

Is the Prime Minister too powerful?

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“DISCUSS AND ASSESS THE VIEW THAT IN BRITAIN THE PRIME MINISTER IS TOO POWERFUL AND THAT MORE POWER SHOULD BE GIVEN TO THE CABINET, PARLIAMENT AND THE EUROPEAN UNION PARLIAMENT.”

The Prime Minister, the head of government and the chairman of the cabinet, is part of the legislature and the executive in the United Kingdom¹. The Prime Ministers power is said to vary according to personality and personal circumstances². There are two examples that commentators point out to contrast and demonstrate how this is so. The first is the Presidential style of government of Margret Thatcher and Tony Blair. The second is the weak and ineffective governments of John Major and Gordon Brown. However, many argue that the Prime Minister is too powerful even when looking at his most basic powers. This view says how the power of the Prime Minister should be fragmented and given to the Cabinet, Parliament or the European Parliament. Such a view raises questions of democracy, leadership and the ability to govern a nation effectively within these institutions. Nevertheless, others argue that the basic Prime Ministers are not as great as some assume. It is only through the Prime Ministers ability to change the personnel of the cabinet and the fact that each secretary of state has specific powers that he can be truly powerful³. However, this wholly depends on the Prime Ministers willingness, and therefore personality, to change his cabinet. With the transfer of the powers of the Crown to the Crowns Ministers, many hope to see a secondary transfer of the powers of the Crowns Ministers to the Crowns Parliament. Considering the wide ranging powers of the Ministers and the fact we live in a modern age, it should be the case that many powers of the Ministers should be transferred to different institutions within the constitutional framework.

¹ As head of the Government, the Prime Minister is ultimately responsible for the policies and decisions of Government, oversees the civil service and Government agencies, appoints members of the Cabinet, and is the principal Government member in the House of Commons. The current Prime Minister of the United Kingdom is Gordon Brown, who assumed the position in June 2007.

² Very real constraints still operate on prime ministerial power under certain circumstances: John Major's inability to control his more fractious parliamentary backbenchers after 1992 illustrates the point only too well. Even Thatcher and Blair eventually ran up against the limits of their constitutional position.

³ Smith (1999: 28-9) suggests, all actors within the core executive have resources, and in order to achieve their goals they have to exchange them. The process of exchange occurs through networks and alliances which develop because of mutual dependence. Because no actor has a monopoly of resources, power cannot be located within a single site of the Core Executive.... Consequently, there cannot be prime ministerial government, because the prime minister will always depend on other actors'. Obviously, no simple command and obey model applies, but, if the prime minister does not possess 100 per cent of the power (indeed, no institutional actor, not even the most despotic of dictators possesses that amount), does this mean he or she cannot possess, say, 70 per cent at any given time? Or 50 per cent? How 'resource-rich'—to use Smith's term—can the prime minister be? How dependent on other actors can he or she be? How dependent on the prime minister can other actors be?

While never being 'totally free' of other network actors (no actor or institution in any political regime ever achieves this), prime ministers exert influence by being 'less dependent' on them. To this end they require not a 'monopoly of power', just 'sufficient power'. Thus, it is impossible, and indeed fruitless, to try to identify a single site of power within the core executive', it is also impossible to suggest that power is 'everywhere'. (Webb & Pogutke, 2005)

This essay will argue that power should be taken away from the European Union altogether. Power should also be taken away from the Prime Minister and the cabinet, fragmenting the power to Parliament and Local Government including County, Borough and Parish Councils. Incidentally, this essay will argue that the Prime Minister should devolve his power down to these lower institutions, rather than the devolved assemblies which currently exist, and that there should be a reversal and end of the devolution of power up to the European Union.

Criticism of the power of the Prime Minister

The power of the Prime Minister largely derives from the royal prerogative, where what the monarch said was law. The Prime Minister is said to be 'primus-inter-pares' (Bagehot, 1867), first among equals, which is meant to describe the Prime Minister's position in contrast to the other ministers of state. However, over the last hundred years, this has been a less and less accurate description of the role and influence of the Prime Minister. First among equals implies an equal status among the ministers and that he is simply the 'first' and represents the ministers and therefore the government and the country. However, the Prime Minister in reality is far more powerful than this implies.

The Prime Minister can hire anyone that is a UK citizen to become part of the cabinet through appointing someone as a peer in the House of Lords. Although he picks solely from the House of Lords and Commons, he can appoint anyone who is a peer to then join the cabinet. One disgraced former MP, Peter Mandelson, recently joined the cabinet as Secretary of State for Business, Enterprise and Regulatory Reform for a third time in 2008 despite not being an MP or a peer (Schofield, 2009). This power certainly erodes the idea of 'first among equals'. However, it must be noted that cabinet could have taken this decision as a whole, though it is unlikely (Politics.co.uk, 2008). Further, the Prime Minister decides the policy of the cabinet and thus the government, the party and the country⁴. Such power, it is argued, is too much for one person to bear.

The Prime Minister as the leader of his political party is subject to the party's support and his ability to whip his majority in the House of Commons to pass his policies and legislation into law. However, the Prime Minister's reliance on the strong party whip system can sometimes be more of a weakness than of a strength. If his largely loyal party and Members of Parliament vote with him 95% of the time, then they may vote differently on the most important issues that matter to them (Press Association, 2005). If the Prime Minister is always creating a party political vote on legislation going through Parliament, then the occasions when he may need to whip on most may not necessarily be as secure as it would be otherwise – he may be forced to rely on

⁴ Indeed, when Richard Crossman was set to join the cabinet in 1964, he felt it appropriate to conclude that 'every Cabinet minister is in a sense the prime minister's agent—his assistant', and 'in so far as ministers feel themselves to be agents of the premier, the British Cabinet has now come to resemble the American cabinet'.

In reality, it was very hard for any Prime Minister to know all that was going on in the whole machine of government: 'to achieve anything he must work with and through his ministers' (Jones, 1965). Taken together, the Prime Minister's private office and the cabinet office did not constitute institutional resources comparable to those available to a departmental minister (let alone a US President). This meant the Prime Minister was often excluded from the 'germination stage' of policy formulation, only being brought in when discussions were complete and opinions solidified.

However, Prime Ministers – despite the fact that they cannot do everything and have to delegate a number of intra-executive responsibilities – are political actors of great consequences. Ultimately, together with leading ministers, the Prime Minister is responsible for 'green-lighting' all major policy initiatives across government. Obviously, the opportunities for Prime Ministerial influence are greater in certain major policy sectors rather than others, but this power essentially remains to be a significant force.

opposition support, an embarrassing political situation (Russell, 2006). One example is the rebellion of over 120 Labour MPs on the plan to partially privatise Royal Mail. However, the Prime Minister can in some cases overcome rebellions by giving concessions to the aggrieved parties i.e. those who rebelled. One example of this was the row over the 'ten pence' tax rule (The Guardian, 2008), a commitment brought in after Labour's success in the 1997 General Election to help poorer wage earners pay taxes, which came to the fore after Prime Minister Gordon Brown reversed this policy commitment despite being outlined in Labour's 1997 manifesto (The Labour Party, 1997). Gordon Brown had to do an immediate u-turn; however, such an open 'u-turn' would have discredited the Prime Minister further. This is why a raft of tax credits and other concessions were made instead.

The 'strong party whip system', however, doesn't necessarily exist in the key decisive policies and legislative proposals presented to Parliament. Indeed, many comment on how Tony Blair's proposals of 90-day detention without trial defeat, his first in the House of Commons as Prime Minister, saw a huge blow to his power and ability to rule as Prime Minister (Brown, 2003). Especially if one considers the period 1997-2005, when Labour passed every policy and piece of legislation it proposed into law. After the defeat of the 90-day detention without trial legislative proposals in 2005, not only did policies start to become harder to pass into law, the actual position of Tony Blair as Prime Minister was called into question. In this regard, it would seem the Prime Minister is not as powerful as he first appears – even under someone heralded as being 'Presidential' in his style of governing. One must accept, however, that for eight years Labour proposals, under the leadership of Tony Blair, went unchallenged. Yet it would be right to acknowledge that once a Prime Minister has overstepped his power, his ability to lead as Prime Minister becomes substantially limited (bbc.co.uk, 2005). This would imply that the Prime Minister is restrained in what he can do, and therefore, is not 'too powerful'.

Nevertheless, many would argue that the point at which the Prime Minister has 'overstepped the mark' is a lot further than other political leaders, especially across the continent in the United States where the people are vehemently opposed to any sort of detention without trial and the President is restrained by the Constitution. The fact that the point at which the Prime Minister oversteps the moral boundaries is harder to cross than other world leaders is why many want to fragment the power of the Prime Minister to institutions like the Cabinet, Parliament and the European Union. However, I would argue that this fragmentation, this devolution, of power should go to lower institutions such as Parish Councils, Borough Councils, County Councils and Parliament in every aspect except income tax, legislating national law and national security. Not to similarly distant institutions like the current devolved assemblies, the Cabinet and the European Parliament. I put forward the argument that this would enable a more effective way of governing – being able to respond and to be more flexible to the demands of the constituents. This would increase economic prosperity and increase interest in politics in the process⁵. A greater likelihood of having your views heard has been demonstrated to

⁵ However, one cannot dismiss the fact that since devolution in the United Kingdom began; interest in politics has decreased dramatically. Following the 61% turnout in the May 2005 general election, which was barely an improvement on the historic low recorded in 2001, the apparent 'crisis of democracy' continues to give rise to concern among politicians and all those individuals and groups working to increase public participation in politics.

The Hansard Society is one such organisation and has for some time been conducting research into the state of political participation in Britain. In March 2005, the Society published its second annual Audit of Political Engagement, conducted in conjunction with The Electoral Commission, which found alarmingly low levels of political engagement among the public: it revealed that the majority of the UK public (54%) feel they know little or nothing about politics; that barely a majority find it of interest (53%); and only a small minority are politically active (16%) (Ram, 2006). Though this can be countered by the argument that it has been since 1997, with the concurrent increase of younger people attending university and with the enlargement of the bourgeois, that people have become alienated by politics – the politicians 'aren't listening'. Devolution, over

show an increase in participation, not just in politics, but in decision making as a general. Thus, the Prime Minister is too powerful and he must have a fragmentation of his power. Arguably, however, this would be a threat to the leadership of a country. This in a modern day world, where the businesses in the UK are global enterprises and corporations, which are all interconnected, needing national coordination, regulation and direction, would create an adverse affect on the country. This lends itself to the argument that the Prime Minister should not fragment his power – as it is essential to the country to retain its competitive nature. However, the President in the US is just one example which highlights the fact that a leader doesn't necessarily have to be overly powerful to ensure the prosperity of a nation. Therefore, the Prime Minister is indeed, too powerful.

Local Government

If more was devolved to local councils, both county and borough, then the desire for further devolution between England, Scotland, Wales and Northern Ireland would be extinguished as it would be achieved through other means. This combined with a transition of ministerial powers to Parliament would give the country a better form of government as government would be tailored to the needs of the specific area. Parliament has to be given ministerial powers because, as it stands, there is little need for Parliament – it is merely a 'talking shop' of the Cabinet and the Prime Minister⁶. This is because of the aforementioned strong party whip system in Parliament. Also county and borough councils need to be given further powers as they would make decisions closer to the people that they represent – in effect, they have greater expertise about what the public in their area really want. This would solve two problems. The first is over centralised government. The second is the breakup of the Union. Europe is too distant for it to be making any decisions and even the strongest pro-European countries such as France and Germany are facing extreme criticism at home for the over-centralised nature of the European Union⁷.

The Cabinet

Currently the Ministers in Cabinet, and as a direct consequence the Prime Minister, are the main deciders in policy. Labour's current policy forums are only of use for long-term policy decisions. However, even then it is debatable how much influence these forums, which include Unions, impacts on policy. The immediate and short term policy decisions have to be taken by the people with the power to do so. As it stands the Prime Minister can appoint anyone to his cabinet, if one of his cabinet ministers disagrees with the policy he wants to push through, that minister is expected to resign⁸. In essence, any power delegated through enabling acts to

time, will increase voter participation as it will mean representatives are more accessible and people will notice its impact upon the quality of their lives.

⁶ When the party whip system was strongest, from the 1960s to 1980s, Richard Crossman published his diaries of his time as a cabinet minister which described how through the Parliament and the Cabinet, the Prime Minister could direct policy to his liking. There were approximately 122 members of government, from cabinet secretaries of state to junior ministers and whips. Through their influence, the Prime Minister got through policies he wanted to get through (Crossman, 1975).

⁷ A respected journalist argues that the expanding European Union is becoming a second, and potentially superior, superpower to the United States, and outlines what the new Union will mean to world trade, politics, and power (Reid, 2004).

⁸ This reinforces the doctrine of 'collective responsibility'. The convention of collective Cabinet, or ministerial, responsibility is at the heart of the British system of Parliamentary government yet, like individual responsibility, it is a concept which is not regulated by statute, although some guidance has been formalised in the Ministerial Code. Collective responsibility serves to bind the government together so that it faces the

ministers is the Prime Ministers to use. His powers are extensive and include: the power of the executive to declare war, the power to request the dissolution of Parliament, the power over recall of Parliament, the power of the executive to ratify international treaties without decision by Parliament, the power to make key public appointments without effective scrutiny, the power to restrict Parliamentary oversight of the intelligence services, power to choose bishops, power in the appointment of judges, power to direct prosecutors in individual criminal cases, power over the civil service itself, and the executive powers to determine the rules governing entitlement to passports and the granting of pardons. Such powers are arguably unnecessary in a liberal 'democracy' as Britain confesses itself to be from time to time (Mann, 1970).

Gordon Brown, Britain's current Prime Minister, has proposed pre-appointment hearings for public officials whose role it is to protect the public's rights and interests - and for whom there is not currently independent scrutiny. This includes the Chief Inspector of Prisons, the Local Government Ombudsman, the Civil Service Commissioner, and the Commissioner for Public Appointments, new appointments to the Monetary Policy Committee, the Governor of the Bank of England, the Chairman of the Financial Services Authority and other regulators, and appointments to NHS boards. The fact the Prime Minister can appoint all these different people governing different organisations proves that he is too powerful. The fragmentation of power to Parliament will mean that these organisations will now come under the full scrutiny of Parliament, not just making these organisations accountable but re-establishing the idea of Parliamentary Sovereignty since its systematic demise from the 1860s onwards⁹.

Indeed, the current Prime Minister has indicated his interest in drawing up a codified written Constitution which would lay out the relationship between the British people, Borough Councils, County Councils, Parliament, Government, Cabinet and the Prime Minister. This, arguably, needs to happen as the powers the

Monarch, Parliament and the public united. Yet, as with individual responsibility, the operation of this concept must depend as much, if not more, on political reality as on constitutional convention. The development of genuinely national politics, the extension of the franchise, the growing size and scope of government and the increasing influence of the media have reinforced the need for the executive to maintain group discipline. Reports about the Government's decision-making in the lead up to the conflict in Iraq have raised questions about the current state of cabinet government and the relevance of the convention of collective responsibility (House of Commons Library, 2004).

⁹ The term Parliamentary sovereignty, the idea that Parliament has no equal and no challenge to its authority, was coined by Albert Dicey (Dicey, 1885). The doctrine of parliamentary supremacy, in English Law, was upheld by Lord Reid in *Madzimbamuto v. Lardner-Burke* [1969] 1 AC 645:

It is often said that it would be unconstitutional for the United Kingdom Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things. If Parliament chose to do any of them the courts would not hold the Act of Parliament invalid.

It has however declined over recent years. In 2004, the Government sought to pass the Asylum and Immigration Bill, which contained a comprehensive "ouster clause", which would have excluded judicial review of decisions on applications for asylum. There was uproar among judges and lawyers, and the Lord Chief Justice, Lord Woolf, went so far as to suggest that if the clause were to become law, the courts would simply refuse to apply it (Dyer, 2004). It has been suggested that following the case of *Factortame*, the will of Parliament was overridden – however, this was simply Parliament being complicit with its reduction of sovereignty due to the then government's policy of being part of the EEC, rather than an actual reduction in sovereignty.

Prime Minister currently has are too far reaching and too extensive. However, some argue that the power of the Prime Minister has already been undermined. With the ever increasing reach of government in everyday lives, many would argue that we should be able to challenge decisions and policies taken by government in court. Indeed, power has already been given to the courts to challenge the validity of Acts of Parliaments through the Human Rights Acts passed in 1998 and by declaring them 'incompatible'¹⁰.

The European Union

The European Union is by far the greatest threat to the Prime Ministers power. Already, the Acts the Prime Minister can pass through the strong party whip system are 'lower' law than the 'higher' European law (Alter, 2001). The reality of the Prime Minister withdrawing from the European Union, and therefore from not being subject to European law, is slim. The ability of the Prime Minister to withdraw from the European Union, or indeed to use the act in such a way on this or any other matter, would mean destroying his reputation. The party would either split or sack the Prime Minister as leader and the House of Commons could sack the government through a vote of no confidence (King, 1985).

It is true that the EU issues more than 12,000 regulations, directives, decisions and recommendations every year (Haywood, 2008) – highlighting a growing democratic deficit as decision-making authority is transferred from Parliament to non-elected EU bodies. The UK's opt-out on the single currency does, however, help to preserve the UK's economic sovereignty, although it has no choice about confirming to rules about the free movement of goods, services and capital throughout the EU. However, with the decisions being made so far away, with the majority of the votes being made by people who have no stake or interest with the UK, the EU is unpopular. Although the UK brings forward legislation to the EU itself, it is only a small part of the decisions taken by the EU. Many backbencher euro-sceptic MPs say how the Europeans on the continent ignore or don't strictly enforce EU legislation, while the UK enforces everything that comes from the EU. Although negligence is not yet an excuse permissible in courts for committing a crime, with the current number of directives, policies and legislative changes being made continuing for the foreseeable future it is unfair and unjust for people to be expected to know all of it. Indeed, the enforcers of these laws, the police, cannot be expected to know even half of it. If they did, the police would spend all their time learning everything, never able to enforce any law at all – making the laws practically useless and therefore pointless and unnecessary. This sets a case for devolution of power to local councils, as the policies and directives that come from local authorities would be well known to the public and police and relevant to the local area and economy. Power should certainly not be further centralised, towards an even more undemocratic institution¹¹.

¹⁰ A declaration of incompatibility is a declaration issued by judges in the United Kingdom if they consider that the terms of a statute are incompatible with Britain's obligations under the Human Rights Act, which incorporated the European Convention of Human Rights into the UK domestic law. Once the court has issued a declaration of incompatibility, the law remains the same until the Parliament removes the incompatibility. Contrary to popular opinion, the HRA only entitles the courts to interpret the law. The courts must still apply the legislation as it is and the parties to the actual case are unaffected by the declaration. Hence, the declaration has no actual legal effect and the parties neither gain nor lose by it (Joint Committee On Human Rights, 2007).

¹¹ Indeed, the fact that Britain pays far more to the EU than it receives back - £6 billion more every year, from 2007, equivalent to £115 million every single week – shows that British interests are not listened to or cared for as much as other European countries, and considering the unpopularity of this, the EU cannot be accepted to be democratic. Indeed, one poll showed that Labour backbencher MPs are just as euro-sceptic as the Conservative Party and that they are simply supporting the Lisbon Treaty and further European integration because of party loyalty. This further demonstrates the Prime Ministers power.

Even the power the European Union currently has is debatable. Ironically, if one needs any proof of how undemocratic and centralised it has become then we need look no further than the current Czech President. The European Union has “turned into an undemocratic and elitist project comparable to the Communist dictatorships of Eastern Europe that forbade alternative thinking” Czech President Vaclav Klaus told the European Parliament on Thursday 19th February 2009 (Klaus, 2009). Klaus, whose country now holds the rotating EU presidency, set out a scathing attack on the EU project and its institutions, provoking boos from many lawmakers, some of whom walked out, but applause from nationalists and other anti-EU legislators. Klaus is known for deep scepticism of the EU and has refused to fly the EU flag over his official seat in Prague during the Czech presidency, saying the country is not an EU province. He said current EU practices smacked of communist times when the Soviet Union controlled much of Eastern Europe, including the Czech Republic and when dissent or even discussions were not tolerated. With a European Leader, who happens to hold the EU Presidency, condemning the EU for being undemocratic only encourages the argument that it holds too much power and is too centralised. Nevertheless, some will argue that Europe doesn’t have as much power as one first assumes (Gabel, 1998)¹².

Conclusion

To conclude, the European Union, the Prime Minister and the Cabinet are too distant from the people they represent and have far too extensive powers over so many policies. Due to the party whip system, the Cabinet control Parliament. Due to the power of ‘hire and fire’ and the doctrine of collective responsibility the Prime Minister controls the Cabinet. Finally, due to the Council of Ministers being the main policy-making forum which includes all the main European Leaders, the Prime Minister will tend to feel obliged to agree with his counterparts and so he is controlled by the European Union.

Interestingly enough, however, each level of power usurps the power of the other. Constitutionally, the Prime Minister cannot function without the Cabinet – which was demonstrated so publically with Margret Thatcher and her resignation as Prime Minister¹³. Constitutionally, the Prime Minister can be replaced as party leader and therefore as Prime Minister by his party. Constitutionally, the EU – through the European Court of Justice - can use majority voting to usurp the policies of the Prime Minister (the veto has been limited to specific areas of policy). So the Prime Minister is not as powerful as the question assumes. However, this does not mean the power he *does* have should remain with him. The power the EU holds over law making should be relinquished. The power the Prime Minister has should be fragmented to Parliament. The Cabinet should stop using the

¹² However, as the debate on the Lisbon Treaty has now made clear, the EU agenda is complete political union with all the main functions of national government taken over by the bureaucratic institutions of Brussels. It alienates the people as a system of government with the roles and responsibilities it has already been given – in effect it is too powerful. It ignores the will of the people – indeed the Prime Minister is complicit in this regard. When the ‘democracy movement’ staged a referendum in Luton against ‘the European Movement’, filmed for ITV1 in a documentary for ITV’s *Tonight* programme, 63% voted ‘No’ to the Lisbon Treaty and 54% voted to come out of the European Union altogether.

The unwillingness of the representatives to acknowledge the public opinion on the European Union not only shows the power of the EU over the Prime Minister, in terms of foreign relationships, it shows the power of the Prime Minister, the Cabinet and the rest of Government over the British people.

¹³ The power of the Prime Minister is, effectively, the power he or she has in and with the Cabinet, British government is a collective enterprise, and a weak Cabinet weakens the Prime Minister. Many commentators believe that Margret Thatcher progressively lost support within her own Cabinet through her own Cabinet through her excessively authoritarian political style. When she found herself in trouble in November 1990 there was insufficient support within the Cabinet to extract her from it without a leadership contest.

party whip system and it should be appointed by Parliament. Local government should also have an increase in their power. Only areas where a coordinated national effort is required should government intervene, such as decisions on matters of national security, income tax and the economy.

Therefore, the Prime Minister is not 'too powerful' in the sense he has unaccountable, absolute power. However, he is too powerful in the sense that his power should be fragmented to lower institutions such as Parliament and Local Government, including the Parish, Borough and County Councils. The notion that more power should be handed over to the European Union in Brussels is only one spouted by those who dream of a Europe-wide utopia and one that should never come to pass. The idea of fragmenting power to the cabinet only gives the Prime Minister indirect power, through his power of 'hire and fire'. Hence, the Prime Minister's power should be devolved to Parish, Borough, County Councils as well as Parliament. Parliament's whip system must also come to an end, or at least the whips should allow greater use of the free votes. Parliament is, and should be, the ultimate decision making body for all matters - so if the citizens have a problem with what their council is doing, they should be able to appeal to the higher council until they reach the final 'court' of appeal for policy and legislative matters, Parliament.

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