# The 2017 Audit of UK Democracy

October 2017

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# 1.1 The 'Westminster plurality rule' electoral system

***Patrick Dunleavy*** *and the **Democratic Audit team** examine a topic of foundational importance for any liberal democracy – how well does its electoral system (in this case the Westminster Plurality Rule, aka First Past the Post) convert votes into seats?*



*Photo:      Jessica Cross via a CC-BY 2.0 licence*

**What does democracy require for an electoral system?**

- It should accurately translate parties' votes into seats in the legislature (e.g. Parliament),

- In a way that is recognised as legitimate by most citizens (ideally almost all of them).

- No substantial part of the population should regard the result as illegitimate, nor suffer a consistent bias of the system 'working against them'.

- If possible, the system should have beneficial effects for the good governance of the country.

- If possible, the voting system should enhance the social representativeness of the legislature, and encourage high levels of voting across all types of citizens.

**The plurality rule (or 'first past the post') voting system**

*Used for:*

- Choosing MPs in the Westminster Parliament.
- Electing local councillors in England (see forthcoming chapter on Local Government)

*How it works*: The national territory is divided into constituencies, each electing one MP. Candidates stand for election from parties, and voters cast one vote for their top preference choice only. The party candidate who gets the largest pile of votes in each local area is elected. The winner doesn't need to gain a majority (50% +1 of voters) to get elected, just more votes than anyone else.

**Recent developments**

The 2015 and 2017 general elections brought a host of changes, manifesting significant recent changes in the UK party system. In Scotland the Scottish National Party secured all but three of the 59 seats (95%) on the basis of 50% of the vote. In England UKIP piled up over 14% of the votes, but won only one seat (that it already held). The Liberal Democrats' vote plunged from 23.5% to 8%, and their seats fell from 57 to just eight isolated survivors, spread across as many regions of the country. Disproportionality increased markedly in Scotland, and the south west region. Because of the collapse in the UKIP vote in 2017, the Conservatives clawed back a number of seats in Scotland but lost them elsewhere, leaving the party reliant on a confidence and supply deal with the DUP to hold on to power – despite a 45.6% vote share, almost nine percentage points higher than in 2015. A mapping of seats by party in Chart 1 below also shows what the Jenkins Commission called 'electoral deserts' dominated by single parties – in Scotland (now favouring the SNP); all of southern England (favouring the Conservatives); and the north-east (favouring Labour).

**Chart 1: Seats won at the 2017 general election by the parties in Great Britain**



Legend: Con, Lab, SNP, LD, PC, Ind, DUP, SF, Green
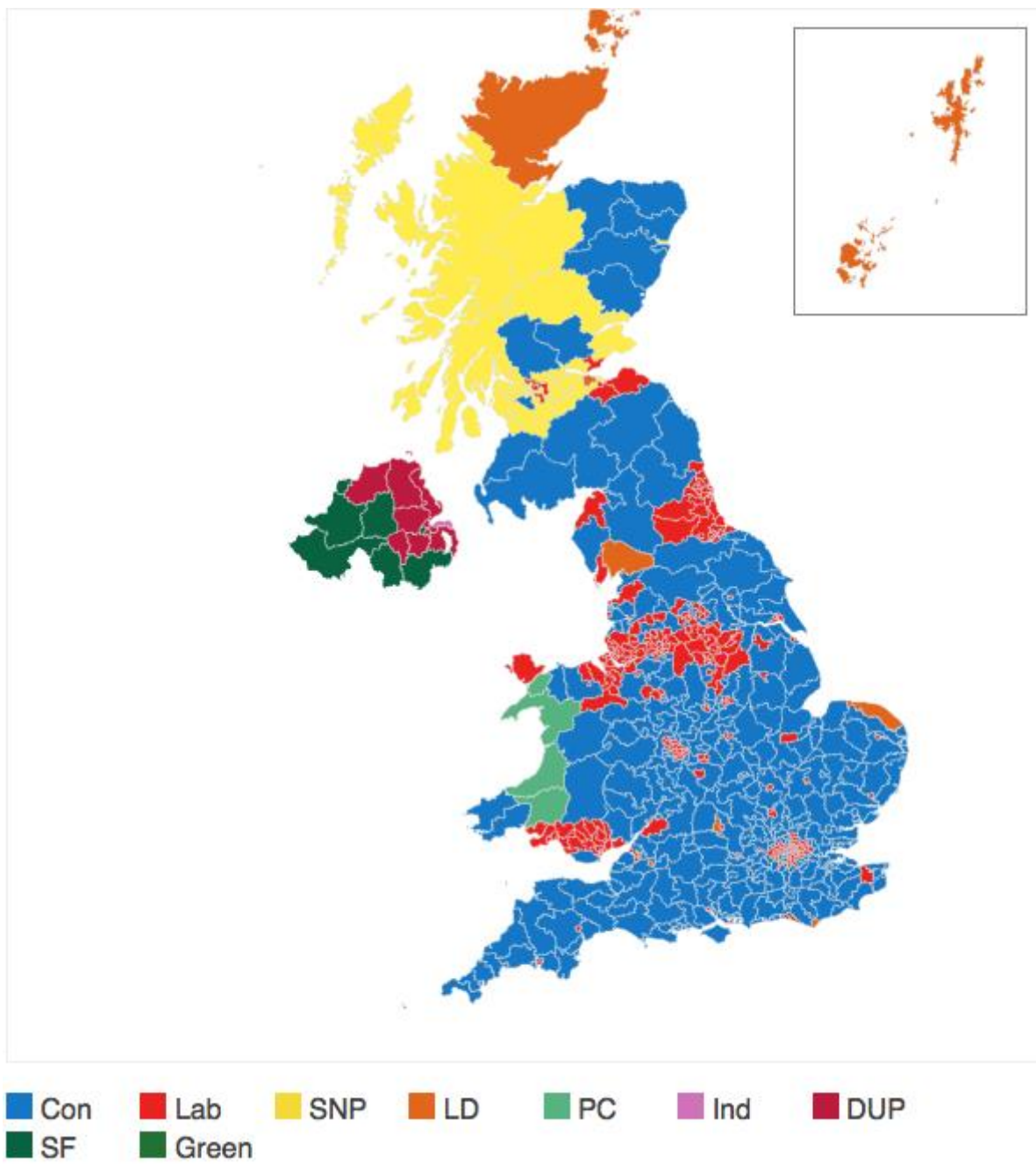
*Source:* BBC

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Familiar system for British voters, dating back to medieval times. | Large minorities of voters regard the seats results as illegitimate and distorted, since they rarely match votes shares well. |
| Simple for people to vote (mark one X), easy to count, and voters can understand how the result happened. | Many voters demand an alternative system – 32% in the 2011 AV referendum, and over two-fifths consistently favour PR systems in polls. |
| 68% of voters supported the status quo in a 2011 national referendum where the reform option on offer was the 'alternative vote' (AV) system (used in Australia). | Plurality rule always advantages the leading parties that can pile up votes in 'stronghold' seats – either Conservatives or Labour (depending who's in the lead) and now the SNP in Scotland. |
| n GB conditions, the system has tended to produce 'artificial' majorities for the leading party. This 'leader's bonus' has allowed single party governments to be formed with 'artificial' House of Commons majorities. Advocates argue that this produces 'strong' government. Exceptions include minority or near minority governments in 1964-66, 1974, 1977-79, the Conservative-Liberal Democrat coalition 2010-15 and the DUP-supported Conservative government in 2017. | It heavily discriminates against parties with dispersed support that only run second or third in many seats – especially the Liberal Democrats and UK Independence Party, who secure millions of votes and few or no Westminster MPs. |
| Turnout levels this century range from 59 to 66%, down on earlier levels, but 30.7 million people still voted in 2015 Westminster elections, more than for any other body. | The system creates 'electoral deserts' for major parties – whole regions where they win millions of votes but no or few seats. So there are few Tories in northern, industrial cities; and few Labour MPs in southern England outside London. |
| | The proportion of MPs in Westminster holding seats not justified by their share of the votes has been above a fifth since 1997 (see below). |
| | The proportion of MPs enjoying local majority support in their seats has fallen over the long term, despite an increase in 2015. |

| Current strengths | Current weaknesses |
|---|---|
| | Single party governments are based on small minorities of voters (35-42% from 2001-2017), and even smaller proportions of positively supporting citizens (22-24% from 2001-2015). |
| | Westminster has only tiny proportions of people from manual working class backgrounds, black and Asian ethnic minorities. And gender representation remains overwhelmingly male, with women MPs representing 20-29% in the last decade. In principle, parties could do better even while keeping plurality rule voting, but progress has in practice been very slow. |

| Future opportunities | Future threats |
|---|---|
| A more proportional voting system is demanded by Liberal Democrats, UKIP, Greens, the SNP and Plaid Cymru. Many people in the Labour ranks also support change, but few Conservatives. | The plurality system will probably perform more and more disproportionately and erratically, as UK voters continue to support far more than two parties. |
| Change will only come when either Labour or the Tories agree to a new system, and the party involved forms part of a coalition commanding a Commons majority, and probably a referendum majority as well. | More MPs failing to achieve majority support amongst local voters could potentially lead to a lowering of their status and legitimacy. |
| An incremental change to the Supplementary Vote system (used in London's and other mayoral elections) could be implemented without a referendum, and might secure support from one of the top two parties. It would involve more voters in being able to choose their local MP and give each member a local majority of support. But it might well not improve proportionality. | Westminster governments may well be chosen by, and answer, to smaller and smaller proportions of the population – especially older voters in 'safe' seats. |
| | Existing trends for younger people to vote much less and for sections of the population to reject election outcomes as unrepresentative may worsen. |

| Future opportunities | Future threats |
|---|---|
| | Westminster's legitimacy is likely to continue to decline, compared with other UK governments and legislatures that are elected by more proportional voting systems and have stronger links to voters (as in Scotland, London, and Wales). |

## How 'unfair' or disproportional are Westminster elections?

Political scientists have developed systematic measures of how accurately voting systems translate popular votes into seats in the legislature. The simplest and most widely used measure is the 'deviation from proportionality' or DV score, which shows what proportion of seats have been 'misallocated' to parties that do not 'deserve' them in terms of their overall vote shares. To calculate it, we look at the individual deviations between the vote percentage and the seats percentage for all parties, as in this small example table.

| Party | % votes | % seats | Deviation |
|---|---|---|---|
| A | 45 | 65 | +20 |
| B | 30 | 22 | -8 |
| C | 20 | 12 | -8 |
| D | 5 | 1 | -4 |
| Total | 100 | 100 | |

We then add up the + and − numbers, ignoring the signs (to get a number called the 'modulus', which is 40 here), and then divide by two, yielding a DV score of 20 in this case. To set that in context, almost any electoral system will end up over-representing larger parties at the expense of very small ones (such as those too small to win seats even under proportional representation). So the smallest feasibly achievable DV score is actually around 5% (and not zero).

How does the UK perform on this measure? Chart 2 below shows the DV score (also called the 'Loosemore Hanby' measure after its inventors) for Westminster elections over time as the dark purple shaded area. Clearly the relationship between party vote shares and seats shares have become more and more disproportional over time. The 2015 general election DV score reached a new high of 24% − so that almost a quarter of

MPs in the Commons are not entitled to sit there in terms of their party's share of the national vote.

**Chart 2: How the disproportionality of Westminster elections has grown over time**
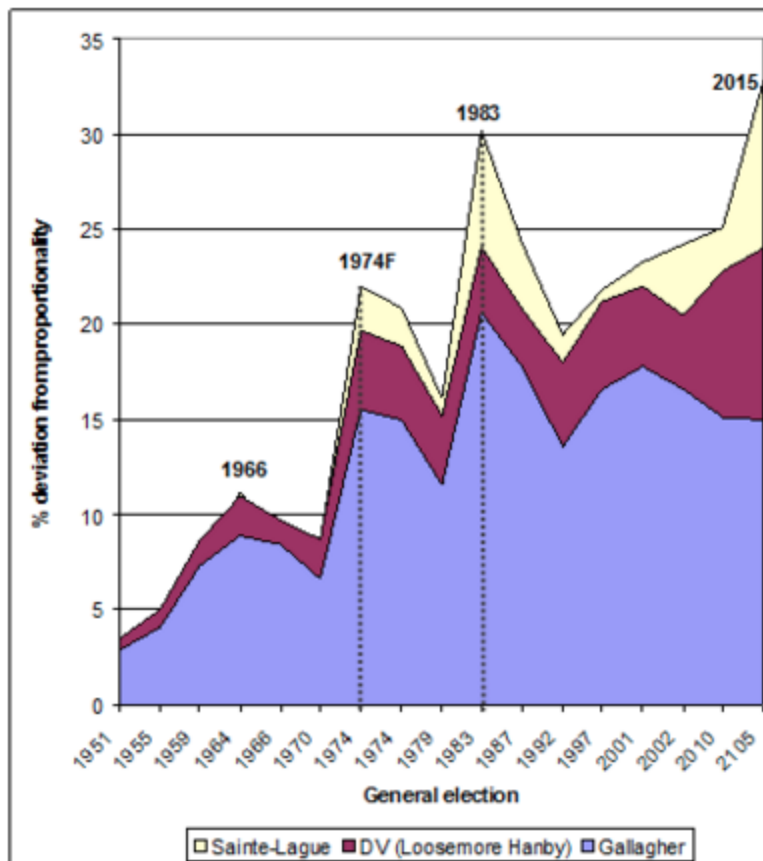
As with every aspect of political science measurement, there are also alternatives to the DV score. Chart 2 shows two main contenders, explained in more detail by Alan Renwick. Suffice to say here that the 'Gallagher' measure (shown light blue) is the most conservative index and arguably understates disproportionality by focusing only on the largest deviation. In 2015 this did not increase in 2015 because the Liberal Democrat vote collapsed and UKIP (although almost unrepresented in MPs) had a smaller 14% vote share. The third measure, the 'Sainte Lague' (shown pale yellow) is more orientated to the under-representation of smaller parties. It has been consistently above the DV score since 1974, and also shows the 2015 election as a post-war peak of disproportionality.

So far we have looked at national DV only, but in democratic terms what matters a lot also is how fairly elections seem to operate to citizens on the ground, in their own local area. When people support a particular party, what happens to that kind of vote in their surrounding area? We cannot compute DV for a single seat, of course, but we can look at the twenty seats nearest to every constituency across Great Britain and calculate the level of *local DV* that voters will experience in the area around them. Chart 3 shows the levels of deviation from proportionality that people experienced, with low scores shown purple and high scores yellow. They ranged very high in both 2010 and 2015, with some local DV scores at or above 40% DV scores in the worst cases, far higher than the national DV numbers (23% and 24%).

**Chart 3: How much deviation from proportionality do voters experience in the local area 'around them'?**
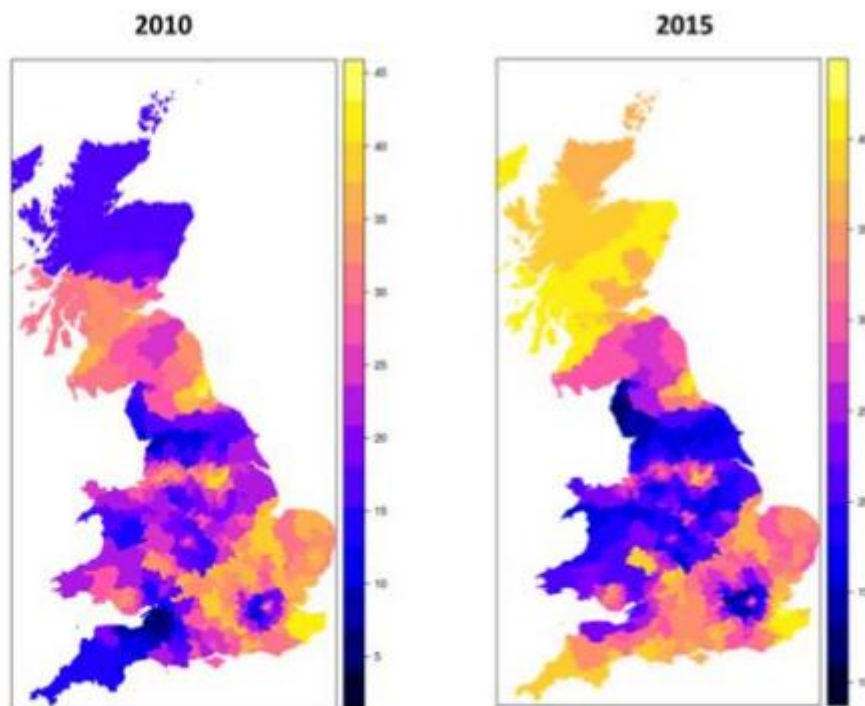


*Sources:* *Chris Hanretty*

*Note:* *The scale here shows the percent DV score in the 20 seats closest to each constituency in the country*

The side by side comparison in Chart 3 also shows how erratically plurality rule elections can operate from one year to the next. In 2010 with the Liberal Democrats riding high, south west England was one of the most proportional regions (purple). But by 2015, with Liberal Democrat support plunging, it was one of the most disproportionate regions (yellow). And in Scotland, the 2010 outcomes were disproportionate in the central lowlands with Labour as the key beneficiary, but more so by 2015 when the SNP was the sole beneficiary. However, there was consistently bad

performance in Tory seats across southern and eastern England for decades, and also in Labour's north east stronghold. But local DV eased off a bit in 2015 in areas around some northern Labour cities and former industrial regions.

A third aspect of disproportionality involves recognizing that nations differ a great deal in how their political parties and party system operate, with big implications for DV scores. So perhaps one of the best indicators to look at is how Westminster elections compare with other elections held under British political conditions, but using *different* electoral systems (discussed in detail in forthcoming sections). Chart 4 below shows that Westminster elections have been far more disproportional than all the other major electoral systems now used in the UK. For decades now over a fifth of the House of Commons have been MPs for parties over-represented at other parties' expense. By contrast, the Scottish Parliament, using a form of proportional representation has consistently been around 11%, half the Westminster rate. And the Greater London Assembly is not much higher than this, despite having only 25 elected members. In Wales the electoral system has too few 'top up' seats to give fully proportional outcomes, so the results there shows higher DV scores, over 14%. The elections for the European Parliament are held in the UK using a regional proportional representation system. Its accuracy is restricted by the small number of seats per region, so again this delivers only 14% DV scores – but this is still two-thirds of Westminster levels.

**Chart 3: How disproportional have Westminster elections been over the last two decades, compared with other British elections?**
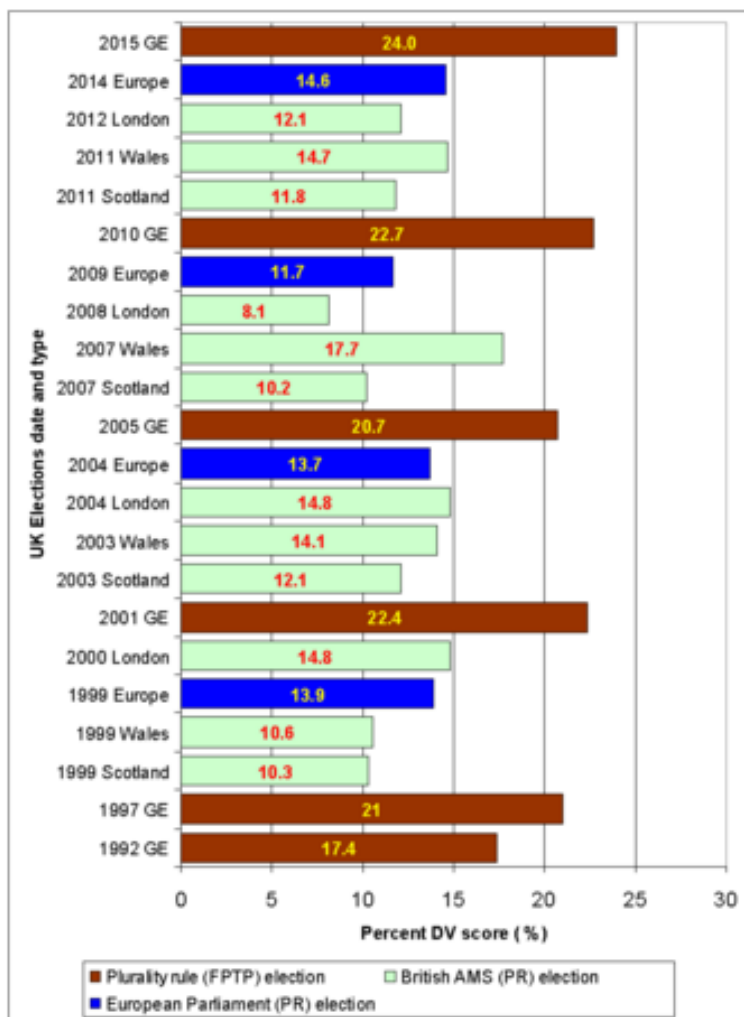
Overall then, it can be seen first that 2015 represents a new post-war high in the UK electoral system's disproportionality. Second, the levels of 'unfairness' experienced by voters at the local and regional level are much higher than the overall national figure suggests. For instance, Scotland in 2015 very nearly saw the SNP winning every single seat for which the party stood, despite only winning 50% of the vote. Third, Westminster elections are far more disproportional than other kinds of British elections held using different voting systems.

Finally, in comparative terms, the UK's Westminster elections are now almost five times more disproportional than the practicable minimum achievable in a modern electoral system. They consistently perform among the worst of any liberal democracies

worldwide. For example, the USA uses plurality rule elections, but DV levels there can be as low as 7-8% – because the Democrat and Republican parties still dominate all politics there, and a plurality rule voting system can work quite fairly with just two national parties in the race. As the UK continues its transition to a fully multi-party democracy on the normal European pattern, so the future of Westminster elections will certainly continue to be marked by high levels of mismatch between the parties that citizens support and those who win seats in Parliament – unless and until reform to a more modern and accurate voting system takes place.

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## 1.2 The reformed electoral systems used in mayoral and devolved elections

*Patrick Dunleavy and the Democratic Audit team examine how democratic the two big reformed electoral systems used in the UK – the 'Additional Members System (AMS)' and the 'Supplementary Vote (SV)' are, and how successful they have been in showing the way for more modern electoral systems under British political conditions.*



*The Mayor of London Sadiq Khan in October 2016.*

Photo:     *Lee* via a *CC-BY-NC-SA 2.0 licence*

**What does democracy require for an electoral system?**

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- In a way that is recognised as legitimate by most citizen (ideally almost all of them).

- No substantial part of the population should regard the result as illegitimate, nor suffer a consistent bias of the system 'working against them'.

- If possible, the system should have beneficial effects for the good governance of the country.

- If possible, the voting system should enhance the social representativeness of the legislature, and encourage high levels of voting across all types of citizens.

Since 1999 voting systems in the UK have diversified. The first Blair government, with Liberal Democrat co-operation, created proportional Additional Member Systems (AMS) between 1998-2000 for new devolved bodies in Scotland, Wales and London. These will have their fifth round of elections in May 2016. Labour also set up the successful London Mayor system, and since 2010 Conservative ministers have encouraged 'strong mayor' elections elsewhere, further expanding the use of a second 'Supplementary Vote' (SV) system.

**'Additional Member' Systems in Scotland, Wales and London**

*Used for:* choosing MSPs in the Scottish Parliament, AMs in the Welsh National Assembly and members of the Greater London Assembly (GLA).

*How it works*: In 'classic' versions of AMS (used in Germany and New Zealand) half of the members of these bodies are locally elected in constituencies using first-past-the-post', FPTP voting. The remaining half (the 'additional' or 'top up' members) are elected in larger regional areas, where a whole set of seats are allocated using a proportional representation system – so as to make parties' seat shares match their vote shares as accurately as possible. Voters cast two ballots: one for their constituency representative, and one for their top-up region representative.

In 'British AMS', because constituency representation was seen as historically and culturally important in the UK, there are more local constituency seats than top-up seats. In Wales though, the proportion of top-up seats (at 1/3) is sometimes too small to ensure proportional outcomes, if one party is heavily over-represented in the constituency seats. In Scotland and Wales the top-up areas are sub-regions. For the Greater London Assembly the top-up area is the whole of London.

| Body | Local seats | Top-up seats | Total |
|---|---|---|---|
| Scottish Parliament | 73 (57%) | 56 (43%) | 129 |
| Welsh Assembly | 40 (67%) | 20 (33%) | 60 |
| Greater London Assembly | 14 (56%) | 11 (44%) | 25 |

Voters get two ballot papers, one for their local constituency and one for the wider regional contest, and they mark one X vote on each paper. The local constituencies use FPTP, so whoever gets the largest vote in each local area is the winner.

In AMS voters also have a second vote for their regional top-up members. To decide who gets top up seats, each party puts forward a slate of candidates (their 'list), and voters choose one party to support. We look at how many local seats a party already has within region A from the local contests, and what share of the list votes it has in the A

region. If a party already has its full share of seats, it gets none of the top-up members. But if the party does not have enough seats already it is assigned additional members, taken from its list of candidates, so as to bring each party as closely as possible to having equal percentages of seats and votes (for the top-up area stage).

There's a formula for doing this that works near perfectly given large top-up areas. However, it may over-represent larger parties if a lot of the list vote is split across multiple smaller parties, which tends to happen quite a lot in British AMS elections.

**Recent developments**

A key rationale for the three AMS systems is to offer proportional representation for each of the bodies involved. In evaluating this claim it is worth bearing in mind as a benchmark the Westminster electoral system's deviation from proportionality, which is 22.5% (see our Audit on FPTP). Table 1 below shows that the Scottish AMS system has performed twice as well in terms of matching party seats shares with their vote shares, and the London system has fared almost as well. In Wales DV scores are higher, because there have been too few top-up seats, especially in 2007. But still, on average, DV scores are routinely two thirds of UK general election scores.

**Table 1: The deviation from proportionality (DV score) of British AMS elections**

|         | Scotland | Wales | London       |
|---------|----------|-------|--------------|
| 2011    | 11.8     | 14.7  | 12.1 (2012)  |
| 2007    | 10.2     | 17.7  | 8.1 (2008)   |
| 2003    | 12.1     | 14.1  | 14.8 (2004)  |
| 1999    | 10.3     | 10.6  | 14.8 (2000)  |
| Average | 11.1     | 14.3  | 12.5         |

*Note:     The DV score shows the percent of representatives not entitled to their seats in terms of their party's share of the overall vote. Its practical minimum level is c.5%.*

Proportional voting systems tend to produce coalition or minority governments, unless some party can command a clear majority of votes on its own. Table 2 shows that the AMS systems have only delivered two single-party government outcomes: in London in 2016, and when the SNP won an outright majority in Edinburgh in 2011, following a period when they ran a minority government (2007-11). In Wales Labour has been continuously in government, but has never had an outright majority. The arrangements for forming governments have generally fared well in all three bodies, without prolonged uncertainty and with party divisions generally not being rancorous.

**Table 2: Governing outcomes of the Additional Member System elections**

|  | Scottish Parliament (129 MSPs) | Welsh Assembly (60 AMs) | Greater London Assembly (25 members) |
|---|---|---|---|
| 2016- | SNP (63 seats) minority government | Labour (29 seats) minority government | Labour mayor. Labour (12 seats) largest party |
| 2011-16 | SNP (69 seats) majority government | Labour (30 seats) minority government | Divided government, Conservative mayor. Labour (12 seats) largest party (2012-16) |
| 2007-11 | SNP (47 seats) minority government | Labour (26 seats) coalition government with Plaid Cymru (15 seats) | Divided government, Conservative mayor. Conservatives (11 seats) largest party (2008-12) |
| 2003-07 | Labour (50 seats) coalition with Lib Dems (17 seats) | Labour (30 seats) government (with effective majority of 1) | Divided government, Labour mayor. Conservatives (9 seats) largest party (2004-08) |
| 1999-2003 | Labour (56 seats) coalition with Lib Dems (17 seats) | 1999-2000: Labour (28 seats) minority government. From 2000: Labour (28 seats) coalition with Lib Dems (6 seats) | Divided government, independent (previously Labour) mayor. Labour and Conservatives both 9 seats (2000-04) |

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The AMS systems were purpose-designed for all three bodies. The Edinburgh system was defined by a constitutional convention, and the GLA system by political scientist consultants. The Cardiff arrangements, however, were a political 'fix' decided by the Welsh Labour party. | We noted above the shortage of top-up seats in Wales, which explains higher DV scores here, especially in strong Labour years. |

| Current strengths | Current weaknesses |
|---|---|
| It is simple for citizens to vote for a local representative. Some critics predicted that citizens would see constituency voting under AMS as more important than top-up votes; and in the 2000 London elections one in six voters did not use their List vote. However, by 2008, 2012 and 2016 more people voted in the top-up election than in the constituency stage. | In London the Assembly has only 25 members, so every seat-switch between parties reallocates 4% of the total. So this is not a 'fine-grain' measure of party support. |
| AMS is easy to count, and it is straightforward for voters to understand how the overall result happened. All outcomes have had high levels of public acceptance and legitimacy. | London's DV score is also a bit higher because by law no party can win a top-up seat unless they get 5% of the London-wide (list) vote. |
| AMS is easy to count, and it is straightforward for voters to understand how the overall result happened. All outcomes have had high levels of public acceptance and legitimacy. | The detailed counting rule used to allocate top-up seats (called the d'Hondt rule) somewhat favours the one or two largest parties in all three cases. As in any electoral system, votes going to very small parties (below say 3% of the total) are unlikely to secure any representation – and in London cannot do so. |
| Election results for all three bodies have been more proportional than for Westminster elections (see above). | Outside London, the systems do not seem to have improved the representation of ethnic minorities or of people from manual backgrounds. |
| Turnout levels have been highest in Scotland at 49 to 59%. Wales has averaged 43%. London turnout grew from 33% in 2000 to 45% in 2008 and 46% in 2016. | |
| Under AMS, parties have incentives to put equal numbers of men and women on their top-up lists. Somewhat more representatives are women than in the Commons, with 35% of the Scottish Parliament, 36% of the London Assembly and 40% of Welsh National Assembly female members. | |

| Future opportunities | Future threats |
|---|---|
| There are some reform demands to create more top-up members in the Welsh National Assembly, which is like to make results more proportional. | Both Scotland and Wales are unicameral legislatures, so there is no upper house to constrain the behaviour of a party that becomes dominant there. |

| Future opportunities | Future threats |
|---|---|
| Over the 18 years it has been operating, the Scottish Parliament has gained far greater autonomy over more public spending and attracted high levels of public trust. Wales and Greater London are also pressing Whitehall for their powers to increase, and they have broad public support for such a change on their areas. | The SNP has emerged as a 'dominant party' in Scotland, especially since the 2014 referendum. There have been complaints of overly strong/unchecked executive rule by the party. However, 2016 saw a revival in the Conservative vote, and there are no regional 'electoral deserts' in Scotland without multi-party representation. And no electoral system can ensure more diversity of parties than citizens have voted for. |

As these bodies become more significant and permanent in the eyes of citizens, voters' interest, turnout levels and media coverage may all increase, especially in Scotland.

### The Supplementary Vote for electing executive Mayors and Police Commissioners

*Used for:* choosing the Mayor of London; executive mayors in 16 English local authorities, mainly large cities; and choosing all Police Commissioners in England and Wales. From 2017 onwards SV will also be used to elect 'regional' executive mayors in six major areas outside London.

*How it works*: No election for a powerful executive position (such as a mayor or president) can operate in a proportional way, because the single office cannot be divided between parties. Instead the Supplementary Vote system tries to *involve as many voters as possible in deciding* on the winner.

Voters have a ballot paper with two columns on it, one for their first choice and one for their second choice. They put an X vote against their chosen candidate in the first preference column, and then (if they wish) an X also in the second preference column.

## Election of the Mayor in your local area

Vote once ☒ in column 1 for your first choice, and
Vote once ☒ in column 2 for your second choice

| | Column 1 first choice | Column 2 second choice |
|---|---|---|
| Candidate A | | |
| Candidate B | | |
| Candidate C | | |
| Candidate D | | |

The key difference between the SV and FPTP sytems is what candidates must do to get elected, as the system is designed to make leading candidates 'reach out' to voters outside their own party's ranks.. At the start first preference votes only are counted. If anyone has more than 50% at this stage then they are elected straightaway, and counting ends.

However, if no one has overall majority support, then the top two candidates go into a runoff stage on their own, where the second preference ballot papers of eliminated candidates are checked. Second choice votes for one of the two candidates still in the race are added to their piles. Once all relevant second votes are added in, whoever of the two top candidates has the most votes overall is the winner.

This process of knocking out all the low-ranked candidates at once, and redistributing their voters' second choices, ensures that the largest feasible number of votes count in deciding who is elected. The person elected can only be one of the initial top two runners (unlike the Alternative Vote, rejected at the 2011 referendum). And yet in practical terms they always have a majority of *eligible* votes cast. In repeated London elections, there has been nearly three fifths support for the winner.

### Recent developments

The supplementary vote was first approved has been used five times to elect the London mayor, in numerous contests for other mayors, and in the 2012 and 2016 elections of Police and Crime Commissioners. Table 3 shows that in London over four fifths of voters take the opportunity to give both a first and a second preference vote. Turnout levels in London also rose from just over a third in 2000 to over 45% in 2016.

**Table 3: Major elections held under the Supplementary Vote from 2000**

| | 1st preference votes (m) | 2nd preference votes (m) | 2nd as % of 1st | Turnout % |
|---|---|---|---|---|
| Police and crime commissioners (England & Wales) 2016 | 8.88 | 1.25 | 14.2 | 26.6 |
| Police and crime commissioners (E&W) 2012 | 5.36 | 3.41 | 63.7 | 15 |
| London mayor 2016 | 2.57 | 2.30 | 89.6 | 45.3 |
| London mayor 2012 | 2.21 | 1.76 | 79.8 | 38.1 |
| London mayor 2008 | 2.42 | 2.00 | 82.9 | 45.3 |
| London mayor 2004 | 1.86 | 1.59 | 85.4 | 37 |
| London mayor 2000 | 1.71 | 1.42 | 82.9 | 34.4 |

By contrast, the first Police Commissioner elections in 2012 were poorly run. They were held in November, at a cold time of year, with little advertising and separate from normal local elections– resulting in a 15% turnout. There was little publicity about the new positions or the candidates, and large numbers of voters were using SV for the first time. Yet, even so, just under two thirds of voters cast a second preference, and the results were accepted as a sound reflection of the views of those voting. Turnout improved significantly in 2016 but the number of second preference votes dropped sharply.

A *possible* key problem of the Supplementary Vote concerns whether voters can accurately identify who the top two candidates are in advance, so as to use their second preference vote effectively. If a voter does not use either of their preferences for one of the top two candidates then their input does not determine who wins. The London Mayor election has always been well forecast and Table 4 shows that even in the first 2000 election the proportion of effective votes was over three quarters. As voters learnt more about how the system worked that proportion has increased, falling back only slightly in 2016. Thus SV in London has indeed maximised the number of votes that count.

**Table 4: How voters in the London mayoral election became more 'effective' in choosing candidates to support (millions of votes)**

|  | Winner | Runner-up | Effective votes | All votes | % of votes effective |
|------|--------|-----------|-----------------|-----------|----------------------|
| 2016 | 1.31 | 0.99 | 2.30 | 2.60 | 88.5 |
| 2012 | 1.05 | 0.99 | 2.05 | 2.21 | 92.7 |
| 2008 | 1.17 | 1.03 | 2.20 | 2.46 | 89.4 |
| 2004 | 0.83 | 0.67 | 1.50 | 1.92 | 77.9 |
| 2000 | 0.78 | 0.56 | 1.34 | 1.75 | 76.5 |

Outside London there has been a limited trend for major cities to adopt the executive major system (like Watford, Bristol, Liverpool and Leicester), and elections there generally operate similarly to London, with Labour versus Conservative run-off contests. However, the Labour candidate in Liverpool in 2014 won outright with 55% of the first-preference votes.

Following devolution deals negotiated between council leaders in six areas and Conservative ministers, new 'regional mayor' elections are expected to be set up and begin operating in 2017 in Greater Manchester (where the mayor will control health service and infrastructure spending), the Liverpool City Region, the North East, the Sheffield City Region, Tees Valley and the West Midlands.

### Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|-------------------|--------------------|
| A brand new system introduced first in London in 2000, and designed by political scientist consultants. The system is popular with voters. | Some critics have argued that the person chosen may not quite have a majority of all the votes cast. This is because some people may give both their first and second choice votes to smaller party candidates, who stand no chance of being in the final top two run-off. But then no other voting system can achieve this in practice either. |

| Current strengths | Current weaknesses |
|---|---|
| The SV system is simple for voters to use and supporters of small parties can express their real feelings with their first vote, but still use their second vote to choose which of the top two candidates they prefer to win. | SV is like an 'instant run-off' version of double-ballot elections (used e.g. in France, where if no one gets a majority on the first ballot, voters must come back a week later and vote again). Some critics argue that it is hard for voters to know in advance who the top two candidates are likely to be. But in London and most local areas this should be reasonably clear. |
| SV is straightforward to count, even at large scale - around 2 million votes are counted overnight in the London-wide Mayoral contest, using electronic counting. Voters can easily understand how the count operated and the result happened. | English local authorities have had the chance to introduce executive mayors since 2000, and 16 now use this system. In three areas mayoral systems were used for a time but then abandoned following local referenda. In 2011 voters in nine areas turned down executive mayors in referenda imposed on local voters. |
| Election results for London Mayor have shown winners getting nearly 60% of all eligible and counted votes. The four results so far have all been accepted as accurate, giving incumbents of the office very high levels of public acceptance and legitimacy. | One or two early mayoral elections saw victories for unlikely or allegedly 'joke' candidates with high name recognition. This has not persisted. |
| No major public criticisms of the system have emerged. | |
| Recent turnout levels in London at 40-45% are high for local elections. | |

| Future opportunities | Future threats |
|---|---|
| The creation of new executive Mayors for Manchester, Yorkshire and other northern English city-regions (e.g. with powers over health spending) could improve public knowledge of the SV system. | Some local authorities with an executive mayor may still revert back to a council system after a local referendum. But again this is for wider reasons, not dissatisfaction with SV. |
| Some local authorities without elected mayors may also adopt them in future. | |

| Future opportunities | Future threats |
|---|---|
| Turnout for Police Commissioner elections improved significantly in 2016, when they were run alongside local elections. This again may boost public awareness of SV. | |

## Conclusion

All three **Additional Member Systems** have operated effectively and the electoral legitimacy of governments in Scotland and Wales has been high. Furthermore, the representativeness of the Scottish Parliament and Welsh National Assembly has not been questioned by the public or the media. In London the GLA elections have been seen as fair, and its scrutiny role has secured some public profile in holding to account the executive Mayor.

**The Supplementary Vote system** has also proved very successful, working very effectively in London in elections so far, and because of that also spreading out to shape the choice of more and more directly elected public officials in England, with a high degree of non-partisan support. This is a rare case of a reformed electoral system spreading incrementally to new bodies and policy areas.

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## 1.3 The UK's two proportional electoral systems

*Patrick Dunleavy and the Democratic Audit team examine the two proportional (PR) electoral systems now used in the UK, albeit for smaller elections – Scottish and Northern Irish local government, and choosing Members of the European Parliament (although the latter will come to an end when Britain leaves the EU). How have they fared in converting votes into seats and fostering political legitimacy? Do they show that PR can work well under British political conditions?*



*Credit: Jas n via a CC BY-NC 2.0 licence*

**What does democracy require for an electoral system?**

- It should accurately translate parties' votes into seats in the legislature (e.g. Parliament)

- In a way that is recognised as legitimate by most citizens (ideally almost all of them).

- No substantial part of the population should regard the result as illegitimate, nor suffer a consistent bias of the system 'working against them'.

- If possible, the system should have beneficial effects for the good governance of the country.

- If possible, the voting system should enhance the social representativeness of the legislature, and encourage high levels of voting across all types of citizens.

## The Single Transferable Vote (STV) System in Scottish local government and Northern Ireland

*Used for:* electing local councillors across Scotland and Northern Ireland; and for choosing members of the Northern Ireland Assembly.Elsewhere in the world STV is only used to elect parliaments in Ireland and Malta.

*How it works*: All representatives are elected in larger local constituencies that have multiple seats (usually between three and five). The Single Transferable Vote (STV) seeks to allocate seats to different parties in direct relation to their votes, so as to end up with minimum differences between seat shares and vote shares. Within each multi-seat constituency, parties put up candidates in a list. Voters mark their preferences across parties, and within parties across candidates, using numbers. Voters therefore have the option to support candidates from across different parties, so as to exactly match their personal preferences. A complex counting process then operates that allocates seats in an order to the candidates that have most votes, so as to get the best fit possible between party vote shares and their number of local MPs.

The total number of votes cast is divided by the number of seats being contested plus one. This gives a 'quota', or a vote share that guarantees a party one seat. (eg if 100,000 people have voted, and we have 4 seats to elect in a constituency, then the quota would be 100,000 divided by (4+1) = 20,000 votes). Any candidate with more than a quota gets a seat straightaway. Every time a seat is allocated, we deduct one quota share of votes from the total and any surplus votes are redistributed.

Once this has been done, a different method is used to knock out candidates from the bottom. The least popular candidate is eliminated from the race, and their voters' second preferences are redistributed across the candidates still in the race. This is repeated until one of the parties still in the race has enough votes for a quota and so wins the next seat. We then deduct this quota from the total votes (as above) and carry on with the 'knocking out the bottom candidate' process until all the seats are allocated.

## Recent developments

The single transferable vote was introduced into the UK because of sectarian conflicts between the Protestant and Catholic communities in Northern Ireland during the period from 1968-2008. The system was viewed as viable because it had operated successfully for many years in southern Ireland, and appropriate because it is a transparently 'fair' system – one that gives parties seats in direct relation to their votes, unlike the huge distortions with plurality rule voting (retained in Northern Ireland only for Westminster elections).

Because STV lets voters choose to support candidates across party lines, British leaders also hoped that the system would encourage Northern Ireland voters to endorse 'moderate' people rather than sectarian extremists, and to support newer parties (like the Alliance) that were non-sectarian.By and large these effects have not materialised. The moderate Protestant party, the Ulster Unionists (UUP), lost ground gradually to be displaced by the initially more vigorously Protestant, Democratic Unionist Party (DUP).

Sinn Fein, the more radical Catholic-backed party with links to the IRA tradition, gained ground, while votes for the more 'moderate' Social Democratic and Labour Party (SDLP) declined over time. The alliance and other cross-sectarian parties survived, but their vote share remained small, and 'cross-voting' across sectarian lines has been relatively rare.

Still STV elections for the 108 seats Northern Ireland Assembly have been successful in creating the basis for a development towards peaceful coexistence and a degree of co-sovereignty of the UK and Irish Republic in Northern Ireland. The accurate seats shares are important in constituting the power-sharing Northern Ireland Executive also in a proportional way. The party with most seats gets the first pick of ministerial positions, the party with second most seats the second pick, and so on. STV also applies to local elections, initially operated in 26 districts (whose boundaries slightly favoured the DUP). In 2014 the first elections took place on new boundaries for the 11 larger and modernised districts.

STV elections spread to mainland Great Britain in 2006, when the Scottish National Party allied with the Liberal Democrats in the Scottish Parliament to reform the voting system for Scotland's local authorities. The SNP was anxious to eat away at the entrenched hegemony of the Labour party in councils, which they alleged was arbitrarily based on plurality rule voting and lead to clientelism and corruption – while the Liberal Democrats have been long-time advocates of STV as the most proportional voting system. So even though STV requires very much larger council wards (in order to elect multiple councillors), and some of these wards in low-population parts of the Highlands are vast indeed, the radical change went through.

The first reformed council elections were held in 2007, on the same day as Scottish Parliament elections. Asking voters to handle the 1, 2, 3 voting used for STV, at the same time as voting for the Edinburgh Parliament using first past the post, proved a disaster. Nonetheless the results were fairly stunning, with more SNP councillors being elected than Labour, and the Liberal Democrats beating the Conservatives into fourth place. In 2012 Liberal Democrat support slumped (because of backing the coalition government), while Labour councillors failed to catch the SNP. The result helped to fuel the SNP's build-up of its party machine, with its many new councillors since 2007 playing leading roles in the party's 2014 referendum campaign on leaving the UK. Meanwhile, Labour's local party machine went into decline without large numbers of erstwhile councillor-activists to sustain it, preparing the ground for the party's wipe-out losses to the SNP at the 2015 general election and the 2017 local elections.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| STV is a clearly proportional voting system when operating in UK conditions, and mostly works very well to match party seats and votes. | Even with large multi-member constituencies, some smaller constituencies may rather randomly not represent all parties (e.g. a three or four-seat constituency in a five-party system). |
| In theory it offers voters the chance to move popular candidates up party lists of who gets elected, (and perhaps move down unpopular candidates that parties have ranked high). In practice, most voters follow party rank orderings. | The counting process in STV is complex and hard to explain to citizens, potentially endangering its legitimacy. |
|  | STV does not necessarily promote diversity. For example, the proportion of women councillors in Scotland was a low 22% in 2007, and grew only a little to 24% in 2012. |
|  | In Northern Ireland STV has not had as much impact as UK elites hoped in encouraging voting across sectarian dividing lines. |
| **Future opportunities** | **Future threats** |
| The STV system seems well-established, and its results are well accepted. | Some smaller English authorities with an executive may revert back to a council system in local referendums. |
| As citizens become more familiar with voting using STV there is the potential for it to be used more widely for other UK elections | Turnout in the Northern Ireland Assembly elections has declined from 70% in 1998 to 54% in 2011 and 2016. In Scotland it has declined from 60% to 40% in 2012 and 47% in 2017, raising questions over whether the more complex electoral system deters voters. |

### How proportional is the Single Transferable Vote in UK conditions?

We noted in the plurality rule post that DV scores for FPTP have averaged 22.5%. Table 1 below shows that both the Northern Irish Assembly and the Scottish system have performed three times as well. In fact, all these elections show overall DV scores almost as low as it is feasible to get at 6.8 and 7.5% (while probably the lowest possible score would be 5%). The Northern Ireland council result in 2014 was considerably less proportional, however, under the new local government boundaries. This largely

reflected the poor success of small parties and independents, who gathered nearly one in eight votes in all, but fragmented across too many candidates to let them win seats.

**Table 1: The deviation from proportionality of STV elections in Scotland and Northern Ireland**

| Date | Election | DV score % |
|------|----------|------------|
| 2014 | Northern Ireland councils | 11.1 |
| 2012 | Scottish local government | 7.5 |
| 2011 | Northern Ireland Assembly | 6.5 |
| 2011 | Northern Ireland councils | 4.5 |
| 2007 | Scottish local government | 7.5 |

**The List Proportional Representation System for electing the UK's MEPs**

*Used for:* choosing the 73 UK members of the European Parliament (MEPs)

*How it works***:** The country is divided into 13 regions, ranging in size from the South East (10 seats) and London (8 seats) down to the North East and Northern Ireland (3 seats each). The main parties all selected enough candidates to contest all of a region's seats, while smaller parties could only contest some of the available seats. The parties arranged their candidates on their list, so candidates that are placed at the top would win seats first if their parties get enough support. The ballot paper showed each party's list and voters chose just one party to support using a single X vote.

All the votes in each region were then counted and each party got seats in proportion to the party's vote share. So, suppose we had a region with 10 seats where party A got 40% of the vote – they should have ended up with four of the available seats. This system is very proportional but it may favour larger parties if votes are heavily fragmented across many smaller parties. List PR is also used widely across Europe for electing national parliaments, as well as the European Parliament (EP).

**Recent developments**

The List PR system was first introduced in 1999 as a result to twin pressures – from the EU to put in place more standardised PR elections for the European Parliament; and a 'constitutional pact' between Labour and the Liberal Democrats, signed just before the 1997 general election. The scheme was drawn up by the UK civil service for 86 seats using standard regions as multi-seat constituencies

In 2004, 2009 and 2014 EP elections took place one year before general elections. In all these years, support for the UK Independence Party surged and that for the Conservatives and Labour took a big hit. And because this is a PR system, UKIP's large vote shares converted into seats well, especially in 2014.

**Chart 2: The largest party in the 2014 European Parliament elections, by local authority area**
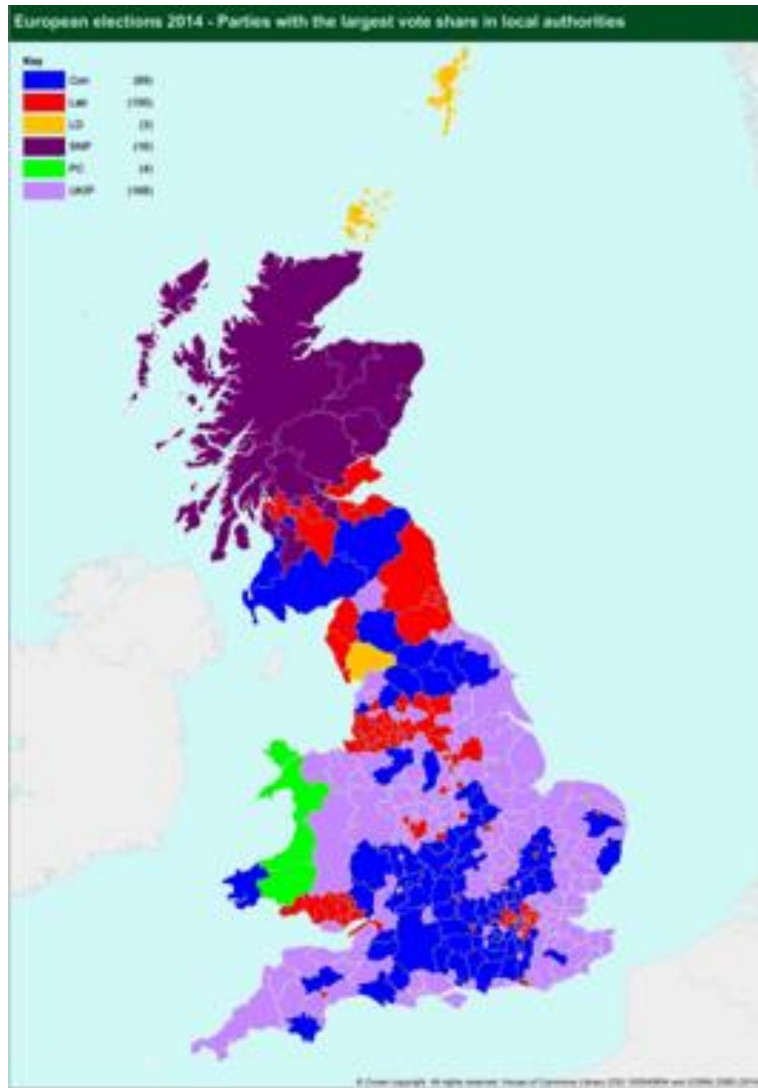


This pattern plays a significant role in explaining why the Conservatives felt pushed into conceding the EU referendum in an attempt to insulate their general election vote from UKIP. UKIP, however, were considerably disadvantaged in the Westminster elections by the first past the post voting system. Chart 3 shows the alternation of proportional List PR EP elections, with disproportional FPTP general elections.

Chart 3: The deviation from proportionality (DV%) of European Parliament and general elections
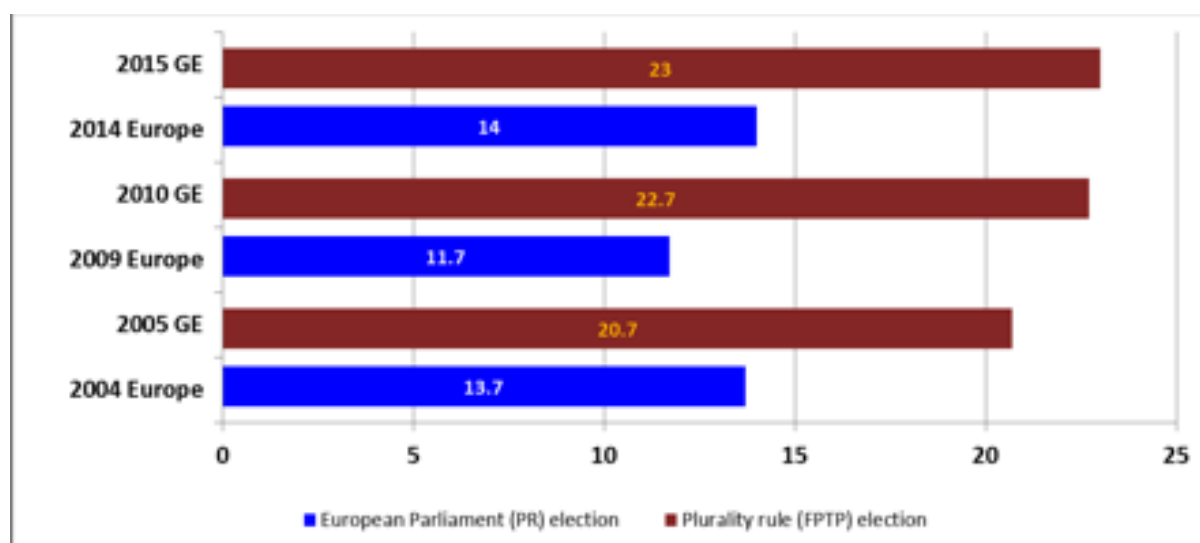


The referendum decision to leave the EU means that the List PR system will no longer be used for the foreseeable future in the UK.

## Strengths, Weaknesses (SW) analysis

| Current strengths | Current weaknesses |
|---|---|
| The system is simple to use. Voters mark one X for their first choice party. | The system is a 'closed list' one, where the political parties completely control the order in which candidates get elected from their list. Voters therefore cannot influence this at all. |
| The system is straightforward to count at the large regional scale and it is relatively easy for voters to understand how votes convert to seats. | Allocating seats follows the d'Hondt method, which somewhat favours the larger parties in the election, over smaller ones. |
| The system was used for five elections and no major public criticisms of the system have emerged. | The UK's number of seats in the EO has been reduced over time, with seats being removed in a rather ad hoc manner from regions, in only rough relation to their population. |
|  | With only 3 seats each, the two smallest regions are too small, and only the top three parties can secure representation there. The north-east of England could be merged into one of its neighbouring regions, but Northern Ireland is an intractable case. |

| Current strengths | Current weaknesses |
|---|---|
| | MEPs in the UK are very little known by citizens. Some critics allege that the large regional constituencies contribute to this 'isolation'. But it seems more likely that the UK's very inwardly focused media dynamics are to blame. The 2016 vote to leave the EU could also be interpreted as a challenge to MEPs' legitimacy, if not necessarily the system used to elect them. |

**Conclusion**

The adoption of proportional electoral systems in the UK has shown that PR can work effectively under British political conditions, and that they are undoubtedly more effective at converting seats into votes than FPTP. That said, they are not without their weaknesses. Both systems still tend to favour larger parties and STV in particular is potentially more confusing, due to the fact voters have to rank their choices with numbers and the complicated counting process.

There is increasing support for PR systems in the UK. However, Conservative resistance and the fact that the electorate voted against electoral reform in 2011 mean the use of PR is unlikely to be expanded in the foreseeable future.

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# 1.4 Are UK elections conducted with integrity, with sufficient turnout?

*Across the world, there are many countries 'where elections take place but are rigged by governments or unfairly conducted. And even in core liberal democracies (like the United States) political parties have now become deeply involved in gerrymandering constituencies and partisan efforts at 'voter suppression'.* **Toby S James** *looks at how well elections are run in the UK, and whether the systems for registering voters and encouraging turnout are operating effectively and fairly.*



*Outside a north London polling station, June 2017. Photo: Ros Taylor*

- What does democracy require for the conduct of elections, and how are voting, candidacies and fair competition facilitated?

- Governmental and legislative offices are open to popular competitive elections. All citizens have the right to take part in the electoral process. All parties, interests and groups assign great importance to maintaining universal and equal voting rights and to encouraging electoral participation.

- All votes count equally. So constituencies for all legislatures are (broadly) equal in size; and seats are (broadly) distributed in proportion to population numbers. Some variations in the population sizes of seats in order to facilitate more effective 'community' representation are allowable.

- The registration of voters is impartially organised in timely, speedy, convenient and effective ways. It maximises the ability of all citizens to take part in voting. Resources are available to help hard-to-register groups to be enrolled on the register.

- Voting in all elections is easy to do and the administrative costs for the citizen are minimised. Polling stations are local and convenient to access, there are no long queues for voting, and voters can also cast votes conveniently by mail or online. Arrangements for proxy voting are available. All modes of voting are free from intimidation, fraud proof and robust.

- All citizens can stand for election as candidates, and they face no onerous regulatory or other barriers in doing so. Some requirements for signatures or deposits are allowable in order to obviate frivolous or 'confuser' candidacies (also called 'passing off'). But they must be kept low and proportional to the seriousness of the offices being contested. All parties and groups assign top importance to maintaining candidacy rights and facilitating effective electoral competition and maximum choice for voters.

- Political party names and identifying symbols can also be registered to prevent 'passing off' strategies designed only or mainly to confuse voters. (Registering party names is also essential in most PR systems where candidates are elected off lists). But otherwise party or candidacy names may be freely chosen, and candidates can describe themselves in any legal way.

- All aspects of the electoral process are run impartially by trained, professional staffs in secure ways that minimise any opportunity for fraud. Election administrators have the legal ability to curb electoral abuses and to ensure that all candidates campaign legally and within both the electoral rules and the normal legal requirements to show respect for other citizens. Police and prosecution services impartially investigate and pursue all allegations of electoral misconduct or corruption and prosecute when necessary in a timely manner.

- Incumbent governments at the national level and sitting MPs or members of legislatures at constituency level must compete at elections on fully equal terms with all other parties and candidates. They enjoy no special advantages.

- Elections should always be welcoming and safe opportunities for voters and candidates to express their views, whatever their political affiliations or social background. Elections must never be occasions for intimidation or the worsening of social tensions.

- Election conduct and counting processes should be transparent and subject to inspection by parties and candidates, and by external observers. Election processes and results should be accepted by all domestic political forces as fully free and fair, and rated in the same way by foreign observers.

- The media system should be a pluralistic one, handling the reporting of elections and campaigns in a reasonably fair and diverse way. There should be no direct state interference in the reporting of elections or campaigns designed to secure partisan advantages for the incumbents or for powerful parties.

Free and fair elections are essential for the democratic process, and the UK implemented many of the requirements for them (including limits on local campaign spending) by the 1880s, although it didn't fully extend the franchise until 1928. The effectiveness of inherited and long-unchanged rules, administration and practice of elections changes over time, however. As society changes, the effect of rules can drift. The UK doesn't have electoral irregularities on the scale commonly seen in competitive authoritarian states or 'semi-democracies' (where voting takes place but under rigged arrangements) or the almost unrestricted corporate funding of elections in the USA. However, there are old and new pressures on electoral integrity in the UK.

**Recent developments**

The UK is not short of elections. The long-term trend has been towards an increase the number of positions in which citizens can elect representatives for office (and more frequent referendums). Devolution, the introduction of Police and Crime Commissioner (PCC) elections, and new mayoral elections all made voting a growing feature of the political landscape. This trend has not always succeeded, however. Health board elections were introduced but then scrapped in Scotland. The low turnout in PCC elections means that their future remain uncertain. Most significantly, there has been no movement towards electing the House of Lords.

Recent continuity in the number and types of elections does not mean that we've seen little change in how they are run or how voters participate. The most publicised development has been the reversal of the long decline in turnout in UK general elections. From the nadir of 2001, turnout rose by nearly 10 percent points to 68.5 per cent in the 2017 general election. Moreover, it grew substantially amongst one of those groups who were increasingly not exercising their democratic right – young people. In 2005 the UK had the largest 'age gap' of any liberal democracy in the gulf between voters over 55 and under 34. However, Chart 1 shows that turnout amongst the 18-24 and 25-34 age categories substantially rebounded in June 2017. The age gap from 2005 and 2015 was effectively halved.

**Chart 1: The estimated turnout of different age groups at general elections from 1964 to 2017**
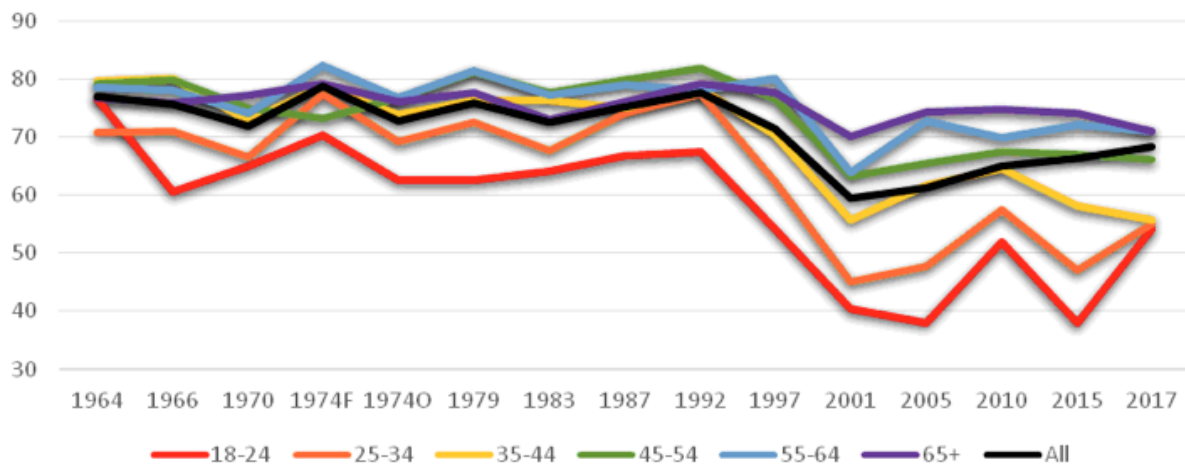


*Source:    Computed by author using data from the British Election Study, IPSOS Mori and BBC.*

Yet there remains cause for concern. Differentials between age (and other) groups have not disappeared. The method for calculating turnout in the UK (as a percentage of registered voters) makes it look higher than it really is. Turnout remains chronically low for other electoral contests. The recent rise in general election turnout owes much to major changes in British party politics, and very little to changes in Britain's electoral machinery. A new cleavage has opened-up based on age, education and social values rather than social class. Jeremy Corbyn's Labour party has successfully focussed on gathering support from a new electoral block – with the newly re-energised youth a key part of this. Whether this engagement will be sustained remains uncertain.

### Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Elections are generally very peaceful, and intimidation or electoral fraud rarely occur, although there are isolated problems. Election results are well respected by parties and citizens. International observers have regularly expressed 'a high level of confidence in the electoral process.' | The most important problem is incomplete electoral registers, owing to a system where it is an individual and not a state responsibility to ensure names are on the electoral roll. Many citizens fail to re-register because they misunderstand the electoral registration process. Estimates suggest that up to 8 million citizens may be missing from registers in recent contests, around 16% of the adult population (see below). |

| Current strengths | Current weaknesses |
|---|---|
| It is very straightforward to register a party or to stand as a candidate at UK elections, with very few regulatory impediments. An election deposit of £500 is required to stand as an MP for Westminster, returnable if the candidate gets 5% of the votes. Higher deposits apply for police commissioner elections (£2000). Candidates also need relatively few registered voters to sponsor their standing (10 for Westminster). | At £500 per seat, the deposit cost of contesting every seat in Britain at a general election is £314,000. This still favours the most established parties over newcomers. In 2017 candidacies for UKIP fell sharply by 346 compared to 2015; and those for the Green party by 106. This partly reflected lack of finance, and less time to raise finance since the 2015 general election. |
| Procedures in polling stations are simple and liberal: for example voters do not need to show ID but just give a name and address. This makes voting very speedy to do and facilitates. Polling stations are also very locally situated (mainly in primary schools or community centres), and most locations stay the same from one election to another and become familiar to citizens. | There is an archaic, antiquated and illogical system for determining who is allowed to vote (see below). For instance, in Scotland teenagers of 16 and 17 can vote in elections for the Edinburgh Parliament and local councils, but not for Westminster MPs. And in all other UK countries they cannot vote at all. |
| The UK's boundary review process responds to statue and its implementation timing is often politically influenced. However, the process of defining constituencies is separate politicians and prevents gerrymandering. | The robustness of electoral finance regulation is problematic at the margins (see below). Constituency spending limits are set restrictively, but national spending levels are unrestricted. |
| Electoral administration is chiefly run by professional officials in local government who are independent from government and local politicians. The Electoral Commission is a national quasi-government body that regulates electoral finance and advises on election procedures in an independent way. It has shown plenty of willing to criticise the government when necessary. | The legislative framework is 'complex, voluminous and fragmented' and in need of consultation. Isolated cases of electoral fraud remain. Some vulnerabilities in electoral registrationremain. The system for securing electoral justice is archaic and slow. |

| Current strengths | Current weaknesses |
| --- | --- |
| A modernised online electoral registration system has enabled many last minute voter registration applications. Timely registration for upcoming contests is much better developed than in the past. | Locating electoral administrators in local governments means that many are operating under financial restraints, following many years of austerity cutbacks. Systems for registration are often dated. Arrangements for the effective communication of results back to voters are online are problematic. The apparatus for communicating with voters was basically defined in the 1880s and though candidates are listed on websites the approach has otherwise been little updated for the social media era. Cutbacks have especially restricted voter outreach work by local authorities. |
| Civil society groups and NGOs (such as 'Bite the Ballot') have organised to register and engage voters. They helped to set out policy ideas through a parliamentary group. Voter advice applications also seek to reach people at general elections who are not normally politically engaged. And sites such as Democracy Club and Democratic Dashboard contribute to the provision of information to citizens. | Further deficiencies in UK elections lie outside the area of 'electoral integrity' itself. The Westminster electoral plurality voting system (also used in English and Welsh council elections) often produces highly disproportional results. In the media system the newspaper coverage of candidates and parties remains systematically unbalanced. |
| | There remains little or no citizenship education. |

| Future opportunities | Future threats |
| --- | --- |
| The Scottish government may bring legislation forward to reform Scottish electoral law and Welsh government is reviewing local elections in Wales. This could also provide opportunities for innovation and learning across the UK. | Proposals to make voters show ID at future elections could discourage voters from going to the polls, and make it more difficult for many citizens to vote. |
| Brexit negotiations offer an opportunity for the concept of citizenship to be redefined and electoral rights to be realigned. | Political advertising via social media is currently very little regulated (see below) |

| Future opportunities | Future threats |
|---|---|
| UK-wide pilots of automatic registration could lead to cost efficiency savings, but may also strengthen levels of voter registration. | Under the new Individual Registration systems electoral turnout and registration levels may drift downwards at subsequent elections without high profile electoral events. |
| A debate has opened up about the funding of electoral services with the Scottish Local Government and Communities Select Committee reviewing arrangements. | Brexit negotiations may leave many EU citizens with fewer electoral rights. |
| The Higher Education and Research Bill requires universities to play a role in student registration. There are therefore opportunities for innovation in, and learning from, voter registration activities. | |
| The Law Commission's proposals to consolidate the UK's 'complex, voluminous, and fragmented' sets of electoral law was published in February 2016 – but the government has not yet said what (if anything) it will do about it. | |

**Electoral registration changes**

Online electoral registration has recently been introduced, which was a massive step forward in the modernisation of elections – and in 2016 and 2017 prevented much of the anticipated decline in levels of electoral registration. The responsibility for registering voters in each household used to rest with the 'head of household', a system that worked pretty well but rested on archaic assumptions. However the new system of individual electoral registration (IER) made it an individual responsibility to register to vote and ask citizens to provide their national insurance number. The consequences of IER have been profound, if often unseen, for the running elections. Forthcoming research shows that the weight of administrative reform sucked up additional resources from local authorities and led to many experienced employees leaving the profession. There were fears that IER would lead to young voters and those moving areas being left off electoral registers. However, some counter-mobilisation efforts from civil society took place, with support from the government's Democratic Engagement Strategy. Established in 2015, it provides some funding for a range of NGOs to undertake voter outreach work. Legislation was also passed to require universities to play a role in registering their students, one of the most under-registered groups. Moreover, civil society has played a much greater input into policy, with the All Party Parliamentary Group on Democratic Participation forming and publishing influential reports.

## Who is eligible to vote?

The electoral franchise, which is defines who has the right to vote, is an essential part of what it means to be a citizen within a polity. Excluding people from it immediately builds in political inequality. The UK's electoral franchise is an antiquated patchwork of historical legacies that lacks any underlying principles. Citizens from qualifying Commonwealth countries and Ireland can move to the UK and have full electoral rights immediately. Yet a citizen from the European Union, who has lived and worked in the UK for most of their life, has rights for local and European elections (while they last) but not for Parliamentary elections, nor for major electoral events like the EU referendum. Recent electoral events have affected them more than any other group of people. The Scottish Parliament has granted 16 year olds the right to vote in Scottish local and parliamentary elections. But they can't vote in Westminster elections, or in any other part of the UK. Lords amendments to grant 16 year olds the right to vote in the Eu referendum were rejected by the government and Theresa May has since restated opposition to extending voting rights to 16 years olds.

This is hugely significant as new electoral cleavages open up in Britain. Many recent electoral contests, which are having profound consequences for public policy may have had entirely different electoral outcomes if the franchise was different. It is currently unjustified, unbalanced and unequal. Meanwhile, the UK continues to breach the European Convention of Human Rights in denying prisoners (other than those on remand or serving sentences for contempt of court) their vote while serving their sentence.

Where the Conservative governments have been proactive in expanding the franchise is for British overseas electors. The 2017 Tory manifesto promised them votes for life (compared with the current system where expats retain the franchise only for the first 15 years that they live overseas).

## Fraud and malpractices

The main focus of policy in 2015-17 under the David Cameron and Theresa May governments was less about promoting democratic engagement and more about reducing opportunities for electoral fraud. The government announced a programme to trial voter ID in the May 2018 local elections. But before those trials could be organised, the Conservatives also made a manifesto commitment at the 2017 election to legislate for voter identification, following completion of the transition to individual electoral registration. Under the pilot proposals, citizens in Britain would leap from having no identification requirement to having some of the most restrictive. This could lead to many people being denied their right to vote because they do not have sufficient paperwork to hand on election day.

Yet there is very little evidence that there is a problem to be solved. It is true that the absence of a requirement to provide any form of identification at polling stations places Britain out of line with international practices. But the overall number of cases of electoral fraud under this 'high trust' system is exceptionally low. Table 1 shows that this was a tiny problem at the 2015 general election.

**Table 1: Problems experienced by poll workers at the British general election 2015**

| Type of problem reported | % of poll workers reporting | | | | |
|---|---|---|---|---|---|
| | **No cases** | **One case** | **2-5 cases** | **6-10 cases** | **10+ cases** |
| People asking to vote but not on register | 31 | 16 | 39 | 10 | 3 |
| People ask to vote whose identity I was unsure of | 94 | 5 | 1 | 0 | 0 |
| People taking photos of ballot/ polling stations | 95 | 5 | 1 | 0 | 0 |
| Members of parties being where they shouldn't be | 95 | 4 | 1 | 0 | 0 |
| Members of parties intimidating the public | 95 | 2 | 2 | 1 | 0 |
| Suspected cases of electoral fraud | 99 | 1 | 0 | 0 | 0 |

*Source:*  *Clark and James, 2017*

**The 'missing millions' of unregistered citizens**

Table 1 also confirms that the more significant problem is citizens turning up to vote only to find themselves not on the electoral register. This confirms other researchwhich shows that many citizens think that their name is on the electoral register because they access other government services and pay their council tax, when they often are not. Chart 2 shows there has been a gradual rise in the number of people missing from the electoral register. If everyone was registered, the number of people on the electoral register should be roughly in line with the annual mid-year population estimates. But there has been a growing gap. This gap also understates the number of unregistered voters because if there are duplicates, which there are, then there are many more people missing. The most complete assessment is that there could be up to 8 million people missing.

**Chart 2: The growing gap between the eligible total number of citizens/inhabitants and total electors**
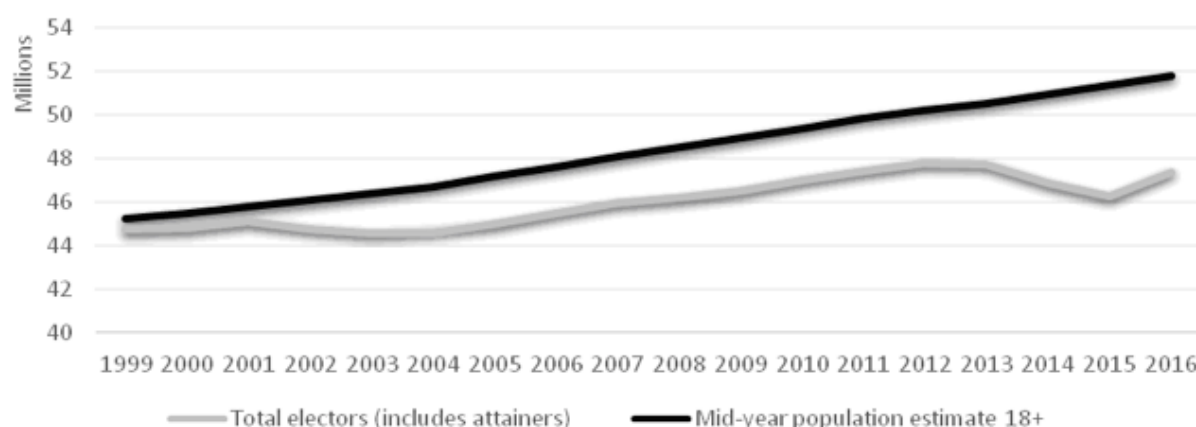


*Source:    Author compiled from ONS Population Estimates and Electoral Statistics from 1 December each year. The local electoral register is used because it has the higher franchise.*

There is further political inequality here. Under-registration is not equally distributed across the whole population. The evidence is that the register is less complete in urban areas (especially within London), amongst recent movers and private renters, Commonwealth and EU nationals, non-white ethnicities, lower socioeconomic groups, citizens with mental disabilities and young people. This matters more than ever before because this is the register on which the boundaries for the 2020 general election will be drawn. These groups will have less representation in the UK Parliament than others.

The most worrying trend is with attainers – citizens who will shortly reach the voting age during the currency of the forthcoming register. These have historically just been 16 and 17 year olds, as only 18 year olds can vote. But the because the Scottish Elections (Reducation of Voting Age) Bill lowered the voting age for some elections in Scotland, attainers can now be 14 or 15. Chart 3 shows that there has been a longer term decline in the number of such electors on the register. The darker line indicates the mid-year population estimates of 16 and 17 year olds in the UK but includes 14 and 15 year olds in Scotland after 2015. The lighter line indicates actual numbers of attainers on the register. In short, the next generation of voters are largely missing from the register.

**Chart 3: The gap between eligible attainers (people nearing voting age, who should be on the electoral register) and registered attainers**

There are two principal short-term causes. The move to individual electoral registration was predicted to hit young people the hardest since their parents often previously registered them. Second, electoral registration efforts in Scotland may not have caught up with the new franchise. Simple solutions include the automatic registration of young people at moments such as when they receive their national insurance card (needed for paid employment) so that they can be brought into the electorate.

## Controlling local election expenses

The UK has made major efforts to monitor and regulate the funding of electoral campaigns over the last 20 years. Yet the breaching of electoral laws became a more high-profile concern in the arena of campaign expenditure in 2015. Conservative MPs and their agents were accused of failing to account properly for campaign spending at the general election. The Tories claimed that they had abided by the rules as set out, and never intended to breach requirements. But the Electoral Commission foundsignificant breach of the Political Parties, Elections and Referendums Act (PPERA) and that the party demonstrated an 'unreasonable' lack of co-operation with the Commission. Cases from 14 police forces were referred to the Crown Prosecution Service, which eventually only decided to press charges in one case.

Yet these cases illustrated two concerning aspects of the regulatory regime. Firstly, charges were not pressed in many cases, not because the affair was trivial but becauseof 'insufficient evidence to prove to the criminal standard that any candidate or agent was dishonest.' It has been questioned whether the legislative framework requires such a high threshold of evidence, that it is difficult to prevent loose interpretations from parties. Secondly, there was a concerning effort and unwarranted from many to criticise and discredit the neutrality of the Electoral Commission, rather than accept the result,

which will only undermine confidence in the electoral process in the longer term. A new concern is that different requirements in Northern Ireland provide a backdoor for influencing elections contests the UK.

## 'Dark money' and social media

As election campaigning increasingly shifts to the internet and social media new concerns have also been raised about how undisclosed 'dark money' can influence elections and undermine political equality. Political parties are reportedly increasingly making use of data analytics to track voter behaviour on platforms such as Facebook and Twitter. This information can then be used to target advertisements in marginal constituencies. This involves a substantial investment of work and money in data analytics which does not necessarily fall within the UK's short official campaign period. Nor does this kind of expenditure clearly fit within campaign spending categories that are regulated by law. Campaign advertising laws cover TV and radio, but not social media. The playing field at electoral contests may become increasingly uneven as a result, and there is a clear need for election finance arrangements to be updated for the digital era.

## Reviewing Westminster constituency boundaries

During the Conservative-Liberal Democrat coalition government the two parties reached agreement that the size of the House of Commons should be reduced from 650 to 600 MPs, and that the population sizes of constituencies would be equalised exactly, removing the tolerance for community and other factors that previously had meant that seats were only broadly of the same population size. There were still substantial variations between the smallest constituencies (often in inner city areas held by labour) and the largest constituencies (e.g. in fast-rowing suburban areas). The boundary review for Westminster elections was set in motion by the Parliamentary Voting System and Constituencies Act 2011. However, the Liberal Democrats subsequently withdrew co-operation on implementing the review, in response to Tory backbenchers wrecking House of Lords reform.

After the 2015 election brought a Tory majority again, fully equalised constituencies were revived. The Boundary Commissions published their proposals in the autumn of 2016. Following consultation, they will lay down the recommendations before Parliament by September 2018. But the calling of the 2017 general election meant that this would be likely to come into effect in 2022, rather than 2020. The 'hung Parliament' also means that implementation of the review may be postponed again to beyond the next general election. Any redrawing of boundaries creates costs for some individual MPs, even if their party benefits. Although most estimates suggest that the Conservatives would make perhaps 20 seat gains from 600 equal sized constituencies, some individual Tory MPs will also lose out and may not be keen on voting for their own seats to disappear.

**Conclusions**

Elections are an indispensable way for citizens to have popular control of government, and they are a fundamental foundation of political equality – two of the Democratic Audit's guiding principles, set out by David Beetham. There is therefore significant room for improving electoral integrity so that these aims can be better achieved.

Political equality is certainly undermined by continued uneven levels of participation across groups, an antiquated and illogical electoral franchise denying people the right to vote in contests that affect them, and millions of people still being missing from the electoral register. There are also emerging threats to a level playing field in the area of political finance.

The paradox of Britain's electoral democracy is that the most power to improve the electoral process resides with the victors from the electoral process – the government of the day. The Lords have flexed their muscles on key issues such as the franchise during the last Parliament and some amendments were passed. However, it is more difficult to have popular control of government, when the same government holds the power over reform of the electoral process. The 'hung parliament' may lead to compromises between parties and opportunities for greater cross-party consensus on electoral law legislation. However, it – and the workload deriving from Brexit laws – may also mean that the government introduces little legislation, and few changes are made.

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# 2. How democratic are political input processes?

- The UK's political parties and party system
- The interest group process across the UK
- How well does the media system sustain democratic politics?
- Does citizen vigilance and social media extend or threaten democratic practices?

# 2.1 The UK's political parties and party system

*Sean Kippin, Patrick Dunleavy and the Democratic Audit team examine how democratic the UK's party system and political parties are. Parties often attract criticism from those outside their ranks, but they have multiple, complex roles to play in any liberal democratic society. The UK's system has many strengths, but also key weaknesses, where meaningful reform could realistically take place.*



*A Unite band plays during Labour's 2015 election campaign.*

**What does democracy require for political parties and a party system?**

**Structuring competition and engagement**

- The party system should provide citizens with a framework for simplifying and organising political ideas and discourses, providing coherent packages of policy proposals, so as to sustain vigorous and effective electoral competition between rival teams.

- Parties should provide enduring brands, able to sustain the engagement and trust of most citizens over long periods.

- Main parties should help to recruit, socialise, select and promote talented individuals into elected public office, from local council to national government levels.

- Party groups in elected legislatures and outside organisations should help to sustain viable and accountable leadership teams, and contribute to the scrutiny of public policies and elected officials' behaviour, in the public interest.

**Representing civil society**

- The party system should be reasonably inclusive, covering a broad range of interests and views in civil society.

- Dissatisfied citizens should be able to form and grow new political parties easily, without encountering onerous or artificial official barriers.

- Regulation of party activities should be independently and impartially conducted to prevent self-serving protection of existing incumbents.

**Internal democracy and transparency**

- Long-established parties inevitably accumulate discretionary political power in the exercise of these functions, creating citizen dependencies upon them and oligopolistic effects in restricting political competition. So to compensate, their internal leadership and policies should be responsive to a wide membership that is open and easy to join.

- Leadership selection and the setting of main policies should operate democratically and transparently to members and other groupings inside the party (such as party MPs or members of legislatures). Independent regulation should ensure that parties stick both to their rule books and to public interest practices.

**Political finance**

- Parties should be able to raise substantial political funding of their own, but subject to independent regulation to ensure that effective electoral competition is not undermined by inequities of funding

- Individuals, organisations or interests providing large donations must not gain enhanced or differential influence over public policies, or the allocation of social prestige. All donations must be transparent.

### Recent developments

Political parties in the UK are normally stable organisations. Their vote shares and party membership levels typically alter only moderately from one period to the next. But after 2014, party fortunes changed radically. At the 2015 general election support for the Liberal Democrats fell to a third of its 2010 level, and their tally of MPs plunged from 57 to 8 (now 9, following the Richmond by-election). Voters punished them for supporting to the end the Cameron-Clegg, Conservative-Liberal Democrat coalition government. The more resilient Tory machine relentlessly captured most seats from their erstwhile, now embattled partners. The party is fighting the 2017 General Election on an anti-Brexit platform, and achieved a national vote share of 18% in the 2017 local government elections, a possible sign of revival also reflected in party members passing 101,000 in the same month.

In Scotland, the SNP built on its mobilisation during the 2014 referendum campaign to take all but three Westminster seats there in 2015. Labour's vote in Scotland plunged from 42% in 2010 to 24% per cent, and under plurality rule voting its MPs there fell

from 41 to just one. The First Minister, Nicola Sturgeon, has made clear her opposition to a hard Brexit and her determination to hold a second independence referendum, but polls continue to show a majority of Scots favour the Union.

Following Ed Miliband's resignation, a lacklustre Labour leadership competition revealed a gulf between Labour's parliamentary party (PLP) and most of its members (recently enlarged by the introduction of a £3 membership fee). A wave of younger people getting involved, and of disillusioned older, left-wing supporters rejoining, lead to the complete outsider Jeremy Corbyn becoming leader, winning clear overall majorities amongst new members, old members and trade union members. He quickly faced serious problems in constructing a shadow Cabinet and maintaining the loyalty of Labour MPs. Following the Brexit referendum, when Corbyn only vaguely supported 'Remain', the PLP majority tried to out him from office by deserting his shadow Cabinet and triggering another leadership contest (lead by Owen Smith). However, Corby won this new challenge easily (getting 62% support), and he survived with enough loyalist MPs to just about staff his front bench. Nonetheless, the majority of the PLP continue to oppose Corbyn's leadership, but have preferred to wait for him to fail rather than splitting the party.

In June 2015 David Cameron's premiership had looked assured until at least 2018, although a few voices foresaw trouble ahead. But after losing the EU referendum, he stood down and was replaced by Theresa May after a confused process where the Tories began a messy-looking leadership competition, and then aborted it almost as soon as it began by all the rivals to May withdrawing from competition. The May government subsequently endorsed an apparently 'hard' Brexit strategy, which embraced the Eurosceptic wing of the party, while promising 'fairness' for 'ordinary' Britons and decrying the influence of a rootless international elite.

The most chaotic political party has been Ukip. The party polled far better in 2015 than previous general elections, retaining nearly 13% support from its high water mark in the 2014 European Parliament elections. But disappointments over its failure to win any new MPs under plurality rule created party in-fighting and tensions between the party leader, major donors and its solitary MP. After the EU referendum, Nigel Farage stood down, declaring his work was done. His successor elected by party members was Diane James, but she stayed in post for only 18 days, quitting suddenly over party in-fighting. She was followed by Paul Nuttall, who stood in a Westminster by-election in Stoke, only to fail ignominiously in his hope of ousting Labour there. In early 2017, the party's sole MP Douglas Carswell announced he would quit the party. Ukip now finds itself outflanked by the Conservatives on the subject of the EU, and lost all the council seats it contested in May 2017, with its national vote share plunging to only 6%.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Britain's party system is stable, and the main parties generally provide coherent platforms consistent with their 'brand' and 'image'. | Party membership in the UK is low. Around 950,000 people are members, out of a population of 65.6 million. |
| Britain's political parties continue to attract competent and talented individuals to run for office. | Plurality rule elections privilege established major parties with strong 'safe seat' bastions of support, at the expense of new entrants. |
| Entry conditions vary somewhat by party, but it is not difficult or arduous to join and influence the UK's political parties. Labour has opened up the choice of their top two leadership positions to a wider electorate using their existing trade union networks and a new £3 supporter scheme. (However, this has caused tensions with the party's MPs). | The most active political competition thus tends to be focused on a minority of around 120 marginal seats, with policies tailored to appeal to the voters therein. |
| The UK's main political parties are not over-reliant on state subsidies and can generally finance themselves either through private and corporate donations, or (in Labour's case) trade unions funding. | It is fairly simple to form new political parties in the UK, but funding nomination fees for Westminster elections is still costly. And in plurality rule elections new parties with millions of votes may still win no seats, as happened to UKIP in 2015. |
| In the restricted areas where it can regulate the parties, the Electoral Commission is independent from day-to-day partisan interference. | The 'professionalisation of politics' is widely seen as having 'squeezed out' other people with a developed background outside of politics (but see below). |
|  | Most mechanisms of internal democracy have accorded little influence to their party memberships beyond choosing the winner in leadership elections themselves. Jeremy Corbyn claims to be counteracting this and listening more to his members. However, in consequence, Labour is struggling to delineate the relationshipbetween MPs in the parliamentary party (answerable to voters) and the enlarged membership (wh0 may not reflect Labour voters' views well). |

| Current strengths | Current weaknesses |
|---|---|
| | There are large inequities in political finance available to parties, with some key aspects left unregulated. These may distort political (if not) electoral competition. Majority governments can alter party funding rules in directly partisan and adversarial ways (see below). |

| Future opportunities | Future threats |
|---|---|
| The UK's continued evolution towards multi-party politics has found expression in elections beyond Westminster and English local government. New and 'outsider' parties strengthen anti-oligopoly tendencies and future electoral reforms may generate some further momentum here. | In multi-party conditions, plurality rule elections for Westminster may operate in ever more eccentric or dramatic ways, as with the SNP's 2015 landslide in Scotland almost obliterating every other party's MPs there. |
| Some 'new party' trends have emerged within Labour and the SNP that might strengthen ties with civil society, or alternatively ebb away again (see below). | Moves by governing political parties to alter laws, rules and regulations so as to skew future political competition and disadvantage their rivals can set dangerous precedents that degrade the quality of democracy. The Conservative government changes to electoral registration and redrawing of constituency boundaries may all have such effects, even if implemented in non-partisan ways. |
| The advent of far greater 'citizen vigilance' operating via the web and social media like Twitter and Facebook creates a new and far more intensive 'public gaze' scrutinising parties' internal operations. Tools such as 'voting advice' application apps or the Democratic Dashboard also allow voters to access reliable information about elections and democracy in their area - information that neither government nor the top parties the state has so far either been able or willing to provide. | The SNP's successes have created a 'dominant party system' system in Scotland, where party alternation in government ceases for a long period. If their now fragmented opposition cannot unite to offer a credible alternative government, good governance may suffer. |

| Future opportunities | Future threats |
|---|---|
| Digital changes also open up new ways in which parties can connect to supporters beyond their formal memberships and increase their links to and engagement with a wider range of voters. Parties now generally conduct their leadership elections using an online system which makes it easier to register a preference. Other matters of internal party business and campaigns could soon be affected, potentially including setting policy. | The growth of political populism and identity divisions post-EU referendum has 'hollowed out' the centre ground of British politics, with the Liberal Democrats unable to regain their earlier momentum. |

All the UK's different legislatures (Westminster, and the devolved assemblies/parliaments in Scotland, Wales, Northern Ireland, and London) have now sustained coalition governments of different political stripes and at different periods, and each has operated stably. So the UK's adversarial political culture does not rule out cross-party cooperation where electoral outcomes make it necessary.

## Structuring competition and party 'brands'

In terms of the parties' ideological appeals and relative standing, Chart 1 shows that for the party system in England the left-right scale still remains the key organising frame for party competition, weakened though it may be. Recent changes (covered above) continue the trend of several decades towards the UK approximating the pattern found across western Europe where an (often declining) social democrat party linked to trade unions faces a main political centre-right party – with an anti EU/anti-immigration party (here UKIP) further to the right; a small, squeezed liberal party; and a green party presence on the left (weaker in the UK than elsewhere). The second part of Chart 1 shows the extent of changes apparent since the general election, including the Tory centre-wards move and Labour's shift further left under Corbyn. If this pattern continues, given the operations of plurality rule in Britain, and Labour's retreat in Scotland, a period of Conservative predominance looks likely.

The main alternative dimension in England has been the pro and anti-EU one, increasingly overlapping in UKIP's campaigning with anti-immigrant sentiments. Both the top two British parties have had chronic difficulties in organising around this aspect of politics, although Labour has become progressively more pro-EU and the Conservative MPs (if not their leadership) have become more anti-EU and pro-Brexit. Attitudes towards immigration are far more aligned with existing left-right cleavages, especially as Labour has developed towards being more of an urban/multicultural party.

**Chart 1: Changes in the party system in England, from June 2015 to May 2017**
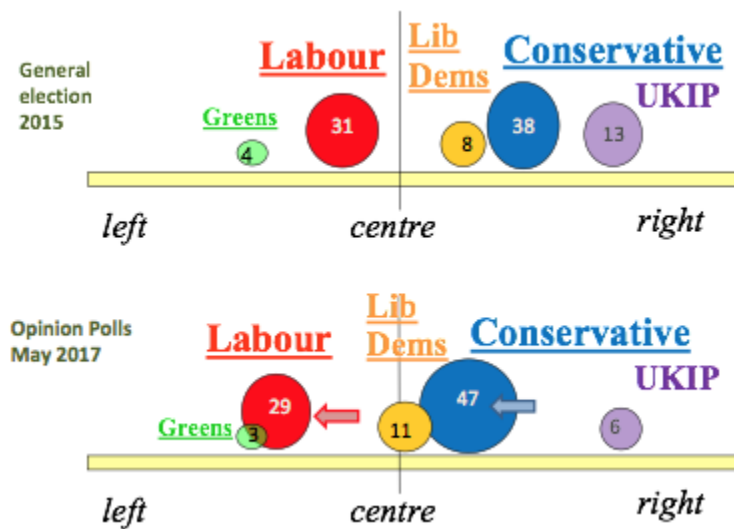
By contrast, in Scotland devolution and independence create a second key ideological dimension of politics, as salient (or perhaps more salient) than left/right cleavages. For some time this benefited the SNP (and Scottish Greens in a minor way), by tending to undermine and push together the other four parties that campaigned to keep the union with the UK in 2014. The SNP lost that referendum, but they gained a pre-eminence as the 'voice for Scotland' that remains a big electoral advantage. Chart 2 also shows that the left/right centre of gravity is more to the left in Scotland, with polls approximating 50% SNP support, Labour reduced to less than a 25% polls share now, and four other parties (including a more vigorous Green party and a diminished UKIP) contending for the remaining support.

**Chart 2: The Scottish party system at the 2015 general election**
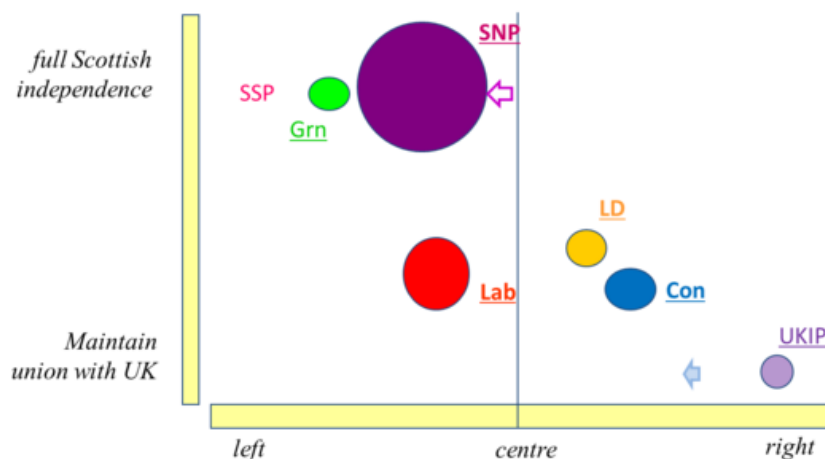


However, the danger of Scotland becoming a 'dominant party system' – where the same party is a serial winner against a fragmented opposition incapable of co-operating to defeat it – perhaps receded in 2016-17. After Scotland voted decisively to remain in the European Union, the SNP leadership attempted to negotiate a partly different 'Brexit' solution from the rest of the UK, a move that the May government decisively rejected, prompting SNP calls for a second independence referendum that were not initially popular with Scottish voters. A referendum was eventually confirmed by Nicola Sturgeon, but rejected by May before the end of the Brexit process, and stoutly resisted by the Scottish Tories under Ruth Davidson. At the Scottish Parliament elections in 2016 there were signs of pro-Union voters for Labour and the Liberal Democrats shifting to the Tories (in addition to UKIP withering away), and in the May 2017 Scottish local government elections the Tories pushed a weakened Labour into third place across Scotland, although with the SNP remaining clearly ahead.

The enduring quality of parties' appeals is borne out by recent research showing that strong party supporters place themselves ideologically at the same place as the parties they identify with. Supporters tend to accurately perceive their own party's position, but to see opposing parties as more 'extreme' than they are. On the centre-left there were multiple overlaps of party supporters' views amongst Labour, the Greens and Liberal Democrats, while on the right the Conservatives and UKIP overlapped in some anti-EU positions.

Yet in mid-terms, between general elections, around two-fifths of those backing major parties told IPSOS-MORI they did not know what they stood for. So are main parties failing to communicate their brands in a sustained and consistent manner? A potential explanation may lie with the various processes of party 'modernisation' that took place over recent years, with each of the three main parties attempting to 'move to the centre'. The shifts to a more 'managerialist' politics of detail that occurred before Corbyn, the EU referendum and May's realignment of the Tories may have left many voters less clear what each party advocates. But the reconfiguration of British party politics since

2016 now suggests that a realignment of the party system may be in train – with UKIP potentially eliminated to the Tories' great benefit.

## Representing civil society

The standard theme of textbook discussions is that the major political parties are declining in their ability to recruit members, and thereby becoming 'cartel parties' dependent for their lifeblood upon large donors (such as very rich individuals for all parties, or trade unions with large membership blocs for Labour), or upon state subsidies to parties. Yet Chart 3 shows that this narrative of continuous decline has not been accurate for British parties as a whole in the twenty-first century.

## Chart 3: The membership levels of UK political parties since 2001
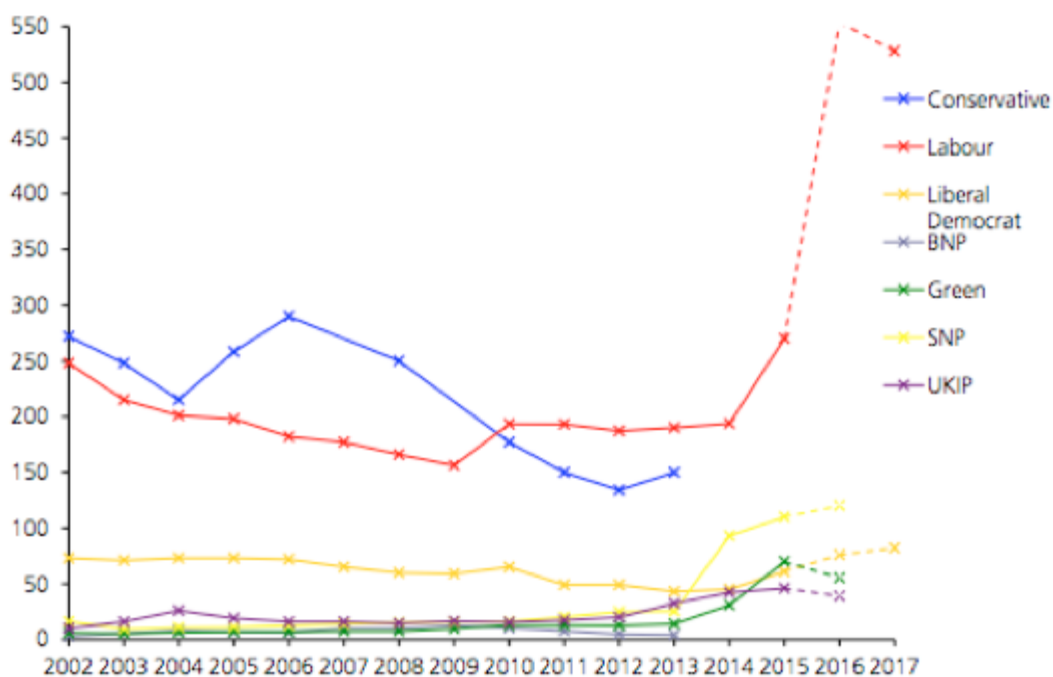


*Source:* House of Commons Library

*Note:* *The vertical axis here shows thousands of members. Dotted lines show estimates based on media reports and party press releases.*

The last two years in Chart 3 also show soaring numbers of members for the SNP since the independence referendum campaign of 2014 and of the Labour party since easier membership rules, low cost fees, and the post-general election changes. Some observers point out that with 517,000 individual members, a Corbyn-led Labour would also gain perhaps £8 million in annual fees, and be able to reduce its dependence on affiliated trade unions' block fee payments – although the threat of legislation mandating that union members 'opt in' to paying political levies, instead of 'opting out' as at present, has receded.

All these changes mean that parties now draw very different proportions of their income from membership subscriptions. The Greens and SNP are the parties for whom membership fees count most as a source of income, with the Conservatives bottom.

**Chart 4: Income from membership revenues as a percentage of total income**
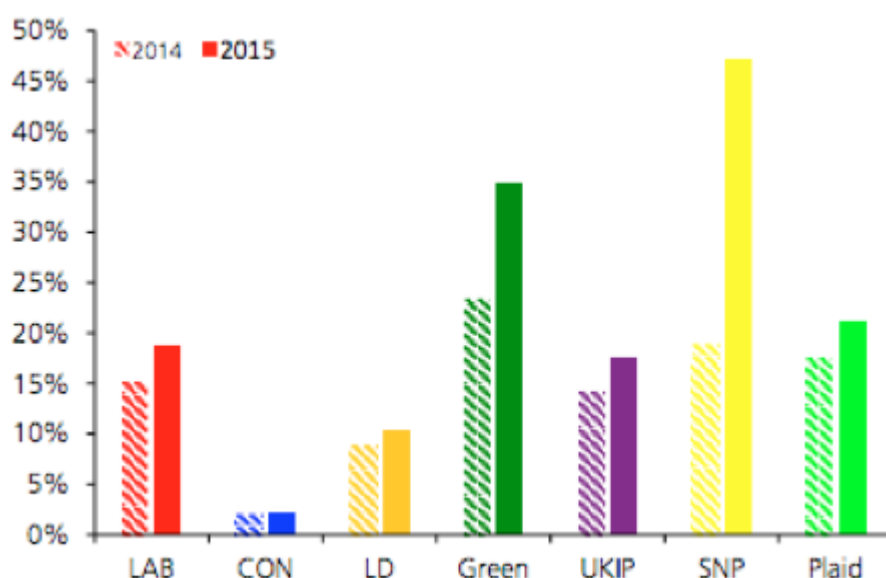


*Source:    Party annual accounts submitted to the Electoral Commission*

In some European countries, a recent rejuvenation of party politics has taken two contrasting forms – with new left parties committed to a different kind of 'close to civil society' politics emerging on the left (like Podemos in Spain), and populist, anti-EU/anti-immigration parties growing on the radical right. Some observers even discern the 'death of representative politics' in such changes. But in the UK the highly insulating plurality rule voting system at Westminster has asymmetrically protected the top two UK parties, with the UKIP wave artificially excluded from Parliament on the right in 2015. And left-of-centre movements have happened not in new parties but within the ranks of Labour (in England) and the SNP (in Scotland). These latter changes may not endure, however, with the SNP reverting to 'normal', less energising status, and the Corbyn period potentially coming to an end in intra-party divisions.

**Electing party leaders, or not**

For a brief period in the 2010s all the parties enacted protracted processes in which their mass memberships would elect the party leaders, albeit from fields of contenders that were initially defined by MPs. Yet these arrangements now look as if they are likely to change or fall into abeyance. In June 2016, following Cameron's shock resignations, complex politicking amongst Tory MPs saw a field to replace him that mysteriously excluded two 'big beasts', Boris Johnson and Michael Gove, who were going to run on a joint ticket, but who ended up falling out and not even making the nominations stage. That left – as well as frontrunner Theresa May – two low-chance Brexiteers (Angela

Leadsom and Liam Fox) and a little known centrist (Stephen Crabb). All three rivals to May subsequently withdrew, making May the unelected but unquestioned leader, the MPs' fix denying members any chance to vote.

When the Liberal Democrats came to elect a new leader after their 2015 general election losses they did run an election, but members had effectively little choice since the party had only 8 MPs left in the Commons.

Meanwhile the election of Jeremy Corbyn in 2015 reflected a different kind of fix. The Labour left had insufficient MPs to meet the 15% of the PLP needed to secure his nomination, and only just prevailed on some centre-right MPs (including Margaret Beckett) to sign his nomination papers so that he could compete. In 2016 an attempt to keep Corbyn off the leadership challenge election forced by the PLP, by forcing him to get 15% of MPs to nominate him again, narrowly failed in the Labour National Executive Committee – Corbyn argued that as sitting leader he did not need to be re-nominated by MPs under Labour's rules, but had automatic entry into the election. After the 2017 general election the centre-right of the PLP is seeking to reintroduce the Electoral College that Labour operated in the 1990s and 2000s, in which MPs have a third of the votes, along with trade union members and constituency party members. Meanwhile the left, who are strongly represented on the party's National Executive Committee want to keep the current system but cut the percentage of the PLP needed for a candidate to qualify, fearing that otherwise the 'Corbyn opportunity' will never arise again.

**Recruiting political elites**

The main political parties maintain a steady stream of individuals to run for political office, who can be socialised, selected, and promoted into their structures. However, the impression has gained ground that increasingly parties are bringing forward candidates with professional, back-office backgrounds as candidates. In fact, such 'politics professionals' make up less than one in six MPs, far lower than popular accounts envisage. However, it is true that 'MPs who worked full-time in politics before being elected dominate the top frontbench positions, whilst colleagues whose political experience consisted of being a local councillor tended to remain backbenchers'. So politics professionals within the top parties do tend to dominate media and policy debates.

In terms of wider social diversity, the 2015 parliament is in some ways (notably gender and ethnicity) the most diverse and representative ever. Yet as Campbell et al noted: 'To put the progress made in perspective, the UK would need to elect 130 more women and double the current number of black and ethnic minority MPs to make its parliament descriptively representative of the population it serves.'

**Internal democracy**

All the parties have moved to greater transparency and openness in their affairs, and have different arrangements for intra-party democracy to periodically c set aspects of

party policy. Labour's widening of membership and election of the party's National Executive Committee by members is the most radical innovation, and has created a left majority under Corbyn.

The remaining parties still operate more orthodox arrangements. In theory Liberal Democrats have the most internally democratic party, with the federal party and party conference enjoying a pre-eminent role in policy formation. Yet in the coalition period the exigencies of the party being in government seemed to easily negate this nominal influence (as has long been argued to be the case in the top two parties). The Conservative Party meanwhile enjoys relatively little influence over party policy with decisions being made largely in Cabinet or Shadow Cabinet, and to a lesser degree by the national party machine. At local level, members have more influence but they rarely challenge sitting MPs. UKIP's members are not empowered by their party's constitution, which declares that motions at conference will only be considered as 'advisory', rather than binding. The Green Party probably allows its membership the greatest degree of influence over internal policy.

**Political finance**

The core foundations of the UK's party funding system lie outside the parties themselves in electoral law. Two key provisions are (i) the imposition of very restrictive local campaign finance limits on parties and candidates; and (ii) the outlawing of paid-for any broadcast advertising by parties in favour of state-funded and strictly regulated party election broadcasts (related to votes won last time). Opposition parties also have the benefit of a degree of state funding (again related to votes received) but this is only available to those parties with at least one MP in Parliament. However, the Green Party and UKIP have begun to receive funding on this basis since 2010 and 2015 respectively. The main effect so far has been to fund the leaders' offices of Labour and the SNP.

Political finance nonetheless still matters immensely in UK politics because two types of spending are completely uncontrolled, namely (iii) supra-local campaigning and advertising in the press, billboards, social media and other generic formats; and (iv) general campaign and organisational spending by parties, which is crucial to parties' abilities to set agendas and create media coverage 'opportunities', especially outside the narrowly defined and more media-regulated election periods themselves. Table 1 shows that the Conservative Party gained 47% of all private donations over the 2013-16 period, mostly from very rich people. Labour, meanwhile, gained a smaller 33%, partly from trade union fees and from large donations. The Liberal Democrats, in government until 2015, also gained some large gifts – as did UKIP.

**Table 1: Donations to political parties 2013-16**

| Party | 2013 | 2014 | 2015 | 2016 | 2013-16 (% of all donations) |
|---|---|---|---|---|---|
| Conservatives | £15.9m | £29.2m | £33.2m | £17.5m | £95.8m (47%) |
| Green | £190k | £662k | £428k | £184k | £1.5m (0.7%) |
| Labour | £13.3m | £18.7m | £21.5m | £13.9m | £67.4m (33%) |
| Lib Dems | £3.9m | £8.3m | £6.7m | £6.4m | £25.3m (12.5%) |
| SNP | £44k | £3.8m | £1.2m | £143k | £5.6m (2.7%) |
| UKIP | £669k | £1.2m | £3.3m | £1.6m | £6.8m (3.4%) |
| Total | £34m | £62m | £66m | £40m | £202m (100%) |

*Source:* *Electoral Commission*

*Note:* *Percentages may not sum to 100% due to rounding.*

Donating to parties is supposedly transparent. All gifts must be declared and sources made clear, and funding is regulated by the Electoral Commission. But unlike many liberal democracies, there are no maximum size limits on UK donations, although donations from overseas have been clamped down on. Critics argue that 'the fact that political parties are sustained by just a handful of individuals makes unfair influence a very real possibility even if the reality is a system that is more corruptible than corrupt.' Close analysis also shows a strong link between donations to political parties and membership of the House of Lords, now almost entirely in the gift of party leaders. Despite supposedly stronger rules applying to 'good conduct' in public life (following scandals around 2009) Conservative and Labour leaders have both been very reluctant to give up the lubricating role of the honours system in sustaining their funding hegemony and easing internal party management. And the Liberal Democrats have far and away the highest ratio of peerages and knighthoods amongst their (now largely former) MPs, of any UK political party.

Although party finance regulation is impartially implemented in a day-to-day manner, there is little to stop a government with a majority from legislating radically change party finance rules in 'sectarian' ways that maximise their own individual party interests and directly damage opponents. In 2016 the Conservatives unilaterally brought forward proposals to force all trade union members of the Labour party to actively 'opt in' to membership, disrupting a lackadaisical and much-blocked cross-party effort to reach agreement on ways of limiting and diversifying donations to national parties. In the UK's 'unfixed' constitution, only elite self-restraint, Tory party misgivings or perhaps

House of Lords changes can prevent directly partisan manipulation of the opposition's finances.

## Conclusion

The conventional wisdom of 'parties in decline' does not now fit the recent history of the UK well, with some membership levels growing, and others fairly stable. Some 'new party' trends emerged (for a while) within Labour and the SNP, utilizing different, more digital ways of mobilising and stronger links to parts of civil society. Internal party elections of most key candidates (not leaders) are generally stronger now than in earlier decades (except within UKIP). So parties are not yet just the self-serving 'cartels' that critics often allege.

Yet many problems remain. The provisions for party members to elect leaders were left unused in the Tory party in 2016, and have created almost insupportable strains for Labour under Corbyn. The problem of a 'club ethos' uniting MPs in the main parties was exemplified in April 2017 by Labour leaders and MPs joining the Tories in calling a general election. It is also evident in the over-protection that the Westminster election system grants Conservatives, Labour and now the SNP; in the very partial regulation of political financing and the (only weakly regulated) effective 'sale' of honours; in the ability of governments to legislate in sectarian ways to weaken their opposition parties; in weak internal party controls or influence over policy stances and manifestos; and in the sheer scale of parliamentary party remoteness from membership views, demonstrated by Labour's leadership contests in 2015 and 2016.

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## 2.2   The interest group process across the UK

*Between elections, the interest group process (along with media and social media coverage) is a key way in which citizens can seek to communicate with their MPs and other representatives, and to influence government policy-makers.* **Patrick Dunleavy** *considers how far different social groups can gain access and influence decision-makers. How democratically does it operate, and how effectively are UK citizens' interests considered?*



*A pressure gauge at the Kew Bridge Steam Museum.*

**How should the interest group process operate in a liberal democracy?**

- Elected representatives and politicians should recognise a need for continuous dialogue between decision-makers and different sections of the public over detailed policy choices. Procedures for involving interest groups in consultations should cover the full range of stakeholders whose interests are materially affected by policy choices.

- The resources for organising collective voice and action in pressure groups, trade unions, trade associations, non-governmental organisations, charities, community groups and other forms should be readily available. In particular, decision-makers should recognise the legitimacy of collective actions and mobilisations.

- The costs of organising effectively should be low and within reach of any social group or interest. State or philanthropic assistance should be available to ensure that a balanced representation of all affected interests can be achieved in the policy process.

- Decision-makers should recognise inequalities in resources across interest groups, and discount for different levels of 'organisability' and resources.

- Policy makers should also re-weight the inputs they receive so as to distinguish between shallow or even 'fake' harms being claimed by well-organised groups, and deeper harms potentially being suffered by hard-to-organise groups.

- Other aspects of liberal democratic processes, such as the 'manifesto doctrine' that elected governments implement all components of their election programmes, do not over-ride the need to consult and listen in detail to affected groups, and to choose policy options that minimise harms and maximise public legitimacy and consensus support.

- Since policy-makers must sometimes make changes that impose new risks and costs across society, they should in general seek to allocate risks to those groups best able to insure against them.

Between elections, a well-organised interest groups process generates a great deal of useful and perhaps more reliable information for policy-makers about preference intensities. By undertaking different levels of collective action along a continuum of participation opportunities, and incurring costs in doing so, ordinary citizens can accurately indicate how strongly they feel about issues to decision-makers.

So sending back a pre-devised public feedback form, writing to an MP, supporting an online petition to the government, or tweeting support for something indicates a low level of commitment. Paying membership fees to an interest group or going to meetings shows more commitment, and gives the group legitimacy and weight with politicians. Going on strike or marching in a demonstration indicates a higher level of commitments still. A well-organised interest group process will allow for a huge variety of ways in which citizens can indicate their views.

At any given time there are around 7,800 interest groups registered by directories for the field in 2009. Chart 1 shows some salient feature of the UK scene with multiple business trade associations (many very small), followed by professional and learned societies, and with campaigning and pressure groups fourth amongst the more specific types of groups. Some groups are very large – such as the UK's trade unions, which have coalesced into a few very large membership bodies.

## Chart 1: Key features of UK interest groups



| Type of non-trade group | 1970 | 2006 | % change |
|---|---|---|---|
| Professional | 606 | 1,167 | 93 |
| General interest | 259 | 565 | 118 |
| Campaigning | 191 | 414 | 117 |
| Total | 1,042 | 2,146 | 106 |
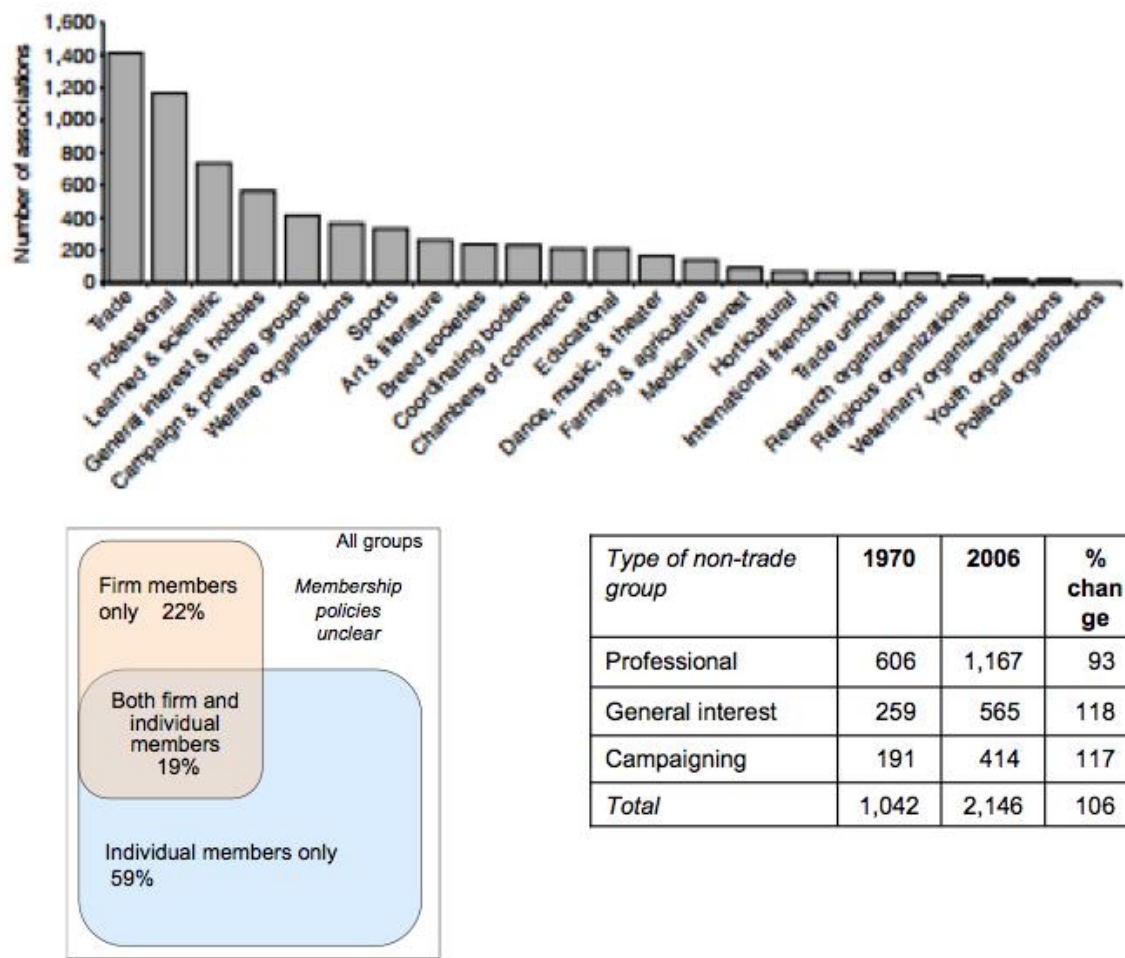
*Source: Jordan and Greenan, 2012, computed from pp. 82, 83, 92.*

Four in every five interest groups recruit individual members, three out of five only recruit individuals – so their legitimacy is based quite heavily on their size. Those that can engage the participation of most people in a given occupation or role will carry especial weight, as with the well-organised medical professions. Over time the numbers of non-trade/individual membership groups has grown substantially, as the table part of Chart 1 show. Campaigning groups have grown slightly more in numbers than the general trend

A fifth of interest groups (all trade associations) only recruit firms as members, and a further fifth recruit both firms and individual members. Here legitimacy may be based on the proportion of an industry or a type of business engaged with a given body. There are often rather divergent voices claiming to represent business interests (as in the long-run rivalry of the Confederation of British Industry (CBI) and the Institute of Directors). Some industries are dominated by a single interest group, like the National Farmers' Union, which achieves enormous insider influence with the relevant Whitehall department. Other looser coalitions of different interests (like the roads lobby of

transport operators, construction companies and motorist organisations) can achieve a similar dominance, however.

At any given time, an 'ecology' of interest groups operates, with different organisations competing for attention, and encouraging their members to commit more resources or time to the group. Trade unions have been the biggest losers in recent decades, with memberships radically reduced by the decline of large firms, and even members in the public sector strikingly less willing to go on strike. Meanwhile environmentally aligned groups have flourished. Some big organisations that have shifted away from restrictive 'legacy' modes of recruiting members to digital approaches have increased their size radically, notably the Labour party under Jeremy Corbyn. But in the interest group world at large, such effects have generally been smaller.

## Recent developments

This area of policy-making has been stable for many years, with occasional fringe scandals. Two small changes have taken place recently. The 2014 Lobbying Act introduced an official register of paid lobbyists operating with MPs in Westminster and in touch with Whitehall departments. But this was on a rather restrictive basis, affecting especially paid-for lobbying firms and some groups with developed governmental or parliamentary liaison operations. The lobbying industry (estimated by some sources to be worth £2bn a year) also remains self-regulated. For a period during the bill's passage (2013-14), the Cabinet Office proposals seemed to threaten to make academics, universities and a wide range of charities advocating for policy changes register too. But after much criticism this proposal was fought off. However, the legislation is still somewhat controversial – particularly among charities, who complain that it stifles them before election campaigns.

The government has made a gesture towards digitally incorporating public views by re-establishing an official online petitions site in 2015, where citizens can lodge proposals for issues to be reviewed by Parliament. Any petition gaining 100,000 verified electronic signatures (a recently raided threshold) goes to the House of Commons and supposedly gets a debate, followed by a response. Very large numbers of petitions are started, but most quickly fail to attract public attention. Only those that can generate around 10,000 supporters in the first couple of days have any effective change of reaching the 100,000 limit in the time allowed. In 2016 thousands of petitions were started but only 10 reached the 100,000 limit, and four of these were denied a parliamentary debate.

However, these initiatives can be influential. In spring 2017 Theresa May invited newly elected US President Donald Trump on a state visit to the UK. A petition to ban him quickly attracted 1.86 million supporters. Although ministers said that they would ignore this, the idea of a visit quickly receded into the long grass after the 2017 election.

## Strengths, weaknesses, opportunities and threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| British government ministers, MPs, politicians and civil servants recognise the importance and legitimacy of a vigorous interest group process. An open consultation process operates for all new legislation, and government policy White Papers, and sometimes for statutory instruments. | Where interest groups are battling against party A's manifesto commitments, and especially where they are aligned with a rival party B, they will face an uphill struggle to make any changes in policies. Parties in government in the UK have a strong record of pushing through partisan commitments over-riding the opposition of groups who do not support them. The UK has no equivalent of the European Union's formal reporting back of consultation outcomes. Ministers and civil servants will talk up any support their proposals secure and often ignore or belittle unfavourable feedback. |
| Parliamentary processes including the consideration of legislation, and questions to ministers, connect strongly with the interest group process. Most legitimate or established groups can find MPs to represent their interests or cause, or to help from their position in the legislature. Select committee inquiries access a more restricted range of 'recognised' interests. Public involvement processes in the devolved Scottish, Welsh, Northern Ireland and London legislatures are even more systematic and inclusive. | There are sharp inequalities in the capabilities of different social groups to monitor policy proposals and to get effectively involved in official consultation processes. The poorest and least socially resourced groups in British society rely chiefly on NGOs, charities and altruistic philanthropists to secure any research or campaigning on issues that concern them. By contrast, corporate interests have well-developed government and Parliamentary liaison units, and ready access to professional lobbyists, public relations consultants, marketers and media experts – giving businesses inherent advantages that are hard to counteract. |
| UK decision-makers are alert to the potentially excessive power of lobbyists and of well-resourced groups best able to afford lobbyists and other organized and commodified means of influence. Most (if not all) politicians discount heavily for the 'industrialized' lobby power of business and other wealthy groups. Lobbying is regulated and any excesses in attempting to secure influence are frowned upon and quickly stamped out. | Lobbying in the UK has historically focused most attention on private links with civil servants and ministers, exercised at early stages of the policy process, and often carried out without transparency. As the powers of the House of Commons have slowly grown, and coalition governments operated in hung Parliaments 2010-15 and 2017-present, so more lobbying has focused on the legislature. Because MPs and peers can work for outside jobs and take money from well-funded interests, there have been a succession of scandals around MPs, peers and even ministers not declaring interests. |

| Current strengths | Current weaknesses |
|---|---|
| For elected politicians, what matters most is the vote-power of groups, which is a function of their size (large membership groups are more influential than small ones), the intensity of their preferences (groups that care a lot outweigh apathetic ones), and their pivotality (giving more importance to potential 'swing' groups who might shift support between parties, shaping who wins). There are inherent influence inequalities between groups, but because they derive essentially from their role in the electoral process, they are generally democratically defensible. | For politicians the *realpolitik* of the interest group process is that they appease groups whose support they rely on. But they will cheerfully impose costs on groups normally opposed to them, or too small or poorly organised to do them electoral damage. Both ministers and civil servants also routinely extract a price for conceding influence to any 'insider' group. To remain influential the group must only express critical views 'moderately' and privately, at early stages of policy development before proposal go public. They must normally mute any public criticisms altogether, or tone them down to be non-confrontational or 'responsible'. |
| Saturation media and social media coverage means that the risks for politicians in lightly or overtly deferring to powerfully organised interests have increased. Modern policy-making has shifted more into cognitive modes of competition between rival coalitions of interests. Here the quality of evidence you can produce to back a case, and effective participation in policy debates, count for more than simple voting power or financial might. A more deliberative interest group process has emerged, which has evened up access to the policy terrain. | Cognitive competition remains heavily influenced by resources and money. Wealthy interests can better afford to fund research and information gathering than groups representing the poor and powerless. Wealthy interests can also trigger more law cases in areas favourable to them and thus ensure that legal knowledge differentially develops in helpful ways. |

| Future opportunities | Future threats |
|---|---|
| The growth of social media and internet-based modes of organising has radically lowered the information and transaction costs of organising collective actions in the last two decades, and promises to continue doing so. In particular, large-scale citizen mobilisations by spatially dispersed or 'functional' groups have emerged. | Lobbying and public relations professionals have extended the techniques they deploy for well-funded interests to increasingly manipulate social media. A new and powerful 'data-industrial complex' has recently emerged, as the Leave campaign for the Brexit referendum aptly demonstrated. |

| Current strengths | Current weaknesses |
|---|---|
| The mass emergence of 'clicktivism' allows individuals to spontaneously signal their position on public issues on Twitter, Facebook and other social media. These 'micro-donations' of time and support mean that people get instant feedback on the popularity of their views and potentially linkages to like-minded people. This radically enhances the speed and granularity of the public's collective vigilance over policy-making in liberal democracies. However, more critical citizen activist campaigners like Alberto Alemmano stress that clicktivism cannot be an end in itself, but must be part of a wide armoury of modernised citizen engagement leading to 'real world' engagement. | By increasingly 'delegating' the job of representing diverse interests to NGOs and charities, and restricting their own participation to digital means, well-educated and altruistic middle class people have just contributed to the further 'professionalisation' of democratic politics. Groups that slip between the gaps of NGOs concerns can lose out badly from this system. Their inexpert autonomous efforts to organise become ever more marginalised. |
| Crowdfunding via the internet has increasingly emerged as a way that large and dispersed groups can fund previously difficult mobilizations. For the anti-Brexit lobbyist Gina Miller used this technique to back anti-Brexit candidates in the 2017 general election. (However, her more famous Supreme Court legal case against the government was privately funded). Similarly, 'open source' techniques of organising can often help otherwise disadvantaged groups operate more effectively in competition with business hierarchies. | The virulent tone of the Brexit referendum campaign caused unhappiness among charities. The chief exec of the National Council of Voluntary Organizations said he regretted they had not spoken out enough because of fear of the 2014 regulations plus being pilloried in the media. In Brexit policy development so far, ministers and Whitehall have seemed reluctant to bring in outside voices, and groups have felt excluded, despite their EU expertise, according to Jeremy Richardson. |
| Interest groups are keen to get involved in the Brexit negotiations, not least because they know a lot about the EU policy process. | |

## 'Managing' public consultations

Elections inherently give policymakers only a crude and infrequent idea of public opinion. Parties must aggregate issues together into programmes and manifestos. Citizens must each cast a single vote, with no capacity to indicate either which issue or policy commitment counts most with them. Nor can they express the different strength of their preferences on multiple issues. So even politicians with a clear manifesto commitment to implement have just a direction of travel, not a detailed route map for getting anywhere that works.

Public consultation processes (some linked to legislation or executive orders) generate huge volumes of very specific information about how and why different interests are affected by proposed policy changes, which will bear costs and which see benefits in them. Often the detailed information needed for effective policy implementation rests with trade associations, firms, trade unions, professions, NGOs, sub-national governments, or academia rather than in Whitehall. Hence in any policy area there will either be a 'policy community' that is strongly networked and perhaps pretty closed to regularly influential outsider groups; or a looser 'policy network', with more weakly tied or changeable sets of participants.

This may seem to leave Whitehall and ministers in a weak position, and some observers have rather fancifully described a 'hollow Crown' that has resulted. However, ministers and civil servants do not assign equal weight to all actors in networks, but instead demand 'responsible' behaviours from those to whom they will listen, such as think tanks, business lobbies, professions or expert academics. These 'insider' groups have the ear of policymakers, while more strident, public and 'extreme' voices are routinely discounted. Views from groups aligned with other parties than those in government may also be marginalised.

Finally, sophisticated opinion polling now allows both politicians and the public to regularly learn much more about how different types of citizen feel about issues – so the policy influence of public opinion as a whole has improved and magnified. And a lot of media and social media coverage and commentary ensures that policy-makers 'get the message' about which bits of their proposals are popular and with whom.

### Corporate power in the interest group process

Yet is the apparent diversity and pluralism of the consultation process just a misleading façade? Vladimir Lenin famously argued that the liberal democratic state is 'tied by a thousand threads' into doing things that owners of capital want. But a concern about the 'privileged position of business' in dealing with government extends widely amongst liberal authors too, such as Charles Lindblom. Since businesses generate economic growth and taxes, they have special salience in making demands on politicians and officials. And as the journalist Robert Peston argued:

> 'The wealthy will [always] find a way to buy political power – whether through the direct sponsorship of politicians and parties, or through the acquisition of media businesses, or through the financing of think tanks. The voices of the super-wealthy are heard by politicians well above the babble of the crowd…. We are more vulnerable than perhaps we have been since the nineteenth century to the advent of rule by an unelected oligarchy' (p.346).

In a discussion of corporate power and financial sector dominance in the UK for Democratic Audit, David Beetham drew attention to how dominant corporate sectors in the UK economy first caused the 2008 economic crash by forcing through rash financial deregulation, but then were differentially rescued by unprecedented bank bailouts by the state, plus 'quantitative easing' by the Bank of England – which propped up the asset

values of the wealthiest groups in society. Via transfer pricing, debt loading and shifting domicile the largest global companies have also effectively evaded corporation taxes and undermined the UK fiscal regime. Public disquiet and counter-mobilisations by online activists have dented this regime only in tiny ways (e.g. a consumer boycott forced Starbucks into 'voluntarily' paying nominal amounts of UK corporation tax).

## Competition between 'advocacy coalitions'

A more benign view of changes in the interest group process is given by the 'advocacy coalition framework' (ACF) view, which argues that the key influences on public policies now are cognitive ones. Old-style, 'big battalion' groups – like big corporations, media barons ands mass ranks of trade unions – sought influence on the basis that they could mobilise adverse votes at the ballot box or unfavourable coverage by media commentators. But most policy-level influence now comes from a different, cognitive competition process, one that is increasingly evidence-based and founded on research and understanding of society.

Nor are the battles that matter fought any longer by single interest groups, but rather by competing 'advocacy coalitions' that bring together clusters or networks of aligned groups on each side of the policy debate. For example, on tobacco policy a succession of nudge interventions by government followed up periodically by regulatory restrictions and new legislation have progressively strengthened the disincentives for smoking and curtailed 'passive smoking' in the UK. The apparently ascendant coalition here includes anti-smoking charities, the medical professions, NHS authorities, the health department in Whitehall, progressive local authorities who forced the pace of implementation, many non-smokers (especially those adversely affected by 'passive smoking', and so on. The coalition fighting a rearguard action includes of course the tobacco corporations front and centre, plus some other aligned businesses, pro-'freedom' or libertarian think tanks, Tories opposing a 'nanny state', and a diminishing minority of still enthusiastic smokers. Yet has the progress achieved in reducing smoking incidence over recent decades been fast and furious, or slow and often stalled? How you assess the scale and speed of these changes will shape how effectively you think cognitive competition changes the dynamics of group competition.

## Conclusion

Nobody now claims that the UK's interest group process is an equitable one. There are big and powerful lobbies, medium influence groups and no hopers battling against a hostile consensus. Democracy requires that each interest be able to effectively voice their case, and have it heard by policymakers on its merits, so that the group can in some way shape the things that matter most to them. On the whole, the first (voice) criterion is now easily met in Britain. But achieving any form of balanced, deliberative consideration of interests by policymakers remains an uphill struggle. Business dominance is reduced but still strong, despite the shift to cognitive competition and more evidence-based policy-making.

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## 2.3   How well does the media system sustain democratic politics?

*The growth of 'semi-democracies' across the world, where elections are held but are rigged by state power-holders, has brought into ever-sharper focus the salience of a country's media system for the quality of its democracy. Free elections without some form of media diversity and balance clearly cannot hope to deliver effective liberal democracy.* **Ros Taylor** *and the* **Democratic Audit** *team look at how well the UK's media system operates to support or damage democratic politics, and to ensure a full and effective representation of citizens' political views and interests.*



*Photo: Garry Knight via a CC BY 2.0 licence*

**What does liberal democracy require of a media system?**

- The media system should be diverse and pluralistic, including different media types, and operating under varied systems of regulation, designed to foster free competition amongst media sources for audiences and attention, and a strong accountability of media producers to citizens and public opinion.

- Taken as a whole, the regulatory set-up should guard against the distortions of competition introduced by media monopolies or oligopolies (dominance of information/content 'markets' by two or three owners or firms), and against any state direction of the media.

- A free press is a key part of media pluralism – that is, privately owned newspapers, with free entry by competitors, and only normal forms of business regulation (those common to any industry) by government and the law.

- Because of network effects, state control of bandwidth, and the salience of TV/ radio for citizens' political information, a degree of 'special' regulation of broadcasters to ensure bipartisan or neutral coverage and balance is desirable, especially in election campaign periods. However, regulation of broadcasters must always be handled at arm's length from control by politicians or state officials, by an impartial quasi-*non-governmental* organisation (quango) with a diverse board and professional staffs.

- Where government funds a state broadcasting service (like the BBC) this should also be set up at arm's length, and with a quango governance structure. Government ministers and top civil servants should carefully avoid forms of intervention which might seem to compromise the state broadcaster's independence in generating political, public policy or other news and commentary.

- Journalistic professionalism is an important component of a healthy media system, and the internalisation of respect for the public interest and operation of a 'reputational economy' within the profession provide important safeguards against excesses, and an incentive for innovation. Systems that strengthen occupational self-regulation within the press are valuable.

- The overall media system should provide citizens with political information, evidence and commentary about public policy choices that is easy to access, at no or low cost. The system should operate as transparently as possible, so that truthful/ factual content predominates, truthful content quickly 'drives out' incorrect content, and 'fake news', 'passing off' and other lapses are minimised and rapidly counter-acted.

- People are entitled to published corrections and other effective redress against any reporting that is unfair, incorrect or invades personal and family privacy. Citizens are entitled to expect that media organisations will respect all laws applying to them, and will not be able to exploit their power to deter investigations or prosecutions by the police or prosecutors.

- Public interest defences should be available to journalists commenting on possible political, state and corporate wrongdoing, and media organisations should enjoy some legal and judicial protection against attempts to harass, intimidate or penalise them by large and powerful corporations, or by the state.

- At election times especially, the media system should inform the electorate accurately about the competing party manifestos and campaigns, and encourage citizens' democratic participation.


The UK has long maintained one of the best developed systems for media pluralism amongst liberal democracy, centring around:

- *A free press*, one that is privately owned and regulated only by normal business regulations and civil and criminal law provisions. The biggest UK newspapers

are highly national in their readership and coverage. They characteristically adopt strong political alignments to one party or another. A voluntary self-regulation scheme has provided a weak code of conduct and redress in the event of mistakes in reporting or commentary.

- *A publically owned broadcaster (the BBC)*, operated by a quasi-non-governmental agency (quango), at arm's length from any political control by the state or politicians. It is regulated by another arm's length quango, Ofcom so as to be politically impartial in its coverage, according space to different parties and viewpoints.

- *A few private sector broadcasters* whose political coverage is also regulated by the same set of rules to be politically impartial – the rules here are also set and regulation enforced by Ofcom, insulated from control by politicians or the state and from the regulated companies.

- Strongly developed *journalistic professionalism*, with common standards of reporting accuracy, and much looser agreement on fairness in commentary and respect for privacy, shared across (almost) the whole occupational group. But breaches are enforced only informally by weak social sanctions, such as disapproval or reputational damage for offenders within the profession. And

- *Social media* that have recently emerged as an increasingly salient aspect of the overall media system, and resemble the free press in being unregulated beyond normal legal provisions. The biggest online sites and associated social media are journalistically produced by newspapers, and generally operate on the same lines, although with less political colouration of news priorities. But much politically relevant content is also generated by a wide range of non-government organisations (NGOs), pressure groups and individuals, many of whom are strongly politically aligned and may not feel bound by journalistic standards. We discuss the role of social media at greater length in a separate chapter of the 2017 Audit.

### Recent developments

In recent years the UK's media landscape has undergone enormous transformation. Not only has news consumption shifted online, but the growth in social media has enabled people to find and share information in ways that challenge the traditional hegemony of state-funded broadcasters and the national press.

One big source of concern about the democratic qualities of the UK's media system has been the typically overwhelming predominance in the press of titles backing the Conservative party, with far fewer backing Labour, and only episodic support from smaller papers for the Liberal Democrats. Once predicted to become just another depoliticised operation of conglomerate corporations, in fact newspapers are still run in 'press baron' and hands-on fashion by powerful companies or media magnates (like Rupert Murdoch and the Barclay brothers). Chart 1 shows that the anti-Labour and pro-

Brexit Sun is by far the biggest newspaper, and Rupert Murdoch also owns the Times/Sunday Times. The Daily Mail, Express and Telegraph complete the Tory press hegemony. The Labour-backing Trinity Group newspapers (the Daily Mirror and Daily Record) have smaller readerships, plus the Guardian. Some papers also take a neutral or more varied political line.

However, Chart 1 also shows that in terms of media exposure by 2017 the non-partisan news media had maintained far more reach and regular use than print newspapers, with a trio of TV news outlets (BBC, ITV and Sky News) plus radio providing much of people's political information. All broadcasters operate under political neutrality rules that apply with special force during election campaigns and require a bipartisan balancing of Conservative and Labour viewpoints (given their historic dominance of general election voting) plus the broadly proportional representation of other parties – e.g. giving the SNP in Scotland equal prominence.

**Chart 1: The percentage of UK respondents who used different TV, radio and print news sources in 2017 – and the political affiliations of these sources**
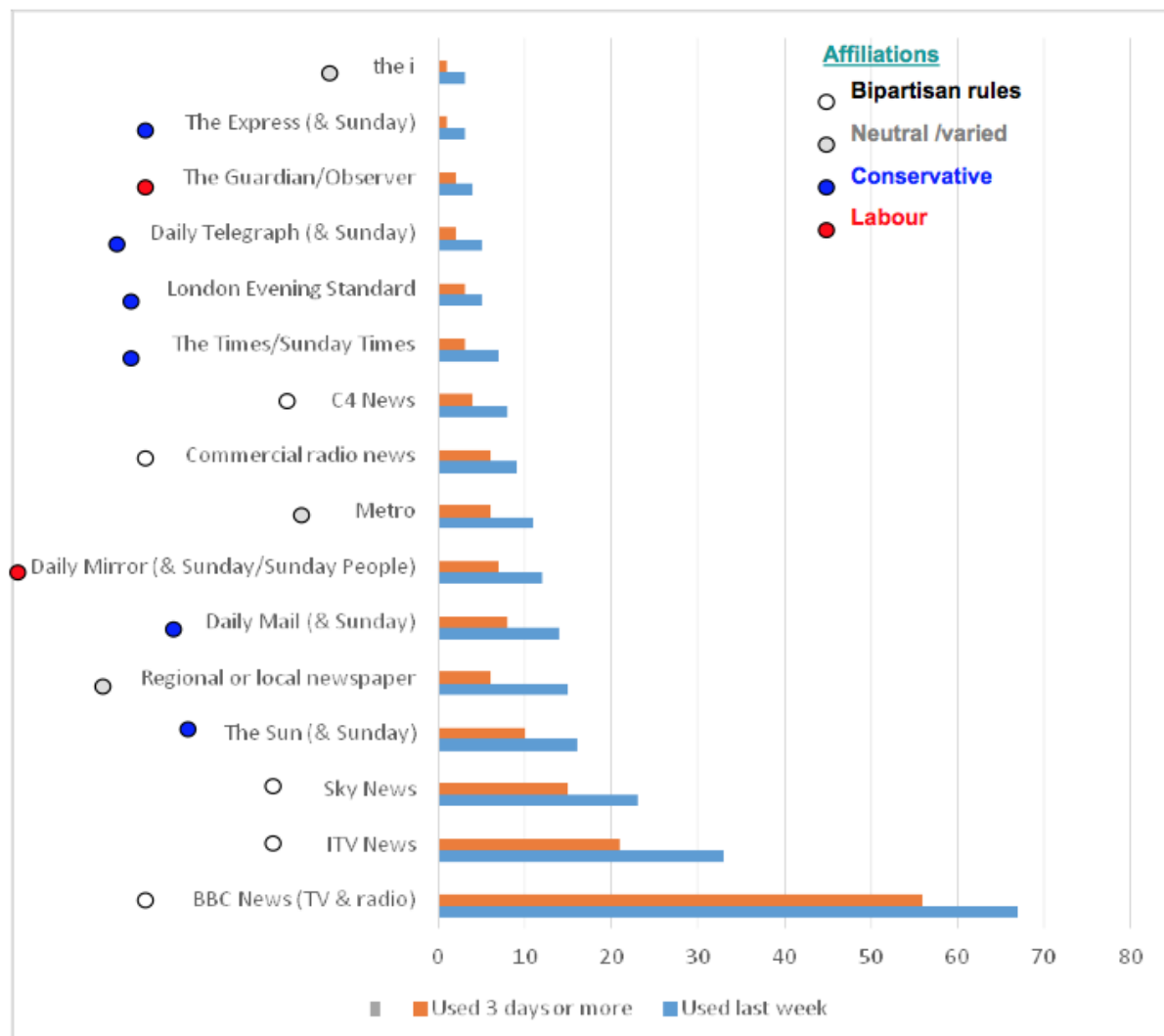


*Source: Reuters Institute Digital News Report 2017 and the authors*

**Chart 2: The online monthly readership of UK newspaper websites**
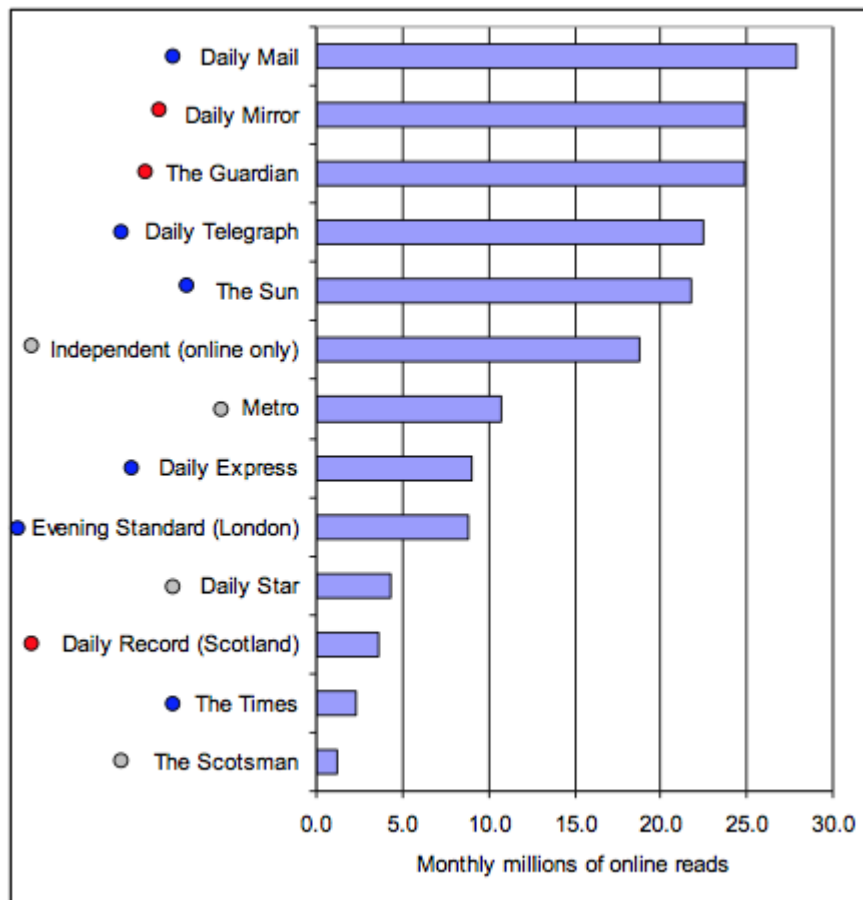


*Source: UK Press Gazette*

In addition, however, newspaper websites now provide major sources of revenue and compete with broadcast and online-only publications to secure online prominence. Chart 2 shows that the picture of papers' online usage shows a greater balancing of political alignments, with Labour enjoying (in 2015 and 2017) the backing of theGuardian website, which has a much bigger reach than its print version. The Daily Mirror is also prominent. On the Tory side the Daily Mail is the leading online title, along with the Telegraph.

These modifying factors may perhaps have begun to blunt the 'power of the press' compared with (say) 1992, when Murdoch's leading title boasted 'It was the Sun wot won it' after the general election. In 2017 the Sun's election day 'Cor-Bin' front page was no less strident in denouncing Jeremy Corbyn. The Daily Mail devoted 15 pages to anti-Corbyn and anti-Labour stories and commentary on the day before polling. Over time the levels of political bias generated can also be striking, as this selection demonstrates:

Yet optimists point out that Corbyn's Labour surged in popularity during the campaign, and forced a hung Parliament, despite facing a wall of Tory press criticism. Perhaps, then, media diversity is working after all, allowing voters to form their own opinions from a range of different sources?

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Charts 1 and 2 demonstrate that the UK's media system remains essentially pluralistic, especially in the complementary nature of a free press offset by bipartisan regulated broadcasting. | The print versions of the leading national newspapers remain wedded to highly partisan approaches to covering UK politics and elections. Cross-ownership of titles and broadcasting by powerful and committed corporate leaders actively trying to sway elections and policy decisions (like Murdoch) distorts political power away from political equality. Traditional forms of joint agenda-setting by journalists (e.g. 'wolf pack' questioning on top issues) and new developments (e.g. press preview programmes on 24-hour TV and press front pages on broadcaster websites) mean press distortions can drag public service broadcasters into line with a press-led agenda. |

| Current strengths | Current weaknesses |
|---|---|
| The growth of satellite and online TV channels, and rapid increases in the numbers of specialised or paid-for TV channels (many catering for niche interests) has reduced the ways in which TV presents a common news agenda to all citizens. Yet the BBC, ITV, Channel 4 and Sky News still compete very effectively for news and politics audiences (Chart 1). Although its audience is aging somewhat, the BBC's broadcast news coverage continues to reach two-thirds of the public each week. | Press coverage of the 2016 EU referendum campaign was frequently hyper-partisan, disingenuous or actively misleading (as in claims that Turkey was poised to join the EU). If and when such claims were ever corrected at a regulator's request, this happened only after readers had voted. |
| The mainstream press has experimented with subscription models that offer an alternative to paywalls, such as voluntary subscriptions or one-off donations and crowd-funded journalism. | The public's reluctance to pay for news, both online and offline, as well as declining advertising revenues and insurgent start-ups represent an existential threat to established media brands.<br>The local press is also in decline, with far fewer reporters. Those who remain are sometimes based outside their 'beat' and discouraged from original reporting for reasons of time and cost. |
| Several new versions of self-regulation have emerged since the dissolution of the PCC, with Impress and Ipso offering different models (see below). The closure of the News of the World over its toxic phone hacking culture looms large still in editors' and journalists' consciousness. | The newspaper industry has failed to reach consensus on press regulation after the hacking scandal and Leveson report, including on the chilling effect of Section 40 of Courts and Crimes Act (see below). Complaints mechanisms are often weak and unclear, especially among new entrants. |
| The Freedom of Information Act, a key right for citizens that is also a valuable tool for journalists, has survived repeated threats due to Whitehall cost-cutting. | Privacy injunctions are the preserve of the wealthy, although they are now declining in numbers. Ordinary citizens typically find it hard to achieve redress and corrections for mistakes. |
| Parliamentary reporting has adapted to the live blog format, arguably providing a more detailed and real-time account of proceedings than the legacy print media did. | Coverage of Welsh politics is especially inadequate. The nation lacks a powerful home-grown media and the Welsh Assembly has considered appointing its own team of journalists to report proceedings. This, like local authority-run newspapers, is a problematic development. |

| Current opportunities | Current threats |
|---|---|
| Citizens have mobilised on social media to counteract newspaper partisan or commentary excesses – eg Stop Funding Hate's campaign to shame big advertisers into boycotting newspapers accused of anti-Islam coverage. As online readers grow more salient, so perhaps a somewhat less partisan style of press political journalism may take root. Crowd-funded initiatives like WikiTribune may have the potential to make the ownership and administration of media outlets more transparent and accountable to their readers. | Both 'alt-left' and 'alt-right' media outlets, run directly by political interest groups seeking to manipulate public debates, have already penetrated the UK market. They often used 'data-industrial complex' methods to target sets of swing citizens, and paid-for Facebook and Twitter 'news' generation to evade journalistic controls or scrutiny. The alt-left (eg the Canary and Evolve Politics) claimed extensive influence in the 2017 general election, while the alt-right (and possibly Russian intelligence) seems to have swayed the EU referendum campaign towards 'Leave'. |
| Recognising the dearth of local news reporting, some efforts are being made to fund and train reporters. | Official proposals for a modernised Espionage Act threaten whistleblowers and would introduce a further chilling effect to journalists' ability to pursue stories relating to the 'secret state'. |
| Libel cases have fallen since the Defamation Act 2013 simplified the public interest defence. If the trend is maintained, this may enable more adventurous investigatory reporting in future. | Mainstream media and journalists are increasingly distrusted by the public, particularly on the left, for their perceived biases and remoteness from 'ordinary people'. |
| Hyperlocal news models continue to evolve, with the ease of making micro-payments offering the possibility of an (albeit unpredictable) revenue stream (see our social media chapter). | The declining sales of local newspapers, and the closure of many titles, plus the relative weakness of regional and local broadcasting within the BBC and ITV, have all meant that journalistic coverage of local politics has drastically fallen away. Court reporting is also in steep decline. |

**The BBC, Channel 4 and Sky**

The regulated broadcasters (and in the BBC's case, state-funded too) have been a key part of the UK's media system since the BBC was first set up in the 1920s. Their role enjoys a wide amount of cross-party consensus, but the Tory press has constantly accused the BBC of having a 'left-wing' bias; conversely, since Jeremy Corbyn became Labour leader, some 'alt-left' outlets have attacked the BBC (and in particular its political editor, Laura Kuenssberg) of bias against him. Ofcom is now the BBC's new external regulator, putting it on a par with other regulated broadcasters, instead of the previous ecceptional situation of the BBC Trust being judge and jury on major complaints. The BBC's once very extensive online presence has also been cut back to

focus on news and programme-specific sites, chiefly as a result of commercial rivals complaining to Ofcom that it was 'crowding out' their own web operations.

A Conservative government green paper in 2015 raised the possibility of cutting or reforming the BBC's licence fee (a disliked tax on TVs) and cutting back the corporation's remit to focus on news. However, the charter renewal of January 2017 guaranteed the licence fee's survival for at least 11 years, with inflation-linked increases until early 2022. A new BBC Board– no more than half of whose members are government appointees – was put in place to manage the Corporation. The National Audit Office will now play a role in scrutinising BBC spending.

The BBC also undertook to serve ethnic minority and regional audiences better. The BBC Trust previously found audiences in the devolved regions felt the corporation needed to do more to hold their politicians to account, particularly in Wales, where Cardiff University's 2016 Welsh Election Study identified a 'democratic deficit' in media. As in the English regions, the reach of BBC services is falling as its radio and TV audience ages.

The Brexit referendum campaign represented a major challenge for all the UK media, but particularly so for the BBC's public service remit and due impartiality. The subject matter was complex and the public was poorly informed about the history and functions of the EU. The Corporation drew up a set of Referendum Guidelines in order to give 'due weight and prominence to all the main strands of argument and to all the main parties.' This was characterised as a 'wagon wheel' rather than an overly simplistic 'seesaw' approach to ensuring impartiality – the latter critiqued by Jay Rosen as 'views from nowhere'. Despite these efforts, the BBC was criticised for inadequate scrutiny of campaign claims on both sides and faced particular opprobrium from Leave-supporting politicians and newspapers.

At the height of the News of the World phone hacking scandal, the Murdoch-run 21stCentury Fox (the ultimate owner of the Sun and the NoTW) withdrew a bid to assume full control of Sky that had previously seemed likely to succeed. After an interregnum, the bid has been renewed and Ofcom has to decide if Fox can meet a key test to take full control of Sky, in which it currently holds a 39% stake: Is Fox run by 'fit and proper persons'? James Murdoch, who was criticised by Ofcom over his role in the NoTWphone-hacking scandal, is both chairman of Sky and chief executive of Fox.

Meanwhile, the 2017 Conservative manifesto indicated that the other regulated broadcaster, Channel 4, would remain publicly owned and move out of London. But the government's failure to secure a working majority and Channel 4's opposition to such a move make this uncertain.

## Newspaper closures and online paywalls

For the health of the 'free press' in the UK, the ability to run newspaper titles successfully is obviously crucial. With sales and advertising revenue falling, the Independent newspaper closed its weekday and Sunday editions in 2016 'to embrace a wholly digital future', and subsequently reported a return to profit. The Times and

Financial Times continued to maintain online paywalls to fund their journalism, with the Telegraph also erecting a partial paywall. The London Evening Standard became a free paper in 2009, maintaining its circulation. However, only 3% of Britons have an online news subscription, one of the lowest percentages across the European Union. At Murdoch's insistence, The Sun experimented with a paywall in 2013, but abandoned it two years later as its online readership numbers fell. A majority of readers seem unwilling to pay for online news when it is freely available elsewhere. However, the Guardian reports 230,000 members who pay at least £5 a month, and 190,000 one-off contributors, both on a voluntary basis.

Regional papers in big cities outside London, and local publications across the country also experienced a drop of 12% in both digital and print revenues in 2015-16. Across the UK 198 local papers closed in 2005-16. The decline in advertising revenues is the principal driver of the ongoing decline in local journalism, but not the only one. More people are renting privately and moving between local areas, and the sociologist Anthony Giddens has argued that social life has become 'dis-embedded' from the local level, so that 'we can no longer take the existence of local journalism for granted'. The decline in local reporting was exemplified in tragic fashion by the failure of west London's press to pick up on the repeatedly expressed concerns of the Grenfell Tower residents on the Grenfell Action Group blog about the safety of their building, before it burnt down, killing at least 80 people in June 2017.

Some efforts are being made to reinvigorate the sector. The BBC has earmarked £8m for 'local democracy reporters' from selected news services, giving them training and access to BBC video and audio. In addition, the local press decline has been a key catalyst for a growth of citizen-driven hyperlocal sites (discussed in our social media chapter).

## Media ownership, partisanship and transparency

A diversity of media ownership has historically been seen as important because of the strong political orientation of the national newspaper titles. But in addition, newspapers provide an important platform for different capitalist interests to campaign for their own interests in regulatory matters and other public policy interests, especially where press titles and broadcast channels are owned by the same mogul or firm.

Ownership of the major newspapers has long been divided among a few large companies, with the American-owned News Corp, publisher of the Sun and the Times, the dominant player. These, along with the Daily Mail (DMG Media), the Daily Expressand the Telegraph Media Group, continue to dominate right-leaning coverage, while the Mirror, the Guardian and the Independent occupy the left or centre. Pearson sold the Financial Times to the Japanese company Nikkei in 2015. A Saudi investor, Sultan Muhammad Abuljadayel, took a stake of between 25% and 50% in the Independent's holding company in 2017, causing concern among some of its journalists, although they were assured its editorial independence would remain intact.

However, online media has inflicted considerable disruption to the newspaper-dominated press model. Digital entrants have used social media to disseminate free news

and opinion. Some originate in the US (BuzzFeed, the Huffington Post, Vice), others are funded by the Russian state (Russia Today and the Edinburgh-based Sputnik), while a number of hyper-partisan low-cost start-ups – such as Evolve Politics and the Canary, a free-to-access site funded by advertising and voluntary subscriptions – have generated their traffic via Facebook. These last, which backed the Labour leader Jeremy Corbyn unreservedly, enjoyed particular success during the 2017 General Election campaign. Their online reach among younger voters during that campaign may have exceeded that of the established mainstream press.

The plethora of new entrants – which, while overwhelmingly digital, include the free Metro and small-scale print publications such as the anti-Brexit weekly the New European (owned by Archant Media) – means UK media is more pluralistic than ever before. These new entrants, however, are not always transparent about their ownership and do not always choose to join a regulator. For example, Sputnik News' About Us page makes no mention of its control and ownership. Neither Sputnik nor Breitbart provide any channel for readers to make a complaint about their reporting, apart from an online contact form on the Sputnik page, and neither are members of a press regulation body. Social media presents a new set of challenges to democratic debate, which will be explored in more detail in the next chapter.

Journalists have been gloomy about the decline of paid-for news contents and its adverse implications for the health of media outlets and the ability of the press to report freely. Freedom House identified 'varied ways in which pressure can be placed on the flow of objective information and the ability of platforms to operate freely and without fear of repercussions'. They rated the UK's media environment as 'free' in 2017, giving it an overall score of 25 (where 0 denotes the most free and 100 the least). This represents a four-point worsening in the UK's score since 2013. Although Freedom House considers the UK's press 'largely open', significant concerns about regulation and government surveillance are unresolved.

## Press regulation and the Crime and Courts Act

If the press or other media behave badly, they have the capacity to generate a great deal of misery for the subjects of poor or inaccurate reporting. UK newspapers maintained for many years a very weak apparatus of 'self-regulation', which collapsed in the wake of a major scandal about reporters at the News of the World, Daily Mirror and other tabloid titles 'hacking' the phones of celebrities and politicians so as to uncover aspects of their private lives. This was always a criminal activity, but Scotland Year proved strangely reluctant to act until long after the large scale of scandal became apparent.

Our previous 2012 Democratic Audit was published just before Lord Leveson produced his long-awaited Inquiry into the Culture, Practices and Ethics of the Pressdealing with phone-hacking and press intrusion. This called for an independent, self-regulatory body to create and uphold a new standards code for the media. Leveson deemed the previous Press Complaints Commission 'not fit for purpose' and it was dissolved. Many of Leveson's criticisms echoed those raised by the 2012 Audit.

At the time of writing, the industry has been unable to agree on a common self-regulatory body. The only one to have gained approval from the government-created (but independently-appointed) Press Recognition Panel (PRP) is Impress, which regulates 40 small, chiefly local publications. Most national newspapers have joined the Independent Press Standards Organisation (Ipso). However, the Financial Timesand the Guardian chose to set up their own internal mechanisms for handling complaints, citing worries about Ipso's independence and the royal charter model that underpins it. The charter is not a statute but is drafted and approved by the Privy Council, which its critics argue amounts to 'unacceptable political involvement' in press regulation.

In an effort to encourage publishers to join a PRP-approved regulator, section 40 of the Crime and Courts Act 2013 gives those that have done so the opportunity to settle libel action through a low-cost arbitration scheme. If they do not, they may be liable for the claimant's costs in libel, privacy or harassment cases. The vast majority of the press have vociferously opposed the implementation of section 40, with the FT opening its objections by claiming that the press landscape had been 'utterly transformed' since the publication of the Leveson report. Index on Censorship warned that section 40 'protects the rich and powerful and is a gift to the corrupt and conniving to silence investigative journalists – particularly media outfits that don't have very deep pockets'. The 2017 Conservative Party manifesto promised to repeal section 40, which clearly has not worked (and which would cause the PRP to close). But it also said that the promised second stage of the Leveson inquiry will not go ahead – leaving considerable uncertainty about the shape, let alone the effectiveness, of any future press regulation or self-regulation.

**Libel law**

For decades the English law of libel has provided for potentially large damages against anyone publishing statements likely to lower the reputation of the claimant in the eyes of reasonable people, even if the statements were true. Papers also had to prove that 'defamatory' statements were not maliciously motivated. The Defamation Act 2013simplified the so-called 'Reynolds defence' against libel by codifying it more simply: if a statement is in the public interest and the writer reasonably believes it to be so, it enjoys protection. In addition, a libel claimant must prove the statement caused 'serious' harm. English PEN and Index on Censorship both welcomed the overhaul: 'England's notorious libel laws [have been] changed in favour of free speech', said the latter. The number of defamation cases fell to 63 in 2014-15, the lowest for six years. A growing proportion of these related to social media postings by private individuals.

English law also allows for 'gag' injunctions preventing publication of details (like names) to be sought if the subject can claim their privacy would be damaged. The media monitoring organisation Inforrm recorded only four privacy injunctions against the media in 2015. Their decline appears to be linked to the difficulty of stopping information from being published by third parties online and the risk of court proceedings being made public, thus undermining the very purpose of the action. The privacy injunction remains a tool of the rich: 'With average legal fees of £400 an hour, the first court hearing would cost up to £100,000,' reported the Guardian in 2016. For

the overwhelming majority of citizens, pre-emptive action against breaches of privacy is out of the question and post-hoc privacy actions likewise impossible. Self-regulation and effective means of redress therefore take on an even greater importance.

### The proposed Espionage Act

The UK government operates a system (called D notices) where they can exceptionally bar papers or broadcasters from running items that would endanger a clear national interest (e.g. publishing the names of UK espionage agents). UK journalists have been vigilant in keeping such cases to an absolute minimum. However, other developments have changed the picture a lot.

In 2013, the American IT contractor Edward Snowden passed large amounts of classified National Security Agency material to the Guardian and Washington Postwhich revealed details of government surveillance programmes. The Guardianpossessed a copy of some of the leaked material. GCHQ requested the files, which the paper did not hand over. Warned that the security services were considering taking legal action to halt its reporting, the Guardian destroyed the hard drives and memory chips with cutting tools at their offices. This was 'a largely symbolic act' the paper said, because the same files were stored in other jurisdictions.

Given the relative ease of disclosing large amounts of sensitive information in the digital era, the Law Commission has since undertaken a review of the Official Secrets Act which recommends replacing it with an Espionage Act. For the first time, the proposed Act would criminalise receiving and handling data that the government deems damaging to national security, thereby drawing into its ambit editors and journalists who are merely examining leaked material. Under the proposals, prosecutors would only have to prove that it 'might' damage national interests, rather than the current test that it was 'likely' to do so. The Commission also suggested increasing the maximum prison term from two years, noting the penalty in Canada is up to 14 years. It would also become possible to prosecute non-Britons.

The Commission agreed with Lord Leveson in his inquiry that introducing a statutory public interest defence specifically for journalists was unnecessary. Leveson had concluded: 'A press considering itself to be above the law would be a profoundly anti-democratic press, arrogating to itself powers and immunities from accountability which would be incompatible with a free society more generally.'

As they stand, the Law Commission's proposals would exert a chilling effect on both whistleblowers and journalists in receipt of leaked data, let alone editors who took the decision to publish it. The Open Rights Group described the new provisions as a 'full-frontal attack on journalism… The intention is to stop the public from ever knowing that any secret agency has ever broken the law'.

### Re-establishing trust

While trust in the BBC's ability to deliver accurate and reliable news remains high (70%), trust in journalists in the UK overall remains much lower than in much of the

EU and USA. It is lower still among under-35s and those who describe themselves as left-wing. Among journalists themselves, most say owners, advertising and profit considerations have little influence over their work. A quarter of them believe that it is sometimes justifiable to publish unverified information.

However, fact-checking has become an increasingly common practice online, pioneered by the charity FullFact, and later adopted by the BBC, Channel 4 and Guardian. Google's Digital News Initiative is currently looking at ways to automate parts of the process. Mindful of how Donald Trump's presidency came about and has developed, the media industry is beginning to grapple with the question of how to report untrue or contested statements made by top politicians.

### Conclusions

The media system is changing fast, and it is often easy to lament all change as a decline from a past golden age, and to resent 'new goods' that are having disruptive effects. Optimists, on the other hand, argue that the choice and variety of media available to Britons have never been greater and that press and broadcasters are free from censorship or direct government interference.

Pessimists see a largely unreconstructed national press, wedded to truth-bending, high intensity partisanship; with a lot of unregulated power concentrated by a handful of press barons; and a wider profession still resistant to any meaningful professionalism or effective self-policing of journalistic practices. And in the wings, government and official sources are almost constantly proposing restrictive laws that would greatly inhibit journalistic enterprise and ability to investigate – especially where the UK's still-large 'secret state' operates, largely immune to any public or parliamentary scrutiny.

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## 2.4 Does citizen vigilance and social media extend or threaten democratic practices?

*Social media technologies (such as blogging, Facebook, Twitter, Google, YouTube, Snapchat and Instagram) have brought about radical changes in how the media systems of liberal democracies operate. The platform providers have become powerful actors in the operation of the media system, and in how its links to political processes operate. Yet at the same time these companies claim political neutrality, because most of their content is created by their millions of users – perhaps creating far greater citizen vigilance over government and politicians.* **Ros Taylor** *and the* **Democratic Audit team** *look at how well the UK's social media system operates to support or damage democratic politics, and to ensure a full and effective representation of citizens' political views and interests.*



*At the 'Rally to Restore Sanity / March to Keep Fear Alive' on the National Mall, Washington DC, 2010.*

Photo:     *Adam Fagen via a CC-BY-NC-SA 2.0 licence*

### How should the social media system operate in a liberal democracy?

- Social media should clearly enhance the pluralism and diversity of the overall media system, especially by lowering the costs for citizens in securing political information, commentary and evidence, and improving their opportunities to understand how democracy works. Any adverse by-product effects of social media use on established or paid-for journalism and media diversity needs to be taken into account. 'Disintermediation' ('cutting out the middle man') processes that simply reduce the viability of existing media (like terrestrial broadcasting

and print/paid-for newspapers) may have net negative effects on the overall media system.

- Social media should be easily accessible for ordinary citizens, encouraging them to become politically involved by taking individual actions to express their views, or collective actions with others to promote a shared viewpoint.

- The overall media system created should operate as transparently as possible, so that truthful/ factual content predominates, truthful content quickly drives out incorrect content, and 'fake news', 'passing off' and other lapses are minimised and rapidly counteracted.

- The overall growth of social media should contribute to greater political equality by re-weighting communication towards ordinary members of the public and non-government organisations, cutting back the communications, nodality and organisational advantages otherwise enjoyed by corporate actors, professional lobbyists or 'industrialised' content promoters.

- By providing more direct, less 'mediated' communications with large publics social media should enhance the capacity of politicians and parties to create and maintain direct links with citizens, enhancing their understanding of public opinion and responsiveness to it.

- Social media should unambiguously enhance citizen vigilance over state policies and public choices, increasing the 'granularity' of public scrutiny, speeding up the recognition of policy problems or scandals, and reaching the widest relevant audiences for critiques and commentary on different government actions.

- Platform providers argue that they do not generate the content posted on millions of Twitter sites or Facebook pages, but only provide an online facility that allows citizens, NGOs and enterprises to build their own content. However, because these large companies also reap important network and oligopoly effects that increase their discretionary power, they must be regulated to prevent their behaving destructively towards established media systems, or abusing their advantages over other media companies or citizen behaviours that breed dependence upon them.

- Platform providers must take their legal responsibilities to 'do no harm' seriously, and respond quickly to mitigate new social problems enabled by social media that are identified by public opinion or elected politicians.

- In assessing (and potentially regulating) social media effects, evidence-based knowledge of the actual, empirical behaviours of users and platform providers is key, rather than relying on a priori expectations.

- The development of regulations and law around fast-changing 'new goods' like social media often lags behind social practice. Legislators and government need to be agile in responding to emergent new problems created by social media, or to existing problems that are re-scaled or change character because of them.

Where existing controls and mitigation actions are already feasible in law, their implementation needs to be prioritised and taken seriously by busy police forces.

- As with conventional media, citizens should be able to gain published corrections and other effective forms of redress (including appropriate damages) against reporting or commentary that is illegal, unfair, incorrect or invades personal and family privacy. Citizens are entitled to expect that platform companies will respect all laws applying to them in speedily taking down offensive content, and will not be able to exploit their power to deter investigations or prosecutions by the police or prosecutors.

The growth of social media – and its wider consequences for the web – have been seen in rather different ways. On the one hand, easy to produce content and low-cost internet communication helps citizens in myriad ways to organise, campaign, form new political movements, influence policy-makers, and hold the government accountable. Social media can also 'disintermediate' the conventional journalist-run and corporate-owned media. In 2008, Clay Shirky's Here Comes Everybody set out a vision in which self-publishing meant 'anyone can be a journalist'. Yashcha Mounk points out that social media 'favours the outsider over the insider, and the forces of instability over the status quo'.

A populist discourse rationalising such changes argues that the mainstream media ('MSM') has stifled debate on issues that matter to 'ordinary' citizens. This pattern was observable in the EU referendum campaign (when the Leave campaign derided 'expert' opinions and urged people to 'take back control') and in the United States (where Donald Trump sought to bypass most media outlets in favour of direct communication at rallies and on social media). Some left critics also share the sentiment. Citing the LSE's study of negative representations of Jeremy Corbyn in the British press, Kadira Pethlyagoda describes a 'chasm between the masses and the elites, represented by the out-of-touch MSM, [that] threatens not only democracy and justice, but also stability'.

On the other side of the debate, new social goods, especially those that disrupt the established ways in which powerful interests and social groups operate, often attract exaggerated predictions (or even 'folk panics') about their adverse implications for society. Social media inherently present a double aspect, because they are run by powerful platform provider corporations (Facebook, Twitter, Google, and WhatsApp). Many seek to 'wall in' millions of users within their proprietary domains. Yet at the same time almost all the content they carry is generated by their millions of users, using free speech rights to communicate about the issues that matter to them. So while the platform providers might seem oligopolistic in the way that they carve up the social media market, and in the enormous corporate power they have acquired relative to other companies, especially conventional media corporations, they can still claim to be politically neutral and competing bitterly for customers – hence standing outside conventional media regulation provisions.

## Recent developments

In the realm of news and current affairs, the recent growth of social media in the UK has shrunk the audience for free TV bulletins. For the BBC, the change means UK viewers can watch and consume TV news on PCs or smartphones, without paying the licence fee. At the same time, the readerships of most paid-form/print daily and Sunday newspapers has also fallen, although some Sunday titles and the free Metro are exceptions. Newspaper publishers must either rely on existing readers recommending their content, or pay to advertise on social media – even as digital advertising revenues fail to live up to publishers' hopes. Thus social media are widely seen by journalists and others as posing an existential challenge for legacy publishers. (See our chapter on the 'mainstream' media system).

For a growing proportion of people, particularly among the 18-34 year-old demographic, online news reports represent their chief source of news. While many people use apps to follow the news, a growing number rely on stories shared via Twitter and, in particular, Facebook.

Chart 1 also shows that people value the ability to directly monitor what their political representatives and candidates are doing, and social media offers an easy way to do so. Currently 18 per cent of all UK citizens follow a politician. In the case of councillors or even MPs, social media commentary is often the first thing to draw politicians' attention to causes and public concerns that do not reach the constituency surgery, council meeting or email inbox. The ability for people to click their concurrence and comment in their own terms helps indicates the breadth and depth of public feeling on a particular issue.

## Chart 1: Why people follow politicians on social media



| Statement | % agreeing with the statement |
|---|---|

(Chart shows the following statements with their approximate values)
- I want to show others who I support politically — ~23
- The mainstream news media tend to ignore the politician/party I follow — ~25
- I don't think the news media report the views of politicians/political parties fairly — ~29
- These feeds provide me with more detailed information than I can get via the news media — ~38
- I like a particular politician/political party — ~46
- I prefer to hear directly from a politician/political party than have their views filtered by others — ~48

*Notes:* *Question was: 'You say you follow a politician or political party via social media, what are some of the reasons for this? Base: All who follow a politician or political party on social media, USA, UK, Germany, Spain, Ireland, and Australia. n = 2671.*

*Source:* *Reuters Institute Digital News Report 2017*

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Voters can follow their elected representatives on social media, and candidates who are competing against them. By replying and commenting, people have low cost opportunities to contact and influence them at a national or local level. | Platform providers give people the ability to customise the news they receive on social media. Most people use this facility as they use conventional media, paying most attention to viewpoints and sources with which they already agree. On tailored social media responding closely to citizen preferences, this behaviour can create a 'filter bubble' in which opposing or even unaligned voices go unheard. Only 4% of social media users follow politicians from both the political left and right. |

| Current strengths | Current weaknesses |
|---|---|
| Even citizens unaffiliated with an organisation, can quickly disseminate their message to a very wide audience via social media and have some chance of evoking wider agreement from like-minded people – a dynamic that drives retweeting, FB 'likes' and even now officially recognised online petitions to the UK government. The popularity of social media among young people provides a helpful means of encouraging them to get on the electoral roll, after the relative success of the National Voter Registration Drives. | Because most retweeters and 'likers' are not professional journalists on fact-checked publications, but ordinary citizens with lower levels of information, critics argue that inaccurate and misleading information ('fake news') can spread more quickly. For example, after the Grenfell Tower disaster online reports spread quickly that the government had issued a D-Notice restricting media reporting on the issue, which (of course) it had not. |
| Digital-only publication and dissemination via social media have lowered the start-up costs for many alternative media outlets, broadening the range of professionally produced news and commentary available to citizens. Snapchat Discover has enabled mainstream publications like Le Monde and CNN to reach the 18-24 year-old audience more easily (10% reach in the UK) as legacy broadcast and printed press consumption declines. | Digital-only publishing by highly committed or partisan publishers has also enabled them to exploit 'data-industrial' capabilities to flood online platform systems with multiple biased or untrue messages in ways that are completely un-transparent. For instance, the ongoing American inquiries into the Trump administration's links with Russia have revealed the ability of foreign powers to use 'fake news' disseminated on social media to sway the political process. |
| New social media are nominally free to set up and use, and quite sophisticated media like blogs are very cheap to run. Hence the growth of social media unambiguously expands the foundations for a pluralistic and diverse media system. | There is evidence that online abuse and harassment, particularly of women, children and minorities, can be more extensive in social media than in society outside. Moving online increases the audiences for abuse, lets it occur in real time and more often, escalating faster, and often involving extreme language. Online 'hate speech' is illegal in the UK but police and prosecutors have been slow to engage. Some cases of legal redress for defamation on Twitter have been successful , but this is a very costly process to accomplish. Many people complain that platform providers have been too slow to take down offensive, harassing or illegal content. So a lack of online 'civility', and harassment of vulnerable people, remain a serious problem. |

| Future opportunities | Future threats |
|---|---|
| The growth of fact-checking tools and websites, including automated fact-checking, enables rapid rebuttal of falsehoods – especially if platform provider firms assist in the process. This ability improves with time. | The media landscape risks atomisation as citizens turn to specialised or hyper-local news sources (but see below), with a corresponding decline in the political salience ('valence') of top media issues. |
| Social media enables rapid and unprecedented scrutiny of policymaking and politicians' pronouncements, with stakeholders' and experts' opinions freely available on Twitter – but while some liveblogs have tried to curate them, this body of knowledge and input remains diffuse and rarely linked to formal mechanisms, such as select committees of the House of Commons. | Armed with huge cash reserves (often gained from setting up complex tax-avoidance schemes), the giant corporations have diversified into social media conglomerates. Facebook (which owns Instagram), YouTube (owned by Google) and to a lesser extent Twitter, now dominate social media platforms. These corporations' power to shape how democratic discourse happens online is considerable, and almost unregulated at nation state level. |
| | Outside the UK and US, growth in social media appears to be levelling off in favour of the more closed environment of messaging applications. |
| | The European Commission (EC) has the population scale and legal resources to move vigorously against misuse of monopoly power by Microsoft (after it bundled its Explorer browser and stifled competition) and later by Google (over unfairly advantaging its own search engine hits). In mid-2017 the EC fined Google 2.4bn euros, a substantial disincentive to monopolistic practices. After Britain leaves the EU, it is unclear whether any UK government would have the motivation, legal resources or scale to act as vigorously. Even if rulings were made, the UK is a much smaller and less salient market for these firms than the EU as a whole. |

**How social media users behave**

Many social media critics rest their objections on claims that they change the behavioural dynamics of information markets in adverse ways. The ability to 'like' and 'follow' like-minded individuals on social media, together with Facebook's use of algorithms that present news and posts based on a user's existing preferences, has led to fears that people increasingly obtain their news from a self-reinforcing 'filter bubble' of

similar opinion. On the day after the Brexit referendum the web activist (and 'remainer') Tom Steinberg posted:

'I am actively searching through Facebook for people celebrating the Brexit leave victory. But the filter bubble is SO strong, and extends SO far into things like Facebook's custom search that I can't find anyone who is happy *despite the fact that over half the country is clearly jubilant today* and despite the fact that I'm *actively* looking to hear what they are saying'.

Relatively few social media users will ever look outside their bubble, and they may not now be able to 'pop' it and reach broader views, even if they wanted to.

In the social media world, the key metric of successful content is its ability to generate retweets or FB 'likes'. Chasing the advertising revenue that a 'viral' piece or video can generate has led some media publishers to produce 'clickbait' – sensationalist headlines that tempt the readers to click through to that story in preference to others on the page. While a great deal of clickbait content is celebrity or lifestyle journalism, some of it relies on distorted and sensationalised news stories. The editor of the Guardian describes this practice as 'chasing down cheap clicks at the expense of accuracy and veracity'.

## Fake news

The term 'fake news' is inevitably subjective and contentious. In some instances it is difficult to draw a clear line between the kind of partisan reporting long apparent in the British media and fabricated stories. Ulises Mejias argues that to insist on a clear distinction between 'real' and 'fake' news 'bypasses any kind of analysis of the economics that makes disinformation possible and indeed desirable' in Western democracies. However, as discussed in our media chapter, increasingly globalised media ownership has opened up opportunities for powerful actors and state-funded operations to influence democratic debate abroad. Leaked US intelligence which claims Russia used online fake news to influence voters suggest that the phenomenon is a growing threat to the legitimacy of elections in the West. In his analysis of electoral manipulation across the world, Ferran Martinez i Coma notes a move away from ballot-stuffing and towards media manipulation. The chairman of the Commons Select Committee for Culture, Media and Sport has described fake news as 'a threat to democracy' that 'undermines confidence in the media in general'. One notable development in the UK has been the ability of far-right groups such as Britain First to disseminate their message on social media under the guise of entertainment.

## Threats to female politicians and activists

Misogyny on social media remains a problem (Demos), despite the introduction of stricter rules by Twitter. The MPs Yvette Cooper, Jess Phillips, Stella Creasy, Diane Abbott and Anna Soubry have also reported misogynistic and racist abuse. Social media harassment has been the subject of numerous other complaints by female politicians and activists, especially at the 2017 general election. A 2016 Demos study suggests that women users are equally as responsible as men for originating misogynist threats. In

2014 a man and a woman were given prison sentences for threats posted on Twitter to feminist campaigner Caroline Criado-Perez. 'Trolling' and 'stalking' women or ethnic minority politicians clearly inhibits their freedom to develop and express opinions and debate on Twitter and other social media, and so represent a threat to democratic discourse online. Other forms of misuse of social media – such as the bullying of vulnerable school students by others – can easily have tragic consequences. Yet while the effective regulation of the new media spaces to outlaw hate speech is clearly important, platform providers (many of whose founders espoused socially libertarian ideas) have frequently been reluctant to self-regulate their content effectively, and help state authorities do so externally (except in the case of clearly illegal material, such as encouraging terrorism or promoting suicides).

## Hyper-local social media

A more positive trend has been the development of hyperlocal news models, which may partly offset the rapid decline of paid-for local newspapers across the UK. The new approaches continue to evolve, with the ease of making micro-payments offering the possibility of a revenue stream (albeit not necessarily an easy or sustainable one).

Nor are hyper-local media necessarily amateurish. Around half of the citizens producing hyperlocal news across the UK have some form of mainstream journalistic experience. Andy Williams notes that hyperlocal news usually privileges the voices of community groups and members of the public, whereas the traditional local press 'are very authority-oriented in their sourcing strategies'. But most outlets depend heavily on volunteers: 'Despite the impressive social and democratic value of hyperlocal news content, community news in the UK is generally not a field rich in economic value'. So he concludes that for all their valuable efforts, unpaid and part-time news producers 'can only very partially plug growing local news deficits'. A Cardiff University initiative has sought to support hyperlocal and community journalism by offering online training and funding advice, chiefly in Wales, where it has identified a particular democratic deficit. The scope for supporting hyperlocals through training and funding initiatives such as audience co-operatives is considerable.

## Conclusions

Social media clearly offers unprecedented opportunities for voters to debate and scrutinise public policy, albeit on terms heavily conditioned by platform providers, and in a constant 'arms race' with the development of industrialised/professionalised social media campaigning by companies and large vested interests. For good – and sometimes ill – social media allow politicians to communicate directly with citizens, enthusing the electorate and reinforcing their bond with supporters. As a tool for influencing and holding the political class accountable for their actions, it may ultimately prove as powerful as the press itself, which increasingly relies upon social media channels to reach younger people.

The blooming of multiple voices enables those who have traditionally been on the fringes of debate, such as disabled citizens, to make their voices heard. However, it also

opens a channel for extremists and news outlets with motives going far beyond conventional partisanship to embrace attempts to skew and undermine democratic debate itself. Because of the ability of users to choose whom they follow and exclude unwanted or dissenting voices, some critics see social media as lending itself to conspiracy theory and fake news. The fact that strongly-held (sometimes abusive) opinions are so visible on social media risks alienating people from the 'normal' political process and increasing social polarisation, undermining political valence.

So it is questionable whether the current main platforms are fit for purpose either in terms of the transparency of their monitoring policies (and the extent to which they co-operate with governments for security purposes), or their ability to foster democratic deliberation and thoughtful social learning. The hegemony and ubiquity of these platforms may be nudging people towards new kinds of political behaviour that will only become fully apparent in years to come.

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# 3. How democratically does the Parliament at Westminster work?

- How effective is the House of Commons in controlling UK government and representing citizens?

- How well does the Commons scrutinise government policy-making – especially via the select committee system?

- How democratically accountable are the UK's security and intelligence services?

- How undemocratic is the House of Lords? How could it be reformed?

# 3.1 How effective is the House of Commons in controlling UK government and representing citizens?

*Artemis Photiadou and Patrick Dunleavy consider how well the House of Commons functions as a legislature. Is Parliament still an effective focus of national debate and close control of the executive? And how well does the Commons function in scrutinising and passing legislation, or monitoring policy implementation?*



*Commons speaker John Bercow takes the Chair in 2010.*

**What does democracy require for the legislature in focusing national debate, and scrutinising and controlling major decisions by the executive?**

- The elected legislature should normally maintain full public control of government services and state operations, ensuring public and Parliamentary accountability through conditionally supporting the government, and articulating reasoned opposition, via its proceedings.

- The House of Commons should be a critically important focus of national political debate, articulating 'public opinion' in ways that provide useful guidance to the government in making complex policy choices.

- Individually and collectively legislators should seek to uncover and publicise issues of public concern and citizens' grievances, giving effective representation both to majority and minority views, and showing a consensus regard for the public interest.

**How should the legislature operate in passing laws and controlling the executive's detailed policies?**

- In the preparation of new laws, the legislature should supervise government consultations and help ensure effective pre-legislative scrutiny.

- In considering legislation Parliament should undertake close scrutiny in a climate of effective deliberation, seeking to identify and maximise a national consensus where feasible.

- Legislators should regularly and influentially scrutinise the current implementation of policies, and audit the efficiency and effectiveness of government services and policy delivery.

## Recent developments

The first peacetime coalition since 1945 between the Conservatives and Liberal Democrats marked out 2010-15 as an unusual period of Parliamentary relations with the government. Ministers (especially David Cameron as Prime Minister) were uniquely exposed to right-wing Tory backbenchers and centre-left Liberal Democrats dissenting from government policies. Not surprisingly, Phil Cowley showed that backbench dissent affected 35 percent of Commons divisions 2010-15, a post-war record (with the Labour government of 2005-10 as the nearest parallel). A new 'hung Parliament' situation arose after the failure of Theresa May's June 2017 general election bid. Her new minority Conservative government is reliant on a 'confidence and supply' agreement with the 10 MPs of the DUP. Most predictions are that it will be vulnerable to more backbench revolts (and indeed to defeats), because Tory MPs in particular have now got the habit of dissenting. Early indications seemed to bear this out. In the Queen's Speech debate in June 2017, Labour backbencher Stella Creasy tabled a relevant amendment to fund abortion operations in mainland UK for women from Northern Ireland. This would have been supported across the House had it gone to a vote, and so the government was forced to agree to the change in order to avoid a defeat.

However, some potentially key changes in parliamentary operations also survived from the 2010-15 coalition government period. The Fixed Term Parliaments Act 2011 formally requires that general elections are held every five years, unless the government loses a vote of confidence and no other government can be formed, or unless two thirds of MPs vote for an earlier dissolution. This was seen as a key safeguard against Cameron calling an election early by the Liberal Democrats, but it actually did little to prevent their electoral punishment at the end of the government's enlarged term in 2015. With Cameron's victory in 2015 the Act initially made the Tories look like a strong beneficiary, with a five-year term apparently securely guaranteed. But May's miscalculation in calling an early election for June 2017, which resulted in the loss of Cameron's slender majority, meant that things turned out differently. In April 2017 when May demanded the election, the Tories were 20 points ahead of Labour in opinion polls, whose MPs nonetheless voted for an immediate context – vindicating Jeremy Corbyn's judgment in this case.

Another legacy of the coalition era was that a significant parliamentary boundaries review to cut MPs' numbers from 646 to 600 and to fine-tune equally-sized constituencies was canned in 2012 by the Liberal Democrats, after Cameron proved unable to keep his promises on Lords reform because of Tory backbench resistance. But when (thanks to the first past the post electoral system) the Conservatives won an outright (if wholly artificial) majority of MPs in 2015, the scheme was dusted off and implementation began – which is likely to boost Tory MPs by around 20 at the other parties' expense. The Boundary Commission for England must submit its report by September 2018 and, if approved by Parliament, the new constituencies will be used in the next election after the approval. However, the febrile conditions of a hung Parliament, and the probability that some Tory members may want to postpone changes that damage their seat, mean that the outcome here is no longer guaranteed.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The House of Commons' long history and central cross-national position as an exemplar of sound Parliamentary practice give its members a strong sense of corporate identity, motivating some public interest behaviours. | The Commons is executive-dominated, with MPs most often voting on 'whipped' partisan lines. Party cohesion has weakened, but is still exceptionally high by cross-national standards.Committee scrutiny of legislation via partisan whipped bill committees (with inexpert MPs) is always ritualistic, ineffective and normally of very little value. |
| Some parliamentary institutions operate effectively, engaging the attention of MPs, media and the public – especially PM's Question Time (and to a lesser degree, ministers' question times), and the operation of select committes. | The Commons' ex ante budget control is non-existent. Finance debates are simply political and general talk-fests for the government and opposition. Parliamentary 'estimates' are odd and out of date numbers, of declining value in relation to the real dynamics of public spending. |
| The collaboration of government and opposition is in some respects exclusionary, but also contributes to a certain degree of elite self-restraint and avoidance of rancorous partisanship that is essential to the operations of the UK's 'unfixed' constitution. | Only a few component parts of the legislature's activities work well, and much of the time its behaviours are ritualistic, point-scoring and unproductive in terms of achieving policy improvements – e.g. anachronistic and time-wasting division vote procedures in a digital era. Most attempted modernisations remain stalled on traditionalist MPs' objections. |

| Current strengths | Current weaknesses |
|---|---|
| MPs' small constituencies have fuelled their role as grievance-handlers for constituents having trouble with public services, which has expanded in recent years. | The top two parties are not only normally over-represented in terms of MPs vis-a-vis their vote share, but also collude to run Westminster business as a club in their partisan interests (e.g. via archaic bodies like the Privy Council). The views of smaller parties and parties left unrepresented despite substantial vote shares are systematically excluded from Parliament. |
| The post hoc auditing of spending via the Public Accounts Committee (PAC) has some strengths. | The Commons meets in a museum building, surrounded by a Victorian empire grandeur that helps perpetuate a culture amongst MPs that is always male-orientated, white, club-like, and obsessed with the 'privileges' of MPs. Debates and other sessions are often 'shouty' and visibly anti-deliberative. |
| Select committees' roles and public visibility have both expanded in recent years, and the 'Wright reforms' have been effective modernisations. | On matters affecting their own welfare, MPs are self-governing, self-interested and routinely dismissive of ordinary citizens' concerns (c.f. repeated MPs' expenses scandals and recent austerity-busting pay rises). |
| The Liaison Committee sessions with the PM are a useful if modest innovation. | The House of Commons (at 646 MPs) is an exceptionally large legislature. Most MPs don't have enough useful things to do (hence the still frequent second jobs and ethically dubious 'outside interests'). The government has created a huge 'payroll vote' of ministers and pseudo-ministers simply to help maintain control of these excess numbers by dangling a chance for preferment. |
| The Backbench Business Committee enables backbenchers to raise topics for debate in a more effective way. | Fuelled by the coalition period, and now the Tories' narrow majority, the amount of secondary legislation is growing, and primary legislation is drafted in ways that increasingly leave its consequences obscure, to be filled in later via statutory instruments or regulation. Commons scrutiny of such 'delegated legislation' is very weak and ineffective. |
| MPs can raise issues with the government though Early Day Motions, very few of which are ever debated. Many topics tend to be trivial. | |

| Current strengths | Current weaknesses |
|---|---|
| The Procedure Committee in 2013 nonetheless found that there should be no changes. EDMs have generally declined. | |

| Future opportunities | Future threats |
|---|---|
| Moves to make the Commons more family-friendly and its culture more diverse are having some success, but much more can be done at zero cost. | In 2015 the incoming Tory government proposed 19% cuts in the state funding given to opposition parties (known as Short money), a move that will inhibit their ability to conduct parliamentary business and critique ministers effectively, without making any worthwhile savings. Its status at mid 2017 seems unclear. The DUP, despite their confidence and supply agreement with the government, also continue to benefit from Short money meant for the Opposition. |
| Funnelling all the post hoc financial scrutiny of public spending through only one committee (PAC) wastes much of the work of the National Audit Office (NAO) in scrutinising the civil service. Single department and smaller spending NAO reports should be run through Select Committees. The PAC should focus more on cross-departmental, inter-governmental and major spending areas. | Enacting the EVEL change via changing Commons' standing orders sets a thoroughly dangerous constitutional precedent, outside all judicial review. If a Commons majority alone can tell MPs in one part of the country that they cannot vote in a newly created but decisive Westminster procedure, what is to stop another majority imposing the same exclusion on MPs of a given party? |
| Select Committees need to move away from sole reliance an out-of-date evidence-gathering process focusing only on calling witnesses and use NAO staff to produce meaningful research of their own on policy effectiveness. Both this and the previous point would cost almost nothing to implement. | The almost non-representation of UKIP in the Commons, and of non-SNP parties in Scotland, further reduces the legislature's already tattered representativeness under first-past-the post voting. |
| Limits on MPs' self-government need to be further strengthened. | The Political and Constitutional Reform Committee was a potent force for modernisation 2010-15, including within the Commons. In June 2015 it was abolished and its constitutional role kept only as a small sub-section of the Public Administration and Constitution committee. |

| Future opportunities | Future threats |
|---|---|
| E-petitions give the public a new opportunity to raise issues with the government by triggering a parliamentary debate if 100,000 signatures are obtained. By July 2017, over 31,730 petitions had been launched, two thirds of which were rejected, while 56 have been debated in Parliament and nine will soon be. So far this popular option has proved inconsequential in changing policies, though it is an effective way of raising public awareness or showing public discontent. | If and when a Brexit agreement is reached, current EU law in force in the UK will need to be converted into domestic law (and in certain cases be 'corrected' before being converted). Such changes, as proposed in the Repeal Bill, will be made by ministers and not be subject to the usual parliamentary scrutiny. The Lords Constitution Committee called this prospect a 'massive transfer of legislative competence' into the Government's hands. It raises major questions about the right balance between executive and legislature power, especially in the period 2017-20. |
| The Parliament website is very large but hard to use. Many MPs and Select Committees have only made limited steps to connect with voters via social media. | |

## Parliamentary consideration of treaties and military actions

The Royal Prerogative consists of those powers of the medieval absolute monarchs that are not yet regulated by statute law. They are exercised on the Crown's behalf by ministers, especially the PM. Historically the PM and government have retained the prerogative ability to go to war and to ratify treaties. The Commons has only been able to vote on these decisions after the fact and in restrictive ways – e.g. via moving a no confidence motion in the government. The Constitutional Reform and Governance Act 2010 curtailed the treaty ratifying power and put it on a statutory basis. Its new provisions will be very important if the withdrawal agreement from the EU will be in the form of a treaty, as this would require the approval of the UK Parliament (and of the EU Parliament) before it became binding.

The ability to commit UK armed forces to war appears to have been replaced through a new convention that MPs should vote on major actions before they are undertaken. In 2003, MPs approved action in Iraq (but influenced by a 'dodgy dossier' prepared by the Blair government). MPs also voted in 2011 for action in Libya against Gadaffi (although operations had in fact already begun). And in August 2013 MPs defeated a proposal by the Coalition to take military action against the Assad government in Syria. A year later a diametrically opposite motion for air strikes against IS (Islamic State) in Iraq (but not in Syria) was approved by the Commons. In December 2015 the Tory government won a vote with a 174 majority to extend anti-IS air strikes to Syria in December 2015. This sequence would seem to suggest that the power to go to war is now subject to approval by the Commons. However, in mid-2016 it emerged that some UK ground forces were being secretly deployed in anti-IS actions in Libya, with no notification to Parliament.

## What do fixed term parliaments mean?

The rules passed under the Coalition require a PM with a Commons majority to call the next general election on a five-year fixed timetable. Should the PM resign, as David Cameron did in June 2016, the process to be followed (as indeed it was in 2016) is that the governing party will elect a new leader, and that leader will be asked by the Queen to form a government. However, should the PM lose a no-confidence vote instead, the process to be followed is still unclear. The monarch could ask another member of the largest party to try to form a government. But if they too declined, conceivably the Leader of the Opposition could be asked to, and might seek to, form a minority government within a 14-day period under the Act, without any immediate dissolution. To dissolve Parliament early a vote of two-thirds of MPs is needed, which would normally require that (most) MPs from both the government and the main opposition should support the motion. This last route was the one successfully followed in April 2017, when a supermajority of 522-13 backed the government's motion for a new election.

## EVEL: English Votes for English Laws

A second potentially far-reaching (or potentially temporary) change for Parliament followed from Labour and the Liberal Democrats' rather credulous decision to support the Conservatives to defeat the Scottish National Party's independence referendum in summer 2014. The three parties solemnly pledged a major granting of powers to the Edinburgh Parliament, and the morning after the result became clear Cameron announced that the deal would be implemented. However, it would be with a previously hidden codicil that changes would be introduced to allow English and Welsh MPs to vote alone in the Commons on laws just affecting them.

After the Conservatives' 2015 victory this substantial constitutional change was peremptorily implemented by a single majority vote to change the House of Commons' Standing Orders. So the growing pseudo-convention that UK constitutional changes require a referendum (buttressed by the 2011 referendum on the Alternative Vote, and the 2014 Scotland vote) was wrecked at a stroke. There was no real public consultation, no House of Lords vote on the change, no Supreme Court decision on the scheme and no judicial review.

In essence the EVEL provisions made these changes:

- a new 'England-only' committee stage for laws affecting only England (and including Welsh MPs for E&W laws);

- a ping pong process between the committee and full House (including other MPs) is possible at Report stage; and

- (iii) at the close of the Commons' consideration, a Legislative Grand Committee of only England MPs votes to accept or reject the final bill as a whole.

- The House of Lords process is not changed. But a Commons Grand Committee composed of only English MPs considers any Lords amendments, as well as full the Commons.

The government's explanation of how the English Votes for English Laws process will work is summed up in this diagram. The new processes are highlighted in blue.

## Figure 1: Outline of model – Bill starting in the House of Commons
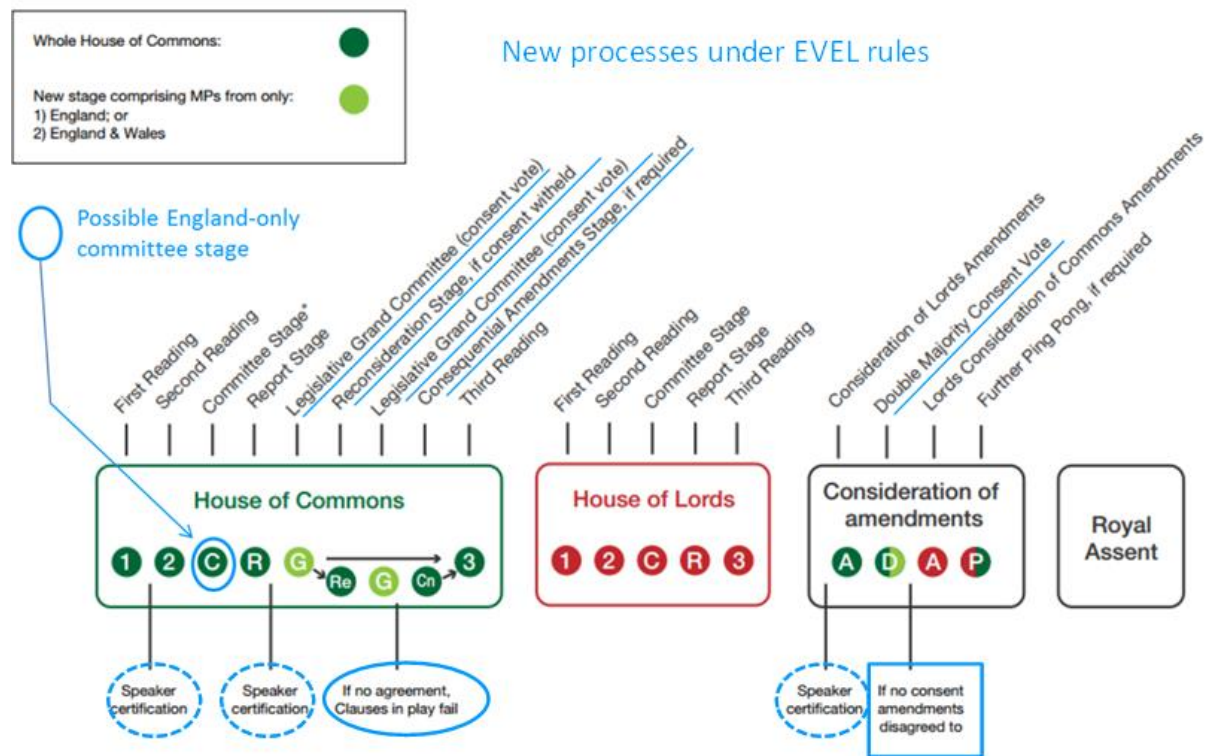


The main components are covered above, but note that the Speaker is repeatedly involved in determining which laws or provisions within laws must be subject to this procedure, conceivably subject to overview by Supreme Court. The Public Administration and Constitution Committee's 2016 report on EVEL is highly critical. Together with politicising the office of the Speaker, Daniel Gover and Michael Kenny have identified and evaluated four additional criticisms surrounding EVEL: that English and Welsh MPs have the power to veto laws passed by the entire House; that the process undermines that way the coherence of UK-wide government; that it is too complex; all while it fails to facilitate a meaningful expression of England's voice. Their evaluation of the first year of the process found that in practice, the force of the first three objections is limited by key features, like the double veto that is required. But it also found that criticism pertaining to complexity and the meaningful expression of the English voice do remain an issue. Whether the scheme will be much used, and if it can survive a non-Tory majority, both seem dubious at present.

## Scrutiny of the executive

The prime minister's active participation in parliamentary proceedings is a key mechanism for ensuring the accountability of the executive, but they have been less and less present in the Commons since the time of Thatcher and Blair. The Prime Minister's attendances are now limited to a single 30 minute question time (PMQs) once a week when Parliament is sitting, occasional speeches in major debates, and periodic public meetings with the chairs of Select Committees in the new Liaison Committee. More encouraging is recent research showing that backbenchers used PMQs in 1997-2008 as a key public venue, with backbenchers often leading the agenda and breaking new issues that later grew to prominence. The current Leader of the Opposition, Jeremy Corbyn, has also routinely been using PMQs to ask questions sent in on email by the public, somewhat changing the tone of the session.

## The 'payroll vote'

Parliament's independence vis-a-vis the executive has long been qualified by strong partisan loyalties amongst almost all MPs, who (after all) have spent many years working within parties before becoming MPs. The members of the government's frontbench are expected to always vote with the executive, as are Parliamentary Private Secretaries (who are pseudo-ministers). The last official data in 2010 showed approximately 140 MPs affected. Unofficial estimates of the size of the payroll vote suggest that by 2013 it was equivalent to well over a third of government MPs. Given the smallish number of Conservative MPs in the 2015 and 2017 Parliaments, the ratio will still be high. When Commons seats fall to 600, the prominence of the payroll vote will increase, unless government roles for MPs are cut back.

## Figure 2. The payroll vote 1900-2016
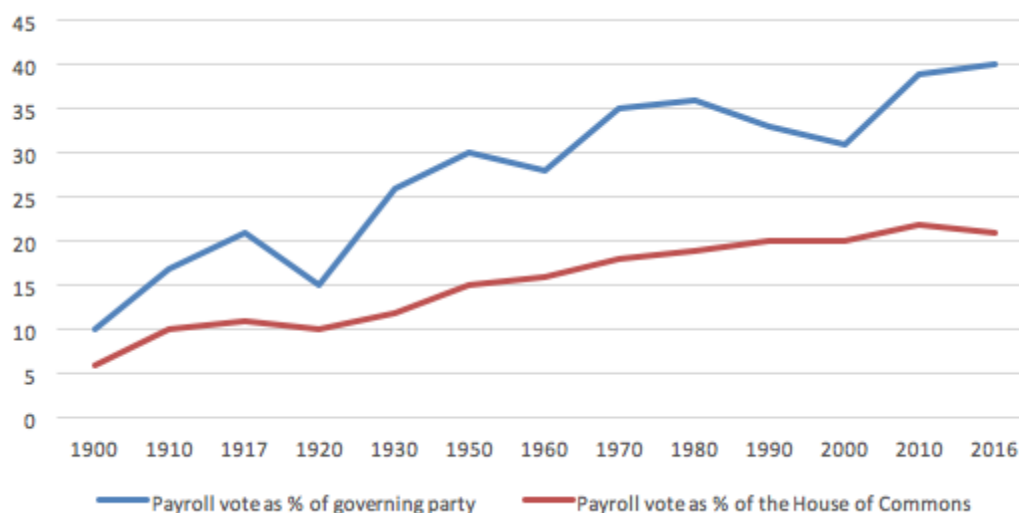


*Sources:   Who Runs Britain?, Commons Library*

**Dissent by backbench MPs**

The coalition period marked not just a period of record dissenting votes by backbenchers against their party line, but also the extension of this behaviour to larger and more consequential issues. The cleavages inside the Conservative party between pro and anti-EU MPs are exceptionally deep. During the summer of 2016 the Cameron government backed off several controversial legislative proposals, and proposed an exceptionally anodyne set of bills in the Queen's Speech, apparently to avoid straining party loyalties further in the aftermath of the Brexit referendum. The rise of serial backbench dissenter Jeremy Corbyn to become Labour leader has also created a serious gulf between his team and many of the Parliamentary Labour Party, which may reduce the cohesion of the main opposition party's voting.

**Conclusion**

Public confidence in Parliament was very badly damaged by the expenses scandals of 2009, and trust in the House of Commons remains at a low ebb, despite some worthwhile but modest reforms in the interim, which made Select Committees more effective in scrutinising government. The Commons remains a potent focus for national debate – but that would be true of any legislature in most mature liberal democracies. There is no evidence that the UK legislature is especially effective or well-regarded, as its advocates often claim.

Five years of Coalition government 2010-15 somewhat reduced executive predominance over Parliament – as they were almost bound to do – and the return of a hung Parliament in 2017 may do so again. But even this recurrence may not break traditions of strong executive control over the Commons. Tory divisions over the EU (plus the artificial exclusion of UKIP from Commons representation) perpetuated backbench unrest after 2015, but UKIP's almost-demise has not lessened tensions between Leave and Remain-inclined Conservative MPs. After 2017, there were some signs of an amelioration of party discipline and more cross-party working being possible, but they may still be temporary. Structural reforms to make the Commons a more effective legislature, and to modernise ritualistic behaviours and processes, are still urgently needed.

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## 3.2 How well does the Commons scrutinise government policy-making – especially via the select committee system?

*The House of Commons is one of the oldest and foremost legislatures in the world – yet in the past it was also a byword amongst political scientists for weak legislative control of government. Recently some revisionist authors have painted a more active picture of MPs' influence. **Patrick Dunleavy** and the Democratic Audit team consider how well Parliament maintains knowledge and scrutiny of the central state in the UK and England.*



*Entrance to a committee room. Photo: Jessica Taylor/UK Parliament via parliamentary copyright.*

**What does democracy require for how the national legislature monitors, understands, publicises and questions the policies that national government develops?**

- The elected legislature should normally maintain full public control of government services and state operations, ensuring public and Parliamentary accountability through conditionally supporting the government, and articulating reasoned opposition, via its proceedings.

- The House of Commons should be a critically important focus of national political debate, articulating 'public opinion' in ways that provide useful guidance to the government in making complex policy choices.

- Individually and collectively legislators should seek to uncover and publicise issues of public concern and citizens' grievances, giving effective representation

both to majority and minority views, and showing a consensus regard for the public interest.

- In the preparation of new laws, the legislature should supervise government consultations and help ensure effective pre-legislative scrutiny.

- In considering legislation Parliament should undertake close scrutiny in a climate of effective deliberation, seeking to identify and maximise a national consensus where feasible.

- Legislators should regularly and influentially scrutinise the current implementation of policies, and audit the efficiency and effectiveness of government services and policy delivery.

Although floor debates in the main Commons chamber – and the rowdy weekly showcase of Prime Minister's Question Time – are the dominant images of the UK Parliament, like any legislature the House of Commons also does a lot of detailed work holding the government to account. (The Lords have their own, smaller and much less influential group of select committees, but our focus in this chapter is on the work of the democratically-elected Commons.)

## Recent developments

The House of Commons select committee system has grown in influence over time. In the past, the issue of reconstituting committees after a general election has sometimes been delayed, and until 2010 the party whips in the Commons 'fixed' who would chair which committee. Now, however, committee chairs can be elected by MPs, if there are multiple candidates. Table 1 shows that only nine contests were held for the 26 chair positions in July 2017. But this low number reflects the fact that many influential and well-liked chairs continued unchallenged from the 2015-17 Parliament.

**Table 1: Key characteristics of the 26 select committee chairs in July 2017**

| Party | | Experience | | Type of committee | | Competition for chair | |
|---|---|---|---|---|---|---|---|
| Conservative | 14 | Backbench | 10 | Departmental | 18 | One candidate | 17 |
| Labour | 10 | Cabinet/shadow cabinet | 9 | Parliamentary | 5 | Election held | 9 |
| Liberal Democrat | 1 | Minister | 4 | Cross-cutting | 3 | | |
| Scottish National Party | 1 | Junior minister | 3 | | | | |

*Source:    Computed from data in* HC Speaker, 2017

Table 1 also shows that half of the chairs now had ministerial experience, with nine having had earlier cabinet or shadow cabinet roles – a testimony to the increasing salience of these chairing roles (which also attract a salary addition for the MPs involved). There are 18 single-department committees, five that handle internal parliamentary issues, and three cross-cutting committees, of which the Public Accounts Committee is best known. The distribution of chairs broadly follows the proportion of MPs belonging to each party.

After the EU referendum the Department of Exiting the EU Committee, chaired by Labour's Hilary Benn, was set up to scrutinise the work of DExEU. It has published a critical first report into the UK's negotiating objectives.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The select committee system now provides one committee scrutinising each Whitehall department's executive actions and implementation processes in detail. Select committee members build up worthwhile expertise in that area and a more effective 'corporate' spirit than in the past. Attendance at committee sessions has increased and there is more of a premium on effective engagement by members. | Select committees only work effectively when they operate in a bipartisan manner, with MPs from different sides of the committee endorsing the same report. Creating this 'corporate' spirit is difficult and biases the topics that committee chairs investigate, because they are anxious to secure wide agreement. As a result critical issues dividing the parties may not be examined as 'too difficult'. Sometimes committees will take on an issue wanted by party A, but only so long party B also gets its favourite issue tackled. These cases rarely work well. |
| Select committee chairs are now paid a worthwhile salary increment and attract a good deal of media attention. So their role has grown in salience – increasingly attracting serious ex-ministers and genuinely expert and less-partisan backbenchers who can command regular engagement from committee members. | Departmental committees mostly operate by calling 'witnesses' to give evidence, and taking written evidence from relevant or involved bodies. This is a weak and old-fashioned form of information gathering, and produces a lot of claim and counter-claim that committees do not have the staff or expertise to critically or objectively assess – except in a vague, judgement-of-plausibility manner. |
| Since mid-2007 select committees have had the capability to review major ministerial appointments of people to head quasi-government agencies. These pre-appointment hearings now strongly conditions how ministers and top officials make these appointments. Out of a set of 59 hearings so far, appointments have divided committees or been rejected 13 times. Some very serious government jobs have been involved. MPs on the Education committee initially rejected the government's proposed head of Ofsted (which monitors schools' quality) after a lacklustre performance at their hearing. And a candidate for Bank of England Deputy Governor resigned in 2017 after the Treasury Select Committee criticised incomplete answers that she had given them. | There is strong evidence of a past lack of diversity in who is invited to give evidence, partly reflecting biases in who sits on committees. Women MPs have been severely under-represented on some committees, especially Defence and Foreign Affairs whose members have been 93% male since 1979. Women MPs are most prominent on the health and education committees. A study of nearly 600 witnesses in 153 hearings in 2013 found that 75% were men, with some committees like PAC hearing from nine men for every woman appearing. Other groups strongly favoured were academics, think tanks and trade associations, whereas trade unions were rarely invited. |

| Current strengths | Current weaknesses |
|---|---|
| The support staff for chairs and committee members has increased somewhat. And in response to criticisms of a lack of witness diversity, select committees staff and chairs have recently been more proactive about soliciting evidence from people who might not normally volunteer as witnesses. | Select committees' powers to compel witnesses to appear and to tell the truth seem weak and undefined. Senior civil servants have to appear before select committees, but ministers may refuse. The committees can invite outsiders to appear, and they might be in contempt of Parliament if they fail to show up. Witnesses have to answer questions but can claim not to know or have information with impunity. Some corporate sector witnesses have made plain their unwillingness to be frank, without much come-back. |
| The Public Accounts Committee (PAC) benefits from receiving the National Audit Office's advice and 60 'value for money' reports per year. (NAO is the leading Parliamentary agency, providing an independent check for MPs that monies votes to the government were spent for the correct purposes and in an effective manner). Its hearings and final reports regularly attract media attention in addition to the NAO reports themselves. | Many PAC reports deal with single-department subjects, and could more helpfully be processed by the relevant departmental select committees. They could also benefit greatly from gaining access to the 800 strong NAO professional staff and expertise to boost their information-generating capabilities – but at present PAC 'exclusivism' has prevented most select committees from gaining any NAO assistance, except for a few cases. |
| The PAC Chair is always a senior opposition figure, and plays a significant role in giving some 'parliamentary' overview of secret spending and defence areas, signing off on some key projects. | The PAC's agenda is a crammed one, so that time devoted to cross-Whitehall issues is regularly squeezed by the pressure of single department reports, sometimes quite minor in scale. PAC members are necessarily generalists in terms of processing a random stream of reports across different departments, although they do develop experience of Whitehall spending and control processes. The NAO produces around 10-15 VFM reports per year that are never reviewed by any parliamentary committee because of capacity limits in the PAC. |

| Current strengths | Current weaknesses |
|---|---|
| Some revisionist accounts have defended legislative committees as operating to show up the 'viscosity' of different measures, alerting ministers of where changes are needed, even if the changes involved are always those proposed by ministers. Similarly, the 'inexpertise' of MPs on legislative committees has been exaggerated on this benign view (see below). | All NAO and PAC scrutiny occurs 'after the fact', and so is limited to a post hoc audit role. The NAO claims to save £9 for every £1 that it spends, but PAC plays no prospective or policy-warning role on decisions. Small amounts of NAO advice go to other select committees, e.g. checking the economic growth estimates included in the Chancellor's annual public spending statements. |
| The new DExEU committee has enjoyed an unusual amount of press attention, particularly after its questioning of David Davis, clips of which were widely circulated on social media. | The separation of legislative committees from select committees is unhelpful and reduces the ability to have legislation reviewed by experts, in favour of many members still being just partisan 'cannon fodder' primed to vote the party line whatever the problems that emerge in discussion. The deliberative quality of legislative committee sessions is also low, reaching a nadir in the Opposition day debates supposedly on the budget but in fact about any convenient issue for attacking the government. |
| **Future opportunities** | **Future threats** |
| The unexpected return of a hung Parliament in June 2017, just two years after the earlier 2010-15 period, may once more encourage MPs to be more assertive towards the executive on more issues – especially those that can command cross-party agreement. The Brexit process, for example, creates many opportunities for lobbying for changes, and Brexit divisions often cross-cut party lines. | The Brexit process is likely to involve extensive use of statutory instruments, over which Parliamentary surveillance has generally been weak. |
| Proposals for radical reforms, such as allowing the NAO to advise all departmental select committees, and for them to discuss all single department VFM studies in their area, could offer big improvements quickly to the staffing and information resources of select committees. | Radical proposals (such as that opposite) seem unlikely to be adopted, with select committees locked into obsolescent and high cost ways of operating via 'witnesses'. |

## Legislative committees

During the legislative process, most bills are sent to a Committee stage when a group of at least 11 MPs consider the proposed Act clause by clause in detail. Of course, the ministers attending come from the department involved and are matched by the shadow

cabinet frontbenchers that parallel them, and this brings a certain degree of different expertise to each discussion. But the remaining MPs are just those deputed by the party whips to serve on each committee. The government and opposition whips determine who will sit on each one, and each handles a varied stream of legislation in which the 'ordinary' members may have little expertise. There are generally six legislative committees operating in tandem.

Critics have historically argued that the committees have no real purpose beyond being a kind of 'mini-me' image of the Commons as whole, always dominated by a government majority and chair, and with over 99% of ministerial amendments moved at the Committee or report stages, and a success rate for non-government amendments of below 1%. Hardly any opposition amendments ever succeed, despite the fuss made by some authors about the greater incidence of backbench rebellions. Most MPs vote with the party line almost all the time, in Committee as much as on the House floor. Partisan timetabling considerations shape how 'line by line' scrutiny is, with guillotines often invoked. And Berry notes that 'sometimes whole sections of bills pass through committees without scrutiny'.

Some recent revisionist authors have argued that this picture is misleading. Russell and Cowley reported on a systematic examination of over 4,360 amendments on six bills, which at one level replicated the picture above. However,

> 'closer examination found that nearly three quarters of government amendments had little policy substance—being purely technical, clarificatory, or "consequential" on other amendments. Of those government amendments with substance that actually changed any of the bills, over 60%— 117 in total—were traceable to influence from nongovernment parliamentarians, usually through prior amendments withdrawn when ministers promised to reconsider. In most cases, there was no [government] defeat involved, but some changes were substantial'.

Similarly Thompson's 2013 study argued that:

> 'bill committees are the perfect conduit for changes to government bills. They enable ministers to effectively be lobbied by MPs. They are both the breeding ground for amendments to legislation and a platform for allowing policy issues which have already been aired by MPs through other parliamentary tools to be tagged on to a bill, making policy change more likely'. (p.89)

These arguments suggest that the Committee and Report stages of legislation can increase the 'viscosity' of different measures, pointing ministers and officials towards fixing the most egregiously damaging of their initial provisions. However, this remains an exceptionally modest role, and one that falls well below the rationale of careful deliberative debate and consideration that other legislatures in Europe can claim.

**The increasing salience of Select Committees**

Much that governments do uses executive capabilities and administrative discretion to deliver services, make regulations or undertake interventions in particular ways. The select committee system (founded in 1979) has provided an ever more influential mechanism for 'shadowing' each department and bringing legislators' views to bear.

The committees have especially been able to develop as independent forces for policy scrutiny since their Chairs have been paid extra salary amounts and elected by MPs, the membership of committees has been chosen by MPs, and their records of influential hearings and reports have grown their media and public profiles. Especially under the coalition government (2010-15), select committees became important venues for discussing controversial issues. Chart 1 show that there was a substantial growth in the mentions of Commons committees in the UK press. Setting the initial levels of coverage in 2008 at 100, then index numbers for both total press mentions and one average indicator (the mean for committee mentions) increased to 330 by 2012. The index number for a further average (the median press mentions) grew from 100 to 274.

**Chart 1: There was a substantial increase in press coverage of House of Commons Committees, 2008-12**
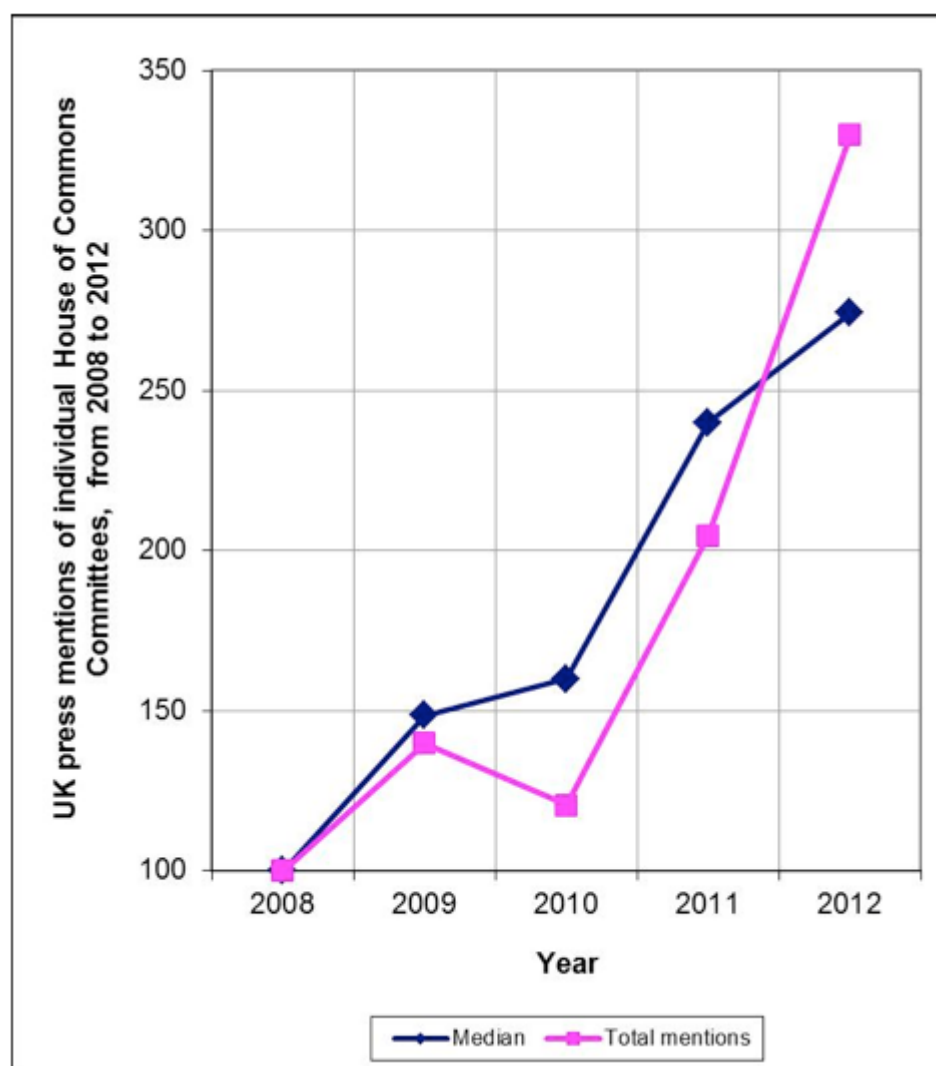


*Source:    Dunleavy and Muir, 2013. Analysis of Lexis-Nexis press database.*

Table 1 below provides a detailed view of which committees became more salient in this period, and which did not. The yellow rows show that much of the total increase in mentions in this period took place in four exceptionally prominent committees:

- The Public Accounts Committee, long rated the most influential Commons committee, and supported by the National Audi Office. At this time it had a dynamic new Chair in Margaret Hodge MP (and see below).

- The Home Affairs Select Committee was already the second-most important committee in 2008. Its press mentions increased sharply in 2011 and 2013, following the summer riots in London and the Committee's inquiries into them.

- The Treasury Select Committee was again an already important committee in 2008 under the Conservative chair Andrew Tyrie. In 2017 the former Tory

cabinet minister Nicky Morgan stood for and won election as Chair, quickly assuming a pro-active approach. And

- the Culture, Media and Sport select committee, whose prominence at this period grew greatly during the phone-hacking scandal over media behaviour. Both Rupert and James Murdoch were called to give evidence on the scandal, attracting global media coverage. This interest continued during the subsequent Leveson Inquiry process. But it may now have decreased considerably.

**Table 2: Trends in the UK press mentions of Commons' select committees, 2008-12**

| Committee | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Home Affairs | 295 | 405 | 302 | 989 | 2033 |
| Public Accounts | 557 | 644 | 639 | 813 | 1956 |
| Treasury | 213 | 418 | 277 | 308 | 530 |
| Culture, Media and Sport | 49 | 85 | 102 | 573 | 476 |
| Transport | 135 | 113 | 90 | 186 | 229 |
| Public Administration | 58 | 90 | 80 | 81 | 200 |
| Energy and Climate Change | 55 | 58 | 86 | 101 | 148 |
| International Development | 27 | 15 | 13 | 42 | 112 |
| Standards and Privileges | 143 | 333 | 181 | 98 | 94 |
| Scottish Affairs | 17 | 48 | 24 | 37 | 73 |
| Health | 30 | 36 | 42 | 54 | 70 |
| Environmental Audit | 83 | 54 | 50 | 79 | 62 |
| European Scrutiny | 16 | 15 | 40 | 68 | 58 |
| Defence | 81 | 94 | 73 | 108 | 56 |
| Education | 10 | 7 | 20 | 39 | 55 |

| Committee | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Business, Innovation & Skills | 0 | 10 | 49 | 46 | 54 |
| Work and Pensions | 17 | 27 | 18 | 58 | 42 |
| Backbench Business | 0 | 3 | 28 | 121 | 41 |
| Foreign Affairs | 44 | 65 | 40 | 42 | 36 |
| Commons Liaison | 13 | 44 | 28 | 17 | 34 |
| Justice | 25 | 30 | 32 | 31 | 32 |
| Procedure | 9 | 18 | 24 | 30 | 28 |
| Communities & Local Government | 25 | 33 | 16 | 18 | 24 |
| Political & Constitutional Reform | | 2 | 20 | 27 | 21 |
| Environment, Food & Rural Affairs | 13 | 11 | 9 | 8 | 18 |
| Northern Ireland Affairs | 14 | 9 | 22 | 12 | 9 |
| Welsh Affairs | 5 | 1 | 4 | 5 | 4 |
| Finance and Services | 0 | 1 | 1 | 0 | 2 |
| Administration | 0 | 0 | 0 | 1 | 1 |
| Members' Expenses | 0 | 0 | 0 | 3 | 1 |
| Armed Forces Bill | 0 | 0 | 0 | 3 | 0 |
| Commons Privileges | 1 | 0 | 4 | 0 | 0 |
| Regulatory Reform | 18 | 5 | 0 | 2 | 0 |

*Source:* *Dunleavy and Muir, 2013. Analysis of Lexis-Nexis press database.*

*Note:* *We searched across years in a standard grid, so committees may not exist in all years covered.*

However, the green rows in Table 1 also show that seven other Commons committees enjoyed a consistent growth of press coverage in this period. Overall, fourteen committees more than doubled their press mentions between 2008 and 2012. A further four saw smaller increases, while seven committees received less coverage.

Yet were select committees just more attractive 'talking shops' for the media? Or have their deliberations, and especially their recommendations had substantial effects on policy? The grounds for thinking they have start with their selection of issues to cover, which has tended to become topical and substantial over time.

One innovative study collated many thousands for recommendations to government made by six select committees over a long period, and then set out to chart out many of these were recommended, and how many were subsequently acted upon. Table 2 shows the key results for implementation of a large set of over 1,330 recommendations that could be tracked. The authors concluded with a strikingly benign assessment: 'Numerous committee recommendations are implemented by government, including many for major policy change'.

**Table 2: How recommendations from seven select committees were implemented by the government, or not (from 1997 to 2010)**

| Scale of change in recommendation | Fully implemented | Partially implemented | Limited attempts | Unclear if implemented or not | Clearly not acted upon | All responses |
|---|---|---|---|---|---|---|
| No/small change | 15 | 8 | 6 | 5 | 3 | 39 |
| Medium change | 8* | 10* | 10 | 13 | 12** | 52 |
| Large change | 1* | 1* | 1 | 1 | 3** | 6 |
| Scale unclear | 1 | 0 | 0 | 0 | 1 | 2 |
| All recommendations | 25 | 19 | 18 | 19 | 18 | 100% (n=1334) |

*Source:* *Computed from Benton and Russell, 2013, Table 1. The committees covered were those for BIS, Defence, Foreign Affairs, Health, Home Affairs, Public Administration (PASC) and Treasury. The period covered was the Blair and Brown governments.*

However, Table 2 shows that this is a highly 'stretched' interpretation of the actual findings. The figures with a single asterisk show that one in five (20%) of the trackable committee recommendations were both 'medium' or 'large scale' in their impacts, and also implemented by government. But one in six recommendations (15%) (with a double

asterisk) were at the same scale and were clearly rejected by government (while in a further one in seven case implementation was unclear). Large scale changes accepted by minister in fact formed only 2% of recommendations, whereas those rejected were 3%.

Of course, our interpretation here excludes the top row in Table 2 covering 'no change' or small change recommendations from committees. MPs and Commons officials will freely admit that there is an accepted art of writing 'chaff' committee recommendations, which suggest to ministers or officials that they should do something small that they already want to do anyway. This tactic allows the committee to look friendly and 'on the same page' as the executive. And it fosters government MPs supporting reports that make criticisms elsewhere, since ministers can agree to the easy bits. So although the top row in Table 2 shows another 23 to 29% of minor recommendations being implemented (versus only 3% not acted on), these cases probably are 'chaff', and so ought to be set aside.

Nevertheless, although committees' hit rate for acceptance and implementation of recommendation is far less than the over-enthusiastic revisionists suggest, it is still a pretty creditable record. Select committees remain one of only two areas where the Commons is clearly contributing to detailed policymaking.

**Legislative supervision of UK government spending**

The other key area is the post hoc scrutiny of government spending achieved by the Public Accounts Committee (PAC), acting on the reports of the independent National Audit Office, the UK's 'supreme audit institution' (or SAI). In international terms the NAO is perhaps the second most powerful SAI in the liberal democratic world (after the Government Accountability Office in the USA). With a constant flow of high quality reports to consider the PAC is a powerful committee, and is always chaired by a leading opposition MP, usually with past ministerial experience. For Permanent Secretaries attending PAC hearings is a stressful experience requiring a lot of preparation.

Yet it is easy to exaggerate the PAC/NAO influence. In a recent five year period NAO staff accounted for a third of witnesses to the PAC, and HM Treasury personnel for another 30%. Only seven ministerial departments or major agencies had more than 4 witnesses a year (Health, Defence, Defra, HMRC, Education, the Home Office and DWP), and another six had over one. Eight departments had one or less per year. In this period the NAO issued 40 VFM studies that tackled cross-government issues (like egovernment or environmental issues). But the PAC held hearings on only half of these (see Figure 13). MPs preferred to devote their time to the more easily media-understandable (and more frequently scandalous) reports on single departments. Just officially detailing already well-known cost over-runs and obvious mistakes made by Whitehall typically earned the PAC Chair more headlines than engaging with more difficult task of fostering more general and sustainable improvements in systems and policy-making.

More generally the influence of MPs over ex ante legislative budgeting in the UK is inherently small, because of very strong party discipline plus the restrictions in the

House of Commons standing orders which prohibit any ordinary MP from proposing an amendment to add even £1 extra onto public spending, unless they can provide the Commons clerks with a certificate signed by a minister. This blanket ban has spread from the UK to other Westminster system countries and to France and Ireland, and explains why cross-national studies show them as having exceptionally un-powerful legislature when it comes to influencing or shaping budgets. For instance, Joachim Wehner's index assigns the UK fifth to bottom place in a league table of legislatures' influence over public spending across 30 liberal democracies.

## Conclusions

Where once Parliament lurked almost completely impotently on the sidelines of policy-making, recent revisionist accounts have 'talked up' MPs' collective influence, with some justification. Yet the Commons is still far from having the 'full spectrum' and decisive influence that democratic criteria suggest are needed. Party loyalties inhibit criticisms and evidence-based reasoning. Budgetary consideration is largely a joke. And legacy procedural practices plus MPs' traditionalist attachment to inefficient and ineffective ways of working (like the witness system for select committees, instead of developing proper investigative staffs) have limited the legislature's role, despite some positive recent developments.

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## 3.3 How democratically accountable are the UK's security and intelligence services?

*Sean Kippin and the Democratic Audit team assess the ways in which the UK's four main security services are scrutinised, to ensure that they are operating legally and in the public interest. For matters that must be kept secret, 'compromise' forms of scrutiny have now been developed in Parliament. But how effectively or independently do they work?*
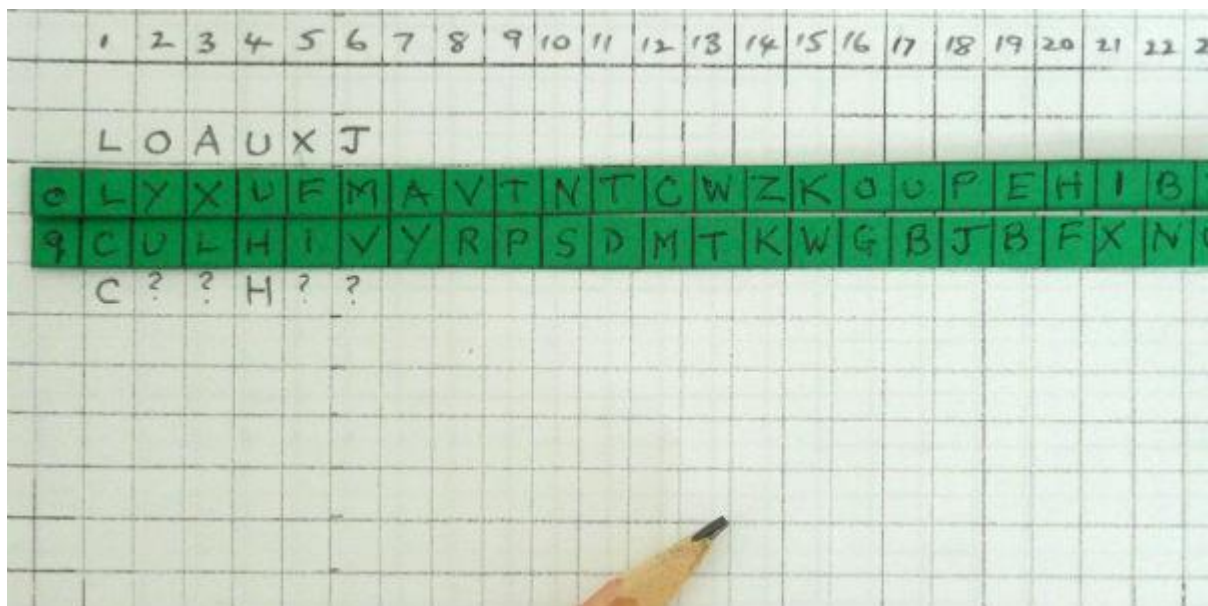


*GCHQ's activities have become significantly more complex since the days of code-breaking at Bletchley Park.*

Photo: *John Keogh via a CC-BY-NC 2.0 licence*

### What does democracy require for the accountability of security and intelligence services?

- Under normal circumstances, elected legislators normally must control all government services and state operations, either directly or indirectly (that is, via ministers), normally through full public and Parliamentary accountability

- At the same time, the state must also maintain a national security, intelligence and defence apparatus sufficient to protect citizens from terrorism and other harms, and to secure national defence – and for much of such activities maintaining secrecy is essential.

- Institutional arrangements must balance these contradictory requirements, ideally securing a degree of accountability while preserving essential secrecy.

- Given limited public accountability, it is of the first importance that legislative, ministerial and judicial controls are sufficient to ensure that the security and

intelligence services respect civil liberties and human rights, and operate within the law – e.g. with rigorous complaints and investigation processes that engage high levels of public trust.

In the nature of secret intelligence and espionage matters, there are limits on how far legislative scrutiny can operate via the normal parliamentary channels. Every liberal democracy in the world consequently provides some special machinery of control that is designed to manage the incompatibility between maintaining these vital specials services and ensuring public accountability.

## Parliament's Intelligence and Security Committee (ISC)

This is the main vehicle used in the UK. It is formally a joint committee of the Houses of Parliament. In practice it is Commons-dominated and is the major way in which MPs in the Westminster Parliament (plus a few peers) exercise a degree of control over the UK's intelligence and security services. These consist of

- MI5 (internal security),

- SIS or MI6 (overseas intelligence),

- GCHQ (electronic and other surveillance),

- the Defence Intelligence Staffs (military intelligence), and

- the Joint Intelligence Committee (JIC) in the Cabinet Office, which coordinates and sanctions major operations, reporting to the Prime Minister.

On the surface, the ISC looks quite like a normal Select Committee of the House of Commons, but when you look more closely it operates in an almost completely dissimilar way. Its nine members are appointed by the government in consultation with opposition party leaders (not chosen by vote of other MPs) and they are vetted. The Committee generally meets in private (although it has held occasional public sessions). It almost always questions security and intelligence witnesses in private, and issues only heavily vetted summary public reports, designed not to reveal any secret information. The Chair of the Committee comes from the government party, is appointed by the PM, and is very influential in settling its workflow and being the public face of its investigations and reports. They (and committee members) have often (but not always) had a background of supervising security agencies as ministers (see Chart 1 below).

The ISC is a kind of 'compromise' solution of a kind that is quite common in liberal democracies. However, a 2014 report of the Commons' Home Affairs Committee identified three 'shortcomings in this approach across many countries surveyed:

- 'the potential for political deference [to ministers and the intelligence services top brass];

- the over-identification of the [committee] members with the security and intelligence services: and,

- the danger confidential information provided to the committee might be leaked'.

## Recent developments

The 2010-15 ISC was criticised as a group of elderly 'trusties', all heavily committed to defending intelligence operations from criticism. Their average age was 63, they were overwhelmingly male in this period, and the ISC chair was Malcolm Rifkind (aged 67 when he finished, a former foreign and defence secretary), who also had extensive business interests in a number of related areas.

Serious allegations surfaced in the mid 2000s of UK agencies having colluded with the illegal 'rendition' of suspects by the CIA and US agencies; and of SIS agents knowing of and being complicit in the torturing of suspects by US or foreign intelligence services. The UK government made large payments to British citizens imprisoned in Guantanamo Bay and released without any charges (one of whom later died as a jihadist fighter in Syria). Links between UK services and the Gaddafi regime in Libya have also provoked controversy, and damages have been paid for a rendition of one person. The Committee investigated all the claims against the UK services in 2007 (in some fashion, undisclosed) and pronounced that the fears expressed about them were all unfounded.

In 2013, the scale of surveillance work carried out by Western governments was revealed by Edward Snowden, a US security contractor, who released a great mass of documents to the *Guardian* and *Washington Post* newspapers. They showed the existence of a series of programmes pertaining to the mining of phone, internet, and other personal communication data, and agreements to share said data between governments, without – in most cases – the knowledge or consent of citizen populations. Essentially GCHQ appeared to be running a 'swapsie' information deal with the US National Security Agency, whereby GCHQ bulk-spied on US citizens for its American counterpart (for whom this would be illegal), in exchange for the NSA bulk-spying on British and European citizens (for which GCHQ would normally need a warrant or ministerial clearance). According to the well-placed observer Ian Brown the scale and reach of these activities 'appeared to be a surprise to members of Parliament's Intelligence and Security Committee (ISC), let alone the National Security Council, other parliamentarians, and the broader public.' Under Rifkind's lead, the Intelligence and Security Committee rather promptly cleared GCHQ of any wrongdoing at all, which a former Chair of the ISC and Conservative Defence Secretary Lord King described as 'unfortunate' and 'pretty quick'.

In February 2015 Rifkind was involved in a press 'sting' operation (along with former Labour foreign secretary, Jack Straw), where *Daily Telegraph* journalists claimed both men offered to trade lobbying influence for advisor fees. Cleared by a limited Commons investigation, both men's public credibility was none the less impaired. In September 2015 Rifkind stood down as ISC Chair.

**The post-2015 ICS**

The new ISC Chair appointed in 2015 was the Conservative MP Dominic Grieve, a former Solicitor General (government law officer), who has been a prominent defender of the European Convention on Human Rights and someone with a strong civil liberties reputation. He has attracted press coverage over recent years for his stances on issues such as enforced removal of UK passports from citizens, the stalled Gibson Inquiry which looked into the treatment of detainees, and the potential implications of repealing the Human Rights Act. Since Grieve's appointment in September 2015, the ISC has produced two reports.

The most dramatic report was on drone strikes in Syria in which civilians were killed, at least three of whom were British citizens. David Cameron explained in 2015 that the deaths were the first time a UK drone had been used to kill someone in a country with which Britain was not at war. The report was rushed out in April 2017, with substantial redactions that the ISC had no time to challenge before the General Election. In it, the Committee expressed frustration that the Government had deemed the strikes a military issue and therefore outside the ISC's remit:

> "Oversight and scrutiny depend on primary evidence: without sight of the actual documents provided to Ministers we cannot ourselves be sure – nor offer an assurance to Parliament or the public – that we have indeed been given the full facts surrounding the authorisation process for the lethal strike against [one citizen] Reyaad Khan."

The other ISC report covered the Investigatory Powers Act (IPA), also known as the 'snoopers' charter' which the Conservative government argued was urgently needed. The Committee was sceptical of the need for bulk hacking powers and said that the bill should include privacy protections. The Act was slightly modified to allay these concerns, with a clause inserted to the effect that mass surveillance powers were not to be used if less intrusive means were available. The civil liberties group 'Liberty' continues to call for a judicial review of the wide-reaching bulk surveillance powers available to government departments and the security services under the IPA.

Demand for further reform of the ISC remains on the agenda. Only two of nine ISC members are women, and both stood down at the 2017 General Election. Lord MacDonald, a former Director of Public Prosecutions, has argued that the Committee ought to become a select committee like any other, and criticised the 'partial' nature of the reforms enacted by the 2013 Justice and Security Act. He argued that the reforms

> 'unwittingly or not, actually weakened democratic oversight of the security and intelligence agencies through the introduction of closed hearings into our civil justice system in national security cases, while simultaneously failing to strengthen the structures of direct parliamentary oversight in any meaningful way.'

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The ISC follows the pattern of a common, minimum or compromise solution used in several liberal democracies. | The Committee has a modest staff, no investigatory powers and can only conduct very limited private hearings with the heads of agencies. |
| It creates some appearance of an independent Commons capacity to investigate - one that is separate from ministers. | The ISC is in principle able to consider any operational matter, but only if it is a matter of significant national interest and does not form part of an ongoing operation. Since security operations often take place over a long period, this is a significant restriction. |
| For the first time, the heads of the security services were questioned in front of the ISC in public, and the Director of MI5 has in addition been interviewed on the Today Programme, suggesting a new willingness to engage with the public via the media. | Despite the ability to request information from the security services and other governmental bodies engaged in intelligence work, sensitive material is subject to veto at Secretary of State level on grounds that are not limited to national security. |
| ISC members are able to require the security agencies to produce information pertaining to their activities, a stronger power than is granted to standard Select Committees which only have the power to 'request' departmental information. | Inherently the Committee is not normally able to publish much of the evidence that it has taken, but can only pronounce its conclusions. |
| Under Dominic Grieve's chairmanship, the ISC has shown a willingness to defend privacy concerns in the face of bulk surveillance. | The ISC remains to a considerable degree in hoc to the government, with the Prime Minister and Leader of the Opposition nominating ISC members. Additionally, the Prime Minister continues to receive ISC reports ahead of publication, and retains the right to choose the timing of publication, and even to veto the publication of certain elements of the report. (This scrutiny power is probably mostly delegated to the Permanent Secretary who chairs the Cabinet Office's Joint Intelligence Committee). |

| Current strengths | Current weaknesses |
|---|---|
| The Committee has also reported on UK drone strikes, although its report was heavily redacted. | The committee has no legal obligation to investigate and make public the kinds of intelligence service work which may create controversy due to invasion of civil liberties or human rights. Nor does it have any duty to educate or to explain the intricacies of intelligence work to both parliamentarians and members of the public. |
| The security services have made efforts to recruit a more diverse workforce. | The ISC remains a one-off and heavily 'siloed' body with little transfer of knowledge or expertise from a core group of representatives to the wider Parliament. |

| Future opportunities | Future threats |
|---|---|
| The new ICS Chair (Grieve) has a good reputation for taking rights issues seriously, and legal knowledge. | With the growth of violent extremism, and other threats, externally, and the increasing scale of homeland security interventions, the absence of more credible Parliamentary safeguards for UK citizens may fuel problems. |
| The Justice and Security Act (2013) ended the anomalous situation by which the secretariat to a Parliamentary Committee was provided by Cabinet Office civil servants (itself a government department with intelligence responsibilities). So the ISC now has its own, dedicated staff - which may help it to take a more independent attitude over time. | The provisions of the RIPA 2000 (Regulatory and Investigatory Powers Act) are being greatly extended by current legislation - giving security services greater powers to hoover up the electronic communications of all citizens without warrants. ISC has no apparent resources for effectively monitoring the use of such powers. |
| | If the Government deems an issue a military one then it falls outside the ISC's remit. Changing methods of warfare make this an increasingly likely occurrence. |

**Chairs of the Intelligence and Security Committee**

This key role has tended to be given to former ministers, with a preference for those who have served in governmental positions in which security clearance is required. Table 1 below shows that only Ann Taylor and had served in ministerial positions that did not pertain to security matters prior to her appointment.

**Table 1: Chairs of the Joint Intelligence and Security Committee since its creation in 1994**

| Chair | Time position held | Former government positions (prior to JISC) | Party |
|---|---|---|---|
| Dominic Grieve | 2015- | Attorney General* | Conservative |
| Sir Malcolm Rifkind | 2010-2015 | Foreign Secretary* <br> Defence Secretary* <br> Transport Secretary <br> Scottish Secretary | Conservative |
| Kim Howells | 2008-2010 | Minister for Foreign Affairs* <br> Higher Education Minister <br> Transport Minister | Labour |
| Margaret Beckett | Jan-Oct 2008 | Foreign Secretary* <br> Environment Secretary <br> Leader of the Commons <br> President of the Board of Trade | Labour |
| Paul Murphy | 2005-2008 | Welsh Secretary <br> Northern Ireland Secretary* | Labour |
| Ann Taylor | 2001-2005 | Government Chief Whip <br> Leader of the Commons | Labour |
| Tom King | 1994-2001 | Defence Secretary* <br> Northern Ireland Secretary* <br> Employment Secretary <br> Transport Secretary | Conservative |

*Position involves supervising security services*

### Reporting by the Committee

The Intelligence and Security Committee is now required to release an annual report on 'the discharge of its functions' and 2013 legislation 'enables it to make any other reports as it considers appropriate concerning any aspects of its functions'. This differs from the situation before the 2013 Act was implemented, which required the ISC to make its reports to the Prime Minister alone. However, the Prime Minister still enjoys foresight of reports and can delay their publication or veto the release of certain information.

The committee may also make other reports on issues and topics which it views as important. For example, in November 2014, it produced a report on the London murder

of an off-duty soldier Lee Rigby in a London street. It also released a report entitled 'Women in the Intelligence Community' in March 2015. The same month, it published 'Privacy and Security: a modern and transparent legal framework' showing the range and frequency of ISC reports. After Donald Trump claimed that President Barack Obama had asked the UK to wiretap him while he was candidate for the presidency, Dominic Grieve said in a statement that it was 'inconceivable' that GCHQ could have done so.

### Political neutrality, transparency and openness

Before 1994 the UK's official attitude to the security services was not to even acknowledge their existence. A more open approach has also now lead some of the main UK security agencies recently to engage more actively in public debate, partly because they use public appearances to lobby for increased surveillance powers in battling terrorism, cyberattacks and major crime. The Director of MI5 Andrew Parker agreed to be interviewed by the BBC's *Today* programme in September 2015 – but then did not reveal anything by way of new information. Instead Parker used the interview to justify the passage of the draft Investigatory Powers Act. Robert Harrington, the normally reclusive head of GCHQ, wrote an opinion piece for the Financial Times in which he made the case for a new understanding between the security services, social media companies, and the public.

The first ever evidence session at which ISC members publicly questioned the agency heads was held in late 2013. An academic expert on the ISC, Andrew Defty, noted that:

> 'Some of the questions were clearly designed to allow the agency heads to make prepared statements dispelling popular myths about their work. It is hardly tenable, for example, that [the then-ISC Chair] Sir Malcolm Rifkind really believes that GCHQ collects information on "the majority of the public". But his suggestion that they did, allowed the head of GCHQ to refute the notion'.

### Conclusion

The Intelligence and Select Committee remains an imperfect and very limited body for the regulation of the large, powerful, and secretive intelligence services. Despite recent reforms which have seen the body become a committee of Parliament, and influence over its membership extended to Parliament, it is still a body over which the government and Prime Minister exercise an enormous amount of influence. Choreographed evidence sessions between the committee and the Service heads suggest an over-co-operative, too close relationship. So too does the past willingness of the committee to very promptly exonerate the GCHQ in regard to the Snowden revelations and the charges of data collection and surveillance exceeding the agency's remit – a clearance that occurred while the revelations were still emerging. Although the ICS criticised the lack of privacy safeguards in the Investigatory Powers Bill, it did not secure major changes in the final Act.

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# 3.4   How undemocratic is the House of Lords? How could it be reformed?

*Sonali Campion, Sean Kippin and the **Democratic Audit team** examine how the UK's deeply controversial current second chamber, the House of Lords, matches up to the criteria for liberal democracies with bi-cameral legislatures. Now an almost-all appointed Chamber, the House of Lords has had some prominent or more bipartisan influence on moderating Commons proposals. But its members remain completely creatures of patronage, and wholly unaccountable to citizens. All parties except the Tories now support its replacement by an elected Senate.*



*Clerks sit at the Table of the House of Lords.*

**What does democracy require for second chambers in legislatures?**

- All legislators with a capacity to approve, amend or reject legislation should
    - either (and preferably) be directly elected by voters, or
    - be elected/appointed indirectly by the elected chamber, or by a government fully accountable to the elected chamber

- In a liberal democracy no legislator should sit in a second chamber (or upper house) simply by virtue of their birth, wealth, or as a result of donating money or services to party politicians.

- Serving in the second chamber may confer distinction, but no part of the legislature should form an integral part of an aristocratic or societal honours system.

- Any appointment of legislators to a second chamber should be vetted by a genuinely independent regulatory body. Mechanisms should be in place to remove legislators who breach legal or ethical standards.

- In any bi-cameral legislature, an upper house should be designed to realise a combination of the following specific constitutional and political advantages:

  o Act as a constitutional and policy check on the majority in the elected house, especially by offering a safeguard against legislative changes that breach democratic principles, impair rights or are otherwise ill-advised

  o Facilitate the technical operation of legislative drafting, scrutiny and amendment

  o Improve the accountability of the executive as a whole to the legislature and to public opinion

  o Increase the number or range of access channels from civil society to the executive, in equitable and accountable ways

  o Re-balance the geographical representation of different parts of the country – for instance, to secure more equal or greater influence for all component regions/provinces/states within a country

  o Improve the social representativeness of legislators

  o Widen the range of expertise amongst legislators as a whole

  o Provide a mechanism to encourage the continued engagement of 'emeritus' politicians in public life

  o Offer a measure of policy continuity, especially on issues where civil society actors must make decisions with some long-run predictability.

**Recent developments**

In 2012, the coalition government introduced the House of Lords Reform Bill to the House of Commons. The Bill would have created a smaller House of Lords in which a large majority of representatives would be chosen in elections by a system of proportional representation, but where a substantial minority of peers would be appointed more or less as now. Additionally, space would be reserved for appointed 'ministerial members' and Church of England Bishops. The reforms were essentially wrecked by the opposition of Conservative backbench MPs, combined with the refusal of the Parliamentary Labour Party to facilitate debate (citing opposition to the proposed timetable rather than the substance of the reforms). Some tiny reforms were introduced in 2014 to enable peers' voluntary retirement, to exclude those given a prison sentence of more than a year, and to allow peers to be excluded if they did not attend the House for an entire session.

Calls for reform have persisted, particularly since the deputy speaker Lord Sewel was forced to resign, following revelations that he had been filmed taking drugs with prostitutes and commenting in derogatory terms on the Lords' expenses system.

Widespread public and media outrage over a string of misconduct incidents, and unease over the role of party political donations in securing peerages for governing party supporters especially, have been backed up by continued demands for a major reform of the House of Lords. The Liberal Democrats are firm in wanting a democratically elected chamber (but nonetheless have a full quota of members themselves). The Scottish National Party refuses point blank to make any party nominations. Since the SNP now controls every Commons seat in Scotland bar three, has been the largest party in the Scottish Parliament since 2007, and has formed the majority government there since 2011 (and looks likely to continue in power there until at least 2020) – their deliberate and long-term absence makes the Lords even more grossly unrepresentative and south-east England-centric than ever. Chart 1 shows the current party make-up of the House.

## Chart 1: Current totals of Lords by party or group
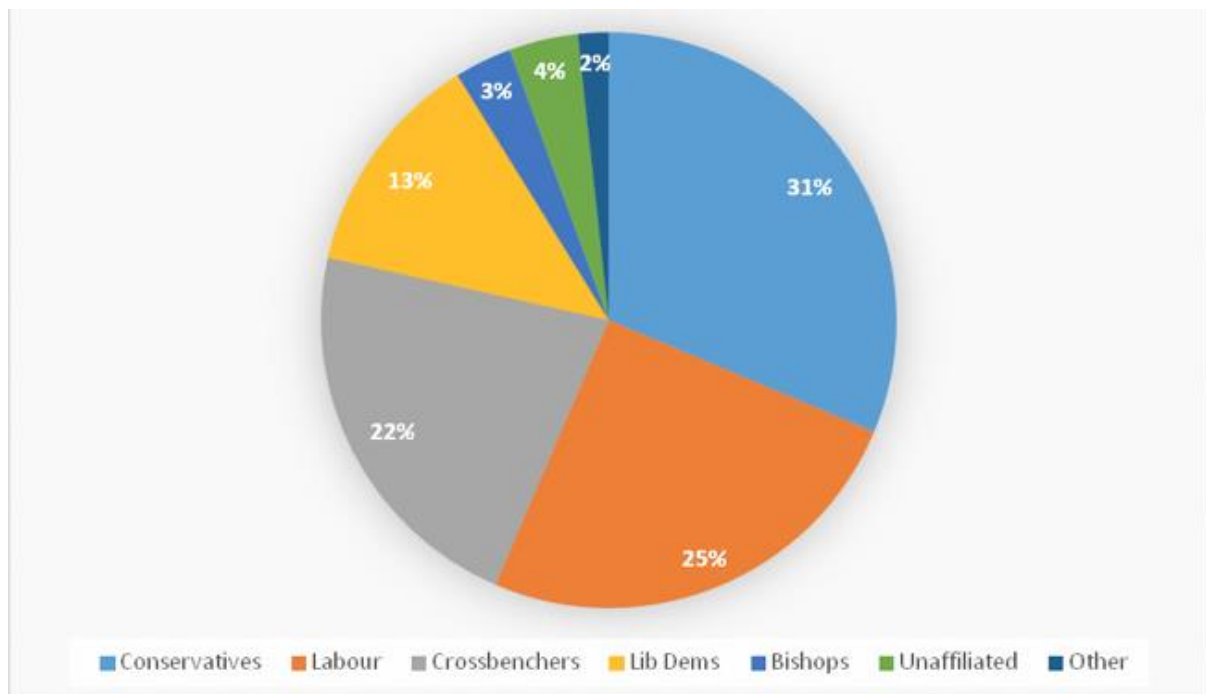


*Source:    Parliament.uk*

For Prime Ministers and opposition leaders alike, the ability to appoint peers (without any limit) has been politically convenient. David Cameron created new peers faster than any of his predecessors, following a policy that the membership of the House of Lords should be roughly in proportion to the party voting totals at House of Commons elections. Chart 2 shows that the size of the Lords has increased by 27% since 2000, when the blue arrow indicates most hereditary members were removed (if we look at absolute members) and by 21% (if we look at actual eligible members). There is a constant tendency for potential members to decrease, as elderly peers die, offset by bouts of PMs creating new peers for their party (and pro rata-ing for other parties making nominations). (Potential members include those who have retired, or taken leave of

absence – it can be seen that in recent years the orange line has again risen above the blue line). The only other countries in the world with second chambers larger than the first are the People's Republic of China, Kazakhstan and Burkina Faso – none of them liberal democracies.

**Chart 2: House of Lords membership and attendance from 1992 to 2015**
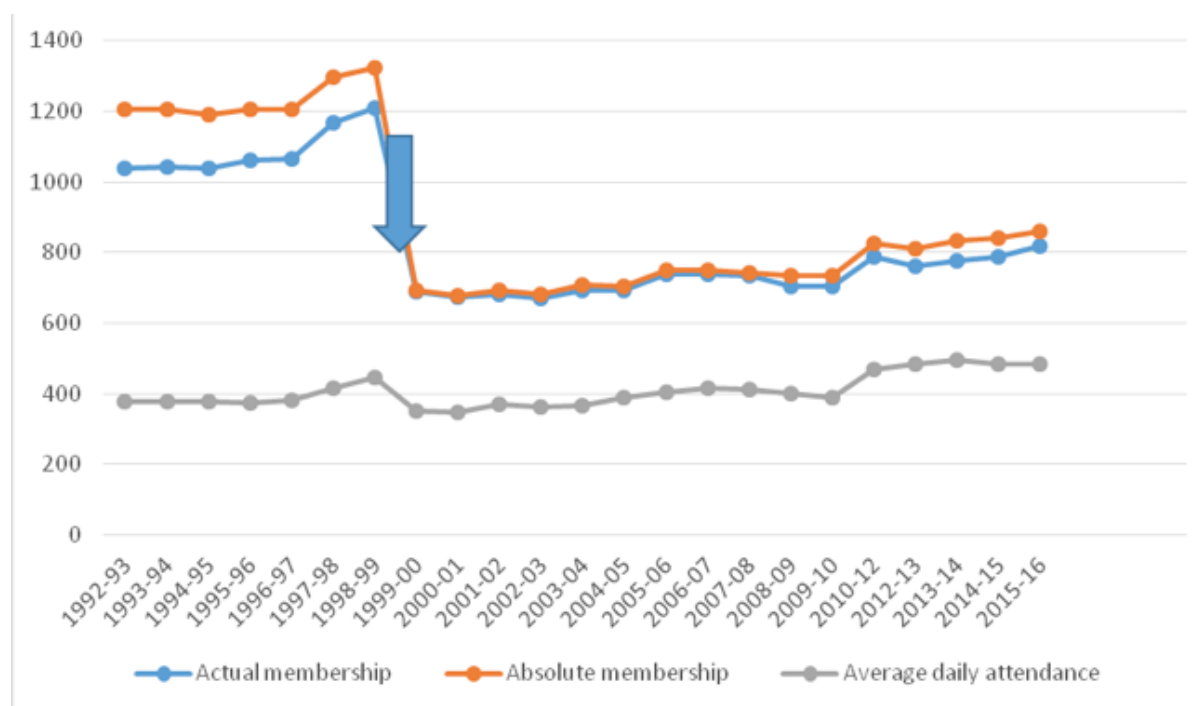


During the 2010-15 coalition, both Tory and Liberal Democrat peers tended to support their government's legislative proposals, so that with limited crossbench backing most laws could pass unscathed. However, after the general election the Conservative majority government (with less than a third of peers) has faced both Labour and Liberal Democrat peers in opposition (nearly two-fifths of the House). Since May 2015 ministers have already been defeated 81 times in the Lords, compared to 99 times in the previous five years of coalition. Yet in August 2015 Cameron dismissed the question of Lords reform and reiterated his ad hoc scheme for the numbers of peers to 'reflect the situation in the House of Commons', shortly before appointing 40 more peers (of whom 26 were Conservatives) in the Dissolution Honours and a further 16 (13 of them Conservative) in his Resignation Honours. This final list attracted particular criticism for its alleged 'cronyism', with a number of key Conservative aides and donors awarded peerages. The only Labour nominee, Shami Chakrabarti, had chaired an inquiry which largely cleared the party of charges of anti-Semitism three months earlier. In total, Cameron appointed 190 peers during his premiership, a faster rate than any PM before him.

The increased Tory representation did not prevent the Lords voting in October 2015 to delay changes to Tax Credits until certain conditions were met. This move sparked

outrage from Conservative ministers, who argued that peers were overstepping their constitutional right by meddling with a budgetary matter (albeit intended to be implemented via delegated legislation). Opposition peers countered that the legislation was not a money bill but a statutory instrument, a method seemingly chosen by the government so as to avoid debate and amendment in the Commons, while the cuts themselves were in violation of election pledges given by leading Tories that tax credits would not be changed. Therefore, they argued, it was within their rights to ask the government to rethink.

The former chancellor, George Osborne, subsequently made a virtue out of dropping the tax credit cuts in his Autumn Statement. Nonetheless Cameron set up an inquiry led by the former Tory peers' leader Lord Strathclyde 'to conduct a review of statutory instruments and to consider how more certainty and clarity could be brought to their passage through Parliament' as a result of the dispute. The resulting Strathclyde Review report in December 2015 recommended that the Lords' (very rarely used) ability to veto statutory instruments should be scrapped, bringing these powers into line with the House's powers over primary legislation, where peers can only delay action for a year. These contentious recommendations were received with scepticism by the opposition, and were widely criticised for threatening to undermine Parliamentary scrutiny of secondary legislation. Theresa May's government dropped the recommendations a year later, but with the proviso that they might be revived if peers failed to show "discipline and self-regulation" and continued to veto statutory instruments.

An attempt to end the hereditary peerage elections, in which some or all of the House picks replacements to top up the remaining 92 hereditary peers after one dies, also failed in late 2016 after failing to receive government support.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
| --- | --- |
| In recent years, while observing the 'Salisbury Convention' to respect government's clear general election mandates, the House of Lords has proved willing to defeat ministers, even on flagship and other significant pieces of legislation. This change has led to somewhat greater checks and balances constitutionally and a little more scrutiny in the policy making process, especially on matters not presaged in a winning party's manifesto. | The House of Lords remains unelected. All peers hold their seats until they die and thus are not accountable to or removable by citizens in any way. |

| Current strengths | Current weaknesses |
|---|---|
| Although there have been some questionable appointments of peers over time, a substantial part of the public, many MPs and elites, and the Lords themselves believe that peers bring valuable additional expertise into public life. | The value of patronage power for PMs and party leaders means that the Lords has increased hugely in size (see above). Costs are also substantial - the average peer claims over £25,800 in expenses and allowances per year. One recent investigation also revealed that 15 peers had claimed an average of £11,091 each, despite not speaking in the main chamber during the 2016/17 session. |
| The social diversity of membership in the House of Lords has slightly improved in this century. There are now 209 female (26%) and 51 black or minority ethnic peers (6.4%). | Although outside peerage appointments are scrutinised, party nominations of peers are only lightly and inadequately appraised by a weak regulator (the House of Lords Appointments Commission). Major party donors can still effectively 'buy' peerages. |
| | Corruption and misbehaviour allegations against peers highlight the openness to abuse that inevitably follows when legislators are accountable to no one and lack any effective oversight. |
| | Ministers in the Lords are not held accountable to the same degree as their counterparts in the Commons. |
| | In all 92 hereditary peers still sit in the Lords, supposedly 'elected' but in effect a self-perpetuating oligarchy selecting new members from among the aristocracy with a tiny 'electorate'. |
| | Uniquely amongst UK religions, 26 Church of England bishops still have seats in the Lords. |
| **Future opportunities** | **Future threats** |
| All parties in the centre and on the left of UK politics are now committed to scrapping the Lords in favour of a wholly elected Senate. | The Conservatives remain resistant to any substantial reform of the Lords of any kind, but especially to introduce elections. |

| Future opportunities | Future threats |
|---|---|
| Systems of election using PR systems, and detailed possible rules and conventions for regulating a Senate's relations with the Commons and roles in policy-making, have now been worked out. So the traditional stance of Lords' defenders (pointing to small advantages of existing bi-cameralism as if they would be lost altogether, or suggesting that reform must create new tensions between the chambers) are less and less realistic. | Most existing peers will undoubtedly seek to wreck any serious reform of the chamber, resisting to the last ditch (witness the survival of the oligarchy of 92 hereditaries). |
| After the 2014 Scottish referendum, and the ad hoc EVEL (English votes for English laws) changes of 2015, the urgent need to reach a proper devolution settlement for all parts of the UK opens up a potentially key new constitutional role for an elected Senate. Greater devolution of Whitehall powers to English city-regions may also help in this area. | It seems likely that any substantial reform will need to be put to a referendum, at which only a coherent and low-cost scheme could succeed – and for which there is not yet consensus agreement between the parties or in public opinion. |
| Lord Grocott has made persistent efforts to abolish the hereditary by-elections system, introducing a private member's bill in the 2015-16 session (which was blocked at committee stage) and again in 2017-19 (which is awaiting its committee stage). | |

## Ministers in the House of Lords

At present around one in five ministers, 20 in all, sit in the Lords and are accountable only to other peers, providing no direct link between them and voters to create legitimacy and accountability. Admittedly, no Secretaries of State currently sit in the House of Lords. But the only form of scrutiny of peer ministers by MPs is currently through the Commons committees, which very infrequently ask them to give evidence. A possible reform would be to allow ministers from the Lords to answer MPs' questions in the House of Commons or in Westminster Hall.

## Independence of the House of Lords

The chamber continues to act with a reasonable degree of independence from the government, as shown by the tax credits defeat in autumn 2015, the difficult ride given to the controversial Health and Social Care Bill in 2012 (in contrast to its easy passage through the House of Commons) and the rebellion over the right of EU citizens to stay in the UK after Brexit. The mauling of ministers' proposal by peers in this case contributed to a government's 'pause' and re-consultation, following which the NHS

'reform' legislation was somewhat redesigned. These changes to more even-handed scrutiny have come as something of a shock the Conservatives, who always dominated the Lords under the hereditary system and when in power were therefore used to suffering far fewer defeats than Labour governments did. Furthermore, Lords defeats since 2010 have frequently been on significant pieces of legislation including some relating to immigration, pensions, anti-lobbying, financial services, children and families, welfare reform and legal aid. In many of these cases the amendments passed by the Lords were accepted by the Commons, often bringing about better policymaking. The pattern of defeats and amendments suggest that the Lords continues to play a significant legislative role on issues where the heavily whipped MPs in the Commons at times seem incapable or unwilling to act.

## Issues around membership of the House of Lords

Analysis by the SNP showed that nearly three quarters of 62 peers appointed in the second half of 2015 were former MPs, special advisers or party aides. Only four academics and two NGO or third-sector figures entered the Lords in this time, suggesting that little diversity of expertise is being brought into play by the current House. Just over a quarter of eligible peers are women and only 6.4% is black or minority ethnic. The only other parliamentary chambers in the world to still include hereditary members of the aristocracy are in the tiny polities of Tonga and the Kingdom of Lesotho. Territorial representation is particularly poor, with limited representation of those outside the South East of England. After a flurry of appointments during the 2000s, the House of Lords Appointments Commission – which has only appointed crossbenchers – has been told to recommend only two new appointments each year; in 2016 there were none. The only other parliamentary chamber in the world to include representatives from the state religion is the Islamic Republic of Iran.

## Expenses abuse in the House of Lords

The House of Lords periodically hits the headlines due to expenses scandals which highlight the on-going openness of the Upper House to financial misuse. In 2014 Lord Hanningfield was suspended for a year after being convicted of abusing expenses for a second time (he served time in prison for his first offence in 2011). Worryingly, Hanningfield offered to reveal another 50 Peers who were also claiming allowances for days when they undertook no work in the Lords, although he did not actually name anyone when pressed. He also claimed: 'I was unaware that what I was doing was wrong'. In 2015, alongside the allegations that Lord Sewel had spent public money on drugs and sex workers, the Lord Speaker, Baroness D'Souza, also came under fire for her 'downright frivolous' attitude to public money. An FOI request revealed she had fuelled substantial 'unnecessary' spending on ministerial cars and international travel. With ministers confirming plans to reduce MPs from 650 to 600 as part of the boundary review in order to "cut the cost of politics', the uncontrolled growth of the Lords seems even more problematic. Indeed, the Speaker Lord Fowler has said it is hard to justify.

**Proposals for reform**

In its 2017 manifesto, Labour called for a democratically-elected second chamber and, in the interim, the removal of the last hereditary peers (mostly Tories) and a 'wider package of constitutional reform' that would reduce the size of the House.

The Liberal Democrats previously reiterated a commitment to reform based on proposals in the failed 2012 Bill, while the SNP and Greens supported scrapping the Lords in favour of a fully elected chamber. All these stances seem to recognise the past attempts at 'tweaking the Lords' have not addressed the chamber's systemic problems, and that only a fresh, elected Senate can really bring about the changes that are needed.

However, in their 2015 manifesto the Conservatives recognised only the case for 'introducing an elected element', but emphasised this would not be a priority. Cameron flatly refused to discuss reform on the scale demanded by the opposition parties. Some commentators, including Lord Tebbit and Meg Russell. have even suggested Cameron might have deliberately undermined the Lords through his uncontrolled appointments.

By 2020 more than a quarter (211) of peers will be over 80, and Lord Steel has suggested introducing a retirement age. However, Russell has pointed out that this measure if adopted alone would lead to an uneven party balance, and would not prevent prime ministers from appointing large numbers of new peers to replace them. Even simply imposing a cap on numbers would reduce the proportion of crossbenchers, since PMs tend to appoint overwhelmingly from their own party.

**Conclusion**

New Labour's compromise changes to keep only a self-perpetuating oligarchy of hereditary peers in the House of Lords and to move it to being an overwhelmingly appointed-for-life body appear to have perhaps increased its role and significance. However, the case for reform is also now impossible to ignore. The growth in membership and costs is unsustainable, its territorial representation is lamentable, the UK's fourth-largest party is boycotting it, and the current members lack all democratic accountability and legitimacy. The Lords are sustained only by Conservative party support, its convenience as a source of Prime Ministerial patronage and the still-significant barriers to meaningful reform. If current government quiescence and the self-interested opposition of peers themselves are to be overcome, opposition parties favouring major reform need to crystallise (and coordinate) their proposals for replacing the Lords with an elected Senate, potentially through a Constitutional Convention.

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# 4. How democratic and effective is national government at the UK level?

- In terms of basic constitutional law
- The core executive and government
- The civil service and public services management systems?
- In terms of Brexit
- In the basic structure of devolution settlements

# 4.1   In terms of basic constitutional law

*The foundations of any liberal democracy lie with its constitutional arrangements, which in the UK are famously diverse and uncodified, with no single written 'constitution' document.* **Michael Gordon** *looks at how to assess the democratic basis of constitutional law, and how well recent experience suggests that the UK has been performing.*



*Demonstrators outside the Supreme Court during the Miller case, December 2016.*

Photo:      *Garry Knight. Public domain*

**What would a democratic basic constitutional law look like?**

A democratic basic constitutional law should meet a number of formal and substantive requirements.

- Formal democratic requirements

- The rules of the constitution need to be – so far as possible – clear, accessible to, and understandable for citizens and officials.

- Some generally accepted processes (both legal and political) are needed through which inevitable ambiguities or disputes about the rules can be settled in inclusive and transparent ways.

- There must be a genuine possibility of the rules changing to enhance the democratic quality of the constitutional system. Processes for constitutional change should be transparent and underpinned by the democratic agreement of citizens.

- Substantive democratic requirements

- The actors allocated governmental power must be democratically chosen and removable, with effective processes of accountability for the exercise of constitutional authority (both political – to ensure responsibility for official action; and legal – to ensure the legality of official action).

- A variety of institutions will exercise a range of overlapping functions – including those of a legislative, executive and judicial nature. But institutions with democratic legitimacy must be allocated ultimate responsibility for crucial decisions.

- Opportunities for citizen engagement with and influence over those in power must exist. A range of channels should be established. And civil liberties which allow people to engage in individual and collective political activity must be ensured.

- There must be recognition and accommodation of different democratic desires in different parts of the state, with devolution or decentralisation of power so that decisions can be taken at the most appropriate levels of government.

**Recent developments**

The basic constitutional law of the UK is in the midst of a period of fundamental change. Perhaps this has been the case for over 20 years, since the election of the New Labour government in May 1997, which began an unprecedented era of constitutional reform. But the electorate's decision to exit the European Union at the 2016 national referendum, rejecting the pro-Remain position adopted by the largest groups inside the UK's three main political parties, will see a further transformation of constitutional law in the UK.

For 43 years the UK constitution adapted to accommodate membership of the EU, and the obligations which it imposes. Now Brexit will see domestic constitutional law reshaped to reverse many of these changes. The supremacy of EU law over domestic law will be removed by the 'Repeal Bill'. And we will very likely see the return of law-making competence from the European Union institutions to the UK Parliament, and to the devolved legislatures in Scotland, Northern Ireland and Wales. Depending on the nature of any future relationship agreed with the EU, and the obligations that may flow from a possible free trade agreement, this may include the reacquisition of authority in areas including agriculture, fisheries, consumer rights, workers rights, product standards, competition, public procurement, immigration and trade.

This will be a significant change to the constitutional authority of the domestic institutions, which had previously opted to combine their decision-making power with that of other member states in a process of EU-wide cooperative law-making. But it will also represent a major challenge for the UK constitution, as the institutions of government attempt to deal with this unprecedented shift, across multiple strands of activity. There is the legislative challenge of preparing the UK for the withdrawal of EU law; the diplomatic challenge of negotiating exit and potentially a new relationship; the policy challenge of making effective decisions in areas of reacquired competence; and

the scrutiny challenge for Parliament and the courts in ensuring that all of this is done in a legitimate manner.

Yet Brexit is just one of a number of high profile constitutional developments in recent years with potentially far-reaching implications. We have seen an independence referendum in Scotland in 2014, a national general election in 2015, the EU referendum in 2016, and a further general election in 2017. The UK constitution is facilitating repeated high-level democratic exercises – some easily anticipated, like the 2015 election, others less so, like Theresa May's snap 2017 election. In different ways, the two referendums might perhaps be viewed as inevitable, given the political environments cultivated by successive UK and Scottish governments, both from positions of weakness and strength.

This political turmoil has also left the UK constitution exposed to very rapid change. While the 2014 independence referendum did not lead to the departure of Scotland from the UK, it did prompt further far-reaching devolution of powers. It also raised expectations in other devolved governments, leading to further devolution for Northern Ireland and Wales. The 2015 election created the conditions for the 2016 referendum, which led to the end of one government, the formation of another, and in less than a year a further general election. The major changes that will flow from Brexit have also therefore been complicated further by the hung Parliament which resulted from the 2017 election, and the uncertain authority of Theresa May as Prime Minister.

We might therefore have reached (or passed) the point of constitutional fatigue – with radical change occurring at an intense pace both to the rules of the constitution, and to the position and authority of those allocated constitutional powers. And while fatigue may be setting in, the pace of change is only likely to accelerate, with new constitutional challenges resulting from the reshaping of the UK which is underway. For example, Brexit has great potential to trigger further change to the union, as we calls are made for a second independence referendum in Scotland, or a border poll on the reunification of Northern Ireland with the Republic. The confidence and supply deal negotiated by the Conservatives with the DUP to sustain the minority Tory government in office has the potential to destabilise efforts to restore devolved government in Northern Ireland, with a return to direct rule from Westminster for a considerable period a serious prospect. Given the instability of the present government, a further election before 2020 also looks more likely than not.

While the UK's constitutional politics have reached a level of almost peak unpredictability, there has been a less obvious, gradual shift in the position of the courts. The expansion of judicial powers made necessary by EU membership were supplemented considerably under the Human Rights Act 1998 – which gave the judiciary new powers and duties to assess the compatibility of official acts with human rights. In the twenty first century this has been accompanied by the development of a striking constitutional self-confidence amongst judges. The most senior judges were relocated from the archaic Appellate Committee of the House of Lords to a new Supreme Court, by the Constitutional Reform Act 2005. On the face of it, this did little to change the pre-existing substantive independence of the judges. But this significant

'rebranding' exercise has profoundly reinforced the judges' willingness to engage with constitutional questions in bolder ways.

The Supreme Court has recently begun exploring common law constitutional frameworks in novel ways (*HS2*), challenging the otherwise clear language of statutory provisions (*Evans*), and gesturing at the possibility of exceptional limitations on the UK Parliament's sovereign law-making power (*Moohan*). The peak of the judges' new prominence was the *Miller* case, on the constitutional requirements for commencing withdrawal from the EU. There was a furious academic and public debate about how this could be done, as these legal issues were considered in the High Courts of England and Wales, and Northern Ireland, before progressing to the Supreme Court. By a majority of eight Justices to three, the Supreme Court held that a new Act of Parliament was required to authorise the Prime Minister giving notice of the UK's intention to leave the European Union. This was an affirmation of the decision of the High Court of England and Wales, albeit on somewhat different grounds, based ultimately on the premise that Brexit would cause a change to the legal sources of the constitution of such magnitude that it could not be commenced by the government using its royal prerogative powers to conduct international affairs. The majority decision by the Court might be criticised as being high on constitutional principle, but lacking in rigorous interpretation of the relevant statute establishing the status of EU law within the UK, or sensitivity to the broader political framework allocating different institutional responsibilities. Yet even aside from the major results of these cases, the shift in judicial power is both a complex and important phenomenon. It raises fundamental questions about the changing role of non-democratic actors in the UK's constitutional system, especially within a period of extraordinary realignment.

### Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| **Current strengths** | **Current weaknesses** |
| --- | --- |
| The era of reform to the UK's constitutional law started by New Labour in 1997 has had generally positive results. Those changes have either been extended, e.g. the further devolution of powers to democratic institutions in Scotland, Wales and Northern Ireland, or proved resilient to retrenchment, e.g. the Freedom of Information Act 2000. | Despite the era of reform, non-democratic institutions remain, and wield considerable power. The House of Lords is only partially reformed and growing in size, and is increasingly relied on as a check on government and the House of Commons. Public debate about the monarchy is absent, even though the Queen has been ever more insulated from key political decisions (such as that relating to the formation of a government in a hung Parliament by the codification of rules in the Cabinet Manual. |

| Current strengths | Current weaknesses |
|---|---|
| Frequent opportunities exist for the electorate to freely express their will, both in parliamentary elections and referendums, and for citizens to shape the policy agenda, e.g. via the parliamentary petitions website. | The rapid extension of devolution has also posed challenges - notably the pace of change in Scotland; difficulties achieving consensus in Wales over the new reserved powers Act of 2017; recent problems in establishing a government in Northern Ireland; and some inconsistencies in the Combined Authority deals in England. There has been a lack of transparency or citizen engagement in the process. Moreover, establishing English Votes for English Laws in the Westminster Parliament may have consequences for the equality of MPs, and for the wider UK union across countries. |
| | Only limited critical or considered debate has taken place about the increasing prominence of the courts, especially given longstanding concerns about the total lack of ethnic diversity and dramatic under-representation of women among the senior judiciary. Also important are the increasing powers over moral-political issues that judges now exercise as a result of the Human Rights Act 1998, without being subject themselves to regular accountability processes. |

| Future opportunities | Future threats |
|---|---|
| Further strengthening and broadening of devolution across the UK may be achievable. Continuing decentralisation of aspects of decision making can create and reinforce new sites of democratic activity to challenge and compete with the Westminster institutions. (However, there are also real concerns about the democratic engagement of citizens in the process of deciding what to devolve). | The scale of the Brexit process will test the capacity of the UK's political institutions to the limit. There will be a strong need to ensure the Westminster government is held to account for the array of decisions it will take as it becomes paramount. The all-encompassing nature of withdrawal from the EU will leave little time for any other democratic reform. Yet it may also represent a complacency about the superiority of UK's exceptional constitution that should be challenged and dispelled. |

| Future opportunities | Future threats |
|---|---|
| The inadequacy of the first-past-the-post voting system for elections to the Commons is increasingly clear. It has difficulties in accommodating an increasingly plural approach to politics, and recently has also failed to achieve its supposed purpose of delivering decisive election results. The result of the 2017 election may present a further opportunity for critics to press the crucial case for reform to the voting system, to establish a system of proportional representation. | The result of the Brexit referendum, and its potentially damaging consequences, may have a chilling effect on the use of direct democratic decision-making, or engagement with other kinds of democratic innovation in future. If Brexit has poor consequences, the lesson drawn may be to stick to conventional representative government only. Rather than reverting to such pure representative democratic systems, ways of deepening the electorate's involvement in democratic methods of democratic reform should be further explored, such as via a constitutional convention or citizens' assemblies. |
| The lack of social diversity amongst judges has gone beyond the point of being indefensible. However, there will be opportunities to begin to address this when half of the Justices of the Supreme Court are due to be replaced by 2018. The recent appointment of a new Lord Chief Justice offered little hope in this regard, although Lady Hale is now the President of the Supreme Court. Formal quotas may therefore be required to alter substantially the dynamics of judicial appointments. | Any debate about codification of the UK constitution, or establishing a formal legal federal order in the aftermath of Brexit is likely to be a distraction. Its democratic salience is also disputable. A legalised constitution is not necessarily democratically superior to an ('unwritten') political constitution, especially when there is much to seek to reform, rather than to entrench, in the UK's present arrangements. |

**Brexit**

Brexit will dominate constitutional discussions during (and well beyond) the process of exiting the EU, running to 29 March 2019. Parliament needs to ensure that democratic scrutiny and accountability is as effective as possible during this period of unprecedented change. The European Union (Withdrawal) Bill (albeit necessarily) delegates a great deal of subordinate law-making authority to the government. But this delegation needs to be subject to strict and appropriate limits on the use of the powers. Thorough and detailed parliamentary scrutiny will be needed to ensure their exercise does not instigate major changes in legal regulation for which a democratic mandate has *not* been obtained.

As a matter of political principle and constitutional convention, if not by law, the interactions between the UK institutions and the devolved legislatures and governments will also be key. The consent of the Scottish Parliament, Northern Ireland Assembly, and National Assembly for Wales will be required to the legislative changes to the devolution statutes. The 2016 referendum result may provide the government with a

mandate to deliver the UK's exit from the EU. But if the process and its results are to be regarded as legitimate, then the nature of that exit, and the means by which it is achieved, will have to be negotiated in a constructive, transparent way in a much more complex democratic landscape.

## The nature, extent and process of constitutional change

Away from the immediate challenge of Brexit, the impact of the dramatic programme of constitutional reform commenced by New Labour in 1997, but continued by the 2010-2015 coalition government, and the Cameron government after the 2015 election, must be assessed. The pace and scale of change has been rapid, and hard to keep up with – this is not an argument against considerable change, for much was needed in 1997, and much still is now, but we must also try to take stock to establish future priorities.

Where is the UK constitution now? This is not a straightforward question to answer, given the constitution is still changing, and further change is to come. Nevertheless, there remain particularly important questions to consider concerning the manner in which we have changed the law of the constitution. New Labour had no overarching vision to structure the constitutional reform programme it carried out, and this may explain why a systematic approach has subsequently proved elusive. The constitution that New Labour produced is one that we think about explicitly, and are prepared to change in a proactive way. But if the goal of constitutional 'modernisation' simply becomes an end in itself, rather than directed to achieving other values, we can end up (and perhaps, to some extent, have ended up) lacking the ability to work out exactly what has been successful, and where further efforts must be targeted.

A structured, value-oriented approach is important to constitutional reform – that may be the key lesson to emerge from the changes of the last two decades. Whatever the pace and possibilities for change over the coming years, there is a need to think holistically about constitutional reform, and at least to attempt to sketch some kind of coherent vision of the overall constitution we ultimately want for the UK. In so doing, we can try to develop a clearer sense of how we can make the constitutional law of the UK more democratic, both in substance and procedurally.

## A vision for a democratic UK constitution?

The UK constitution is at a crossroads – partially reformed, but with further change imminent. The process of reform – through the abundance of new statute law, and written constitutional documents – has made the constitution more formalised. Yet the UK's arrangements are still fluid, and stand far apart from a traditional codified constitution. For some this may be a democratic deficiency. As the UK constitution has become more overtly 'constitutionalised', calls have increased for a codified, written constitution to be established. This could more clearly define, and also limit, the powers of Parliament and the government. Such a model could more firmly federalise the powers of the devolved institutions in Scotland, Wales and Northern Ireland. The increased accessibility of such a constitution may appear attractive. Yet a decisive shift from a political to a legalised constitution would also have many costs. It would likely

entrench inadequate existing arrangements, create potential barriers to further reform, along with accomplishing the (further and greater) empowerment of the judiciary, who would be tasked with enforcing its rules in increasingly contentious political circumstances.

The crucial (and enduring) idea of parliamentary sovereignty at the heart of the UK constitution can (rightly) attract criticism if it is used as a rhetorical device signalling the centrality of Westminster politics, or the international superiority of the UK. Yet it is a fundamentally democratic foundational principle of UK constitutional law, in allocating ultimate law-making power to the elected and accountable actors in the UK's system of government. Rather than displacing parliamentary sovereignty by pursuing the distraction of codifying the UK constitution, a better vision for democratic constitutional change involves exploiting that unlimited legislative authority to complete substantive institutional reform: to the House of Lords, the voting system, the monarchy and the royal prerogative powers, the funding and election spending of political parties, voter registration and age limits, the ownership of the media, among others.

Such an orientation would be accompanied by consideration of the process and methodology of constitutional reform, and its democratic components. How can we use democratic instruments more effectively and constructively, and deepen levels of citizen engagement and deliberation? Can we regularise and enhance the use of direct democracy, which is at present irregular and under-informed, so therefore potentially erratic? Being aware of the limits of the constitutional means recognising that effective citizen engagement is a function of political culture and education, as much as it is a product of legal institutional arrangements.

Yet the engagement of the people in reshaping the basic constitutional law of the UK is something of intrinsic democratic importance, while also crucial in the present age of political distrust and citizen alienation. Further democratising the constitutional law of the UK – both in substance and in terms of the process of reform – is no doubt a goal that poses great difficulties, both in general and especially in the age of Brexit. Yet greater difficulties would be caused by allowing this era of democratic change to stall at a point when there is much more to be done.

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## 4.2   The core executive and government

*Patrick Dunleavy looks at how well the dominant centre of power in the British state operates – spanning the Prime Minister, Cabinet, cabinet committees, ministers and critical central departments. How effectively does this 'core executive', and the rest of Whitehall government, consistently serve UK citizens' interests? How accountable and responsive to Parliament and the public are these key centres of decision-making?*



*Theresa May and her Cabinet in September 2016.*

*Photo:   Zoe Norfolk/ Number 10 via a CC-BY-NC-ND 2.0 licence*

**What does democracy require of the core executive, along with wider central government?**

- The core executive should provide clear unification of public policies across government, so that the UK state operates as an effective whole, and citizens and civil society can better understand decision-making.

- The core executive especially, and central government more widely, should continuously protect the welfare and security of UK citizens and organisations. Government should provide a stable and predictable context in which citizens can plan their lives and enterprises and civil society can conduct activities predictably.

- Both strategic decision-making within the core executive, and more routine policy-making across Whitehall, should foster careful deliberation to establish the most inclusive possible view of the 'public interest'. Effective policy should maximise benefits and minimise costs and risks for UK citizens and stakeholders.

- Checks and balances are needed within the core executive to guard against the formulation of ill-advised policies through 'groupthink' or the abuse of power by one or a few powerful decision-makers. Where 'policy fiascos' occur the core executive must demonstrate a concern for lesson-drawing and future improvement.

- The core executive and government should operate fully within the law, and ministers should be politically accountable to Parliament and legally accountable to the courts for their actions.

- Policy-making should be as transparent as possible, while recognising that some core executive matters especially may need to be kept secret, for a time. Parliament should always be truthfully informed of decisions and policy plans as early as possible, and House of Commons debates and scrutiny should influence what gets done.

- Policy development should ideally distribute risks to those social interests best able to insure against them at lowest cost. Consultation arrangements should ensure that stakeholders can be easily and effectively involved. Freedom of information provisions should be extensive and implemented in committed ways.

The executive is the part of the state that makes policies and gets things done, while answering in public directly to Parliament and via elections to voters. At UK national level, and across all of England, the executive consists of ministerial departments and big agencies headquartered in Whitehall, each making policy predominantly in a single policy area. This centre also funds and guides other implementing parts of the state – such as, the NHS, local authorities, police services and a wide range of quasi-government agencies and 'non-departmental public bodies' (NDPBs).

Within the centre, the 'core executive' is the functional apex (or the brains/heart) of state decision-making. In any country it is the set of institutions that unifies the polity and determines the most important or strategic policies. In the UK the 'core executive' includes the Prime Minister, who appoints the Cabinet, plus cabinet committees, key ministers in central Whitehall departments, and some top officials in the same departments – especially the Treasury, Cabinet Office, 10 Downing Street staffs, the Foreign Office, the Ministry of Defence, the intelligence services and the Bank of England. The core executive especially makes 'war and peace' decisions, shaping the UK's external relations and commitments, homeland security, strategic economic policies (like austerity, national debt and deficit financing), and the direction of broad policy agendas from the top (like Brexit). Parts of the core executive's activities are shrouded in secrecy, and much remains confidential.

### Recent developments

In the 2015 general election David Cameron secured a narrow Conservative majority in the Commons. The result seemed to signal the resumption of 'normal service' for

peacetime government in Britain. The apparatus of the five-year Conservative-Liberal coalition government was swept into the dustbin. The post of Deputy PM, which had been held by Nick Clegg, returned to the cupboard of history. And the inner co-ordination committee of four (Cameron, George Osborne at the Treasury, Clegg and Danny Alexander, Chief Secretary at the Treasury) that had kept the coalition operating smoothly for so long, was scrapped. Cameron kept Whitehall's department structure largely unchanged, as he had under the coalition, and ruled mainly with Osborne. Boris Johnson (a possible leadership succession contender) was brought into the Cabinet in a minor role.

Jockeying between the relatively few Cabinet Eurosceptics and the 'Cameroons' became more vigorous as the PM moved to deliver on his election pledge (dating from 2013) to hold an in/out referendum on the European Union. But in the end it was the committed Eurosceptic Michael Gove and the more diffident late-convert Johnson whose campaigning caused the 'doom and gloom' Brexit campaign to be lost on 23 June 2106. Cameron resigned the next morning.

From the ensuing chaos of an aborted Tory leadership contest (in which Gove and Johnson both imploded early on), Theresa May emerged as winner, becoming PM after a two week interregnum. She signalled a pattern of strong central control from Downing Street by keeping only three out of 24 Cabinet ministers in the same roles as before, promoting Johnson to the Foreign Office, and exiling Gove (for a year) and Osborne (for good). She created two new Whitehall departments for major Eurosceptics David Davis and Liam Fox to run key Brexit functions. A very centralist 10 Downing Street operation was headed by two powerful staffers who had followed May from the Home Office (Nick Timothy and Fiona Hill). In a speech at Lancaster House, May outlined a 'hard Brexit' stance, which toughened up the referendum vote decision into a commitment to re-control all immigration and exit fairly completely from all EU institutions and arrangements.

This regime collapsed within a year, after May reversed her previous public pledges and called a general election (which Jeremy Corbyn's Labour agreed to under the terms of the Fixed Term Parliament Act). What seemed like a smart move for May, and a suicidal one by Corbyn, turned out to be exactly the opposite, with May losing her majority of MPs in June 2017. The government clung to power only by negotiating a 'confidence and supply' agreement with the 10 MPs from the Northern Ireland Democratic Unionist Party (DUP), at a reputed minimum cost of a £1bn 'bung' for public spending there. May's closest advisors, Timothy and Hill, were blamed for the disastrous Tory manifesto and hounded from office by Tory newspapers and MPs. A more outwardly 'consensual' regime for running the Conservative parliamentary party was put in place, with a new Deputy PM, the more accommodating Damian Green.

The new government ran into immediate trouble, failing to trigger the COBRA emergency committee for the Grenfell Tower fire disaster, where the initial state response had compounded the catastrophe. Tensions over the hard Brexit strategy within the Conservative parliamentary party created a very different situation from the 'strong and stable' platform that May had said the early election would secure for her. The

government abandoned practically all the controversial components of the damaging Tory manifesto, and May called for inter-party co-operation. But the PM was living on borrowed time and her administration could not seem to get a modus operandi for liaising more constructively on Brexit with Labour or the devolved governments in Scotland and Wales, whose legislative consent will probably be needed.

Amidst these travails, the 2016 official post mortem report into the UK's 2003 joining of the Iraq invasion by Sir John Chilcot's commission (five years in the making and running to 15m words) was soon lost to view. It painted a bleak picture of the UK's core executive at that time. Blair as PM and his communication chief (Alastair Campbell) clearly steamrollered military action through the Cabinet and Parliament with false information – a 'dodgy dossier' alleging that Saddam Hussein's Iraq had 'weapons of mass destruction', which in fact did not exist.

### Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| British government before 2010 was normally strongly unified, with clear Prime Ministerial and Cabinet control, strong ministerial roles within Whitehall departments, single-party or close-knit coalition governments, and relatively clear and distinct strategic policy stances. Some of these features were briefly visible again in 2016-17. | The PM's 'three As' powers are extensive. They appoint cabinet ministers, allocate their portfolios and assign policy issues across departments. Theoretically they can so arrange ministers' policy trade-offs that they will perfectly implement the premier's preferences. Most ministers are highly dependent on the PM's patronage and access for influence. |
| Cabinet government and the extended cabinet committee system provide key checks on the power of Prime Ministers and their 10 Downing Street office. They foster greater deliberation before policy commitments are made, and a balanced approach, with the different departments ideally representing diverse stakeholders' interests and wider public reactions. | In pursuit of purely political advantages, PMs have often rejigged ministerial roles by pushing through reorganisations 'making and breaking Whitehall departments'. This administrative churning is costly, short-termist and disruptive, reaching a peak under the Blair and Brown governments. A moratorium on reorganisations followed under Cameron's premiership (2010-16), only to be succeeded by drastic changes under May in June 2016. |
| Decisions within the core executive are normally made on far more than a simple majority rule (51% agreement). Instead an initial search looks for a high level of consensus across ministers/ departments. This may give way to deciding on a lesser but still 'large majority' (e.g. 60% agreement) basis, especially in crises or situations where the status quo is worsening. | Cabinet decision-making no longer operates in any effectively collegial manner. PMs control the routing of issues through committees and can bypass them via 'bilaterals' and 'sofa government'. Strong government communications integration enforces complete solidarity across all ministers, without any guarantee of participation in decisions. Ministers mainly fight back by 'adversarial leaking', in turn routinely denied. |

| Current strengths | Current weaknesses |
|---|---|
| Because of these processes, the principle of 'collective responsibility' binds Cabinet ministers to publicly back every agreed government policy, and not to talk 'off their brief'. Wider ministerial solidarity also requires all junior ministers to follow the government line (e.g. resigning if they do not vote the government line in the Commons). | The UK still has a 'fastest law in the West' syndrome, with the fewest checks and balances of any liberal democracy on the PM or the core executive – especially in one-party governments with secure Commons majorities. Decisions can be (and often are) made 'lightly or inadvisedly'. Ministers can simply escape any unfavourable consequences of bad policies through party loyalties making them invulnerable in the legislature. |
| Policy-making can take place swiftly when needed. Whitehall's resilience in crisis-handling and capacity to respond to demanding contingencies are generally high. | Recurring 'groupthink' episodes have produced major 'policy fiascos' – most recently the UK's involvement on false grounds in the 2003 invasion of Iraq; the disastrous 2011 armed intervention with France in Libya; and Theresa May's calling of an early general election in 2017. Arguably the UK is more prone to major 'policy disasters' than other liberal democracies. |
| UK institutions are long-lived and can draw on a strong tradition of relatively effective government, confident and immediate administrative implementation of ministerial decisions, and (normally) high levels of public acceptance and legitimacy. It is expected that the government will consult (most) affected interests on major policy changes, but ministers often choose to ignore or override the feedback received. | There is little evidence of much substantial policy-learning capacity within the core executive. All British PMs back to Stanley Baldwin (in 1935) have been forced to retire by election defeats, coups against them within their own parties, or illness. None has retired to acclaim as a successful leader. |

| Current strengths | Current weaknesses |
|---|---|
| All ministers sit in Parliament and are directly and individually accountable there for their actions. The Freedom of Information (FOI) Act secures public transparency. Modern media, interest group and social media scrutiny is intense, rapid and fine-grained. | Long-running dyadic power conflicts have occurred between PMs and key ministerial colleagues (especially the Chancellor or Foreign Secretary). These have been the main exceptions to Prime Ministerial dominance. Here a powerful minister (often an alternate leadership contender) can amass enough influence with colleagues to exercise a 'blocking veto' on what the PM wants to happen in key policy areas, usually those related to their brief. Under large majority rules this frustrates implementation of the PM's preferred policy. It either results in inaction, or on extra time being spent to achieve a bargained compromise between the PM and the vetoing minister. Notable cases include Thatcher-Lawson/Howe conflicts on EU policy (1985-90), the Blair-Brown public spending conflicts (1997-2007), Cameron-Clegg tussles (2010-15), and post-Brexit referendum disagreements within the May governments (2016-17). |
| | Ministerial decision-making operates in a climate of pervasive secrecy (still enforced by the Official Secrets Act). Ministers often withhold information from Parliament, reject FOI requests on questionable grounds, and manipulate the flows of information to their own advantage. They incur only small costs when found or, unless a scandal takes root. |

| Future opportunities | Future threats |
|---|---|
| Over the 43 years of the UK's membership of the EU, Westminster ministers lost power to Brussels. Perhaps unconsciously British elites compensated by focusing more and more attention on 'micro-managing' the public services still within their control in the UK and in England and being implemented by regional or local bodies. This strong centralisation dynamic was checked only by some 'organic' devolution. Now that the UK is leaving the EU, many lost central government competences need to be re-built to 'take back control' of trade and economic policy. A post-Brexit re-focusing may encourage ministers and Whitehall to ease up on trying to fine-control public services that are best run at regional or local levels. At the least the burden of Brexit-related laws will squeeze opportunities for other kinds of domestic legislation. | The Brexit process will remove a whole set of checks and balances on UK decision-making that have operated for 43 years at EU level in Brussels. These mainly enhanced stability and a long-run perspective in policy-making. As a result, the organisational culture of more short-termist and failure-prone modes of decision-making (that prevail in defence, foreign policy and welfare state management) may reinvade key parts of UK policy, especially in economic regulation, innovation and environmental policies. |
| | Working through the Brexit process will take many years and entail one of the largest and most demanding shifts in public policy-making of the last three decades. Many observers doubt that ministers and Whitehall will be able to respond well to this challenge. |
| | The May government apparently envisages relying heavily on 'Henry VIII' clauses in Brexit legislation, which would allow ministers to vary inherited EU laws using hard-to-scrutinise statutory instruments instead of new legislation in Parliament. |
| | In the 2016-17 period there were disturbing signs of another eminently foreseeable policy fiasco emerging through Conservative ministers' partisan stress on following a 'hard Brexit' strategy, whose economic costs could be high. |

## Policy fiascos and disasters

Critics argue that major problems arise from the lack of checks and balances in the UK core executive. This interacts badly with the 'legacy' hangovers of an over-strong executive government tradition using Crown prerogative powers, and a lingering British

empire tradition of foreign and defence policy-making that is insulated from public opinion and elite-dominated. These factor combine to make the UK uniquely vulnerable to large-scale but perfectly foreseeable policy fiascos or disasters. This is especially true where a PM and close advisors fall prey to 'groupthink', as May and advisors clearly did in triggering the 2017 early general election. Other observers see UK ministerial elite as being too powerful vis-à-vis their 'generalist' civil servants, able to order that ill-advised policy is implemented. Neither politicians nor their Whitehall advisors are masters of specialist subjects, compounding a long succession of smaller-scale 'blunders'.

In strategic policy making the most recent policy fiasco was the UK's joint military intervention with France into the civil war in Libya in 2011, aiding the anti-Gaddafi rebels with frequent air strikes, SAS 'advisors' and plentiful arms supplies. Both the intervening countries ran out of bombs and missiles within weeks of the conflict starting, and had to be re-supplied covertly by the USA which nominally was not involved. A lot of Gaddafi regime infrastructure was destroyed, and plentiful arms supplies sent to assorted rebel militias. The regime was duly toppled, but Libya descended into near-permanent lower intensity civil war and 'failed state' status. A Commons committee concluded that planning for the aftermath of interventionwas minimal and ham-fisted.

As a result, greatly increased flows of refugees began crossing the Mediterranean to reach EU countries, creating part of the anti-immigrant momentum that fuelled the anxieties of the UK's Brexit voters five years later. And Islamic jihadist forces (such as Isis and al-Qaeda) soon secured toeholds in the Libyan stalemate chaos. The arms initially sent into Libya also spread into all neighbouring countries, reaching Islamic jihadists as far south as Nigeria and Chad. Little wonder that Barrack Obama publicly described the episode as the 'worst mistake' during his presidency, and in private reputedly called it 'a shit show'.

The Libya commitment reflected an over-homogenisation of views by the PM and colleagues, and an over-confidence (bordering on delusional) about the UK's state capacities in the modern world. However, conflicts inside the core executive can also lead to policy fiascos, as with David Cameron's repeated failure (like his Tory predecessors) to manage the Conservative Eurosceptics. Cameron alighted on the pledge of an in/out referendum in early 2013 as a tool to keep their dissidence under control in the short term. But as the pledge hardened and UKIP boomed in 2014, Cameron began to make a drip-drip of extra concessions to his far-right ministers and MPs.

After the 2015 election, this culminated in the suspension of collective cabinet responsibility during the referendum campaign, so that Eurosceptic ministers need not resign their posts, despite publicly contradicting everything that the PM and Chancellor were saying. Arguably this was what led to the Brexit vote outcome. Critics see it a profound failure of the key requirement for the core executive to provide unified control, albeit with checks and balances. The vacuum of leadership that opened up for two weeks or more after Cameron's resignation spoke to this collapse of the core executive's role – as did the Tories' subsequent aborting of the leadership campaign, with all of Theresa May's rivals withdrawing.

**Making and breaking Whitehall departments**

One of a Prime Minister's most potent uses of Crown prerogative powers involves their unilateral control over the structure of Whitehall departments. PMs can scrap, merge, de-merge and reorganise ministries at will, often creating new ones to reflect their priorities or to respond to external changes. Chart 1 below shows that in the post-war period there were two periods of rapid reorganisation, in the late 1960s/early 1970s, and under the modernising Blair and Brown 'new Labour' governments. Most redesigns occur in the first two years of a premiership. Research shows that political priorities in cabinet-making priorities dominated administrative ones in most of the reorganisations – many of which were done by PMs in a great rush and with little or no planning. The past level of churn in Whitehall structures made the UK exceptional amongst OECD countries, and stood out even when compared with other 'Westminster system' countries.

**Chart 1: Major reorganisations of Whitehall departments**
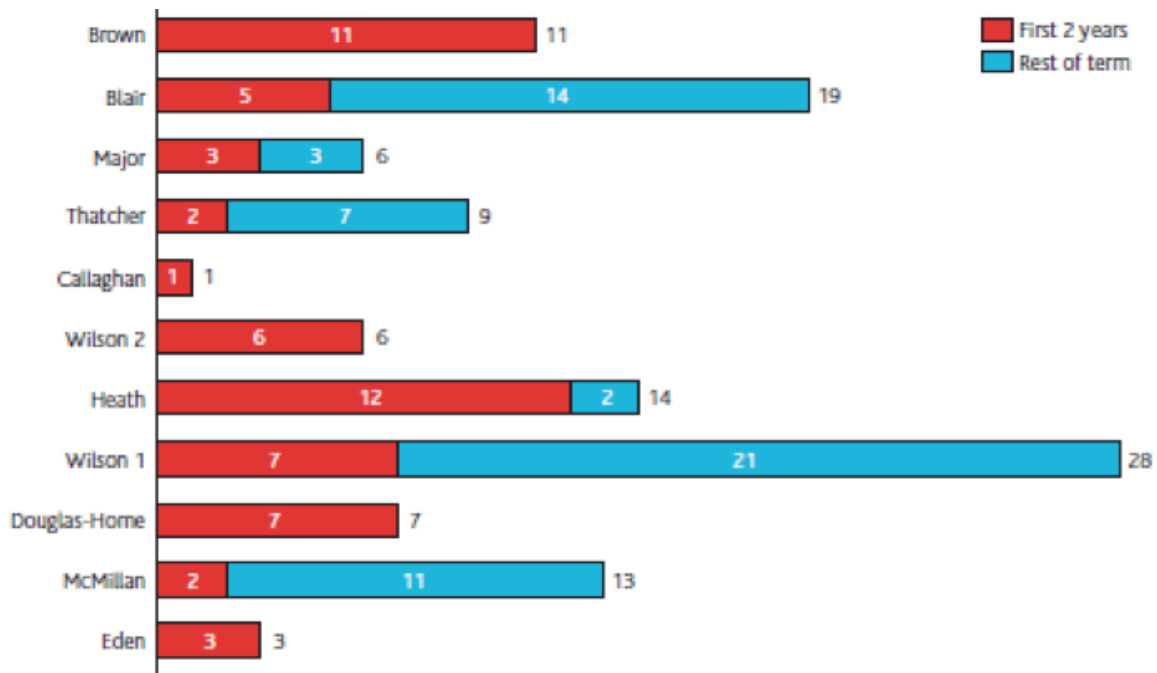


*Source:* *White and Dunleavy*, 2010, Figure 8, p. 20.

In 2010 David Cameron decided not to reorganise Whitehall, which he saw as a costly distraction when the UK's priority was cutting public sector deficits. (His Tory health minister, however, pushed through a costly and pointless 'reform' of NHS governance'). Throughout Cameron's five years running a coalition government he could not act alone, since ministerial appointments formed key parts of the coalition agreement, although he reshuffled Tory ministers a bit. In 2016 he continued this stance, so that the UK seemed to be acting more like a standard OECD country with stable department structures.

All this changed under Theresa May, who created two completely new ministries – DExEU, the Department for Exiting the European Union to manage the withdrawal process; and DIT, the Department for International Trade, to resume the trade deals role previously assigned to Brussels, and in which the UK lacked all expertise. May also reconfigured two existing departments in major ways, setting up BEIS, the department for Business, Energy and Industrial Strategy, and moving universities and research back to the Education department. Both DExEU and DIT look as if they may not last long, and an alternative strategy would have been to create a neutral Cabinet Office unit to run Brexit negotiations.

## The Cabinet committee system

Below the large, 24-member cabinet, the Westminster system has traditionally operated one of the most elaborate committee systems of any liberal democracy. All relevant cabinet departments sit on related committees, but in the past there were many more committees, arranged in a complex hierarchy. 'Prime ministers decide how to organise [committees], who to appoint to them, and how actively they are involved in them'.

However, Nicholas Allen recently demonstrated that:

> May has streamlined the committee system she inherited from David Cameron. Instead of ten committees, ten subcommittees and eleven 'implementation taskforces' (bodies introduced in 2015 to drive forward the government's 'most important crosscutting priorities') [*31 major bodies in all*], there are now just five committees, nine subcommittees handling regular business, and seven taskforces [*21 major bodies, shown in Chart 2 below*]. [Our italics]

**Chart 2: May's cabinet committee structure in summer 2016**
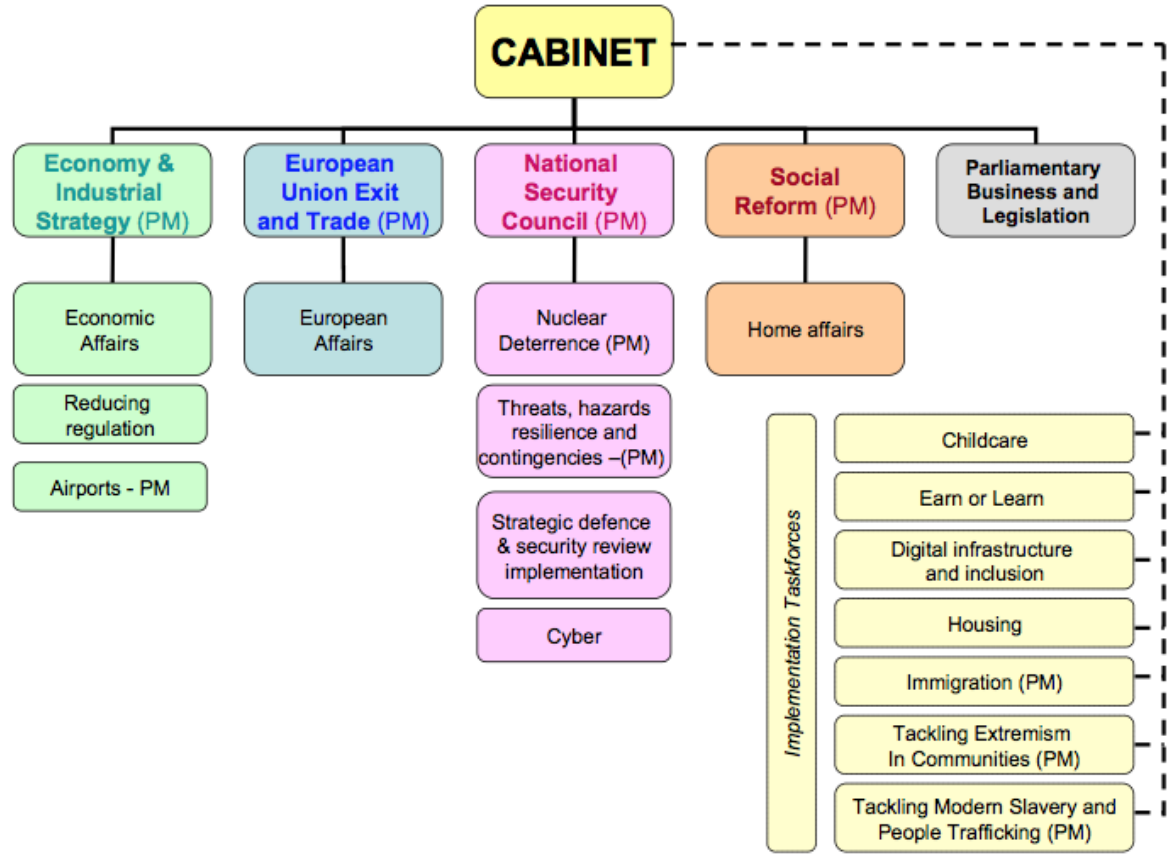


*Note:      (PM) shows PM chairs body*

Almost half of these new bodies were chaired by the PM herself (as shown), including all the main substantive committees, a historically unusual level of centralisation. The Leader of the Commons chaired the only other full Committee, scheduling legislative business. The Chancellor and Home Secretary chaired two sub-committees each, and the Business Secretary and Party Chairman chaired one. Three other ministers chaired one or two Taskforces, which on past form may meet irregularly or infrequently.

Using a counting and weighting system applied to committees in all UK governments since 1992, we can calculate the 'positional power' of ministers in terms of their places, and their share of the total. Chart 3 shows that the new bigger committees and some sub-committees give a place to almost everyone on almost everything, so that the PM's share of positional power is less than 11 per cent. Comparing earlier research shows that May's number is greater than John Major's 7.6% score in 2001, but down on Tony Blair's score of 14.9% in 1997.

**Chart 3: The positional power of Cabinet members in the cabinet committee system, in summer 2016**



| Position | Value |
|---|---|
| Prime Minister (Theresa May) | 10.3% |
| Business Secretary (Greg Clark) | 7.4% |
| Home Secretary (Amber Rudd) | 7.0% |
| Chancellor of the Exchequer (Philip Hammond) | 5.9% |
| Communities Secretary (Sajid Javid) | 4.8% |
| Defence Secretary (Michael Fallon) | 4.4% |
| Foreign Secretary (Boris Johnson) | 4.3% |
| Education Secretary (Justine Greening) | 3.3% |
| Work and Pensions Secretary (Damian Green) | 3.2% |
| Culture Secretary (Karen Bradley) | 3.1% |
| Transport Secretary (Chris Grayling) | 3.1% |
| International Development Secretary (Priti Patel) | 3.1% |
| Cabinet Office Minister (Ben Gummer) | 3.0% |
| Lord Chancellor (Elizabeth Truss) | 3.0% |
| Environment Secretary (Andrea Leadsom) | 3.0% |
| Health Secretary (Jeremy Hunt) | 3.0% |
| Party Chairman (Patrick McLoughlin) | 2.9% |
| Chief Secretary to the Treasury (David Gauke) | 2.8% |
| Attorney General (Jeremy Wright) | 2.3% |
| International Trade Secretary (Liam Fox) | 2.1% |
| Scottish Secretary (David Mundell) | 2.1% |
| Northern Ireland Secretary (James Brokenshire) | 1.9% |
| Leader of the Commons (David Lidington) | 1.7% |
| Welsh Secretary (Alun Cairns) | 1.6% |
| Commons Chief Whip (Gavin Williamson) | 1.3% |
| Exiting the EU Secretary (David Davis) | 1.2% |
| Leader of the Lords (Baroness Evans) | 0.9% |

*Source:*   *Allen, 2016.*

*Note:*      *Ministers in pink are prominent Brexiteers.*

Of course, positional power is not the only kind of power that ministers have, as the low rank for David Davis (one of the most powerful ministers under May) shows. Allen showed that in the 2010-15 coalition government the Liberal Democrats had more positional power in the committee system than they did cabinet posts (where they had five out of 23). But this positional power was invisible to the public, who saw the government as Conservative-dominated.

Amongst the several other power bases that matter, ministers control substantial administrative power by holding their own department fiefdoms, where they control key policy-making functions, and shape how a lot of public money is spent. Informal coalitions of ministers may have 'blocking power' to delay or frustrate decisions under the 'large majority' rules that prevail in executive decision-making. Other ministers may be politically powerful because they have the PM's ear. And some cabinet top ministers can become credible leadership succession candidates, with their own followings in the government party's MPs (and perhaps amongst other ministers looking to the future).

Running the committee system and keeping track of what departments have committed to do, and of their progress in meeting targets, is the Cabinet Office secretariat. It provides a strong administrative core, ensuring that decisions and commitments are carefully recorded and then chased up.

### Budgetary control within government

The other core co-ordination mechanism is tight Treasury control of public spending, which reached a peak under the Cameron governments' austerity programmes. The budgets for the NHS and overseas aid were maintained in real terms between 2010-16 (although NHS spending fell below the amounts needed for a real standstill budget). But this just meant that the burdens elsewhere, on other domestic, welfare and defence spending were intensified. An Expenditure Review Group formed from the Treasury and Cabinet Office did a reasonable job, at first, of damage limitation in implementing cutbacks, using a 'do more for less' strategy. David Cameron commented complacently in 2014: 'It must be said, at the time, all manner of horror show predictions were made about what would happen to our country. But what actually happened?' However, by this time in fact real cuts in programmes, crude 'do less for less' strategies had almost completely taken over, with Whitehall simply passing the need for huge cost cuts down to local authorities, police forces, the armed forces and NHS bodies which could cope only by cutting out services.

The apparatus of Treasury control make it one of the world's most powerful 'finance ministries'. It 'focuses on managing a number of interrelated systems that taken together provide the basis for spending control in the context of substantial delegation to other actors', according to one study. In preparing three-year spending reviews the Treasury conducts detailed 'bi-lateral' negotiations with spending ministries. It also has a set of macro-controls over budget sectors, which they use to hold departments to spending totals between reviews, but with some departmental autonomy within agreed totals.

Yet micro budget controls (such as limits on viring unspent monies from one heading to another, and 'clawing back' unspent funding at the year end) also remain. And staff and

expertise cuts within the Treasury itself have drastically reduced its understanding of where spending occurs, or why. For example, many government 'blunders' have revolved around IT schemes and big capital investments, for which there are several different but inadequate major project evaluation systems. And UK central government has never yet had any coherent programme for improving government sector productivity.

### The 'secret state' within Whitehall

Much of the Chilcot report on the disastrous Iraq intervention dealt with the UK's still substantial secret state, the last remnant of the British empire's worldwide reach. The main intelligence and security services are:

- MI5 (internal security),
- SIS or MI6 (overseas intelligence),
- GCHQ (electronic and other tech surveillance),
- the Defence Intelligence Staffs (military intelligence)

Their activities are supervised by the Joint Intelligence Committee (JIC) in the Cabinet Office, which coordinates and sanctions major operations, reporting to the PM. Following the 'dodgy dossier' episode where intelligence was manipulated by the PM's aides, Whitehall confidence in the quality of information from the four agencies and the Joint Intelligence Committee took several years to rebuild.

The UK is bound into close working relationships with the US intelligence agencies, with SIS linked to the CIA, and GCHQ working hand-in-glove with the US National Security Agency. Less important strong links are to agencies in Australia, Canada and New Zealand, and also to those in a few major European states and EU agencies.

A single Cabinet Office intelligence expenditure vote of £2.5bn is declared to Parliament but not further explained in public. Around £85m to £100m of undeclared intelligence spending is still padded around the Cabinet Office budget, with further amounts in defence. The only Parliamentary control over any of this comes from the Intelligence and Security Committee, whose members are 'trusties', hand-picked by the PM from the Commons and Lords.

The UK also has developed inter-departmental homeland security arrangements which focus on the COBRA meeting (an impressive acronym that actually stands for the mundane Cabinet Office Briefing Room A, where its meeting take place). In principle, the resilience system is also supposed to also cover civil contingencies (such as foot and mouth disease and flooding in the past). But COBRA never met over the 2016 Grenfell Tower disaster, and government co-ordination in the aftermath was very poor.

These highly non-transparent arrangements have fuelled persistent controversy about the existence of an 'inner state', one that controls the drone killings of terror suspects in military action zones overseas, and some extra-legal actions of homeland security or

army special forces (which for certain included extra-judicial assassinations in Northern Ireland and perhaps in Afghanistan in earlier periods). The Snowden revelations suggested that GCHQ had done a 'buddy deal' for many years with the NSA to bulk spy on US citizens (which the US agency cannot legally do), in return for the NSA trading back the same information for UK and European citizens (which GCHQ cannot legally do). SIS has been accused of colluding in torture implemented by US agencies in Iraq and Afghanistan in 2002-08, using information gained from a rendition programme where prisoners were sent for interrogation to torture-using US-allied states.

Routinely denounced by elite insiders as 'conspiracy theories', these allegations have none the less gained added contextual credence from the long-run and now well-documented cover-ups of policy fiascos perpetrated elsewhere by the UK state establishment – such as those over mass deaths in 1989 at the Hillsborough football stadium; and over the poisoning of NHS patients over many years with hepatitis B from US-imported blood.

## Conclusions

The UK's core executive once worked smoothly. It has clearly degenerated fast in the 21st century. Westminster and Whitehall retain some core strengths, especially a weight of tradition that regularly produces better performance under pressure, reasonably integrated action on homeland security for citizens, and some ability to securely ride out crises. Yet elite conventional wisdoms, which dwelt on a supposed 'Rolls Royce' machine, are never heard now – after six years of unprecedented cutbacks in running costs across Whitehall; political mistakes and poor planning over Libya, Afghanistan and Iraq; and the unexpected loss of the Brexit referendum. Now the looming threat of leaving the EU on poor economic terms under a 'hard Brexit' strategy seems to cap a very tarnished recent record.

The clouds in the form of recurring 'policy disasters' and 'fiascos' are also gathering. Both the Conservative and Labour party elites and leaderships seem disinclined to learn the right lessons from past mistakes, or to take steps to foster more transparent, deliberative and well-considered decision-making at the heart of government. Like the Bourbon monarchs, the fear might be that they have 'learnt nothing and forgotten nothing'.

*Patrick Dunleavy is Professor of Political Science and Public Policy at the LSE and co-director of Democratic Audit.*

# 4.3 The civil service and public services management systems?

*Patrick Dunleavy looks at how well the administrative wings of the British state operate – especially the traditionally dominant civil service headquartered in Whitehall, but also the wider administration of key public services, notably the NHS, policing and local government administrations. Are public managers at all levels of the UK and England accountable enough to citizens, public opinion and elected representatives and legislatures? And how representative of, and in touch with, modern Britain are public bureaucracies?*



*The Government Digital Service Team celebrate the launch of gov.uk in 2012.*

Photo:     *gdsteam via a CC-BY-2.0 licence*

**What does democracy require for how Whitehall and the national civil service operates, along with wider public service delivery systems?**

- Policy-making about services provision and implementation, and about the regulation of social and economic activities, should be controlled by democratically elected officials so far as possible, and should be deliberative, carefully considering all the interests of all relevant actors. Before significant policy or implementation changes are made, fair and equal consultation arrangements should allow service recipients and other stakeholders to make inputs into decisions, especially where services are being withdrawn or rights are being constrained.

- Public administration at all levels of government and the delivery of public services should be impartially conducted within administrators' legally available powers. All citizens should have full and equal access to government and to the

beneficial services and goods to which they are entitled, without discriminatory provisions applying to any group. The human rights of all citizens should be carefully protected in decision-making, and 'due process' followed in adjudicating about their cases or entitlements.

- Where 'para-state' organisations deliver services on behalf of or subsidised by government (e.g. NGOs or private contractors) action within the law, equal treatment and access, respect for human rights, and freedom from corruption should all apply in exactly the same way. Public services, contracting and regulation should be completely free from corruption, with swift action taken against evidence of possible offences.

- The importance of these 'public value' considerations is especially heightened in government regulatory activities, cases of compulsory consumption, where service users face any form of 'coerced exchange' choices, or where consumers depend heavily on professional expertise or are subject to the exercise of state or professional power.

- The civil service and public services organisations should recruit and promote staff on merit, taking due regard for the need to combat wider societal discrimination that may exist on grounds of race, ethnicity, gender, disability or other factors.

- Ideally, public administrations will be 'representative bureaucracies' whose social make-up reflects (as far as possible) that of the populations they are serving. Where differences in the social make-up of the people delivering and receiving public service has significant implications for the understanding, legitimacy and perceived quality of services, the delivery organisation must demonstrate committed efforts to overcome recruitment biases.

- Government-organised and subsidised services should be efficient and deliver 'value for money'. Costs should be reasonable and competitive, and the activities and outputs should be produced using technologies that are modern, and kept under review, using best practice methods. Over time the productivity of government-organised and -subsidised services should grow, ideally at or above the societal average level.

- The efficacy of government interventions and regulations should be carefully assessed in a balanced and evidence-based way, allowing for consultation not just with organised stakeholders but also with unorganised sets of people affected, or interest groups active on their behalf.

- Regulation and de-regulation should both be implemented in balanced, up-to-date and precautionary ways that safeguard public safety and the public interest, but keep the economic and transaction costs of regulation to the minimum needed.

- Point of service standards in the public services should keep pace with and be comparable to those in other modern sectors. Procedures for complaints and

citizen redress should be easy to access and use, and public service delivery agencies should operate them in transparent and responsive ways, fulfilling 'freedom of information' requirements.

- Where mistakes happen, and especially where public service delivery disasters occur that seriously harm one or a few person, or that adversely affect large number of people, public service organisations should show a committed approach to recognising and rectifying problems, and to rapid organisational learning to prevent them from recurring.

In liberal democracies, citizens and politicians expect that public service organisations and the civil service will meet all of the multiple requirements listed above, simultaneously. If lapses occur in any aspect, public trust in these bodies can be severely impaired, usually increasing their costs appreciably and reducing their abilities to get things done.

Yet the different expectations listed above clearly crosscut each other. For instance, carefully consulting and respecting human rights adds expense and time to government agencies' processes. So it may curtail their ability to reform, and impair efficiency-seeking and cost containment. Similarly, treating people equally means that agencies cannot do what firms do, and focus just on those customers who are easy or profitable to serve, turning their backs on difficult cases. Yet agencies are expected to match firms in terms of productivity growth. Public management involves handling these dilemmas so as to (somehow) steer a course between them that maximises public value.

### Recent developments

The recent history of public services has been dominated by the austerity programme of the 2010-15 Conservative-Liberal Democrat government, which sought to restore a balance between public spending and government revenues, primarily by cutting back welfare payments and the running costs of public services. Chart 1 shows that their plan sought a rarely achieved balance of current spending and receipts by 2020, with public spending stable at around 37% of GDP – pretty much above the level it has been since the late 1980s.

**Chart 1: Tax receipts, public spending and UK deficits as a proportion of gross domestic product over time**
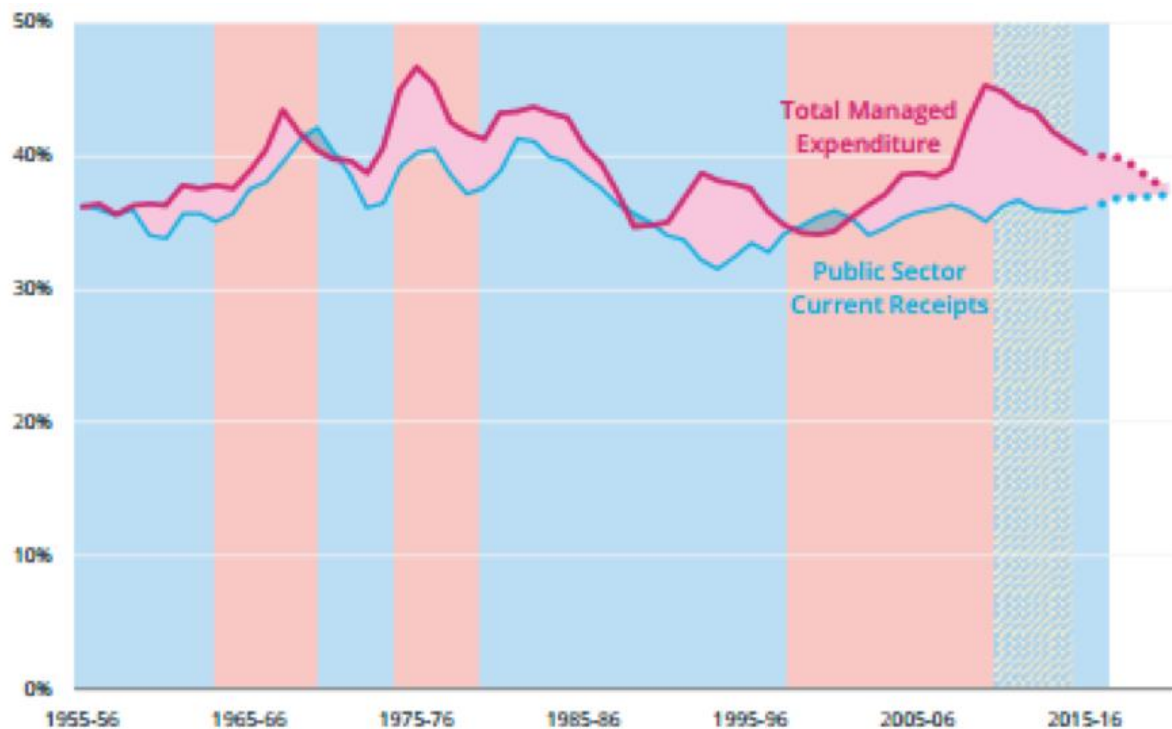


*Source:    Institute for Government, p.35.*

The NHS was exempted from austerity with spending maintained in real terms, but the higher costs of health inflation not covered. Most spending cuts focused on welfare benefits, policing, prisons, and devolved and local government services, with the civil service exporting many cutbacks to other agencies to accomplish. Nonetheless Whitehall running costs were also targeted and the number of civil servants fell below 385,000 – its lowest level since 1940 (when the UK's population was also far smaller).

**Chart 2: The size of the UK civil service over time**
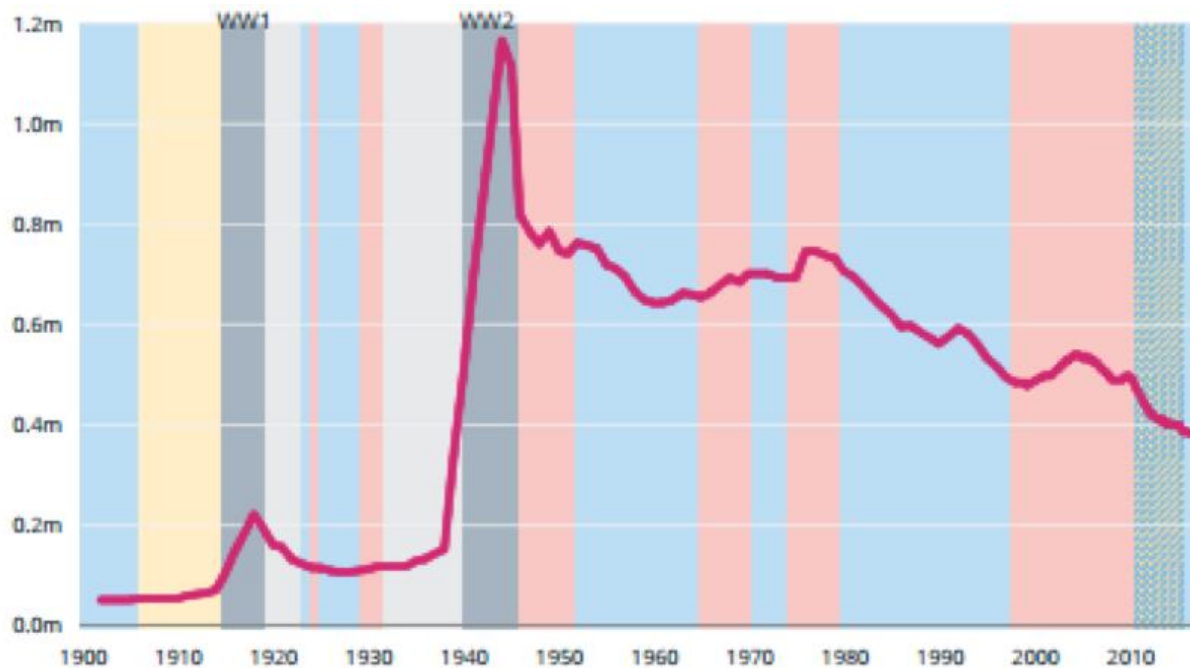


*Source:    Institute for Government, p.4.*

Yet much of this fall may be rather cosmetic, because of the growth of a para-state of contractors (and a few NGOs) who now carry out functions previously done by Whitehall but do not count in the personnel numbers. In 2016 the UK government as a whole spent as much on contracting with firms for goods and services as it did on paying public sector salaries.

The Labour general election campaign in 2017 called for an end to austerity and this apparently chimed with the public, especially when three terrorist attacks occurred near or during the campaign, drawing attention to reductions of 20,000 in police numbers. The austerity policy's imposition of 1% pay rises on all public sector workers (cutting their real pay by around 2% a year) also sparked controversy. Shortly after the election, the catastrophic fire at a council high rise block, Grenfell Tower (which killed 80 people) focused attention on cutbacks made in regulatory provisions. Apparently some 260 other high rise blocks had been fitted with highly inflammable cladding and insulation that should have been banned. Successive deregulation initiatives, plus severe cutbacks in the fire service's inspection capacities, meant that no effective fire safety checks seem to have operated for many years.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The UK civil service model has a long tradition of being very politically controllable and accountable. Its culture is generalist and non-partisan, able to work with governments of different partisanship and to tackle new issues with some competence. Departmental viewpoints are strong in Whitehall, but less so than in many countries thanks to cross-departmental movements of personnel over their careers. | The dominance of the generalist 'policy profession' in Whitehall feeds into and encourages a pattern of policy-making that overvalues short-run administrative and organisational changes as keys for increasing public policy effectiveness. This undervalues the importance of long-run and substantive changes reliant on greater policy-specific expertise. |
| Officials are individually and collectively responsive to public opinion, keen to avoid criticisms, and committed to equal treatment of citizens at the point of service. These qualities are replicated in other public services. | There is no statutory protection of civil servant independence. The 'Armstrong Doctrine' holds that 'the civil service has no constitutional personality separate from that of the government of the day'. So UK senior civil servants have only a weak capacity to 'speak truth to power', and especially have not been able to curtail ministerial hyper-activism, pointless party political policy churn, and legislation that was little used after its passage into law. |
| Public administration in the UK is generally effective and reasonably modern. The civil service has a well-developed pattern of continuously or regularly undertaking reforms and looking for best practices elsewhere to adopt. The UK's record in digitally transforming public services is a reasonable if not outstanding one, especially in the heyday of the Government Digital Service (2011-15) – see below. | The NPM organisational culture means that senior UK civil service officials may be party-politically neutral, but show a chronic bias towards 'new public management' beliefs – especially in over-valuing 'managerialism' and 'leaderism' compared to evidence-based policy-making. |
| Whitehall has a strong tradition of contingency planning and rallying around in resilient ways in crises, plus an ability to see issues through despite scarce resources. | The same over-orientation towards managerial reorganisations and strong leadership has been spread strongly into policing, local government and the NHS by Whitehall interventions. |

| Current strengths | Current weaknesses |
| --- | --- |
| Corruption and fraud in the civil service is rare and this pattern has been extended into devolved governments and most local government over time. | The 'revolving door' denotes a set-up where senior mandarins can retire or leave their posts, but then move into private consultancy jobs or posts in public service contractor firms. Critics argue that it also creates a pro-outsourcing NPM bias. Rules supposedly safeguarding the public interest by limiting moves to beneficial jobs are only weakly enforced, as a 2017 NAO report noted. |
| | The increased financial involvement of private sector firms in delivering critical public services (via privatisation, the Private Finance Initiative and Public-Private Partnerships) has sometimes worked. But at other times it has weakened the stability of public service, importing new sources of financial instability and poor productivity change (see below). |
| | There have been some notable and recurrent lapses in the equal treatment of some black and ethnic minority citizens, women and physically or mentally disabled people within the police, prisons service, NHS and local government, with a succession of adverse scandals. |
| | Citizen redress processes have always been weak in conventional public services (see below). They have been made far more complex and often impenetrable by the growth of contracting and commissioning of private sector firms and NGOs in many welfare state and social services. Legal and administrative provision for complaints and redress in these areas lags many years behind organisational best practice. |
| | A few corruption blackspots remain, especially in areas like overseas sales of defence equipment, and private contractors taking over government-run services on a payment-by-results basis. |

| Future opportunities | Future threats |
|---|---|
| The Brexit move to 'take back control' (and its many associated difficulties) may create an 'overload' at the centre that impels both ministers and Whitehall and the civil service to cease blocking the delegation of more powers and freedoms to devolved and local governments. | The burden of new legislation and statutory instruments imposed by any abrupt Brexit transition could overload Whitehall capacities, but might be handled better given an extended transition period. An early Deloitte consultants' report argued that Whitehall really needed 30,000 more civil servants to process over 500 Brexit-related projects, sparking angry denunciations by the May government. |
| The growing use of social media (aided by the pervasive use of mobile phone cameras to generate photo and video images) has greatly increased the specificity and rapidity of citizen vigilance. The potential 'audience reach' of criticisms, and the speed and salience of news of mistakes, have also increased. Officials now confront a stronger discipline of public criticisms. So perhaps responsiveness - in better explaining policies, and in quickly correcting mistakes or services lapses - may improve. | The UK civil service will need to rebuild key skill sets and forms of expertise (e.g. in trade negotiations or strategic economic regulation), which have been wound down during the 43 years of EU membership. These cannot be easily or quickly put in place, and will be costly to recreate. |
| | The planned extensive use of 'Henry VIII' powers in the Brexit transition to make new executive orders with little Parliamentary or public scrutiny means some Whitehall powers may go unchecked. |
| | As austerity eases off some the pressure for digital changes has also ebbed, with the GDS budget cut back and an absence of any clear ministerial lead (see below). |
| | The longer that public sector pay remains artificially constrained by the 1% salary cap, the greater the pent-up salary bill problems in public services become. A loss of EU migration may also adversely impact labour shortages, e.g. in the NHS. |

| Future opportunities | Future threats |
|---|---|
| | 'New public management' strategies plus many years of austerity policies have worn thin the UK state's capacity to cope with crises and unexpected contingencies. The August 2011 riots in London and other cities showed one kind of vulnerability, eventually requiring 16,000 police on the streets to bring them to an end. And the 2017 Grenfell Tower disaster and scandals around building safety de-regulation demonstrated another facet of the same underlying fragility. |

**New public management, austerity and 'zombie NPM'**

Critics of conservative, state-shrinking policies often characterise them as 'neoliberal', and see uncaring senior officials as complicit in over-cutting government provision. In fact public servants in the UK from the 1980s to around 2005 bought into a rather different set of doctrines called 'new public management' or NPM. Its central themes were

- *disaggregation* (chunking up large bureaucratic hierarchies into smaller organisations) to improve responsiveness;

- *competition* (especially between in-house providers and private contractors) to improve efficiency; and

- *incentivisation* (paying officials and contractors by results) to improve motivations for hitting targets.

NPM continued under the Blair/Brown governments – but in more 'humanised' ways, and with concessions to trade union interests.

Many commentators confidently predicted that the Coalition government in 2010 would return NPM ideas to centre stage, not least because they had been the orthodoxy when Tory ministers had last been in power (back in 1996-7). But in fact only one or two NPM-style changes were made – below the Whitehall level. They were implemented in a 'zombie NPM' style that soon ran into opposition, causing the intended changes to be heavily modified. 'Free schools', for instance, were supposed to boost competition and expand choice, but soon ran into regulatory problems, limiting their spread. The Cameron government also made some play with the idea of backing a 'Big Society' in 2010-2013 (supposedly preferable to a 'big state', and thus providing some ideological cover for austerity). This concept was always tenuous, especially as NGOs and the third sector were among the first to suffer from cutbacks. It disappeared for good after a Commons select committee found little substance to it.

The chief NPM 'reform' was a reorganisation of NHS administrative structures pushed through by Cameron's first health minister, Andrew Lansley. Eventually implemented by 2013, at a huge cost (between £2.5bn and £4bn), it created Care Commissioning Groups, supposedly run by consortia of GPs. CCGs 'buy' services from NHS acute hospitals, which were also mandated to 'commission' more services so as to allow more private firms to bid for 'work packages'. The result was a massively complex 'quasi-market' scheme that Cameron had to 'pause' and try to simplify, before it was finally put into action. Of the promised CCG improvements in commissioning and savings in management costs there has been little or no sign, and instead acute controversies over a 'postcode lottery' in access to costly drugs or fertility treatments. And some prominent private sector contracts for acute hospital services have already failed.

Meanwhile in Whitehall austerity meant reversing earlier NPM changes. The high salaries for leaders under 'incentivisation' schemes proved unaffordable, as did the luxury of multiple agencies created in the 1990s. Top pay was promptly capped to the level of the PM's salary, and many agencies re-absorbed into central department groups. 'Light touch' regulation supposed to encourage competition collapsed in financial markets in 2008-10, prompting a huge prudential re-regulation by 2015. The Grenfell Tower disaster in spring 2017 showed that the finance case was not an isolated one, with fire safety and building controls deregulated into meaninglessness.

Detailed analysis of new public management's claims to have saved money and improved government efficiency also suggested that the whole NPM experiment had not realised any cost reductions or efficiency improvements. And while the structural costs of austerity were diffused, by 2017 evidence accumulated that their consequences had become potentially far-reaching. For example, the annual growth in UK life expectancy, which had been strong before 2010, slowed to a complete standstill after 2011, for no clear reason except the increased stress placed on the NHS.

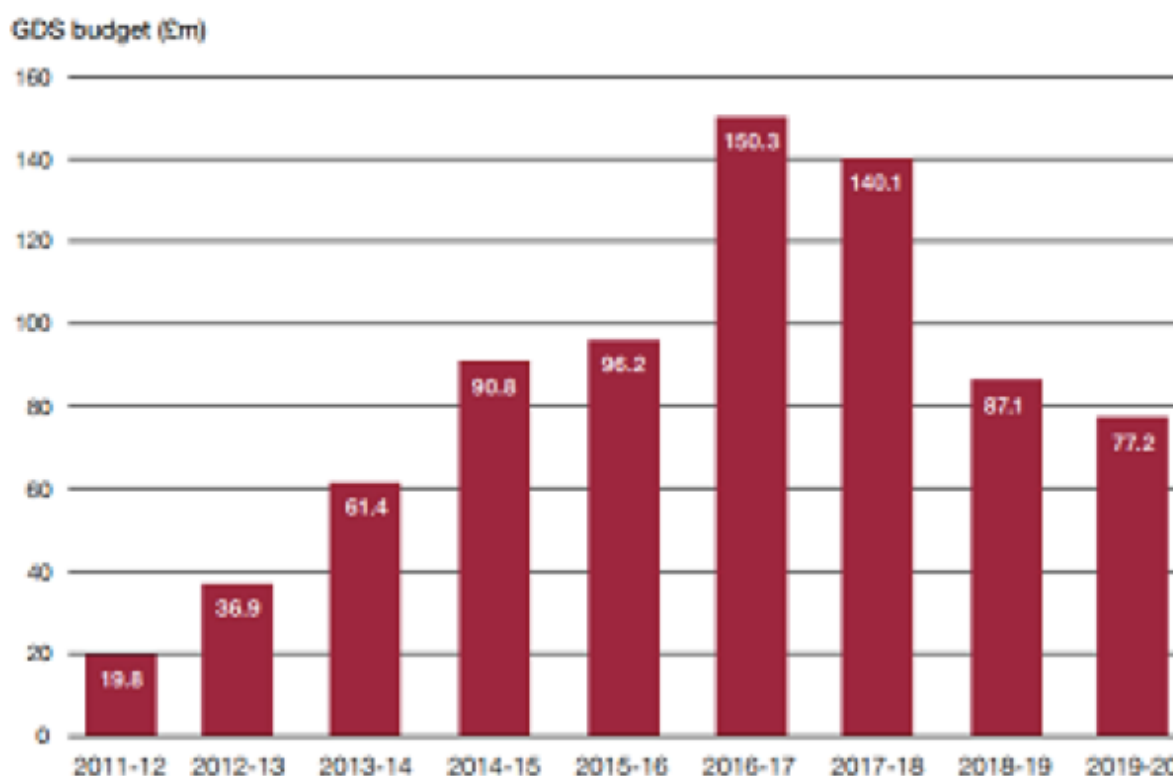### Digital era governance in the UK

Although ministers still publicly adhered to NPM discourses, the demands of severe austerity proved to be key in Whitehall finally adopting a completely different public management strategy called 'digital era governance' (DEG). As its name implies, DEG strategies focused on the reform potential arising from embracing a wholesale transition to online and digital services. Two other elements directly reversed NPM by stressing the 'reintegration' of services, to provide more simplified and cost-effective structures, and 'needs-based holism' to ensure that public services meet citizens' needs in the round (and are not provided in an uncoordinated way to 'customers' of highly siloed agencies).

DEG strategies were often poorly implemented by officials inured to NPM approaches, but austerity pressures were so severe that they prevailed. In 2011 the Cabinet Office required departments to adopt 'digital by default' approaches, where at least 80% of services are delivered to people online. The Department of Work and Pensions was catapulted from ignoring online services completely (as it did from 1999-2010) into embracing digital by default as an integral part of the Universal Credit change, a huge

benefits and tax credit re-integration push forced through by the former Tory leader Iain Duncan Smith.

And with the backing of Francis Maude and the PM, a Government Digital Service was established in 2011 and assigned increasing amounts of funding to develop a single main government website (gov.uk) and put in place online services. Chart 3 shows that its funding expanded greatly, as savings from doing things online were realised, peaking in 2018. However, the ever-zealous Treasury, plus a backlash from departments bringing their IT operations back in-house, curbed its operations from 2016. Funding is now declining.

**Chart 3: The budget for the Government Digital Service, 2011 to 2020**

GDS budget (£m)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|---|---|---|---|---|---|---|---|---|---|
| | 19.8 | 36.9 | 61.4 | 90.8 | 96.2 | 150.3 | 140.1 | 87.1 | 77.2 |

*Source: National Audit Office, 2017*

**Intelligent centre and devolved delivery**

One major problem for the UK's centralised welfare state is that of establishing a so-called 'intelligent centre/devolved' delivery structure, where the digitally scalable services are handled once by Whitehall or agencies, and local services focus on things that really require in-person delivery. For instance, England has 150 different library authorities, buying books together in around 70 consortia, and each developing their own very limited and very late ebook service. Yet 85% of the book stock is the same across local libraries, and many libraries are being closed by councils under intense

austerity pressures. By contrast, there would be huge scaling savings from buying books and ebooks once at national level (which Whitehall has never dreamed of doing), and with local libraries just focusing on liaison with local readers and users, plus their community activities and services.

## Public service delivery disasters

The UK polity has a big problem with recurring policy fiascos, mistakes made at the top levels of government and the core executive. But the public administration system has a different if partly similar phenomenon, called 'public service disasters' (PSDs). These are not due directly to misguided decisions from the top (although these usually play some role). Rather, PSDs are unintended implementation catastrophes arising through the complex choices and interactions of overloaded or misguided 'street-level' bureaucrats.

Important examples have included the deaths of 90+ patients in a hospital infection outbreak at a Tunbridge Wells hospital placed under extreme NPM managers, and the unnecessary deaths of perhaps 400 patients at Mid Staffordshire NHS Hospital Trust, where managers coerced staff into losing all respect or care for many people. The squeezing of childcare services has produced a long sequence of cases where children at risk from their parents were neglected by multiple agencies, or not protected from abuse in children's homes. Similarly, mistakes by the police and probation services in not following up information to prevent harm to vulnerable people, or in releasing dangerous people from custody, created public alarm. And in mid-2017 the government decisively retreated from its earlier NPM commitment to using private sector prisons, as treatment and cost issues emerged.

The squeezing of social care costs under austerity has produced very rapid declines of standards in social care homes, which has lead to multiple abuse cases and ever-gloomier assessments by the Care Quality Commission battling to re-regulate the sector. Together with poor care for the elderly in NHS settings, this area became a huge issue in the 2017 election campaign when the Tory manifesto tried to raise more receipts from dementia sufferers' estates. By mid 2017 social care was rated the most important issue in UK politics by 14 per cent of opinion poll respondents.

## Weak citizen redress

A prominent casualty of the austerity period has been the once-strong mechanisms in British government providing for citizen complaints and redress. A shift to regulation of private or quasi-market provision, and the fact that more and more services have come to be delivered by private firms or NGOs on behalf of public agencies, has made seeking redress far more complex than before. NHS complaints processes have been cut back, despite the escalating level of NHS liabilities for medical mistakes, and the development of 'no blame' methods common in other 'safety bureaucracies' has proceeded very slowly. As delivery worsens, and expenditure cutback became more evident, so citizens have become inured to falling point of service standards and to not getting redress for things going wrong. Efforts to get a single public sector ombudsman for England (on

the same lines as those in Scotland and Wales) and improve complaints services online have been repeatedly stymied by Cabinet Office indifference since 2005.

**Conclusions**

At one time, British public services were a justified source of citizens' pride in their democracy (famously summed up in the 2012 Olympic opening ceremony's celebration of the NHS). By 2017, however, the UK's public services were in a poor condition. Overstretched, staffed by now underpaid workers, facing apparently indefinite real wage cuts, and with services hollowed out by seven years of austerity, they nonetheless still command a great deal of public respect and huge levels of staff commitment. But after two decades of NPM the British state is now a fragile thing, vulnerable to acute failures and disruption, and devoid of many of the 'strengths in depth' that once sustained it.

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# 4.4   In terms of Brexit

*Many political and constitutional steps are needed in order to for the UK to leave the European Union, after 44 years as a full member. Cumulatively they form one of the biggest constitutional changes in British history, and one dogged by intense controversy and disputes. **Joelle Grogan** examines how far the Brexit process meets democratic criteria for such a momentous transition, or falls short of these standards.*



*Anti-Brexit marchers in London, July 2016.*

**What does democracy require for the way in which the British withdrawal from the EU is decided, implemented and achieved?**

- *Only Parliament can finally decide* the terms on which Brexit is achieved. The 2016 referendum provided a significant statement of popular support to leave the EU. But giving effect to this decision is highly technical process that only Parliament can navigate successfully – since there cannot be a plebiscite on each sub-issue. Parliament is accountable only to the electorate, which itself has the prerogative to change it at the next election.

- *Cross-party co-operation and engagement are needed*, especially in a hung Parliament, as now. The full Brexit process will not be resolved within the next two years, or even in multiple parliamentary terms. So it necessitates careful deliberation from all MPs and parties in Parliament. This is not to suggest uncritical support for a singular interpretation of an ambiguous mandate, but rather to advocate for what Parliamentary democracy ought to epitomise:

informed debate by elected representatives and the capacity to compromise on the best course of action.

- ***The process must fully involve the devolved legislatures***. Scotland and Northern Ireland voted in the majority to remain, and the land border with the Republic of Ireland makes the issue of critical importance to Northern Ireland. For both Scotland and Wales the previous devolution legislation assigned all powers to the devolved Parliament or Assembly that were not reserved to the UK. Yet the May government's Brexit process seems to involve two stages, in which all powers shift back to Westminster, and only then are devolved down – potentially breaching the previous constitutional understanding. Navigating this cannot be done by Westminster imposing a solution.

- ***Government must openly communicate with the public*** about the achievable outcomes and feasible timelines for Brexit. Acknowledging the complexity of the task can rebuild trust with negotiating partners, and build public recognition of the need for an extension to the time to negotiate a Withdrawal Agreement or a transition period.

- ***A progressive, sectoral and methodical plan of law reform is needed, prioritising the rule of law***. Separating the UK from the EU is a highly technical and challenging process of law reform. There is now no pre-European Community law to rely upon, because people have built their lives and businesses on the certainty of the law of the last 40 years. Sensibly reforming the law to reflect post-Brexit UK entails committing to prioritise legal certainty and accountability above expediency and ease of policy implementation. It will also require a well-resourced and enlarged civil service, with open and transparent consultation processes.

- ***Robust accountability mechanisms are needed to scrutinise government decisions taken under the Brexit process***. The 2016 referendum gave a mandate to withdraw as a member of the European Union, but not to radically change the foundations of the British legal system. Such delegated powers as are necessary to quickly address deficiencies in the law arising from Brexit must be balanced by effective and robust oversight mechanisms. This includes acknowledging the central duty of the judiciary to review these decisions so as to uphold parliamentary sovereignty and the rule of law.

Brexit is in the eye of the beholder. The 2016 referendum result is seen by many Leavers as the ultimate expression of the popular will of the British people. But Remainers often picture it instead as the upshot of a poorly-framed question to an ill-informed, and under-representative segment of the population – even the product of a 'gerrymander'. In the context of such *all* or *nothing* Brexit paradigm, auditing the democratic legitimacy of Brexit is challenging. However, there are clear and manifest issues with regards to the process of Brexit, rather than the outcome and the decision itself.

**Recent developments**

Since the 2016 referendum, much has happened. The Prime Minister who championed the referendum resigned and a new majority party leader (and thus PM) was selected, who rather promptly lost much of her standing in an early general election supposed to underpin her position. There was hard-fought litigation on Parliamentary sovereignty to trigger Article 50, and the government decision to go ahead began a two-year countdown. A European Union (Withdrawal) Bill ('Repeal Bill') aims to solve the issues of the separation of the UK from the EU within two years of exit day. Very little of any of these changes has directly addressed the issues immediately pertinent to the Brexit process.

The 2017 general election was called to 'strengthen the mandate' of the Conservatives in the EU negotiations. Initially framed as providing certainty in the leadership for the Brexit process, and 'stability' in government, it resulted in a loss of both. While the question of Brexit was identified as the key election issue, neither of the top two parties (who predominated) emerged strongly in support of the remain side. Nor did they engage with each other on the form of Brexit to be pursued following the election. So as a metric for the democratic legitimacy of Brexit, the inconclusive 2017 result served neither to validate the government's choices on the process, nor to repudiate them.

The only certainty is uncertainty. The business of Brexit is a process which is so fast evolving as to make analysis of it one day obsolete the next. A practical reason for this is in the ongoing negotiation with the EU, from which nothing can be said with certainty until there is a Withdrawal Agreement, or the March 2019 deadline falls due. Relatively little negotiation seems to have been accomplished (at the time of writing), and the UK executive seems to have not yet articulated a coherent or consistent position on the aims and means of Brexit, beyond the vacuous stopgap of 'Brexit means Brexit'.

**Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis**

| Current strengths | Current weaknesses |
|---|---|
| The electorate's 2016 rejection of membership of the European Union is an assertion of the importance of national sovereignty, and the desire for national control over laws, especially the key issue of migration. | By respecting a slim majority vote in advisory referendum, where the campaign itself was subject to criticism for the lack of informed debate and uncertain positions, the government is pursuing a mandate which is unclear in its terms, meaning or consequences. |
| In promptly following up the Brexit vote, the government shows democratic respect for the (narrow) majority result of the EU referendum. | One consequence of according so much weight to an unclear mandate is to weaken the power of Parliament. Open debate about the consequences of Brexit has been curtailed as MPs face an electoral and media backlash in expressing any doubts regarding the consequences of Brexit. |

| Current strengths | Current weaknesses |
|---|---|
| | The rights of millions of EU and UK citizens are being devalued to 'bargaining chips' in negotiations between the EU and the UK. Such a debasement of the meaning of citizenship and individual rights is a violation of basic tenants of a democracy. |
| | The lack of a clear UK position threatens that negotiations with the EU may come to an end without a deal having been achieved. Embracing the possibility of a 'hard Brexit' is a failing in the Brexit process, because it provides the public with no grasp of the consequences that may follow the March 2019 deadline on this pathway. |
| | Unjustified public attacks on the judiciary by leading politicians and powerful media following the Miller decision are a concerning trend eroding the separation of powers and respect for the institutions of democracy. |

| Future opportunities | Future threats |
|---|---|
| The Brexit process presents an unprecedented opportunity for large-scale legal reform over a broad range of areas. The flexibility which could arise from separation from EU norms presents a very significant opportunity for new practices and policy to develop. | The May government's proposed framework for legal separation from the EU and reform of UK law has significant flaws. It sacrificed certainty for speed by delegating broad and sweeping powers to government ministers – allowing them scope to change vast areas of law with little oversight or review from Parliament. The approach seems undemocratic by design. |
| Withdrawing from the European Union will result in the restitution of substantial legislative and administrative powers to national, regional and local governments. This presents an important opportunity for increasing decentralisation and devolution of power to the most appropriate level of government, those closest to citizens. | The division of powers returned from the European Union between the UK national government in Whitehall and devolved governments is likely to be determined by the Westminster Parliament. This raises a concern that power will be centralised in Parliament, and the current powers of the devolved governments to act under EU law will be diminished or removed. |

| Future opportunities | Future threats |
|---|---|
| New bilateral relationships between the UK and other countries can be formed as the UK seeks to find new trading partners across the globe. Post-Brexit, there may be new demands for democratic input in the process of agreeing trade deals, where they have previously been within the prerogative power of the executive. | The Brexit process represents a threat to rights based on EU law, for example, relating to workers, consumers, animals and the environment. These rights may be vulnerable to repeal where political expedient to do so. |
| | Rights codified by the EU's Charter of Fundamental Rights will not be converted into UK law, where they do not otherwise exist. The removal of robust remedies for the violation of rights systematically weakens current redress and remedy mechanisms against (ab)use of executive and legislative power. |

### Is the 'Repeal Bill' undemocratic?

The European Union (Withdrawal) Bill is designed to deliver both the legal separation of the UK from the EU, but also a degree of legal certainty within the UK following Brexit. The process envisioned by the Bill is

1. to repeal the European Communities Act 1972;

2. to convert directly effective EU law into UK law; and

3. to delegate significant powers to the executive to remedy or prevent deficiencies arising from the conversion of EU Law (a 'Henry VIII' power).

The European Communities Act 1972 is the Parliamentary act which at the moment gives effect and supremacy to EU law in the UK, and underlies a significant corpus of law in the UK by incorporating the *acquis* of EU membership, notably the EU Treaties and the EU Charter of Fundamental Rights, into British law. Repealing this bill without adequate transition mechanisms may result in a high degree of uncertainty about which law applies (or continues to apply), where and when. Many legal commentators have highlighted multiple concerns arising from the design of this bill. The most significant issue relating to the democratic legitimacy of Brexit concerns the use of delegated powers by Ministers. The Repeal Bill proposes to delegate power to the government ministers, to create secondary legislation which will change, amend or remove retained EU-law on an unprecedented scope and scale. An estimated 800 to 1,000 statutory instruments have already been envisioned, but this is likely to be an underestimation of a possible 'legislative tsunami' that may result from this bill.

Constraints on the use of delegated powers to change or remove primary or secondary law are limited, while the power to determine where secondary legislation is needed is broad. Ministers will also decide the level of Parliamentary scrutiny. And in some limited cases, instruments may even be made without any draft being laid before Parliament. This delegation of legislative power away from Parliament raises pressing concerns for the accountability and transparency of the new arrangements. There is no proposed requirement on the government to provide explanation, justification or evaluation of the impact of their changes made to the law. This approach could compromise legal certainty and individual rights, and give government ministers leave to implement policy choices without Parliament. For all the intention of 'taking back control', such a design will be less democratic, create more uncertainty and ultimately weaken Parliament, as power is centralised in the hand of very few people in Whitehall.

**Will the jurisdiction of the European Court of Justice be undemocratic post-Brexit?**

To a significant extent the key 'Brexit issues' will be determined by a Withdrawal Agreement with the EU, and not by the UK's Parliament (or executive) acting alone. These issues include questions about the Northern Irish border with the Republic of Ireland; the rights of EU citizens resident in the UK and of UK citizens in the EU; Gibraltar; and the settlement concerning the UK's remaining financial liabilities to the EU. However, these matters are just the headline issues so far. Many more issues will need settlement, including cooperation on matters of security, crime, family and civil judgments.

A key question has been whether the Court of Justice of the European Union (CJEU) has any jurisdiction in Britain following Brexit. The issue captured headlines following the 'red line' announced by Theresa May. The CJEU's function is to ensure the uniform application of EU law across all Member States. It acts as a final arbiter in the case of disputes that fall within its jurisdiction, and provides an authoritative interpretation of EU law to be equally applied across all Member States.  Asking whether it is democratically legitimate to have regard to the jurisdiction of the CJEU is misplaced. In most liberal democracies, the judiciary are generally unelected in order to insulate them from the vagaries of day-to-day politics and to preserve judicial independence. Whether or not the UK will fall under the jurisdiction of the CJEU on certain EU-related issues post-Brexit will be left as part of the complex resolution of the future relationship between the UK and the EU, and depend on whether it will be necessary for participation in the Single Market.

However, what is significant about this question is that it has had to be considered at all. The pillorying of judges in the media as 'enemies of the people' (an accusation that was not condemned by government ministers, and was perhaps even condoned by them), or attacks on the CJEU for a lack of democratic legitimacy, both fundamentally misunderstand the whole notion of an independent judiciary, and the central values of the separation of judicial power from the executive and legislature and of the rule of law.

## Could there be another 'Miller Judgment'?

The 2016 *Miller* judgment by the UK's Supreme Court was a powerful statement of the centrality of Parliament and the rule of law, above and beyond the powers of the executive. Under the judgment, the government alone does not have authority to make law which changes or removes domestic rights of individuals. To trigger Article 50, the Government must be authorised to do so by an Act of Parliament. The key result of *Miller* was a brief (137-word) Act of Parliament that gave authority to the Prime Minister to notify the EU of the UK's intention to withdraw from the EU under Article 50. This Act does not give authority to the Prime Minister to agree to adopt the Withdrawal Agreement on behalf of the UK. [From the EU perspective, the Withdrawal Agreement would need to be adopted by a qualified majority vote, which requires that it is supported by at least 72% of the remaining 27 Member States and representing at least 65% of the total EU population]. It can therefore be assumed that any Withdrawal Agreement must also be passed by the Westminster Parliament. Not doing so would likely result in *Miller 2.0*.

However, a further question of the Brexit process concerns the immunisation of executive power from judicial challenge, and the removal or weakening of individual rights, by virtue of the Brexit process. Both of these concerns are at issue in the context of the European Union (Withdrawal) Bill. It is highly likely there will be extensive litigation arising as a result of Brexit. The recent *Unison* judgment concerning the constitutional right to access to justice can also be recognised as a shot across the bow from the Supreme Court for future *Miller*-type litigation. In a searing section of this judgment, the Supreme Court affirmed their role in ensuring that the executive carries out its functions in accordance with the law, and as regards its view on Parliamentary democracy, the rule of law, and access to justice:

> 'Without such access [to the Courts], laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade.' (*R(Unison) v Lord Chancellor* [2017] UKSC 51, at 58 (per Lord Reed).

We may guess how the courts will be likely to regard any Brexit process that does not respect these fundamental values.

## Would a second referendum deliver democratic legitimacy?

There is no clear vision of what Brexit is, or what it will deliver. The 2016 referendum delivered a result so surprising to all sides that no clear preparations had been made for a Leave vote. The referendum result has been questioned, and it is clear that the consequent process has in many cases weakened rather than strengthened parliamentary democracy. So the question of whether there ought to be a second referendum to guarantee the democratic legitimacy of Brexit has been raised, particularly in the context of any Withdrawal Agreement made with the EU. Many people are still hoping for the UK to remain a member state of the EU, and for them it may be a case of what was done by a referendum can only be undone by a referendum. From an external perspective, the

question of whether it is possible to 'un-trigger' Article 50 is likely to be answered as a political rather than a legal question, and likely in the affirmative.

However, such a referendum is at once too early and too late. It is too early for a deal to have been negotiated with the EU-27 which can then be put to referendum, and too late for the decision to be determined by the UK electorate as negotiations have begun. From fundamental constitutional perspective, however, there should *not* be a second referendum on Brexit – because that would only serve to further undermine the system of Parliamentary democracy. A democratic Brexit process is one that reasserts Parliament sovereignty over the 2016 referendum, but recognises that this sovereignty extends only to the UK borders – while Brexit reaches far, far beyond them.

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## 4.5   In the basic structure of devolution settlements

*Devolution in the UK encompasses a range of quite different solutions in three countries (Scotland, Wales, and Northern Ireland), plus lesser delegations of powers to London and some English cities. Designed to meet specific demands for national or regional control and to bring government closer to citizens, there are important issues around the stability and effectiveness of these arrangements.* **Diana Stirbu** *and* **Patrick Dunleavy** *explore how far relations between Westminster and the key devolved institutions have been handled democratically and effectively.*



*At the Auld Acquaintance Cairn in Gretna Green, opponents of Scottish independence left messages of support for the No campaign.*

*Photo:*   *summonedbyfells via a CC-BY 2.0 licence*

**What does democracy require of the UK's devolution arrangements?**

- Devolved institutions must be *representative and legitimate.* They must rely upon freely and fairly elected institutions, built on and promoting democratic principles. Regional and local democracy should bring decision-making closer to the citizens. Devolved institutions should be created with popular endorsement to strengthen their legitimacy.

- Devolution arrangements should be *transparent and intelligible* to the people they serve. The powers and competences devolved (i.e. what functions are exercised and by whom?) should be clear. And to the relationship between devolved authorities and the central government should be easy to follow. Clear and coherent devolution arrangements are essential if the general public are to hold decision-makers accountable, and are key for decision makers at all levels of government in helping more effective decision making.

- Under the principle of *subsidiarity* genuine scope for decision-making should be located as close to citizens (as low down in a governance hierarchy) as possible. This is to ensure that decisions attract consent, and interventions take place at the most effective and appropriate level of intervention.

- *Autonomous development* is best fostered where devolved institutions can decide on their own democratic arrangements – electoral arrangements, size and nature of their political institutions, etc.

- Devolved institutions should be *inclusive, and promote citizen participation* by creating new venues and mechanism for engagement on a wide range of issues: from early constitutional deliberation on the form and nature of self-governance adopted, through to the policy making process within the new system

- Democratically elected institutions must be able to *effectively scrutinise* the exercise of power at their appropriate level of government.

- *Constitutional and (or) legal protection* is needed if democratic devolution is to work, requiring a formal, fair and clear mechanism of resolving disputes over powers and competencies between tiers of government. The UK central government and Westminster Parliament need to ensure that devolved administrations do not trespass on their legislative competence, whilst devolved administrations require a measure of security against central interference. A system of inter-governmental relations is needed to facilitate dialogue and negotiation between the different levels of authority.

- Building new institutions takes a long time. So the arrangements of devolved governance should be *durable and resilient* in the face of political changes internally in their country or region, and at the UK level.


Most liberal democracies of any size in the modern world have moved away from being run as 'unitary states', with just one main centre of government plus a set of clearly subordinated local or regional authorities. For instance, some big European countries, like France, Italy and Spain, now have constitutionally protected regional governments, where before they were previously run as centralised Bonapartist states. Other liberal democracies are longstanding federal systems, notably Germany, the USA, Canada and Australia. So the UK's rapid movement since 1997 towards creating more devolved government is something of a belated falling into line with other countries.

However, the UK follows a pattern of 'organic' devolution with varying powers decentralised to different countries and regions. This approach is very different from a federal state. Figure 1a shows that under federalism a written constitution (one that is normally fixed and quite hard to change) specifies just two 'bundles' of powers and competences. The first bundle is allocated to the federal or central tier, and the second bundle to the component states. All the states have the same powers here. The character of these allocations, along with the development of tax-raising powers and financial capacity at the two tiers, then create a system of inter-governmental relations. The

federal centre may pick up new functions not specified in the constitution, and it may equalise financial capacities across states. It can also subsidise the states to do things on its behalf, or otherwise intervene. But it cannot change the constitution's allocation of functions. So the federal tier can only realise policy objectives that clearly fall within bundle 2 by persuading or incentivising the states who 'own those issues. In addition, a Supreme Court polices the activities of both tiers of government impartially, and impartially regulates inter-governmental relations.

By contrast, in the UK there is no written constitution, and the foundational principle of 'parliamentary sovereignty' still implies that the Westminster Parliament 'cannot bind itself' legally. A set of major policies (especially defence, foreign affairs, and most tax-raising and welfare) are reserved to the UK centre. Different sets of policy functions have been devolved to national institutions in Scotland, Wales and Northern Ireland in ways which politically are more binding, and may provide some constitutional protections to them. Yet as Mark Elliot has observed: 'As a matter of strict law, the UK Parliament has merely authorised the devolved legislatures to make laws on certain matters, without relinquishing its own authority to make law on any matter it chooses — including devolved matters'. As we discuss below, Westminster actually still legislates changes that affect devolved policy areas, albeit so far with the consent of the devolved countries' legislatures. So the extent to which devolved powers in Scotland, Wales and Northern Ireland are protected constitutionally is obscure.

**Figure 1a: How a federal government system works**
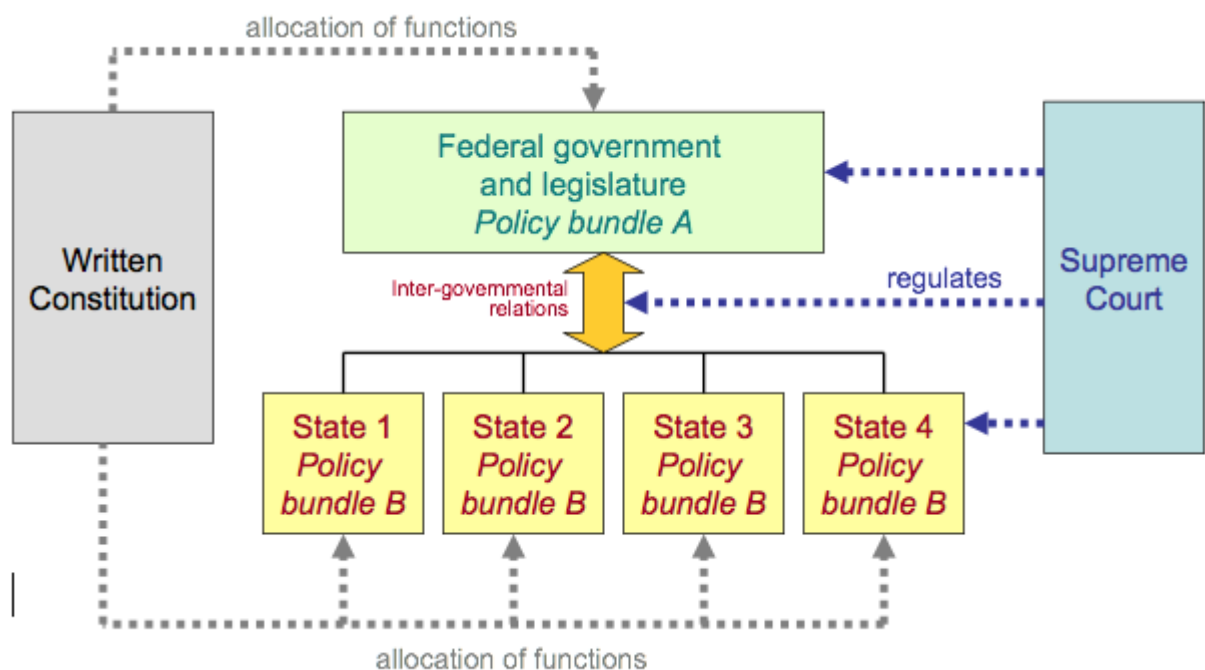
**Figure 1b: The UK's devolved government system**
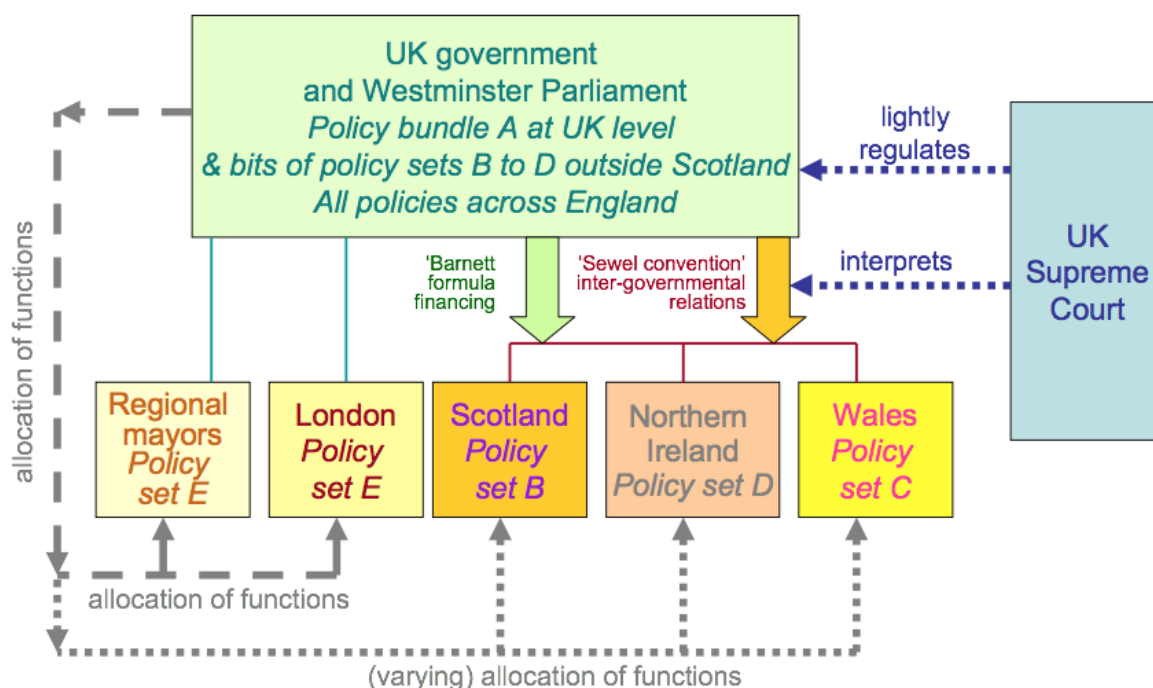


Within England extensive powers have been devolved to the executive Mayor and Assembly in London, and lesser sets of powers to executive mayors in some city regions. But here Westminster retains an (almost) untrammelled ability to alter who is responsible for any policy function within England.

There is also a very unsophisticated system of inter-governmental relations within the UK, with Westminster/England as the dominant player, accounting for five sixths (85%) of the population. There are only two key co-ordination mechanisms. First, most taxes are raised by the UK government, and it then allocates funding to the three devolved countries using a crude, fixed rule of thumb known as the 'Barnett formula'. The three devolved countries get funding as a ratio of English spending, so if England cuts or raises public expenditure, the same happens to transfers from Westminster to fund devolved services.

Second, the UK centre has recognised a convention named after a peer Lord Sewel, which says that Westminster will not pass laws about the policy sets of Scotland, Wales or Northern Ireland without the consent of their legislatures and governments. What this means in practice is much debated (see below). The UK's Supreme Court has some role in regulating inter-governmental relations between Westminster/Whitehall and the devolved governments. The Court is independent of Whitehall, and can in principle regulate how the centre behaves, but it has historically done so only in rather a light touch way, deferring to the need for a (national) government to operate effectively as it wishes.

**Recent developments**

In the 2014 Scottish Independence Referendum voters chose to remain in the UK by 55% to 45%, but only after the PM David Cameron had promised new powers for Scotland's government. In Scotland and Wales the aftermath of this closely fought contest precipitated important changes in their constitutional arrangements. The Scotland Act 2016 and the Wales Act 2017 embodied the Sewel Convention in statute law for the first time, which was seen as a symbolic under-pinning for the permanence of the Scottish Parliament and the National Assembly for Wales.

Fiscal devolution to Scotland (important in the context of enhanced autonomy) featured prominently in the 2014 Smith Commission Report, and was the centre piece of the 2016 Act. It gave Edinburgh new powers over taxation – to set air passenger duty, to make an add-on to income tax rates and vary thresholds. On spending the Scottish government gained new social security powers on carers and disability welfare benefits, on topping up reserved benefits run by the UK, and on creating new ones.

The Wales Act 2017 also marks a significant reshape of the Welsh constitutional settlement with a move to a reserved power model, transfer of additional powers (i.e. energy, harbours) and more autonomy for the Assembly in dealing with its own affairs by devolving electoral franchise and powers over the size of the Assembly to Wales. However, the likely durability and robustness of the Act has been criticised heavily during the legislative scrutiny stage (see the National Assembly Constitutional and Legislative Affairs Committee Report on the Wales Bill 2015/16) and after receiving Royal Assent. Constitutional preferences amongst citizens in Wales point to strong support for greater autonomy. Given the choice between the Welsh National 'Assembly to have more powers / Assembly to have same powers as now', 73% of respondents to the regular BBC/ICM St David's Day Poll in March 2017 chose more powers.

The devolution settlement in Northern Ireland has also seen some important changes. The size of the Assembly there was cut from 108 to 90 in 2016, and some of its powers (on welfare reform, and corporation tax) were altered.

The process of English devolution carried on in London with the already powerful executive mayor (and Greater London Authority) acquiring commissioning, strategic planning, funding and regulation powers in health and social care. Outside the capital new governance and leadership arrangements emerged piecemeal from 2014 onwards, initially in the absence of a clear legislative framework. The 2016 Cities and Local Government Devolution Act rectified this, and to date 11 devolution deals have been negotiated, not all of them implemented.

Some large-scope English deals cover areas such as transport and infrastructure, health, skills and employment, enterprise and growth, housing, planning fire services (as in Greater Manchester with a powerful executive Mayor). More modest deals bracketed as 'devolutionary', because Whitehall gives up some powers, range from combined authorities spanning city regions and led by an executive mayor (as in Liverpool City region) to combined authorities with a new elected Mayor with much fewer powers (as in Cambridge and Peterborough), down to a unitary council and local economic partnership model (Cornwall).

**After the Brexit referendum**

Voting on European Union membership in June 2016 revealed deep geographical divisions within the United Kingdom. Two devolved countries (Scotland and Northern Ireland) and the devolved city-region in London (with roughly the same population size as the other two combined) voted strongly to remain in the EU. Both most of the rest of England and Wales voted to leave.

The lead-up to the March 2017 triggering of formal 'leave' processes under the EU's Article 50 was marked by visible tensions in intergovernmental relations between the UK central government and all three devolved country administrations. A Joint Ministerial Committee (JMC) of the three devolved countries and Whitehall ministers, which had previously been in abeyance, was resurrected by the May government to facilitate dialogue and consultation. It did not stop devolved administrations voicing their dissatisfaction with the low level of engagement and access that they had to the UK Government's negotiating strategy.

In December 2016, the devolved administrations joined the legal challenge brought by Gina Miller against the May government, seeking to require them to seek Parliamentary approval before initiating the Article 50 'divorce' process. The case went to the UK Supreme Court, and the devolved countries effectively forced a first legal test of the Sewel Convention, now reflected on the statute book in Scotland Act 2016 and Wales Act 2017.

The Supreme Court's judgment took the view that 'the UK Parliament is not seeking to convert the Sewel Convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it is recognising the convention for what it is, namely a political convention, and is effectively declaring that it is a permanent feature of the relevant devolution settlement' (page 48). This limited interpretation may none the less prove significant in the process of repatriating powers from the EU to either the UK government or the devolved governments (see below for more discussion).

**Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis**

| **Current strengths** | **Current weaknesses** |
|---|---|
| Devolution appears to be firmly entrenched in the national polities in Scotland, Wales, Northern Ireland, and in London. | The overall UK-wide devolution project lacks any constitutional coherence. It has evolved piecemeal, in asymmetric and specific fashion in each case, making public understanding harder. |
| Electoral systems used in the mainland devolved administrations (Scotland, Wales and London) secure broadly proportional representation. They arguably redress some of the representational defects inherent to Westminster's plurality rule (FPTP) system. | Devolution deals in England have been negotiated in ways that lack transparency and have received little public scrutiny. |

| Current strengths | Current weaknesses |
|---|---|
| Some devolved legislatures have better records on gender representation than Westminster. There have never been under 40% women members in Wales, and never been under 30% in Scotland. Northern Ireland is still somewhat a laggard. | Turnouts in the new devolved mayor elections in England in May 2017 were low, reflecting citizen engagement in the devolution process there – although turnout in any new elections is often lower. |
| All the devolved legislatures and executives in Scotland, Wales, Northern Ireland and London were popularly endorsed in referenda before being implemented. The same is true of some English devolution schemes outside London. | The EVEL process does not ensure a 'voice' for England. It remains an opaque and complex parliamentary procedure, little known and understood by the general public. |
| Stronger levels of citizen engagement with national legislatures have become the norm in Scotland and Wales, whereas they remain the exception at Westminster. | Inter-governmental relations between the devolved countries and the UK are very poorly developed, and do not include London. Perhaps more significantly inter-parliamentary relations are vestigial. |

| Future opportunities | Future threats |
|---|---|
| The Brexit process looks likely to initiate another period of extensive constitutional flux. A positive consequence could be a window of opportunity to initiate an inclusive, nationwide deliberation about the constitutional future of the UK. So far, only a few Labour figures have called for such national conversation. | A potential downside of the Brexit process is that powers repatriated from the EU might accrue overwhelmingly in the hands of UK ministers and Whitehall, with little Parliamentary scrutiny. Perhaps the onward devolution of these powers to the three countries and to English regions and areas may be short-circuited or inadequate, resulting in a net centralisation of power. |
| Repatriating powers from the EU, in the spirit of subsidiarity, offers the opportunity of enhancing powers and competences of sub-national legislative assemblies. | Devolved administrations in Scotland, Northern Ireland and London have different Brexit aims from the May government and given the financial and political implications in the case of Wales and Northern Ireland. |
| As Wales moves from a conferred power model (where Westminster says what it could control) to a reserved power model (where powers rest with them permanently) so there may be a better constitutional alignment with devolution practice. | Further territorial divisions within the UK could be amplified by a second Scottish independence referendum. This possibility depends on the level of public support north of the border, but also on the perceived treatment of Scotland's interests in negotiating the EU exit deal and the repatriation of powers. |

| Future opportunities | Future threats |
|---|---|
| The Mayoral elections in May 2017 were overshadowed by the general election called for a month later, and had rather low turnouts. But reruns in future will be opportunities to revitalise local democracy and to improve the visibility of devolution deals. | Any bullying UK-centric approach to repatriation of powers that seeks to overstep proper parliamentary scrutiny and involve devolved legislatures poses a serious threat to the principles of democratic devolution. |
| | The level of dispute and contestation both in courts and politically may increase as a result of Brexit. |
| | The Conservative 2017 election manifesto unilaterally proposed scrapping the Supplementary Vote voting system used for elected mayors, in London and elected regions and replacing it with first past the post, which would radically lower mayor's legitimacy. The manifesto is largely history now, but that such a non-consensus policy (also overturning local referenda) could have been envisaged by the Conservatives is an ominous sign for the future of English devolution. |

### The further unfolding of Brexit

As the Brexit process enters a new stage of detailed 'divorce' negotiations with the European Union, a raft of underlined new legislation will be needed to give effect to the multiple changes involved. It will cover areas such as agriculture, fisheries, transport, and economic and environmental regulation – all areas where the three devolved countries are primary actors within their own territories. As yet, however, there is little clarity on what role these devolved governments and legislatures will have in the passage of this legislation, at what stage they will intervene, and how the Sewell convention and 'legislative consent' process discussed below will operate. Early indications from the *Legislating for Brexit: White Paper* (2017) suggest that existing EU frameworks will in the first instance be replaced by UK common frameworks, moving powers back to the UK centre. Subsequently, 'there will be an opportunity to determine the level best placed to take decisions […] ensuring power sits closer to the people of the UK than ever before' (paragraph 4.5).

If the spirit here follows a subsidiarity principle in a full-hearted way, then devolved administrations and legislatures would see their functions and responsibilities greatly enhanced, and could play an enhanced role in the process. However, there is no single mention of the notion of 'legislative consent' by the three devolved countries in the *White Paper*, nor any indication of inputs to be made by the devolved legislatures. Thus the May government, before the disastrous 2017 general election, seemingly envisaged

a highly executive driven process. Their approach centred on ministers and Whitehall negotiating with the devolved administrations, thus relying on one of the weakest links in the devolution settlement so far, namely the current poorly institutionalised inter-governmental relations.

**The Sewel convention and legislative consent**

If a Westminster MP seeks to ask a question of UK ministers about a matter that forms part of the devolved powers of the Scotland, Wales or Northern Ireland governments and Parliament/Assemblies the Speaker of the House of Commons will immediately intervene to rule the question out of order. So an outsider might have expected that Westminster would simply have stopped legislating about issues that are now controlled by devolved legislatures.

In fact that has not happened. Looking for a moment just at the UK-Scotland case, on about ten occasions a year, every year for 16 years now, the Westminster Parliament has legislated in ways that change the powers of the Scottish government and the Edinburgh Parliament. But in each case they have done so after a Legislative Consent Motion (LCM) was framed by the Scottish government and accepted by the Edinburgh Parliament. In almost all cases the effect of the legislation has either increased or left intact but varied in some way the powers of the Scottish government. And these changes have been accepted because they improve policy-making north of the border, maintain consistency across the two parts of the UK, and can conveniently be 'piggy-backed on England and Wales legislation going through the Commons.

The Sewel convention is an agreement that 'Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament'. Initially rather informally established (like all other conventions), this was later formalised. A section of the Scotland Act 2016 clearly stated: 'It is recognised that the parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament'. It also applies to Wales now in the same form.

However, the UK Government's Devolution Guidance Note 10 interprets the Sewel Convention very restrictively as follows:

> '[W]hether consent is needed depends on the purpose of the legislation. Consent need only be obtained for legislative provisions which are specifically for devolved purposes, although Departments should consult the Scottish Executive on changes in devolved areas of law which are incidental to or consequential on provisions made for reserved purposes' (paragraph 2).

The difference between these two views is quite wide legally. For example, Mark Elliot has argued that if the Westminster government wanted to withdraw the whole UK state from the European Human Rights Convention (as the Conservatives in 2015-17 long said they wished to do), then it could so – because the action does not relate solely to

devolved powers (as Brexit does not). However, what Westminster could not do within the Sewel Convention was then to put in place a 'British Bill of Rights' (as the Conservatives at one stage planned to do) – because this would vary the powers of the devolved country administrations and require their legislative consent.

It thus remains pretty unclear whether the repatriation of powers from the EU to the UK falls foul of the Sewel convention, which would give Edinburgh and perhaps Northern Ireland a lock on the process because it automatically varies their powers without their consent. As we noted above, the Supreme Court refused to see this as legally necessary, regarding Sewel as a purely political convention. A neatly separated, two-stage movement of powers – back from Brussels to London, and then down from London to the devolved countries – seems to be what Tory ministers envisage. But even some of them have hinted that legislative consent from Edinburgh would be needed for the first stage as well.

## Conclusions

Devolution in Scotland, Wales, Northern Ireland and London has strengthened representation, legitimacy and the inclusiveness of policy debates there. Devolution in England outside London has just begun, but might be expected to redress important democratic, deliberative and scrutiny deficits there as well. However, both types of devolution still lack clarity and coherence, with poor inter-institutional relations and questionable constitutional and legal protections for even devolved powers in Scotland (the most powerful devolved country). As a result, the overall durability of democratic devolution in the UK seems still unsettled.

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# 5.   How democratic are devolved government arrangements?

- Scotland – devolved government and national politics
- Scotland – local government and politics
- Wales – devolved government and national politics
- Wales – local government and politics
- Northern Ireland – devolved government and politics
- Northern Ireland – local government and politics
- London – devolved government and politics at metropolitan level
- London – local government and politics within the metropolis
- England – local government and politics

# 5.1 Scotland – devolved government and national politics

*Devolved government in Scotland started as a radical innovation in bringing government closer to citizens, and its development has generated great expectations including strong pressures for and against the Scottish Parliament and government becoming the core of a newly independent state.* **Malcolm Harvey** *and the Democratic Audit team explore how democratically and effectively these central institutions have performed.*



*MSPs' offices at the Scottish Parliament.*

**What does democracy require of Scotland's devolved Parliament and government?**

- The legislature should normally maintain full public control of government services and state operations, ensuring public and Parliamentary accountability through conditionally supporting the government, and articulating reasoned opposition, via its proceedings.

- The Scottish Parliament should be a critically important focus of Scottish political debate, particularly (but not limited to) issues of devolved competence, articulating 'public opinion' in ways that provide useful guidance to the government in making complex policy choices.

- Individually and collectively legislators should seek to uncover and publicise issues of public concern and citizens' grievances, giving effective representation both to majority and minority views, and showing a consensus regard for the public interest.

- The Scottish government should govern responsively, prioritising the public interest and reflecting Scotland's public opinion.

Scotland's law courts and legal system have always been separate from those in England and Wales, and culminate in the High Court in Edinburgh. However, the UK Supreme Court remains the key legal arbiter of relations between the UK and Scottish governments.Many of the founding ideas for Scotland's parliament and government were defined by the Scottish Constitutional Convention (1989-95), and implemented in the Blair government's devolution settlement overwhelmingly endorsed by Scottish voters in 1997. The core institutions are a Scottish parliament of 129 MSPs, elected by a broadly proportional representation system (the additional member system). A Scottish Executive was set up to run all the devolved policy areas, using a directorate structure (instead of the separate departments found in Whitehall). Its policy responsibilities have steadily expanded and the now Scottish Government supervises the 60 per cent of spending in Scotland (£41 billion) that are devolved functions. The key areas excluded from their control – and which would accrue only to an independent Scotland – remain social security (£18 billion), most major taxation, defence and foreign affairs. Most domestic spending (on education, health, transport, housing, local government, the economy etc) is devolved. The government is currently headed by the Scottish National Party (SNP) leader, First Minister Nicola Sturgeon. She has a small cabinet (12 members), plus another 13 ministers, all drawn from the Parliament.

## Recent developments

Despite electing MSPs via proportional representation, which tends to stabilise political alignments, Scottish politics has undergone a period of significant political and constitutional upheaval over the past half-decade. In 2011 the SNP returned 69 of the 129 MSPs – a majority government, for the first time – providing the crucial catalyst for Scotland's independence referendum in 2014. The SNP proposition that Scotland should secede from the UK (also supported by the Greens) was opposed by all the main UK parties in Scotland and was defeated by 55 to 45 per cent.

Nevertheless, far from killing off the SNP and their *raison d'être,* the strong campaigning momentum of the referendum period and its aftermath saw SNP membership increase fivefold, from 25,000 before the referendum to around 125,000 in the six months after it. At the UK general election in 2015, the SNP went on to increase their seats from six in 2010 to 56 of Scotland's 59 seats, taking 49.97% of the vote in the process. This was a high water mark and in the May 2016 Scottish Parliament election the SNP won 63 seats, falling two shy of the 65 required for a majority, but retaining government office.

Percentage of Westminster Seats Won 1997-2015



Percentage of Scottish Parliament Seats Won 1999-2016
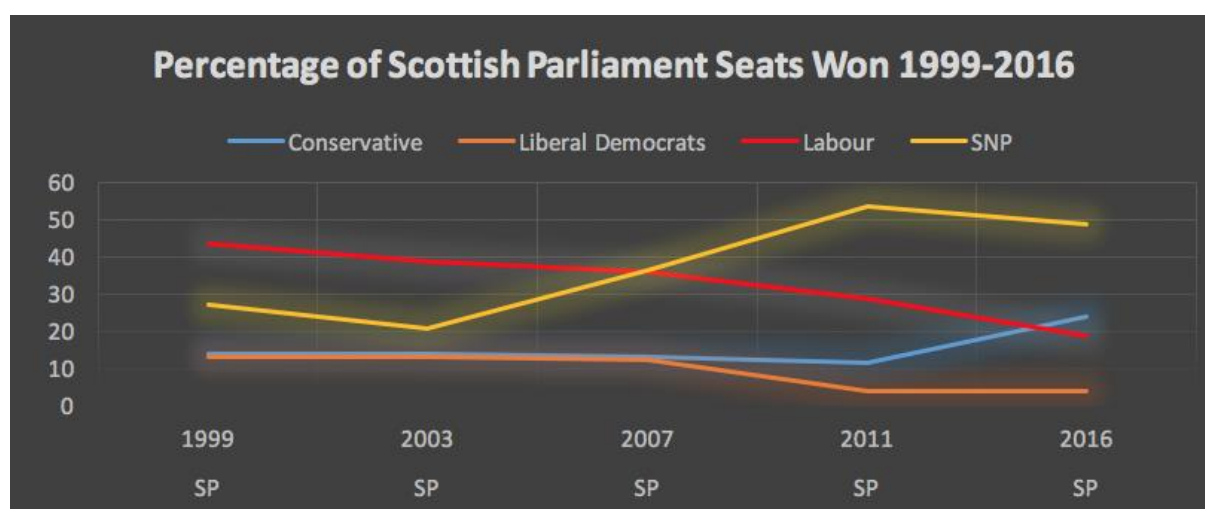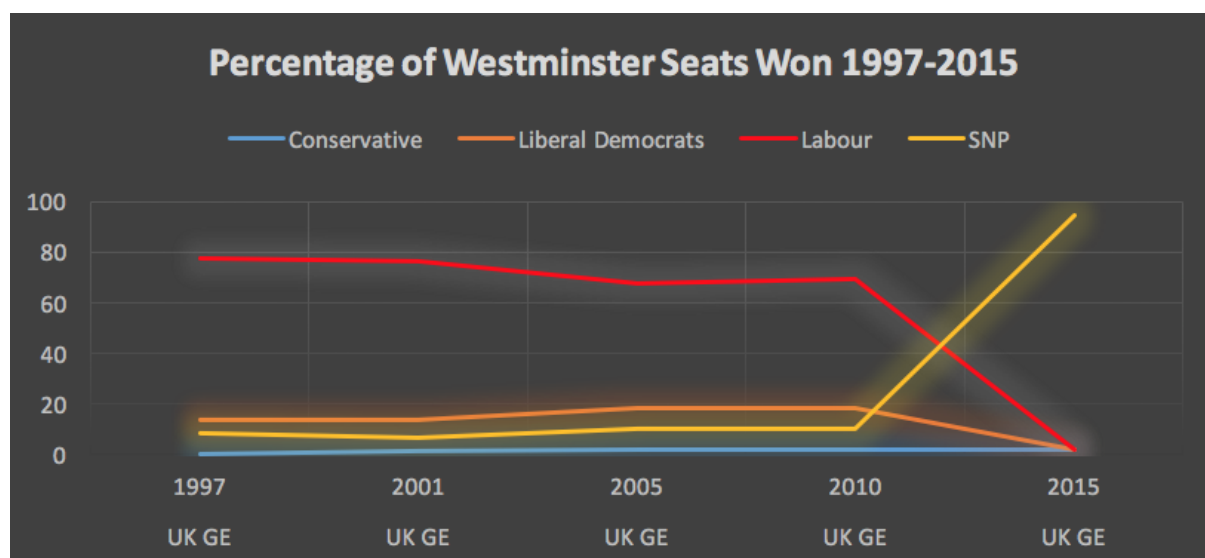
The Scottish independence referendum also began critical changes in the fortunes of Scottish Labour and the Scottish Conservatives. Labour was first ousted from control of the Scottish executive in 2007, and its subsequent history has been nothing short of catastrophic. Since then the party has had nine different leaders (three of those in a caretaker role) and its previous dominance of Scottish politics has rapidly leached away. A key stage was reform of the electoral system for Scottish local government, often Labour-dominated, with the single transferable vote introduced by the SNP with Liberal Democrat and Green support in 2004. At three elections (2007, 2012 and 2017) Labour's previously dominant control of councils and councillors has been drastically eroded by the SNP. Increasingly without its traditional hegemony in central Scotland's local authorities, Labour's decline accelerated under PR elections for the Scottish Parliament. And Figure 1 shows how suddenly and completely their Westminster predominance was completely terminated in 2015, with the party losing all but one of the 41 seats it held

in 2010. For a party that had dominated Scottish politics for nearly half a century, this has been a stunning reversal of fortune, accentuated by weak UK Labour leaders (Miliband and Corbyn) who had little electoral appeal in Scotland – though signs of this decline were already apparent under Gordon Brown's premiership.

Meanwhile since the 2014 referendum the Scottish Conservatives have staged a significant revival, becoming the main opposition party to the broadly social democratic SNP. As a result of the proportional electoral system that they had continually opposed, the Conservatives have moved sharply back from the electoral decline of the 1990s, largely because their clearer and complete opposition to independence suddenly projected them as the safer option in defending the UK union. Labour's once equally strong unionism was squeezed in the referendum campaigns by the SNP's embrace of social democratic approaches, and divisions amongst Labour and left/green voters, members and trade unionists on how to vote. The party leadership found themselves in a constitutional lose-lose situation between the SNP's clear nationalist option and the Conservatives' unabashed Unionism. Labour has tried to float a position somewhere between the two, discussing increased autonomy, 'devo-more', and, most recently, even federalism. But the issue has become so polarised that there are now few voters in the middle ground. Labour's prospects for future recovery appear slim.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current Strengths | Current Weaknesses |
|---|---|
| The Scottish Parliament has long held itself to be a parliament that is transparent in its operation, and the stringent measures it took to provide for registering interests of its members meant that it has largely avoided the negativity that befell Westminster in the wake of the MPs' expense scandal. | Parties in the Scottish Parliament operate strict party discipline, like the House of Commons. MSPs rarely rebel on whipped votes. During the 2011-16 majority SNP government, many critics complained that rigorous SNP discipline reduced the Parliament to a residual role akin to the stunted functions of the Westminster Parliament –subject to the dominance of the executive. |
| As a key aspect of set-piece politics, the weekly jousting session that is First Minister's Questions provides opposition parties with the opportunity to hold the government to account. | The committee system of the Scottish Parliament, established to fulfil the function of both Westminster subject and select committees, has proved ineffectual in scrutinising legislation and holding government ministers to account. Members are assigned to committees based just on party strength in the wider parliament. |

| Current Strengths | Current Weaknesses |
|---|---|
| The establishment of family friendly hours – parliamentary business takes place from Tuesday to Thursday, 9am-6pm, with infrequent exceptions – means that members have a clearly established working pattern, allowing for better work-life balance, the ability to spend more time with family or other outside interests (one MSP is a qualified referee and regularly features at Scottish and European games). | First Minister's Questions provides a set-piece session, albeit in a tired format. But it does not clearly fulfil objectives of enhancing scrutiny or accountability. Questions and answers frequently revert to partisan bickering, especially on the unresolved constitutional questions around independence. |
| Electronic voting allows for decisions to be made quickly and records to be announced without the need for physical divisions that operate in the House of Commons. The Parliament also has modern IT built into all its operations. | The Additional Member System for electing MSPs creates a distinction between constituency and regional list MSPs, although issues around 'two classes' of members are less evident than in Wales. Some list MSPs have been accused of 'targeting' citizens cases in a single local constituency of their region, with the next parliamentary election in mind. Potentially then, their regional constituents elsewhere might not be as well represented as those in the target constituency. |
|  | The operation of the Additional Member System has created a closed party system in Scotland. No new parties entering the legislature since 2003. There is no official 'threshold' to gain list MSPs (as there is in the operation of the German AMS electoral system). But because top-up regions are quite small, parties normally need to secure between 5 and 9 per cent of the list vote, in order to secure MSPs at this stage. |
|  | The Parliament has few ethnic minority MSPs. The first was elected in 2007, and only four have succeeded ever, each initially elected as regional members for Glasgow. |

| Future Opportunities | Future Threats |
|---|---|
| The vote to leave the European Union has altered the dynamics of the Scottish constitutional debate. Given the nature of the 'reserved powers model' of devolution which established the Scottish Parliament, the 'repatriation' of powers from Brussels may provide the Scottish Parliament (and government) with the opportunity to accrue most of these powers, providing it with extensive competences. | Scotland has only a small, uni-cameral legislature. There is no upper chamber to act as a check or balance on the Parliament mis-operating or over-reaching its powers. |
| The return to a new SNP minority government from 2016 may mean that parliament can reassert itself, regaining a clearer role in scrutinising government legislation and holding the government to account. | With or without independence, the Scottish Parliament faces major issues about its capacity to deal with the significant increases in powers that have been delivered or are promised. When 25 government ministers and three different main opposition party front benches are removed (at least another 35 MSPs here), only a limited number of members remain to fill existing committee seats. (The problem would worsen post-independence, with more ministers and committees needed for five main additional functions). |
| The Presiding Officer's 'MOT' review of the Scottish Parliament and willingness to actively examine the operating procedures is both timely and a recognition that there are ways in which the parliament can improve. | |

### Has the Scottish Parliament matched its own democratic ideals?

Following the success of the devolution referendum in 1997, a Consultative Steering Group on the Scottish Parliament was established to provide recommendations on how the parliament should operate: how it would be elected, the Standing Orders that would operate, and the key principles it would operate under. They provided an ambitious agenda for an apparently more consensual democratic approach. A first 'key principle' was (unexceptionally) that the Scottish Executive (now Scottish Government): Has the Scottish Parliament matched its own democratic ideals?

- 'should be accountable to the Scottish Parliament, and the Parliament and Executive should be accountable to the people of Scotland'.

Three more far-reaching 'key principles' required that the Scottish Parliament:

- 'should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive;

- should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;

- [and] in its operation and its appointments should recognise the need to promote equal opportunities for all'.

On each of these three measures, the picture is rather mixed. *Power-sharing* between the executive and the legislature was most obvious during the SNP's period of minority government between 2007 and 2011; and, again, since the 2016 election. These periods gave the Scottish Parliament a clear role in adapting, challenging and scrutinising government proposals. During the first two sessions – under the Labour-Liberal Democrat coalitions – parliament's role was more limited, though private members' legislation piloted by Tavish Scott and Tommy Sheridan were passed into law.

However, from 2011 to 2016 there was an overall Scottish National Party majority in the legislature. This was a period characterised by much more in the way of executive dominance (more in line with the 'Westminster system' model). The Scottish Parliament was reduced to a rubber-stamping role as the (incredibly disciplined) SNP government utilised its majority of MSPs to full effect.

On *accessibility*, the Scottish parliament appears to score more highly. It has a well-utilised public petitions committee and a clear and transparent process of legislating, and it symbolically meets inside a building in which most rooms are glass-fronted. However, public engagement in its elections continues to hover around the 50 per cent mark – significantly lower than the level of UK elections (though the independence referendum did see a record 84% turnout).

When it was established in 1999, the Scottish Parliament was one of the most gender-balanced parliaments in Europe, with only the Scandinavian states returning more female representatives. However, since then, and despite significant (but voluntary) mechanisms being adopted by several political parties, female representation has fallen. Ethnic minority representatives, and those who identify as having a disability, have also failed to become MSPs in any significant numbers, so the parliament's success on promoting equality has been limited here. But it does maintain 'family friendly' working hours, with almost all parliamentary business taking place from Tuesday to Thursday in office hours. This allows MSPs to spend more time with family, their constituencies or outside interests – one MSP is a qualified referee and regularly features at Scottish and European games. Chamber business very rarely extends beyond 6pm – in sharp contrast with the late-night sessions that are frequently a part of the House of Commons business.

In terms of *accountability*, MSPs themselves have to adhere to a strict Code of Conduct, and the Standards Committee can investigate any breaches of this. Scottish Government ministers are required to respond to questions and appear in front of parliamentary committees regularly in order to provide information on their brief. However, ministers

can be more or less accommodating – and the questions can be more or less pointed – depending on the nature of the query and the party which is asking it. There is a vigorous First Minister's question time.

On becoming Presiding Officer after the 2016 Scottish Parliament election, Ken Macintosh announced that the parliament should undergo a 'MOT' to determine how well it operated and what could be improved. A Commission due to report in June 2017 will examine the ways in which the parliament can:

- be assured it has the right checks and balances in place for the effective conduct of parliamentary business;

- increase its engagement with wider society and the public; and

- clarify its identity as distinct from the Scottish Government.

### Is Scotland a 'dominant party system'?

The recent electoral dominance of the SNP led several political commentators and politicians – most notably Adam Tomkins, the newly-elected Conservative MSP – to complain that Scotland has become a 'one-party state'. This characterisation is clearly flawed. A one-party state is a very different thing from 'a dominant party system', where regular competitive elections are held, but the same party always wins – as happened in Scotland in the period of Labour hegemony. But what this exaggeration does point to is that the relatively small Parliament is easily dominated by the executive if one party has an overall majority. For instance, in the period 2011-2016, when the SNP formed a majority government, this status guaranteed the party a majority of the institution's committee convenorships (important for determining the business and agendas of committees) and, crucially, a majority of members *on each committee*. So the government not only had a majority in the chamber – where votes on stages one and three of legislation take place – they also had majorities in committees, where stage two is debated and amendments raised. This repetition of the Westminster model (despite PR elections) was accentuated by loyal SNP backbenchers keen to assist the government's agenda.

### Scotland, Brexit and a second referendum

The UK-wide vote to leave the European Union in June 2016 contrasted strongly with Scotland's electorate voting 62% to 38% to remain in the EU, highlighting a clear divergence in public attitudes in Scotland from those in England and Wales. The SNP argues that the fact Scotland will be forced to leave the EU with the rest of the UK, despite voting differently, shows that Scotland is not an 'equal partner' in the UK, and that its 'voice is not being heard'. The referendum outcome also puts the issue of a second constitutional referendum 'back on the table', with the SNP arguing that 'only independence' can ensure that the Scottish electorate are not overruled by the wider UK electorate.

The SNP government produced a document which outlined options for Scotland to retain some form of access to the EU and attempted to get the UK government to examine them. However, the May government's increasing momentum towards a 'hard Brexit' up to the 2017 general election produced only bruising rebuffs for Sturgeon's suggestions. These led in turn to the First Minister announcing that a second independence referendum should be held before the UK leaves the EU in April 2019 – a timetable that has been flatly rejected by the Conservatives, who put the earliest feasible date as 2020 – by which time Brexit would be a *fait accompli*. In the short term, opinion polls show that Scotland's voters are opposed to a second referendum, and would split quite evenly but so far not convincingly for independence. The polls also suggest that there is a limited link between support for membership of the EU and support for independence – meaning that the issue of Brexit may not be the tipping point that the SNP hope for. However, it is also true that the starting point for an extended debate is much more favourable now for the independence cause than it was at the start of the 2012-14 campaign.

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## 5.2   Scotland – local government and politics

*Local authorities play key roles in the devolved government of Scotland, as the only other source of elected legitimacy and as checks and balances on the domestic concentration of power in Scotland's central institutions. **James Mitchell** and the Democratic Audit team explore how democratically local councils have operated.*



*Tartans at Lochcarron Mill in Selkirk.*

Photo:      *Gitta Zahn via a CC BY 2.0 licence*

**What does democracy require of Scotland's local governments?**

- Local governments should engage the wide participation of local citizens in their governance via voting in regular elections, and an open interest group and local consultation process.

- Local voting systems should accurately convert parties' vote shares into seats on councils, and should be open to new parties entering into competition.

- As far as possible, consistent with the need for efficient scales of operation, local government areas and institutions should provide an effective expression of local and community identities that are important in civil society (and not just in administrative terms).

- Local governments should be genuinely independent centres of decision-making, with sufficient own financial revenues and policy autonomy to be able to make meaningful choices on behalf of their citizens.

- Local governments are typically subject to some supervision on key aspects of their conduct and policies by a higher tier of government. But they should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an

assurance that cannot simply be abolished, bypassed or fully programmed by their supervisory tier of government.

- The principle of subsidiarity says that policy issues that can be effectively handled in decentralised ways should be allocated to the lowest tier of government, closest to citizens.

As in other parts of the UK, the authority and powers of Scottish local government were eroded over many decades prior to devolution. The major parties tended to argue for decentralisation in opposition but then to revert to centralising ways when in power. The absence of any constitutionally entrenched protections for local government meant that there were few impediments to this trend.

So there were many hopes that the establishment of a Scottish Parliament and Executive in 1999 would call a halt to local councils' decline. The 32 local authorities have key delivery responsibilities covering most of the policy fields devolved to Edinburgh institutions, including:

- Mandatory services, such as education for students aged between 5 and 16, social work, and (initially) fire and rescue services.

- Regulatory functions, such as environment, public health, taxis, licensing of alcohol.

- Permissive activities, such as recreation and economic development.

A month after the first Scottish Parliament elections an all-party Commission (chaired by Sir Neil McIntosh, formerly chief executive of Strathclyde Regional Council) offered a comprehensive programme of reform. But the then dominant Labour elites in Scottish politics largely ignored the report, ensuring that centralisation broadly continued.

The SNP Minority Government elected in 2007 signed a Concordat with the Convention of Scottish Local Government that removed many of Scottish central government's detailed controls over councils. But over time SNP ministers have tended to revert to the pattern of their predecessors in centralising power. Sometimes centralisation is borne out of Scottish government frustration that policies are undermined at local level, but at other times may reflect a 'control-freak' impulse to impose central policies. Whatever the reason, for local government there is actually little in Scotland's constitutional set-up to prevent centralisation happening.

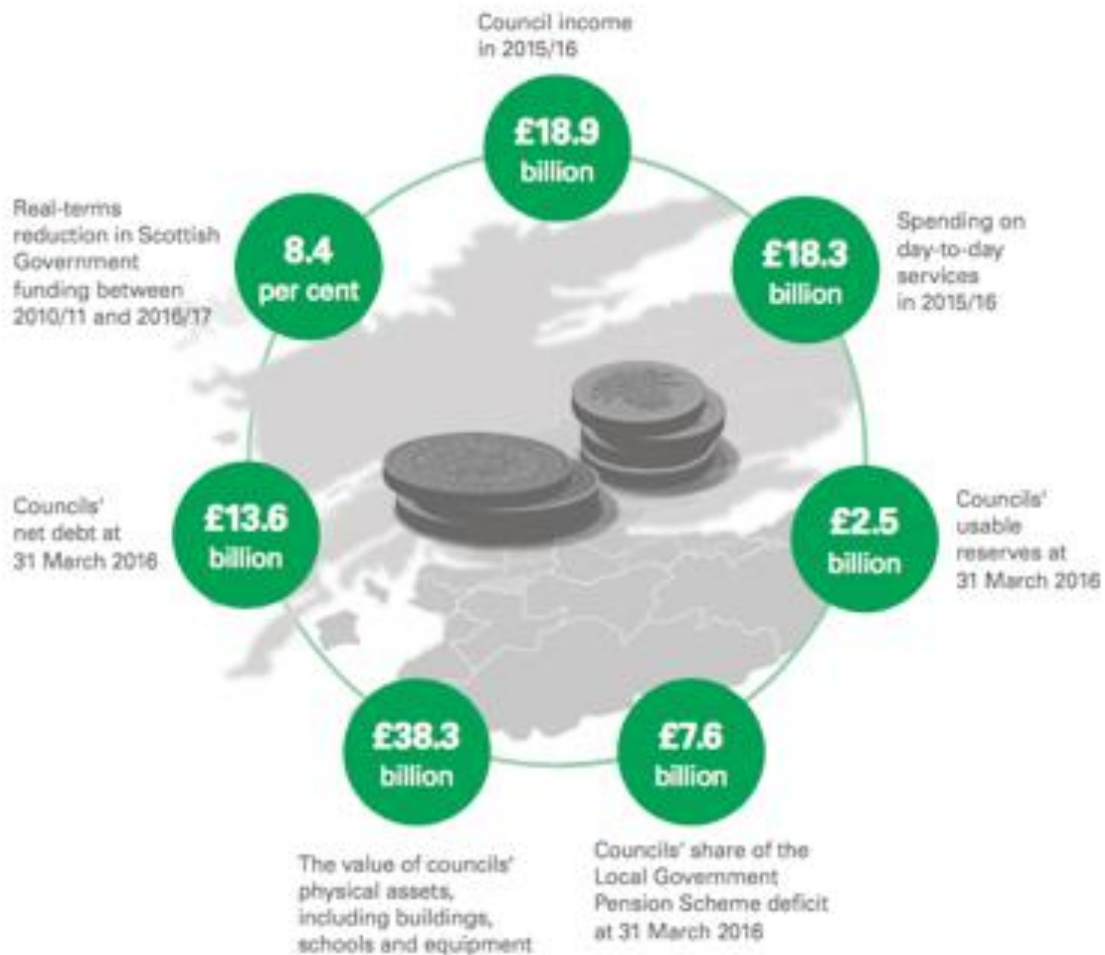### Recent developments

The biggest recent challenges facing Scottish local authorities are financial pressures from UK and Scottish government austerity policies, combined with increased demands for services, especially with an ageing population, and some increasing staff costs including pensions. As Chart 1 from Audit Scotland makes clear, all local authorities

face funding gaps and either need to make further savings or make more use of their reserves. Some authorities are better placed than others to address these challenges.

## Chart 1: Financial challenges for Scottish local government, 2016



Council income in 2015/16
**£18.9 billion**

Real-terms reduction in Scottish Government funding between 2010/11 and 2016/17
**8.4 per cent**

Spending on day-to-day services in 2015/16
**£18.3 billion**

Councils' net debt at 31 March 2016
**£13.6 billion**

Councils' usable reserves at 31 March 2016
**£2.5 billion**

The value of councils' physical assets, including buildings, schools and equipment
**£38.3 billion**

Councils' share of the Local Government Pension Scheme deficit at 31 March 2016
**£7.6 billion**

*Source:* *Audit Scotland 2016*, p. 4.

At the same time, local authorities are struggling to develop better ways of working with separate Scottish public services (like the police, fire services and NHS hospitals and GPs) so as to deliver more effectively joined-up services. Occasional voices are still raised in favour of the wholesale reorganisation of local government. For example, the Scottish Greens advocate creating many more local community-based authorities, instead of the current 32 large and remote councils. However, there appears to be little appetite for any major reform push amongst the larger parties.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Scottish local councils are elected using the Single Transferable Vote, ensuring a spread of parties across local authorities. Since 2007 the previous pattern of one party dominance (benefiting mostly Labour) has pluralised at three successive council elections, to better reflect the balance of opinion in each area, though there are problems with its operation in sparsely populated areas. | Local authorities have no entrenched constitutional protection. Their roles, areas and even existence can be changed at will by a government with a majority in the Scottish Parliament. |
| There is a consensus on the broad principles of the key roles played by local governments across the main parties, although a highly adversarial party political battleground often obscures and undermines the degree of consensus. | The Scottish government provides well over half of local authorities' revenues (see Chart 2 below), which creates a high level of dependency by councils, and inhibits their capacity for independent decision-making. |
| There is also a high level of under-lying agreement between the Scottish government and local government on councils' key roles in service provision. | In a retreat from the 2007 Concordat, a council tax freeze was imposed by the SNP government from 2007 to 2018. And yet local authorities are still set many targets by the Edinburgh government, and are expected to use resources determined by the centre to achieve goals set by the centre. |
| The importance of Community Planning Partnerships (CPPs), with local government at its heart, is well accepted - together with greater community empowerment in the formulation and implementation of public policy. | Local authorities have faced persistently low turnouts in local elections. This diminishes the authority of local councillors. The large wards required for PR voting in multi-member seats also weaken links to smaller localities. |
| A commitment to prioritising reducing inequalities in CPPs enjoys multi-party support. The Scottish Conservatives appear to accept this, or at least have chosen not to strenuously oppose it. | National politics also intrudes a lot into local campaigning - exemplified by the Conservatives' emphasis on opposing an independence referendum (wholly outside the competence of local government) in the 2017 local elections. |
| Past problems of local government corruption in one-party areas have generally lessened in recent years. | |

| Future opportunities | Future threats |
|---|---|
| If 'community planning' can be made to work well, services could potentially be improved, and duplications or conflicts of service provision avoided. | Further financial cutbacks seem likely, but expectations for service delivery from the public and the Scottish Government are not diminishing. Addressing these expectations is likely to become increasingly difficult, given continuing austerity. |
| Potentially, Brexit processes for repatriating policy responsibilities might boost local councils' roles, if recentralisation in the Edinburgh or UK governments can be avoided. | Austerity might tighten further in the run-up to and aftermath of a second referendum where Scotland votes to leave the UK. |
| | Despite some greater consensus than in England (see 'Strengths' section), this stance does not extend to prioritising the need for action around agreed principles. Different government tiers and CPP agencies still clash on identifying how to put prevention, engagement, collaboration and efficiency into practice so as to reduce inequalities. |
| | The Brexit process and the second referendum controversy may weaken Scottish economic growth. Brexit may potentially accentuate the centralization of power in Scottish or UK central government. Independence for Scotland might lead to a squeeze on councils' resources. |

## Local government finances

The dependence of local authorities for Scottish central government financial support undermines council's autonomy. The 2007-18 council tax freeze cut their freedom to raise revenues themselves, although central grants to local authorities did at least taken account of lost revenue. In all 57% of local authority funding comes from the Scottish central government.
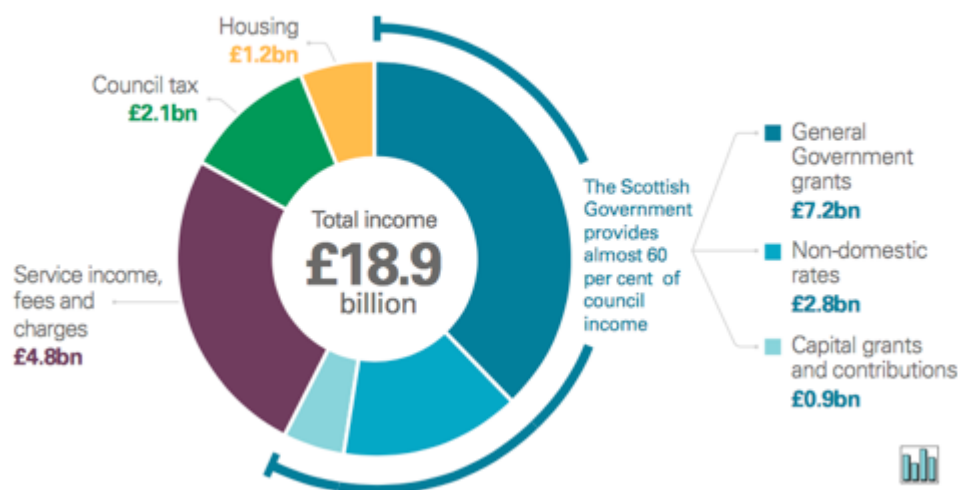
A Commission on Local Taxation was established by the Scottish Government and Convention of Scottish Local Authorities (CoSLA) with representatives of all parties in Holyrood, except the Conservatives, who boycotted it. The Commission's remit was limited to domestic taxation (only 17 per cent of net funding) and it reported in December 2015. It concluded that the existing council tax system 'needs substantial reform' because 'some people are paying more than they should' and that the 'present Council tax system must end' (pages 5 and 79). However, the report failed to offer unambiguous recommendations but instead outlined three alternatives:

- a local income tax;

- a reformed Council Tax with changes in charges for banks; and

- a much more progressive property tax.

The absence of a clear consensus weakened the Commission's impact. In March 2016 the Scottish Government issued proposals for modest reform, involving increasing the ratios of upper bands to average bands. Once again, a consensus on the need for reform failed to translate into a consensus on what to do next.

## Chart 2: The sources of Scottish councils' income

Councils' total income in 2015/16 was £18.9 billion and almost 60 per cent (£10.9 billion) of this came from the Scottish Government.

Housing
£1.2bn

Council tax
£2.1bn

Service income, fees and charges
£4.8bn

Total income
£18.9
billion

The Scottish Government provides almost 60 per cent of council income

■ General Government grants
£7.2bn

■ Non-domestic rates
£2.8bn

■ Capital grants and contributions
£0.9bn

*Source:    Audit Scotland 2016: 11*

Demographic projections also suggest that Scotland's population will grow by about 9 per cent over the coming quarter century, but changes will affect local authorities differently. Population decline is anticipated in 12 of 32 areas, while the largest increases will occur in Aberdeen, Edinburgh, and Perth and Kinross. All local authorities can anticipate a growing elderly population, though the change will vary in extent from a 47 per cent increase in West Lothian and Shetland, to the smallest anticipated increase in Dundee. Twelve authorities will have an increase in school age populations, with significant increases in Aberdeen and East Lothian (NRS 2014).

## Community Planning Partnerships

By law local councils must work with other bodies – public, private and third sector – at local level through Community Planning Partnerships (CPPs) based on local authority

areas. The 2011 Christie Commission's report on the Future Delivery of Public Services provided a set of well-received principles for reforming public services in integrating ways:

- 'Reforms must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use.

- Public service providers must be required to work much more closely in partnership, to integrate service provision and thus improve the outcomes they achieve.

- We must prioritise expenditure on public services which prevent negative outcomes from arising.

- And our whole system of public services – public, third and private sectors – must become more efficient by reducing duplication and sharing services wherever possible'.

CPPs include representatives from public bodies including Police Scotland; Scottish Fire and Rescue Service; health boards; further and higher education. The Community Empowerment (Scotland) Act 2015 requires CPPs to:

- focus on improving outcomes,

- produce local outcome improvement plans (LOIPs)

- identify geographic areas with the poorest outcomes

- prepare and regularly update locality plans based on priorities agreed in the CPP

- expand the list of partners

- achieve a greater focus on tackling inequalities.

Each public sector member of a CPP retains organisational autonomy, and will have its own specific targets and performance management regimes –so that for councils to lead co-operation may be tricky. While CPPs offer an institutional framework within which to collaborate and address complex wicked problems, targets and performance management regimes remain to a large extent silo-based undermining effective coordination.

A major development in collaboration affecting local government has been the integration of health care (run by the NHS) and social care (run by local authorities). The Public Bodies (Joint Working) (Scotland) Act 2014 created a framework within which adult health and social care would be integrated, intended to shift towards a more community-based and preventative approach. New Integrated Authorities (IAs) to coordinate local health and social care have been established.

Some important centralising institutional developments have occurred in recent years. A single, national Scottish Fire and Rescue Service replaced eight services, and Police Scotland replaced eight regional police authorities under legislation passed in 2012. In both cases responsibilities transferred from local government bodies to these new central government bodies in April 2013. A number of controversies have surrounded the establishment of Police Scotland, including relations with local government where critics argued that well-working previous arrangements were disrupted. It remains to be seen how the new Integrated Authorities in health and social care will operate.

## Brexit changes and a second independence referendum

The EU has impacted on Scottish local authorities via:

- *Euro-regulation* imposing unavoidable obligations to implement, enforce and monitor EC legislation;

- *European economic integration*, which created new opportunities for, and pressures on, local economies; and

- *Euro-funds* offer potential support for the local economy and for a range of local authority projects.


In the 1990s councils placed most emphasis upon securing EU funding via 'grantsmanship', seeing to influence EU decisions in favourable ways and to identify pockets of regional and 'solidarity' funding to tap. More recent local authority engagement with the EU focused more on Euro-regulations and the implications of economic integration. Alteration of the UK's relations with the EU in terms of the four freedoms – goods, capital, services, people – will have significant implications for local councils as part of a complex multi-level system of government, best thought of as akin to a 'marble cake' (according to US political scientist Morton Grodzins). Changes of the magnitude envisaged in the Brexit process are likely to reverberate through the system in unintended ways.

However, Scottish local government may also be able to take some advantage from the changing institutional and policy environment. With clear leadership, councils could address aspects of EU membership that have long irritated local communities and authorities, such as procurement policy and perceived cumbersome bureaucratic mechanisms. There may also be opportunities to ensure that as institutional power returns to the UK and Scottish Parliaments, so that the principle of subsidiarity operates to advantage local government.

If and when it happens, a second independence referendum campaign also presents challenges for local government. But in the 2014 vote a campaign for *Our Islands, Our Future* set out a bold prospectus for island governance. It demonstrated that it is possible for well organised local government interests to insinuate themselves into even such a highly adversarial battleground as the 2014 Scottish independence referendum. The prospect of another independence referendum might offer another opportunity to ensure

that the debate is broadened and includes an agenda that includes the role of local government.

## Conclusions

In common with government throughout the UK, Scottish councils face many challenges, especially dealing with future uncertainty. The cuts imposed on English local authorities by central government have been greater and have come faster than those north of the border. Yet in some respects Scottish local government can look over the border to see some of the challenges, especially financial challenges, and the variety of the responses that may await them. With increasing pressure and demands for local government services, the limits on authorities' financial and policy autonomy point to stormy times ahead.

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## 5.3 Wales – devolved government and national politics

*Devolved government in Wales started as a radical innovation in bringing government closer to citizen. Its generally successful development has generated great expectations about the National Assembly for Wales and the Welsh government acquiring more powers – and perhaps being reformed in some respects. **Jac Larner** and the Democratic Audit team explore how democratically and effectively these central institutions have performed.*



*Welsh flags flown at the Senedd on St David's Day.*

*Photo:     National Assembly for Wales via a CC BY 2.0 licence*

**What does democracy require of the devolved National Assembly and government in Wales?**

- The legislature should normally maintain full public control of government services and state operations, ensuring public and Assembly accountability through conditionally supporting the government, and articulating reasoned opposition, via its proceedings.

- The National Assembly for Wales (sometimes known as the Senedd from its main building) should be a critically important focus of Welsh political debate, particularly (but not limited to) issues of devolved competence. It should articulate 'public opinion' in ways that provide useful guidance to the Welsh government in making complex policy choices.

- Individually and collectively legislators should seek to uncover and publicise issues of public concern and citizens' grievances, giving effective representation

both to majority and minority views, and showing a consensus regard for the public interest.

- The Welsh government should govern responsively, prioritising the public interest and reflecting public opinion across Wales.

The current institutions were implemented as part of the Blair government's devolution settlement, and were endorsed by Welsh voters in 1997. The National Assembly for Wales in Cardiff has 60 AMs, elected by only a very roughly proportional representation system (the additional member system). It has fewer powers than the Scottish Parliament. The Welsh Government accounts to the Assembly for how it runs all the devolved policy areas. The government is currently headed by the Labour Party leader, First Minister Carwyn Jones who heads a coalition of Labour and the Liberal Democrats drawn from the Assembly.

The Labour party drew up the initial plans for the Assembly in a one-party way, without the cross-party Constitutional Convention that operated in Scotland. There is an Additional Member System voting method, with 40 constituency AMs, most of whom have always been Labour. There are only 20 seats to allocate at the top-up stage (33%), far less than in Scotland or London, and too few to achieve more than very rough proportionality. Labour has been continuously in power in Cardiff since 2000 – in sole power for nine years, and otherwise in coalition governments. In the early run-up to the 2017 general election there were some predictions that its predominance in representing Wales at Westminster would be decisively reduced, but these turned out to be incorrect.

## Recent developments

Wales has received a good deal of funding from the European Union in recent years, but the country nonetheless voted to Leave (52.5%) at the Brexit referendum. The Brexit process is likely to have wide-ranging effects for devolved democracy and governance in Wales. Chief among these is the potential transfer of policy competencies directly from the EU to the National Assembly. The Wales Act (2017) changed Wales' devolution settlement from a conferred model (where Westminster lists what the devolved government can do) to a reserved model (where Westminster instead lists the powers reserved to the UK government). All other things being equal, this change means that areas of EU policy that are not explicitly reserved should therefore be transferred to the Assembly. This might include additional controls and regulations over the environment and agriculture. Farming is a particularly important issue for Wales, considering that 90% of Welsh agricultural exports go to the EU, and that 80% of Welsh farmers' income comes from the common agricultural policy (CAP).

However, Whitehall has suggested that some of these powers (such as agricultural subsidies) may be stripped from devolved competency and placed centrally in the hands of Westminster. For this to come about the Sewell Convention (governing Westminster/devolved country relations) would seem to require the consent of the devolved legislatures. Such an interpretation may be disputed by the UK government,

creating potential for a future legal struggle between Westminster and the devolved legislatures.

| Current Strengths | Current Weaknesses |
| --- | --- |
| The National Assembly for Wales has long been regarded as a success story with regards to representation. | The National Assembly has not seemed to be a relevant institution in the day-to-day lives of the Welsh public. So the low levels of participation and interest in the institution have been low. |
| In 2003, the Assembly made waves worldwide as the first national legislature in the world to achieve a 50:50 gender balance. Following a by-election in 2006 Wales took a step further, with female AMs outnumbering their male counterparts in the Senedd for a brief period – neatly reflecting Wales' demography where women make up 52% of the total. | Since 1999 low levels of voter engagement have been a constant issue for the National Assembly, with mean turnout for its elections a relatively low 43%. This is 21 per cent points lower than the average Welsh turnout for general elections in the same period. And it lags behind average turnout for the Scottish Parliament (53%), and the Northern Ireland Assembly (61%). |
| These results largely reflect the electoral dominance of Welsh Labour and the positive measures to promote gender equality that it put in place. 'Twinning' of constituencies and 'zipping' on the party's top-up candidate lists both mean that men and women must alternate in being successful. So Labour has an impressive record on women's representation: 55% of Welsh Labour's constituency AMs and 71% of their top-up list AMs since 1999 have been women. Plaid Cymru have also enacted some positive measures themselves - so 51% of Plaid List AMs have been women, 27% of constituency AMs. | Enthusiasm for devolution has historically been lukewarm in Wales. The 1997 referendum, which asked voters if they wanted a National Assembly for Wales, had a turnout of only 50% (compared to 60% in the equivalent Scottish referendum). The endorsement of the proposals was just 50.3% of votes cast, far less enthusiastic than in Scotland (74%). |
|  | The 2011 referendum on further powers for Wales provided a far more positive result for proponents of devolution. Some 63.5% of the population voting in favour of giving the Assembly more powers - yet only 35% of registered voters turned out to vote. |

| Future opportunities | Future threats |
|---|---|
| The fifth Assembly has seen a willingness between parties to work together to achieve a more accountable politics in Wales. After a shaky start, an early agreement between Welsh Labour and Plaid Cymru laid the groundwork for projects that the parties would work together on. | Brexit is likely to be the biggest challenge that the Assembly and Welsh government have faced in its relatively short existence. The potential repatriation of powers from the EU to the Assembly, and any legal battles with the UK Government that may accompany them, will test the capacity of the Welsh political institutions. |
| With the formation of the nonpartisan Expert Panel on Electoral Reform in the Assembly, there is now a real chance that electoral reform and a reshaping of the Assembly could gain cross-party support. Any proposal would still have to pass the super-majority threshold of two-thirds support, but it is at least a possibility. | These events will occur almost simultaneously with the devolution of tax powers (which could encounter implementation difficulties) and a reduction in the number of Welsh MPs at Westminster (weakening Wales' voice within UK institutions). |
| The devolution of taxes will also bring a new level of accountability to the Assembly. For the first time the Welsh Government will be at least part responsible for raising the funds it spends. This will bring a new relevance to the Assembly, and it will have to step-up and become an open and more effective place for debate and scrutiny in Welsh politics. | |

## Voting systems

The new Expert Panel on Electoral Reform may decide that there is a need for the Assembly to increase its capacity, probably implying a change to the electoral system. The British-style Additional Member System (sometimes called Mixed-Member Proportional or MMP) gives voters two votes, one for a candidate in a constituency, where the winner is decided by plurality voting ('first past the post'), and one for regional members allocated to even up overall party regional seat shares with their votes there. Critics in Wales argue that it is confusing for voters to use. Others argue that if only the number of top up seats was increased (giving a somewhat large Assembly) more proportional outcomes would follow. Any changes are likely to be hard-fought however, as they would require a super-majority of two-thirds support in the Assembly. A large amount of support from Welsh Labour AMs (who have benefited greatly from the status quo) would be needed for any change to pass.

There have also been moves to examine the electoral system used in local council elections in Wales. In a January 2017 white paper, *Reforming Local Government: Resilient and Renewed* the Welsh government focused specifically on 'Elections and Voting' (section 7). Among other things, it discussed whether the voting age should be

lowered to 16 (as in Scotland now); whether candidates should have to declare whether they are a member of a political party (even if not standing for that party); preventing 'dual mandates' where sitting AMs are also elected as councillors; and the voting system to be used at council elections (which is currently plurality rule or FPTP). Surprisingly, the white paper floats the idea that each local authority might be able to individually decide whether they maintain the FPTP system, or to swap to a Single Transferable Vote (STV) system, as used in Scottish local government. This could mean that rather than a unitary election system for council elections in Wales, it would vary from one local authority area to another. Careful consideration will be needed here since Welsh voters are already using multiple differing electoral systems; First Past the Post (FPTP) at general elections; multi-member FPTP at local council elections, AMS at Assembly elections, and the Supplementary Vote (SV) for Police and Crime Commissioners. Even more variation within Wales might create more confusion, and hurt engagement further.

## Senedd reshaping proposals

The Wales Act (2017) provides the Assembly with powers over its own affairs. This translates into the Assembly having the ability to change its name and many other features. In recognition of this, Y Llywydd (the Presiding Officer) has formed an expert panel on reforming the Assembly to examine three key areas: the number of AMs, the electoral system and the minimum voting age.

With only 60 sitting AMs, recent political developments have raised questions over the Assembly's capacity to be an effective and accountable legislature that is able to provide scrutiny to the Welsh Government. The potential repatriation of powers from the EU to the Assembly, Brexit negotiations, and the devolution of tax powers over the next few years will be a significant test for the institution. This is further compounded by a likely reduction of over a quarter of Wales' MPs at Westminster, recommended by the Boundary Commission for Wales (cutting their numbers from 40 now to 29). This is the largest proportional reduction of any of the four nations of the UK.

## The media system in Wales

Part of the Assembly's problems reflect the fact that Wales has never had a strong domestic media presence (unlike Scotland). Welsh Election Study (WES) data showed in 2016 less than 7 per cent of the electorate in Wales read a 'Welsh' newspaper. UK papers do not provide 'Welsh editions', again unlike Scotland. Typically they almost never contain information or news about the Assembly or politics in Wales. Furthermore, there is also a serious lack of diversity among the printed press in Wales. WES data show that the three most widely read Welsh papers were the Western Mail, South Wales Echo and the Daily Post, all owned by Trinity Mirror (traditionally backing Labour in its lead title the Daily Mirror). The most visited Welsh news website, WalesOnline, is also owned by Trinity Mirror.

Welsh broadcasting has broader reach, but many constraints. On television, news content about the Assembly or Welsh Politics must fit within a 15-minute supplement that follows the UK news on BBC or ITV. Some 42% of WES respondents reported

watching *Wales Today* on BBC Wales, and 17% *Wales Tonight* on ITV Wales. Radio is a similar story to the Welsh press, with only 15% of respondents saying that they listened to Welsh radio programmes. Further analysis of this data suggests it is largely the same people who read/watch/listen to Welsh content. So a significant proportion of the Welsh electorate is rarely if ever exposed to information about what happens in the Assembly, or Welsh politics more generally. The situation looks unlikely to improve in the future. While the BBC has recently announced it will create a new TV channel in Scotland with a dedicated hour of Scottish news programming the step was not matched in Wales. Instead, Wales is to receive £8.5 million a year in extra funding

**Support for Welsh independence**

Unlike Scotland, support for Wales to become an independent country has never been extensive, so that relatively little polling is carried out on the issue. When asked as a binary question (independence: yes or no?) support in recent years has ranged from 14% in May 2014 to a high of 17% in September that year. Immediately after the Brexit referendum, this increased dramatically to 28% when respondents were primed with the idea that Wales could thereby remain in the EU.

A more detailed range of options shows that support for independence in Wales is perhaps even lower still. Figure 1 shows the results of five BBC/ICM polls since early 2014 that gave more options to voters. The stability of constitutional preferences is striking and the order of Welsh voters' preferences remains nearly constant despite Scotland's 'IndyRef', the 2015 general election, the 2016 Welsh election and Brexit all occurring over this period. Here support for Welsh independence was just 6%. However, close to half of respondents favoured more powers for the Assembly, while around 30% thought its existing powers sufficient.

**Figure 1: BBC/ICM St David's Day poll (2014-17): respondents' constitutional preferences**
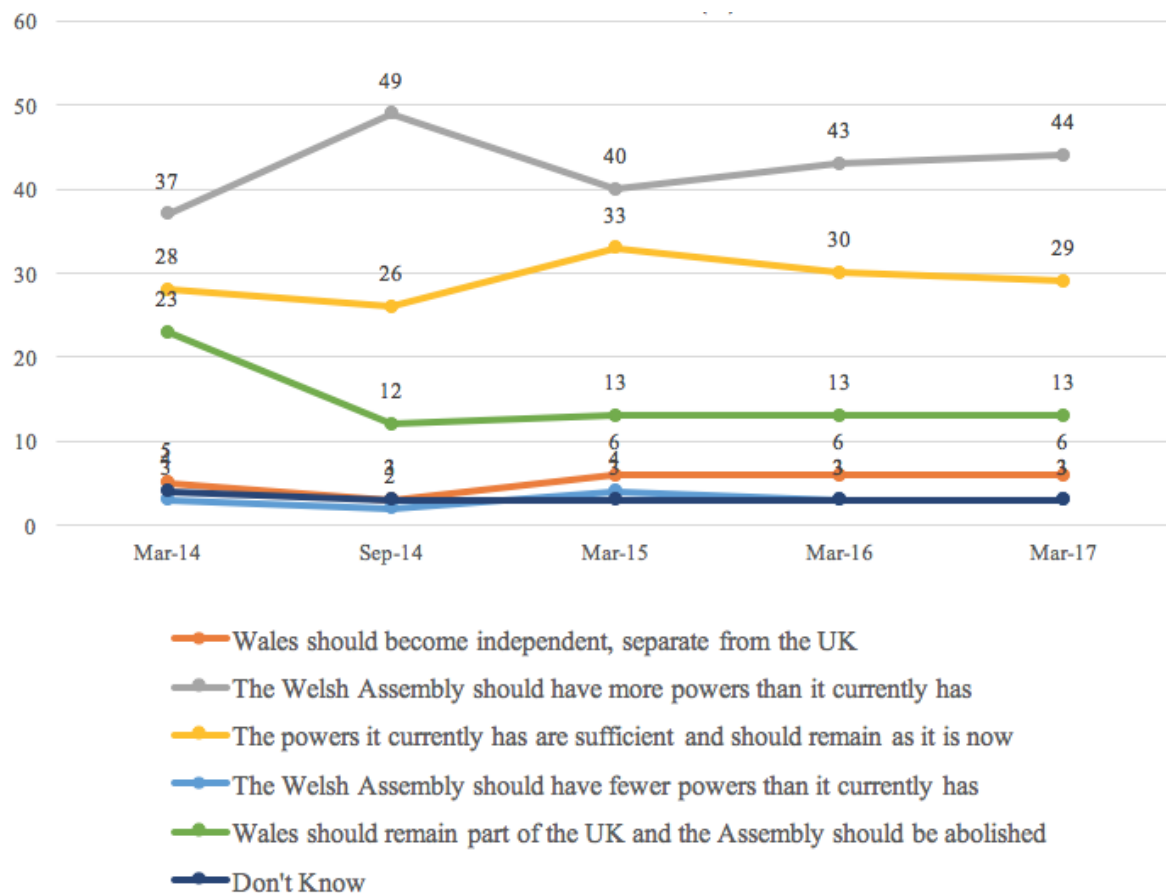


**Conclusion**

As Figure 1 shows, devolution now seems to be the settled will of the Welsh people. Yet the National Assembly for Wales and the Welsh government face uncertain times ahead as the Brexit-fuelled transfers of power from the EU test its competence, capacity, and ability to adapt to rapidly changing circumstances. New tax powers will also accrue to Cardiff. The challenge for both, especially for the National Assembly, will be to become more well-known, effective and accountable bodies at the heart of politics and governance in Wales.

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# 5.4   Wales – local government and politics

*Within Wales, the local councils provide the main focus for democratic politics below the devolved government in Cardiff, and organise the provision of most local services.* **James Downe** *looks at how well they fulfil their roles.*



*A statue in Blaenau Gwent commemorates the Six Bells mining disaster in 1960, in which 45 men died.*

Photo:     *Ben Salter via a CC BY 2.0 licence*

**What does democracy require of local governments in Wales?**

- Local councils should engage the wide participation of local citizens in their governance via voting in regular elections, and an open interest group and local consultation process.

- Local voting systems should accurately convert parties' vote shares into seats on councils, and be open to new parties entering into competition.

- As far as possible, consistent with the need for efficient scales of operation, local government areas and institutions should provide an effective expression of local and community identities that are important in civil society (and not just in administrative terms).

- Local governments should be genuinely independent centres of decision-making, with sufficient own financial revenues and policy autonomy to be able to make meaningful choices on behalf of their citizens.

- Local governments are typically subject to some supervision on key aspects of their conduct and policies by a higher tier of government. But they should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an

assurance that cannot simply be abolished, bypassed or fully programmed by the Welsh government in Cardiff.

- The principle of subsidiarity says that policy issues that can be effectively handled in decentralised ways should be allocated to the lowest tier of government, closest to citizens.

## Recent developments

The structure of 22 local councils in Wales was called in question from 2014 when a Commission appointed by the Welsh government in Cardiff recommended a radical reorganisation to reduce numbers to 10 or fewer authorities (see below for details). The controversy over this debate was ended in 2016 when a new Cabinet Secretary for Finance and Local Government announced that the proposals would be scrapped, and the exiting councils stay unchanged, but working together in future on a more regional basis.

Meanwhile, austerity funding was the most significant challenge facing Welsh local government. Councils are responsible for 28% of Welsh public service expenditure. Yet local authority revenue fell by £461m in real terms between 2010-11 and 2014-15, a 10% reduction. At a time of great uncertainty, councils have had to made tough decisions about where to devote scarce resource and considered new ways to deliver services to people. Regardless of the final regional arrangements adopted, Welsh councils are likely to face significant financial challenges for the next few years.

Historically, many south Wales councils were dominated by Labour and the party had far more councillors across Wales than any other party, reflecting its dominance of Welsh government and politics at a national level. Independents formed the second largest set of councillor, followed by Plaid Cymru and then the Conservatives and Liberal Democrats in clear fourth and fifth place. The plurality rule voting system (first past the post) in local elections also assigned Labour disproportionately more seats than votes. In early 2017 they still controlled ten councils. Most other councils were in no overall control, reflecting Wales's multi-party system and the importance of Independent councillors.

However, in May 2017 local elections took place in the early stages of the surprise general election campaign initiated by Theresa May, when Jeremy Corbyn's Labour party was still lagging badly in opinion polls, and the Tories seemed to be reviving in Wales. Labour lost 102 councillors and control of three councils (Blaenau Gwent, Bridgend and Merthyr Tydfil), but retained control of seven still. The Conservatives gained 80 more councillors, and control of a council (Monmouthshire) while Plaid Cymru also gained control of one authority (Gwynedd). Ten councils are under 'no overall control', with cross-party coalitions needed to make decisions.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
| --- | --- |
| Compared with other EU countries, the ratio of councillors to the electorate in Wales is relatively high, and council areas are relatively local and well-understood. | The public are still largely unaware of who makes decisions and how. Citizens are often reluctant to get involved in local politics, unless an issue directly affects them. Only around one in ten or 12 citizens contacts their council in any given year, although this ratio is higher in rural areas. |
| Councils make significant efforts to keep councillors and the public informed of their decisions (but see below). | Critics argue that the 1251 Welsh councillors are disproportionally 'pale, male and stale'. Studies show that most are over 60 years of age, and 99 in every 100 being white. Amongst those elected in 2017 just over a quarter (28%) are women (compared to a third in England). A Welsh Government push for greater diversity has not improved matters much. |
| The introduction of the 'cabinet' system in local government has made clearer where responsibility for decisions lies (at least internally) – either with an individual portfolio holder, a senior officer with delegated powers, the cabinet as a collective, or the council leader. | Despite its commitment to less micro-managing, the Welsh government has outlined several overly prescriptive actions such as insisting that a councillor should hold at least hold four surgeries a year (which they have now backed down on). The Welsh Government needs to continue to make strategic decisions about the what, but allow local authorities the power to decide how they deliver things. |
| Local authorities have a generally good working relationship with the Welsh government, which recently recognisedthey 'do not need to manage the detail of Local Authority business. We can, and should, leave more autonomy and decision-making with those who manage the delivery of services' (p. 12). | Despite a Welsh government commitment to putting 'the citizen at the centre' of public service delivery, there has been no clear and coherent strategy for encouraging citizen engagement with local services. Webcasting meetings and budget meetings have proved unappealing to an issue-focussed public who want to be involved at an earlier stage of policy-making. Councils have been slow to use digital innovations to engage with the public. So digitally adept young people ('millennials') are being asked to engage with an antiquated system. |

| Current strengths | Current weaknesses |
|---|---|
| | Plenty of performance data has been produced, but not in user-friendly formats that enable the public to assess how well their councils are doing. Frequent changes in national performance indicators make comparison over time impossible. The Williams Commission (2014) concluded 'the picture for too many of the public services in Wales is poor and patchy'. |
| | After a consultation exercise that produced only 17 responses across the whole of Wales, the Welsh Government removed the statutory duty on local authorities to collect national strategic indicators. The data for 2015-16 showed an overall picture of improvement over 2014-15, with performance for seventeen indicators going up and twelve indicators showing a decline. |

| Future opportunities | Future threats |
|---|---|
| The 2015 Well-being of Future Generations Act aims to improve the social, economic, environmental and cultural well-being of Wales. It sets out a range of duties for councils to ensure that every decision they make takes account of the needs of future generations as well as the existing population. | Only 15% of local government income is currently raised through council tax. Councils are likely to be forced to raise council tax faster than inflation. There is no clear political appetite for the reform of local government funding. |
| A new, robust performance framework needs to put in place to ensure that there is sufficient evidence for the public to understand how Welsh councils are performing. More needs to be done to design outcomes measures which are meaningful to the public and performance need to be benchmarked against councils beyond Wales. | The new regional collaborative arrangements need to be scrutinised from the start. Previous public service collaborations were not fully held to account. |

| Future opportunities | Future threats |
|---|---|
| A far greater variety of service delivery models now exist in Welsh local government, which include community trusts, local authority trading companies, community asset transfers, and mutuals. These span a range of services including culture, leisure, arts and adult education. They are likely to increase in their use as councils explore the opportunities provided by regionalisation. | The Brexit process may be damaging to Wales local governments, whose disadvantaged areas have received considerable regional subsidies from the European Union which will no longer be available. |
| Councils need to consider how the public could help provide or co-produce services in the future, but there also needs to be a healthy dose of realism about the size and potential of such involvement. Changing the public mindset on who delivers services is going to be a lengthy process. | |
| A new Local Government Bill (see below) is likely to see councils working together regionally on key services such as economic development, transport, and social services. But the precise arrangements of these collaborations needs to be finalised. Councils may be able to improve their financial resilience and offer better quality services. | |

## The overall health of local politics in Wales

Some political scientists regard local elections as 'second-order' contests, because they are viewed by the public and media as being less important than other elections for the Welsh Assembly or Westminster general elections. Turnout rates for Welsh local government elections are generally quite high compared with other parts of the UK, touching 49% in 1999 and 44% in 2008, but with some lower scores (42% in 2004, and 39% in 2012). (For comparison, general election turnout was 66% in 2015, and 69% in 2017).

In 2017 and 2012 one in twelve councillors (8%) were elected unopposed, a somewhat higher proportion than in other parts of the UK. In one ward in Powys, there were no candidates and a by-election had to be held at a later date. Amongst town and community councils (which work on a micro-local scale within local authorities) only one in four are elected in contested races. Around a third of councillors elected in 2017 were new to the role, and there are many independents operating without any party organisation back-up, primarily representing their ward or community interests.

Chart 1 shows that Welsh politics is multi-party. However, the plurality rule electoral system produces some distortions, in an erratic manner. In 2012, Labour gained 47% of the councillors with a vote share of 36%, but in 2017 a quite similar vote share (35%) gave them a far smaller 'leader's bonus', with 38% of seats. For the Conservatives in Wales, operating lower down the pecking order of parties, the relationship between the share of the vote and the number of councillors is not so favourable. In 2012, they achieved 13% vote share but this delivered only 9% of seats, and in 2017, a vote share of 21% gave only 15% of seats. The Welsh Government have recently outlined plans to allow councils to decide whether they would like to introduce the single transferable vote (STV) system for their local elections (used in Scottish council elections) in place of first past the post. Labour-controlled councils are unlikely to opt for changes.

**Chart 1: How parties fared in Wales' 2017 council elections, compared to 2012**

| Party | Councils 2017 | Seats 2017 | Change | Seats 2012 |
|---|---|---|---|---|
| Labour | 7 | 473 | -107 | 580 |
| Independent | 3 | 322 | +13 | 309 |
| Plaid Cymru | 1 | 203 | +33 | 170 |
| Conservative | 1 | 184 | +80 | 104 |
| Liberal Democrat | 0 | 62 | -11 | 73 |
| Llais Gwynedd | 0 | 6 | -7 | 13 |
| Green | 0 | 1 | +1 | 0 |
| Ukip | 0 | 0 | -2 | 2 |
| No overall control | 10 | | | |
| Total | 22 | 1251 | | 1251 |

The Welsh Government are currently considering introducing a range of reforms to modernise electoral arrangements. Options include all-postal elections, electronic voting, and mobile voting. There is also a proposal to reduce the voting age to 16 for local elections. The introduction of STV is likely to have the greatest positive effect on future turnout rates, but the other proposals could also have potential to 'get the vote out'.

Councils can clearly do more to engage citizens. Only 20% of the public agreed that they can influence decisions affecting their local area in a recent survey (Welsh Government, 2017). While cabinets formally meet in public, decisions are generally made behind closed doors in political group meetings. So at one level there is always clear agreement in public, but on the other hand real decision-making takes place elsewhere in party groups. The continuing prominence of 'independents' may raise issues of whether these councillors take a strategic view across the whole council (and increasingly, the whole of a wider region) rather than focusing on being local community concerns.

### New regional structures: the Local Government Bill

There has been much debate about whether the 22 local authorities in Wales are too small for the effective delivery of public services. In 2014, the Welsh government's Commission on Public Service Governance and Delivery (known as the Williams Commission) recommended that councils should be merged to cut their number down to 10 or 12. The latter option was initially favoured by the Welsh government. But in 2015, they introduced a Bill which contained proposalsfor creating only 8 or 9 councils. A total of three Welsh Government White Papers in as many years have all examined options to reform local government (Welsh Government, 2014; 2015; 2017). However, the government in Cardiff was unable to gain enough political support to implement their reorganisation plans, either in the Welsh Assembly or within the local government sector. In 2016 the new Cabinet Secretary for Finance and Local Government scrapped the previous plans, and in their place advocated a more collaborative approach. The existing 22 councils would be retained but would be grouped on a regional basis to work together in providing key services.

The Welsh government outlined a menu approach in 2017. allowing councils to choose the most appropriate scrutiny mechanism for the new regional structures. Local councils will have a choice of conducting individual scrutiny of the regional arrangements, establishing a joint regional committee, or using a mixture of approaches including task and finish groups. The theory is that councils are best placed to make the decision about what mechanism is best for their context. However, the Welsh government will provide a framework for 'Joint Governance Committees', so that everyone plays by the same rules.

How and where councillors fit into these arrangements is not really clear yet, however, nor whether the public will have access routes allowing them to be involved in the regionalised policy processes. Citizens are unlikely to be widely interested in processes and structures, but the prospect of services working to different geographical arrangements may cause confusion about accountabilities for members of the public. This could in turn increase feelings that local government is 'remote', despite the retention of familiar council areas. Given the three years of uncertainty over reorganisation, the new regional structures need to be implemented quickly, paying regard to local circumstances, and with clear messages for service users about how improved outcomes will be achieved.

**Conclusions**

The Welsh government's approach to local government reform in 2014-2016 was 'top-down', confused and inconsistent. A more consensual style now prevails, keeping the existing 22 local councils, but enforcing statutory regional collaboration. There is a balance to be struck between Welsh government and Assembly direction and local discretion. However, just letting councils decide in a discretionary way on different mechanisms of holding decision-makers to account, as well as on different voting systems, may end up being confusing for citizens and stymie reforms where it is most needed. (For example, it seems very unlikely that one-party-dominated Labour councils will adopt STV voting, although that may be where such a change is most needed). It will be important for Welsh councils to try and 'join-up' behind the scenes so that the public's experience of services is not adversely affected.

The Brexit process is also likely to have implications for Welsh public services. Wales has received a good deal of funding from the European Union in recent years, but the country nonetheless voted to Leave (52.5%) in the June 2016 referendum. Without access to the EU's regional funding, it remains to be seen how councils will fare. Pessimistic voices suggest that poor outcomes are likely.

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## 5.5   Northern Ireland – devolved government and politics

*Devolved government in Northern Ireland centres around unique institutions, a power-sharing Executive with ministers chosen on a proportional basis, answering to an Assembly elected using PR. It was designed to overcome the intercommunal strife that has characterised Northern Ireland public life: the challenges it has faced have been particularly acute, and its record has, inevitably, been mixed. At the time of writing it is in abeyance for want of political agreement, which may not be found – at least in the short term. At present there is no political control at all over the Northern Ireland administration.* **Alan Whysall** *and the Democratic Audit team explore how democratically and effectively the institutions of government have performed in Northern Ireland.*



*The lion that sits at the base of a lamppost outside the Parliament buildings at Stormont.*

*Photo:      Northern Ireland Assembly via a CC-BY-ND 2.0 licence*

**What does democracy require of Northern Ireland's devolved Assembly and Executive?**

There is a long history of community division within Northern Ireland, which is reflected in voting behaviour. Given this, since the constitutional issue – whether Northern Ireland should remain part of the UK or join a united Ireland – ceased to dominate political life, there has been wide agreement that in order to be able to function, government needs to be acceptable across the community. In practice this means guaranteeing that parties from each side of the community can participate in government, engaging their political energies and obliging them to work together.

But as devolution became established, there has been a growing focus on how the system measures up against more conventional criteria for effective democratic government, such as:

- The Executive should be able to set out a coherent vision across the range of devolved responsibilities, and develop and implement a practical and effective set of policies in pursuit of it

- It should in particular tackle cogently the most acute problems of the economy and society, and be capable of responding decisively to events

- It should provide efficient and effective public services

- The Assembly should effectively hold the Executive accountable, through conditional support or reasoned opposition, drawing out views and expertise within different parts of the community to improve policy-making, the delivery of public services and the quality of legislation

- All involved in the institutions should act in the wider public interest, and in particular should practice financial regularity and prudence, and avoid the reality or the appearance of corruption

- The institutions should be recognised by the voting public as meeting these criteria, and as articulating and responding to their concerns

Since the institutions remain fragile, however, democracy also requires a degree of outside stewardship, notably from the British government, but also the Irish government and others, to help keep them functioning.

In Northern Ireland, the criteria for democratic governance are rather different from elsewhere. For the whole of its 96 year existence as a distinct political entity, the great bulk of voters have backed "tribal" parties, unionist and nationalist. In consequence, the operation of traditional Westminster rules, transplanted to Northern Ireland in the 1920s, led to 50 years of government by the Ulster Unionist Party alone. Nationalists in response denied the legitimacy of any government arrangements in Northern Ireland, arguing it was an entity contrived to sustain Unionist rule.

This system collapsed in 1972 following a campaign of abstentions and protests, and physical violence by some groups. More than 30 years of direct rule by Westminster followed. Devolved government definitively resumed in 2007 under arrangements set out in the Good Friday Agreement of 1998, lightly modified by subsequent agreements. The GFA provides for much besides internal government arrangements: under it, inter alia, Northern Ireland's constitutional status, whether within the United Kingdom or a united Ireland – the dominant issue in its politics for 70 years – is established as depending on consent, with provision for "border polls" to test it; there are guarantees of parity of esteem for the British and Irish identities, and for upholding equality and rights; there are elaborate arrangements for wider relationships, in particular those within the island of Ireland. These, as much as the shape of the domestic institutions, are important elements of the political equation underlying the settlement.

The essence of the new devolved government arrangements has been:

- *An Assembly, now of 90 members,* is elected using a proportional voting system called Single Transferable vote (STV), discussed here in a separate blog. Its members designate themselves nationalist, unionist or other.

- *A First Minister* is nominated by the largest party in the Assembly, and a *deputy First Minister* by the largest party composed of members of the largest designation apart from the FM's; so in present circumstances there will be a unionist and nationalist. The FM and DFM exercise their powers jointly and equally.

- *The post of Justice Minister* is because of its special sensitivities selected by a cross-community vote in the Assembly; it has been held by the Alliance Party (2010-16) and an independent Unionist (2016-17).

- The remainder of the places in *the power-sharing Executive*, a further seven, is allocated among those parties in the Assembly wishing to take them up, in proportion to the number of seats they hold in the Assembly, using the d'Hondt system. Because any party of sufficient size may thus participate as of right, the Executive is sometimes spoken of as a "mandatory coalition".

Across the political spectrum there is agreement that Northern Ireland circumstances require some arrangements to ensure acceptability of government across the community. Some disagree that the current ones are the right way of achieving the objective, though no major party presses for significant change to structures at present.

### Recent developments

Devolution has functioned in a somewhat rocky way following its resumption in 2007. A succession of political crises have threatened its survival.

The 2016 Assembly elections were held on the basis of the 'Fresh Start' agreement between DUP and SF (who provided the First Minister and deputy First Minister). The smaller parties, who had been in the Executive previously, now moved into opposition, for which new provision had been made. The DUP and SF maintained a public appearance at least of working together until late 2016. At that point serious and costly failings in a Renewable Heat Incentive scheme became public. The scheme had been introduced by the First Minister, Arlene Foster, in a previous role; around it there were (still unproven) rumours of corruption. It provoked much controversy. Sinn Féin eventually withdrew from the Executive, which led to the calling of a further Assembly election for 2 March.

Below the surface, it became clear, more fundamental tensions had been building within the Executive. Partly this was over the DUP's attitudes to nationalism, and the Irish identity more generally. Aggravating the tensions was Brexit, on which the DUP and Sinn Féin were at odds with each other, and Sinn Féin with the British government.

**Brexit and Northern Ireland**

In the Brexit referendum last year, on a turnout of 62% (lower than any other UK region), Northern Ireland voters chose to remain, by 56% to 44% (a smaller margin than Scotland or London, the two other Remain regions). The DUP campaigned to leave; the other main parties, Sinn Féin and the SDLP, Alliance and the Ulster Unionists, to remain. The great majority of nationalists who voted appear to have favoured remain, although turnout was exceptionally low in some nationalist areas; a proportion of Unionists also did so. The DUP position now appears to be in favour of a hard Brexit, in line with its traditional antipathy to Europe; whilst also opposing restrictions on freedom of movement within the island of Ireland (2017 Westminster manifesto, section 6).

Nationalists fear these objectives are incompatible, and point to the possibility of controls of various sorts on the border being reintroduced, after several decades during which it has been scarcely visible. The British government's recent proposals say there should be no physical infrastructure on the border. But their feasibility is widely doubted, some seeing them as a device to transfer blame for a border made inevitable by a hard Brexit. Any such development is liable to be acutely sensitive politically – manifestations of a border within the island of Ireland are anathema to nationalists.

There are also potentially very significant economic consequences to Brexit, for both parts of the island, and perhaps also consequences for justice cooperation within it. And the tensions here are putting strains on the partnership between the British and Irish governments, which has been the motor of the peace process.

**The 2017 Assembly election**

**Table 1: The outcomes of the March 2017 Assembly election**

| Party | Historically seen as | Vote % | Assembly seats (%) | Executive posts (2016-17) |
|---|---|---|---|---|
| Democratic Unionist Party (DUP) | 'More hardline' unionist party | 28.1 | 28 (31%) | 4 |
| Sinn Féin (SF) | 'More hardline' nationalist party | 27.9 | 27 (30%) | 4 |
| Social Democratic and Labour Party (SDLP) | 'More moderate' nationalist party | 12.0 | 12 (13%) | |
| Ulster Unionist Party (UUP) | 'More moderate' unionist party | 12.6 | 10 (11%) | |
| Alliance Party (AP) | Centrist, with support from all parts of the community | 7.7 | 8 (9%) | |
| Green | Environmentalist, also with mixed support | 2.7 | 2 | |
| TUV (Traditional Unionist Voice) | Very hardline unionist, opposed to the present structures | 2.6 | 1 | |
| PBP (People before profit) | Left, non-sectarian | 1.8 | 1 | |
| Independent Unionist | Personal candidature | | 1 | 1 |
| *All parties* | | 100.0 | 90 | 9 |

The March 2017 election was a divisive one. And the results marked a significant change in the Northern Ireland political landscape. The nationalist vote, which had been flagging in recent elections, strongly revived, and for the first time unionist parties lost the overall majority they had enjoyed in all previous assemblies, with only one seat more

than nationalists. There was also some movement from both Unionist parties, which did relatively badly, to the Alliance party, which did particularly well.

## The Westminster election of June 2017

Attempts to resume devolved government following the Assembly election had failed to produce any result by the time the UK general election was called. Westminster elections in Northern Ireland as elsewhere use plurality voting (or first past the post) ,which favours larger parties.

This election was also particularly polarising, the sense of being under threat on each side of the community driving people back to traditional voting patterns. The DUP improved on its performance at the Assembly elections to elect 10 MPs (55% of seats, on only 36% of the vote), and Sinn Féin gained seven MPs (39% of seats, on 29% of the vote), with one Independent Unionist.

The middle ground suffered severely: the UUP and SDLP lost all their seats. Since Sinn Féin do not as a matter of principle take their Westminster seats, this means that Irish nationalism is unrepresented in the House of Commons for the first time in centuries.

Lacking a Commons majority, the Conservative party concluded a 'Confidence and Supply' agreement with the DUP, involving £1 billion in extra public spending for Northern Ireland. The spending plans themselves have not been criticised on partisan grounds, indeed they received some welcome even from nationalists; but the Conservatives' dependence on the DUP has caused questioning of their ability to be an honest broker among Northern Ireland parties.

Further efforts to resume devolved government following the election have so far been unsuccessful. Northern Ireland at present has no ministers – the devolved ones have gone, and UK ones have no legal authority over the Northern Ireland administration. There is no budget for the current financial year – some money can still be committed under an emergency procedure but ultimately at lower levels than last year. The statutory deadline for the Secretary of State to call a further Assembly election has passed. Political negotiations will resume after the summer.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Since efforts continue to re-establish devolved government, this analysis focuses largely on its performance. But because the foundations of the Northern Ireland system, unlike those in Scotland and Wales, are fragile, the ability of outsiders, notably the British and Irish governments, to intervene is also important to the soundness of democratic arrangements.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| In the historical perspective the institutions have been an enormous success, leading to a degree of working across the community that was unthinkable 20 years ago. They permitted the establishment of a government locally accountable to Northern Ireland voters that had not been possible before. | The core institutions have been beset by regular political turbulence, have at times in the past seemed near to collapse, and have been completely inoperative for a number of months this year. Consequently they have not provided all the social and economic stability that might have been hoped. |
| The political settlement also paved the way to cross community acceptance of policing. Given the acute social conflicts that went before, this is a remarkable advance. | The Executive has had limited success in tackling the serious economic and social problems that beset Northern Ireland. For example the private sector economy remains very small, and has declining relative competitiveness. Northern Ireland is dependent on public spending – at levels per head higher than those of any other UK region. Public services are seriously struggling – significantly more in the case of health, for example, than in England. |
| Power-sharing devolved government has made it much harder for paramilitaries on both sides of the sectarian divide to thrive, although on a much reduced scale they continue to be active, in occasional limited terrorism and more prevalent gangsterism. | Despite a general commitment to the principle of a 'shared future', Northern Ireland society is still in parts seriously tainted with sectarianism. Issues from the past remain unresolved, and are at times a political irritant. For example over 'legacy' issues from the time of Troubles; over flying of flags and other symbols, which created a crisis in government in 2012 in some local councils. |
| During the time of the new institutions, most of the remaining inter-community conflicts at street-level have disappeared. | In political life and the media, there has often seemed to be a lack of interest in good government and in policy-making. The traditional bones of inter-community contention have been a more attractive focus of attention. The Renewable Heat Initiative affair in its early stages is a good example of lack of scrutiny. |
| More broadly, the new institutions at first generated a spirit of optimism and rebuilding that made much social progress possible. | There have been episodes of serious budgetary disorder before the present one. They have not always been regarded as matters of fundamental concern – perhaps in part because new money from the Treasury has often been forthcoming as part of a rescue package. |

| Current strengths | Current weaknesses |
|---|---|
| There has also been some economic success, in particular a good record in securing foreign direct investment. And unemployment is well down from the very high levels once found in Northern Ireland. | The Executive has been frequently unable to make decisions, in large part because the way that it is constituted means that it lacks common purpose. Although it has adopted substantial Programmes for Government, they have lacked political traction. |
| People in Northern Ireland do not seem excessively troubled by political difficulties: personal well-being measures are well above the UK national average. | The Assembly has overall been of limited effectiveness in its scrutiny of government policy or service delivery, has rarely come forward proactively with ideas of its own, and such formal opposition as there has been has tended towards the destructive, rather than the constructive. |
| | There is limited civic society involvement in public dialogue in Northern Ireland: many people keep their heads down. Nor is there much contribution to public policy from outside government: e.g. nothing that at present could be called a think tank. The tradition of looking to provision by the state, and the British and other governments, has often prevailed. |
| | A whiff of corruption remains in political life. There have been significant cases of politicians sailing close to the wind, at times closer than they could have got away with elsewhere, though there is little hard evidence of criminality. |
| | Given their record, the Northern Ireland institutions are held in particularly low esteem by the electorate, though the principle of devolution still appears to be widely supported. And increasingly they seem to command little enthusiasm even among those who work in them. |

| Future opportunities | Future threats |
|---|---|
| Concern for the success of the peace process is in particular evident in the EU approach to Brexit. If there were a united Northern Ireland voice on Brexit issues, it would be very influential. | Hitherto Northern Ireland's crises have often been resolved by negotiation under the auspices of the British and Irish governments, with strong US interest. All those partners are now heavily committed elsewhere. They may now have much less capacity or inclination to resolve Northern Ireland's longer-term problems. |
| There remains, despite the increasingly divergent positions of the two main Westminster party leaderships, an element of bipartisanship in the approach there to Northern Ireland, which can at times facilitate necessary, sometimes urgent, intervention. | The overtly unionist line that the Conservative party has taken in UK government since 2010, and its current dependence on the DUP at Westminster, may mean that the British government now has particular difficulties in helping develop political compromise. Its good faith, always to some extent doubted by Northern Ireland parties, is now particularly seriously in issue with nationalists. |
| | Parliament, too, may be weakened in its ability effectively to oversee Northern Ireland affairs, not least because of the absence of nationalists elected in Northern Ireland. |
| | More widely, the understanding among British political players of Northern Ireland issues, developed over the decades of the Troubles and subsequent Agreements, seems to have rapidly dissipated. Prime ministers latterly have shown little interest, except so far as Northern Ireland impacted on Westminster arithmetic. |

## Conclusions

On an optimistic view, it is possible to see devolved government resuming after the summer, and even to envisage measures to improve the way it functions. There is a good argument that those would bolster future stability. The Northern Ireland institutions might then progress beyond achieving the necessary but scarcely sufficient requirement of embodying cross community working, towards the objective of delivering effective government that is the main expectation of political institutions elsewhere, and still more ambitiously of setting out a positive vision of the future (irrespective of constitutional destiny).

But for the present, and especially while key Brexit issues remain to be resolved, it is not clear that we shall reach that point. The two main parties have appeared to be moving

further apart, and reverting to the rhetoric of earlier days. There may not be sufficient commitment to restore devolved government in the short-term with the Brexit negotiations producing a succession of grounds for disagreement between the parties.

And the British government's standing, and its preoccupations elsewhere, mean that it would face very serious and perhaps destabilising challenges if it were to reintroduce direct rule, traditionally the alternative where agreement sufficient to sustain devolved government is not possible, but already much disliked by nationalists. Northern Ireland may this autumn drift into its second Assembly election of the year, something both large parties may favour since it is liable to crush the smaller ones. But it seems unlikely to bring resume devolved government closer.

But at some point, action to establish political authority over the civil servants who are, no doubt to their great discomfort, at present presiding over autopilot government, will as a practical matter become inevitable at some point. If direct rule is restored, the Irish Government will under the Good Friday Agreement have a right to make representations about the conduct of government in Northern Ireland – itself a potential source of much contention, and the more so since Brexit is opening serious strains in the relationship of the two governments.

No early majority in a referendum for a united Ireland seems likely – indeed it seems unlikely the Secretary of State will call one. But if such a decision eventually came about by a narrow majority vote, rather than as the product of negotiation involving significant representation of both communities in Northern Ireland, it would be highly destructive and divisive, in both parts of Ireland and beyond.

We are at a profoundly dangerous point for democracy in Northern Ireland. The consensus underpinning the Good Friday Agreement institutions appears to be fragmenting – and Brexit may speed the process. But it is hard to see any plausible alternative to those arrangements that could deliver stability. The longer devolved government remains in abeyance, the more difficult it may be to put it back together. And though an immediate increase in violence is unlikely, violent people have in the past flourished when constructive politics was weak.

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# 5.6   Northern Ireland – local government and politics

*Local authorities play key roles in the devolved government of Northern Ireland, as expressions of communities that were in the past highly polarised on religious and political lines. They are also the only other source of elected legitimacy to the Northern Ireland Assembly and Executive, and can act as checks and balances on the domestic concentration of power. **James Pow** explores how democratically local councils have operated in difficult conditions.*



*Detail from the Belfast city crest on a carpet in the City Hall.*

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**What does democracy require of Northern Ireland's local governments?**

- Local governments should engage the wide participation of local citizens in their governance via voting in regular elections, and an open interest group and local consultation process.

- Local voting systems should accurately convert parties' vote shares into seats on councils, and should be open to new parties entering into competition.

- As far as possible, consistent with the need for efficient scales of operation, local government areas and institutions should provide an effective expression of local and community identities that are important in civil society (and not just in administrative terms).

- Local governments should be genuinely independent centres of decision-making, with sufficient own financial revenues and policy autonomy to be able to make meaningful choices on behalf of their citizens.

- Given the special history of Northern Ireland, deliberative policy-making has a particularly key role in building local political harmony and understanding of multiple viewpoints and interests.

- Local governments are typically subject to some supervision on key aspects of their conduct and policies by a higher tier of government. But they should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an assurance that cannot simply be abolished, bypassed or fully programmed by their supervisory tier of government

- The principle of subsidiarity says that policy issues that can be effectively handled in decentralised ways should be allocated to the lowest tier of government, closest to citizens.

**Recent developments**

Local government areas and structures recently went through the biggest shake-up to its structure and organisation since the early 1970s. A major 2005 review initially recommended that 26 local government districts be radically streamlined into just seven 'super-councils'. After devolution was restored at Stormont in 2007, the power-sharing administration ultimately made a compromise to reduce the number of districts, but only to 11. Of these, six have predominantly unionist electorates, four have predominantly nationalist electorates, and one, Belfast City, is relatively balanced.

The first elections to the revised council districts took place in May 2014; the transfer of power from outgoing administrations was complete within a year. The reformed councils removed many 'legacy' features, and so provided fresh opportunities for citizens to re-engage with local government politics. A key reform hope was also that councils themselves can enhance the democratic quality of their decision-making processes. Their average size is over 171,000 people, far larger than their predecessors, with a range from 339,000 in Belfast City to 115,000 in rural Fermanagh and Omagh.

**Figure 1: How structural reforms changed local government districts**
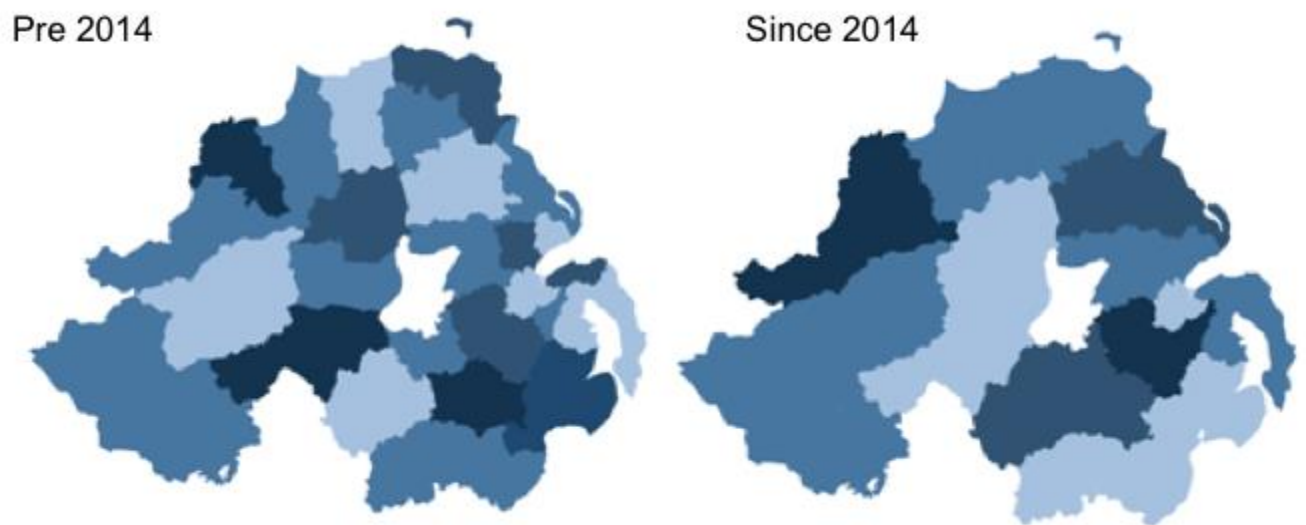


Northern Ireland councils have fewer responsibilities than councils elsewhere in the UK, partly reflect both the province's relatively small population and the deeply divided nature of its society. The Housing Executive is Northern Ireland's single public housing authority, set up in 1971 in the wake of discriminatory housing allocations by district councils. It is a quasi-government agency (technically an executive non-departmental public body or NDPB). It is operationally independent of the Northern Ireland Executive, but accountable to the Minister for Communities. Transport NI is the region's sole road authority. The Education Authority (EA) is responsible for all educational and library services. And the provision of social care is overseen by six trusts. These public bodies are each accountable to the Northern Ireland Executive, but *not* to local councils.

### Proportional elections in the new councils

Apart from general elections for the Westminster Parliament, all elections in Northern Ireland are conducted using the Single Transferable Vote electoral system (known as PR-STV in Northern Ireland). The most recent council elections in 2014 using STV generated reasonably proportional results – that is, the number of first preferences received by each of the five main parties broadly corresponded to their total share of seats, to within a handful of percentage points. The results produce a deviation of proportionality (DV) score of 11.1% This is much lower than average scores for Britain's Westminster elections, using plurality rule voting.

**Figure 2: How the main parties' shares of votes compared to their share of seats in the 2014 council elections**
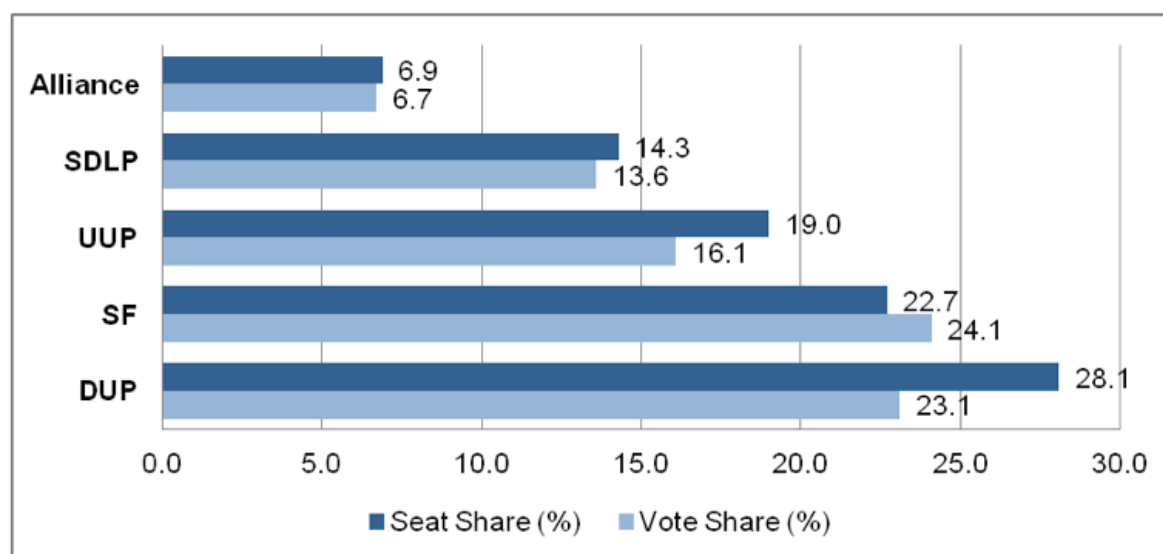
However, STV elections are *preferential* (i.e. voters can number multiple choices of candidates 1, 2, 3 etc. in an order they choose) as well as proportional. So effective vote management and how voters transfer preferences to other parties can influence the results. In 2014 a fragmented distribution of first preference votes across smaller unionist parties disrupted their chances of winning seats. Once these early preferences were eliminated in the counting process, then second or later preferences from these parties' voters were transferred to their next preferences. Figure 2 shows that the DUP gathered the most of these later vote transfers, thus apparently ending up 'over-represented' against their first preference votes. So it would be too simplistic to say that voters who supported smaller parties are left unrepresented – they may not be represented by their first preference party, but by one lower but still positive in their preferences.

Northern Ireland voters historically participate more in local government elections than those elsewhere across the UK. In 2014 over 51 percent of registered voters cast a ballot. This was none the less the lowest level of turnout recorded in a local government contest in Northern Ireland. But it still compares favourably to England's 36% on the same day. The continued predominance of ethno-national voting in Northern Ireland (at all levels) encourages voters from rival political/religious groups to try and maximise unionist and nationalist representation respectively. Participation is also encouraged by holding council elections concurrently. All other council elections over the last two decades have occurred on the same day as either Westminster or Assembly elections. But in 2014 contests the other elections were for only the European Parliament.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Local authorities across the UK have no entrenched constitutional protections. However, following their protracted and controversial creation process, Northern Ireland councils have perhaps more protection from further changes coming from the tier above them. | Despite a proportional electoral system, important groups are under-represented. Only a quarter of councillors are women, lower than the percentage of women in the Northern Ireland Assembly. Citizens who identify as neither nationalist nor unionist may also not be adequately represented. |
| The PR-STV electoral system is broadly proportional. The preferential voting aspect of the system minimises the likelihood of wasted votes. | Relatively high levels of turnout may partly reflect the continuing salience of sectarian loyalties (linked to ethno-national political competition) rather than a high level of engagement with municipal issues per se. |
| Participation levels in local government elections are relatively high, facilitated by a tradition of holding them concurrently with elections to other levels of government. | Under STV you cannot easily hold by-elections, since the process relies on multi-member seats. Instead the political party holding the seat is allowed to nominate (co-opt in) a new person when councillor vacancies arise. This gives parties a lot of power, since one in ten councillors across Northern Ireland has been co-opted. Between May 2014 and April 2017, 42 co-options have been made across Northern Ireland, at least one on every council. The highest number has been made on Belfast City Council, where 18.3% of incumbent councillors are unelected. |
| Councillors are no longer permitted to hold multiple mandates. The shift away from 'double-jobbing' is designed to promote clearer electoral accountabilities. | Despite recent reforms of local government, there has been no effort to introduce innovative mechanisms of public consultation, such as citizen juries or planning cells. |
| The transfer of local planning powers to councils may help to promote transparency in and engagement with local decision-making. | |

| Future opportunities | Future threats |
|---|---|
| The transfer of some additional powers to local government level may increase support for additional democratic reforms, such as developing better or new forms of public consultation. Gaining these additional powers could help focus councillors' minds away from controversial issues of symbolism towards more substantive policy decisions that lack any obvious ethno-national connection. | The recent election to the Northern Ireland Assembly (2 March 2017) was preceded by a bitter campaign, showing an increasing salience of the ethno-national dimension. This may trigger regressive polarising motions and debates in local councils in reaction. As the dispute over the flying of the flag at Belfast City Hall demonstrated, decisions on sensitive issues – even if they are the result of a democratic procedure – can stir fervent opposition beyond the council chamber. |
| In the event that the fragile power-sharing administration fails to re-start (or collapses) at Stormont, representatives from the local government level will play a greater role in mitigating any democratic deficit. | If direct rule has to be restored, because Stormont cannot, the oversight responsibilities for three key quasi-government agencies with urban roles - the Housing Executive, Education Authority and Transport NI - will transfer to Westminster. This would add further distance between citizens and accountability mechanisms over major agencies of local/regional government. |
| There has been some trend towards fostering local economic development at least in bi-partisan ways. | There is still not a consensus on all the key roles played by local governments across the main parties, and sensitive sectarian issues can arise in many applied policy contexts. |

### Still 'tribal' elections?

Just over half (52%) of councillors elected in 2014 were elected to one of the main unionist parties, and 37% to one of the main nationalist parties. However, cross-sectional evidence from the annual Northern Ireland Life and Times Survey has consistently found since 2006 that at least 40% of citizens (a plurality) identify as *neither* nationalist nor unionist. As in higher levels of government, this group of voters appears to be systematically under-represented under the existing party system.

The reformed structures of local government have not been accompanied by a significant improvement to women's representation. A quarter of councillors elected in 2014 were women, up just 1.6 percentage points on 2011. The aggregate level masks variation across the new districts. Women are a third of the members of Belfast City Council, but just one sixth of members on North Down and Ards Council.

Until new legislation prohibiting dual mandates came into effect in 2016, several incumbent members of the Northern Ireland Assembly (MLAs) were also elected to local government in 2014. The new rules now prevent the democratically dubious practice of 'double-jobbing'. But the one-off vacancies left by MLAs vacating their

seats were filled by 'co-option' (see Weaknesses, above) giving political parties, not voters, the exclusive right to nominate a successor.

## Some council planning powers, but not more transparency

As part of the reorganisation of local government, the 11 new councils gained some additional powers from the Northern Ireland Executive. Most notably, decisions on the majority of planning applications and urban regeneration now rest at the level of local government, not the Department for Infrastructure. This transfer of power mandated by the 2011 Planning Act (Northern Ireland) has a democratic objective:

> '[The change] will make planning more locally accountable, giving local politicians the opportunity to shape the areas within which they are elected. Decision making processes will be improved by bringing an enhanced understanding of the needs and aspirations of local communities'.

A 2011 report on public and stakeholder opinion of the Northern Ireland planning system found it to be poorly regarded by citizens, developers, and planners themselves. Citizens tended to see the relationship between planners and developers as too close, while developers tended to see the process as too inefficient. The reformed planning system remains in its infancy, so it is too early to tell whether or not the public and stakeholders perceive the revised system as more legitimate than its predecessor. At this stage, there is no evidence that the new councils have embraced global democratic innovations in planning, such as utilising citizen juries or deliberative planning cells. Regardless of their satisfaction with the new system, citizens and stakeholders may at least more clearly identify council representatives as accountable for decision-making.

## Budgets remain constrained

As in Scotland and Wales, local councils receive most of their funding from the next tier up, here the Northern Ireland Executive. However, most of this money in turn comes from the UK exchequer under the Barnett formula, which maintains a broad parity with England public spending. As a result of UK-level austerity policies, funding for Northern Ireland local authorities has declined appreciably.

## Decisions are sometimes contested

Given the carefully limited powers of local government, it may be somewhat surprising that council decisions still have the potential to spark controversy and raise fundamental questions over democratic legitimacy. But symbolism is still important. In December 2012 Belfast City Council voted to restrict the number of days that the Union Flag could be flown from City Hall. Nationalist councillors initially proposed a motion that would discontinue the flying of the flag altogether, but lacked a majority to carry it. The cross-community Alliance Party successfully proposed an amendment that would see the flag flying on 18 designated days during the year, in line with official government guidelines.

In the end 29 councillors supported the amendment, but all 21 unionist councillors voted against.

The decision prompted street protests across Northern Ireland, some of which turned violent. Loyalists saw the decision as an attack on their British identity. A public consultation conducted as part of an Equality Impact Assessment suggested that a large number of citizens would be offended by any change to the council's policy. The Chief Constable of the Police Service of Northern Ireland blamed loyalist paramilitaries for orchestrating disorder. The Alliance Party, holding the balance of power on Belfast City Council, was a key target. Some of its councillors' homes were attacked, one of its offices was set alight and destroyed, and its sole MP (Naomi Long) received a death threat. Violence eventually dissipated, but the council's decision stood. Small, peaceful protests have been held outside Belfast City Hall every Saturday afternoon ever since.

This case study shows how a democratic decision, made after a major public consultation, can still face widespread disorder in a politically polarised society like Northern Ireland. Even if a decision is made following consultation and in line with majority views, the decision itself may lack sufficient buy-in on a cross-community basis. Each of the 11 new reorganised councils has made individual decisions on flag-flying policies. Some decisions have attracted protests, but none of the intensity or scale of those seen in Belfast in 2012.

### Northern Ireland politics in flux

At the time of writing (June 2017), Northern Ireland lacks a devolved power-sharing government. After a snap Assembly election on 2 March and a highly acrimonious campaign, the two largest parties (the Democratic Unionist Party (DUP) and Sinn Féin) failed to reach agreement for many months on the formation of a new administration. If direct rule from Westminster has to be restored, then the British government assumes responsibility for matters devolved under the Northern Ireland Act (1998), diminishing potential oversight over public services from Northern Ireland voters, especially housing, education and road maintenance (see above). Connections with local council services might suffer too, since the vast majority of Westminster MPs lack experience in, or any strong incentive to understand, local governance in Northern Ireland.

The June 2017 general election further complicated matters by creating a further polarisation of the province's Westminster MPs between just the DUP and Sinn Féin, and by bringing the DUP into supporting the Conservative's minority government, potentially jeopardising the UK government's ability to be seen as impartial arbiters in Northern Ireland politics.

### Conclusion

Local government in Northern Ireland apparently meets many democratic criteria to an encouraging extent, especially in the electoral legitimacy of councillors, high turnouts at elections, and a continuing ability to engage citizens' political interest. However, the continued predominance of the ethno-national dimension at all levels of Northern

Ireland politics casts doubt on the extent to which citizens engage with the substantive issues of local government, impairs the deliberative and consensual quality of their decision processes, and has caused democratically-controlled local powers to be kept very minimal. Still, at the time of writing, councillors have for several months been the only elected officials making public policy decisions in Northern Ireland. Despite their comparatively narrow remit they have maintained some reality behind devolved powers across the region.

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## 5.7 London – devolved government and politics at metropolitan level

*Devolved government in London – focusing on the executive Mayor and Greater London Assembly – started as a radical innovation in 2000. Its generally successful development has sparked a slow, 'organic' spread of executive Mayors to other English cities and conurbations.* **Andrew Blick** *and* **Patrick Dunleavy** *explore how democratically and effectively the two London institutions have performed.*



Photo:    *Lena Vasiljeva via a CC-BY NC 2.0 licence*

**What does democracy require of London's devolved government?**

- Elected politicians should normally maintain full public control of devolved government and public services. In the London system this means there should be accountable and transparent government exercised by the Mayor. The Assembly should ensure close scrutiny of the executive, and allow other parties to articulate reasoned opposition via its proceedings.

- TheGreater London Authority (GLA, comprised of the Mayor and Assembly acting together) should be a critically important focus of London-wide political debate, particularly (but not limited to) issues of devolved competence, articulating 'public opinion' in ways that provide useful guidance to decision-makers in making complex policy choices.

- Individually and collectively Assembly members should seek to uncover and publicise issues of public concern and citizens' grievances, giving effective representation both to majority and minority views, and showing a consensus regard for the public interest.

- The London Mayor as executive should govern responsively, prioritising the public interest and reflecting public opinion in the capital.

- The GLA administration should be realistically and reliably funded, with resources so scaled that it could carry out its functions well, so long as it is efficiently and effectively run.

- The GLA should be a stable part of the UK's constitutional set-up, with considerable protection against ill-considered or partisan interventions in how it works originating from central government or Parliament.

The Greater London Authority (GLA) was established after a 1998 referendum, which saw Londoners endorse – by 72 per cent on a 34 per cent turnout – a new strategic government for the capital proposed by the Blair government. It consists primarily of a Mayor and Assembly, each elected by voters across London every four years. The mayor controls the GLA's executive powers, which cover strategic and London-wide functions – especially public transport and roads, policing via the Metropolitan Police, fire services, and strategic planning and economic development. The small (25 member) Assembly is elected using a form of proportional representation. It scrutinises the mayor's policies, budgets and conduct in office, and allows different parties to develop and advocate for varying policy agendas. All other local government services are run by 32 London boroughs, with which the GLA must co-operate to achieve many goals (see below).

The GLA was deliberately set up by Tony Blair to be a slim top-tier body, with a strong mayor and a weak Assembly, whose members would be forced to focus on London-wide issues, and not local ones. The Assembly's only clear powers are that it can reject or amend the strategies or the budget that the mayor proposes. However, in both cases, a two-thirds majority in the Assembly is required to replace the original proposal, which is very difficult to achieve. So in practical terms the Assembly can only scrutinise the activities of the Mayor through a range of committees. It can also hold public hearings with the key post holders appointed by the Mayor, but lacks the power to block their appointment.

### Recent developments

In the fourth round of the mayoral elections in 2016, using the Supplementary Vote election system which requires candidates to gain a majority of eligible votes, Labour's Sadiq Khan won 58% support in the run-off stage to convincingly beat the Tory candidate, Zac Goldsmith. He succeeded Boris Johnson, who had served eight years as London mayor. Khan's manifesto priorities were to build more homes (of which half would have to be 'genuinely affordable'), freeze transport costs and tackle gangs and knife crime. In an effort to reduce air pollution, the mayor also announced a 'T-charge' (a levy on more polluting vehicles) to apply within London's congestion charging zone from late 2017.

The Assembly election uses a form of Additional Member System (AMS), with 14 local constituency seats (spanning two or three London boroughs) with winners elected by 'first past the post' (or plurality rule) voting. However, voters then have a second vote for 11 London-wide seats, which are distributed to parties so as to make their total seats shares align with their vote shares. In 2016 Labour and the Conservatives won all the local seats between them, and gained top-up seats as well – ending up with 12 and 8 total seats respectively. This continued a pattern that stretches back over many elections for the top two parties to dominate the capital's politics. The Greens (2 seats), Liberal Democrats (1 seat) and UKIP (2 seats) had more limited success at the top-up seat stage.

Turnout in 2016 rose to 45 per cent, matching the 2008 peak when Boris Johnson was first elected.

**Chart 1: The percentage turnout in the five London mayoral and Assembly elections since 2000**
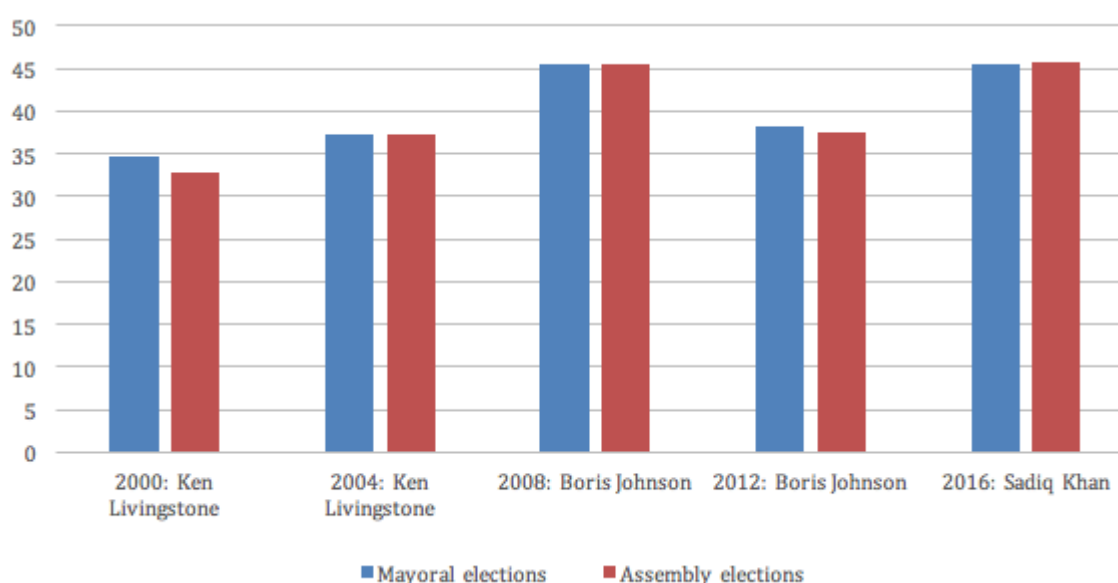


In the June 2016 Brexit referendum just under 60 per cent of Londoners voted to remain in the EU, reflecting the city's more youthful population, and perhaps factors such as the importance of EU workers for many key industries and services, and the capital's stronger dependence on Europe for trade and markets. Efforts by Sadiq Kahn to influence UK policy towards a 'softer' Brexit (backed by the vast majority of bigger London businesses) have so far been decisively rejected by Whitehall.

Finally, the GLA's policy roles and competencies sprang into far greater prominence in the spring and summer of 2017 following three terrorist attacks in central London (two on iconic bridges), plus the catastrophic fire in the municipal Grenfell Tower block. For homeland security it became clear that protecting citizens from vehicular assaults would require a far-reaching re-assessment of roadside barriers (belatedly introduced on London bridges) and other 'passive' measures. This will require much greater liaison between the Metropolitan Police and GLA and borough highway authorities. The fire

tragedy also attracted criticism for the initial response by the small Kensington and Chelsea borough and by Whitehall departments; the possible under-funding and under-management of public housing that had gone before; and issues about the adequacy of fire regulations policed by the GLA-controlled fire service. There are implications here for the two-tier local governance of London, with the mayor and GLA likely to emerge with stronger abilities to guide how boroughs carry out some functions.

**Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis**

| Current strengths | Current weaknesses |
| --- | --- |
| Mayoral elections have proved genuinely competitive, with the winners being an independent candidate (Ken Livingstone in 2000), Labour candidates (Livingstone in 2004 and Sadiq Khan in 2016) and a Conservative candidate (Boris Johnson in 2008 and 2012). In each round the top two candidates have been very easily identified by voters. Turnout has been substantial for new bodies, recently established, and has risen overall. | Theoretically any mayor whose party holds 9 or more votes in the 25 member Assembly can never be defeated, and so need take no notice of its views. In practice, mayors have wanted to be seen as performing well in scrutiny meetings and as acting with majority support in the Assembly. But these more subtle means of Assembly influence are not widely known, and its role is not seen as very important by most London citizens. By contrast, the mayor is seen as very powerful. |
| The intense interest generated by these contests, and the strong legitimacy produced by winning clear majorities under the SV voting system, have made the London Mayor a key politician not just in London, but across the UK and internationally. Each of the Mayors has been able to represent London internally and externally, wielding both hard power (via extensive policy reach) and soft power (via media prominence and a clear mandate). | In the mayoral election, voters have first and second preference choices. If no one wins over 50% support on first preferences, then the top two candidates stay in the race and all others are eliminated. The second preferences ballots cast by voters supporting for eliminated candidates are examined, and any 2nd votes for the candidates still in the race are added to their piles. However, if voters cast both preferences for eliminated candidates, these are not 'eligible' and do not influence the result. |
| Since it was established, the GLA has become a firmly established fixture of UK governance and its powers have expanded over time. For the foreseeable future, it is difficult to imagine any UK government seeking to abolish it, as Margaret Thatcher did with its predecessor (the Greater London Council) in 1986. | Despite the high level of public attention around mayoral elections, turnout in elections has fluctuated between the low 30s and mid 40s (see Chart 1 above) – levels found in other local elections, and well below those in the devolved countries. |

| Current strengths | Current weaknesses |
|---|---|
| Mayors have made creative use of the powers they possess, especially in the field of transport. The congestion charge (introduced by Ken Livingstone) is a good example of innovation in this area. Their 'soft power' advocacy has also been influential, for instance in encouraging take up of the London Living Wage. | Smaller parties, those which win less than 5% of the London-wide votes for the Assembly, are debarred from winning any seats through a rule inserted to discourage undue party fragmentation under PR. The larger parties gain from this. |
| The AMS election system for the Assembly has led to a greater diversity of parties being represented there, reflecting to a good extent the diversity of views within the huge London electorate. | When parties win top-up Assembly seats, the successful candidates are chosen in order from a 'closed' party list, which voters cannot influence. |
| The supplementary vote system used for the mayoral elections creates the opportunity for a larger proportion of voters both to choose their favoured candidates and have more influence on the outcome than they would do under a simple plurality voting system. | Theoretically, in a very tight race, the SV system used for the Mayoral election could lead to a candidate who came second on first preferences winning at the second round. So far in practice the contest has in fact always been won by the leading candidate in first preferences. |
| The Assembly has 20% ethnic minority members and a generally better gender balance (with women forming 40% of members) than most UK political institutions. However, black and Asian minority ethnic people now form 40% of London's population, so that much remains to be achieved. | Ten of the 14 Assembly local constituency seats have never changed party control, which may lead to complacency and inertia. |
|  | Mayors must negotiate many of the policies with Whitehall, or with quasi-government agencies running functions like airports or national railways, or the 32 London boroughs running local services. Success here involves 'soft' rather than 'hard' power. The seven strategic plans that the Mayor is required to produce rely a lot on others for their implementation - eg, despite strenuous efforts, mayors have made little discernible impact on decisions about London airport capacity. |

| Future Opportunities | Future Threats |
|---|---|
| The Brexit process has seemingly strengthened Londoners' sense of the capital as having distinct economic interests. Although exiting the EU may overall harm London's economy (see threats), the transferring back of powers from Brussels may create new opportunities for repatriated functions to expand the scope and coherence of GLA policy roles. Whitehall 'overload' post-Brexit may also increase favourable shifts of responsibilities. | The Brexit process promises to be turbulent and may adversely affect financial services, a key part of London's economy and tax base. The 2017 Tory manifesto also indicated the government would move large numbers of civil service jobs and some cultural institutions out of London. |
| The mayor may also be able to sustain the domestic momentum it had previously generated towards the extension of GLA's powers. This push could also capitalise on the wider trend towards greater devolution in the UK. | If tensions between the GLA and the London Boroughs grow, plans to build affordable housing may be hampered. |
| Brexit could be used to justify the argument that London should have independent capacity to respond flexibly to the challenges leaving the EU creates. | The 2017 Conservative election manifesto suddenly proposed to scrap the SV system used for electing the executive mayors in London and other UK cities, replacing it with first past the post. This would tend to wreck the mayor's legitimacy and in multi-party politics could lead to winners with far less than majority support. Since the voting system was part of a package approved by a London referendum in 1998, it is unclear that Westminster can make such a change without another referendum. The Tories lost the election, with the manifesto being rated disastrous, so that no action may follow. |
| | A Conservative government could be reluctant to transfer significant new powers to or otherwise cooperate with the now Labour-dominated GLA. |
| | Further devolution to England may be concentrated on cities or regions that did not previously have it, so that London might lose out. |
| | The Assembly's limited role may become harder to justify in future, given its relative insignificance in constitutional and governmental processes. |

## How the Authority works

The Greater London Authority was established under the *Greater London Authority Act 1999*, with the inaugural elections to the Greater London Assembly and for the office of Mayor held in May 2000. The introduction of the Authority followed a period, since 1986 and the abolition of the Greater London Council, in which there had been no directly elected tier of governance for London. The Authority is often regarded as being devolved rather than local-level government, though it does not possess powers as extensive as those attached to the devolved institutions in Wales, Scotland and Northern Ireland that were also established at around the same time. In particular, the Authority does not have the full primary law-making powers that are attached to those devolved institutions.

Other areas in which the mayor has the power to operate are policing, economic development, housing and regeneration. These powers are exercised via four functional bodies: Transport for London; GLA Land and Property; the London Fire and Emergency Planning Authority; and the Mayor's Office for Policing and Crime. The Mayor is also required to produce strategies for transport, housing, culture, economic development, health inequalities and spatial development. The Mayor is also able to intervene in some local authority planning decisions. The Authority raises money from council tax precepts; business rates; transport charges; and an infrastructure levy.

Successive Acts of Parliament have expanded the powers of the Authority: the *Greater London Authority Act 2007* granted new roles in skills and employment, and housing. The *Localism Act 2011* gave the Mayor more land and housing powers; and allowed the Mayor to form Mayoral Development Corporations. The *Police Reform and Social Responsibility Act 2011* made the Mayor the Police and Crime Commissioner for London; and the *Public Bodies Act 2011* gave the Authority some development powers.

## Financial dependency and budgets

Like all local authorities in the UK, the Greater London Authority must legally submit a balanced budget, where its current spending and revenues are equal. As Table 1 shows the scale of GLA operations is vast, with current spending of £11.8 billion. Because of transport receipts the Authority actually generates over 70 per cent of its own resources, but depends on Whitehall for grants of over a fifth of its income, and also has local business rates redistributed away by Whitehall to other poorer authorities. It collects a share of business rates and levies a council tax precept that is collected by the boroughs on its behalf.

## Table 1: Current spending by the GLA for 2017-18 and its revenue sources

|  | £bn | Percent |
|---|---|---|
| Total spending | 11.758 | |
| Revenue sources | | |
| Fares | 4.877 | 41 |
| Whitehall grants | 2.610 | 22 |
| General income | 1.405 | 12 |
| Business rates (GLA retains) | 1.307 | 11 |
| Council tax | .805 | 7 |
| Paid to Whitehall from business rates | .754 | 6 |
| Total revenue | 11.758 | 100 |

*Note:    Fares, general income, GLA-retained business rates and council tax are locally generated revenues.*

This situation may look quite favourable, but Whitehall grants were severely cutback in the austerity period (2010-17), with drastic consequences for London police and fire services where personnel numbers had to be greatly reduced. Central departments also control much of the GLA's vital capital budgets, which are very large because of major transport projects.

The London Finance Commission, first formed by the Mayor in 2012, recommended that the GLA should take on complete responsibility for a wide range of taxes such as council tax, stamp duty, business rates and capital gains tax. This change would be accompanied by a reduction in central funding for the Authority, thereby increasing its autonomy and responsibility. The Commission has also supported the idea of new taxes, such as a levy on tourism. A 2017 report lays out the scope for further functions to be devolved to the capital, building on the momentum for more powers to be devolved to cities or city regions within England.

### Two tier government

One reason why the GLA's predecessor London-wide body was abolished by the Thatcher government in the mid 1980s was conflict between the Labour GLC and many of the 32 London boroughs under Conservative control, produced by an overlap of functions. So the design of the GLA was designed to keep the mayor (and especially the

constituency Assembly members) from interfering in purely local issues. This design aim has generally been achieved, but there are inevitably some tensions between the more dynamic GLA and the small and slower-moving London Boroughs – e.g. over plans to build more affordable housing to combat the capital's crisis of housing costs that are well above ordinary Londoners' ability to pay.

## Conclusions

London's strategic government has succeeded far better than its creators could have envisaged. The London mayor is an internationally known representative of the capital, and all five mayoral terms have created strong electoral legitimacy for the office-holders. By contrast the Assembly has been inhibited by its lack of powers from playing a major role or establishing a strong public profile.

London-wide issues have been successfully addressed by the GLA, especially on transport improvements and road charging. But policing, homeland security, responding to Brexit and other areas have been hampered by continued Whitehall interference. The current system may seem 'entrenched', but rash proposals to wreck the mayoral voting system in the Tory 2017 manifesto show that some in Westminster still refuse to recognise the reality that devolved powers are devolved.

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## 5.8 London – local government and politics within the metropolis

*Within London the 32 London boroughs undertake most local services provision and planning, and play a major role in shaping the capital's evolution. **Tony Travers** looks at how well they fulfil their roles.*



*A protest against the closure of libraries in Lambeth, 2015.*

### What does democracy require of London's borough councils?

- Elected politicians should normally maintain full executive control of local government and the public services that councils are required or empowered to deliver. In the London system, there are two tiers of sub-national government, the 32 boroughs (and the City of London) and the Greater London Authority (the GLA, consisting of a Mayor and Assembly). The latter has no supervisory responsibility over the former.

- Boroughs should represent local and neighbourhood interests whereas the GLA represents London-wide ones. The lower tier authorities should be the focus of local democracy in the delivery of municipal services and leadership.

- Individually and collectively, London's councils should not only deliver publicly-accountable services but also, in effect, act as a democratic counter-balance to the city-wide power of the Mayor.

- Councils should have accountable, effective and responsive leadership, with an understanding of the needs of all their citizens and acting in ways responsive to public opinion.

- In addition to their representative role on behalf of their constituents, the non-executive members of the London borough councils should undertake oversight and scrutiny functions so as to provide strengthened performance and accountability.

- London's borough government should be consistently and predictably funded in such a way as to provide a link between raising of resources and their use, while also being sufficient to deliver legislatively-required public services.

- London councils should be a stable part of UK local government, with some quasi-constitutional protection against ad hoc, inconsistent and/or partisan interventions from other tiers of government.

In common with local authorities throughout England, the London boroughs' responsibilities for service delivery have been much reduced, but they have become far more active as local economic development institutions. Local government now has only residual responsibilities over education, for example, where once this was their biggest spending function. Borough councils in the capital each have between 45 and 70 councillors, with significant disparities in the numbers of registered voters (and, separately, total population) per elected member. Councillors stand for election every four years (when all seats are up for election). There have been 14 of these elections since the boroughs were created in 1964.

Each of the 32 councils is generally led by a cabinet, consisting of a sub-group of the elected members chosen from either the majority party, or a coalition/combination of two minority ones. In four cases (Hackney, Lewisham, Newham and Tower Hamlets) there is a separately-elected executive mayor who holds executive power.

The boroughs and the City are relatively powerful units of sub-national government in London. Their total budget is broadly twice the size of the GLA's, so the arrangement can be characterised as a bottom-heavy two-tier system.

### Recent developments

As with local government elsewhere in England, London borough elections use the first-past-the-post ('plurality') voting system. They last took place in May 2014, on the same day as the European Parliamentary elections. Labour won 20 councils (up by 4), the Conservatives 9 (down by 3), and the Liberal Democrats 1 (down by 1), with 2 'no overall control' results. The City of London largely eschews party politics, and holds its elections every four years on a different cycle. The most recent occurred in March 2017, with one of the major national parties (Labour) gaining an unprecedented five seats.

Turnout in the 2014 borough contests averaged 39 per cent, down from 62 per cent in 2010, when the borough elections were held on the same day as the general election. In years unaffected by general elections, the highest-ever turnout was 48 per cent in 1990 and the lowest was 32 per cent in 2002. Partly reflecting the multiparty character of

European elections, some nearly 7,000 more candidates stood for election in 2014, up by 115 candidates on the 2010 total, and 437 more than in 2006.

**Chart 1: Political control of London boroughs after the 2014 elections**
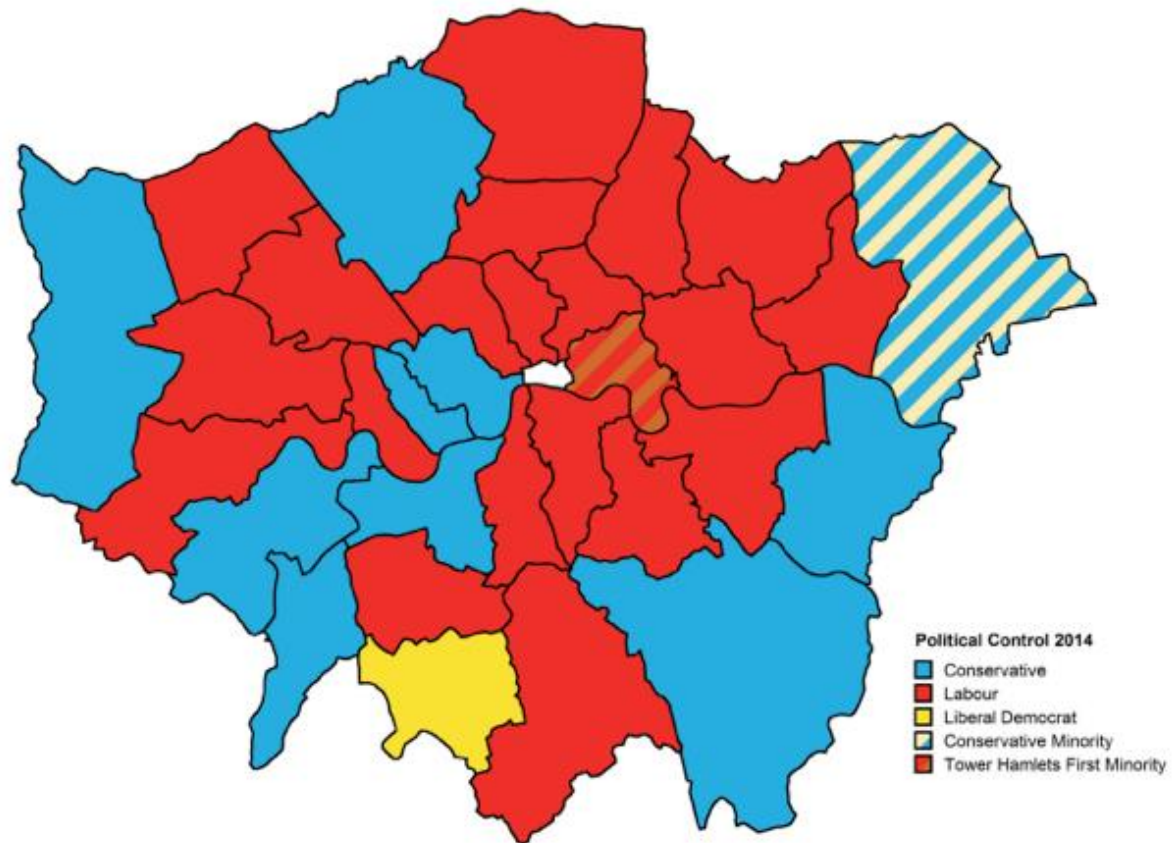


*Source:    GLA.*

The central government appointed Commissioners in late 2014 to take over the government of Tower Hamlets, to support the council improvement and to ensure transparent and open governance. In particular, the commissioners assumed direct responsibility for the borough's grant-giving. In 2015 Mayor Lutfur Rahman's 2014 election was declared null and void by the Election Court because of electoral fraud within the terms of the Representation of the People Act, 1983. Rahman was disbarred from public office until 2021. Subsequently, a new mayor was elected and the commissioners have been stood down.

In June 2017, a disastrous fire occurred at Grenfell Tower in Kensington and Chelsea borough, killing at least 80 people, and with 255 people being rescued. The consequences of the fire and a woeful aftermath in terms of meeting survivors' needs included the (forced) resignation of the borough's chief executive, followed later by the Conservative council leader and deputy leader. In the immediate aftermath of the disaster, a joint ('Gold Command') arrangement of other borough chief executives and

officers assumed control of recovery and administration. The government announced that a task force (with advisory not executive powers) would be appointed to assist the longer-term recovery from the fire and its impacts. Kensington and Chelsea's new Tory leader admitted that trust in the council had been seriously damaged by the incident and the council's subsequent response.

**Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis**

| Current strengths | Current weaknesses |
|---|---|
| In many boroughs there is effective competition between two or more parties, with the real chance of a change of control at forthcoming elections. The Conservatives, Labour and the Liberal Democrats are active in every borough, while there has been some growth in minor parties in recent decades. In 2014, over 26 per cent of the votes cast in the borough elections went to parties other than the 'big three', though this resulted in the 'others' winning only 3.4 per cent of seats. | There is far less democratic competition in some boroughs than others. In Newham and Barking & Dagenham a single party holds all the seats on the council. In Lewisham and Islington the majority party holds all but one and in Lambeth all but four. The number of minority party councillors on a number of councils is below 10 per cent of the total. The make-up of the electorate, ward boundaries, the fragmented opposition and the first-past-the-post voting system together ensure that in Barking & Dagenham Labour can win all seats with around half the votes cast (as few as 47.5 per cent in 2010). In 2006, which was a bad year for Labour, the party won 54 out of 60 seats with 41.9 per cent of the vote. There are other boroughs, such as Westminster and Kensington & Chelsea where there has also never been a change of control, though there is a sizeable opposition in both. |
| Turnouts at 38-39% have been around 5 to 6% higher than at the turn of the century, but below the levels of the politically-charged 1980s and early 1990s. Political controversy seems to drive up turnout. | Although turnout was up slightly in 2014, the overall level is just on a par with other UK local elections, and low by international standards In 2014, the turnout across Kensington and Chelsea was just 30 percent and as low as 24 percent in one individual ward. |

| Current strengths | Current weaknesses |
|---|---|
| Stability is a key attribute of the London boroughs. They have survived with virtually the same boundaries and many of the same service responsibilities for 52 years, they are now the oldest municipalities in the UK. Virtually all other public providers have been reorganised more frequently. Despite their lack of any formal constitutional protection, the London boroughs have proved resilient within a UK government system which is subject to regular administrative 'churn'. The City of London, an exception to virtually all rules, is almost a thousand years old. | The City of London's democratic position is anomalous and has been for decades. Its franchise includes business votes, a characteristic which was unique in modern sub-national government until business improvement districts came into existence in the 2000s. The latter are business-led, but have access to non-domestic rates as a revenue source. In addition, many larger London businesses are now required to pay a supplementary local rate to fund the Crossrail project. |
| Local responsiveness is perhaps the single most important virtue of London boroughs and their councillors. There are 1861 councillors in London (compared to 73 MPs and to 25 Greater London Assembly members, only 14 with constituency roles). So London borough wards cover an area or neighbourhood which is small enough to allow easy access to elected representatives. In a city as large as London (1572 sq km) residents have a need for both local and city-wide voice. Borough councillors make locally-sensitive representation possible. | The processes that political parties use to choose candidates are not easy for the wider public to understand, though this issue is not unique to London. Parties are private organisations which have their own processes for selecting candidates for all types of election. The closed nature of party selections may from time to time encourage 'entryism'. Here a sub-set of party members within a party become able to choose candidates by surviving long meetings, procedural struggles and other ways of operating that discourage wider participation by the wider local membership. |
| London is by far the most diverse part of the UK. The most recent census of the city's councillors (in 2013) suggested nearly 16% were from black and minority ethnic communities, and this share probably increased in 2014 – in line with the 2017 general election when just over 16 per cent of London's MPs came from BME backgrounds. Only a third of London councillors are female. | There have been examples of electoral fraud in a number of British councils in recent years including, notoriously, in Tower Hamlets. Although London elections are generally well-managed and clean, there have been accusations of malpractice, though there have been very few examples of proven fraud. Since the Tower Hamlets case greater efforts have been made to monitor electoral registers, postal voting and (with police assistance) polling stations. |

| Current strengths | Current weaknesses |
|---|---|
| The boroughs are capable of representing themselves and their democratic position within UK government in negotiations with the Mayor and Whitehall. A jointly-funded representative body, London Councils, acts both to safeguard borough interests during the passage of legislation and in lobbying for greater devolution, as well as being the collective voice for boroughs in relation to national and city-wide government and to other institutions. | The small size and multiplicity of London boroughs are criticised from time to time. Thirty two boroughs seems a large number of authorities for a relatively small geographical area. Some critics have suggested a move to 14 (the number of Assembly constituencies) or even five 'super boroughs'. From a democratic point of view, reducing the number of boroughs would inevitably reduce the number of elected representatives, and cut the possibility of access by the public. Five boroughs would mean each having an average population of 1.8 million, almost twice the size of Birmingham City Council. If boroughs were that large, some form of 'parish' or 'community' council would doubtless be required, thus creating three tiers of sub-national government within London. (Some shire areas already have county, district and parish councillors, which can be seen as complex). In democratic terms, any reform of London borough government would need to take access and local accountability into account. |
| Since the abolition of the Audit Commission, there have been no objective council-wide assessments of London boroughs' performance. But there has been little evidence to suggest that London boroughs are disproportionately susceptible to management, financial or service failure. Apart from the cases of Tower Hamlets and Kensington and Chelsea discussed above, both one-party dominated for long periods, there have been no examples of significant difficulties affecting individual councils. Given the scale of revenue expenditure cuts demanded of many London boroughs since 2010 (see 'Weaknesses'), their performance can be seen as remarkably good in the circumstances. | Tax raising by the London boroughs has been centrally-constrained since rate capping started in the mid-1980s. From 2010 onwards a number of boroughs have had their revenue spending reduced by between 35 and 45 per cent in real terms - a far greater cut than almost all other parts of the public sector. Such sharp cutbacks required boroughs to protect some services, such as social care, while allowing others to take even deeper cuts. Official statistics show central administration, roads and planning have faced reductions of 50 per cent or more over seven years. The National Audit Office has reported on the financial sustainability of English local authorities as a whole, explaining that the scale of change is unprecedented. Government plans show further reductions in non-social care spending at least till 2020. It is hard to see how London boroughs' core capacity cannot be affected by reductions on such a scale. |

| Future opportunities | Future threats |
|---|---|
| The boroughs and the Mayor have been jointly negotiating with central government over a further package to devolve powers over skills, employment, criminal justice, housing and health to London. The sense that devolution is a 'process not an event' has created dynamism which was reflected in the London Finance Commission report of January 2017, which argued for fiscal devolution to the boroughs and the Mayor. | Brexit is a potential threat to the economic development and stability of a number of London boroughs which have in recent years had to harness major projects in order to pay for new local facilities and services. Any abrupt, 'cliff-edge' departure from the EU might adversely affect the tax base of London authorities, especially if and when more taxations powers are devolved. |
| As the primary planning authorities for the capital, the boroughs have the chance to reduce any short-term impact of Brexit by adjusting their policies to accommodate any shocks that emerge as the UK leaves the EU. More generally, London councils have significant freedom to use planning and regeneration policies to make good the lack of central government funding for investment. | Any recession, whether or not linked to Brexit, also would threaten the boroughs' capacity to deliver large numbers of new homes. The softening of the London property market during 2016 and 2017 will change the economics of many boroughs' regeneration plans. |
| Housing supply is linked to the planning system. Given co-operation involving the Mayor and Whitehall, it would be possible to increase the numbers of both affordable and total homes available in London. There is growing central government pressure on councils, land owners and the development industry to increase housing supply. More than any other part of government, the boroughs could create the conditions needed to deliver a rising number of new homes, though such an outcome would require additional borrowing freedoms and greater use of resources created by selling of social housing. | The fallout from the Grenfell Tower disaster will inevitably include the need for many London councils to spend substantial amounts of money on improving the safety of their high rise housing blocks. Whether central government will assist in funding of these upgrades remains unclear. Boroughs affected will face short- and longer-term costs that may run into billions of pounds. There is a risk to the availability of social housing and also to the maintenance of buildings other than those affected by post-Grenfell requirements for improvements. |
| The boroughs can assist the Mayor with the delivery of the Crossrail 2 regional railway. It will require significant amounts of development on sites within a number of boroughs from Enfield and Waltham Forest, across inner and central London, to Sutton and Kingston. Again, the creative use of the planning system will be essential to both tiers of government if they are to generate resources for improved services. | There is always a risk that the government will initiate a reorganisation of the boroughs as a solution to a problem - such as loss of capacity due to revenue spending reductions; or to respond to failings revealed by the Grenfell Tower public inquiry. All local government in the UK is almost-permanently under threat of some potential reorganisation. |

### How the boroughs work and what they do

Since their creation in 1965 to today, the London boroughs have survived (while the former Greater London Council was abolished by the Thatcher government in 1986), partly because their service responsibilities matter to local residents, even though they have altered a lot over time. The boroughs run social care, environmental services, most roads, public health, part of social housing, some services and oversight for local schools, some special needs transport and the administration of elections. Council leaderships (generally a mayor or cabinet) make policy which is subject to voting and scrutiny by the whole council. In all but two boroughs there is a majority administration of one party (see Chart 1 above). Service delivery is the responsibility of non-political professional officers who are appointed by the council.

### Two-tier government

For resident Londoners and businesses, the borough is the unit of government responsible for most local services. The Mayor of London and the London Assembly have explicitly separate responsibilities (see here). There is some overlap: boroughs must fit their local plans within the Mayor's overall *London Plan*, while the Mayor is responsible for allocating resources to support affordable housing and can lead policy but does not have a delivery role. The boroughs, on the other hand, work in partnership with City Hall to deliver homes. The Mayor's agency, Transport for London, allocates some transport funding to boroughs.

It is relatively easy to understand for the public to understand the differences between the boroughs' responsibilities and those of the Mayor. There is probably greater confusion amongst citizens on how the boroughs' responsibilities for social care and link to the NHS health care, supervised by central government. Failings or deficiencies in the joined-up care of older people can easily lead to finger-pointing between central and local government, as across England.

In the 17 years since London-wide government was restored, the boroughs have come to accept the Greater London Authority, particularly the office of mayor, as a legitimate expression of metropolitan democratic needs. There is no borough-initiated campaign to reform the GLA, though there have been concerns expressed by some borough leaderships about the London Assembly. From time to time, individual boroughs will disagree with the Mayor of London about issues such as planning policy or house-building. But there is an acceptance that there are two legitimate spheres of sub-national government within London, which will disagree from time to time, for good democratic reasons.

The capacity of each tier of London government to represent different interests: 'local' and 'metropolitan' is, in effect, part of a *de facto* constitutional settlement for the capital that balances citizens' own different needs. Despite the lack of a formal UK constitution or a London city charter to mediate between the two tiers of the capital's government, relations are overwhelmingly managed effectively.

**Financial dependency and budgets**

In common with other UK local authorities, the boroughs are required to produce a balanced revenue (ie day-to-day) budget each year. Only capital expenditure projects can be funded by borrowing, and only so long as it is consistent with an official 'prudential code'.

Chart 2 below shows that over four fifths of revenue expenditure is funded by government grants or re-distributed business rates (still centrally controlled). Less than 20 per cent of revenue spending is funded by the local council tax. The latter is effectively capped at a 2 per cent increase per annum, and to raise more a council would have to win a local referendum. The Conservative governments since 2015 have encouraged centrally-determined increases in council tax to pay for additional social care expenditure. (The government had plans to allow councils to retain 100 per cent of their non-domestic property tax income from 2020, though the result of the 2017 general election appears to have reduced the chances of this reform taking place). Capital expenditure represents just under a quarter of all London boroughs' expenditure and is also partly grant-funded, though to a significantly lesser extent than revenue spending.

**Chart 2: Total funding and expenditure, London boroughs (2015-16)**
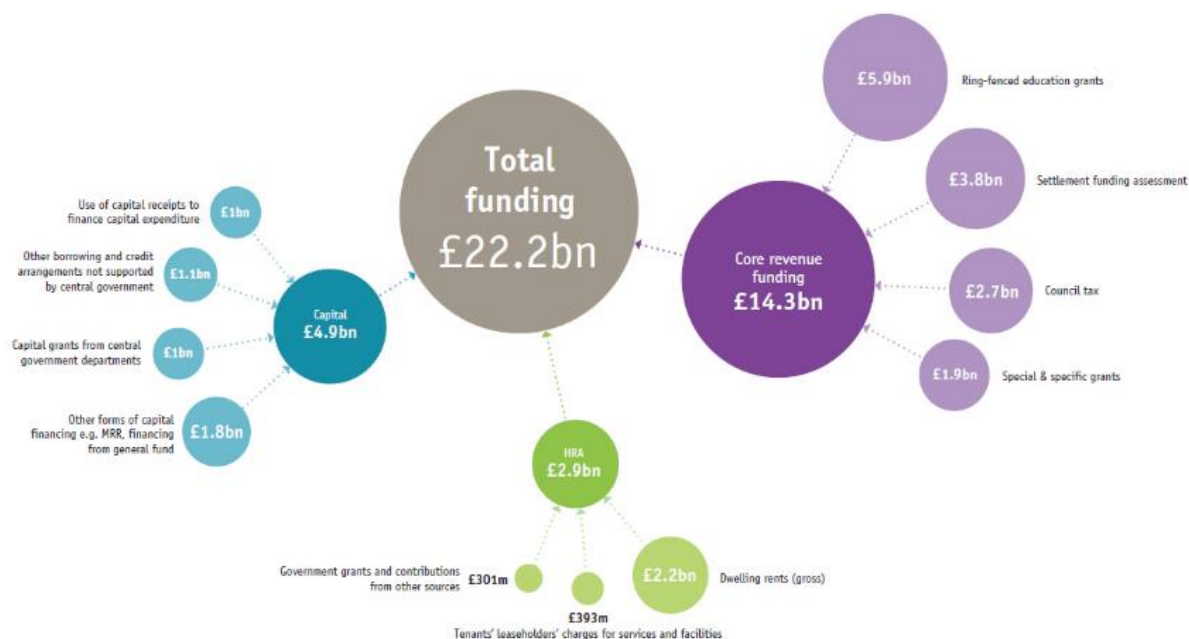


*Source:    London Councils*

**Conclusions**

London's local government is stable and effective. Despite very large reductions in centrally-set funding in recent years, London boroughs have been able to continue to deliver effective services and to regenerate former industrial parts of the city. Public satisfaction scores are generally high. Managing such a massive and complex city is a

daily challenge, suggesting that this is one of the better-functioning parts of UK government. Stability has allowed politicians to concentrate on service delivery and regeneration.

The boroughs represent a long-established and accessible element in the government of a very large mega-city. With an average population of 275,000, London boroughs are large municipalities by international standards. Two outer boroughs are forecast to have populations in excess of 400,000 by the early 2020s. The scale of London makes it hard to envisage a system of government which did not include a local-scale tier capable of representing neighbourhood and community interests.

The variegated nature of London's 8.8 million population means that there are differences that go beyond those related purely to a geographical area. But many groups of minority citizens are often concentrated within small numbers of boroughs. Looking ahead, a greater capacity for councillors to be representative of the many different communities represented in London is a decent goal. Expanding opportunities for neighbourhood involvement in local policy-making would be another.

However, there are inevitably clouds in this broadly benign picture. Occasionally events occur which are seen, rightly or wrongly, as systemic in their implications. Riots in 2011 were of this kind, as was the Grenfell Tower disaster. London remains an unequal city, though the centralised nature of UK government means the boroughs and the Mayor do not, even jointly, control many of the resources and powers necessary to deliver radical change. In a city as large and complex as London there is always the risk that an event will occur which will be interpreted as being totemic of broader governmental failure – a risk that London councils need to be mindful of.

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## 5.9   England – local government and politics

*England (outside Greater London) is one of the largest areas in the liberal democratic world that still lack any form of regional governance. Here, local authorities are the only other tier of elected government and they play a key role in the democratic life of cities, towns and regions.* **Colin Copus** *and the Democratic Audit team explore how democratically local councils have operated.*



*Paul Dennett, City Mayor of Salford, at a bake-off event in 2016.*

**What does democracy require of England's local governments?**

- Local governments should engage the wide participation of local citizens in their governance via voting in regular elections, and an open interest group and local consultation process.

- Local voting systems should accurately convert parties' vote shares into seats on councils, and should be open to new parties entering into competition.

- As far as possible, consistent with the need for efficient scales of operation, local government areas and institutions should provide an effective expression of local and community identities that are important in civil society (and not just in administrative terms).

- Local governments should be genuinely independent centres of decision-making, with sufficient own financial revenues and policy autonomy to be able to make meaningful choices on behalf of their citizens.

- Within councils the key decision-makers should be clearly identifiable by the public and media. They should be subject to regular and effective scrutiny from

the council members as a whole, and publicly answerable to local citizens and media.

- Local governments are typically subject to some supervision on key aspects of their conduct and policies, in England directly by UK government in Whitehall. But they should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an assurance that cannot simply be abolished, bypassed or fully programmed by their supervisory tier of government.

- The principle of subsidiarity says that policy issues that can be effectively handled in decentralised ways should be allocated to the lowest tier of government, closest to citizens.

In 2004, the Blair government was worried that its devolution changes in Scotland and Wales could be seen as a basis for reducing their number of MPs in the House of Commons, hurting its fortunes. In a bid to forestall that, a schema for implementing a very weak form of regional devolution for England was devised, and a pilot version was put to a referendum of voters in the heartland Labour region of the north east. Voters there decisively rejected it, and all progress on the subject was halted for a decade. This left England (outside London) being directly run by UK departments and quasi-governmental agencies (like the NHS), plus Whitehall-supervised local councils.

The weakness of English regionalism may also be partly due to local loyalties to their existing councils. But local authorities have no constitutional protection from Whitehall interference, and depend heavily on central government grants. Their relative weakness as a tier of government has been compounded by the 'nationalisation' of the UK press and media system and the decline of the local press, plus the dominance of UK national parties in 'first past the post' local elections that only weakly relate parties' seats to their vote share.

### Recent developments

The May 2017 local elections across England and Scotland took place in the early part of the 'snap' General Election campaign triggered by Theresa May, at a point when the Conservatives still enjoyed a massive opinion poll lead over Jeremy Corbyn's Labour, and with the Liberal Democrats trailing at just 8 per cent national support. The party vote shares at local level across Great Britain turned out rather differently. The Conservatives gained many seats on 38% support; Labour was on a historic low of 27%; and the Liberal Democrats defending their local 'community' bases secured 18%, more than double their eventual general election vote share a month later.

The same elections also saw the May government delivering on previous coalition and Cameron government promises of more localism by creating elected executive mayors to operate on a sub-regional level. These would end the decade-long stasis on devolution within England and the new mayors would take on functions previously run from Whitehall or quasi-government agencies. The first regional mayor elections were

successfully held in six areas: turnouts were low, although this might be expected for brand new roles unfamiliar to voters. These developments revived the somewhat flagging momentum towards more use of elected mayors (see below).

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The development of multi-party politics has reduced the number of completely on-party councils, and cut the number of 'safe' councils. When councils are 'no overall control', cross-party coalitions are needed. This may increase the range of views being considered beyond those of a single party. | Local council elections in England use plurality rule ('first past the post')voting. It often produces severely disproportional election outcomes, especially over-representing the largest party in a local area with. Some councils become completely one-partyfor long periods, and others are dominant party systems, where the same party holds power for decades. First-past the post sometimes provides for a clear winning party but it does not adequately reflect a wide range of political views. If local policymaking is to be a deliberative process where debate take place in public a more proportionate electoral system would strengthen local democracy. |
| The voting system used for all executive mayors is the Supplementary Vote, a system that gives citizens first and second choice votes. It ensures that the person elected gains majority support amongst 'eligible' votes in each contest. To win, candidates normally must 'reach out' beyond their own party's supporters to draw in second vote backing from the supporters of other parties. | The Supplementary Vote does not guarantee majority support amongst all those voting. If people cannot identify the top two candidates, or decide to vote twice for smaller parties, then their votes may not count at the second stage. |
| Councils are democratically elected, representative bodies. They provide an opportunity for over 18,000 people across England to take part in holding elected office. Local government provides avenues for participation in politics and for allowing for a wider range of people to hold elected office than simply the 650 elected to parliament. | Currently approximately 60 per cent of local government funding comes from the centre in the form of grants many of which, such as grants received for schools, are ringfenced and therefore cannot be used for purposes other than those set by the government. Central control leaves little discretion for local spending priorities to be realised thus undermining the democratic legitimacy of local government. |

| Current strengths | Current weaknesses |
|---|---|
| Local government is an institution that is able to provide a barrier between a powerful central state and local citizens and to at least attempt to attenuate the worst excesses of central policy. | Local electoral turnout in England is among the lowest across Europe and bumps uncomfortably along in the mid to high 30% bracket – although turnout does increase when local elections are held on the same day as a general election. |
| As locally elected representatives, councillors are located close to the public in small wards. Hence they are able to make policy decisions, or decisions about the provision of public services, in ways that closely reflect local needs and priorities. | Research shows that many voters in council elections are choosing parties to support on national lines. Hence local results may be influenced by the popularity of the government of the day in Westminster, rather than by local policies. Local elections are often reported in the media chiefly for what they can tell us about the national fortunes of the main political parties. These traits weaken the purpose of local elections, and the accountability of councillors to local voters. |
| Councillors - and the council as an organisation - are easily accessible to the public and provide channels into local political decision-making. | The large size of English local government – again compared to much of Europe – makes it remote from local citizens and undermines it as a truly local institution. |
| Councils provide for a set of electorally legitimised processes for arbitrating and deciding between competing local views and issues, and resolving them. | Local government can be re-shaped, re-structured, re-organised at the whim of the centre and its boundaries altered and reshaped or particular councils abolished or merged, with little regard to the wishes of local communities. Thus, local government, as a democratic component of the state is constitutionally weak. |
|  | Functions, powers, responsibilities and tasks of local government can be removed by the centre in Whitehall and placed with other agencies or bodies. UK ministers have interfered extensively and freely in local policy-making, removing whole functions (like education) and limited councils' tax-raising powers. |

| Current strengths | Current weaknesses |
|---|---|

| Future opportunities | Future threats |
|---|---|
| A central government policy of devolution has seen major public service responsibility and some budgets devolved from the centre to new combined authorities, and in May 2017 voters in six such combined authorities directly elected a mayor to head the combined authority. It is likely after the 2017 general election that further devolution to local government, through combined authorities, will form a part of government thinking. | Local government, as a creature of statute and with no independent right to exist is under constant threat of centralising governments or the centralising tendencies of the civil service. |
| The Brexit negotiations designed to ensure the repatriation of powers, responsibilities, finance and sovereignty lost as a result of EU centralisation can be used to accelerate devolution to local government. A strong local government voice at, or around the negotiations could make sure that repatriated powers do not stop at Westminster and Whitehall, but flow down to local government and to parish-level government. | Local government operates in an environment where it competes with a wide range of external agencies and bodies, which spend public money, make public policy decisions and affect the well-being of local communities but do so without a democratic mandate. Local government is open to the centre removing its responsibilities and functions and placing them with unelected bodies. |
| Local government's experiences and practices of citizen engagement and devolution to local communities can bolster its support, and engage citizens in policy making and local decisions far more effectively than similar attempts by central government. | The low fiscal discretion available to local government will continue to hinder its ability to respond to economic change and austerity policies implemented by the centre. |
| There may be scope in the Brexit negotiations for improvements in how councils achieve funding. Currently English local authorities receive 70 different forms of EU funding managed by multiple different local government departments. So the processes involved can be confusing, slow and bureaucratic. Taking back control within the UK might speed things up and produce simplified ways forward, assuming that the UK government continues funding the same kinds of scheme. | There are no guarantees that the UK government will pick up and replace EU funding to local councils as part of the Brexit process. The two stage process envisaged by ministers, of first repatriating powers within the UK, and only thereafter considering whether any of them should be delegated down to local authorities, is likely to re-centralise controls in Whitehall, certainly for the short term. 'Henry VIII' powers in Brexit legislation will also give ministers far more discretion in how they implement executive powers. |

## Elected mayors

Throughout the 20th century, English mayors were simply honorific office holders, chairing council meetings and opening events, but otherwise devoid of power. All power instead lay with the majority party group on the council (or coalition), whose leadership

typically formed a 'submerged executive' little known to citizens and not very visible even to local media.

The Blair government changed this historic pattern in 1998 by introducing a powerful executive mayor for Greater London, directly elected by citizens using the Supplementary Vote (SV) method in 2000. The perceived success of this innovation lead to local citizens anywhere in England gaining the power in 2002 to petition to hold a binding referendum on whether to create an elected mayor with executive powers for their area, and thus be able to directly choose the political head of the council, again using SV. Table 1 shows that eight main towns and London boroughs adopted the system straightaway, but further developments lagged. A legislative change in 2007 allowed councils to resolve to move to a mayoral system of governance and thus avoid a referendum. Three main cities adopted the reform in 2012. So far there have been 53 referendums and currently there are only 16 directly elected mayors outside of London. Two authorities that tried out elected mayors (Hartlepool and Stoke-on-Trent) subsequently scrapped them.

**Table 1: The spread of elected executive mayors in England outside London**

| Conventional local authorities | Established |
|---|---|
| Bedford, Doncaster, Hackney LB, Lewisham LD, Tower Hamlets LB, Middlesbrough, North Tyneside, Watford | 2002 |
| Torbay | 2005 |
| Leicester | 2011 |
| Bristol, Liverpool, Salford | 2012 |
| Copeland | 2015 |
| **Regional city mayors** | **Established** |
| Cambridgeshire and Peterborough; Greater Manchester; Liverpool City Region; Tees Valley; West of England; West Midlands | 2017 |

Direct election of local office-holders was adopted by the coalition government for Police and Crime Commissioners (PCCs0, introduced across England and Wales in a disastrous November 2012 set of elections. Held out of sequence in the chilly autumn, these SV elections attracted only 15% turnout, but SV produced useful results carrying some legitimacy. In May 2016 the second PCC elections were run at the normal May time, producing 21 Conservatives, 16 Labour, three Independents and two Plaid Cymru commissioners.

From May 2017 a new type of mayor and a new type of sub-national political institution: the combined authority was introduced in the six areas shown above, with directly elected metro-mayors. This devolution initiative stemmed from the Local Democracy, Economic Development and Construction Act 2009 and Cities and Local Government Devolution Act 2016. As the name suggest, the combined authorities are groupings together of existing local authorities that have negotiated a devolution deal with the government. The key consequence of each deal was that the councils acting together received devolved responsibilities for a range of different services and devolved budgets. Several metro-Mayors (including Manchester) will take over the role previously filled by Police and Crime Commissioners in their area, and some will seek to better integrate social care with regional NHS provision – giving them substantial roles.

The significance of these new types of sub-national combination of authorities and the directly elected mayors that head them cannot be overstated. They are a new way of the centre attempting to devolve powers and function, and early developments were promising. Some mayoral contests attracted 'big hitter' politicians as candidates. The former Cabinet minister Andy Burnham won the Greater Manchester contest for Labour against the run of polls, and was quickly prominent in the response to the Manchester terror bombing shortly afterwards). And the former John Lewis executive Andy Street won the West Midlands for the Conservatives.

But as with all sub-national bodies within England, they exist at the behest of the centre, so Whitehall's willingness to devolve effective powers remain to be tested. Interference from Westminster is also an ever-present threat. For instance, the Conservatives' ill-fated 2017 general election manifesto unexpectedly proposed to scrap SV elections for police commissioners and all elected mayors, and replace it with first past the post, a move that would dramatically impair these office-holders' legitimacy. The advent of a hung Parliament may mean that such a partisan and destructive move (without support from any other party) is scrapped, but that the threat came so close to implementation is disturbing.

### Local cabinets and scrutiny committees

The historic patterns of running local councils in England have also changed in the last decade. Once all councillors were collectively engaged in decision-making through committees and no single councillor legally held decision-making powers. The reality of such a system, however, was that only the majority group of councillors would see their preferred decisions made in committee. Committee chairs would also often meet together privately, or with officers and act as a form of 'submerged' or nascent cabinet.

After the Local Government Act 2000, all councils were obliged to distinguish between councillors holding executive positions within a cabinet headed by an executive leader, and the remainder of the council membership. Executive councillors would hold portfolios and if the council decided, could have individual delegated authority. Councillors outside the cabinet would no longer have day-to-day decision-making powers, but would sit on overview and scrutiny committees, charged with holding the

executive to account, reviewing policy and decisions, or indeed, holding to account and reviewing the actions of organisations beyond the council. However, overview and scrutiny committees cannot make decisions, only produce reports and recommendations for others to consider. This system made a clear break with the previous approach.

**Reorganisation of local authority areas**

As a result of reorganisations in the 1960s and '70s, England has some of the largest units of local government in Europe. There is still a folklore-like attachment in much of local government and Whitehall to the belief that bigger local authorities are better. However, in recent decades national governments have preferred to make only 'organic' changes a bit at a time, rather than more expensive across-the-board reforms. Table 2 shows the most recent reorganisation in 2009, which focused in more rural areas with two tiers of district and county councils. It saw 44 existing councils abolished and replaced by just 9 new councils.

**Table 2: Changes made in the 2009 reorganisation**

| County area | Main reform | Old councils | New councils |
|---|---|---|---|
| Bedfordshire | County council abolished. Two districts now unitary authorities | 3 | 2 |
| Cheshire | County council abolished. Two districts now unitary authorities | 7 | 2 |
| Cornwall | Unitary county, 6 districts abolished | 7 | 1 |
| Durham | Unitary county, 7 districts abolished | 8 | 1 |
| Northumberland | Unitary county, 5 districts abolished | 7 | 1 |
| Shropshire | Unitary county, 5 districts abolished | 6 | 1 |
| Wiltshire | Unitary county, 4 districts abolished | 5 | 1 |
| Total | | 44 | 9 |

These changes were justified in terms of both efficiency and creating a simpler structure of unitary authorities, more understandable by citizens. However, they also meant a consequent loss of over 1,300 councillors, a 63 per cent reduction in the areas concerned. In the last five (de-localising) rows of Table 2, fewer elected members meant less participation by people in local politics, a greater workload for the remaining members

and a greater distance between them and the citizens they represent. In addition, larger units of local government are more remote from the public than the smaller units they replaced, which van create more communicative distance between councils and citizens. Critics argue that as English local government units get bigger and are less proximate to citizens, so citizens will tend to disengage and to feel less politically efficacious.

## The Localism Act 2011

A section of the Localism Act 2011 provides that 'a local authority has power to do anything that individuals generally may do' unless they are specifically prohibited in legislation. However, this relatively new 'general competence' power does not free local government from oversight by Whitehall departments, who have been less than enthusiastic in embracing the idea of new freedoms for local government. Indeed, the power does not fundamentally undermine the structure of public law and how councils are restricted in their ability to act. This highlights a conflict between the legalistic view of local government and the political / governing view of local government. Yet, if English local government is to have any chance of genuinely focusing local views, and having governing autonomy to act as it thinks fit to solve the issues it faces, then the general power of competence is a step in the right direction.

## Local government finances

The impact of UK government austerity policies has hit home hardest in English local councils. They calculated in July 2017 that central revenue support grants of £9.9bn would be reduced to just £2.2bn by 2019-20 on Whitehall's projections: 'Local government as a whole in England would have £15.7bn less central government funding by 2020 than it did in 2010'. Around half of all local councils get no grant support at all. Yet local authorities' ability to raise council tax is also restricted by Westminster ministers, and monies raised from business rates cannot be retained locally but are passed to the Treasury. In response, cutting 'discretionary' spending has been the main thing that councils have had to do – especially repairing potholes in roads infrequently; cutting back library, museum and leisure services; collecting rubbish less often; firing staff; selling off land and depleting financial reserves. Statutory duties, such as providing social care for old people and long term ill and disabled people, and ensuring the safety of children, have been pruned too, but with somewhat more ameliorative central funding arriving late on, chiefly to forestall care scandals. This all adds up to a picture of a dependent tier of government scrambling around to maintain services under acute pressure.

## Conclusions

In 2013 the Political and Constitutional Reform Committee, then chaired by Graham Allen MP (but since scrapped) published a report on the prospects of codifying the relationships between central and local government. It included a Manifesto (pp.1-9) by this author, outlining how genuine local autonomy could be introduced. It proposed radically new local law-making powers for councils, constitutional protection against

being scrapped or reorganised, substantial tax-raising powers and financial independence from central government. The manifesto also envisaged an English Parliament with much the same powers as the Scottish Parliament (except for the local autonomy provisions above), including safeguards for local citizens to control local voting methods and changes in how councils are run by local referenda. Implementing such a manifesto, or even part of it, would considerably enhance the democratic strength of local government and recognise it as a permanent partner with Whitehall in the overall government of England.

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# 6. How well are the political and policy equalities essential for liberal democracy protected and promoted?

- Human rights and civil liberties
- Gender equality
- Equality amongst ethnic groups
- The rights of workers
- Class disparities and social inequalities

# 6.1   Gender equality

*Sonali Campion and the Democratic Audit team examine the extent to which gender equality provisions in British public life accord with democratic requirements. Where previous historical inequalities and discrimination against women are being rectified, is the pace of recent change fast enough?*



*MP Stella Creasy high-fives fellow MP Jess Phillips as Anna Soubry and Jo Johnson look on.*

Photo:   *University of Nottingham via a CC-BY-NC-SA 2.0 licence*

**What does democracy require in terms of gender equality?**

- Men and women must enjoy genuine equality in terms of civil rights (covering equal pay, employment rights, property rights, access to legal protections, childcare access, and marriage and partnership laws)

- In particular, political and public life should be organised to maximise the equal chances of women and men to be involved in democratic politics – to vote and stand for election, to take part in party and political processes, to contribute to public debate and discussion, and to rise to the top in elected public office.

- Employment in the public service sector (and in firms working on public sector contracts) should serve as exemplars of good practice in improving gender equality more broadly.

- No gender group (male, female or transgender) should be subject to differential discrimination in political or public life, nor to prejudicial or demeaning discussion in terms of public and media discourses.

- Where barriers to gender equality are proven to exist, it is desirable for public regulation or interventions to at least temporarily be undertaken to secure

appropriate and feasible ameliorative actions (consistent with maintaining the civil rights of all citizens).

## Recent developments

Although equal pay legislation for men and women was first passed in the UK in 1970, a substantial pay gap still persists for full time workers. Career parity remains very difficult to achieve for women with caring responsibilities. Systematic efforts to improve the proportion of women in public life are much more recent, and they have not been effectively backed by statutory powers or firm regulation. For instance, political parties are not obliged to seek gender parity in the candidates they put before voters, only to not discriminate against women. The representation of women in some public roles (like being an MP or a member of a devolved assembly) has improved significantly in the last five years. The prime minister, Scottish First Minister and leaders of Plaid Cymru and the Democratic Unionist party are all female. However, we remain a long way from achieving parity of representation for women in public life. Furthermore, some new social developments, such as the use of social media to let citizens comment on the behaviour of politicians and others in the public eye or the focus of media attention, have shown disturbing indications of entrenched misogynistic attitudes among substantial groups of citizens. Similarly, although more transgender people are visible in public life, there remains substantial prejudice against them and the Gender Recognition Act 2004 needs updating to reflect the principle of gender self-declaration.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| The proportions of women in politics, public life and the upper levels of the business world have improved noticeably, albeit often from a low initial base (see below). | There is still a pervasive gender bias across the board and the overall pace of change in achieving gender parity shows that existing or 'legacy' ways of operating still restrict women's full participation. For instance, with less than two fifths of party members being women it has been hard to get local selectorates in some parties (like UKIP and the Conservatives) to choose women candidates. |

| Current strengths | Current weaknesses |
|---|---|
| There is now broad public consensus that achieving an equal gender balance is desirable. This is reflected in increased efforts by both the public and private sectors, for example, to promote diversity in their recruitment processes; offer more family-friendly policies such as flexible working hours; specify clear diversity targets and make people accountable for achieving them; and offering tailored mentoring and support for women to progress within organisations. | In tabloid newspapers and other popular media women in public life continue to be treated in unfair ways, e.g. judged on their appearance (the infamous 'Legs-it' Daily Mail cover) or family roles. |
| After many years of irresolute and piecemeal action, most of the main political parties are working harder to promote women, particularly in Westminster and the devolved assemblies. The commitment is reflected by the growing use of gender quotas among parties that lean to the left. | The recent growth of social media has shown shocking incidents of misogynistic behaviour. Women politicians or participants in public debate (such as those advocating for more women on UK banknotes) have been harassed by virulent 'trolls'. Police/court action has been prompt, but confined to a few cases. |
| Using demeaning language about women, or harassing them in the workplace, has clearly become publicly unacceptable and political suicide for politicians. Social media vigilance has increased the level of scrutiny of such issues, previously often swept under the carpet. | Elite behaviours also still show traits that are off-putting for women, such as the frequent raucous behaviour of MPs at question time in the House of Commons. Women are judged negatively for behaviour accepted or even encouraged among men. Credibility is more easily presumed among men, whereas women have to work harder to earn it. In politics and in the workplace, masculine styles of thinking and working are often represented as more 'natural'. |
| | Transgender people continue to suffer discrimination and prejudice. |

| Future opportunities | Future threats |
|---|---|
| As women become better represented in public life, and the engagement with gender inequalities becomes more sophisticated and far-reaching, there is potential for greater changes towards 'feminising' institutional cultures and practices. | There is a danger of complacency, of seeing intractable issues as resolved, when many years work may still lie ahead. |

| Future opportunities | Future threats |
|---|---|
| With Labour leading, parties are adopting quotas and other activist methods to boost women's representation. | Recent experience with social media; the escalating growth of pornography adversely affecting youth attitudes to women; problems such as honour killings, forced marriages, and female genital mutilation among some ethnic minority populations; and continued incidents of sexist behaviours in the media and public life – all show that UK social trends are not all favourable for gender equality. |
| There are now more women than men in the civil service and more women than men are joining the legal profession every year. In the future a larger pool of eligible candidates should therefore be available for senior roles. | Public sector austerity and government spending cuts have hit women harder than men and increased relative disadvantage in ways that reduce incomes and childcare support, and may cut back women's employment and opportunities more broadly. |
| Transgender people are gaining more exposure in public life. | |

## Women's representation in UK public life

Everywhere in UK public life women still remain a minority, despite constituting half of the electorate. The Welsh National Assembly in the early 2000s is the only public body in UK history where gender parity was achieved, and this ratio did not endure. Chart 1 shows that in 2016 there still sharp differences in the extent which women have been able to break into positions of political power or seniority within the public services.

In 2016 fewer than a quarter of Court of Appeal and High Court judges and Conservative MPs are women – illustrating the very long UK time spans for changing historic patterns of women's under-representation. Chart 1 also shows some data for recent past years and by comparing the two dates readers can gauge the degree of changes achieved since 2010 or thereabouts – e.g. the Court of Appeal moved from having one in 25 female judges to having one in five.

**Chart 1: The proportion of women in a range of major roles in UK public life, in 2016 and a recent past date**
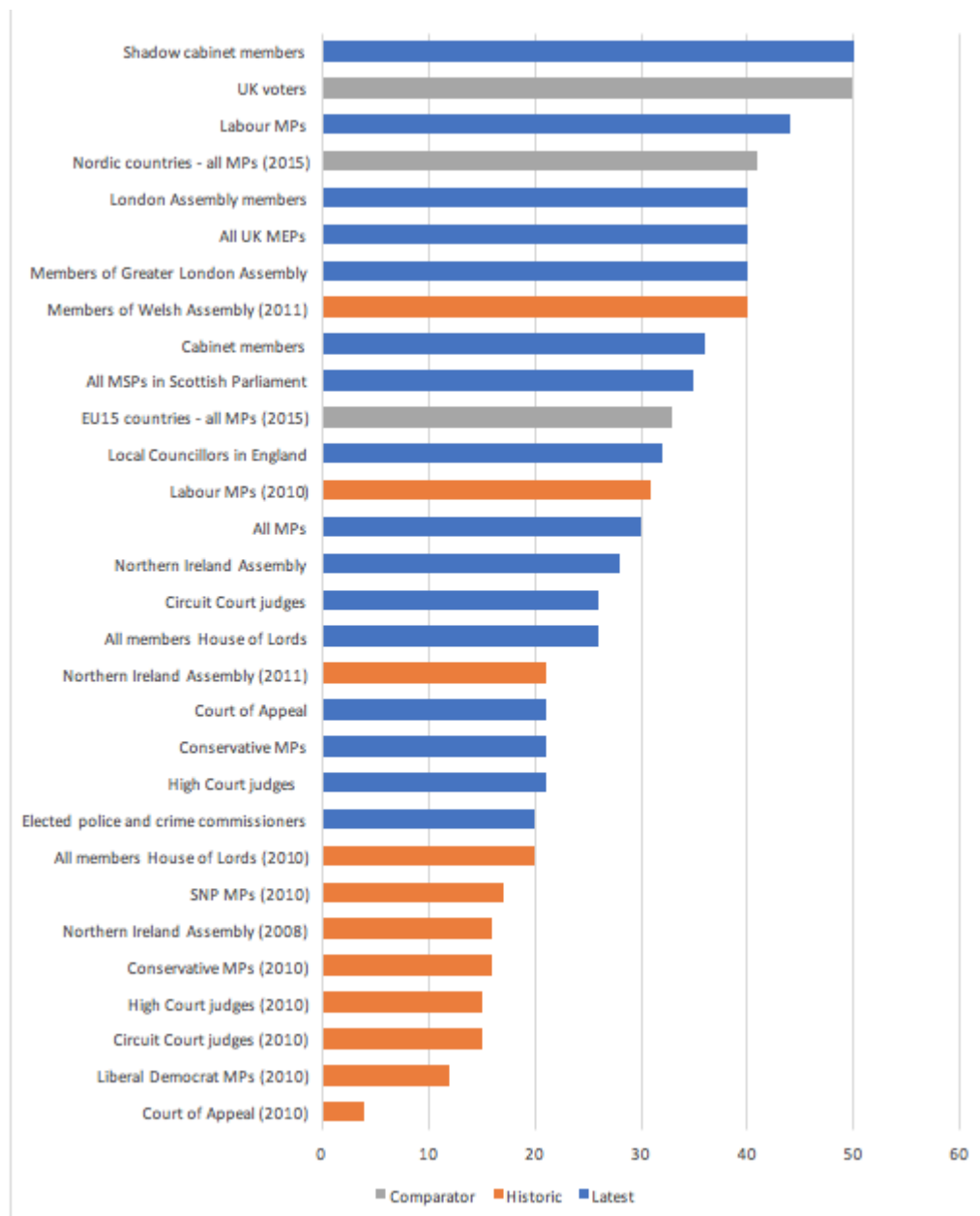


More women have become MPs recently in a large part because most of the main parties fielded more female candidates than they did in 2010, and both the Tories and Labour placed women in winnable seats. For example, the Conservatives ran female candidates in 38% of retirement seats and Labour put 53% of women candidates in winnable seats. Labour's strong improvements have been attributed to using all-women shortlists (AWS). The Conservatives remain resistant to gender quotas and even the 'A-list' system to increase the diversity of Tory MPs in 2010 was not used in 2015. UKIP has a huge majority of male candidates still, and in Northern Ireland only 25% of candidates

for MP were female. The Democratic Unionist Party (DUP) did not field any women at all.

David Cameron fulfilled his promise that one third of his cabinet would be women by 2015, in contrast to previous Conservative-majority Cabinets, which had a maximum of two women. Theresa May's cabinet is 36% female. Labour's Shadow Cabinet has consistently comprised 40% women and for the first time achieved and maintained gender parity following the 2016 reshuffle, despite numerous changes of personnel.

In the devolved assemblies, the proportion of female MSPs in Scotland has been significantly better than Westminster. But recent patterns across three main Scottish political parties (SNP, Labour and the Lib Dems) point to either a stalling or falling in the number of women MSPs elected since 2003. On the flipside, positive changes have come both from the top down, through party rules, and the bottom up, through the civic awakening that accompanied the referendum. The SNP, Scottish Labour and the Scottish Conservatives are now all led by women. Nicola Sturgeon in particular has pushed for the SNP to use quota measures with some success, and Labour has pledged that 50% of its Holyrood candidates will be women. Encouragingly, EU-wide research suggests that fears voters are put off by female candidates are unfounded.

**Employment and income**

In wider UK society, Chart 2 shows that the gender pay gap for median earnings of full-time employees (showing how much better paid men are than women for the same work) currently stands at 9.4%. The gap is now the lowest it has ever been, but the pace of change has been slow since 2011 – for instance, the gap actually increasing by 0.5% between 2012 and 2013. Women in part-time work, however, earn 6% *more* than their male counterparts and their rates of part-time pay have exceeded men's since 1998.

**Chart 2: The gender pay gap for median gross hourly earnings (excluding overtime), UK, April 1997 to 2016**
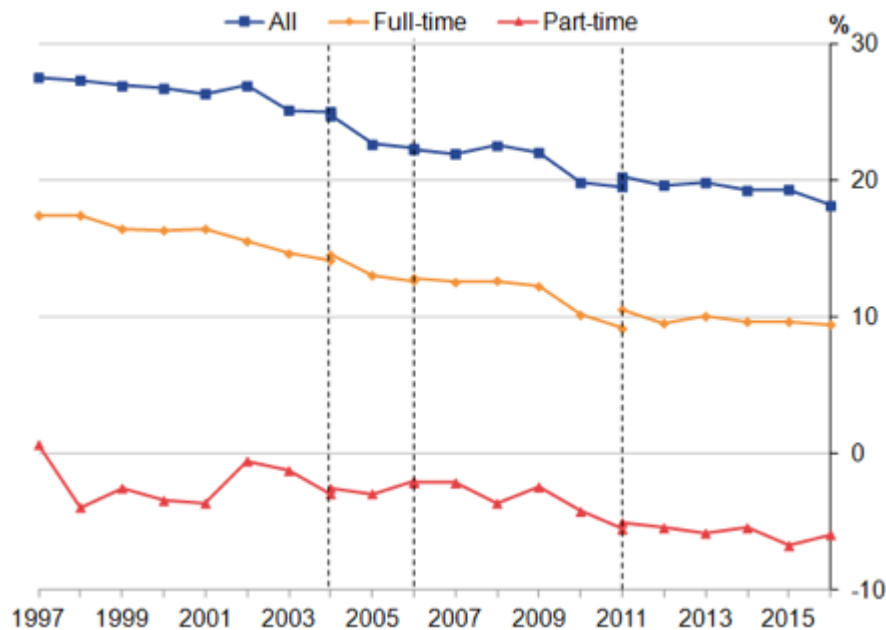


*Source:* *Office for National Statistics, Annual Survey of Hours and Earnings.*

*Notes:* *Earnings excludes overtime. Full-time defined as >30 paid hours per week. Dashed lines represent discontinuities in the 2004, 2006 and 2011 estimates; 2016 data provisional. The data shown are for April in each year.*

Women's labour market participation, pay and conditions are linked to the amount of support they receive for their caring responsibilities. On average British women do about twice as much as childcare as men, and factors such as a lack of affordable childcare inhibit women's ability to sustain full-time, better-paid employment. Chart 3 shows that the full-time pay gap varies according to age group: women in their twenties tend to earn slightly more than their male counterparts. It is during their thirties, when women are now more likely to be having children, that the gap begins to grow. New rules to make parental leave more flexible for both partners are a step in the right direction, but while the discrepancy between male and female earnings persists, uptake is likely to be limited.

**Chart 3: Gender pay gap for median gross hourly earnings (excluding overtime) by age group, UK, April 2016**
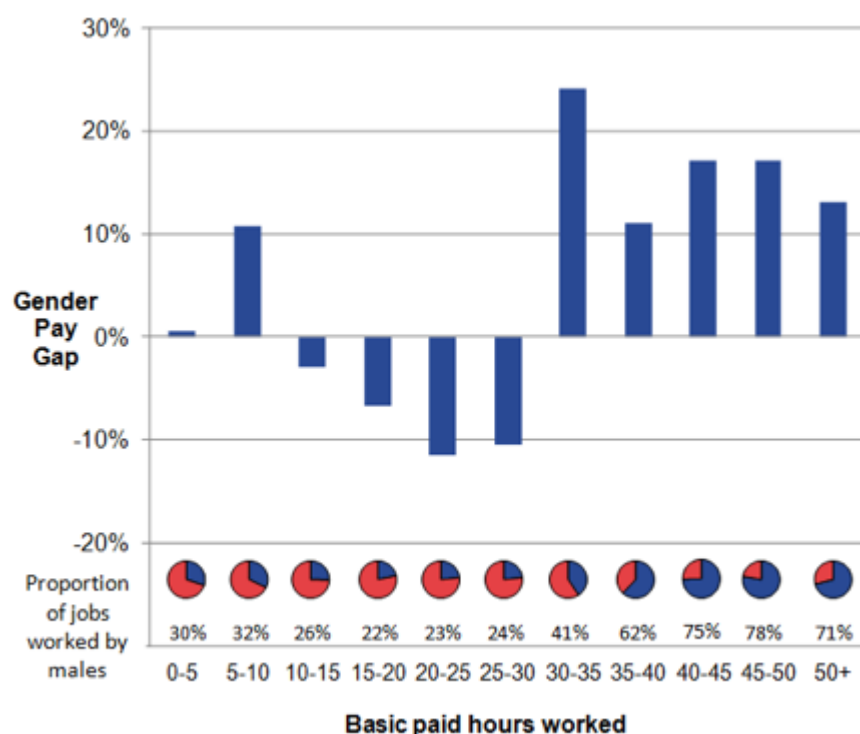
Welfare cuts introduced since 2010 have disproportionately affected women. Women are statistically more likely to use public services, to be single parents or carers for older or disabled relatives, and to live longer and therefore need greater support in later life. Women's average losses from changes to tax credits, housing and child benefits were twice as large as men's as a proportion of net individual incomes, with the lowest earners hit hardest. Furthermore, women make up the majority of public sector workers, so cuts to public services and pay freezes there are also impacting women's employment.

**Cultural barriers to change**

Quotas and other policies to promote female participation in the workplace are welcome developments and fall into line with the UK's commitments under CEDAW to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy their human rights and fundamental freedoms fully.

However, the majority of these measures treat women as the problem, rather than tackling the bias that has restricted their involvement up until now. A recent LSE report *Confronting Gender Inequality* focussed specifically on gender imbalances in the economy, politics, law and the media – and recommended much wider measures. These

include designing macroeconomic policies which value the reproductive sector and unpaid care work; gender budgeting; applying equality legislation more effectively; improving women's access to justice; monitoring and reporting on gender representation in the media; and efforts to educate people on the root causes of gender inequality across the public and private sectors and at all levels.

With transgender people more visible in public life, the discrimination and obstacles the trans community faces have received far more scrutiny. The Gender Recognition Act 2004 and Equality Act 2010 should be revisited in the light of these findings.

## Conclusion

Women are now more present and visible than ever before in UK politics and public life. However, the pace of change is slow, and men continue to dominate the most senior roles across the board. Furthermore, it seems debatable whether institutional culture and attitudes are evolving as rapidly in Britain as elsewhere. Between 2007 and 2016 the UK slipped from 13th to 20th in the World Economic Forum's Global Gender Gap Index. If gender imbalances are to be tackled effectively and in a lasting manner, a much more holistic approach is required.

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# 6.2 Equality amongst ethnic groups

*Sonali Campion* and *Ros Taylor* *examine the extent to which the representation of minorities in the UK operates to foster or to damage democratic public life. Where previous historical inequalities and discrimination against ethnic minorities are being rectified, is the pace of recent change fast enough? Are there areas where we are moving backwards?*



*A crowd at the London Mela festival of Asian culture in 2011.*

Photo:    *Manoj Vimalassery via a* *CC-BY-NC-SA 2.0 licence*

**What does democracy require in terms of ethnic and religious equality?**

- Citizens of all ethnicities and religions must enjoy genuine equality in terms of civil rights. They must be free to practice their beliefs and customs (as long as these do not restrict the rights of others)

- Political and public life should be organised to maximise the equal chances of minorities to be involved in democratic politics – to vote and stand for election, to take part in party and political processes, to contribute to public debate and policy decisions, and to rise to the top in elected public office.

- Employment in the public service sector (and in firms working on public sector contracts) should serve as exemplars of good practice in improving minority representation more broadly.

- No minority group should be subject to differential discrimination in political or public life or by the law, nor to prejudicial discussion in terms of public and media discourses.

- Where barriers to inclusion clearly exist, public regulation or interventions should be undertaken to secure appropriate and feasible ameliorative actions (consistent with maintaining the civil rights of all citizens).

## Recent developments

In the 21st century the UK is home to more ethno-religious identities than ever. This diversity has developed over a relatively short period of time, in a significant part due to immigration especially from former UK colonies since World War II, and to some in-migration of EU citizens since 1973. Changing attitudes towards religion have also played a part, for example, resulting in a decline in Christian affiliations.

While increasing multiculturalism and religious variation have the potential to enrich British society, such social changes do present public policy challenges for Western liberal democracies. This is particularly the case in the current geopolitical climate, where conflict in the Middle East and Afghanistan, and the growth of a European migrant crisis and Euroscepticism (to name but a few) are fuelling tensions between communities. Concerns over immigration and social change have clearly contributed to the growing popularity of right-wing populist politicians and there are indications that racist attitudes in the UK are once again on the rise after years in decline.

Political responses to external threats have in many cases done little to alleviate tensions and in some areas have arguably exacerbated them with clumsy counter-radicalisation policies, which focus on tackling extremism rather than addressing disadvantage and promoting integration. For example, the Prevent strategy has been criticised for its 'stigmatising surveillance of one particular [Muslim] community', rather than building the educational capacity to discuss contentious issues or deliver effective civic education.

One-dimensional reporting about ethnicity and religion is also feeding into tensions. One example is the *Sun* headline in November 2015 claiming that "1 in 5 Brit Muslims' sympathy for jihadis". The article was based on misrepresented poll data from Survation, who were quick to distance themselves from the unauthorised interpretation of their study. The incident led to both an outcry and mockery on social media and *The Sun* was eventually forced to admit that its headline was 'significantly misleading'. Furthermore, not all discriminatory coverage – for example of Romanians and Bulgarians in the run up to the lifting of transnational controls – is called out so effectively.

The rise of UKIP as an anti-immigration, Eurosceptic party also seems to have gone hand-in-hand with a revived acceptance of 'banal racism' in other areas of the media and public life. During the Brexit campaign Ukip's 'Breaking Point' poster urged voters to "break free of the EU" and depicted a crowd of refugees – and the image was widely circulated on social media. Although Michael Gove, one of the leaders of the Leave campaign, sought to distance himself from this, the damage was clearly done.

**Figure 1: The controversial UKIP Brexit referendum poster**



In the immediate aftermath of the referendum, both the Muslim Council of Great Britain and the Polish embassy reported outbreaks of racist and xenophobic incidents, including cards reading 'No more Polish vermin' pushed through eastern Europeans' letterboxes. These incidents show a strong anti-immigrant minority view. Such extreme views also seem to receive regular legitimation from tabloid press headlines that repetitively cover immigration issues in an alarmist and stigmatising fashion.

**Figure 2: Headlines about immigration in a UK tabloid newspaper**



Race-related hate crime rose 37 per cent in England and Wales between 2011/12 and 2015/16, while hate crime based on religion rose 172 per cent in the same period. At the same time, the Equality and Human Rights Commission has noted increasing incidents of hate crimes, with racial, Islamaphobic or anti-Semitic motivations in England. This contrasts with Scotland, where there was a significant drop in charges reported with 'a religious aggregation' in 2014-15. (The incidents of religious abuse that did take place there were predominantly aimed at Catholics and Protestants). Police noted a peak in race and religious hate crimes after the murder of soldier Lee Rigby and a rise in hate crime after the Charlie Hebdo terrorist attack in Paris. So policy debates around ethnic inequalities and religion and belief are taking place against a highly charged atmosphere, raising new challenges for the UK's traditionally low-key ways of handling these issues.

### Mainstream politics and ethnic tensions

Even mainstream politicians appeared to be adopting 'dog-whistle' strategies to mobilise ethnic and religious divisions for political ends. When Barack Obama reiterated his call for Britain to stay in the EU on a 2016 visit to the UK, prominent Leave campaigners Boris Johnson and Nigel Farage both suggested the President's 'part-Kenyan' roots were to blame for his 'anti-British' attitude.

Early on in his failed London mayoral campaign, Zac Goldsmith started using the word 'radical' to describe his Pakistani Muslim opponent Sadiq Khan. Goldsmith claimed he was using the word to describe the radical politics of the Labour leader Jeremy Corbyn.

But media commentators were quick to pick up on the Islamaphobic undertones, especially when a *Daily Mail* article by him a week before polling day was illustrated with pictures of London's 7/7 bombings. Goldsmith was also criticised for targeting London's Hindu, Tamil and Sikh communities with leaflets making 'reductive and condescending assumptions' about their priorities, and seeking to mobilise historic tensions between Pakistanis and Indians. A backlash against an apparent attempt to exploit or exacerbate London's ethnic divisions for political ends seems to have played a role in Goldsmith's defeat by Khan, and his later loss of his Richmond seat to the Liberal Democrats in a parliamentary by-election.

Nor has Labour managed to escape rows over religion and ethnicity. In April Naz Shah, MP for Bradford West was suspended for an allegedly anti-Semitic graphic she shared on Facebook in 2014 (before she was elected). Former Mayor and key Corbyn ally Ken Livingstone then tried to defend Shah and was also suspended from the party as his comments were also viewed as anti-Semitic. The incident prompted Jeremy Corbyn to launch an inquiry into racism in the Labour Party, later denounced as a whitewash by most Jewish groups. Its chair, Shami Chakrbarti, was shortly after promoted to the House of Lords and became one Corbyn's closest shadow cabinet colleagues.

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Politicians in the 'mainstream' parties (especially the Conservatives, Labour, Liberal Democrats, Greens, and the SNP and Plaid Cymru) have normally renounced resort to any 'dog whistle' politics that exploits voters' evident concerns over immigration and the changing social character of some cities for partisan ends. With some prominent exceptions and lapses, political elites held a 'self-restraint' line against exploiting social tensions. In London, recent evidence suggests that this position enjoys wide popular support, but this is not the case elsewhere in the country | Populist parties and sections of the right-wing press are increasingly stigmatising sections of the population for political/commercial gain, adding fuel to division and discrimination, and promoting crude stereotypes around minority groups |
| Britain has a reasonable track record of promoting the integration of immigrant communities, particularly when compared to neighbours like France and Belgium | The Leave vote in the Brexit referendum was clearly driven by concerns about immigration both of EU migrants, refugees arriving from Europe's neighbours and the possibility of Turkish accession to the EU |

| Current strengths | Current weaknesses |
|---|---|
| Austria, Germany and France have all witnessed local or national bans on Muslim women's dress; there have been few such calls in the UK | The rise of UKIP has put the previous elite 'self-restraint' ethos on exploiting social tensions under more stress. The stance has become associated with elites' lack of frankness about globalisation and unwillingness to recognise many voters' concerns |
| The proportions of ethnic minorities in UK politics, public life and senior business positions are increasing, albeit relatively slowly. However, some communities are significantly better represented than others, e.g. those of Indian origin and descent | Political responses to immigration issues have tended to focus on economic responses, without fully engaging with cultural concerns held by anti-immigration voters |
| | Multicultural policies, while they are associated with more peaceful societies, can also make ethnic majorities feel unsafe and discriminated against |

| Future opportunities | Future threats |
|---|---|
| Promoting religious literacy, both at schools and in the workplace, could do much to expand people's awareness of other faiths | Recent terrorist attacks in Paris and Brussels have prompted a rise in hate crime. Xenophobic violence also surged after the EU referendum |
| The government has announced recent plans to promote English learning among migrants to offer greater support for tackling discrimination and disadvantage among minority communities – and such provision could easily be expanded | The evolution of migration pressures on the EU as a whole, and specifically on the UK (e.g. via the now scrapped Calais 'jungle' camp) will assuredly influence UK voters' attitudes further |
| Evidence from Germany suggests that political intervention early on combined with curbs on the far right may pre-empt xenophobic violence | Uncertainty about the future residency status of EU migrants in Britain continues, with fears they may be used as a 'bargaining chip' in Brexit negotiations. The scale and atmosphere of EU migration to the UK (and of UK citizens moving to EU countries also) will be strongly affected by the outcome of Brexit negotiations |

| Future opportunities | Future threats |
|---|---|
| Liberal values (e.g. gender equality, sexual minorities and free speech) could be better promoted among ethnic and religious minority communities. But this would need to be done not in a way that targets individual communities with stereotyped assumptions about their existing attitudes | The major future risk may be that polarisation increases between majority attitudes and those of specific minorities, especially some sections of the Muslim community, accentuating some existing disadvantages |
| The government has established a Controlling Migration Fund, designed to alleviate pressure on councils, schools and NHS services when a region experiences a large increase in inward migration, and so encourage community cohesion | |

We look next at five deeper-lying and continuing major issues relating representation in public life: the representation of minorities in political life; ethnic diversity in the media; the treatment of minorities in the criminal justice system, and the education, and employment and income situations of ethnic minorities.

## Representation in political life

Variations in the understanding of ethnicity have impaired understanding in this area. Where data are collected, they tend to focus on "black, Asian and minority ethnic" (BAME) people, i.e. those of non-white descent. This categorisation is of limited usefulness, because it fails to acknowledge the multifaceted nature of the UK's growing diversity. The umbrella label groups the experiences of very different minority communities into one category. It also fails to acknowledge the challenges faced by some white minorities, such as migrants from Eastern Europe. However, due to the limitations of the data and analysis available, we must focus predominantly here on those ethnic minorities included in the BAME category.

The 2016 Annual Population Report found that 13.6% of the population came from non-white backgrounds. However, minorities remain underrepresented in public life. Although more BAME MPs than ever before (52) were elected in the 2017 general election, the number would have to rise to 88 for the House of Commons to accurately reflect the population as a whole. Sajid Javid MP and Priti Patel MP remain the only non-white Cabinet Ministers. More positively, the percentage of ethnic minority female MPs in the House of Commons increased from 1.5% to 4% between 2010 and 2017 (with a current total of 26).

## Chart 1: The percentage of ethnic minorities in various political bodies and populations
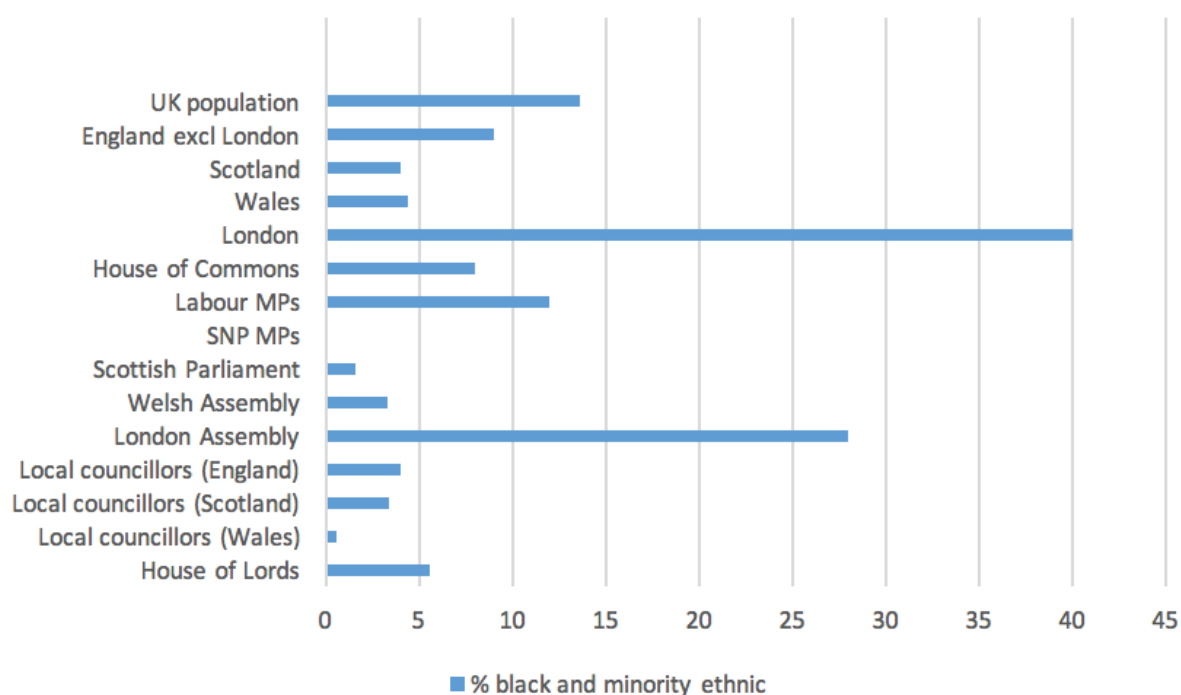


*Source:* *House of Commons Library, Greater London Authority, Scotland's census*

## Diversity in the media

Ethnic minorities make up 6 per cent of journalists, though that figure conceals major variation between ethnicities, with black journalists accounting for just 0.2 per cent of the workforce. But the problem extends beyond just such numbers. There is a lack of diversity in the kind of stories that are reported. And excluded voices are often only brought in to stories dwelling on extremes or "otherness". On the flipside, BAME journalist who do break into the industry are frequently expected to comment on 'minority issues' or those that relate to their 'own communities' while predominantly white male journalists dominate the mainstream. Commentator Nesrine Malik describes how a 'fundamental misunderstanding' of networks can be hermetic and self-perpetuating without being actively racist.

The portrayal of religion and belief in news and current affairs is too often clumsy and lacking in nuance, which has been attributed to a lack of religious literacy among reporters. Studies have noted a foregrounding of stories focusing on the differencesbetween Islam and British/Western culture. References to extreme forms of Islam are 21 times more common than mentions of moderate Muslims. Journalists themselves are far more likely to have no religion (61 per cent) than the population at large (28 per cent).

**Treatment in the criminal justice and penal systems**

Ethnic minorities continue to be over-represented throughout the criminal justice system. At every stage from being stopped and searched to prison populations, ethno-religious minorities (predominantly those who are black, of mixed parentage, or Muslim) form a majority. Data from the Youth Justice Board indicated that in 2014-15, 40 per cent of prisoners in young offenders' institutions came from a BAME background. In 2016 Muslims accounted for 14.6 per cent of the prison population, sharply up from 7.7 per cent in 2002.

**Chart 2: The likelihood of being arrested by people's self-defined ethnic group, compared with those from white ethnic groups – England & Wales, year ending March 2015.**
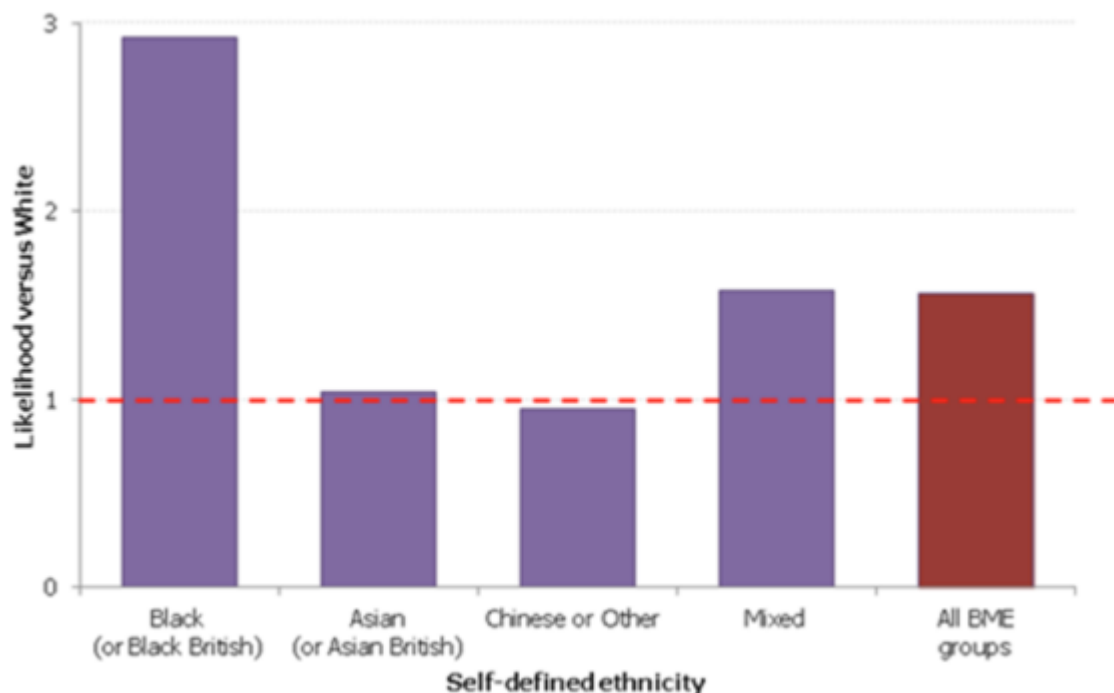


*Sources:    Home Office and Statistics on Race and the Criminal Justice System 2014*

*Note:        A score of 1 shows an ethnic group being treated identically with white people; a score above 1 shows a comparatively high arrest rate, and below 1 shows a low arrest rate.*

In the year to March 2015, BAME people were one and a half times as likely to be arrested as whites. Black people were three times as likely. BAME groups are also more likely to receive longer sentences – the average custodial sentence length for white defendants is 17 months, compared to 25 months for black or mixed people, and 20 months for South Asian defendants.

The disproportionate numbers of BAME minorities in the justice system is not new, but attempts to address it have so far been unsuccessful. The 2014 Young Review, which looked specifically at the experiences of young male black and/or Muslim offenders,

found the disadvantage in BAME communities contributed, along with assumptions based on crude stereotyping or outright racism. These factors made it harder to effectively rehabilitate and reduce reoffending rates among these groups. The report also emphasised that the overrepresentation of ethno-religious minorities 'does not exist in isolation from other unequal outcomes', both in the criminal justice system and other sectors.

Minority representation in the staffing of the criminal justice sector also remains low, with minimal change over the last five years. Although ethnic minorities are well represented in relation to population within the Ministry of Justice and the Crown Prosecution Service, they are poorly represented in the police, judiciary, magistracy and Her Majesty's Prison Service. To counteract this lack of ethnic diversity in the workforce, the Young Review urged pro-active efforts to include organisations and representatives from the offenders' communities and faiths so as to tackle unequal outcomes.

Meanwhile, the proportion of foreign nationals in jail (12per cent) has remained fairly stable since 2002. However, they are now much more likely to be Polish (10per cent of imprisoned foreign nationals) or Romanian (7per cent).

Reforms to civil law justice, such as reductions in the availability of legal aid, are also expected to affect ethnic minorities more than others, in part because people in these communities tend to be more reliant on legal aid financial support. IN addition, many types of immigration and housing cases relevant to BAME groups and Roma are now ineligible for public funding. The Equality and Human Rights Commission (EHRC) has also argued against fees for employment tribunals, on the basis that it compromises certain groups' human rights by restricting access to justice. This argument is supported by the fact the number of claims relating to both race and religion or belief have dropped by 61 per cent since the introduction of these fees. Monash University's Access to Justice: A Comparative Analysis of Cuts to Legal Aid similarly noted that BAME lawyers were disproportionately represented among those practising in the legal aid sector, and so the cuts could be expected to make the legal profession less diverse.

**Education**

In England improved attainment among both south Asian and black minority students resulted in a narrowing of the gap with white pupils in state schools between 2008 and 2013. However, this change is less marked in Wales and Scotland. Meanwhile gypsy and traveller pupils continue to have the lowest attainment levels of any ethnicity. Furthermore, children from socio-economically disadvantaged backgrounds in England tend to have lower attainment. Although this discrepancy is most pronounced among white boys eligible for free school meals, it is also marked among Asian, black and mixed students.

Individuals of Indian, mixed or Caribbean/African/black origin are significantly more likely to hold a degree-level qualification than those from white, Pakistani or Bangladeshi backgrounds. This trend is set to continue as a greater proportion of minority ethnic school leavers now go on to higher education, outstripping the white

majority. In particular, 19-20 per cent of mixed and Asian pupils went to top British universities in 2012/13, compared to 15 per cent of white students. In contrast, only 13 per cent of Black pupils went to study at universities ranked in the top third. The proportions of Buddhists, Hindus, Sikhs and Jews with degrees (or equivalent) were also higher at over 48 per cent than the same share for Muslims (28 per cent) or Christians (25 per cent respectively).

**Employment and income**

Austerity measures under both the David Cameron and Theresa May governments have hit ethnic minorities (alongside women and people with disabilities) the hardest, although it is worth noting that the impact has not been uniform across ethnic groups: Chinese, Indian, Black African communities were affected more than Bangladeshi and Pakistani households. From the outset, the Equality and Human Rights Commission (EHRC) was critical of the government for failing to consider how austerity politics would impact minority groups. However in 2012 the government cut ERHC funding by more than half and stripped it of its duty to foster 'a society with equal opportunity for all'.

Approximately two-fifths of people from ethnic minorities currently live in low-income households (twice the rate of white families). This statistic again varies across groups: more than 50 per cent of families of Bangladeshi and Pakistani origin live in low income households, compared to less than 30 per cent of Indian origin. Researchby Alison Donald at Middlesex University attributes the disparity between the White British majority and minorities to the age structure of BAME groups, work status and higher rates of in-work poverty. She also points to changes to social security as penalising the poorest in society to a much greater extent that the richest.

Pay has decreased across the board since 2008 but white workers continue to get paid 50 pence more per hour than the combined average of BAME workers. The African/Caribbean/black community has been hit particularly hard by the recession, with a £1.20 decrease in average hourly pay. The Sikh community was hardest hit by wage decline following the crash, with a fall of £1.90 in average hourly pay. The TUC has identified a 23 per cent pay gap between black and white graduates, with the gap for those educated to GCSE level at 11per cent.

Employment rates continue to be higher for the White majority than for ethnic minorities (75 per cent compared to 59 per cent). In 2015, analysis released by the Labour Party indicated that there had been a 49 per cent rise in long-term unemployment among 16-24 year olds from BAME groups since 2010. In contrast, youth unemployment among young white people fell by 2 per centage points during this period. These findings were corroborated by the EHRC who found Pakistani/Bangladeshi women were less than half as likely to be in employment as the average UK woman. The study also found that Muslims experienced the highest unemployment rates and lowest hourly pay, while Jews have experienced the highest fall in employment rates of any religious group since 2008.

A large-scale survey conducted by Business in the Community indicated that bias against BAME minorities in the workplace persists, with extensive evidence of racial harassment, underrepresentation at every management level and barriers to opportunity despite greater ambition to progress. Campaigners have called for the government to show the same commitment to tacking ethnic inequality as they have to addressing gender imbalance, for example by pushing to increase the diversity of FTSE 100 boards.

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# 6.3   The rights of workers

*During the 20th century, developed societies increasingly accepted that democracy could not stop at politics, and had to extend to aspects of the economy as well. Democracy in the economy began – and continues – with workers' rights. **Ewan McGaughey** and the **Democratic Audit team** explore how far they have been handled democratically and effectively in the UK.*



*A poster in Euston, London highlights the low pay of food delivery workers.*

Photo:      Russell Davies *via a* CC-BY-NC 2.0 licence

The labour movement across every democratic society has always demanded rights that transcend the market. People at work lack bargaining power. As Adam Smith told us, employers can 'hold out' longer in any negotiation because wealth is unequally distributed. In a democratic society, the goal of labour law has always been to have universal rights that are not up for sale.

**What does democracy require for the protection of workers' rights?**

- *A minimum floor of workplace rights*, that nobody falls through, to ensure everyone has the basic income, time off work, and dignity that they need to pursue the true values of human life: science, philosophy, art, music, sport, nature, family and participation in community life.

- *Fair pay through a voice at work,* above the minimum floor, by collective bargaining through free trade unions and votes in workplace governance, to guarantee productivity, innovation and prosperity.

- *Equality and social inclusion,* in all work relations, based on the content of one's character, skills, qualifications and conduct. There must be no discrimination for unjustified factors: race, gender, orientation, age, belief, union membership, agency, part-time, fixed-term or any other irrelevant status.

- *Job security.* This means stopping conflicted or irrational employer dismissals, so that: (a) Workers must get reasonable notice of termination. (2) Dismissal can take place only on fair terms, judged by one's peers and the law of the land. And (3) severance pay exists to halt socially unjustified redundancy.

- *Full employment* (around 2%) would be central to every government's fiscal, monetary and trade policy. Chart 1 below shows this between 1945 and 1973.

**Chart 1: UK unemployment 1881-2017, with major government changes.**
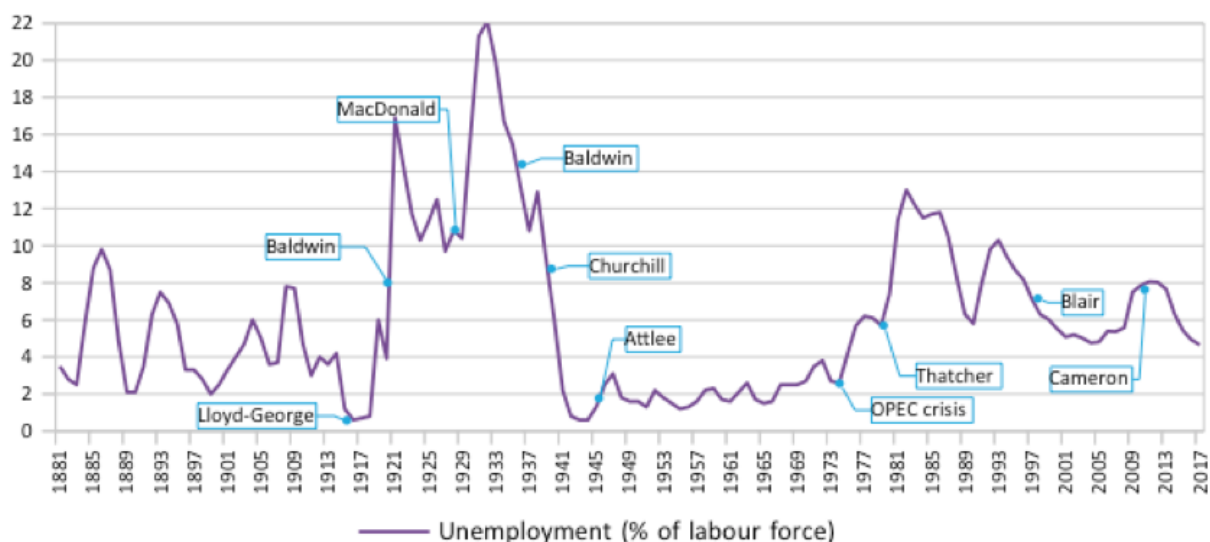


*Sources:   Denman and McDonald (Jan 1996), and ONS, MGSX (1995-2017).*

**Recent developments**

Since a Conservative-led government took power in 2010 a long series of changes to labour law took place. The combined effect is that British people have seen the longest sustained wage decrease in modern British history, unseen since the eras of revolution and plague. Statistical calculations of this decline show average changes: for the people below the average, the picture is worse. In democratic terms, it is significant that almost all major changes to workers' rights were made using executive fiat, bypassing Parliament.

The government withered most minimum rights by stopping their enforcement, either in court, or by public bodies under government control in four ways. First, a 2013 Order introduced Employment Tribunal fees of £1200 for the typical claimant. This deterred almost 80 per cent of claimants at these tribunals. In July 2017 the UK Supreme Court considered the introduction of tribunal fees and declared them unlawful, forcing the

government to pay back £32m in fees, but providing no redress for people who had not launched Tribunal cases because of the fee burden. Second, even when people can afford Tribunal fees, the statutory right to claim unfair dismissal (that is central to most claims) was cut by a 2012 Order. People now have to work for two years, instead of one, to qualify for this right. Third, in 2014, the government stated a policy that Jobseeker's Allowance would be refused if people turned down 'zero hours' contracts. These contracts mean an employer purports to have an arbitrary, unilateral power to vary working hours down to zero. Used like this, zero hours contracts have been found in court to be an unlawful sham. They violate the common law duty to fulfil the reasonable expectation of stable work.

Fourth, under Treasury orders, Her Majesty's Revenue and Customs has not enforced income tax, National Insurance or minimum wage duties against 'gig economy' corporations. One exception (proving the rule) has been Deliveroo. But Uber, CitySprint, Mechanical Turk, and more have been left alone to engage in mass tax fraud. It is fraud because their lawyers know the workforce has employment rights (see below). They deliberately wait for someone to sue before they pay.

Fifth, the government delayed all sorts of laws being brought into force, or did not activate them at all. In the Pensions Act 2008, the right to automatic enrolment in a basic pensions was delayed between 2 and 10 years – that is, for many people the right to an occupational pension was destroyed for a fifth of their working lives. Under the Work and Families Act 2006, the right of parents to share child care leave with one another was delayed until 2011. Last, but not least, Theresa May as Home Secretary halted virtually all investigations by the Gangmasters Licensing Authority into migrant and agricultural worker exploitation. She also scrapped the Equality Act 2010 duty on public bodies to promote socio-economic equality. It was, she said, 'ridiculous'.

The methods used to frack the floor of minimum rights bypassed representative democracy with 'Henry VIII clauses'. Increasingly, Acts of Parliament are passed with the ability of any Secretary of State to amend legislation at will. Social rights are being treated like an on-off switch, to be varied at the executive's whim. The minimum wage itself has been cut like this for people aged under 25. This is the most vulnerable worker age group because they are most likely to be on zero hour contracts, or in precarious work. The economic theory the government uses to justify it seems to be that if employers can make young people unemployed more easily, there will be less youth unemployment. This Milton Friedman theory has no basis in evidence, and has been maintained solely by ideology. Parliament did use primary legislation, the Enterprise and Regulatory Reform Act 2013 section 78, to abolish the Agricultural Wages Board of England and Wales. This Board maintained a higher scale of minimum wages, based on experience, for people doing hard manual labour on farms. When the Welsh Assembly decided to keep a Board for Wales, the Attorney General brought court action. The government lost in the UK Supreme Court.

There has been progress for people over 25, in that the minimum-living wage rose since 2010, and was promised to be £9 an hour by 2020. But people do not want the minimum-living wage. They do not just want a 'basic' income. People want a fair day's wage for

a fair day's work. Most people have no voice at work. They get told what their pay and conditions will be. They are told to 'take it or leave it'. When people protest about reductions in pay, their corporate managers say, 'you're fired.'

Chart 1 shows the consequences of labour rights for union membership and inequality. Union membership continued to wither while Boris Johnson called for more anti-union laws in 2010, Vince Cable released the Employer's Charter in 2011, and Eric Pickles demanded an end to union time-off in 2012. In 1979, collective agreements covered 82 per cent of the British workforce, and now the figure is around 20 per cent. Correlation is not always causation. But in the UK, the relationship is clear. The loss of voice at work made inequality soar.

**Chart 2: UK trade union membership, and income inequality.**
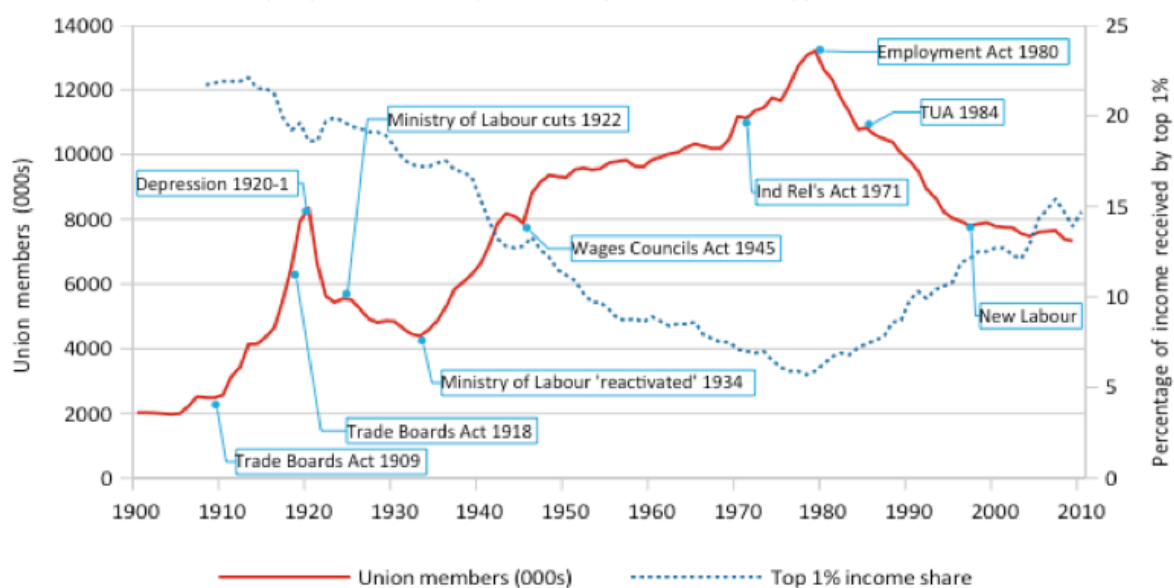


*Sources:  Piketty (2014) Table S9.2, and Brownlie (2012) DBIS.*

Three main changes were made to collective labour rights since 2010. First, as an employer itself, the government has simply refused to engage in meaningful collective bargaining. Instead, from 2010, it froze public sector pay, cut pensions, and made mass-redundancies: all to shrink (without any particular principle) the size of the state. This has been seen from the civil service, to the London Underground, to the NHS and the emergency services.

Second, the government fought human rights challenges to its statutory ban on solidarity action by trade unions, threatening to leave the European Convention on Human Rights. In *RMT v United Kingdom* [2014] ECHR 366, the Strasbourg Court caved. It held that the right to freedom of association in article 11 of the Convention did not protect the right of workers in a subsidiary company to strike against the parent company, or vice versa. The UK was 'at the most restrictive end of a spectrum of national regulatory approaches on this point' (along with Turkey, Russia, etc). The reasoning was thin. With the Tory threat of leaving the Convention, the judges found the law within the UK's 'margin of appreciation'.

Third, after a majority Cameron government returned in 2015, the Trade Union Act 2016 was passed. This introduced a requirement for a 50% turnout in strike ballots, and a 40% total support rate (80% turnout in close votes) if strikes were to be legal in health, school education, fire, transport, nuclear waste, and border services. The Act maintains a ban on electronic voting in union ballots. A review will be conducted by a retired fire chief to decide if postal voting is adequate in the 21st century. The Act requires that at each picket, a union supervisor holds an 'approval letter' from the union, and 'must wear something that readily identifies' them. It wraps collective action in more red tape and pointless form-filling obligations, all designed to slow collective action and weaken bargaining power.

## Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| Compared to the United States, Eastern Europe, China or other quasi- and non-democratic jurisdictions, the UK has a relatively sound system of minimal labour rights. In the past the UK worked inside the European Union to ensure that many rights apply continent-wide. | Compared to Sweden, Denmark, Norway, Germany, France, the Netherlands, or other Western European countries, Australia, Canada, New Zealand or other developed Commonwealth countries, the UK has serious deficiencies in every respect in its labour rights. It systematically fails core labour standards of the International Labour Organisation, ratified by and binding on the UK in international law. |
| A national minimum wage covers most people in law. There are 28 days of paid holidays a year, and health and safety at work has improved with the transition towards a service economy. | The UK has failed to sustain a policy of full employment since it accepted that some joblessness was 'natural' after the 1974 OPEC crisis. Since then, unemployment has ranged between 4.3 and 11.9 per cent. This has led to millions of hardened lives, in poverty and precarity, and squandered trillions of pounds in lost prosperity. |
| Almost everyone has the right to not be discriminated against on grounds of their race, gender, sexual orientation, religion or belief, age, union membership, part-time, fixed-term or (after 12 weeks) agency status. | The UK fails to guarantee votes at work through enterprise governance and sectoral collective bargaining. It is in a minority of EU countries with no workers' voice in the governance of firms (outside universities). |
| There are clear rights to join a union; for unions to be recognised for collective bargaining with majority support in an enterprise; and for unions to take collective action for the defence of workers' interests. | UK laws, as Tony Blair said in 1997, are 'the most restrictive on trade unions in the Western world'. This has destroyed the ability of people to achieve fair wages, beyond the minimum, in their sector. |

| Current strengths | Current weaknesses |
|---|---|
| On job security, before any dismissal UK employees have the right to one week's notice after one month's work (and two weeks after two years, three after three, up to 12). After two years there is a statutory right to be dismissed only for a good reason, and a severance payment for redundancy. | The UK fails to ensure enforcement and universality of core labour rights, particularly on dismissal protection, child care rights and the state pension. The pursuit of 'flexible' labour markets has shot the welfare state with holes, damaging growth, increasing stress and depriving people's dignity in childhood, in their working lives and retirement. |
| | Despite the Equality Act 2010, the UK has state-sponsored sex discrimination in child care leave: there is very low paid maternity leave, and virtually nothing for paternity. Any segregation in law, or an ability to transfer rights, perpetuates the gender pay gap. It stacks the odds against women's careers, and harms fathers' relationships with their children. |
| | Dismissal law lets employers act on conflicts of interest, and make irrational decisions, fuelling recessions and damaging sustainable enterprise. The UK has not yet made legislation for elected work councils to defer flawed decisions to dismiss colleagues. |

| Future opportunities | Future threats |
|---|---|
| Evidence is mounting, driven by big data across countries (like the Centre for Business Research's Labour Regulation Index, at the University of Cambridge), about the positive relationship that better labour rights have in improving prosperity. Against escalating inequality and political instability, the opportunity for evidence-led policy is greater than ever. | Major corporations, both UK and multinational, lobby for international deregulation treaties (including TTIP, CETA, TPP, and thousands of Bilateral Investment Treaties). All aim to remove financial regulation, liberalise the public sector, cut the cost of privatisation, but charge compound interest for public ownership plans. This has the knock-on consequence of weakening labour's relative bargaining power, and redistributing wealth from people at work to asset managers, banks and corporate boardrooms. |

| Future opportunities | Future threats |
|---|---|
| On a limited but significant number of issues, there is growing political consensus, including some Conservative MPs, about the need to improve labour rights. This covers particularly (1) raising the minimum wage, (2) tentative proposals about workers having a voice in company board rooms, and (although now expired) (3) a commitment to report on getting full employment included in the Welfare Reform and Work Act 2016, section 1. | The slow collapse of American democracy weakens labour rights in the US, and its debased standards are increasingly exported to the UK. The Congress and President have been incapable of legislating on labour rights in any meaningful way since 1974, meaning an 'ossification of American labor law' - so the US is experiencing de-development. Hard line managerial practices are spread by US corporations worldwide, including standard form contracts denying labour rights, union busting, blacklisting, and aggressive tax fraud in the gig economy. |
| Trade unions have unprecedented capacity through social media - independently from politics – to pursue an active strategy to expand membership, demand new routes to voice at work through collective bargaining, and in corporate governance, pension and asset management reform. | Global billionaires and corporate lobbies advocate a theory that mass unemployment is an inevitable consequence of automation and robots. Whether intentional or not, this psychological attack on full employment accompanies an apparently progressive call for a (minimal) basic income – and it threatens policy for fair incomes. |
| | Trade unions may fail to seize the chance to - independently from politics - pursue an active strategy to expand membership, demand new routes to voice at work through collective bargaining, and in corporate governance, pension and asset management reform. |

### The gig economy, robots and precarity

New technologies raise no new issues for labour policy: the difference today is failure to deal with aggressive management practice of emerging tech firms, and evasion of labour rights and tax. In the 'gig-economy' the typical work and payment method is 'piece-work', not a yearly salary or hourly pay. People are paid for individual taxi rides, food deliveries, bits of programming, and so on, as if they were self-employed. A gig firm purports to be a neutral agency, linking worker and consumer, but not in an employment or consumer relationship, to evade tax and rights. In most cases, this qualifies as civil law fraud. It is objectively dishonest by the standards of reasonable and honest people. This does not mean the predatory business in the gig-economy is new, but simply that existing law seems not to be being enforced in these areas.

For example, Uber knows that the Californian Labor Commission has ruled its drivers are employees. It knows that the same position probably holds true in almost every jurisdiction. It knows the majority of legal opinion states that it is an employer. But just

as it ran as an illegal, unregistered taxi company until it was banned in Germany, it will refuse to abide by the law and pay tax until it is made to. This qualifies as civil dishonesty, under the Fraud Act 2006 section 2. It does not matter that HMRC, under a Conservative administration, has failed to act itself. In the UK, it is possible for HMRC to change its position immediately. The government has simply not let it do so. The 'Taylor Review' was unable to alter this, but in any case appears to have sided with multinational corporations, and failed flexibility theory, over human rights and social prosperity. Fortunately, reviews are not law.

Technological change is also predicted by some pop-writers to mandate mass redundancies in future: from driverless cars to financial advice or journalism. One piece of now 'viral' academia from two theorists speculated that 47% of all US jobs are 'potentially' at risk 'over some unspecified number of years'. By contrast, a report from Obama's White House suggested this was a wild exaggeration. Even if so many jobs were at risk, and the losses were concentrated into a few years, the social problem would be considerably smaller in scale and kind compared, for instance, to demobilisation after World War Two. The true problem is not only a fraction of that size, but also of considerably less social complexity. Automation will not create, for instance, massive numbers of disabled or dead people. The only important question is whether ownership of patented technology, and capital goods, is sufficiently distributed through the shareholding system in corporate governance – particularly through pensions – to guarantee everyone shares in the gains of growth. For this, collective bargaining, votes at work, votes in the economy, and an active democratic state, are crucial.

### Free movement and immigration

As globalisation intensifies, and especially before every society reaches comparable levels of human development, the quantity of migration may increase. The UK has swung from being the most open country since 1997, to attempting to be one of the most closed since 2010. Current political debate has some echoes surrounding the reverse of the British Nationality Act 1948, changed by the Commonwealth Immigrants Act 1962 and Enoch Powell's 'rivers of blood' speech in 1968, against citizens of Commonwealth countries. With the EU the UK and Ireland were the countries most open to the ten new member states in 2002. Britain declined to apply transitional restrictions on free movement, but changed its stance when Romania and Bulgaria joined in 2007. The Conservative government agreed to take only 20,000 refugees by 2020 from the civil war in Syria (of which 2011 have been admitted to date), even though the war and the 'Islamic State' partly result from the US/UK invasion of Iraq in 2003. The missing element of immigration policy is any serious commitment to international, regional and full employment. People move because of wars, persecution, economic necessity, and sometimes out of choice. Truly 'free' movement is much rarer than 'unfree movement'.

### Workers' rights and Brexit

The referendum on EU membership in 2016, and the snap general election destroying the Conservative government majority in 2017, pose an existential threat to all workers'

rights, including those deriving from EU law. When the EU has agreed new Directives or Regulations that create worker rights, the UK has put some into primary Acts of Parliament. Many were already in UK law. But other rights were put into secondary legislation. The European Communities Act 1972 section 2(1) empowers the Secretary of State to make Regulations to comply with standards we make through the EU. These include,

- Working Time Regulations 1998 (28 paid holidays, rest breaks and limits on working week)

- Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

- Agency Workers Regulations 2010

- Information and Consultation of Employees Regulations 2004

- Transfer of Undertakings (Protection of Employment) Regulations 2006

Any workers' rights that are not contained in primary legislation (an Act) could be repealed at will by a Secretary of State if the UK leaves the EU in a 'hard Brexit'. In any Brexit, workers also lose the right to vote in the standards that apply across border. Like the UK itself, they consequently lose bargaining power in a global economy. This does not mean workers' rights will be repealed. But while any major political party is ideologically hostile to labour nothing is safe.

This Brexit vulnerability does not mean that EU law has been all good for workers' rights. The extent of EU law's impact on the UK is disputed. The four core EU freedoms (movement of people, capital, services and establishment, or goods) exacerbate underlying inequality of bargaining power, if labour rights and public services are not supported everywhere. The Court of Justice of the EU in three major cases (*Viking*, *Laval*, *Rüffert*) said trade unions' collective action, and pro-labour government procurement policy, might have to be used proportionately to (ostensible) business freedoms. Its theories of 'market access' have largely derived from arguments developed by British academics and lawyers (particularly in *Viking*). The result has been marginal limits on cross-border union action, workers posted in from other EU countries being used to undercut domestic collective agreements, and some governments abandoning procurement policy that ban contractors paying their workers 'poverty' wages.

Within the EU, the Court's interpretations have been resisted by all European trade unions and social democratic parties, so that regressive policies are being changed or circumvented. In this way, 'social Europe' is currently more resilient than 'social Britain'. However, the European Central Bank and Commission have pursued a massive assault on collective labour rights, minimum wages, public sector employment, and job security in its debt collection agreements with Greece, Portugal, Spain and Ireland.

Again, however, the political consensus has turned against austerity, because of overwhelming evidence that it has failed.

Because Brexit is a European problem, and the causes of Brexit are shared across Europe and the globe (falling incomes, failure of development policy, deficient democratic structures) any solution must be an international one. Securing a fair day's wage, for a fair day's work, for all would mean reversing escalating inequality through voice at work; reversing regional decline through credible public investment; ending financial oligarchy with transparency and corporate governance reform; and restoring dignity and hope through returning to full employment policies.

### Democratising enterprise governance

A critical issue in 21st century society will be how votes in the economy become democratised. The UK is in the minority of EU countries (generally the poorer ones) without general rights of workers to vote for representatives on company boards. Out of 28 EU member states, 16 have worker participation laws across private and public sectors. The UK is behind, even though it probably had the first laws in the world, and maintains votes at work (without transparency, highly imperfect, but still there) in its most globally successful enterprises: universities.

On the capital side, asset managers take almost all the votes on company shares, even though these are bought with other people's retirement savings: in pensions, life insurance and mutual funds. Unions and employee elected pension trustees are beginning to demand that their shareholder voting rights are only exercised according to their instructions. Discussion has begun about the legitimacy of asset managers and banks voting at all in company AGMs. In private enterprise, a new democratic constitution for the economy will ensure that workers have votes in their companies, that all votes on capital are exercised by the true investors, and that the public and consumer interest is far better represented in network and natural monopolies than presently.

### Conclusion

Workers' rights are at a critical juncture in the UK in 2017, reflecting major challenges faced by trade unions (and allied social democratic parties) worldwide. The globalisation consensus around 'flexible' labour markets, major reductions of job security, only restrictive collective bargaining in individual enterprises, and hostility to workers having any voice in corporate governance has begun to crack. Empirical evidence has mounted that hostility to labour rights and economic democracy on the basis that markets will solve every problem has been a deeply self-harming belief. Law makes markets exist or fail. Workers' rights are the first step towards making markets work for society, not the other way round.

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# 6.4 Class disparities and social inequalities controlled in the UK

*Class is back – class inequalities now feature centrally in multiple media, are core to campaigns and protest movements, and are a part of everyday conversation. Mitigating their effects again plays a key role in policy formation and formal politics. **James Pattison** and **Tracey Warren** consider how far the UK's approach meets or falls below the types and levels of action that any liberal democracy requires.*



*Mural near Grenfell Tower, London 2017.*

*Photo:       duncan c via a CC-BY-NC 2.0 licence*

**How should a genuinely democratic society promote greater class equality?**

- Public policy should focus on addressing and mitigating the structural causes of class inequality, rather than taking refuge in individualised explanations.

- Positive policies are needed to ensure that working-class people have an equal political voice.

- Class should become the 10th protected characteristic covered by the UK's equality legislation.

- This stance needs to be backed up by policies to curb the expression of discriminatory views and other 'symbolic violence' inflicted on working-class people and used to stigmatise them as a group and the places where they live.

- Public policies need to guarantee quality working lives for the disadvantaged – providing a minimum floor to job quality so as to promote decent work. This

floor should cover wages, work-time, job security, worker representation and support for a decent work-life balance.

- Taxation and benefits policies should ensure a minimum income standard via transfers, and include a progressive system of taxation (with a levy on wealth).

- In any capitalist society, social housing policies are an inescapable part of mitigating class inequalities. Meaningful reinvestment is needed in social housing – along with the democratisation of housing management and policy so as to fully include working-class residents in managing their own accommodation and neighbourhoods.

There was a time, not so long ago now, when the societal importance of class was doubted by some serious social scientists. Yet now class is increasingly recognised as having enduring significance for describing the distribution of advantage and disadvantage. A full decade of economic upheaval spanning the build-up to the 'Great Recession' of 2008-9, plus the acute austerity politics which followed, have raised anew key questions about the extent of class inequalities and how effectively class disparities are controlled.

A focus on injustice, inequality and value is fundamental to class-based analysis. Economic inequalities are core to how class shapes people's everyday lives and life-chances. Yet this is not the entire story of our classed lives. Cultural understandings (following the French theorist Pierre Bourdieu) stress that class inequalities are also about how we relate to others and to ourselves. How class 'intersects' with other social divisions such as gender, ethnicity and age is also an important area of study for researchers.

### Recent developments

Class is a highly-charged word which politicians, media commentators and others are often reluctant to use. 'Class' has often been a glaring absence from headline politics and policy formulation around inequalities. Instead, classed inequality is often discussed implicitly via terms that are politically more neutral, and lack a critical theoretical underpinning. Inequalities of 'income' feature heavily in public policy, with frequent recourse to ideas of 'poverty' and 'the poor'; 'economic disadvantage'; socio-economic 'deprivation' and the 'deprived'; and 'under-privileged' to depict class-disadvantaged groups. In everyday language, talk of hipsters and chavs, or toffs and hoodies all contain classed assumptions. The names associated with those at the bottom of society are often particularly disparaging and morally loaded, 'producing' the working class as 'disgusting subjects' (Lawler, 2014).

The middle class was forecast (incorrectly) to fare most poorly in a projected 'first middle-class recession' and appeared, later, in the 'squeezed middle' narratives of the Labour party under Ed Miliband. The highly class-privileged – the upper class, the elite, the 'super rich' – also attracted attention in the face of deep economic inequalities post-crisis. High incomes are defined by HMRC (2017) as a minimum gross pay of £162,000

in 2014-15, but much executive pay in the private sector is far greater. Very high pay levels and the immense wealth held by 'the one percent' led to the birth of the Occupy protest movement in 2011 to work against inequality and towards improved democracy. Their slogan 'We are the 99%' promotes unity of the many against the privileged few. Protest movements against severe inequalities, symbolised by the excesses of the elite, mirror influential academic research into the extremes of class inequalities and the multiple negative impacts of intense inequality on society, by such writers as Kate Pickett and Richard Wilkinson, Danny Dorling, John Hills, Thomas Piketty and Guy Standing.

Questions about class disparities in the UK were boosted post-recession, and in the lead-up to and aftermath of the 2016 EU referendum. Again the working-class featured implicitly, as the vote outcome was ascribed to the impacts of austerity and globalisation on 'left behind communities'. And some explicit critiques were made of the class background of Brexit voters.

The working class were central too to the discourses about the 'just about managing' and 'ordinary working families' in the 2016 campaign and 2017 manifestos of the Conservative party. In her first statement as PM, Theresa May said:

> 'If you're from an ordinary working-class family, life is much harder than many people in Westminster realise [..] You have a job but you don't always have job security. You have your own home, but you worry about paying a mortgage. You can just about manage but you worry about the cost of living and getting your kids into a good school. If you're one of those families, if you're just managing, I want to address you directly'. (Prime Minister's Office 2016)

Mounting concerns with a very heavy concentration of wealth and privilege even made their way into the Conservative election manifesto in 2017, where a vision was set out of 'A fairer Britain that works for everyone, not just a privileged few' (p. 5). In its expressed aim to make Britain 'the world's Great Meritocracy', the May government also stated (although again with class left implicit): 'The greatest injustice in Britain today is that your life is largely determined not by your efforts and talents but by where you come from, who your parents are and what schools you attend' (p. 49).

## The class structure of the UK

The numbers of well-paying industrial manual jobs have fallen greatly in Britain over time, a drop fuelled by contracting manufacturing industries. There has been a long-term expansion of people working in services, with manual jobs concentrated especially in such low paid sectors as retail, hospitality and catering. The consequences for the overall occupational class structure are shown in Chart 1.

## Chart 1: The official view of occupational classes in 2017
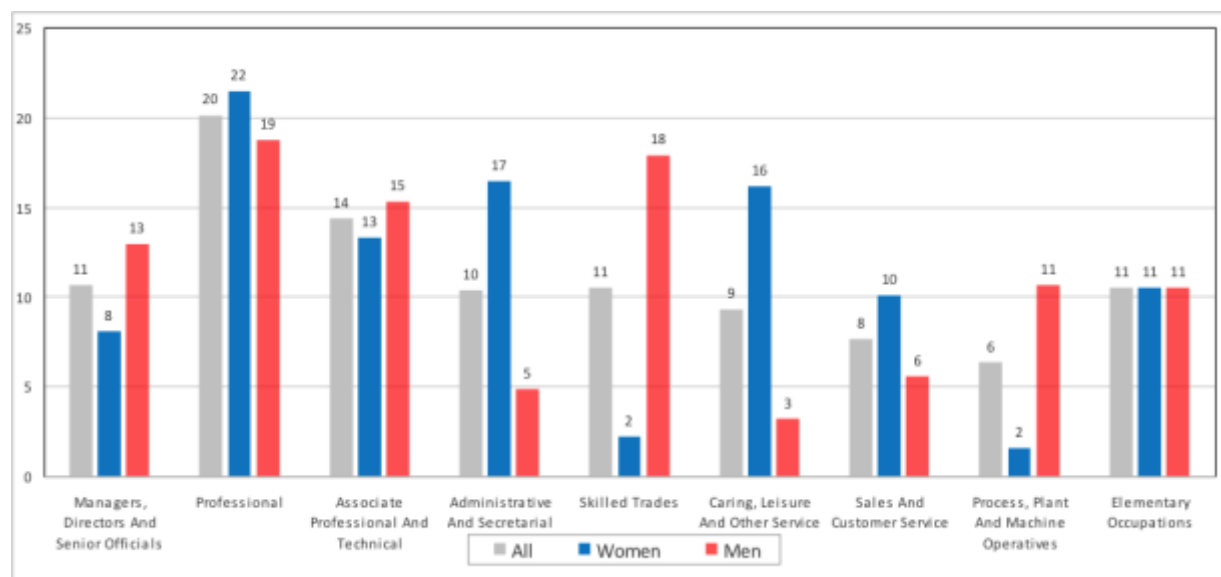


*Source:* *Quarterly Labour Force Survey, April-June 2017*

Nearly a third of the working population are professionals or managers (the two groupings on the left), while including the 'associate professional and technical' group would give almost half of the population in an upper/middle class group. Among the remaining 'working class' groups, women work especially in administrative/secretarial and caring/leisure jobs, while men overwhelmingly predominate in the 'skilled trades' and 'process, plant and machinery operatives'.

Moving beyond the emphasis on occupation as a simplified signifier of class, an alternative approach focuses on how people see their own class position. In 2011, the 'Great British Class Survey' was carried out by sociologists in cooperation with the BBC, collecting information on the economic, social and cultural capital of 160,000 people. They concluded that traditional depictions of class (e.g. working, middle, upper) were out of date, and proposed instead a seven-class schema influenced far more equally by people's occupations, their wealth, social contacts and their 'cultural capital' – shown in Table 1.

**Table 1: The 'Great British Class Survey' categories**

| GBC survey categories | % of UK population in 2011 | Brief description |
|---|---|---|
| Elite | 6 | Very high economic capital (especially savings), high social capital, very high highbrow cultural capita |
| Established middle class | 25 | High economic capital, high status of mean contacts, high highbrow and emerging cultural capital |
| Technical middle class | 6 | High economic capital, very high mean social contacts, but relatively few contacts reported, moderate cultural capital |
| New affluent workers | 15 | Moderately good economic capital, moderately poor mean score of social contacts, though high range, moderate highbrow but good emerging cultural capital |
| Traditional working class | 14 | Moderately poor economic capital, though with reasonable house price, few social contacts, low highbrow and emerging cultural capita |
| Emergent service workers | 19 | Moderately poor economic capital, though with reasonable household income, moderate social contacts, high emerging (but low highbrow) cultural capital |
| Precariat | 15 | Poor economic capital, and the lowest scores on every other criterion |

*Source:    Savage et al (2012)*

The elite and established middle class form almost a third of UK respondents, with a technical middle class and new affluent workers forming a further fifth in the middle. Other working class people divide relatively evenly between a traditional working class (often owning their homes, though), a group of emergent service workers (some with high cultural capital), and a 'precariat' whose economic and social position is fragile. While the survey and its methods have been contested, the overall messages posted about the results on the BBC website are less contentious, including this one: 'The extremes of our class system are very important. The Elite and Precariat often get forgotten with more focus on the middle and working-classes'.

Despite the fall in the type of (manual) jobs traditionally seen as 'working-class', successive British Social Attitudes (BSA) surveys has found that 60 to 63% of

respondents see themselves as 'working class', with the remaining group (just under 40%) describing themselves as middle class'. There is hardly any variation from one year to the next. Self-identification as working class 'has proven to be a remarkably stable feature of British society' (Evans and Mellon, 2016: 4). The same surveys suggest that the economic climate between 2005 and 2015 made people more aware of class differences:

> 'We find Britain divided along class lines. Nearly 8 in 10 of us think that the divide between social classes is wide or very wide. We are less likely now to think it possible to move between social classes than in the past' (BSA 33 2016).

## Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

| Current strengths | Current weaknesses |
|---|---|
| *In terms of working lives:* | *In terms of working lives:* |
| Unemployment in mid 2017 stood at 4.4%. its lowest level since 1975 (ONS 2017), with positive consequences for class gaps in labour force participation rates and in levels of wages and income. | Many concerns around deep class inequalities have been accentuated by the declining quality of new service jobs, especially in terms of worsening (or vanishing) job security, the expansion of zero-hours contracts and the so-called 'gig economy'. Low official unemployment rates partly reflect a growth in work time underemployment (where low paid workers want but cannot get more paid hours – see below) and in marginal self-employment. |
| The UK has a 'National Minimum Wage' which rose to £7.50 in 2017 (for over 25s), almost matching the level in Germany. The NMW is set to increase substantially leading up to 2020. A 'National Living Wage' is being introduced for workers aged at least 25. | The NMW is very low for younger workers - dropping to only £5.60 an hour for 18-20 year olds. Real earnings in 2017 are lower than before the recession hit. The extent of in-work poverty is testament to the low paying jobs held by many of the working class. |

| Current strengths | Current weaknesses |
|---|---|
| Free childcare hours expanded to 30 hours in September 2017. This change can assist more women into paid work, though trials suggest it is being taking up more by middle class parents. | Class inequalities persist in the support available for working parents. Given scarce supply, the extension of free child-care could deepen rather than reduce class inequalities in child-care use. Problems from the provider perspective (such as rising delivery costs, falling profits, difficulties in staff recruitment and limited space in venues for expanded numbers) also raise concerns about whether the policy changes are sustainable. |
| *In terms of living standards:* | *In terms of living standards:* |
| The UK government spends around £486 billion (26% of GDP, 2015-16) on the welfare state. | Systematic cutbacks in public spending continued into 2017 and are budgeted to continue throughout the life of this parliament. In 2017 the Institute of Fiscal Studies noted how 'terrible' economic growth since 2008 created 'big problems' for the finances of both households and government. |
|  | From April 2017, the child tax element paid to new claimants of the 'Universal Credit' scheme applies only for the first two children in a household. This is predicted to cut the benefits of 515,000 larger families by 2020. |
|  | Extending the conditionality of welfare payments, and the use of punitive benefit sanctions against people whose behaviour is judged non-compliant with increasingly prescriptive benefits rules, has adversely impacted the lives of hundreds of thousands of poor people, both those who out of work and those in low paid and insecure jobs. |
|  | Stark class inequalities in living standards persist in the UK, as signalled by the huge gaps in income and wealth levels between 'the 1%' and the majority |

| Current strengths | Current weaknesses |
|---|---|
| *In terms of housing provision:* | *In terms of housing provision:* |
| The Conservative Party's 2017 manifesto promised reinvestment in 'short-term' social housing. | More long-term and larger-scale solutions are needed to combat the current lack of affordable and social housing. |
| One substantial disincentive to well-off people or companies purchasing multiple 'buy to let' properties was introduced in 2016 with a Stamp Duty surcharge. | Housing in Britain is still seen as a commodity rather than a basic right. 'Gentrification' in cities has especially reduced the supply of low-cost housing in convenient locations for getting to jobs. The expansion of 'buy to let' housing has raised all house prices and meant more households must cope with the expense and insecurity of private renting. |
| | The pursuit of deregulation and removal of 'red-tape' in housing has had high human costs, as witnessed by the spiralling of multi-occupation and the lapses in securing basic safety in social housing demonstrated by the Grenfell Tower catastrophe. |
| *In terms of representations of class:* | *In terms of representations of class:* |
| There was a small increase in the numbers of MPs from less privileged backgrounds at the 2017 general election. Fewer MPs than before from privileged backgrounds, and there was the lowest proportion of privately-educated MPs on record (29%). | The dominant media and political representations of working-class people, and of the places where they live, remain disparaging - which weakens the political standing of the working class. In particular, structural or systematic inequalities are normally presented as the consequences of individual failings. |
| There is some evidence of softening public attitudes towards benefit claimants. | The negative portrayal of benefits claimants legitimises austerity and deepens class inequality. |
| **Future opportunities** | **Future threats** |
| *In terms of working lives:* | *In terms of working lives:* |

| Future opportunities | Future threats |
|---|---|
| The Taylor Review made clear that the quality of jobs is a key area for action, though its recommendations have been criticised for being too unambitious. | Exiting the EU may become a serious threat to the quantity and quality of jobs in the UK if rights and entitlements around work guaranteed in EU law are not transposed into UK law, or are watered down in the transition. |
| A 'real Living Wage' campaign is persuading employers to voluntarily pay workers (aged 18 and older) a minimum of £8.45 (or £9.75 in London, where living costs are greater). This success has ramifications for narrowing the wage gap in those firms. | Because it is a voluntary and statutory approach, only a minority of employers seem likely to sign up to a 'real Living Wage'. |
| The 1% cap on public sector wage rises (affecting e.g. nurses, teachers, civil servants since 2012) has attracted mounting protests, and is widely expected to end. In September 2017 police and prison officers secured some increases in pay above the cap. | Long-deferred public sector pay rises must all come out of existing government sector budgets. This inevitable 'catch-up' surge could squeeze finances further, or create pressures for compensating reductions in headcounts, in the public sector with its generally better working conditions and still-strong trade unions. |
| *In terms of living standards:* | *In terms of living standards:* |
| Campaigns have grown to establish an unconditional 'Basic Income', which advocates claim can provide a safety net for all classes – and buttress democracy by reducing state surveillance of behaviours. | Weak economic growth and cuts to welfare are predicted to power the biggest rise in inequality by 2020-1 for the last four decades (see below). Already planned cuts to benefits will impact more on low-income households. |
| | Cuts to social care budgets signal threats to the most vulnerable in society. |
| *In terms of housing provision:* | *In terms of housing provision:* |
| Building on campaigns such as SHOUT – the campaign for social housing may help to reverse the disinvestment in social housing over the last 30 years. | Further gentrification continues to threaten to displace people from the less advantaged social classes – who may be priced out of more desirable areas, particularly in central London. |
| A greater democratisation of social housing management and policy may follow the Grenfell Inquiry report, where the 'tenant management organisation' in fact gave residents little influence. | |

| Future opportunities | Future threats |
|---|---|
| Proposals to reintroduce local rent caps in areas of high housing stress have been aired by the Labour leader, Jeremy Corbyn. Widely used in other countries, such caps might not only keep rising costs in check (so making renting from private landlords more affordable), but also help to lower house prices. | |
| *In terms of representations of class:* | *In terms of representations of class:* |
| Making class a 'protected characteristic' in future Equality Acts could actively combat discrimination and stigmatisation of working-class people and neighbourhoods. | The outcome of the EU referendum has been (inaccurately) attributed to a problematic 'white' working-class, reinforcing and potentially intensifying already existing social divisions along axes of class, ethnicity and migration status. |
| Achieving more increases in MPs from less privileged backgrounds could rebalance political representation. | |
| More positive representations of working-class life in the media and public sphere could counteract key forces worsening the experiences of a classed society. | |

## Changing working lives in a class society

Many questions about stark and potentially deepening class inequalities in the UK economy have been given added salience by pay freezes and cuts during and after the recession, Conservative governments pursuing greater deregulation of the labour market, radical austerity measures reducing public sector employment, growing underemployment and multi-jobbing, an expansion in 'zero hours' contracts, and the rise of the 'gig economy'. Brexit brings the added risk, depending on the future UK-EU relationship, that some or all UK law derived from the EU may be impacted. This may include current workers' rights (e.g. those based on the Working Time Directive) as well as forthcoming EU initiatives (such as around work-life balance).

Although UK employment levels are high, the quality of jobs (rather than their quantity) is widely seen as a major UK problem; and this issue is classed. In July 2017 at the *Taylor Review* into 'Employment practices in the modern economy' its lead author said:

'Our national performance on the quantity of work is strong. But quantity alone is not enough for a thriving economy and fair society. We believe now is the time to complement that commitment to creating jobs with the goal of creating better jobs'. (Department for Business, Energy & Industrial Strategy 2017).

In terms of real earnings, in 2017 they were still lower than before the recession hit. Earnings fell across the board in recent years, impacting most at the middle and top of the income distribution (although reliable data on very highest incomes is hard to obtain). Incomes for the bottom earners were supported by the National Minimum Wage (NMW).

The impact of minimum wages on wage inequalities, employment levels and hours worked is heavily debated, but the NMW has clearly not increased UK joblessness (as many critics on the right had predicted) and has improved the wages of those in lower-level occupations. Coverage by NMW grew higher in 2016 for workers without qualifications, with disabilities, for women, ethnic minorities, migrants, part-timers and workers in cleaning, hairdressing and hospitality (Low Pay Commission, 2016).

The 2017 General Election campaigns saw commitments to raise NMW substantially in 2020 (to £8.75 from the Conservatives, and £10 from Labour). According to the Low Pay Commission, should the government rate be implemented then 'measured on a like-for-like basis, the UK will have one of the highest minimum wages in the world'.

Surveys show that job security was the job attribute rated as important by most respondents (92% in 2015). But this was also the attribute they felt had become less attainable over time, with most disadvantage faced by those in the lowest social class. Job insecurity is known to be severe for workers in the so-called gig economy, perhaps most associated with such working-class jobs as driving and deliveries for Uber and Deliveroo. But it also applies in other occupations, such as writing, translating, coding and designing. Gig work is also associated with a range of other negative characteristics – notably very long, unregulated, and often anti-social hours; high intensity work; low pay; no employment protection, and no guarantee of work; and weak pensions arrangements.

A growing and also markedly classed phenomenon after the recession has been work-time underemployment (WTU). WTU disproportionally affects workers in lower level occupations, including part-timers who want but cannot find a full-time job, resulting in financial and psychological distress. Despite having more than one job, many low-paid workers needed more work to survive, with some participants working in up to 7 different jobs a week. Work-time underemployment, linked with severe financial hardship, was a growing cause of work-life imbalance for the working-class post-recession.

However, 2016-17 saw signs that 'peak insecurity' may have passed: with expansion in full-time employment and falls in self-employment, part-time work and zero-hours contracts as employers find it harder to attract staff on poor conditions. Chart 2 shows

that the proportion of part-timers working part-time involuntarily rose steeply from 2008 to 2012, but have now begun to fall back almost as sharply. A number of legal judgements have expanded 'gig' workers' rights and policy actions to rebalance workers' lack of clout in negotiating with employers are promised, although how substantial any outcomes may be remains to be seen.

**Chart 2: The proportion of women and men part-timers working part-time involuntarily because they could not find a full-time job**
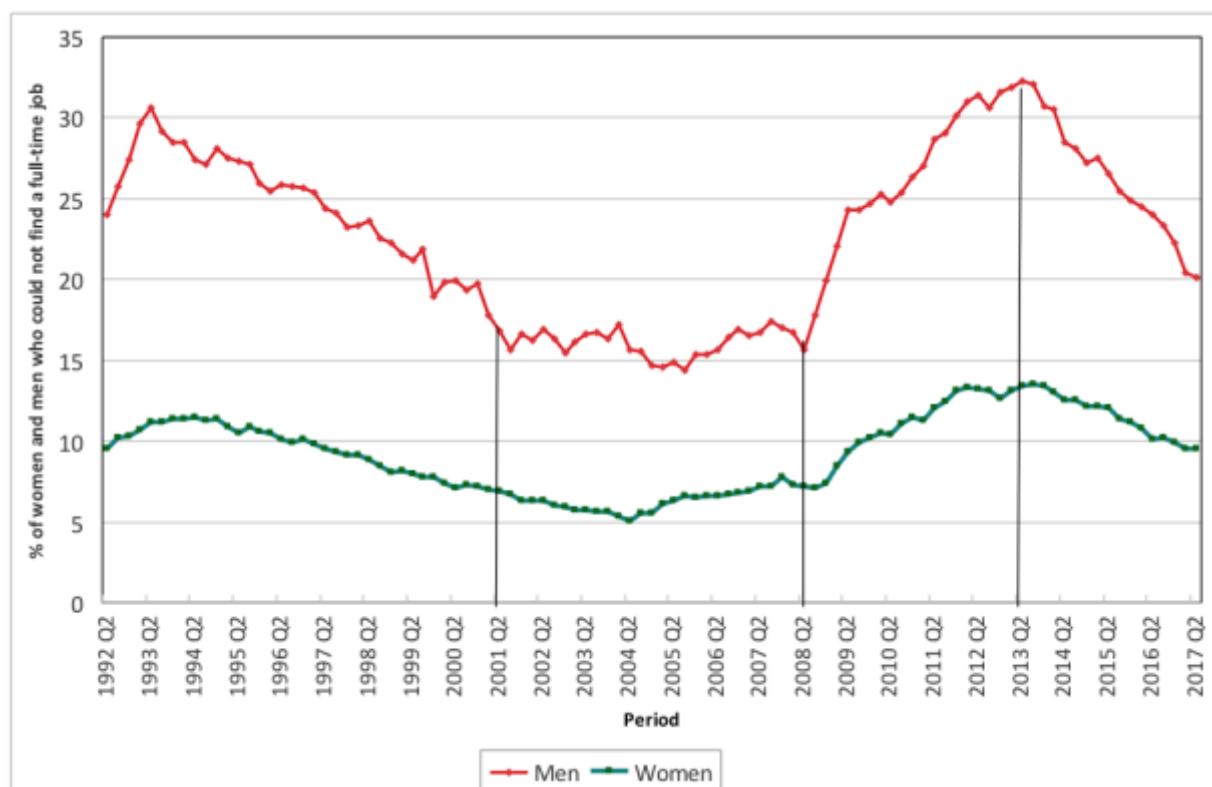


*Source:    Labour Force Survey, series ID: YCDC*

Turning to issues around parental employment, there are significant class gaps in the UK in how parents in paid work care for young children. Formal mechanisms (such as nurseries and childminders) are used far more by middle-class families, while informal care (often by grandparents) has remained dominant for working-class working parents. Access to good, affordable and convenient childcare is a key way to support parents (especially mothers), into paid work, but formal childcare has been prohibitively expensive for many. Government initiatives have invested in early education and childcare with explicit class-based motives to promote child development, narrow the gap in attainment 'between the most disadvantaged children and their better off peers', enable parents to work, and help with poverty- reduction.

From September 2017, working parents of children aged four became eligible to apply for 30 hours of funded, tax-free childcare per week for 38 weeks a year (doubling the 15 hours previously available in England). This scheme to 'support parents into work or

to work more hours should they wish to do so' targets fathers and mothers earning or expecting to earn 'the equivalent to 16 hours at National Minimum or Living Wage over the coming three months'. Parents earning more than £100,000 are not eligible. However, rather than favouring working-class families, trials of the scheme saw more uptake among middle-class families. Meanwhile, government statistics shows that many Sure Start centres, set up by the Labour government to support working-class pre-school children, closed (850 closed in England in 2010-16, while just eight new ones opened).

## Living standards across classes

Working-class lives are marked by more strained living conditions than other classes, with post-recession accounts of increasing numbers of working-class people scraping by, reporting relentless and demoralising everyday worries about spending and accumulating debts. Some parents recount caring for children whilst being unable to heat their homes or afford hot water. In September 2016 the Resolution Foundation estimated that six million families were 'just about managing'. Financial problems grew so intense in the UK over the past decade that the numbers of people using charitable food banks for essentials rocketed. Loan sharks offering high interest loans proliferated, as did pawn shops offering high-interest loans in exchange for personal items.

For the first time since the financial crash, in 2016 more respondents to the British Social Attitudes survey (48%) wanted taxation increased to allow greater spending than wanted levels to stay as they are (44%). More people (42%) agreed that government should redistribute income from the better off to those who are less well-off (while 28% disagreed).

The UK is committed to meeting the United Nation's (UN) 2030 'Sustainable Development Goals'. One relevant target is to: 'progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average' (Target 10.1). Yet research by the Resolution Foundation found that the incomes of the bottom 40% of people were growing more slowly in 2016-17 than the higher 60%. Median household income in 2015–16 was only 3.7% higher than before the recession (2007–08), after adjusting for inflation, indicating only a 'glacially' slow growth over time.

Because levels of unemployment are low, there are fewer people in Britain without any earnings at all, and this has held income inequality down. A 'Minimum Income Standard' (MIS) for the United Kingdom, which reports on how much income households need to afford an acceptable minimum standard of living, also identified a steadying in 2016. However, few families can reach this MIS with only one person working full-time on the national minimum wage. Projections to 2020-21 suggest the biggest rise in inequality since the 1980s looms, powered by weak economic growth and by cuts to welfare for those with the lowest incomes.

The absolute poverty level is defined in the government's official measure as falling below 60% of median household income. Levels here have changed little and showed about 20% of households living in poverty in 2015-16. Yet this lack of progress in reducing poverty is historically rare. Inflation rose sharply in 2017 while benefit cuts

are deepening, adding to the risks of more class-based financial hardship. The majority of those officially classified as 'poor' are not in households with no paid work at all: most live in a household where someone is in (low) paid work. According to the Child Poverty Action Group there were 3.9 million children living in poverty in 2014-15, amounting to 28% of all children in the country.

Poverty adversely impacts people's lives in manifold ways. For example, fully 60% of families in the bottom income quintile would like, but cannot afford, to take their children away on holiday for just one week a year. 'Fuel poverty' among low-income families has increased, testifying to life on a low-income with rising bills and an inadequate everyday standard of living. Between April 2016 and March 2017, the Trussell Trust supplied nearly 1,183,000 three-day emergency food supplies, a 7% increase on the previous year. More supplies were given July/August 2016 than in the previous two months – when children were in school and receiving school dinners.

Meanwhile the 'poverty premium' consists of the 'additional costs [that] low-income households pay for goods and services compared to those on higher incomes'. This amounts to an estimated extra £490 per household per year, including the extra costs of living in economically disadvantaged areas (e.g. paying an extra £74 for car insurance and an additional £227 in grocery bills in locations poorly served by supermarkets).

Changes in how state benefits are paid have also worsened working people's lives. The Universal Credit (UC) was designed to replace six working-age benefits. It targets both those out of work and in paid work on a low-income and with few savings, estimated to be eight million households. UC was devised with multiple aims: to simplify the benefits system, to make work pay, to increase take up of some benefits, and to reduce fraud and error. Yet its implementation has set off many alarms. Numerous problems have been cited with inefficiencies in its delivery, delaying its full roll out until 2020.

Because benefits are now paid monthly, and in arrears, there are also serious concerns about how people can get by in the long period before a first UC payment (up to 6 weeks), with ramifications for those who are in a 'low pay/no pay' cycle caused by insecure jobs. Referrals for emergency food supplies grew higher in those areas where UC was rolled out (a 17% average increase) compared to the national average of 7%. Queries have also been raised about UC's imposition of monthly household budgeting on those low-income households who operated weekly accounting before UC. This impacts heavily on women who are commonly responsible for budgeting, shopping and feeding families. It also creates extra things that can go wrong for people poor at managing money.

More fundamentally, there are serious concerns with Universal Credit's underpinning assumptions, including a conditionality that is 'backed by an extensive tiered system of very harsh benefit sanctions and a new range of civil penalty fines'. For working-class people UC extends conditionality, and harsh sanctions, to low-paid workers in insecure jobs. The impact of benefit sanctions on people living with a disability or chronic illness has also attracted condemnation – as in the film *I, Daniel Blake*. The claimed evidence that sanctions increase employment rates for disabled people is far from conclusive. Overall, UC's founding assumptions are 'divorced from what we know' from

established research on what life is like for those either in 'low-waged and often insecure employment' or on a low non-waged income.

Equally slated was the so-called bedroom tax, portrayed by ministers as removing a subsidy for working-age social housing tenants deemed to have a spare bedroom (by 14% for one spare bedroom, 25% for two or more). First implemented in 2013 a formal evaluation, commissioned by the Department for Work and Pensions in 2015, found that affected tenants were forced to cut back on essentials such as heating and food. Other research has shown mounting hardship and debt from the policy has adversely affected tenants' mental health, family relationships and community networks. It has also led to falls in children's performance in school linked to having less private space to study in circumstances of intensifying poverty.

At the opposite end of the spectrum of living standards, inequalities of wealth far outstrip those of income in the UK. The system of taxation in the UK has not kept up with the 'meteoric rise' in the amount of wealth held by 'the 1%'. For 2014 data the *Resolution Foundation* estimated that 'the 1%' owned £11 trillion in financial, private pension, property and physical wealth (14% of the nation's assets). By contrast, the lowest 15% of people on a wealth scale either owned no assets at all or were in debt. Low and middle-income households have weak financial safety nets, if any. Even more people are struggling to save anything in a decade marked by low-income growth. In 2016, 64% of people living in low and middle-income households reported having less than £1,500 in savings.

### How housing inequalities condition class

One of the biggest demands on income, especially for poor people, is accommodation and housing. Being able to secure a stable home in an area has huge implications for people's access to jobs, transport costs, and the environment in which they can afford to live.

Greater inequalities in housing have opened up over recent years. At one extreme by 2017 there was a 32% increase in homelessness case actions by English local authorities since 2009. At the other extreme the super-rich are buying up multiple properties, which are then left empty or underused whilst they appreciate in value for their already wealthy owners. Nowhere are these extremes of inequality more evident than in London, where the highest concentrations of wealth exist side by side with the highest concentrations of poverty. Cunningham and Savage dispute dominant claims that it is middle-class gentrifiers that have had the biggest impact on the class structure of London. Instead they argue that it is the global elites of many countries who have colonised central London, with less advantaged social classes being pushed towards the outskirts of the capital.

There has been an important change in the balance of homeownership (once expected to be dominant in the Thatcher years) and private renting, now resurgent as a UK housing tenure. Arguably since the 2008 financial crash the onset of a 'housing crisis' has more accurately been a crisis for middle-class home owners and investors who have experienced unexpected greater uncertainty (but also historically low interest rates).

Despite this, the wealth of the UK's richest groups has grown due to financial policy actions propping up asset values, including house prices. Conservative and coalition government policies responding to the housing crisis focus mainly on home ownership, for instance with subsidies aimed at getting first-time buyers on the housing ladder.

The policy emphasis on home ownership despite the adverse trends that have steadily eroded its role has been criticised because it does not prevent poverty, with over half of those living in poverty being homeowners; and because the burden of mortgage repayments is too high for the lowest paid (even if they could secure low interest rates). Conservative policy partly reflects a calculation that homeownership will produce political quietism – a goal of political control central to Thatcher's now vanished ideal of a property-owning democracy.

By contrast, those with the lowest incomes have suffered the most in housing, especially amongst younger people. Insecurity in housing (moving from one rental flat to another) has become an extension of the precarity stemming from insecure work, and the rolling back of social security. Home ownership remains financially out of reach, and because social housing is scarce, this only leaves the private rental market, where cheap housing is insecure, expensive, and more likely to be of poor quality. The most vulnerable families are almost always renting, paying more and more to private landlords from meagre incomes. In the nine years from 2006 the proportion of people living in the private rented sector who are in poverty increased by around two fifths.

In the past, social housing in Britain reflected a recognition that for the working-class there is a perpetual housing crisis, albeit to varying degrees. For much of history, especially before 1919 and since 1979, working-class existence has been marked by inadequate housing. One of the key housing issues facing the working-class today stems from the transformation of the vision of good quality and secure housing as a basic right, to housing chiefly as an economic resource or investment. In 1979 42% of the UK population lived in council housing, today it is only 8%, arising largely from the Thatcher government's 1980s Right to Buy scheme. Many former council houses are now in the hands of profit-seeking private landlords. They do not usually maintain these homes to the former standards, and they charge significantly higher rents that are mostly subsidised from public funds paying housing benefits. For instance, one study showed how one tenant on a former council estate was charged £800 per month by her private landlord, for a unit that the council would charge £360 for, with the difference coming from the public purse.

This situation typifies the commodification of housing, where profit becomes the priority, housing prices are inflated and residents' needs are not met. Successive governments have squeezed spending on social housing, putting greater pressure on the need for affordable social housing. The 2017 Conservative Party manifesto does include a promise to build a 'new generation of social housing', a pledge partly maintained at the Conservative conference in 2017. However, the manifesto also envisaged that after 10-15 years these houses will return to the market to be sold privately via automatic right-to-buy policy.

## The Grenfell Tower disaster

Many of the issues discussed in this chapter converge in the Grenfell Tower disaster, where at least 80 people died in a fire on 14 June 2017 that spread enormously rapidly throughout the whole block. Coming just six days after the general election the complete destruction of the council tower block, crammed with desperate (often refugee) families just a few streets away from some of London's wealthiest housing, dramatised the existence of extreme inequalities in the capital.

It also raised acute questions of democracy, because the warning voices of concerned council tenants had been systematically ignored in implementing the cheapest possible refurbishment of blocks in Kensington and Chelsea, one of the UK's richest local authorities. Years of complaints from tenants' associations such as the Grenfell Action Group, highlighting the risk the building was at from disaster, were ignored out of hand. As well as the tenants' fears being ignored, it was also discovered that the cladding used during refurbishment was made from flammable material and had been chosen as a cost-cutting measure. And shifts towards ever more 'light touch' building and fire safety regulations were exposed as leaving not just Grenfell tenants but thousands of residents in hundreds of blocks across the country at terrible risk.

This example also illustrates the many ways in which damaging representations of the working-class (below) can serve to delegitimise and undermine legitimate concerns and effectively erase working-class voices from central and local state concerns. The austerity-induced commodification of housing, where homes are seen as maintainable only in ways that scarce resources would allow, rather than the priority being that they were a safe place to live, clearly contributed to the deaths of largely working-class residents – and graphically illustrated the 'dark side' of neoliberal deregulation and privatisation.

## Representations of the working class

The way that working-class people and the places they live are pictured and portrayed for the rest of society plays a vital part in how class inequalities are controlled in the UK. The language of class may be absent from debates, but discussions of 'chavs', 'welfare', 'council estates' and 'sink estates', and even the names of particular places, all contain classed assumptions.

There is a well-established sociological argument that working-class people are not taken seriously by more powerful groups, who consider them to be unable to understand or usefully articulate their experiences. Partly this originates from the way that working-class people are reproduced as 'disgusting subjects' through discriminatory descriptions of their bodies, clothes, behaviour and taste, most explicitly associated with the tracksuited chav. These outward markers become signifiers of social class and an underlying pathology, which are associated with a perceived lack of taste.

Bourdieu's concept of social distinction has been deployed to illustrate how middle-class taste is perceived as legitimate, and produced in opposition to a 'tasteless' working-class, by extending it to argue that this also represents the working-class as

lacking value, pathological and immoral. So, there is a symbolic struggle between classes over legitimacy, middle-class culture is seen by dominant groups and interests as having value, and working-class culture is defined by a lack of culture.

Bourdieu called this process 'symbolic violence', where domination is accepted tacitly and the dominated working-class are not seen as having the right or ability to make legitimate judgements. It manifests as the ('natural') underrepresentation of working-class political opinion amidst multiple dominant political ideas generated by the middle and upper classes. This plays a vital part in the reproduction of the established order via processes of cultural reproduction.

Another area where these processes of social classification, symbolic violence and disgust are most evident is the explosion in popularity of reality television, especially the 'poverty porn' sub-genre which began in 2013 and has remained popular since. TV programmes such as *Benefits Street* became a catalyst for public debate centred on questions of the welfare state. Poverty porn produces a symbolic divide between the 'worker' and the 'shirker' and encourages viewers to scorn the lifestyles of those featured in the programmes. Structural inequalities stemming from deindustrialisation and the precarity of the contemporary labour market are obscured, and instead poverty (as discussed above) is reproduced as a lifestyle choice, with benefits claimants depicted as living it up at taxpayers' expense.

Such understandings have become 'common sense' and have been much utilised as an ideological tool to legitimise austerity and the rolling back of the welfare state, which further deepens already existing class inequality. Whilst the 2017 BSA survey found evidence of softening attitudes towards benefits recipients, more people remain critical of benefit fraud than tax evasion. The ideological immediacy and apparent accessibility of poverty porn TV encourages the public to regard the majority of benefit claims as fraudulent.

Derogatory representations of working-class people are also extended to the places where they live, with certain place names being classed signifiers for dangerous people and places. Politicians and policy makers often represent the places where poor people live as the problem rather than seeing them as a symptom of broader structural inequalities. They use deprived areas as backdrops to make political claims that certain areas are able to entrench poverty and disadvantage – for example, PM David Cameron's war on 'sink estates'. Like the pathological representations of the working-class, these depictions deflect attention away from the external forces that produce the conditions of existence for residents there, and instead stigmatise neighbourhoods further. These messages can divide residents from each other, obstruct the potential for collective resistance to poor treatment, and often shape the future with regulations, investment and/or disinvestment in stigmatised territories.

A final coda: in the fallout from the Brexit referendum, it was the working class who were blamed for the vote to leave the European Union, although the factors involved were actually far more complex than this. Leave voters were frequently portrayed as being from disadvantaged areas that had been 'left behind' by globalisation, particularly de-industrialised northern English towns (i.e. implicitly *white* working-class

communities). But if the conditions of being 'left behind' stem from the precarity of present-day existence, then these conditions are also shared by migrants and ethnic minorities. The association of being 'left behind' with a *white* working-class denies the classed inequalities effecting minority groups, and has the potential to deepen already existing social divisions along axes of class, ethnicity and migration status.

## Conclusions

Class remains a fundamental form of deep inequality and injustice in the UK in 2017. It also 'intersects' with other social divisions, with many ramifications for how we understand the lives and life chances of different class groups of women and men.

In a liberal democracy like the UK it is only feasible to better control class disparities and narrow class inequality gaps more effectively both by establishing a firmer ceiling for the highly privileged (as housing market changes have shown), and by lifting the floor that supports the least class-advantaged in society (as the minimum wage and living wages have shown is feasible). In addition, class upbringing still lies outside the list of 'protected characteristics' that are covered by the Equality Act 2010 (which include sex, race, age, sexual orientation etc.). Current equality legislation does not prevent employers, education providers, government departments and so on from discriminating, harassing or victimising someone on the basis of their social class. This is a relatively easy thing to change, and doing so could counteract representations of working class people and areas that do so much to intensify the effects of inequalities.

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