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## 1

# Introduction: Forecasting Constitutional Futures

*Mark Glover and Robert Hazell*

## Introduction

This is a book with a difference. It is different in three respects. It is the first study of constitutional change which has systematically used futures methodology and forecasting techniques in combination with political and legal theories. These techniques are still controversial and seldom used by academics. We have found the techniques provide a disciplined but creative framework, which has proved intellectually stretching, and we hope the reader does so too. We also hope that it may encourage other academics to use futures methods in appropriate contexts. We explain our methodology and use of forecasting techniques at the end of this chapter.

Risk and uncertainty is inherent in any predictive exercise, but this does not mean it is not worth doing. We believe that the framework supplied by futures techniques has helped us to focus on what is really driving or constraining change, to think through the interactions between the different forces and to present clearly organised and instructive scenarios up to the year 2020.

The second and third differences of the book can be more briefly stated. The book is genuinely multi-disciplinary, with contributions by lawyers, political scientists and former public servants. And it was written as a genuine collaboration, with a lot of mutual learning as we got to grips with the details of forecasting techniques and the substance of each other's chapters. The aim throughout has been to produce a book which is greater than the sum of its parts in its explanatory power and in terms of the overall conclusions about the future of the British constitution in a time of great change.

## The constitution in flux

The UK is going through a period of quite extraordinary constitutional change. In the space of ten years the Westminster Model, formerly held up as the ideal type of unfettered majoritarian government, has seen the

introduction of a whole series of new checks and balances to reduce the power and discretion of the executive. Devolution, the Human Rights Act (HRA), Lords reform, proportional voting systems, freedom of information (FOI), a new Supreme Court and an array of new constitutional watchdogs have transformed the Westminster constitution. European Union law, meanwhile, is reshaping the political and institutional context of the UK. Some of the changes to the constitution have been described as the biggest since the Great Reform Act of 1832 and the subsequent grant of universal adult suffrage (for example Bogdanor 1999: 55).

The changes have been introduced piecemeal, and they have mainly been written about and analysed in a piecemeal way. An early exception to that was the Constitution Unit's 1999 book *Constitutional Futures*, which was the first attempt to view the New Labour government's constitutional reform programme as a whole and to forecast the cumulative impact of all the different constitutional changes. (Subsequent books about the whole constitutional reform programme include Evans 2003; Foley 1999; Forman 2002; Johnson 2004; King 2001; King 2007; Morrison 2001; and Oliver 2003.)

*Constitutional Futures* was written in the first year of Tony Blair's first term. Ten years on, at the beginning of Gordon Brown's premiership, is a good time to review where we are and make a further set of forecasts. Even without further changes the British constitution is very different from what it was in 1997. But further changes are inevitable. There are many items of unfinished business, and further reforms may come from a Conservative government under David Cameron as well as from the Labour government under Gordon Brown. Even the changes to date contain a continuing dynamism of their own. The only thing that is certain is that the British constitution is not going to stop changing.

The most commonly asked question is where these changes are taking us. Sometimes the question is asked in fear and apprehension; sometimes with expectation and excitement. That is the main reason for looking into the future: to give politicians, parliamentarians, judges and the media a better sense of the direction of travel, the steps on the way and the range of possible destinations. Will devolution lead to Scottish independence and the break up of the UK? Will a British bill of rights lead to yet more power for the judges? Will the introduction of proportional voting systems in Scotland, Wales, Northern Ireland and the European Parliament lead eventually to electoral reform at Westminster? And will this mean more power for Parliament, or less?

Even ten years on the British public and its politicians remain reluctant to view the constitution in the round. This is partly because the Blair government was reluctant to provide any overall narrative and partly because it was hesitant over many of the changes, so that its actions appeared sometimes contradictory. Britain has become more decentralised, but the central executive retains very significant power. The constitution has become

more formalised and legalised, but politicians continue to resist a greater role for the judges. Parliament is becoming more assertive, especially in the second chamber, but the House of Lords remains unelected. Checks and balances on the executive are therefore increasing but continue to be contested. Citizen power has increased, through referendums and FOI, but voter turnout at elections and membership of political parties continue to decline.

The next ten years will be crucial to the bedding in of the new constitutional settlement and the changing relations between the three branches of government. Much remains in flux, which means that several different futures could lie ahead. Depending on the paths we take, Britain could end up as a decentralised and judicialised state, far away from the Old Westminster Model. Or traditional British caution and suspicion of excessive legalism means that we could settle on something in between. Much depends on the changing relationships between parts of the constitution outside the direct control of politicians. Parliament may not live up to the challenges presented to it by the Brown government. Amongst the judiciary the pendulum may swing away from activism and back towards greater deference towards the elected branches of government. The task we have set ourselves in this book is to make the best informed forecasts we can about all the different pieces and players in the constitution, and then connect all the moving parts to give a dynamic sense of the whole.

### **The reform programmes of the parties**

Gordon Brown has promised a bold new programme, starting with strengthening Parliament and reforming the prerogative powers, and possibly ending with a British bill of rights and even a written constitution (Brown 2007a; Ministry of Justice 2007c). The main measures to strengthen Parliament include giving it a greater say over going to war, over its own dissolution and recall, over senior public appointments and over the ratification of treaties, and greater oversight of the intelligence services. The prerogative powers will be curtailed by introducing a statutory framework for the regulation of the civil service, the issue of passports and the grant of pardons and by dropping any effective role in the selection of bishops, and possibly of judges, but with no sign of further curtailing the Prime Minister's role in the appointment of peers. On a bill of rights and a written constitution, the Brown government promised to lead a dialogue within Parliament and with people across the UK in a series of public hearings, to develop first a statement of values which define British citizenship, and then to consider whether

we should go further still than this statement of values to codify either in concordats or in a single document both the duties and rights of citizens and the balance of power between Government, Parliament and

the people. [...] [I]t is right to involve the public in a sustained debate whether there is a case for the United Kingdom developing a full British Bill of Rights and Duties, or for moving towards a written constitution (Brown 2007a).

David Cameron has promised to scrap the Human Rights Act 1998 (HRA) and replace it with a British bill of rights, but with the understanding that Britain would still adhere to the European Convention on Human Rights (ECHR) (Cameron 2006). On devolution, he has undertaken (like his two predecessors) to introduce English votes on English laws: a procedural change which would have a dramatic impact on the drafting of legislation and the legislative process and which would create two or three different classes of MPs at Westminster. The Conservatives' 2005 manifesto also contained a commitment to reducing the number of Scottish and Welsh MPs at Westminster and to reducing the total size of the House of Commons to 550 members. The Conservative Democracy Task Force, chaired by Ken Clarke, has seen most of the proposals in its first report, *An End to Sofa Government* (Conservative Democracy Task Force 2007a), already adopted by Gordon Brown as the new Prime Minister. In his July 2007 statement to Parliament on constitutional reform, Brown also adopted many of the proposals in the Task Force's second report, *Rebuilding Parliament* (Brown 2007a). But in other respects Ken Clarke would go further in extending Parliament's powers and autonomy: by introducing a Business Committee to set the Commons agenda, reducing government's control of the timetable; by allowing select committee chairmen to be elected by a secret ballot of the whole House, reducing the power of the whips; by enhancing the role for private member's bills; and by enhancing the scrutiny of government finance, with select committees following up the work of the Public Accounts Committee (Conservative Democracy Task Force 2007b). More reports of the Democracy Task Force are still to come.

### **The unfinished business of constitutional reform**

But even without any new constitutional reforms, whether introduced by Labour or the Conservatives, the constitutional reform programme contains plenty of momentum simply from the pieces of unfinished business. The first wave of reforms released powerful political and legal forces still working their way through, which have given rise to second and third waves (Hazell 2007c). The initial reforms set in train a series of consequential changes, and there is a lot of dynamism still working its way through the system. The dynamism is particularly evident in devolution, in Wales, Scotland and London. It is at work in Parliament, in particular in the new House of Lords. It is also being driven by the changes flowing from the (HRA), greater separation of the judiciary and the new Supreme Court.

Devolution has plenty of unfinished business. In Wales, the government has finally acknowledged that the original model of devolution is not working, and the new Government of Wales Act 2006 proposes to grant the Assembly greater powers in three stages. The final leap in stage three would be made only after a referendum. In Scotland, the new Scottish National Party (SNP) government will press for further powers for the Scottish Parliament and greater fiscal autonomy. In London, the government is devolving more powers to the Greater London Authority. In the English regions 'creeping regionalism' continues, leaving growing questions about the democratic accountability of the new regional structures. Public support for an English Parliament has been flat, but may be moving upwards in response to the Conservative campaign for 'English votes on English laws'.

At Westminster the semi-reformed House of Lords is much more assertive, defeating the government on average 50 times per year, with many defeats resulting in significant policy concessions (Russell and Sciarra 2007). The House of Commons voted in March 2007 for an all-elected House of Lords. The government had proposed 50:50 elected and appointed. Depending on size and relative proportions, elected members could reduce the independence and expertise of the appointed House. But they could also make the second chamber yet more assertive, and help to create even stronger bicameralism at Westminster.

In the House of Commons the backbenchers are also becoming more assertive (Cowley 2005). A hung Parliament with coalition or minority government after a future election could herald a reshaping of executive-legislative relations. The Liberal Democrats will press for electoral reform as the price for their support, but it will not be introduced until one of the major parties perceives it to be in their interest. If proportional representation was introduced the Liberal Democrats could find themselves ensconced in a pivotal position in the House of Commons as well as the House of Lords. A Conservative government which introduced English votes on English laws could have equally dramatic effects: implemented to the full, it would create a parliament within a parliament (Hazell 2006c).

The impact of the HRA has been as strong on the executive branch of government, and on the legislature, as it has been in the courts. The government clearly dislikes the constraints, but the review which Tony Blair initiated of the operation of the Act proposed little change (DCA 2006b). David Cameron has said he would replace it with a British Bill of Rights, which he would seek to entrench. If successful, this would tilt power strongly towards the judiciary. The growing judicialisation of politics, the Lord Chief Justice (LCJ) as the new head of the judiciary, and the new Supreme Court will also serve to give the judges a higher profile. This is likely to create new tensions between the executive, Parliament and the judiciary.

These selected examples illustrate the continuing importance and dynamism of constitutional reform, but they fall into the familiar trap of

discussing the reforms item by item. What is different about the approach in this book is that we will set out (as we did in the original *Constitutional Futures*) to explore the interactions and interplay between the different constitutional changes and to assess their cumulative impact. We hope to do so in a more systematic way, borrowing from the foresight techniques developed in futures studies. But before we explain the forecasting methodology used in this book, it is worth revisiting the main forecasts made in the original *Constitutional Futures*, to see which were proved right, which were proved wrong, and why.

### The main forecasts made in *Constitutional Futures* in 1998

*Constitutional Futures* was written in 1998, in the first year of the new Labour government. The central framework of the book posited two scenarios of how the constitutional reform programme might unfold over the next ten years, one minimal and the other maximal (see Figure 1.1).

Area	Minimal	Maximal
Devolution	Scottish Parliament with legislative power, not exercising its limited tax raising powers	Scottish Parliament exercising legislative and tax raising powers. Independent Scotland?
	Northern Ireland Assembly with legislative but no tax raising power	Northern Ireland Assembly with legislative and tax raising powers
	Welsh Assembly with secondary legislation making power only	Welsh Parliament with legislative and tax raising powers
	Regional Development Agencies in England appointed by central government	Elected Regional Assemblies in some English regions; Regional Chambers elsewhere
	Elected mayors in a few cities with limited powers	Strong elected mayors in the major cities
	Joint Ministerial Committee (JMC) on Devolution meeting infrequently; firefighting only	JMC as strong part of devolution settlement
	Council of the Isles as token consultative body	Council of the Isles developing wider functions

Figure 1.1 The 1998 predictions: Minimal and maximal scenarios for constitutional reform

Source: Hazell 1999: 7–8

Area	Minimal	Maximal
Parliamentary reform	Limited reform of the House of Lords, involving removing the hereditary peers and re-balancing party numbers. House of Lords remains a nominated body	A predominantly or solely elected House of Lords representing the nations, regions and cities. Some changes to strengthen its functions and powers
	Referendum rejects electoral reform for House of Commons	House of Commons elected by proportional representation
	Closed list PR for elections to the European Parliament (EP), enabling voters only to choose between two parties	Open list PR for EP elections, enabling voters to choose between individual candidates
A rights culture	European Convention on Human Rights (ECHR) as part of UK statute law but no Human Rights Commission to promote a new rights culture	ECHR as part of UK law, Human Rights Commission, domestic Bill of Rights either in preparation or already in the statute book
Openness	Restricted Freedom of Information (FOI) regime, focused mainly on access to personal files	Liberal Freedom of Information Act (FOIA) enabling access to general government information
Judicial Structure	Appellate Committee still sitting in the House of Lords. The Privy Council adapted to hear 'devolution' disputes	A new supreme court for the United Kingdom, separate from the House of Lords
Inter-governmental relations	Informal intergovernmental consultative processes based on Whitehall concordats	Formalised Council of British Isles with full time secretariat

Figure 1.1 (Continued)

The book suggested that the actual position might be any range of combinations between the two scenarios. What is striking looking back is how in almost every case it is the minimal scenario which has come to pass. The only exceptions are the gradual grant of legislative powers to the Welsh Assembly under the Government of Wales Act 2006; the creation of a Human Rights Commission, as part of the new Equality and Human Rights Commission (EHRC) in 2007; and the establishment of the new Supreme Court from 2009. In each case it has taken ten years for these changes to occur, reflecting the Blair government's minimalist approach to the whole constitutional reform agenda. Lack of political will in the Cabinet is the main reason why one reform never happened (the referendum on the voting system for the House of Commons) and others (an elected House of Lords, British bill of rights) stalled after the first-stage reform. But lack of interest

amongst the people is a secondary reason, explaining the rejection of an elected Regional Assembly in the North East in the 2004 referendum and the failure to introduce an elected mayor in any major city outside London despite the power given to local residents in the Local Government Act 2000 to force a referendum on the issue.

At a slightly lower level the institutional forecasts were pretty good. We correctly forecast the need to create a range of new constitutional watchdogs including an Electoral Commission, Information Commissioner, Judicial Appointments Commission (JAC) and Human Rights Commission. But we also forecast a Territorial Grants Commission to advise on the distribution of government funding to the devolved bodies, which has not come to pass. The biggest omission was our failure to forecast the creation of the Department for Constitutional Affairs, now the Ministry of Justice. Although we forecast the need for a stronger locus of responsibility for constitutional matters, then scattered round half a dozen Whitehall departments, we suggested the Cabinet Office could be the place where they were pulled together.

In terms of the dynamic forces released by the constitutional reform programme, our central thesis has proved broadly correct – that these would take on their own directing force, and that the cumulative impact of devolution, a rights culture, new voting systems and parliamentary reform would be greater than the sum of the constituent parts. But some of the individual dynamics we got badly wrong: notably in devolution, where we forecast much greater friction (including litigation) between the UK and devolved governments than has been the case. We were too heavily influenced by overseas experience of intergovernmental relations (IGR), and had not anticipated the harmonious effects of Labour-led administrations in London, Edinburgh and Cardiff. Nor did we anticipate how strongly bilateral the conduct of IGR would be, because of the asymmetry of the devolution settlements.

At the end of the book we tried to summarise the key features of the new constitutional settlement which would emerge by listing them under five main themes. Those themes are reproduced here as a further way of summarising the main forecasts of the first *Constitutional Futures*. The themes, shown in Figure 1.2, are still relevant today, and provide a bridge to the analytical framework which follows and which provides the basis for this book.

Broadly all these themes have been realised; but we overstated the importance of devolution and understated the contribution of a new school of constitutionalism in influencing the thinking of the higher judiciary. There was only a hint in the book that in time there may be Acts of Parliament which are regarded as organic laws and which become entrenched.<sup>1</sup> The growth of constitutionalism, and the growing separation of powers are two themes which will receive greater space in this book.

*Quasi-federalism: rebalancing the Union*

Devolution would introduce some elements of a federal system:

- Formal division of powers between two levels of government, but with areas of overlapping jurisdiction (for example, through exercise of the foreign affairs power by the UK government);
- New constitutional court to resolve devolution disputes;
- New structure of IGR.

But with some big differences from classic federal systems:

- No constitutional entrenchment;
- Asymmetrical devolution instead of uniform division of powers;
- English dominance, with 85 per cent of the population;
- Lack of English political institutions;
- Central financial control.

*More checks and balances on the Executive:*

- Devolution will create strong alternative centres of power;
- ECHR incorporation will be a significant check on the Executive;
- FOI will be a lesser check;
- The EU will continue to reduce the Executive's freedom of manoeuvre;
- Parliamentary reform could improve parliamentary scrutiny;
- Reform will give the Lords greater legitimacy and assertiveness.

Parliamentary sovereignty gives way to popular sovereignty:

- Devolution and ECHR incorporation represent an important shift towards sovereignty of the people;
- Devolution referendums make it impossible for Parliament to abolish the devolved assemblies without popular consent;
- As the use of referendums grows, so will political and public expectations that referendums should be used for major constitutional change.

Tighter rule of law:

- HRA confers new powers for the courts;
- Devolution will give the courts an important role in adjudicating devolution disputes;
- Pre-legislative proofing for ECHR and jurisdictional compliance;
- EU will be a source of further legal challenges, with the courts gradually introducing European norms of rule-based administration;
- Other watchdogs apart from the courts will help to ensure due process and reduce administrative discretion;
- Separation of Crown and state in the language and reasoning of the courts, making the state more susceptible to judicial control.

Figure 1.2 Themes from the first *Constitutional Futures*

Source: Hazell 1999: 230–9

Pluralist instead of majoritarian democracy:

- PR in Scotland, Wales and Northern Ireland will make it harder for a single party to form a government;
- Coalition governments will see the development of more inter-party agreements;
- Devolution will cause fragmentation of major parties and growth of minor regional parties;
- Increased consultation and participation will result from due process requirements of ECHR, FOI and pre-legislative scrutiny of draft bills;
- Lords reform could also lead to a more consensus style of politics, if government does not necessarily have a majority and has to negotiate and build up coalitions of support to get its measures through.

Figure 1.2 (Continued)

One of the major lessons from the original *Constitutional Futures* is the impossibility of capturing the future in a single set of forecasts. That is why we offered two broad scenarios, and predicted that which scenario came to pass would depend primarily on the degree of political will and commitment from the new government. (Even in 1998 it was apparent that Labour's commitment to some of the reforms was thin.) Since that time futures studies has developed strongly as a discipline, and in working on this book we have been able to draw upon the systematic techniques it offers for developing a range of future scenarios. The next section explains briefly the forecasting techniques we have used, before we apply this method to building four constitutional scenarios.

## Forecasting techniques

The forces outlined above indicate that there are several different directions which constitutional change could take. It is therefore worth thinking beyond just mini and maxi scenarios. For this reason, we have borrowed forecasting techniques from futures studies to add rigour and texture to our analysis of the future. Our chosen method of 'scenario planning' is based on delineating different futures on a two-by-two matrix, based on an analysis of the 'drivers', the main forces and events that will influence the shape of the future. The process, explained in greater detail in the appendix to this chapter, has three main stages: first, analysing the drivers which will shape the future constitution; second, working out how these drivers relate to each other: which affect common themes and which cause, contradict and exacerbate which others; third, reducing these drivers to two critical dimensions – the lines on which the future shape of the constitution will be drawn – and using these as axes to create a matrix of four quarters. This leads to four different scenarios which provide the framework for the book.

## Constitutional scenarios

The forces driving the shape of the constitution come from a variety of sources. An initial list, shown in Figure 1.3, was created through brainstorming and discussion at a two-day workshop for contributors to this volume. It shows the range of different forces which now help to shape the constitution, from above and below, from all parts of the UK thanks to devolution and from abroad because of European and global influences. It also shows the array of different players who can now influence constitutional developments. There was no systematic attempt to mention all the branches of government or the new constitutional regulators, because the brainstorming was conducted in small groups using scatter grams; but it is noteworthy how Figure 1.3 gives strong roles to Parliament and the judiciary, and includes such bodies as the Electoral Commission, the Equality and Human Rights Commission and the Information Commissioner. Constitutional change is not just driven by the executive branch of government.

Using this selection, we then considered which were likely to have the most critical influence on the future shape of the constitution. On the macro level the two most critical groups of drivers seemed to pertain to, first, the dispersal or concentration of power and, second, the political or legal status of the constitution. These provide the axes for our matrix. Reducing constitutional issues to two dimensions of course risks simplification. But the

<hr/> <p>Devolution</p> <hr/> <ul style="list-style-type: none"> <li>● Scottish, Welsh nationalism</li> <li>● Campaign for an English Parliament</li> <li>● English nationalism</li> <li>● Media reporting of English Question</li> <li>● English votes on English laws</li> <li>● Pressures on Barnett formula</li> <li>● Provincial resentment of London and South East</li> <li>● Policy divergence</li> <li>● New governments in Scotland, Wales and Northern Ireland</li> </ul>	<hr/> <p>Whitehall</p> <hr/> <ul style="list-style-type: none"> <li>● New Civil Service Code</li> <li>● New Ministerial Code</li> <li>● Civil Service Act</li> <li>● Rise in external consultants</li> <li>● New Public Management</li> <li>● E-Democracy</li> <li>● Technological changes</li> <li>● Public spending squeeze</li> <li>● Declining contact with devolved administrations</li> </ul>
<hr/> <p>Political parties</p> <hr/> <ul style="list-style-type: none"> <li>● Declining party membership</li> <li>● Change in leadership of major parties</li> <li>● Decline in two-party system</li> <li>● Tighter regulation by Electoral Commission</li> </ul>	<hr/> <p>Media</p> <hr/> <ul style="list-style-type: none"> <li>● 24/7 news culture</li> <li>● Personality-driven news coverage</li> <li>● Decline in traditional media</li> <li>● Proliferation of new media</li> </ul>

Figure 1.3 Constitutional drivers by theme

<hr/> Parliament <hr/> <ul style="list-style-type: none"> <li>● More assertive House of Lords</li> <li>● Elected House of Lords</li> <li>● Electoral reform</li> <li>● Legislative-executive relations</li> <li>● Parliament and the judiciary</li> <li>● Stronger scrutiny role</li> <li>● Lords Constitution Committee</li> <li>● Public Administration Select Committee</li> <li>● Justice Select Committee</li> <li>● New Speakers in Lords and Commons</li> <li>● New Leaders in Lords and Commons</li> </ul> <hr/>	<hr/> Human Rights <hr/> <ul style="list-style-type: none"> <li>● EHRC</li> <li>● Joint Committee on Human Rights</li> <li>● British bill of rights</li> <li>● Tabloid campaign against HRA</li> <li>● European Court of Human Rights</li> <li>● Impact of terrorism</li> </ul> <hr/>
<hr/> Public <hr/> <ul style="list-style-type: none"> <li>● Declining trust</li> <li>● Multi-culturalism and integration</li> <li>● Declining voter turnout</li> <li>● Politicisation of 'populist' nationalism</li> <li>● Secular versus religious society</li> <li>● Demographic changes</li> <li>● Demands for direct democracy</li> <li>● Disengagement from conventional politics</li> </ul> <hr/>	<hr/> Future Events <hr/> <ul style="list-style-type: none"> <li>● Political scandals</li> <li>● Policy disasters</li> <li>● New Sovereign</li> <li>● General elections in 2009? 2013? 2017?</li> <li>● Devolved elections in 2011, 2015, 2019</li> <li>● European Parliament elections in 2009, 2014, 2019</li> </ul> <hr/>
<hr/> Judiciary <hr/> <ul style="list-style-type: none"> <li>● Judicialisation of politics</li> <li>● Judicial-executive tensions</li> <li>● Judicial Appointments Commission</li> <li>● Lord Chief Justice and Judges' Council</li> <li>● Higher profile for judiciary</li> <li>● Pressures for more representative judiciary</li> <li>● Government and media criticism of judiciary</li> </ul> <hr/>	<hr/> European Union <hr/> <ul style="list-style-type: none"> <li>● New EU constitution</li> <li>● EU Charter of Rights</li> <li>● EU enlargement</li> <li>● European Court of Justice</li> <li>● EU regional development funds</li> <li>● Closer co-operation in Justice and Home Affairs</li> </ul> <hr/>

Figure 1.3 (Continued)

method gives analytical clarity and is justified by the fact that we are still able to capture what we predict to be the most important aspects of constitutional change up to 2020. The axes coincide with the drivers which emerged *ex post facto* from *Constitutional Futures* (as shown in Figure 1.2),

Concentration of power	Dispersal of power
<ul style="list-style-type: none"> <li>● Centralism</li> <li>● Representative-passive democracy</li> <li>● Uniformity</li> <li>● Unionism</li> <li>● Britishness</li> <li>● Strong centre in Whitehall</li> <li>● Two-party system</li> <li>● Unified civil service</li> </ul>	<ul style="list-style-type: none"> <li>● Decentralisation-multi-level governance</li> <li>● Direct-active democracy</li> <li>● Diversity</li> <li>● Separatism</li> <li>● Scots, Welsh, English</li> <li>● Weak centre, federal civil service</li> <li>● Multi-party system</li> <li>● Fragmented civil service</li> </ul>

Figure 1.4 Concentration versus dispersal of power

and they capture the dimensions of the two biggest changes in the UK's constitutional reform programme. These two changes have been devolution and the HRA. The first was a huge step towards decentralising a unitary system of government; the second has the potential to be a huge constraint on the legislative supremacy of Parliament. These axes are shown in Figure 1.4 and described below. The relationship between these axes and established political science and legal theories is expanded upon in the appendix to this chapter.

### Concentration of power versus dispersal of power

If constitutions are about defining and regulating the institutions which exercise political power, how power is dispersed or concentrated is crucial to the future shape of the settlement. Primarily this means whether power is geographically dispersed so that concentration of power illustrates the centralisation of power in the British political system before devolution, with power strongly concentrated in Westminster and Whitehall. Unionism is a strong political ideology and Britishness strong in national identity. There is a majoritarian two-party system with strong single-party government. Public policy is uniform throughout the UK, implemented by a unified civil service. Local government is weak and implements policies determined by central government.

The opposing pole illustrates the dispersal of power. Post devolution there are strong alternative centres of power in Edinburgh, Cardiff and Belfast. Unionism is weaker as an ideology, and people in Scotland, Wales, Northern Ireland and England have a stronger sense of their Scottish, Welsh, Irish or English identity, and a weaker sense of Britishness. Demands for separatism are more frequent and separatist or nationalist parties win more votes, at the expense of unionist parties. There is a multi-party rather than two-party system. This leads to frequent coalition or minority government, weaker

executives vis-à-vis the legislature and more pluralist politics. Public policy is more divergent, and the civil service is no longer unified. Local government is stronger, politically and financially, and has greater autonomy to determine its own policies. As a result of greater diversity there is also greater inequity in public policy provision.

So far this analysis has been about dispersal of power within the nation state. But power at the nation state level has been hollowed out from above as well as below. If concentration of power here means concentration at the level of the nation state, dispersal of power can be upwards as well as downwards. At the supranational level power is dispersed to European and global institutions. The more power is exercised by the European Commission and Council of Ministers, European Parliament and European Court of Justice (or the Council of Europe and European Court of Human Rights), the less autonomy there is for national governments and parliaments. The same goes for global institutions like the United Nations, World Trade Organisation and International Court of Justice.

A further dimension of concentration versus dispersal of power can be expressed in terms of representative versus direct democracy. On this dimension concentration of power represents the sovereignty of parliament, with passive subjects having no power to influence politics or policies in between elections. Dispersal of power represents the sovereignty of the people, with active citizens voting in referendums and participating in citizens' juries and other forms of direct democracy.

### **Political constitution versus legal constitution**

In a famous polemical lecture John Griffith drew a distinction between the political and the legal constitution (Griffith 1979). This provides the basis for the second axis of the matrix, with the key variable being whether executive power is held in check politically by the elected House of Commons, or legally by unelected judges and other guardians. These axes are shown in Figure 1.5.

One pole represents the political constitution. Parliamentary sovereignty is the dominant principle. Ministers have very wide discretion, including over how much or little information to disclose, but they are called to account and kept in check by Parliament. There are no recognised rights: it is up to Parliament to protect civil liberties. The judiciary are appointed by the executive and show deference to parliamentary sovereignty and executive necessity. There are few external checks on the executive apart from Parliament, and the system is based on a high degree of trust that the executive and Parliament are the best judges of the public interest.

The logic of this system is that solutions to political problems must be political themselves – 'law is not and cannot be a substitute for politics'

Political constitution	Legal constitution
<ul style="list-style-type: none"> <li>• Parliamentary Sovereignty</li> <li>• Fusion of powers</li> <li>• Elected politicians</li> <li>• Ministerial discretion</li> <li>• Political accountability</li> <li>• Unfettered executive</li> <li>• Weak judiciary</li> <li>• Weak human rights regime</li> <li>• Few external checks</li> <li>• Based on trust</li> </ul>	<ul style="list-style-type: none"> <li>• Constitutionalism</li> <li>• Separation of powers</li> <li>• Unelected guardians</li> <li>• Tighter rule of law</li> <li>• Legal checks and balances</li> <li>• Constrained executive</li> <li>• Activist judiciary</li> <li>• Enforcement of human rights</li> <li>• Strong constitutional watchdogs</li> <li>• Based on mistrust</li> </ul>

Figure 1.5 Political versus legal constitution

(Griffith 1979). Political constitutionalism, therefore, does not allow for the entrenchment of rights in the constitution because there is no consensus, for example, on what a Bill of Rights should contain. Rights are simply an expression of power relationships – ‘concealed political propaganda’ (Griffith 1979) or ‘little more than the view held by the hegemonic group or officials with the power to decide’ (Bellamy 2007a: 151). The process of judicial review is also not democratically satisfactory: judges ‘resolve their disputes by the very democratic procedure they claim to supersede – majority vote’ (Bellamy 2007b: 12). Further, responsibility for problem solving would be passed from Parliament to the judiciary (and from an accountable body to an unaccountable one).

At the other pole, which represents the legal constitution and the principle of legal constitutionalism, power is passed in this direction. Legal constitutionalism is a theory of limited government which constrains the supremacy of Parliament, subjecting it to a range of legal checks and balances and relocating the final authority to interpret and enforce fundamental law in the judiciary (Kramer 2004). Here the logic is that Parliament cannot be trusted always to uphold democratic values and human rights.<sup>2</sup> This is not a particularly new idea in itself but has gained relevance recently for a number of reasons: first, the perceived inability of the legislature to hold the executive to account; second, globalisation and the increasing importance of international law; third, the perception that judges are apolitical and as a result able to make objective decisions as opposed to partisan or politically motivated decisions. The basis of governance is no longer parliamentary sovereignty but the rights of the individual, and it is judges that interpret whether or not the rights of the individual are being upheld.

In practice this involves the creation of statutes which entrench certain rights of individuals and organisations in the law beyond the reach

of Parliament. There is a greater separation of powers, and the judiciary constrains legislative and executive freedom by means of interpreting the statutes. Specialist constitutional watchdogs are also set up (such as the office of the Information Commissioner) to regulate the executive.

### The four constitutional scenarios

If these two variables will define the shape of the future constitution, putting them into a matrix enables us to present four scenarios which differ in the two most important respects. The four scenarios, or ideal types, which result can be described as the Old Constitution, Centralised Constitutionalism, Westminster Devolved and Dispersed Constitutionalism. The matrix is shown in Figure 1.6.

#### The Old Constitution

The scenario in the north-west quadrant is the classic Westminster Model. It represents the 'old' constitution as it was 10 or 20 years ago, with a highly centralised system of government, little or no devolution and very few checks and balances on the unfettered executive. Parliamentary sovereignty is the dominant principle. There is a strong two-party system, with the party in power being able to do almost anything it wants, subject only to retaining the support of its parliamentary majority. Public policy is delivered uniformly throughout the UK. There are no constitutional watchdogs apart

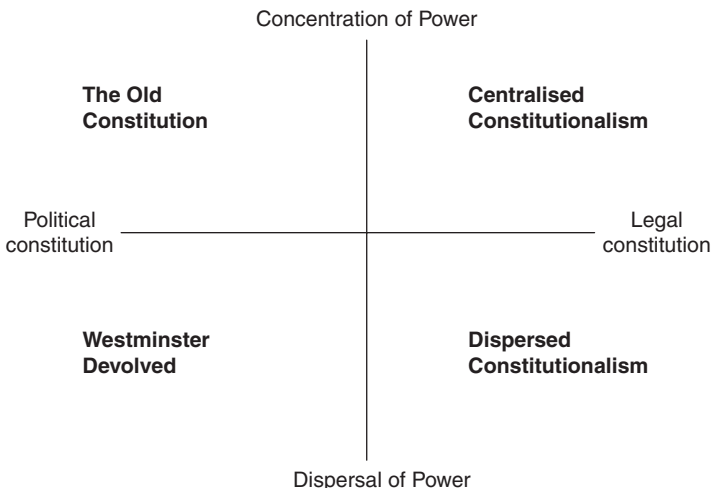


Figure 1.6 Overarching constitutional scenarios

from the Ombudsman and Auditor General. Advocates of parliamentary sovereignty (and sceptics about enforceable bills of rights) include John Griffith (1979), Keith Ewing (2002a), Richard Bellamy (2007a, 2007b) and Adam Tomkins (2002). As a scenario this seems implausible, unless there were a reversion towards the *status quo ante* 1997, with repeal or reduction of the devolution legislation, the HRA, Freedom of Information Act (FOIA) and so on.

### Centralised Constitutionalism

The north-east quadrant represents a scenario in which there is little decentralisation of power, but checks and balances are introduced to constrain the supremacy of Parliament and the discretion of the executive. These include a bill of rights, a stronger judiciary and a range of constitutional watchdogs (Information Commissioner, Electoral Commission and so on). Political parties are subject to tighter regulation. Devolution is limited to Scotland, Wales and Northern Ireland, with no extension of their powers, and there is no development of regional government in England. Public policy remains highly uniform, especially in England. Local government remains weak. Advocates of a strong central state delivering uniform public policies include David Walker (Walker 2002). If we were looking for an overseas model to illustrate this scenario in the common law world, it could be New Zealand, which until 20 years ago was an archetype of the Westminster Model, but has since introduced an impressive array of legal and constitutional checks and balances (Palmer 1987; 2004). Or in Europe it could be represented by France, which has a strong belief in uniform public policies, but also imposes legal and constitutional constraints on the executive and parliament through bodies such as the *Conseil Constitutionnel* and the *Conseil d'État*.

### Westminster Devolved

The south-west quadrant depicts a scenario with a lot of decentralisation, but few other checks and balances on central government. Scotland, Wales and Northern Ireland gain increased powers, 'creeping regionalism' continues in England, and local government gains greater autonomy. Public policy is more diverse. But at Westminster the sovereignty of Parliament remains dominant: there is only a weak bill of rights, a deferential judiciary and few constitutional watchdogs. Advocates of this model include Dawn Oliver (2003), who regrets the need for more and more legalisation and would like the political constitution and Parliament to work better in checking the executive. In terms of overseas models, it might be represented by Australia, which is decentralised, but has no bill of rights and few other checks and balances on the federal government apart from the federal system.

### **Dispersed Constitutionalism**

The south-east quadrant represents a scenario in which power is dispersed geographically, with a lot of decentralisation, and central government is subject to many more checks and balances. Scotland, Wales and Northern Ireland gain increased powers, 'creeping regionalism' continues in England and local government gains greater autonomy. Public policy is more diverse. There is a bill of rights, a strong and activist judiciary and a wide range of constitutional watchdogs. Advocates of Dispersed Constitutionalism include the Liberal Democrats, pressure groups like Unlock Democracy (which has incorporated Charter 88), and academics like Neil MacCormick (1999) and Beetham *et al.* (2002, 2008). If we were looking for an overseas model to illustrate this scenario it could be Canada, which is highly decentralised and highly constitutionalised, in that it has a weak parliament, a strong bill of rights, a strong Supreme Court and an array of quite powerful constitutional watchdogs.

### **Dispersed Constitutionalism the most likely future scenario**

Another way of looking at the matrix in Figure 1.6 is to consider the direction of travel. Before 1997 the British constitution was squarely in the north-west quadrant, with a highly centralised system of government and very few checks and balances. All the changes since 1997 have moved the British position south and east. If the present position in 2007 is represented by the centre of the matrix, then future changes are likely to drive the British constitution still further south and east. A return to the Old Constitution is highly unlikely. It is not advocated by any political party, not even the Conservatives. And a shift to the north-east or south-west quadrants is not very plausible. A shift to Centralised Constitutionalism in the north-east would require the repeal or diminution of devolution, when current forces all point in the other direction. A shift to Westminster Devolved in the south-west would require the repeal or diminution of the HRA, FOI and the Constitutional Reform Act 2005. The first two developments are conceivable, given the Blair government's evident dislike of the HRA and FOI, and the Conservatives' wish to repeal the HRA (Cameron 2006). But reducing the separation or independence of the judiciary seems unlikely, and generally the pressures for greater legalisation and judicialisation seem stronger than a reversion to the political constitution.

Each of the chapters in this book uses the overarching matrix as the main framework for organising future scenarios, and develops from that a specialist matrix or matrices for its own subject matter. These specialist matrices use at least one of the axes from the overarching matrix (centralism versus decentralisation, or political versus legal constitution) so that there is a uniform treatment underlying all the scenario planning running through the book.

## Structure of the book

The book is organised into four main parts. Part I covers the future of devolution, with separate chapters on devolution in Scotland and Wales, in Northern Ireland and in England, and chapters on IGR and finance, and Britishness. Part II looks at the future of the key institutions of the central state, with chapters on the judiciary, on Whitehall and on the monarchy. Part III addresses the growing constraints on the central state through new forms of accountability: human rights law, FOI, the proliferation of constitutional watchdogs, and the pressures of the modern media. Finally Part IV looks at the main representative institutions, with chapters on the regulation of political parties, changes to the electoral system and the future of Parliament.

The sense throughout the book is of a constitution continuing to change rapidly following the big changes introduced during Blair's first and second terms. But (to anticipate the conclusions of the final chapter) further very big constitutional changes on the scale of devolution or the HRA are unlikely. There will be plenty of stresses and strains as devolution continues to loosen (but not break) the bonds of the UK and as the judiciary and Parliament both become more autonomous and more assertive. This will undoubtedly lead to more constraints on the UK executive, previously regarded as famously untrammelled and the archetype of the majoritarian Westminster Model. The final chapter analyses where the Westminster Model will end up, as a result of all the constitutional changes so far, and those still to come.

## Appendix

### Futures studies and forecasting techniques

The literature on constitutional reform tends to be 'present-descriptive', describing how things are; or 'future-prescriptive', prescribing how they should be (see Evans 2003: 287; Mount 1993: preface). Few studies tend to be predictive. But policies should be made and legislation passed for the future. Studying what the future might look like and what is likely to influence the shape of the future will better inform our plans and reactions in the present.

Predicting the future is uncertain. It is important to think in terms of different possible versions of the future, or 'scenarios'. We believe that borrowing critically from futures studies and combining these methods with political science and legal theories can add rigour to the forward-looking process. To help do this we will first explain how the history of futures studies has informed the development of its methods; second, move on to why futures studies methods are compatible with this study; and finally, explain scenario-planning and its relevance to a study of the constitution.

### **A brief history of futures studies**

When the World Futures Studies Federation, the professional body for 'futurists', was being set up, there was a disagreement: was it to be Futures Studies plural or Future Studies singular? The western Europeans wanted Futures plural; the Russians insisted there was only one future, the communist one (Inayatullah 2005: 401). Uncertainty goes beyond the name of the discipline, however. The history and foundations of futures studies as we understand it – the exploration of driving forces and building of possible future scenarios – are inextricably linked to uncertainty. A brief analysis of this fact should be of assistance in our own predictions.

Despite harking back to the certainty of a weighty ancestry – Plato, Thomas More and von Clausewitz, for example (Bell 2005: 4; Bradfield *et al.* 2005: 797) – futures studies as we know it developed after the Second World War, when there was no 'end of history' in sight and the political and military climate was uncertain. During and after the Second World War, RAND Corporation is credited with the development of scenario planning, fulfilling the need of the US military for war game simulation models. The increasing processing power of computers and the theoretical structure of game theory aided its development (Bradfield *et al.* 2005: 798). Herman Kahn, who adopted the word 'scenario', resigned from RAND to set up the Hudson Institute, which further developed scenario techniques and moved these into the civil domain (van der Heijden 2005: 3). Scenario techniques offered the advantage of allowing the opinions of large numbers of experts to be harnessed in the simulation of multiple possible futures, and allowed the consequences of various policy options to be tested against these alternative futures (Bradfield *et al.* 2005: 798).

According to the Futures mythology, Shell was the first company to make use of forecasting techniques, and its success caused the number of scenario planners to double after 1973 (Bradfield *et al.* 2005: 803). Shell aimed to develop its engineering projects such that they had positive returns under any of the scenarios they developed, with no scenario deemed more likely than any others (van der Heijden 2005: 4). When thinking about the future scenarios, the most critical factor at the start of the 1970s was the price of oil, and therefore the principle of supply and demand. Differentiating between the predictable and the uncertain, Shell's scenario planners thought demand was predictable, having risen 6 per cent each year since the Second World War. However, the planners wondered whether it would make sense from the point of view of the oil-producing governments to continue to supply the increasing quantities of oil required. This was deemed sufficiently uncertain to make it worth developing a new scenario, dubbed the 'energy crisis scenario' (van der Heijden 2005: 5). When elements of this scenario were recognised in the developments in the Middle East in 1973, Shell was able to shift its investments before its competitors. Consequently, after the

oil price 'shock', Shell's profitability suffered much less than the industry's as a whole throughout the 1970s and the 1980s (van der Heijden 2005: 4–7).

Since then, the popularity of forecasting and scenario planning has endured, with numerous governmental organisations at a national or supranational level either commissioning forecasts or setting up a dedicated Futures unit,<sup>3</sup> and forecasting as a discipline starting to gain academic credibility.<sup>4</sup> Given the aims and audience of this volume, we drew on sources from the worlds of academia and public policy to inform our techniques.

### The relevance of forecasting techniques

What sets *Constitutional Futures Revisited* apart from other books on constitutional reform is the fact that it is able to look at the constitutional reforms holistically. As 'futurists' have developed systematic techniques for identifying forces shaping change and exploring the different outcomes of their interaction, borrowing critically from these will strengthen the possible versions of the future that we will present. The aim of this section is to introduce the futures techniques that we have chosen – principally 'scenario planning' – and show why they fit a study of this kind.

The stated aims of this volume sit neatly with the tenets of futures studies. Broadly speaking, there are two possible reasons for undertaking a study of the future: to be predictive, to say what can or what might happen, what is 'possible' or 'plausible'; and to be prescriptive, to say what ought to happen, what is desirable (see Voros 2005: 11). In this volume we will concentrate on the first aim; we will not seek to prescribe the direction of constitutional change or stasis, but will simply describe versions of the future which are 'possible' and 'plausible', occasionally passing judgement on what is most 'probable'.

If there is no right answer, it is not wise to present one single answer. Just as the discipline goes by the name of 'futures', not 'future', studies, pluralism is at the heart of a predictive study: 'it seems self-evident [...] that nobody, however expert, can come up with a justifiable answer for the probability of a unique event' (van der Heijden 1997: 7). For this reason, we will present a selection of scenarios on both the 'macro' level of the constitution as a whole, and the more 'micro' level of its constituent parts.

How are these alternative visions of the future arrived at? While in futures studies, as elsewhere, there is 'no single, fully developed theory of social change', explaining or predicting change in the futurological, as well as the constitutional, field rests upon an assumption of identifiable dynamics. According to van der Heijden (2005: 117), 'we need to look for forces and relationships that, by already existing, constrain or determine the future in important ways'. Constitutional change can be conceived of in a similar light. In 1999 it was predicted that '[c]onstitutional reform is likely to release dynamics in politics and the law which will take on their

own directing force' (Hazell 1999: 4). This is still true today, with successive 'waves' (Hazell 2006a) still breaking.

Even if there are shared underlying assumptions, the general description of futures studies given above hides a multiplicity of different techniques and applications (Bradfield *et al.* 2005: 803; Slaughter 2002: 230). Seventeen methods were identified in 1975, and more have been added to the repertoire since. It is therefore not feasible to write an evaluation for each method here. Suffice to say that we have rejected those methods which entail the articulation and shaping of desired futures (see Cabinet Office 2001 and Lang n.d.) and those which crowd out the role of intuition (see Ritchey 2005). The most suitable method for our purposes is 'scenario planning' (see van der Heijden 1997: 219–72), more specifically, the 'matrix approach' (van der Heijden 1997: 247).<sup>5</sup>

### The matrix approach in scenario planning, political science and legal theory

The core of the scenario-planning process is presented in Figure 1.7. Briefly, it involves the following: first, the analysis of forces expected to influence the future outcome of the area in question; second, reducing the multiplicity of drivers to two key dimensions; third, using these as a matrix to articulate four logical and plausible scenarios. Why have we adopted this method?

First, the overarching three-part process – input, analysis and prospection, itself a form of analysis – as suggested by Voros (2005: 9) is an intuitive and universal approach to creating and analysing content – 'in a word [...] scholarship' (Slaughter 2005: xi). The thorough and methodical nature of the analysis moves us away from, for example, simplistic extrapolation, and reduces the effect of hidden bias or normatism.

Second, the way the process is developed is conducive to the use of the 'expert' (van der Heijden 2005: 222). Indeed scenario techniques arose during and after the Second World War precisely because of the advantage they offered in allowing the opinions of large numbers of experts to be harnessed in the simulation of multiple possible futures (Bradfield *et al.* 2005: 798). Our use of experts of different disciplines in turn increases the holistic aspect of the volume, such that we are able to gauge the effect of the interaction of the different chapter areas with each other and on the whole.

Third, the matrix itself. Organising scenarios using two variables is not perfect. It is an advance on one dimension, but necessarily entails simplification. There are advantages however. It stops us arbitrarily picking and choosing the changes we describe, for example. But using matrices in political science is not novel or controversial. In *Patterns of Democracy* Lijphart (1999) uses a two-by-two matrix to classify political systems. Flinders (2005) has used this matrix and Lijphart's criteria to evaluate change in the nature

## 1. Input

**Aim:** to collect knowledge on and novel ways of looking at the area in question.

**Output:** an unstructured list of 25–50 drivers that may affect the area in question.

**Method:** normally taking place in a workshop, this is the ‘brainstorming’ phase. Firstly, it involves identifying the purpose, question or system to be focused on. Secondly, the experts generate ideas and potential variables according to two questions: What is happening that might matter? What could happen that might matter? (At this stage, it is not necessary to worry about structuring, linking or defining causality in the data.)

## 2. Analysis

**Aim:** to structure the knowledge generated in phase one. It is useful to divide this phase into two parts: clustering and identifying drivers.

### 2.1. Clustering

**Aim:** to organise the information collected in order to make the thematic interrelations of the information visible.

**Output:** groups of thematically linked variables.

**Method:** clustering involves finding logical criteria according to which the phase one variables can be organised. It may involve trial and error. As a consequence the variables can start to be seen as a system. (Alternatively, the clusters can be imposed before the brainstorming in phase one.) See Figure 1.3.

### 2.2 Identifying the ‘drivers’

**Aim:** to identify the causal relationships, driving forces and key events in the clusters of drivers.

**Output:** ‘influence diagrams’ showing the causal relationships in the clusters.

**Method:** (1) Identify which drivers are events and which trends. (2) Identify which variables are linked. (3) Draw a line between those that are. (4) Identify what is driving what: ask of each variable: what happens if it goes up or down? why would it go up or down? (5) Ask what other events might be related. (6) Look out for vicious or virtuous circles – ‘positive feedback loops’.

## 3. Prospection

**Aim:** the creation of a limited number of equally plausible scenarios in which the insights from the previous stages can be reflected.

**Output:** a description of and narrative for each scenario.

**Method:** (1) Identify two drivers, or clusters of drivers, with high potential impact and high uncertainty. (2) Express the outcomes as binary opposites, e.g., ‘increasing insecurity’ and ‘decreasing insecurity’, or ‘reactive citizen’ and ‘proactive citizen’. (3) These then become an x and y axis, giving rise to a two-by-two matrix, and four scenarios. (4) Add detail to the scenario and create a narrative to describe how the end state of the scenario is arrived at. See Figures 1.4 and 1.5.

Figure 1.7 The matrix approach to scenario planning

Source: van der Heijden (2005: 219–72); Voros (2005); Godet (2000); Cabinet Office (2001)

Westminster (Majoritarian) model	Consensus model
1. Single-party majority cabinet	1. Power sharing in multi-party system
2. Dominant executive	2. Executive-legislature balance of power
3. Two-party system	3. Multi-party system
4. Majoritarian electoral system	4. Proportional electoral system
5. Pluralist, competitive interest groups	5. Co-ordinated interest groups

Figure 1.8 Lijphart's executive-parties dimension

Westminster (Majoritarian) model	Consensus model
6. Centralised government	6. Decentralised government
7. Power concentrated in one chamber	7. Power balanced between two chambers
8. Flexible constitution amendable by normal majority	8. Rigid constitution amendable by extraordinary majority
9. Legislatures have final word	9. Laws subject to judicial review
10. Central bank controlled by executive	10. Independent central bank

Figure 1.9 Lijphart's federal-unitary dimension

of the UK's political system. Instead of using a matrix to evaluate change, we are using it to predict change.

Why did we not simply adopt Lijphart's matrix (shown in Figures 1.8 and 1.9)? First, not all Lijphart's variables are valid for our study – interest groups (variable 5) and central banks (variable 10) are not drivers of constitutional change. Second, adopting this would have been to impose a structure on the analysis *a priori*. In hindsight, this would have obscured what we have now identified as one of the main areas for change with the highest potential impact on a macro level: variables 8 and 9 in Lijphart's terms – what we have described as the political or legal constitution. We believe this aspect should be given greater emphasis and dealt with in more detail, which we have done by drawing on the work of political scientists and constitutional lawyers. As a result of this, we have effectively compacted the remainder of Lijphart's two dimensions into one: concentration versus dispersal of power. In Tsebelis's (2002) terms, this axis runs from a single 'veto player' – or actor or group of actors that has to agree to a policy change – to many.

Finally, there is a certain amount of flexibility in the development of the scenarios. A variety of methods can be used: 'from the most qualitative to the most quantitative'. This is useful in an edited volume with a large number of contributors, who are given room to use their own judgement. Scenarios

also emphasise story-telling (van der Heijden 1997: 12): ‘they permit people to visualise and explore alternative futures’. We hope that tangible and graspable narratives will help bring the scenarios alive for the wide audience we are aiming for with this volume.

## Notes

1. See *Jackson and Others v Attorney General* [2005] UKHL 56, where Lord Steyn said, ‘[t]he classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom. Nevertheless, the supremacy of Parliament is still the general principle of our constitution. It is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish’ (para 102).
2. Although constitutionalism is promoted mostly by lawyers, Lord Steyn (1997:8) has argued: ‘The principle of constitutionalism [...] is neither a rule nor a principle of law. It is a political theory as to the type of institutional arrangements that are necessary in order to support the democratic ideal. It holds that the exercise of government power must be controlled in order that it should not be destructive of the very values which it was intended to promote.’
3. Government organisations in the UK using forecasting include the DCA (2007a); Foresight, the Office for Science and Technology (2006a and 2006b); DEFRA (2004); Department for Transport (2007); Development, Concepts and Doctrine Centre (DCDC) (2007); Performance and Innovation Unit (2001a and 2001b); Scotland’s Futures Forum (2007).
4. See, for example, the Tomorrow Project’s partnership with the Economic and Social Research Council (Tomorrow Project n.d.).
5. We will refer to the ‘matrix approach to scenario planning’ simply as ‘scenario planning’, as this is by far the most common approach.

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