

Elective dictatorship? The democratic mandate concept has become dangerously over-extended

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Against the background of a general breakdown of public confidence in the political elite, politicians on both left and right have seen themselves not as part of a broader governing elite but as outsiders, empowered by their democratic mandate to shake up government and make it more responsive to the wishes of the people. [Nat le Roux](#) argues that taken to its logical extreme, the end point of this doctrine is an impoverished political ecology in which the only actor is an omni-competent centralised executive, constrained only by periodic popular election.



There is a very widespread view in Britain that our political culture is dysfunctional. According to the survey carried out for the Hansard Society's 2013 [Audit of Political Engagement](#), two out of three citizens believe that the present system of governing Britain is in need of significant improvement. When asked how this might best be achieved, a large majority of respondents favoured action to increase the transparency of politics and the popular accountability of elected representatives.

It is easy to see why many people believe that a disjunction between citizens and elected politicians is the primary problem in an increasingly dysfunctional, and disrespected, political system. However this is at best a partial diagnosis. In reality, British politics are considerably more transparent than a generation ago: proceedings in parliament are televised, it is much easier to access many types of government information, and the public and private activities of the political elite are subject to relentless media scrutiny. From the perspective of the ordinary citizen, Westminster culture may appear introverted and opaque, but this is an inadequate explanation for the current malaise felt towards British politics and government.

Less evident to outsiders, but equally debilitating, is the growing and dangerous imbalance of power between the institutions of the state itself. Lord Hailsham coined the term [elective dictatorship](#) in 1976, and it is a more accurate description of the political landscape today than was the case forty years ago. Two developments have taken us further down that road. The first is the increasing unwillingness of the executive to respect the independent authority of the judiciary, the civil service, local government and parliament itself. The second is the willingness of governments, especially after 1997, to introduce fundamental constitutional changes, many of them effectively irreversible. Perversely, it is the over-representation of democratic legitimacy as the dominant contemporary political virtue which arguably bears a large measure of responsibility for our current predicament.

The breakdown of the old order

In the great majority of democratic states, a codified constitution specifies the relationship between the various organs of the state and their respective powers. The historic, un-codified British constitution was not rooted in a formal separation of powers, but in an evolved distribution of power between several sources of legitimate authority. The generally harmonious interaction between these *loci* of authority for much of the twentieth century was the product of complex evolution. These relationships were based in part on statute but rooted mainly in convention and precedent. Until comparatively recently, they were sustained by the mutual accommodations of an elite which occupied most of the senior positions across all the organs of the state. Senior figures in parliament, government and the judiciary, as well as the civil service and the armed forces, adhered to a common set of normative values; potential conflicts between authorities were resolved through informal networks, facilitated by shared class and educational backgrounds. Since 1997 this multi-polar comity, the product mainly of historical accident rather than deliberate design, has been subject to increasing strain and now appears potentially more unstable than at any time since the [constitutional crisis of 1911](#).

The shifts in the cultural landscape which began in the 1960s have had a profound influence on political norms. The current generation of British political leaders were formed in an era when 'the establishment' had become a subject for satire and all types of institution were increasingly viewed as outdated and potentially malign. Since the Thatcher era, most senior politicians on both left and right have seen themselves not as part of a broader governing elite but as outsiders, empowered by their democratic mandate to shake up government and make it more responsive to the wishes of the people. A natural extension of this self-conception is to believe that elected leaders are legitimately empowered to change institutional structures and overrule other sources of authority as they see fit. Taken to its logical extreme, the end point of this doctrine is an impoverished political ecology in which the only actor is an omniscient centralised executive, constrained only by periodic popular election.

Democracy and executive supremacy

Discussions about democracy often become tangled because the term is commonly used, sometimes simultaneously, in both a broad and a narrow sense. In the broad sense, a democracy is a political system which has the collection of attributes found in the mature states of Western Europe and North America: popular election of governments; an independent judiciary; the rule of law; respect for individual rights; apolitical armed forces and so on. In its narrow sense, democracy means only the appointment of government by popular election.

It is an intrinsic feature of democracy in the broad sense that executive authority is not absolute. Many of the rules and institutions which constrain the actions of elected governments are by their nature not democratic – in the narrow sense – because they are not subject to popular endorsement. To take the most obvious instance: if governments are to operate under the rule of law, then government actions must be subject to review by the courts, and few in the UK believe that judges should be appointed by popular election.

When British government ministers believe their plans are being obstructed by the judiciary, the civil service or the House of Lords, they commonly now argue that such resistance is politically illegitimate because these are unelected institutions. It is only executive government which has legitimate political power because it enjoys popular democratic endorsement.

The reality of the democratic mandate

It is often argued by the proponents of executive supremacy that a government effectively enjoys a direct democratic mandate because most voters in general elections believe they are voting for a party manifesto and a prime minister at the same time as selecting a constituency MP. Political history suggests that this argument is a very weak one. Two of the last four prime ministers were installed by their parties between general elections, and this has always been an entirely normal route to No. 10. Voters in 2010 did not choose to have a Conservative/LibDem coalition government (under the current electoral system there is no mechanism which would have allowed them to express such a preference). Many of the policies of the present government were foreshadowed in the election manifesto of only one of the coalition partners, and some policies were in neither. The coalition's policy platform is the coalition agreement, negotiated by the party leaders after the 2010 election and never endorsed by the electorate.

If democratic legitimacy implies substantial popular endorsement, then the democratic mandate of recent British governments rests on weak foundations. In the 2005 general election, Labour secured an absolute majority of



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parliamentary seats but only 35.2 per cent of the national vote. The turnout was 61.4 per cent of registered electors. Thus the Labour government which was in power between 2005 and 2010 enjoyed the active endorsement of less than one in four potential electors.

Additionally, the votes of those citizens who made the journey to the ballot box in 2005 were of very unequal value in terms of their statistical ability to influence the outcome of the election. An increasing majority of parliamentary constituencies are safe seats where, barring some freak event, the result is not in doubt. The number of marginal constituencies – defined as those which can change hands on a 5 per cent swing of the vote – has halved from 166 in 1955 to 83 today. The decisions of a few hundred thousand swing voters in a few dozen constituencies are overwhelmingly important in determining the outcome of general elections.

In a multi-party landscape, a first-past-the post voting system with single-member constituencies will tend to produce governments which enjoy only minority popular support. Unequal constituency sizes, low voter turnout and the recent increase in electoral fraud compound the problem. There are long-standing debates about the merits and demerits of proportional electoral systems, individual voter registration, constituency equalisation and so on. These are important questions, but they are not directly relevant to the present argument.

All electoral systems are to some extent defective but – at least in the absence of wholesale vote-rigging – nonetheless endow a majority in the legislature with legitimate authority. That is a central principle of democracy. But what is the proper *extent* of that authority in the specific context of the UK's political and constitutional arrangements?

The sovereignty of parliament

The argument for unconstrained executive authority is commonly based on the doctrine of parliamentary sovereignty. It is asserted that, since Parliament can 'do anything it wants' (itself a highly questionable assertion from the perspective of international law), a government which can command a majority in the Commons similarly enjoys a near-absolute constitutional authority.

The reality of party politics, in Britain as in other mature democracies, is that a government's ability to sustain a majority is not based on an ability to convince legislators by reasoned argument of the merits of particular proposals. Although backbench revolts are more frequent than a generation ago, nearly all divisions are along party lines. Bills are introduced and passed into law irrespective of their objective merit because, *tout court*, the government commands a majority in the House. Most MPs, most of the time, support their own party leadership for a combination of principled and self-interested reasons. Despite the Wright reforms of 2010, it is government rather than the Commons itself which largely determines the Parliamentary timetable and enjoys a near-monopolistic control of legislative processes. At best, party loyalty severely muffles effective legislative constraint on executive action, except in those rare cases where a backbench rebellion is large enough to overturn the government's majority. None of this is especially surprising or – arguably – objectionable in itself: that is how parliamentary democracies work. However, given the realities of parliamentary behaviour, government claims to an untrammelled and generalised authority may ring rather hollow.

The extent of legitimate executive authority

We should be more willing to question the assertion – voiced by ministers with increasing frequency – that a government’s popular and parliamentary mandate is so strong that other institutions of state may never legitimately resist it. The democratic underpinning of executive authority in Britain is in reality indirect, qualified and compromised, and the concept of democratic mandate, the dominant trope of much contemporary political discourse, has arguably become dangerously over-extended.



Most political commentators, and no doubt a majority of the public, believe that a popular mandate – however imperfect – legitimates any sort of legislative initiative and constitutes a permanent trump card in any confrontation with unelected institutions. Increasingly, ministers seem to share that view, and to believe that it is government, rather than parliament, which holds the trump. This is especially troubling in the absence of formal constitutional arrangements which delineate and entrench the powers of other sources of authority: the courts; the permanent civil service; local government and indeed Parliament itself. It is unsurprising that conflicts between ministers and these other sources of authority in the state have become more frequent.

The new era of constitutional change

At the same time, the period since 1997 has been marked by frequent constitutional change. Some of these measures have been well-intentioned reforms, some have been self-interested and some have been ill-considered meddling. All these changes have been enacted by ordinary legislation in a way which would have been impossible in almost any other mature democracy. The codified constitutions of most democratic states specify mechanisms for constitutional amendment which are clearly separate from the mechanisms for enacting other legislation. These commonly require a legislative supermajority: in consequence any significant alteration in the existing constitutional arrangements is normally preceded by an often protracted period of scrutiny and consensus building.

In Britain there is no process for constitutional change other than ordinary legislation. As a result, the executive is able to rearrange the architecture of the state at will, irrespective of the views of other state institutions, and at short notice. For most of the 20th century this power was rarely used. Since 1997, by contrast, we have seen successive governments use a simple parliamentary majority to radically overhaul the structure of the judicial system; strip the office of Lord Chancellor of most of its historic authority; introduce fixed-term parliaments and devolve substantial legislative powers to selected parts of the United Kingdom. These constitutional innovations may or may not be good things in themselves, but they are all effectively irreversible. In nearly all cases, these changes were introduced without any process of consultation beyond the incumbent government and generally without endorsement by referendum.

Drifting towards instability?

A pessimist could easily believe that we are drifting towards institutional instability. Governments have become increasingly willing to alter very long-standing constitutional settlements for reasons which often appear short-term and politically self-interested. It seems likely that, even if the Scots vote No, the independence referendum will accelerate the breakup of the United Kingdom. A serious clash between government and the senior judges over the extent of the courts’ powers of judicial review seems increasingly likely. The constitutional position of the civil service is being challenged by the current government in a way which would have been unthinkable a generation ago. Government ministers are increasingly bold in asserting their democratic mandate – or rather an over-

representation of it – to trump all opposition. All of this is taking place against a background of the general breakdown of public confidence in the political elite. Not so long ago, Britain was widely admired across much of the world as a model of strong constitutional democracy. It is hard to believe that is the case today.

Note: This article gives the views of the author, and not the position of the British Politics and Policy blog, nor of the London School of Economics. Please read our [comments policy](#) before posting. Houses of Parliament image credit: [Shane Global](#) CC BY 2.0

About the Author

Nat le Roux co-founded The Constitution Society in 2009. He spent most of his career in finance and was Chief Executive of IG Group plc between 2002 and 2006. He holds an MA in Law from Cambridge University and an MSc in Anthropology from University College London.

