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## Using Economic Approaches to Analyse Institutional Reform in Britain\*

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### *Abstract*

Over the last decade, the British state has been profoundly restructured. The reforms challenge scholars to develop accounts that can provide a unified analysis of the numerous changes and enable their effects to be identified. While the constitutional changes in Britain are the subject of an extensive literature, most of the studies focus on individual institutions and neglect the reforms' collective nature and effects. To develop a more unified analysis of the reforms and their consequences, we need an account of what institutions are and of how they work. Economic analyses of institutions provide such an account, helping us to identify the common operating logics that underpin different institutions along with their effects. Insights from economic analyses are used to examine the recent institutional reforms in Britain, in particular how these reforms affect the distribution of decision making authority and the nature of political accountability.

### *Keywords*

Constitutional reform; Institutional analysis; Economic approaches; Rational choice; Britain.

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Over the past fifteen years or so, the British state has been profoundly restructured. Political authority has been decentralised to new tiers of government, the role of the judiciary has been strengthened, new systems for electing public representatives have been introduced, the membership of the second chamber has been recast, access to official information has been liberalised and power over monetary policy has been delegated to an independent agency. The magnitude of these changes forces us to think about how we should assess them; in particular whether we can identify a way of analysing the reforms in a unified way, or must instead fall back on a piecemeal approach in which each reform is analysed individually. To date, most of the literature on constitutional change in Britain has taken the latter route, analysing individual institutions in discrete terms with little attempt to develop a more encompassing analysis. This article suggests that seemingly distinct reforms in fact manifest various common operating logics, and that attention to these logics opens up a way of exploring institutional change in Britain in a more unified and systematic manner.

These operating logics can best be identified and understood by adopting a detached or generalised approach to the subject matter, which focuses less on the detailed particulars of institutions than on the broad rules they represent. Such an abstract treatment is characteristic of economic or rational choice approaches to institutional analysis. In adopting a simplified or pared down perspective, the economic approach helps us to identify similar types of rules manifested in seemingly very different political institutions. Focusing on these general rules, rather than on the specific features of individual institutions, helps us to discern common operating procedures across institutions, providing a unifying focus for analysis. A second virtue of the economic approach is that it enables us to specify more clearly what the effects of reforming political institutions might be. On this approach, institutions are seen to comprise bundles of incentives and constraints that encourage actors to make certain decisions while discouraging other choices. Treated in this way, we can begin to discern the ways in which different types of institution might induce particular behavioural responses among actors, in turn allowing a clearer link to be drawn between institutional design (and re-design) and various policy and political outcomes.

The economic approach to institutions thus provides a potentially valuable tool for analysing the numerous constitutional changes introduced recently in Britain. It enables us to deal with multiple different reforms in a more encompassing way, while also helping to identify the potential effects of these reforms. Economic analyses suggest that institutional rules structure the interactions between actors in a number of ways, of which two provide particularly useful frameworks for analysing the reforms introduced in Britain. The first stresses the role of institutions in shaping how policy decisions are taken by governments, in particular the degree of discretion, or absence of constraint, enjoyed by ministers. The role of institutions in allocating decision making rights has significant effects on outcomes such as the level of credibility attached to government pronouncements, the extent of redistributory policy activity that ministers can engage in, and the degree of protection afforded to minority groups. The second framework sees institutions as establishing the terms on which governments are rendered accountable to citizens. Different institutional configurations shape the extent to which ministers and other executive agents are encouraged to align their decisions with public preferences. Again, these institutional arrangements have potentially significant effects, not only on the degree of government accountability, but also on factors such as the level of cohesion

within political parties and the propensity of ministers to make policy choices that enhance public welfare.

Economic analyses thus make much of the role that institutions play in determining how policy decisions are made and how political accountability is secured, and we can use these two frameworks to analyse many, if not all, of the institutional changes in Britain. As a result, rather than treating the numerous reforms in discrete terms, we can offer a more unified account of their nature and implications, based on the contribution that they make either to shaping the decision making process or to changing the nature of political accountability. This is the task undertaken in the main sections of this article. Before then, however, I briefly review the existing literature on constitutional change in Britain, and outline the contribution I think economic analyses of institutions can make to our understanding of these changes.

### **Analysing constitutional reform**

The literature devoted to the constitutional reforms introduced in Britain since 1997 is now voluminous in size and extensive in reach. This literature includes several impressive book length overviews of the reform programme as a whole (Oliver, 2003; King, 2007; McDonald, 2007; Bogdanor, 2009), as well as numerous studies of specific institutions. Many of these accounts are historical and descriptive, concerned primarily to map the genesis, formal powers and detailed operating procedures of individual institutions. There is less concern to explore any common operating logics that might apply across different institutions, or to identify the effects of the reforms. Granted, among the more ambitious accounts, attempts have been made to identify the cumulative, or systemic, implications of the various reforms. Thus, the constitutional changes are seen as leading to a dispersal of power from the central executive, the imposition of more powerful constraints on ministers, the establishment of a more constitutionalised politics, the extension of individual rights over collective obligations and the introduction of more transparent decision making processes (e.g., Oliver, 2003; Judge, 2003; King, 2007; McDonald, 2007; Bogdanor, 2009). Some accounts suggest that these effects are inducing a shift in the underlying logic of the British political system, away from an electoral democracy towards a 'juridified', 'judicialised' or 'constitutionalised' politics, with executive authority constrained by formal regulatory codes, policed by judicial actors and independent enforcement agencies (Oliver, 2003; King, 2007: 356-58; Bogdanor, 2009: ch. 11). In a more comparative vein, other scholars have adopted Arend Lijphart's distinction between 'majoritarian' and 'consensus' forms of democracy, arguing that the political system in Britain today represents a form of 'modified majoritarianism' (Flinders, 2005, 2009a, 2010; Flinders and Curry, 2008; Hazell, 2008).

Descriptively, these analyses are valuable in helping us to understand more clearly the ways in which changes to some core institutions have served to redistribute political authority in Britain. Yet many of the analyses remain more focused on the characteristics of individual institutions than on the collective nature and implications of those institutions. (One revealing indication of this is the tendency among book length treatments of the constitutional reforms to order their chapters by specific institutions.) In addition, the collective implications that are identified tend to be drawn somewhat narrowly; thus, while labelling Britain as a 'constitutionalised' polity might serve to

highlight a shift towards a clearer separation of power between the executive, legislature and judiciary, it says little about other important implications of the reforms, such as shifts in the nature of political representation and in the status of political parties.<sup>1</sup> Hence, notwithstanding the extensiveness of the existing literature, there remains scope for thinking more broadly about the recent institutional changes in Britain, in particular by exploring whether individual reforms exhibit common rationales and operating logics that would open the way to treating them more explicitly in collective, rather than in discrete, terms. Moreover, the existing literature rarely reaches beyond descriptive accounts to consider the effects or outcomes of Britain's recast political rules (Kelso, 2008: 546). Anthony King's analysis provides a partial exception, in attempting to gauge the effects of fragmenting executive authority – between agencies, service delivery bodies and watchdogs – for the quality of political accountability (King, 2007: 360-62). However, this effect is examined only fleetingly, and few others have attempted to explore what a 'constitutional' or 'modified majoritarian' system might entail for political or policy outcomes.<sup>2</sup>

One reason why scholars in Britain have approached constitutional reform in a largely piecemeal fashion and with little concern for the effects of institutional change stems, I suggest, from a reluctance to consider what institutions are and how they might be studied.<sup>3</sup> Partial exceptions are the books by Anthony King and Vernon Bogdanor, both of which open with definitions of the key term. Taking King's formulation, a constitution represents a set of rules and understandings that regulate relations between governing actors and between these actors and citizens (King, 2007: 3; see also Bogdanor, 2009: 8-10). Yet, however accurate this definition, it tells us more about the scope of the rules under review than it does about their nature and properties, and thus about the way those rules should be analysed.

The limited attention that constitutional analysts in Britain have paid to the issues of institutional form and operation is somewhat puzzling, since for the last two or more decades, the study of social institutions has been at the forefront of political science.<sup>4</sup> Among the various forms of institutional analysis, one that is extremely helpful in exploring the nature and implications of different political institutions is the economic, or rational choice, approach (overviews of which appear in Goodin, 1996 and Peters, 2005). This approach treats institutions as comprising the 'rules of the game'; sets of accepted procedures that lay down how a particular game or decision making process is to be conducted between actors (Ostrom, 1986; North, 1990). In particular, institutions comprise bundles of incentives and constraints; incentives affect the costs of pursuing different courses of action – by raising the cost of certain actions and lowering the cost of others – while constraints close off certain actions altogether. These incentives and constraints provide individual actors with clear payoffs from alternative decision paths.

Even this very brief summary serves to highlight the potential benefits of deploying an economic approach to analysing constitutional change in Britain.<sup>5</sup> First, paring back institutions to basic sets of incentives and constraints makes it easier to discern operating logics not merely within particular institutions but also across different institutions, paving the way for a more encompassing and unified approach to constitutional analysis. Second, focusing on the incentives and constraints presented by institutions helps us to understand the ways in which institutions provide different payoffs to the choice options facing political actors. In turn, this helps to link institutional design with identifiable

patterns of behaviour among actors, and ultimately to political and policy effects. Third, in treating institutions as general 'rules of the game', economic analyses tend to be fairly catholic in their coverage of the subject. The relevance of an institution lies not in whether it is labelled 'constitutional', but whether it presents sufficiently powerful inducements and restraints to shape the choices made by political actors.<sup>6</sup>

Within the economic literature, institutions are seen to shape various aspects of the way political actors behave (see, for example, Brennan and Hamlin, 2000: chs 5 and 7; Persson and Tabellini, 2003: ch2; Besley, 2006). I focus on two of these aspects which provide useful frameworks for considering the various reforms introduced in Britain. The first aspect concerns horizontal level interactions between political rulers. Here, institutions determine how decision making authority is allocated, and in particular the extensiveness of governments' discretionary authority. A political system that centralises power serves to increase such ministerial freedom of latitude. On the other hand, institutions that disperse decision making authority force ministers into bargaining games to accomplish their desired outcomes and, depending on the particular bargaining rules, can force ministers to compromise on their policy ideals. We can therefore distinguish between institutions that disperse authority and thereby constrain ministerial discretion, and institutions that concentrate authority, thereby increasing such discretion. The second aspect concerns the vertical level interactions between citizens and rulers. Here, institutions determine the ways in which rulers are rendered accountable to citizens, and are thus induced to take citizens' preferences into account when making decisions. Again, we can distinguish between different types of rules; those that provide for accountability via elections and cohesive political parties, and those that introduce more explicit arrangements for validating (or 'screening') candidates for public office and for scrutinising (or 'monitoring') these actors once in post.

These two broad implications of political institutions – for the distribution of decision making authority and the nature of government accountability – provide unifying frameworks within which we can analyse most of the reforms to the British political system since 1997. If one consults an inventory of those reforms (e.g. McDonald and Hazell, 2008: Table 1.1), then quite simple economic assumptions can be used to explore the nature and effects of such major changes as the Human Rights Act, the granting of operational independence to the central bank, a recast membership of the second chamber and the establishment of a freedom of information regime. Moreover, the two frameworks have the additional virtue of extending our analytical reach to incorporate a series of lower profile, but nonetheless significant, institutional changes often neglected by constitutional textbooks such as tighter constraints on ministerial policy autonomy, new ways of monitoring government activities and reforms to the selection of political office-holders. The economic approach thus provides a genuinely broad and encompassing way of analysing institutional change. In the following sections, I draw on this approach to examine initiatives that either constrain ministerial authority (notably through changes to the role of the Bank of England, reforms to the second chamber and the granting of more extensive power to judges, but also extending to seemingly more minor measures such as legislative vetoes over ministerial decisions and the fixing of the legislative term) or which alter the nature of government accountability (notably the way political actors are selected and then monitored once in office).

Before coming on to these reforms, I must note two institutions that are not directly covered in the analysis. Alongside the twin frameworks of decision making rights and government accountability, the economic approach also treats institutional rules as fundamental for the way that popular preferences are aggregated or represented (Persson and Tabellini, 2003: ch2). The institutions that most directly shape the nature of political representation are the electoral system and the territorial division of policy authority. Different electoral rules and territorial distributions of power create different incentives on political actors to represent, or be responsive to, distinct social groups within the population. Taking electoral rules first, plurality voting systems are held to promote responsiveness to a small set of voters in ‘marginal’ districts, while proportional systems tend to encourage responsiveness to a wider social constituency (Persson and Tabellini, 2000: ch8; 2003: 16-19; see also Hix et al, 2010). While different electoral rules thus have important implications for representation – and associatedly for the nature of policy decisions and policy outputs – the constitutional reforms in Britain have not, of course, extended to changing the electoral system for the central (Westminster) legislature, from a plurality to a proportional model. Moreover, following the defeat of the Alternative Vote proposal at the referendum in 2011, there is little prospect of any such change in the near future. Hence this article contains no further discussion of electoral reform.

The other institution that directly shapes preference aggregation and political representation is the territorial division of power. Here, of course, we have seen significant reform in Britain with the creation of devolved assemblies in Scotland, Wales, Northern Ireland and London. Devolution has major potential implications, extending from the nature of citizens’ social identities, to the extent of policy variation across the different units of the United Kingdom, to the very unity of the state itself (King, 2007: ch8; Bogdanor, 2009: ch4). In thinking about these effects, economic analyses have useful insights to contribute insofar as decentralisation is seen to affect the incentives for responsive policy decisions and for the salience of distinctive civic identities and secessionist demands (Treisman, 2007: chs 7 and 10).

Yet economic accounts see the effects of decentralisation as extending more widely than this. In particular, decentralisation is believed to shape levels of taxation and public spending and the capacity of governments to redistribute resources between social groups. Decentralisation can even constrain central government's ability to take policy initiatives, by increasing the number of vetoes within the political system (see Mueller, 2006; Treisman, 2007).<sup>7</sup> But the same economic accounts also suggest why such potent effects are unlikely to materialise under the current devolved regime in Britain. This settlement grants only limited financial authority to the various devolved governments, well short of the fiscal form of federalism usually associated with distinctive economic effects. Moreover, and more prosaically, the devolution settlement does not extend outside Scotland, Wales, Northern Ireland and London; the full implications of federalism are hardly likely to hold when political power has not been formally decentralised to the bulk of the population. Thus, while economic analyses certainly recognise the kind of incentives presented by the devolution reforms in Britain to date, they also point to an additional set of incentives, capable of triggering rather wider policy implications, that only a more far-reaching programme of decentralisation – including fiscal federalism – would generate.

Given the absence to date of reform of the electoral rules for Westminster, and the partial nature and coverage of the territorial devolution of power to date, this paper does not extend its analysis of the way that institutional rules affect the aggregation or representation of popular preferences. Of course, should Britain witness any move in the future towards a proportional voting system for Westminster, or towards more explicit form of fiscal federalism, then economic analyses provide plenty of pointers towards the kind of policy effects that might be anticipated. For now, however, this paper focuses on two other aspects of institutions – namely the way that policy authority is distributed, and the nature of political accountability – and explores how far these provide us with unifying frameworks within which to analyse the multiple institutional changes introduced recently in Britain.

### **The distribution of decision making authority**

Decision making in Britain used to be highly concentrated; the distribution of authority meant that governments held extensive discretion over policy choices, with limited policy autonomy granted to other bodies and few checks and constraints on ministerial decisions (Saalfeld, 2003). Yet the recent constitutional changes have qualified this majoritarian model. We can explore these changes by focusing on two ways in which institutions help to allocate decision making authority. The first reflects the way in which responsibility for various decisions is ‘delegated’ by ministers to dedicated external agencies, is shared with some third party, or is subjected to some rule or proviso that limits the discretion available to ministers. The second reflects the presence of institutions that are equipped to restrain government activity, by virtue of being able to formally block, or ‘veto’, ministerial decisions.

A prime motivation behind the moves to delegate and disperse government authority was the desire to alleviate the problems associated with the concentration of political power. The previous institutional arrangements afforded ministers substantial discretionary authority, but thereby also limited the credibility of any official commitments, since these could be altered or broken relatively costlessly by succeeding administrations (Moe, 1990; Moe and Caldwell, 1994).<sup>8</sup> Why should citizens or groups commit to a policy decision – particularly one that involved a financial investment or that meant foregoing a present benefit for some future utility – if that decision might be overturned by a new government? A system that allocated extensive discretionary power to government thus made it difficult for ministers to commit credibly to policy positions, with potentially damaging consequences for collective welfare. This problem could be tackled in a number of ways, most notably by government agreeing to voluntarily ‘tie its hands’ by delegating control over sensitive policy decisions to independent, or ‘non-majoritarian’, agencies, unaffected by partisan motivations and thus with less incentive to renege on commitments (Dixit, 1996: 62-85).<sup>9</sup>

Numerous areas of public policy in Britain are now overseen by non-majoritarian agencies, particularly in policy domains where incentives for non-partisan decision making are seen as vital to establish the credibility of commitments (for example, on issues around market access and behaviour, such as utility regulation and commercial competition; see Thatcher, 2003). This goal also lay behind the first institutional reform introduced by the Labour Government in 1997, granting operational independence to the Bank of England, a reform designed to imbue monetary policy with greater credibility in the eyes of global financial markets (Allsopp, 2006; Balls, 2006). Under the terms of the



new rules, the government retains some authority over monetary policy – by stipulating inflation limits and through appointments to the body responsible for monetary policy decisions – although the Bank enjoys sufficient operational autonomy and distance from partisan pressures to command significant credibility in its policy announcements; witness the decline, immediately following the Labour Government’s decision, in the level of interest demanded by the market on investments (Goodhart, 2002: 194).

The Bank of England is the most important exemplar of policy makers’ attempt to redesign institutions to boost the credibility of policy commitments, although various other institutional changes can also be analysed through similar operating logics. Restrictions on government discretion over taxation and spending decisions were introduced by the Labour Government after 1997 to strengthen its professed commitment to a restrained fiscal policy; particularly noteworthy examples were the ‘Golden Rule’ and the ‘Investment Rule’, which stipulated limits on levels of government borrowing and debt over the economic cycle (Balls, 2006: 104-7). More recently, the Conservative-Liberal Democrat coalition government has established a dedicated agency, the Office for Budget Responsibility, designed to provide independent information on the public finances, and thus to encourage governments to select fiscal measures that meet broad public objectives rather than narrower partisan goals. Restraining government discretion to encourage more effective policy decisions also forms part of the rationale for the coalition government’s reform of the electoral cycle, by introducing fixed parliamentary terms. In commending the change, the Deputy Prime Minister, Nick Clegg, suggested that allowing governments leeway over the timing of elections “... is debilitating to good government ... in public policy terms, it certainly prevents difficult, long-term decisions being taken, because everything is refracted through that short-term objective” (Constitution Committee, 2010). Finally, reforms have also been introduced to restrict government discretion in policy areas that involve very high individual and collective costs. The decision to commit troops to war is an example. Following the discredited decision to invade Iraq in 2003, the Labour Government introduced a rule stipulating that any future deployment of troops would only follow a confirmatory vote of MPs (Justice Department, 2008). By forcing ministers to gain legislative approval prior to any decision, and by thus fettering their discretionary authority, the government hoped to attach greater credibility to promises to act responsibly where the lives of military personnel were being risked.

Thus, various seemingly disparate institutional changes introduced recently in Britain – ranging from central bank independence to legislative veto of military deployments – can be brought together under a common unifying rubric, namely restricting ministerial discretion in order to strengthen the credibility of policy commitments. Turning to the effects of these institutional changes, what can we say about the likely success of the reforms in enhancing that credibility? We have already seen that the delegation of authority from ministers to the Bank of England seems to have established the necessary incentives for effective decisions, and thus for a more credible monetary regime. However, attempts to strengthen the credibility of the fiscal regime appear to have been less successful. The various fiscal constraints or ‘rules’ in fact comprised only paper commitments with no accompanying legal sanctions, and were, moreover, both defined and monitored by the very organisation they were designed to restrain (Chote et al 2007, 86).

Nor do the constraints in other areas of decision making appear sufficiently strong to accord greater credibility to government commitments. In the case of war making powers, the executive retains some discretionary authority, since it may commit troops without legislative approval in an 'emergency' situation, the definition of which rests with the executive. Moreover, for the government to be truly restrained in its decisions, the legislature must be able to fully scrutinise the basis for ministers' policy decisions; yet when it comes to war powers, members of parliament are reliant on information provided by those very ministers. The move to fixed term parliaments, too, may fail to restrict the tendency for partisan tinkering in policy decisions. In fact, empirical studies suggest that, in comparison to countries with flexible electoral timetables, countries operating fixed electoral terms tend to witness more, not less, government interference in the economy. This is because flexible terms allow governments to call an election that coincides with propitious economic circumstances ('surfing') rather than seeking to engineer such circumstances to coincide with a fixed election date ('manipulation') (Smith, 2004: 243; Kayser, 2005). Thus, while the incentives and constraints established by the new institutional rules appear, in some cases (such as the independent central bank), to have strengthened the credibility of government commitments, in other cases (such as the fiscal rules or war making powers) they may have failed to achieve this goal, while sometimes (in the case of fixed electoral terms) they may even have served to weaken that credibility.

Government discretion may be fettered not only by dividing up competences and allocating policy rights to other actors, but also by granting third parties the authority to formally constrain government. The purpose here is less to enhance the credibility of policy commitments than to restrict the reach of majority rule and thereby to safeguard the interests and welfare of minority groups. This goal does not require that specific policy competences are unbundled and hived off to separate agencies, as is the case where power is delegated; rather, safeguarding minority rights entails granting third party agencies the authority to review and restrain the executive across policy fields, akin to a 'separation' of powers. We can assess how far the institutional reforms introduced in Britain provide for such a separation by considering whether the political system now contains more 'veto players' than before. A veto player is an individual or a collective actor whose assent is needed before any change can be made to the policy status quo (Tsebelis, 2002). Usually, Britain's political system contains just a single veto player: the government of the day.<sup>10</sup> Since the constitutional changes introduced since 1997 included reforms to both the legislative upper chamber and the judiciary – two elements in a system of separated powers – it might be thought that the number of veto players in Britain would have increased. However, as existing analyses of those changes suggest, this is not the case.

The Coalition Government's plans to reform the House of Lords focused on moving to an elected basis for composition, and did not extend to conferring any new powers on the second chamber to constrain the executive (Stationery Office, 2012).<sup>11</sup> Granted, analysts have noted how even limited compositional reforms to the second chamber – namely the removal of most of its hereditary members – appear to have had the effect (inadvertent on the government's part) of stimulating peers' willingness to challenge the lower chamber. Thus, over the past decade, a reconstituted House of Lords has imposed numerous defeats on the government, often on important pieces of legislation (Russell and Sciara, 2008; Russell, 2010). Yet, by denying a reformed second chamber any significant additional powers, the government's proposals would not have conferred on the House of Lords

formal veto player status. Nor have reforms to the judicial arm of the state established judges as formal veto players. Under the Human Rights Act, Britain's courts have been granted more extensive terms against which to evaluate government decisions. And governments have tended to comply with any negative findings by the courts; a tally of judicial 'declarations of incompatibility' found that in no case since the Act came into force in 2000 has a judicial declaration been ignored by the government (Justice Department, 2010). Yet the Act confers no powers on judges to annul primary legislation, but merely to signal that an offending law is contrary to a set of prescribed rights; the initiative remains with ministers.

While existing accounts (e.g. Hazell, 2008; Flinders, 2010) are correct to suggest that reforms to the second chamber and the judiciary do not establish additional formal vetoes within the political system, they largely fail to link these changes to other, rather lower profile, institutional reforms that contribute to the same goal, of restraining ministerial power. One such reform concerns changes to the way appointments to executive positions are made. It is widely accepted that the direction of government policy can be strongly shaped by the personnel appointed to run large and important executive agencies (Lewis, 2011). Governments that are unencumbered in the appointments they can make are free to select individuals whose policy positions are coterminous with those of ministers. However, reforms introduced by Labour after 1997 have restricted executive discretion over appointments, potentially impinging on the direction of government policy. For a variety of important executive positions – such as the chairs of the utility and transport regulators, the education, prisons and health inspectorates, and the public ethics and spending watchdogs – those nominated for office are now subject to formal legislative hearings.<sup>12</sup> For the majority of such posts, the legislature lacks any right of veto over government nominations. However, in two cases – the chairs of the Statistics Board and the Office for Budget Responsibility – the legislature does wield such veto rights.<sup>13</sup> There have also been calls for the legislature to be granted veto rights over a more extensive range of executive positions (see the reports by the Liaison Committee, 2011; Treasury Select Committee, 2011; Institute of Government (Paun and Atkinson, 2011); and the Public Administration Select Committee, 2003).

Thus, by focusing on the general incentives and constraints underlying institutions, rather than on these institutions' specific features, we can group together and analyse some fairly distinctive institutional changes – to the second chamber, the judiciary and the process of executive appointments – under the general theme of constraints or vetoes on government decisions. Again, moreover, economic considerations help us to identify the kind of effects likely to be triggered by changes to these institutional rules. In general terms, veto players make it more difficult to shift from the policy status quo, thus increasing the level of policy stability within a political system (Tsebelis, 2002: part 3). A semi-reformed House of Lords appears to be a more active constraint on government initiatives, thus bolstering the policy status quo. However, lacking equal powers with the House of Commons, the Lords falls short of formal veto player status, and so is unlikely to generate the sort of constraints on government – particularly in relation to budgetary measures – characteristic of powerful second chambers (Heller, 2001; Bradbury and Crain, 2006). Systems of strong judicial review are also believed to restrain governments' ability to introduce redistributory fiscal measures (Tridimas, 2005). Yet, such effects are again unlikely in Britain since, although judicial decisions appear to be honoured by ministers, there are few grounds under the Human Rights Act for

individuals or groups to challenge government decisions on raising and disbursing public goods. In fact, to date, where judges have used these rights to rule against government spending decisions, these cases have generally concerned individual entitlements to public goods, rather than checks on the provision of those goods (Palmer, 2007; King, 2009). The new rights regime thus appears to be a vehicle for the equitable provision of government services rather than a constraint on the extent of these services.

Thus, unless further reforms are introduced in Britain, notably by extending the formal powers of the second chamber, I suggest that the institutional changes to date are unlikely to significantly curb government's ability to engage in redistributory policy initiatives. However, governments' policy discretion may be affected if the legislature is granted more extensive powers of scrutiny and veto over executive appointments, which would create far stronger incentives for ministerial compromise over appointments. Assuming a legislature whose median member diverges from the relevant minister's ideal policy point, an appointments process marked by a legislative veto would entail significant transaction and opportunity costs for ministers, which would become particularly burdensome if an election was imminent or if the executive position carried limited discretionary powers. These factors tend to induce ministers to compromise on their preferred policy by nominating personnel that fall close to the ideal position of the median legislative or committee member<sup>14</sup> (for this argument in the context of executive nominations in the US, see Cameron et al, 1990; Moraski and Shipan, 1999; Nokken and Sala, 2000; Chang, 2001).

A wide variety of institutional reforms introduced in Britain since 1997 can thus be seen as mechanisms for redistributing decision making authority. It is rare for governments to willingly curtail their freedom of manoeuvre, so it is hardly surprising that the institutional reforms in Britain have introduced only minor additional formal restraints, or vetoes, on ministerial discretion (the increasing assertiveness of the House of Lords is, as noted earlier, a largely inadvertent by-product of government reform). This point has been amply made in the existing literature on constitutional reform in Britain. What has been less widely noted is that this discretion comes at a cost, paid in the limited credibility attached to government commitments. To limit these costs, a range of other institutional reforms have been introduced that share similar goals, of delegating, or placing some additional limits on, executive authority. These reforms – which include new fiscal requirements and monitoring agencies, moving to a fixed electoral cycle and requiring third party approval in the case of military deployments – are less regularly featured in existing constitutional analyses. Yet they work to a broadly similar logic, of seeking to constrain the discretion afforded to ministers in making policy decisions. An analysis of these reforms suggests, however, that only in one case have the new rules contained sufficient incentives to bolster the credibility of policy commitments, namely in the field of monetary policy through the creation of an independent central bank.

### **Accountability of politicians**

If one way to discern an underlying logic to various seemingly disparate institutional reforms in Britain is to focus on their contribution to the horizontal distribution of decision making authority, a second is to consider their effects on the vertical relations between politicians and citizens, manifested in the nature of political accountability. Government accountability in Britain used to rest

on a relatively narrow set of mechanisms, namely robust competition between parties at elections whose outcome was usually decisive for government formation. In between elections, disciplined parties ensured that the electoral 'contract' with voters served to bind legislators and members of the executive (Strom, 2003). However, even in robust form, these twin mechanisms of electoral sanctions and internal party cohesion were widely seen as presenting too restricted an apparatus for effective government accountability (Strom, 2003: 95-7). Compounding the problem, these mechanisms may now be less robust than they once were; in particular, commentators have pointed to the waning links between social groups and parties which have arguably weakened the clarity and distinctiveness of parties' values and policy positions (Saalfeld, 2003). Faced with these shortcomings, a number of the recent institutional reforms can thus be seen as attempts to introduce supplementary accountability mechanisms to Britain's political system, mechanisms that largely operate outside political parties rather than through them.

One such mechanism is represented by reforms that provide for more rigorous 'screening' of candidates to ensure that only those who share citizens' preferences are selected to hold public office. The political parties have actively pursued new forms of candidate screening, to ensure that those selected appeal to a wider cross-section of voters. This has involved more robust procedures within parties – involving thorough vetting of candidates by internal party panels – that enable their leaders to exert greater control over who gets selected, but that also ensure prospective party representatives are screened and selected on criteria such as responsiveness to local concerns and general competence (Quinn, 2003: ch.5; Russell, 2005: ch.4; McIlveen, 2007).<sup>15</sup> Alongside more formalised arrangements within parties, moves have been made to extend screening outside party confines. The Conservative Party has gone furthest here, adopting 'open' primary contests – which extend selection rights to non-party members – in over 100 parliamentary constituencies before the 2010 general election, and for the important post of London mayor.<sup>16</sup> All-voter primaries are, under the Conservative-Liberal Democrat Coalition Agreement of 2010, supposed to be extended to 200 constituencies in the current parliament.

Other reforms target accountability higher up the delegatory 'chain'. As already noted, one of the most significant reforms in Britain in recent years has been the delegation of specific functions to independent agencies. Such delegation, from elected politicians to unelected agencies, raises obvious accountability issues. One way of meeting these concerns is to ensure that candidates for unelected positions are rigorously and publicly screened prior to selection. Since the rationale for delegating authority in the first place is to remove ideological or strategic motivations from sensitive policy decisions, such screening cannot be partisan in form. Instead, new arrangements have been introduced to provide for non-partisan screening of candidates. For many executive positions, covert party screening has been replaced by more overt mechanisms, based on clearly defined criteria for holding public office, reviewed and enforced by independent agencies such as the Commissioner for Public Appointments (Flinders, 2009b). More innovatively, moves have also been made, as noted above, to strengthen the legislature's ability to screen and approve nominations to various executive positions.

A second way in which political accountability can be strengthened is to introduce arrangements for scrutinising, or 'monitoring', what governments do. In political systems like Britain's, dominated by

strong political parties, governments tend to face limited monitoring by external agencies. Thus, the legislature, for example, provides only weak oversight since the incentives for MPs to scrutinise ministers' performance are largely outweighed by the incentives for party cohesion (Strom, 2003: 72-3). While some attempts have recently been made to strengthen legislative oversight – notably, following the recommendations of the Wright Committee, by granting MPs greater power over select committee membership and the legislative agenda (Kelso, 2011) – these reforms materialised right at the end of Labour's term in office, while government actions until that point had been marked as much by attempts to subvert legislative scrutiny as by efforts to enhance it.<sup>17</sup>

But while – or maybe because – the monitoring capacity of the legislature remains weak, a more extensive scrutiny role has been accorded to external organisations. Thus, various monitoring or 'watchdog' bodies have been established, including the Committee on Standards in Public Life, the Statistics Authority, the Electoral Commission and the Information Commissioner (Gay and Winetrobe, 2008). Alongside greater independent monitoring of government have gone moves to require greater transparency and openness among public organisations. All public bodies are now covered by a Freedom of Information regime, established in 2000, requiring them to disclose information about their activities. Political parties are also required to disclose the sources of their election funding, ending the secretive arrangements that endured until 2000.

Thus, a variety of institutional reforms – covering candidate selection procedures, screening of executive appointments, scrutiny by the legislature and by external watchdogs, and transparency requirements – can be seen to share a basic logic, of seeking to strengthen the accountability of government. Moreover, these reforms attempt to compensate for the weaker contribution now made to accountability by periodic elections and cohesive political parties by introducing non-partisan mechanisms for screening and monitoring political agents. If we examine the incentives established by these changes, what conclusions might be drawn about their effects? Reforms to the way parties select their candidates may have been introduced to boost the parties' electoral attractiveness, but their implications extend more widely to the nature and cohesion of parties. Open party primaries, championed by the Conservative party, provide various benefits for party leaders. For a start, since candidates may be keener to stand in party contests if selection is by all local voters rather than by an internal party clique, primaries tend to increase the pool of candidates available to the party. At the same time, open primaries also enable these candidates to be screened for their campaigning skills (Serra, 2011). However, there are also potential costs for party leaders in extending candidate selection beyond party members. If the primary electorate holds ideological preferences that differ to those of the party leadership, then candidates will face a strategic dilemma between pleasing the electorate and pleasing the party leadership. As long as primary contests are competitive, so that no candidate can be sure of winning, then candidates will locate at the ideal point of the primary electorate's median member and prioritise local concerns over national party priorities, which will serve to weaken – yet further – levels of party cohesion (Gerber and Morton, 1998; Muller, 2000).<sup>18</sup>

The more extensive requirements for monitoring or transparency appear to deliver clear benefits for government accountability, since the more that ministers must reveal about their actions, the stronger the incentives they face to align their behaviour with public preferences. However, monitoring government is not without drawbacks. For a start, it is costly, both for governments in

the time they must devote to reporting their actions, and for the public in the resources that must be committed to oversight bodies. Moreover, unless monitoring requirements are very extensive, and thus very costly, it will be possible for ministers to conceal some of their actions from citizens. Monitoring can thus address, but not resolve, accountability concerns (McCubbins et al, 1987: 250-51). In addition, while transparency may induce ministers to be more responsive to public demands, this may be at the expense of other incentives that encourage welfare-enhancing behaviour. Thus, the more that government actions are observed, the more incentive ministers have to behave in ways they think citizens will approve of, even when different policy decisions might actually generate greater aggregate levels of social welfare (Prat, 2006; Fox, 2007). This perspective highlights the difficult balance involved in any delegation of authority to a third party. Delegation is undertaken to reap the benefits of an agent's superior information and expertise, but forcing the agent to reveal their actions – in the name of accountability – may weaken their incentive to act on this information (Stasavage, 2006). It is not yet clear how far the new monitoring requirements on government in Britain achieve an appropriate balance between incentives: to be transparent, on the one hand, while avoiding undue 'pandering' to public expectations, on the other.

## Conclusion

Faced with the extensive changes to Britain's political system over the past fifteen years, it is perhaps understandable that scholars have tended to focus their attention on individual institutions rather than on grappling with the less tractable nature and effects of institutional reform in the round. Some accounts have attempted the latter, but characterisations of Britain as a form of 'modified majoritarianism' or 'constitutionalised state' deal largely with the distribution of decision making authority, while remaining largely silent on other aspects of the reforms such as the nature of political accountability. Moreover, the labels offer only descriptive statements, and tell us little about the effects or implications of the new arrangements. Consideration of Britain's recent institutional upheavals would benefit from a more explicitly theoretical account of institutions and of the way they function, capable of abstracting from the particulars of specific organisations and thus enabling a more collective analysis across institutions. While by no means the only account capable of this task, the economic or rational choice approach offers researchers some notable virtues. In particular, its abstract treatment of institutions helps us to focus on the common operating logics that underpin very different reforms, enabling a more encompassing or synoptic account of institutional change. Treating institutions in terms of underlying incentives and constraints also helps in identifying the effects on actors' choices and behaviour, and thus in specifying the kind of outcomes that might arise from reforming a set of institutional rules.

This article has discussed a range of reforms, some that feature prominently in existing constitutional analyses (notably the Human Rights Act, reform of the House of Lords and the establishment of a Freedom of Information regime) and others that feature more rarely, if at all (such as the delegation of policy authority, various limits on ministerial power, the screening of public officials and the monitoring of political agents). This ecumenical coverage constitutes one of the main virtues of the economic approach to institutions; since its focus is on the underlying rules and procedures that shape the behaviour of political actors, it casts a broad analytical net, encompassing a range of institutions that go well beyond the formal 'constitutional' rules dominating most textbooks.

The central appeal of the economic approach, at least for the analysis presented here, is thus to offer a route towards a more unified treatment of institutional reform. At places in this article, observations have been made about individual institutions that differ little from points already stressed in the existing literature. For example, it is widely recognised that reforms to the second chamber and to the judiciary, though important, do not introduce additional formal constraints, or vetoes, on government. In this sense, as various analysts have already argued, the majoritarian basis to Britain's political system has been 'modified' rather than replaced. But this conclusion is based on a rather limited set of institutions. If, instead, we focus on the general rules that institutions present, rather than on their specific features, we are able to extend the analysis to include a range of other institutions that also shape the degree of ministerial discretion over policy decisions. This allows our coverage to extend beyond traditional or formal separation of power institutions to include, among others, legislative oversight of executive appointments, delegation of ministerial powers to third party agencies and restraints on government authority to engage in war and to call elections. These reforms may be less significant than changes to higher level institutions (or 'constitutional' structures), but as the economic literature makes clear, they often have important and discernible policy consequences in their own right. They thus deserve to be included in analyses of how far institutional reform in Britain has reshaped the distribution of decision making authority, and the economic approach provides one way of showing how this may be achieved.

Similarly when it comes to the impact of institutional change on the nature of political accountability, an abstract economic approach helps to identify a range of reforms that potentially function in a broadly consistent manner. In particular, new institutional rules can be seen as supplementing the waning accountability generated through political parties and competitive elections, by providing more overt, and less partisan, mechanisms to ensure that political agents are responsive to public demands. These rules include new screening mechanisms for candidates seeking party selection and executive nomination, more extensive monitoring of governments by external agencies and clearer requirements for transparency on government and political parties.

Even in the brief exploration of economic approaches presented here, we have begun to identify something that is largely neglected in many existing accounts of constitutional reform in Britain, namely the implications of institutional change. It is important not only to understand the nature of the new rules, but also to think through what kind of effects they are likely to generate. Descriptive accounts of Britain as a form of 'modified majoritarianism' or a 'constitutionalised state' tend to say rather little about such effects. Yet by focusing on the incentives and constraints underlying institutions, we are able to at least point to some potential implications of the new rules. Thus, while some reforms may have had their origins in attempts to limit ministerial discretion and thus to bolster the credibility of government commitments, the analysis presented here suggests the new rules – with the exception of the reformed Bank of England – largely fail to provide such effective restraints and thus do little to stimulate greater policy credibility. Similarly, while various institutional reforms have been designed to introduce new lines of accountability to government, the analysis presented here suggests is not apparent that these new rules will, indeed, induce more responsive decision making among ministers; or if they do, it suggests these incentives may well be at the expense of choices that maximise collective welfare.



The economic approach to institutions thus provides a way of moving beyond existing constitutional analyses in Britain, to consider how seemingly different institutions share similar operating logics, and thus might be analysed collectively rather than discretely, and to identify some of the potential effects of changing these institutions' underlying rules. These characteristics are not only valuable in analysing existing institutional changes but, as noted earlier, can also be put to good use in thinking through the effects of any reforms that may arise in the future, such as any move to a proportional electoral system for Westminster or to a formally fiscal form of devolution. Thus, whether we are concerned with reforms already introduced, or those that may arise in the future, the economic approach to institutions provides an extremely fruitful way of analysing the nature and effects of Britain's recast institutional architecture.

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<sup>1</sup> Bogdanor's (2009) analysis does call attention to the effects of the constitutional reforms in Britain on both the formal distribution of political power and on the role of political parties within this distribution.

<sup>2</sup> More attempt to identify the effects of such changes has been made among the many studies of individual constitutional reforms. Thus, for example, new electoral systems have been examined for their effects on the party system (Dunleavy, 2005) and on constituency representation (Lundberg, 2006), while devolution has been considered for its effects on public policy (Greer, 2004; Keating, 2005) and on government accountability (Curtice, 2009). However, these effects are usually specific to the particular institution being reviewed, and do not necessarily tell us much about the implications of reforms across multiple institutions.

<sup>3</sup> Similar observations are made by Evans (2001), who takes constitutional studies to task for failing to consider how political institutions might be analysed, and by Flinders (2010: 66-73), who notes the paucity of attempts to consider Britain's constitutional rules in comparative or theoretical terms. Some recent analyses of institutional change in Britain have adopted more explicit theoretical approaches to their study, notably McLean (2009: esp. 30-33), who treats constitutional rules as 'veto points' that structure political games and Kelso (2009), who examines parliamentary reform through an 'historical institutional' framework. The latter work provides a particularly rich treatment of institutions, although its value lies more in explaining the genesis and nature of reforms to a specific institution than in exploring the nature and effects of institutional change more generally.

<sup>4</sup> Admittedly, the nature of institutions has been the subject of considerable reflection among scholars working outside the field of constitutional politics, most notably in the development of interpretive approaches by Bevir and Rhodes (2004; see also Kerr and Kettell, 2006: 12-14 and Marsh, 2011).

<sup>5</sup> Indeed, Dowding (2006) suggests that economic forms of analysis could usefully be extended to many other aspects of British politics.

<sup>6</sup> Because the focus of economic analyses often extends beyond the formal political rules conventionally labelled 'constitutional', I prefer the term institutional reform to the more usual term constitutional reform.

<sup>7</sup> Vetoes are discussed in more detail in the following section.

<sup>8</sup> 'Costlessly' in the sense that only limited administrative and political resources would need to be invested by a single party majority government in overturning a commitment made by a previous government. Where a government commitment involved the creation or abolition of an institution and/or an expensive financial outlay, then the cost for any succeeding administration in revoking this commitment would be much greater and thus the initial commitment made more credible.

<sup>9</sup> The provision of a credible commitment is not the only reason why authority might be delegated to a non-majoritarian agency. Delegation might also take place to shield politicians from potentially unpopular policy decisions or to overcome information gathering costs by transferring these to more knowledgeable officials; see Majone, 1997; Thatcher and Stone Sweet, 2003; Elgie and McMenamin, 2005; Gilardi, 2006.

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<sup>10</sup> Coalition governments may increase the number of ('partisan') veto players generated by the political game; but I am primarily concerned here with ('institutional') veto players specified by the constitutional arrangements (Tsebelis, 2002: 78-9).

<sup>11</sup> The government's proposals for Lords reform were dropped in September 2012, in the face of legislative opposition.

<sup>12</sup> There are currently sixty such positions for which pre-appointment hearings can be conducted by the legislature (Waller and Chalmers, 2010).

<sup>13</sup> Confirmation of executive nominations is by the whole House in the case of the Chair of the Statistics Board, and by the Treasury Select Committee in the case of the Chair of the Office for Budget Responsibility.

<sup>14</sup> More precisely, to nominate personnel that fall closer to the median legislator's ideal position than to the status quo, where no appointment is made.

<sup>15</sup> As just noted, reforms to the way party candidates are screened, along with the use of party primaries in candidate selection, were partly introduced by party leaders for reasons of internal party management. However, alongside these partisan effects, the reforms also have implications for the nature of political accountability and are discussed here with this outcome in mind.

<sup>16</sup> Information from Conservative Central Office, January 2010.

<sup>17</sup> Examples being the Labour Government's attempt to remove such independent chairs of select committees as Gwyneth Dunwoody and Donald Anderson in 2001, and encouragement of MPs to vote against removing party whips from the process of selecting committee chairs in 2002.

<sup>18</sup> In fact, there are suggestions that Conservative Party leaders have gone lukewarm on open primaries, precisely because of their perceived effects to date in fostering independent minded MPs (Goodman, 2011).