



Democratic
Audit



Press

The UK'S CHANGING DEMOCRACY

The 2018 Democratic Audit

Edited by
Patrick Dunleavy,
Alice Park
and **Ros Taylor**

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Read more at: democraticaudit.com

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Preface

This book presents a uniquely *democratic* perspective on all aspects of UK politics, at the centre in Westminster and Whitehall, and in all the devolved nations. It returns our focus firmly to the ‘big issues’ around the quality and sustainability of the UK’s liberal democracy. The last decade has seen a global rise of debased ‘semi-democracies’ (like Putin’s Russia) where authoritarian rulers maintain (rigged) elections and a managed, only superficially open political process and institutions as a façade, disguising parts of their corruptly run or dictatorial regime from view. In these troubled times it is more important than ever before for exponents of liberal democracy to take a critical look at their own political practices, and to identify where improvements can be made.

As our final, concluding chapter makes clear, this means paying attention not just to how the big and obvious macro-institutions in a liberal democracy work (like a voting system or a parliament) – but also to much less visible ‘micro-institutions’, the highly detailed rules that often govern how macro-institutions work out in practice. The need to cover how macro- and micro-institutions operate together is one reason why our book has 37 chapters. The other reason is to cover properly the vital contributions to UK democracy being made by the devolved governments and legislatures, and by politics at a local level – a task that takes up nine chapters in **Part 6** of the book.

The book’s overall plan follows this sequence. **Part 1** is an introduction that sets the scene for the book as whole by looking at three overall aspects of the UK’s situation as a liberal democracy. **Part 2** examines the UK’s main electoral systems and shows how they work. **Part 3** surveys the other ‘political input’ processes, that is all the ways (besides voting) in which citizens can communicate their preferences, needs and priorities to decision-makers. **Part 4** covers the heart of government in the Parliament at Westminster. And **Part 5** looks at UK executive government in the Cabinet system, how ministers and the civil service operate in Whitehall, and the public services. **Part 6** covers the devolved governments in Scotland, Wales, Northern Ireland, London and some parts of England, and local politics. **Part 7** addresses the effects of democracy in terms of defending human rights and achieving core levels of equality between British citizens. The brief **Part 8** summarises and ties together our judgements of the UK’s changing democratic performance.

Each of our short chapters follows a very similar structure. We always start by setting out clear criteria for what democracy requires in that aspect of a nation’s political life. We then outline some key recent developments in the UK, so that readers can gain an overall picture of the most important current controversies in this institutional or policy area. The heart of each chapter is a SWOT analysis (see **Chapter 1.2** for an explanation of our approach and methods). Finally, for readers deeply interested in that topic, the last part of each chapter discusses in somewhat more detail a small number of core aspects where issues arise for the democratic quality of political life.

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(iii) On factual matters (such as election data) we have linked a great deal to official statistics, and the many invaluable reports and databases from the House of Commons

Library and Institute for Government. Our links to Wikipedia also reflect the fact that its coverage is increasingly broad, reliable and up to date, although we have carefully checked the items used here.

(iv) In addition, for interested readers we have provided a **full set of references** at the end of the book. For each chapter we show the trigger words in the main text that lead to links, arranged in the sequence they occur. For each we provide a conventional endnote text version of the link. We also include a small number of non-OA sources not triggered by links but which the chapter authors feel have especial value as follow-on reading.

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Commenting on our analysis

Finally, an important motto of the open sources movement in IT is that: ‘Given enough eyeballs, all bugs are shallow’. In any text of this length there may be mistakes, or issues, sources and arguments that we have not appreciated. We aim to revise and update this book (if we can) annually, so your comments, corrections, criticism or suggestions can really help us. Please email, Tweet or message us on Facebook at any of the addresses below.

And if you have enjoyed reading the book, and want to advance open social science too, why not give us a retweet, a ‘like’ or another form of positive mention on social media?

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Any book of this scale takes a massive amount of time that eats into home life. Patrick Dunleavy thanks his wife Sheila for her invaluable help. And Alice Park would like to thank her family.

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1

Auditing the UK's changing democracy – Patrick Dunleavy

The UK is one of the world's oldest and leading liberal democratic states. So the fortunes and performance of democracy in these shores matters intensely not just to the citizens of England, Scotland, Wales and Northern Ireland but to the wider world as well. By liberal democracy we denote a complex balance between four key goals:

- ◆ (large) majority control of government via free and fair elections, genuine party competition, a vivid interest group process, and diverse other forms of political participation;
- ◆ the maintenance and development of human rights and civil liberties for all citizens, ensuring equal treatment even for unpopular minorities or causes;
- ◆ the conscious development and pursuit of greater political and social equality; and
- ◆ widespread political legitimacy for the state, in part based on the existence of multiple (plural) centres of power, information and influence within society.

We seek to give a thorough-going review of how well British government is now performing in meeting these criteria across all the salient aspects of the political process.

I begin by establishing a wider context for liberal democracy globally, where prospects have generally been deteriorating in recent times, for varied reasons. Many disturbing trends elsewhere provide important pointers to possible grounds for concern within the UK itself. The factors that are currently going wrong for democratic advance across the world mostly have their counterparts in modernisation changes within Britain itself.

Chapter 1.2 then describes how the Audit implements a detailed and disaggregated (section-by-section) analysis of the current performance of UK institutions and of recent developments in how they operate. We have undertaken a qualitative analysis, assessing various kinds of evidence and argument across a wide range of key topics. Readers will also find numerous charts and tables allied to a systematic effort to present different perspectives within each chapter.

The final section considers the 'British political tradition', or the so-called 'Westminster system', which continues to define the almost unique political and institutional development of the UK. With the 2016 Brexit referendum decision to 'take back control' of all aspects of nation state operations, the UK public voted essentially to revivify one-nation practices,

turning our back on many processes of converging towards a more general 'European' pattern of working that had previously seemed in train. For some observers, the UK's unique features and lengthy constitutional traditions and history are unquestionable sources of strength. Yet for others (as we shall see) the legacy of the UK's long imperial history and lagged transition to modernity are the origin of much that remains problematic and flawed in contemporary democratic politics.

1.1

The worsening context for liberal democracy

When the UK's Democratic Audit was established, in 1989, the prospects for liberal democracy globally seemed very encouraging. The Berlin Wall had fallen and countries in eastern Europe and within the former Soviet Union itself were beginning to separate out from the previous Communist bloc in ways that held out great hopes for a transition to democracy in many of them. In other continents too, like Latin America, decades of authoritarian dictatorship seemed to be crumbling, with democratic constitutions emerging and attracting popular enthusiasm. The 1990s indeed saw one of the largest and most sustained increases in the proportion of the world's population under democratic rule since the late 1940s.

Yet in the last two decades evidence of further liberal democratic advances has dried up. The new period began with the 9/11 massacre in the USA and the wars that followed, and intensified after the global financial crisis of 2008 struck with devastating force in many (but not all) advanced capitalist countries. Since then, worrying signs of democratic stagnation or malaise have multiplied across a wide range of countries, including some of the 'core' established democracies themselves.

One of the most disturbing of these trends occurred in countries that are mostly far from being liberal democracies, with the rise of versions of extreme Islamic jihadism in some Muslim-majority countries, and in other areas where conflicts have occurred between Muslims and Christians, or between Islamic zealots and more secular groups (often including moderate Muslims). The new jihadist movements reject western civilisation in many aspects, but with particular force for democracy and human rights. Through a 'wicked' cycle of terrorism and counter-response invasions and military actions by the USA, UK and other western powers in Arab countries and Afghanistan/Pakistan, Islamic jihadist movements in varying forms and strengths have spread across many countries. Their influence now extends from northern Nigeria in western Africa, throughout north Africa, the Middle East and across through Syria, Iraq, Iran, Afghanistan and into parts of Pakistan, even reaching Bangladesh. Jihadist movements reject liberal democracy, civil liberties and all respect for human rights in perhaps a more thoroughgoing way than any other political movement since European fascism in the 1930s. This change has serious consequences too for the domestic security of the UK and other European states, dramatised by the three major terrorist outrages undertaken by home-grown jihadist supporters in Britain in the run-up to the 2017 election.

A second key trend has been the growth of 'semi-democracies' where authoritarian governments undermine political competition from non-incumbent parties. They erode political equality, the rule of law and civil liberties behind a veneer of rigged elections and manipulated media that confer repeated popular endorsements on the regimes involved. Often closely allied with the development of **macro-level political corruption**, this disguised authoritarian pattern has been exemplified in the decades-long domination of Russian politics by Vladimir Putin. Long regarded with a degree of complacency by western governments, the evidence is now mounting that semi-democracies are dangerous for their neighbours and for world peace. For instance, Russia began by seizing tiny enclaves of territory by force from Georgia, but then moved on to lead a covert (if bloodless) occupation of Crimea. Later Putin backed a covert civil war that has wrecked much of eastern Ukraine and caused the deaths and ethnic-cleansing of thousands of people there. This return to naked power politics has been allied with overt Russian efforts to disrupt liberal democracies in the USA and western Europe that go far beyond the defence of national interest by covert means. Russian threats to frontiers along the entire eastern borders have also triggered a large-scale rearmament process in NATO's European countries, but met with only constrained responses by western democracies.

The rapid economic and social development of China under overtly authoritarian government, with one-party control and no elections beyond highly constrained contests in Hong Kong and at village level in some areas, has also powerfully eroded the association between economic improvement and liberal democracy. As something like 350 million people have **moved out of poverty** and into reasonably prosperity in each of the last two decades under Communist Party strategies, so China has become the second largest economic power globally. Its powerful state apparatus has used its new taxation resources to rebuild the foundations for a traditional Chinese foreign and defence policy, focused on achieving 'suzerainty' **over its immediate neighbours**. This has involved a degree of limited military expansion, seizing islands in the South China Sea to establish a maritime zone, and investing heavily in resource-rich developing countries to secure materials (ironically mirroring decades of similar 'realist' US policies). Yet China has also broadly maintained support for international political, trade and economic institutions that have facilitated its recent rapid growth.

The examples offered by the Russian and Chinese regimes have been influential for many other incumbent authoritarian elites needing to engage the support of rising middle class groups in industrialising countries. Semi-democratic ways of running the political system have been adopted in many countries and have spread back into some newly democratised countries. For example, in Thailand a military coup overthrew civil government after a long period of rancorous inter-party conflict. And in Turkey the popularly elected Prime Minister used his electoral majority to convert his office into an apparently near-permanent presidency, restricting press freedoms and civil liberties for his opponents and skewing election processes in his favour.

Some observers detect behind these changes a wider '**revolt of the middle classes**' in industrialising countries. These economically important groups were previously prepared to take action against legacy authoritarian regimes in their countries, in order to secure

economic liberalisation and the security of their private property, along with legal protections of civil rights and free movement across borders for themselves and their families. But as democratisation has extended so the middle classes became much less keen on securing genuine rights for trade unions or for workers (especially migrants), or on taking action to improve the living standards of the poorest sections of their societies, especially in the booming favelas and slums of the world's mega-cities. The thesis can draw some support too from the growth of mass, '**bourgeois**' protest movements, often against newly elected governments and corruption in countries like Venezuela, Thailand and Brazil, with de-stabilising consequences. In many industrialising countries there has been an increased conditionalisation of support for liberal democracy. The ideals of majority control and political freedom continue to be endorsed by sizeable majorities of public opinion, but criticism of democracy's operations in specific party-competition and public-policy contexts threatens to weaken core processes in practice.

An **additional argument** points out that: 'Over two-thirds of countries that have transitioned to democracy since World War II have done so under constitutions written by the outgoing authoritarian regime'. This often creates 'hangover' problems and anomalies somewhat similar to those still affecting former authoritarian or imperial states in western Europe (see below).

In the longer-established liberal democracies of western Europe, north America and Australasia for a long time both the governing elites and much of the public at large seemed to regard the adverse trends in the rest of the world as something remote and external to them. They affected 'far away' geographical areas, or regions at earlier stages of economic and political development, or countries that broadly lacked long-lived and firmly founded liberal democratic traditions. These problems proved how hard it was to become an established liberal democracy, but on this view they did not represent any great internal threat within the 'core' countries of the democratic bloc.

Yet modern insights into '**how democracies die**' suggest a different picture. Past complacency has been pretty comprehensively shattered within the last five years by the growth of very large and successful populist movements in many countries across western Europe, the UK and the USA itself – exemplified most dramatically in the Brexit referendum decision of 2016, the election of President Trump on a radically populist platform in 2016 and its subsequent chequered implementation, and the decisive rejection of all established Italian parties by voters there in 2018, in favour of both left- and right-leaning populist parties.

A key source of popular support for right-wing populists has been the increased salience of immigration issues. The whole world land-surface has solidified into an apparently now-immutable geographical arrangement of 186 states claiming sovereignty, and seizures of terrain have become a thing of the past (apart from Putin's adventures). So the political salience of defence has generally declined, while regulating the still large movements of peoples across the immutable borders has increased in importance.

Right-wing populism has been sustained by a reaction against 'foreigners', plus the 'securitisation' of immigration because of jihadist Islamism (especially strong in Europe),

and because of extreme drugs-related violence in Mexico (a strong fear factor in the USA). Reactions to increasing public fears focusing on migration have amply demonstrated the potential 'lynch law' qualities of populism, with measures appropriate for tiny minorities of people being extended to whole categories. The '**naïve statism**' that often fuels populism is also well demonstrated in the 'build a wall' reaction of President Trump, who is apparently committed to constructing a 1900-mile long set of southern frontier defences for the USA.

These developments have culminated in some liberal democracies moving sharply downwards on international democracy league tables and seeming vulnerable to a long-term democratic malaise. The USA is the most prominent country affected. Its former 'city on the hill' ideals have been tarnished by clear evidence of prisoner torture, redaction and imprisonment without trial, with a disdain for international law shown in the 2000s 'war on terror', and again since 2017. The 2003 invasion of Iraq on a pretext; drone assassinations of opponents deemed terrorists in Afghanistan and elsewhere (without trial); apparent mass intelligence surveillance of allies' citizens; and deals to monitor even US citizens, enacted outside the rule of law, have all seemed to create a modern apparatus of 'imperial' rule (despotic overseas and on state security, but democratic at home). (Many of the same charges can be made in a minor key about the UK's roles as American ally in the 2000s.)

The intensification of **acrimonious partisan controversies** in the USA marks a key change. The **integrity of US elections** has sharply declined due to the rise of systematic 'voter suppression' policies, especially practised by Republican state legislatures against poor and black voters whom they expect to be Democrat supporters. Shockingly, these administrative practices (such as removing non-voters from the electoral roll altogether) have been endorsed by the conservative-dominated Supreme Court. Their range has multiplied so greatly that an international project on electoral integrity in 2018 rated North Carolina as **no longer a liberal democracy**.

A weakening of the two major US parties' appeals seems to have stimulated more unprincipled elite efforts to retain control by bidding up the intensity of partisan advocacy. Politicians have sought to engage populist supporters via ever-more vitriolic campaigning that converts into **more polarisation** amongst voters themselves, rancorous legislative obstructionism and a collapse of previous bipartisan co-operation. The USA remains the only liberal democratic country where a two-party system as predicted by Duverger's Law still operates, but increasingly without providing the strong and stable government that 'majoritarian' arguments always said would be its corollary. The stalemate over any form of restrictive limits on who can buy guns – despite successive US school and other massacres carried out by anomic gunmen – is one of the most prominent symptoms of political over-polarisation. Little wonder then that one prominent index of democracy (**V-Dem**, Figure 1, and see below) has the USA dropping from a score of 85% in 2015 to one of 72% in 2017, making it the fifth most prominent democracy 'backslider' in that period.

Amongst political scientists the implications of these disturbing developments remain quite strongly disputed. An 'old guard' of analysts, who place their trust in the study of long-run responses to 'values' questions about liberal democracy, argues that in the USA and other established democracies public opinion remains broadly stable, with only small declines in the numbers of survey respondents agreeing with pro-democracy statements. However,

another group of analysts point to sharp increases in support for clearly 'undemocratic' responses (such as favourable attitudes to military rule or government by non-elected experts) in the USA, and in some other European democracies including the UK. Similarly, the proportion of the population who say that it is essential to live in a democracy has fallen markedly since the 1990s, in the US, UK and some other established democracies. These responses perhaps cannot be taken at face value, but the increasing proportions of citizens prepared to endorse them is worrying.

At the least, then, the global context for liberal democracies has clearly worsened radically since 2000, semi-democracies and authoritarian regimes show few signs of transitioning to democratic norms, and many liberal democracies have shown signs of 'backsliding' and distortion of the political process to favour incumbents. Even in previously 'core' liberal democracies, like the USA, respect for essential civil liberties has apparently declined, and the proportion of citizens impatient with party politics and elections as the means for settling policy disputes has apparently increased substantially. Thus the context for our Audit of the UK is a darkening one, and the number and range of threats to democratic performance have multiplied.

1.2

Evaluating UK democracy and the Democratic Audit's choice of methods

These developments are one reason why this book offers a detailed, section-by-section evaluation of the changing state of UK democracy, and not the simplifying, summative assessment that has been widely offered by quantitative assessments and rankings or 'league tables' of democracy. The changes involved are subtle ones, and their effects cumulate and interact in ways that the aggregate indices find difficult to capture.

However, there are now quite a number of these indices and before explaining our methods in more detail, it is useful to look at the alternative treatment they provide. Figure 1 shows some of the main indices and how they currently rate the UK, plus any overall classifications they give, together with a brief note on the methods used to compile them. The indices covered here are up to date or relatively recent. They are orientated to measuring relatively fine-grain changes, and have reasonably sophisticated methodologies. They are arranged in Figure 1 in a rough descending order of their influence, with the EIU's Democracy Index much the most widely quoted, although its methods are not entirely clear. The next three are academic productions, with better explained methods. The IDEA index has been adopted by the UN. The Zurich 'Democracy Barometer' accords a lot of influence to the proportionality of the electoral system, which other measures more or less ignore. The 'Democracy Ranking' has not been updated and is relatively obscure compared to the others.

Figure 1: Some current quantitative rankings of liberal democracies and how they rate the UK in 2017–18

Name of index	Produced by	Rating of the UK	UK rank	Lowest scoring elements	Methods (linked to UK data page)
Democracy Index	Economist Intelligence Unit (EIU)	8.5 out of 10 Classed as 'Full democracy'	14	'Functioning of government' = 7.5 out of 10	Varied, not entirely clear
Varieties of Democracy	V-Dem at University of Gothenburg	87% on the Liberal Democracy Index	16	68% on the 'Participatory component'	Quantitative data analysis, aggregated into six components
Global State of Democracy	International IDEA	83% average score across 16 political/institutional dimensions	not given	17% on 'direct democracy'; 60% on electoral participation	Varied, but data-heavy
Democracy Barometer	University of Zurich (in 2014)	58% on overall 'democratic quality' index, across 9 political/institutional dimensions	2014 rank not given, but was 26 in 2011	49% on representation dimension; 53% on popular control and social equality	Quantitative data analysis , aggregated into six components
Democracy Ranking	Austrian NGO, Democracy Ranking (in 2014)	75% across seven political, economic and other dimensions	14	62% on the economy; 64% on knowledge of democracy	Varied indices, but uses data

Note: URL links to all sources are included above (see also [References](#) section).

What picture do these scorings give about UK democracy? All agree that the UK is one of the world's top group of democracies, but none of them put it within the top ten positions. However, the top-scoring countries tend to be small or very small countries, especially the Scandinavian countries with some tiny additions (like Estonia). Arguably it is much easier to run a liberal democracy with (say) six million people than with the UK's current 66 million. And, of course, it is harder still to run a democracy with 300 million people (as in the USA), and very hard to do so with 1.2 billion people (as in India). Smaller states are more straightforward to operate, and organising public participation and consultation is simpler. So perhaps this explains the UK's absence from the top ten. Five of the six rankings score participation-related aspects as the UK's weakest area. However, EIU scores it lowest on how well government operates.

(*Side note for geeks:* In addition to the indices above, there are literally hundreds of different classification schemes that are of no use to us here, because they are primarily orientated towards the comparative classification of countries over time [for example, across the last century]; use simplistic typologies [where the UK is just always in the top/best 'democracy' category], or are very out of date. They have been discussed extensively by **political scientists** and **development economists**, but they are useless for our purposes because the UK achieves a 'ceiling' score in them. A well-known example is the **Polity IV score**, which updates every year but always gives the UK a 'perfect' 10 out of 10 score [along with the USA] – whereas other democratic countries [like France] are often scored 9 out of 10. It is produced by a **US think tank**, and funded by the CIA.)

In addition to the overall democracy rankings, there are a large number of other measures of single aspects that are highly relevant to democratic performance. Figure 2 shows how the UK compares with other countries on some key institutional criteria: freedom of speech and media, civil service effectiveness and corruption. Their importance for democratic performance is clear-cut – with corruption and media manipulation by political leaders especially emerging as central means of contemporary democratic decline.

Figure 2: Some current rankings of partial institutional aspects of liberal democracy, and how they rate the UK in 2017–18

Name of index	Aspect of democracy covered	Rating of the UK	UK rank	Methods
Freedom House Index	Freedom, political rights, civil rights	94% out of 100% Also: Score = 1 ('fully free') on a seven-point scale	16	2018 rating Both Press and Net freedom status = free
Transparency International	Corruption, bribery etc.	81% out of 100	10	Survey evidence of perceptions of corruption
INCISE Index of Civil Service Effectiveness	How well national bureaucracies operate, using objective indicators and expert judgements. Produced by UK think tank, the Institute for Government (with UK civil service funding).	Implied average score of 87% across three macro-indices	4 out of 31 countries assessed	76 metrics aggregated into 12 component scores (see p.63). UK ranked top for 3, but below 50% for capabilities and digital services.

On both freedom measures and the absence of corruption the UK does well, but does not score exceptionally highly. The INCISE measure of civil service effectiveness gives the UK its highest ranking of any comparative measure, at fourth out of 71 countries covered. However, INCISE could be seen as generous to the UK – for example, in giving the UK top marks in regulatory effectiveness for 2017, despite the crisis of building regulations revealed by Grenfell Tower, and the earlier neglect of macro-prudential regulation of bank liabilities.

Another relevant set of partial criteria to consider for liberal democracies are shown in Figure 3, which covers output-related measures – in terms of meeting people’s basic needs, achieving well-being or happiness for citizens, and levels of social equality (or inequality). Their relevance for democratic performance lies in the salience of including all citizens in political life on relatively equal terms, which clearly requires that some measure of social equality is maintained. Again, the UK is placed in a rather familiar ‘good but not outstanding’ category, except on social inequality where it is placed in the bottom group of OECD countries, alongside the USA.

Figure 3: Some current rankings of output/political equality aspects of liberal democracy, and how they rate the UK in 2017–18

Name of index	Aspect of political equality covered	Rating of the UK	UK rank	Methods
Social Progress Index	Index of how far society meets people’s basic needs, creates well-being foundations and offers opportunities	89% out of 100	12	Index aggregated from 12 underlying indicators, then normalised
World Happiness Report	Happiness index based on healthy life expectation, social support, generosity, choices	6.7 out of 10 (top country’s score = 7.6)	19	Mix of survey data and country statistics
OECD late 2000s	Inequality after taxes and transfers (GINI coefficient)	0.345 (Best country = 0.25. Worst country = 0.48)	27 (out of then 34 OECD countries)	Country statistics on income levels across social groups

Summing up, quantitative assessments and league tables of democratic performance tend to have a problem with ‘ceiling’ effects, with ‘advanced’ countries bunching near the top. Even allowing for this, the UK rarely makes the ‘premier league’ of excellent performers, coming in instead in the ‘first division’ of good but at times somewhat flawed democracies.

For any one ranking it is always possible to make an argument that the measures being considered are problematic in some degree, or have been put together into component indices in ways that reflect value judgements – which indeed are inevitable in this field of work. However, the UK’s recurring placement across multiple rankings is not so easily dismissed – for the inaccuracies or potentially questionable features of indices tend to wash out when we look at many different measures. Aggregated quantitative indices are also rather ill-adapted to assess the democratic quality of advanced countries, especially where they take the established democracies as an unproblematic standard for the assessment of developing countries, which is potentially a rather smug assumption.

Democratic Audit's disaggregated approach

One of the founders of Democratic Audit (along with Stuart Weir) was the philosopher David Beetham. He claimed that:

'Our conception of democracy is more comprehensive, and our assessment criteria more rigorous, than those employed in other democracy assessments. We have not limited democracy to the two areas of electoral competition and inclusiveness and civil and political freedoms that have become standard since Dahl's Polyarchy... In addition, we have used the principle of political equality as a key index of democratic attainment throughout our assessment of political rights and institutions.' (Beetham, 1999, p.569).

And he rejected trying to define an overall ranking:

'because aggregation into a single score is inappropriate to the distinctive purpose of a democratic audit, which is to help differentiate between those aspects of a country's political life which are more satisfactory from a democratic point of view and those which give cause for concern. For this purpose, keeping the different aspects separate, and making a discursive assessment of each in turn, is both a more appropriate and a more defensible procedure.' (Beetham, 1999, p.569).

This approach was an influential one, and **adapted well to comparative use** in different countries.

In addition, we need multiple criteria because we are assessing a democratic *state* – and modern political theory emphasises that a state is never a single unity (as both Marxists and neo-liberals used to claim), nor ever just a ragbag of miscellaneous institutions (as pluralist liberals used to claim). Instead states are composed of multiple connected parts, all of which must work harmoniously together if the state is to survive and work effectively. In one perspective **the state is a 'multi-system'** – like the human body, composed of multiple partly independent systems (muscles, bones, nervous system, respiratory and blood supply systems) that must work jointly within narrow limits if effective operation is to be maintained. A more post-structuralist view sees the **state as 'many things'**, so operating in a differentiated way, but also strongly unifying.

For our purposes, though, the key implication is the same – namely that a disaggregated or bit-by-bit evaluation can offer many more useful and differentiated insights into the UK's changing democracy. In each chapter that follows in sections 2 to 7, we look at one of 32 components that we identify as critical building blocks of a liberal democratic polity. And because democracy is a local thing we devote nine of these chapters to following this analysis through into the devolved governments of Scotland, Wales, Northern Ireland and England at sub-national level.

In the qualitative methods we have used throughout our analysis:

'Popular control and political equality comprise our two key democratic principles and provide the litmus test for how far a country's political life can be regarded as democratic.' (Beetham, 1999, p.570).

However, we have also made two innovations on the original Democratic Audit schema for evaluation, so as to develop and make fully transparent the basis on which we have made judgements of performance and assessed recent trends and changes.

First, for each of the topics that we analyse we seek to specify clearly and comprehensively what are the *democratic criteria* applying in that area. We set out these bases for judgement in a box at the start of every chapter. All of these evaluations:

- ◆ relate to core liberal or democratic (majority rule and popular control) principles;
- ◆ are sufficiently generic to apply across all (or a viable sub-set) of countries;
- ◆ are ranked, so that we would expect established liberal democracies to pass all criteria that more recent democracies pass;
- ◆ are realistic (i) in recognising that perfect or utopian principles always conflict, and so how they are reconciled is critically important;
- ◆ and realistic (ii) in recognising that liberal/democratic principles and state viability/efficacy must sometimes conflict.

Many philosophers have also expressed these last two 'realism' requirements as the problem of '**dirty hands**'. Any leader or government will sometimes face choices where one ethical principle must be violated if another ethically desirable goal is to be achieved. Some choices are necessarily dilemmas (with undesirable costs attaching to whatever course of action you take). To be useful (and not just utopian) the criteria for democracy must acknowledge such conflicts, where needed.

Second, we have used a framework called *Strengths, Weaknesses, Opportunities and Threats (SWOT)* to provide clearly visible overall judgements of the UK's performance against the democratic criteria. The 'strengths' section sums up how many aspects of the UK's arrangements conform with democratic requirements, explaining why it is a leading democracy in these respects. The 'weaknesses' section considers where democratic criteria are not currently being met, briefly tracing their causes and effects. (We also expand on some strengths and weaknesses in the discussions of key topics that follow the SWOT analysis.)

Because democracy is a living, changing focus of many different people's practices, hopes and aspirations, our SWOT analysis also covers future trends and developments. 'Opportunities' are areas where current strengths can be expanded or deepened in future, or where new approaches might extend the value of current democratic practices. 'Threats' are adverse possible developments, where democratic performance may worsen in future – either because of wider trends (for example, digital social media eroding 'legacy' media's coverage of politics), or because of distinctive UK state actions that inhibit or damage existing freedoms or democratic practices. (These two parts of the analysis are also discussed more empirically, either in the 'recent developments' sections that come just before the SWOT analysis, or in one or two sections that follow it.)

1.3

The ambivalent legacies of the 'British tradition'

Central to the UK's strengths as a democracy is its stability, with constitutional changes and democratisation both happening gradually and in manageable increments, so creating a long political tradition on which voters and elites can draw in resolving new problems. Yet the recurring mirror weakness in British democracy is that for much of its history, the UK state was first oligarchic (run by an aristocracy) – and later a mixed imperial state. From the late 19th century, the political system was in part (slowly) democratising at home, but at the same time it operated in essentially despotic ways across India and colonies with hundreds of millions of (non-white) subject peoples.

Political scientists assign a lot of importance to a phenomenon called '**path dependency**': once a country starts off with a given set of core institutions, it tends to move down a particular direction of change that is influenced by the initial conditions. So a country usually cannot go back and do something different. Nation states cannot (easily, without some unusual crisis) reset their constitutions or established institutions into a fresh or modernised set-up adapted to a new age with new problems. Instead political systems mainly **adapt the institutions** they already have, or make only those changes that seem feasible from their previous direction of travel. Sometimes the influence of earlier stages of development is benign, providing key foundations for new responses, with changes then happening in peaceful increments. But at other times 'legacy' institutions endure into very different conditions despite operating poorly or in non-democratic ways, and here citizens and politicians are forced simply to accept that 'this is the way things are' and that a majority will for change is not sufficient to be effective.

The Westminster tradition as an asset

British political historians have overwhelmingly taken a strongly favourable view of what's called the *Westminster tradition*, summed up by **Anthony King** as 'Britain's power-hoarding constitution' [p.81]. Its central elements combine the apparently different doctrines of parliamentary sovereignty (there is no constitutional or judicial or any other limit on what Parliament can legislate), with the actual subordination of Parliament almost all the time to the executive elites of the two main, highly disciplined parties. In practice, a single-party government with a solid Commons majority was the normal peacetime situation in the late

19th and 20th centuries. Thus Parliament in fact became dominated by the Prime Minister, ministers and the executive. In this set-up, as King [p.49] aptly remarked: '[Walter] Bagehot [the leading constitutional commentator of the 1860s] and most of his successors... were right to observe that there is one and only one crucial institution in the British system: the government of the day'. Yet the mighty executive has marched under the apparently paradoxical banner of parliamentary control, reconciling the two by claiming to embody the electoral will of the people.

The allegedly positive features and consequences of the Westminster tradition have also been expounded by dozens of political science, and constitutional and legal commentators. The UK has an unfixed constitution, written down only haphazardly in numerous different documents. Its operations are subject to a lot of interpretation. And how things work in practice often depends on the existence of limiting conventions, which sustain a degree of consensus on the rules of politics between the competing major party elites. (Conventions are akin to 'rumble strips' on the sides of roads, but they are not crash barriers. You can easily drive over or through them, if you don't care about the ugly noise created.) The constitution can be easily changed – sometimes by a single vote in the Commons, as with the 2015 introduction of 'English votes for English laws' (EVEL). This change brought in novel legislative procedures at Westminster for processing laws only relating to England, from which non-English MPs were excluded (see [Chapter 4.1](#) on the House of Commons).

The unfixed and uncodified constitution is said to be adaptable, to facilitate elite consensus on fundamental values and norms that conduce to effective government, and yet to respond sensitively to (most) public demands. These claims are often allied with a macro-narrative of steady democratic progress, first in the 19th century towards limited democracy from a liberal monarchical constitution, and then in the modern era towards universal franchise, the full extension of civil liberties, a welfare state and (since 1997) a more devolved and participatory democracy.

Gradual change amidst strong traditions is said to have developed a 'civic culture' engendering benevolent habits and instinctive actions amongst citizens that support democratic debate without rancorous divisions. This is something like a political equivalent of [fast/slow thinking](#) as analysed by Daniel Kahnman, with the 'fast' impulse here being an almost instinctive closure to extremism amongst British voters, and recognition of the need for collective decisions to respect the rights of all. For example, UK civic attitudes are said to shut down (most) rancorous political extremism before it flowers, and to be successful in attracting new generations of citizens and also inward migrants to operate within the existing institutions via 'soft power' and rational logics.

More differentiated accounts

The key danger of the literature justifying 'the British political tradition' and the Westminster model is that it becomes a myth-building exercise, positing a smooth linear development that ignores repeated disjunctures and crises that have shaped the UK's political evolution. Many modern political science accounts claim to be sensitive to the dangers of 'meta-narratives', which often end up justifying the status quo as something like Voltaire's

'Everything is for the best in the best of all possible worlds'. These revisionist accounts assign more significance to the persistence of strong disagreements about how the political system does and should work between different parties and political groupings within parties. For example, Mark Bevir and R.A.W. Rhodes argue that four main 'narratives of governance' have contested the nature of the UK's polity for a century or more, shown in Figure 1.

Figure 1: Four alternative traditions/interpretations of the UK polity

	Contesting traditions			
	Liberal (to neo-liberal)	Tory	Whig	Socialist
Core locations	Conservative Party, right-wing Liberal Democrats	Traditionalist Conservatives, House of Lords, legal profession	Traditionalist Conservative and Labour elites	Labour Party, trade unions, public services
'Governance narrative'	Markets and communities need careful husbanding	Intermediate institutions have been eroded or wrecked	An 'organic' constitution and polity is needed and can be returned to via reforms	Government needs to be joined-up to serve welfare needs
'Storyline'	Markets need to be restored and state overload reduced	Preserving traditional authority and institutions is vital for stability	Evolutionary change in institutions	Reconfiguring the bureaucratic/administrative state is key

Source: Derived from [Bevir and Rhodes, 2004](#), Table 1.

These positions are not just academic creations (although each has many academic exponents). Rather Bevir and Rhodes claim that these traditions are live and current elements in the thinking of UK political and administrative elites. Their effects can be observed at work in debates and controversies over constitutional and policy issues. They are **embedded in the everyday practice** of ministers and civil service elites. According to these authors they can be seen threading through elite behaviours when observed by ethnographic techniques, like shadowing top officials or ministers through their daily activities.

The legacies of imperialism

There is a singular omission in the accounts of both the conventional defenders of the Westminster tradition, and the more recent culturalist accounts of its enduring role. Both are strongly selective in their historical picture of the UK state, with their focus narrowly drawn *only* on the core UK territories and processes that relate to them.

Most conventional descriptions (especially by modern political scientists) include nothing more than isolated, passing references to the British empire. A few fuller accounts stress instead that the empire always had only minimal effects on the core institutions of Westminster, Whitehall and intra-UK government. For instance, in describing 'Britain's traditional constitution', **King (2007)** wrote [p.47]:

'The traditional constitution was also remarkably self-contained. So long as the British Empire existed, important British institutions, notably the Colonial Office, the India Office, the Dominions Office, and the Judicial Committee of the Privy Council (which acted as the empire's supreme court), did intersect with the outside world; but the constitutional traffic was, so to speak, almost entirely one way. It was overwhelmingly outwards... In constitutional terms, inbound traffic was almost non-existent. Britain felt no need to learn from the institutions and practices of other countries.'

The empire appears in most recent UK political histories chiefly as an aberrant episode of history – one that should never have happened, was always destined to disappear, and anyway was relatively benign by the standards of the times. It therefore has only a limited significance for the development of the home UK state and polity, chiefly confined to the (predictable) loss of Empire in the period 1945–70, with its main impact on voters and public opinion being that 'by the mid 1960s the British were no longer special. They were ordinary, very ordinary'. (King, 2007, p.65). The implications for UK elites were (as Dulles put it) that the country had 'lost an empire but not yet found a role'. Similarly, despite their stress on understanding political and administrative cultures, Bevir and Rhodes' works (**such as 2010**) actually mention the UK's imperial recent past only once, to note how nostalgia for empire was an integral part of Enoch Powell's anti-immigration stance. Thus, most conventional accounts and the culturalist analyses of political traditions both practice a kind of UK 'nativism' in which they ignore or marginalise anything in the path development of UK governance not relating directly to the British heartland.

The key thing about organisational and institutional cultures, however, is that they are very long-lasting, and also very hard to change. Developed over decades, they may last centuries. So is it really credible that the imperial state which lasted in the UK for more than three hundred years, and which existed in a recognisably modern form as a consistently and strongly unified apparatus from the 1860s to 1970, has so few implications for the modern UK?

One interesting pointer to an answer is that the Brexit referendum and the rejection by voters of 43 years of pro-EU policy-making was apparently closely linked amongst older voters with a nostalgia for times past, **including the imperial period**. In January 2016, **YouGov** found that 44% of UK respondents were proud of Britain's history of colonialism while only 21% regretted that it happened; 23% held neither view. The same poll also asked about whether the British empire was a good thing or a bad thing: 43% said it was good, while only 19% said it was bad; 25% responded that it was 'neither'. A **2014 YouGov poll** found 59% of respondents supporting the view the British empire was 'more something

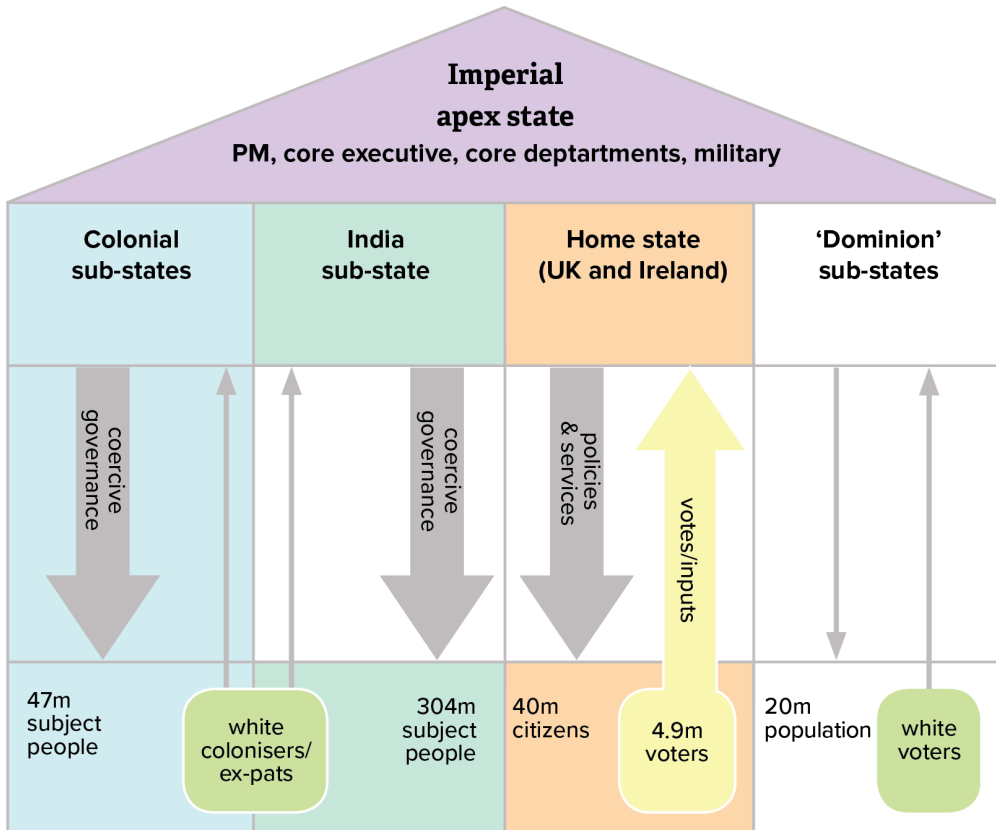
to be proud of', compared to 19% feeling it was 'more something to be ashamed of'. **One columnist** observed that: 'The sun may never set on British misconceptions about our empire'.

And surely one of the most salient facts about the modern UK state is that throughout its most formative century (1850 to 1950) it was not just a liberal constitutional state, still less just a slowly evolving liberal democracy. It was instead a *mixed polity*, where the liberal and democratic parts co-existed with a huge apparatus of overseas empire that was for the most part governed despotically (and on racist lines). Figure 2 shows how these arrangements operated in 1910, with four very different kinds of political system all channelled through the same Westminster Cabinet system and Whitehall civil service.

(i) Perhaps the dominant part of the system was the home or 'island' state (shaded orange in Figure 2). Inside the UK's 'metropolitan territories' of Britain and Ireland a recognisably democratic political process operated. It still involved only a small minority of male voters, but already the UK elites had worked out how to do peaceful political succession as strong parties alternated in government, and they in turn created a well-organised home civil service. By 1900 there were even the beginnings of a welfare state. Of course, the home state dominated much of the business of the apex state, shown shaded purple, and many of the issues that preoccupied politicians and parties.

Even in the 'metropolitan core', however, the inclusion of Ireland caused huge anxieties to UK elites – with the elite (and mass) fearing that Irish nationalists might come to hold a balance of power at Westminster and use that leverage to advance their independence cause. To stop this from happening, from the 1870s onwards Tory and Liberal party elites agreed a whole range of restrictive practices limiting the power of the Westminster Parliament in favour of the government of the day. These included the ability to close down and guillotine Commons debates, force votes and, very significantly, a ban on MPs proposing *any* new public spending without a certificate from ministers (which was never given). These measures consolidated major party elites' ability to dominate their MPs, but they also meant that, with some cross-party agreement at leadership level, Irish MPs' influence could be minimised. This was a key reason why MPs' influence was so radically reduced at just this time, and why the executive and opposition came to so thoroughly dominate the Commons.

Figure 2: The British imperial state in 1900



(ii) A second, rapidly growing element in Figure 2 (shaded white) consisted of the white settler states that would later evolve into 'dominions' (chiefly Canada, Australia, New Zealand and South Africa), plus the white settler minorities in India and in other colonies. It is rarely appreciated in the UK now how vast was the scale of emigration from Britain and Ireland to the imperial territories:

'Between 1815 and 1914 around 20 million Britons left the country, a massive exodus relative to the total population. By 1900 the British population was about 41 million; without emigration it would have been over 70 million.'

(Kennedy, 1992, p.6).

Some of this out-migration was voluntary, but much was not, especially in Ireland. There, compared to 1800: 'By the 1840s starvation and emigration had reduced the population by one-fifth [on its 1800 level]' (Kennedy, 1992, p.10). Nevertheless, by 1900 white populations in the countries that later became the 'white' dominions were organising and operating their own democratically elected governments. Hence, as Figure 2 shows, their political elites were accorded a measure of influence by the UK's imperial command.

In (iii) India (shaded green) and (iv) the other UK colonies (shaded blue), the white populations exerted an important if less direct and formalised influence on imperial officials – who relied a good deal on their support and co-operation in regulating sometimes

turbulent local politics. All colonies were expected to be self-supporting in budgetary terms, and to contribute when needed to 'imperial defence'. In return, they knew that the same UK protective naval and military umbrella could apply to them if ever needed, and that they would enjoy the benefits of imperial trade preferences. So for the white populations only the rightmost columns in Figure 2 included channels of influence that were also liberalising (albeit in a revenue-constrained way) and moderately responsive to local opinion.

However, for the non-white populations, the same two leftmost columns in Figure 2 show that governance was run on entirely despotic lines, with native populations coercively governed and policed. Beyond law-and-order roles, almost nothing by way of state services was organised for the non-white population (let alone any form of welfare services). The 350 million people governed in this way dwarfed the 60 million home island and later dominion populations, creating a huge military/policing tensions. Managing them required constant attention from the centre and its pro-consuls in each territory.

The main difference between the two rightmost columns in Figure 2 was that India and its surrounding regions were recognised as the chaotic legacy product of multiple past civilisations, whereas in Africa especially native peoples were seen as uncivilised and prone to purely tribal reactions. Accordingly, law was seen as an important weapon for maintaining imperial predominance in India, so that UK despotism there was always somewhat more constrained. For Weiner (2009) 'Law lay at the heart of British imperial enterprise'. As James Fitzjames Stephen observed in the early 1870s:

'British Power in India is like a vast bridge... One of its piers is military power: the other is justice, by which I mean a firm and constant determination on the part of the English to promote impartially and by all lawful means, what they (the English) regard as the lasting good of the natives of India. Neither force nor justice will suffice by itself... Strike away either of its piers and it will fall, and what are they?' (Porter, 2010, review of Weiner, 2009).

(Of course, no Indian court had any jurisdiction over the UK officials operating the imperial apparatus in India for any act done in a public capacity, from the Viceroy down to the lowest district administrator.)

In the era of free trade, none of this could protect the Indian economy from opening up to UK trade, however devastating the consequences of imperial globalisation were for the domestic economy:

'whereas the British and Indian peoples had roughly similar per capital levels of industrialisation at the outset of the Industrial Revolution (1750), India's level was one hundredth of the United Kingdom's by 1900... India imported a mere one million yards of cotton fabric in 1814, but that figure had risen to 51 million yards by 1830 and to a staggering 995 million yards by 1870'. (Kennedy, 1992, p.11).

Some revisionist historians have recently argued that the theme of British **exploitation of India** can **be undone**, and that some economic change did occur. But the basic picture is at best a severely mixed one.

The idea that the development of the UK state was largely uninfluenced by the imperial period historically relied on a range of other supportive beliefs – such as that the British empire was distinctively liberal, benign and interested in the welfare of its subjects (at least by comparison with contemporary empires); or the equally powerful 'myth of effortless control' whereby hundreds of millions of Indians were ruled by a few hundred thousand (white) British officials and troops. In fact, **estimates by Subrahmanyam** (2006) show that at its peacetime peak around 1910 the imperial state involved more than 2.5 million people – in a period when world populations were a fraction of their current levels.

And recent studies of the millions of lives lost in repeated and perfectly avoidable Indian famines (**the last in 1943**) and of 'barbed-wire imperialism' have demonstrated that (whatever the self-beliefs of the officials involved) the UK empire could not escape the worst consequences of despotic rule. Concentration camps, for instance, were invented in British India to warehouse otherwise itinerant **victims of famines**, long before their more notorious use against a complete (white) people during the Anglo-Boer war. **Forth notes:**

'The scale of internment is shocking: in the final decades of the nineteenth century, Britain interned more than ten million men, women and children in camps during a series of colonial, military, medical and subsistence crises.'

The increasing demands of the imperial state often lead the way in British officials developing all the varied technologies of modern government, including the management of extended chains of command, military and political intelligence systems, and modern, centralised communications:

'The number of telegrams and dispatches at the Foreign Office rose markedly – from 9,060 in 1825 to 91,430 in 1895 – as did registered papers at the Colonial Office. The number of papers handled by the Colonial Office doubled between 1868 and 1888. Its telegraph bill rose more than twelvefold between 1870 and 1900–1, and the number of telegrams it dispatched rose sevenfold between 1907 and 1915.' (**Harrison, 1996, p.63**).

The imperial state provided a template for the modern UK civil service (which developed from an Indian civil service blueprint) and its technologies defined some of the most advanced governance practices of the era:

'In the case of the nineteenth-century British high civil service, the code of "honorable secrecy", maintained by a whole new technology of "administration", reasserted aristocratic, part-patrimonial, powers within government and the often highly dishonorable exchanges of information and favors by which political work gets done by state agents.' (**Joyce and Mukerji, 2017, p.16, quoting Vincent [1998]**).

Above all, the routing of all imperial issues through the Westminster apparatus of Prime Minister, Cabinet and Parliament, and the Whitehall apparatus, created a radically bifurcated situation in the policy-making environment – where one item on the agenda for decision-makers involved domestic, democratically influenced politics, and the next would relate to the despotic government of other races. Keeping both ways of thinking and proceedings going in tandem required that decision-makers develop a kind of 'split

personality' culture. Little wonder then that over 150 years a cross-pollution of each sphere occurred. Imperial policy was increasingly infected by the myths of a 'white man's burden' creating ethical issues for imperial administrators. And the exigencies of repeated imperial crises required the development in the apex state of a culture of secrecy, cross-party elite 'bloc' rule, the suppression of all parliamentary initiative in spending or legislation, and the insulation of much of government from any effective popular control.

These effects were most apparent amongst the aristocratic 'pro-consuls' who kept the imperial state's multiple contradictions in working order:

'[Lord Alfred] Milner's private correspondence is peppered with scorching comment on the problems resulting from "this rotten assembly in Westminster" where "the whole future of the Empire may turn upon the whims of men who have been elected for their competence in dealing with Metropolitan tramways or country pubs".' (Harrison, 1996, p.62).

Similarly, Lord Selborne told Lord Curzon in 1907: 'One of the great problems you and I have to try to solve is how to develop the constitution so as to remove things really imperial from the control of the House of Commons.'

The safe operation of the empire, insulated from destabilising, democratic politics, required increasing deformations in how the executive and legislative branches acted in order to reconcile contradictory impulses. While these changes could be more easily accommodated within the uncodified constitution, the reliance on restrictive political and administrative cultures changed the purely 'island state' history of the UK polity into something far more onerous and with adverse legacy effects. The American conservative thinker George Santayana wrote in his 1922 *Soliloquies from England*:

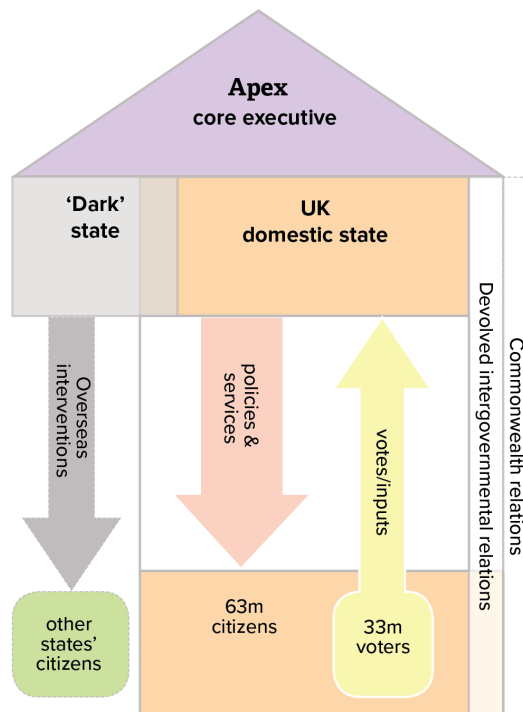
'When a people exercises control over other peoples its government becomes ponderous even at home; its elaborate machinery cannot be stopped, and can hardly be mended; the imperial people becomes the slave of its commitment.' (quoted Kirk, 1982, p.468).

Did all this change from 1947 with Britain's overly delayed and badly botched retreat from empire in India (where decades of earlier 'divide and rule' policies contributed to millions killed in Hindu and Muslim ethnic riots)? Not much, in fact, because as Harrison (pp.64–65) noted:

'The administrative consequences [of empire] for Whitehall of Britain's world role persisted well into the 1960s and were wound down less from inclination or design than in response to economic crises... The empire in decline made greater bureaucratic demands than in its days of prosperity.'

Of course, the imperial state overseas shrank back progressively. Yet if we consider the contemporary structure of the UK state in 2018 (half a century after the colonial dream was finally given up in the retreat from Aden) there are some substantial continuities still with the earlier imperial period, as Figure 3 shows. The almost complete dominance of the UK domestic state is clearly shown, although the development of devolved governments and inter-governmental relations is beginning to qualify it. The old apparatus of empire lingers on only in the vestigial form of the Commonwealth.

Figure 3: The UK state in 2018



However, there is a more substantial relic of imperialism in the persistence of a substantial 'dark state' that encompasses:

- ✦ the UK's nuclear defences and facilities (created and retained by a post-war Labour and Conservatives elite 'bloc' as a substitute for empire in international affairs);
- ✦ an extensive apparatus of fighting 'small wars' (for example, now including special forces and drone warfare) that has seen UK forces involved in overseas conflicts (as well as in Northern Ireland) in every post-war year, often in ex-colonies – most recently in Libya, Iraq and Syria;
- ✦ a 'cold war' alliance-state legacy, including a 'special relationship' with the USA;
- ✦ a highly developed intelligence state (forming part of the 'Five Eyes' linkage of the USA and the UK and three former dominion states);
- ✦ a highly developed procurement state, which requires that the UK be a leading armaments exporter in order to survive, and which increasingly underpins the UK's dwindling manufacturing and high-tech sectors.

This part of the state is 'dark' not because its activities are necessarily nefarious or directed to wrong purposes, but because so much of its operations are kept away from Parliament and public debate, shrouded still in a pervasive secrecy that is yet another enduring legacy of decades of imperial rule.

Now, just as in the past, a whole series of conflicts inside the UK's political parties can be traced to 'dark state' operations – such as the status of the Trident missile programme in

Labour's policy; or the operation of the Faslane nuclear base in the Scottish independence debates); or the August 2013 Tory–Liberal Democrat government move to start bombing Syria, which was the first foreign policy case where a majority of MPs rejected a Prime Minister's war-making initiative in the **post-war period**.

The continuities in state practices and modes of decision-making between the imperial state in its heyday and the contemporary 'dark state' are striking. For instance, **Ledwige's 2017** book *Losing Small Wars: British Military Failure in the 9/11 Wars* is strongly reminiscent of **Callwell's classic** (1896) treatise on *Small Wars* (still in print), and different from the still 'business as usual' gloss in **Mockaitis**. The UK's failures in Basra, Afghanistan and Libya show an almost spooky continuity with the UK's imperial past – both within the UK armed forces and Ministry of Defence, and in the very heart of the state in the core executive as it authorised repeated, failed overseas interventions. And the burdens of managing an overwhelmingly democratised polity while masking the continuation of the 'dark state' from the public's gaze, still continuously creates deep-lying structural and institutional tensions.

These cloud and obstruct the impulse for democratic reforms to 'normalise' the institutions of UK democracy. For instance, the UK has been a consistent laggard on recognising international human rights issues, partly because of fears that UK armed forces' actions overseas would trigger claims – just as in the imperial era the UK shunned any declaration of 'human' rights, and any clear specification of citizenship rights, lest they should be thought applicable within their territories by the empire's subject peoples.

This history of split democratising/despotic government co-management within the same institutions, and its diminished but still substantial implications even half a century later, is one of the primary factors sustaining islands of undemocratic practice across UK government. These legacy 'dark state' effects largely account for why the UK typically ranks outside the top 15 liberal democracies. They also explain why the institutional landscape of UK government is so jumbled and capable of generating almost simultaneously evidence of strong responsiveness to public opinion and extensive influence over policies by citizens, and strongly centralising and coercive initiatives whenever governments come under pressure from new issues – as with the recent 'securitisation' of immigration issues.

One recent danger of these contradictory impulses lies in their interaction with populist movements of public opinion and with media campaigns feeding on them. The 2016 Brexit referendum result was driven in part by a populist nostalgia amongst older voters for a return to imperial times. All populist movements tend to advocate complex mixes of **'anti-state' policies, but also 'naïve statist' policies** (like Brexit), where a crude assertion of state power is used in 'lynch law' ways that (could) ride roughshod over the rights of socially unpopular minorities. After the decision to leave the EU, 3.2 million non-British European citizens living in the UK faced not only an uncertain future, but also a social backlash from a minority of voters who apparently saw their anti-foreigner prejudices as 'validated' by the referendum outcome. To be sure, state authorities took action to clamp down on any serious threats, yet still the livelihoods and families of those affected seemed for a long time no more than a bargaining chip in the UK state's Brexit negotiations.

Thus contemporary political cultures at both elite and popular levels continue to be shaped by the 'British political tradition' in diverse long-lived ways, both benign (from the slow evolution of democratic practices with deep roots) and malign (from the legacy effects of the 150 year traumas of imperial rule routing through the same UK apex state as democratising impulses).

Conclusions

Liberal democracy is a complex construct. Its operations require many different components to work together, mesh with, and be able to control a wider state apparatus that is arguably essential to modern civilisation. In the rest of this book we provide a detailed, section-by-section coverage of the UK's changing democracy. From the wider, worsening context of modern political changes (discussed in [Chapter 1.1](#)) we are alert to the many ways in which democratic decay or backsliding can set in, and to the wider (often global) trends that are transforming political processes across many countries. From the qualified recognitions of the UK as a stable but not clearly excellent liberal democracy covered at the start of [Chapter 1.2](#) we take the lesson that Britain's patchy achievements contain strengths and weaknesses that may translate into opportunities to improve what is currently failing, or threaten to initiate wider decay if left un-tackled. And from the UK's highly mixed inheritance of gradual and peaceful democratisation, combined with prolonged institutional and political culture deformations from the imperial era (covered in [Chapter 1.3](#)), we trace why the UK's unusual constitutional and political arrangements have persisted into the 21st century, with many lacunae, gaps and lapses from democratic practices that are otherwise hard to explain. 'Never before has the British political tradition been more contested', [according to some critics](#).

Our analytic approach is a qualitative one, but with the developed criteria for democratic practices made explicit, and our key evaluations summarised in our SWOT analyses. Our analyses start from the premise that democracy within the UK is far from fully realised:

'[T]o assume perfection is to cast serious doubt on the conception of democracy and the assessment criteria being employed.... An [underlying] assumption we have made in our work is of an inertial tendency inherent in social and political systems towards oligarchy and inequality, unless it is being actively resisted. This means that the work of democratisation is never finished and that established democracies are as much in need of critical assessment as developing ones.' ([Beetham, 1999, pp.568–569](#)).

2

How democratic are the UK's electoral systems?

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2.1

The Westminster ‘plurality rule’ electoral system

Patrick Dunleavy examines a topic of foundational importance for any liberal democracy – how well does the electoral system (in this case the Westminster plurality rule, aka ‘first-past-the-post’) convert votes into seats? A sudden growth in two-party support in 2017 allowed the UK’s ancient voting system to work far more proportionately. But is this outcome a one-off blip, or the start of a new long-term trend?

What does democracy require for an electoral system?

- ◆ It should accurately translate parties’ votes into seats in the legislature (here the House of Commons nationally, and councils at local level in England and Wales).
- ◆ Votes should be translated into seats 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 and Wales.

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 (by marking an X) for their top preference choice only. The party candidate who gets the largest pile of votes in each local area is elected. To get elected the winner does not need to gain a majority (50% +1 of voters), but just needs more votes than anyone else. The more candidates there are, the lower the level needed to win may become.

Recent developments

Two general elections were held close together – in 2015 (at the end of five years of coalition government) and in 2017 (opportunistically called by Theresa May). They brought a whole host of dramatic alterations in how the voting system operated, reflecting recent large changes in the UK party system.

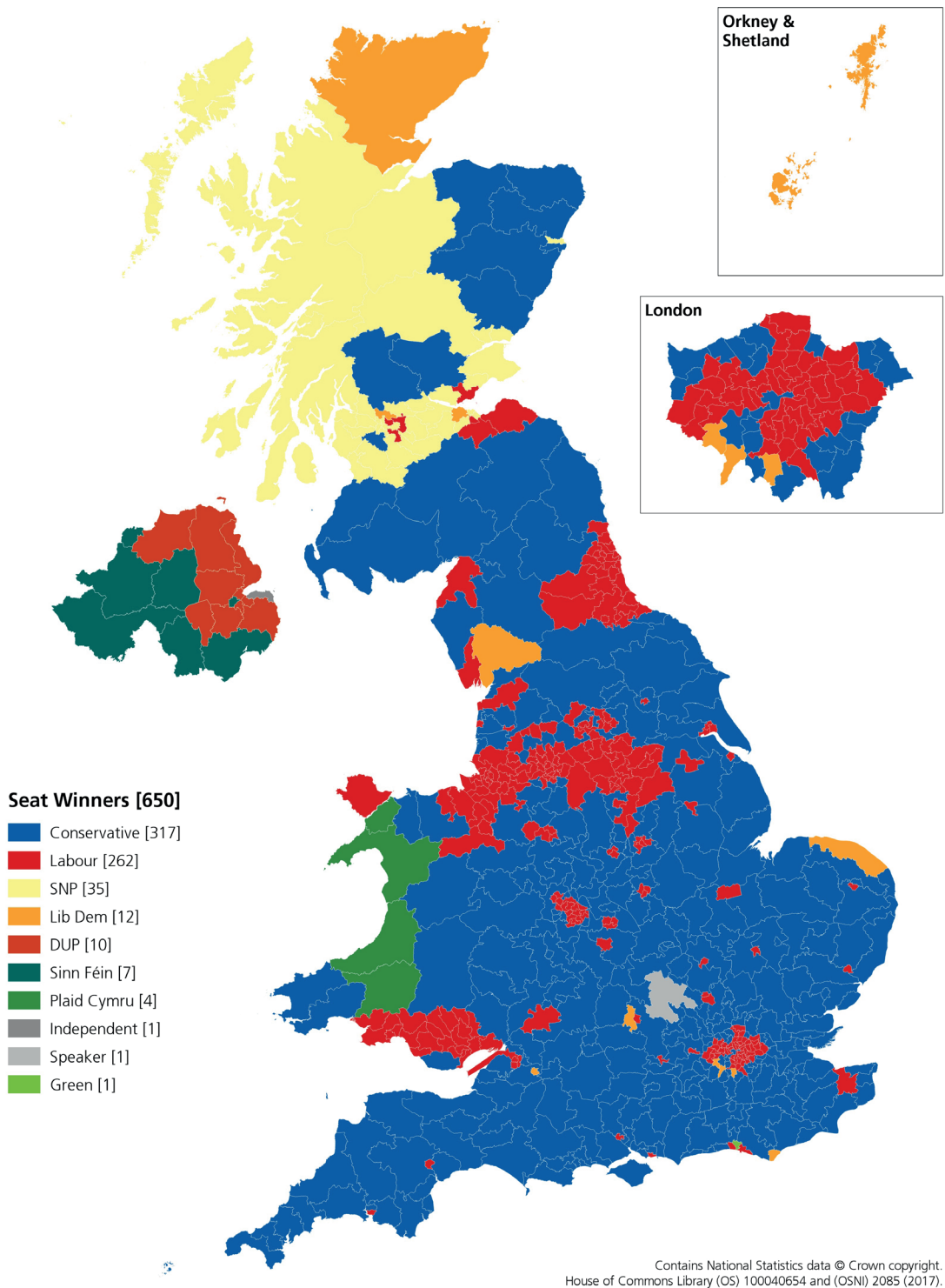
In 2015: The biggest upset occurred in Scotland where the Scottish National Party (SNP), still buoyed up by its 2014 independence referendum campaign, secured all but three of the 59 seats (95%) on the basis of 50% of the vote, a highly disproportional result. In England the anti-EU, UK Independence Party (UKIP) piled up over 14% of the votes, but won only one seat (that it already held). The initially third-placed Liberal Democrats' vote plunged from 23.5% in 2010 to just 8%, and their seats fell from 57 to just 8 isolated survivors, spread across as many regions of the country. The party's coalition government with the Conservatives was seen as a betrayal by many of their earlier voters. Disproportionality increased markedly in Scotland, and in the south-west region.

In 2017: Following the 2016 Brexit vote, the UKIP leader Nigel Farage resigned. A year later support for UKIP collapsed (partly on a 'mission accomplished' basis, and partly because of its lack of a recognisable leader). The Liberal Democrats' vote share dropped a further 0.5% from its 2015 low. Despite these favourable conditions, the Conservative campaign in England backfired badly and they lost seats, despite boosting their UK votes share to over 42%, almost 6 percentage points higher than in 2015. The Tories did gain seats in Scotland, as some of the 2015 SNP surge drained away. Yet overall, the governing party was left reliant on a 'confidence and supply' deal with the Northern Ireland party, the Democratic Unionist Party (DUP), in order to hold on to power. The big gainer from the election was Labour under Jeremy Corbyn, whose national vote share grew radically from just over 30% in 2015 to 40% in 2017. Much of the growth occurred during the last three weeks of Theresa May's doomed 2017 campaign. The Liberal Democrats' seats increased slightly from 8 to 12, but each was still an isolated bastion, seeming to cling on at the UK's scattered extremities against the revival of the Labour and Conservative votes.

In Scotland, the SNP's near 'clean sweep' in 2015 lasted only two years, and multi-party politics were restored there. The SNP's support dropped sharply from its (probably unsustainable) peak of 50% to just below 37%, and the plurality rule system produced a radical reduction of its seats from 59 to 35. Labour's modest bounce-back in Scotland, plus a Tory resurgence there under Ruth Davidson, gave both parties more seats at the SNP's expense.

A mapping of seats by party in Figure 1 also shows the return of what an earlier electoral reform commission called 'electoral deserts' in England and Wales, where one party wins almost all the seats. In 2017, these covered all of southern and eastern England (where the Conservatives were very strong); and the north-east, north-west industrial areas, south Wales and much of inner London (where Labour predominated). On the other hand, the Midlands became more diversified than in the past.

Figure 1: Seats won at the 2017 general election by the parties in the UK



Source: Carl Baker et al, **General Election 2017: results and analysis**

House of Commons Library, Briefing Paper 7979

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
Plurality rule is an ancient and hence thoroughly familiar system for British voters, dating back to medieval times.	Large minorities of voters regard the seats awarded to the largest parties, and the lack of seats for smaller parties, as illegitimate and distorted. Seat shares in the Commons rarely match vote shares well.
It is simple for people to cast a vote (just mark one X against your top party/candidate). Votes are easy to count, and voters can easily 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.
In a 2011 national referendum (promoted by the then very unpopular Liberal Democrats), 68% of UK voters supported the status quo rather than the reform option on offer, which was the alternative vote (AV) system (used in Australia).	Plurality rule always advantages the leading parties, those that can pile up enough votes to create many 'stronghold' seats. In the UK, this benefits either the Conservatives or Labour (depending who's in the lead locally), and now the SNP in Scotland.
Turnout levels this century range from 59% to 69%, down on earlier levels. But 30.7 million people still voted in the 2015 Westminster elections. And this number increased sharply to 39.3 million in 2017 – more than for any other elected body.	The voting system heavily discriminates against parties with dispersed national support that only run second or third in many seats – especially the Liberal Democrats (plus UKIP in 2010 and 2015), who secure millions of votes but few or no Westminster MPs. (However, in 2017 UKIP's support fell to 0.6 million votes.)
In British conditions, plurality rule in the past tended to produce 'artificial' majorities for the leading party. This 'leader's bonus' then allowed single-party governments to be formed with 'artificial' House of Commons majorities. Advocates argue that this produces 'strong' government which is both what voters want and an important feature of UK democracy as a whole.	However, the system no longer produces strong government effect in any reliable way. Recent 'exceptions' include the Conservative–Liberal Democrat coalition government of 2010–15 (in an otherwise 'hung' parliament), and the minority Conservative government since 2017 which relies on a 'confidence and supply' agreement with DUP MPs from Northern Ireland in order to stay in office. (Earlier examples of minority or near minority governments were 1964–66, 1974 and 1977–79.)
	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.

Current strengths	Current weaknesses
<p>The proportion of MPs with local majority support has increased across the last three general elections, reaching a high of 72% in 2017.</p>	<p>The proportion of MPs enjoying local majority support in their seats fell over the long term from 1974 to 2005 (when it touched just 55%).</p>
<p>The proportion of citizens positively supporting the governing Conservatives in 2017 was 29.2%, an increase on the levels shown opposite.</p>	<p>Single-party governments are based on small minorities of voters (35–42% from 2001 to 2017), and even smaller proportions of positively supporting citizens (22–24% from 2001 to 2015).</p>
<p>When Labour won many university town and inner-city seats in 2017, helped by enthusiastic young supporters, media commentators were quick to identify a 'youthquake' in terms of young people re-participating in voting. This claim was declared a myth by the most orthodox political science study (the BES). However, their research has been disputed, because the BES includes only small numbers of young people, from very few constituencies. Young people certainly voted more in 2017, in line with most social groups.</p>	<p>The proportion of MPs in Westminster holding seats not justified by their share of the votes was above a fifth between 1997 and 2015. However, this level fell sharply in 2017 (see below).</p>
	<p>Westminster has only tiny proportions of people from manual working class backgrounds and from black and Asian ethnic minorities. Gender representation remains overwhelmingly male, with women MPs forming 20–29% of the total for the last two decades. In 2017, women MPs rose to 32% of the Commons, but this is still a long way from 50/50. In principle, parties could do better, even if plurality rule voting is retained. But progress has, in practice, been very slow. (See Part 7.)</p>
Future opportunities	Future threats
<p>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.</p>	<p>If more voters revert to supporting third- or fourth-placed parties (as they did until 2015, and as they clearly still do in Scotland and Wales, and non-Westminster elections in England), then the plurality system will probably continue to perform disproportionately and erratically, as it has in the past.</p>

Future opportunities	Future threats
<p>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. It will probably need a referendum majority as well.</p> <p>However, since the 2017 election UK opinion polls consistently show the top two parties dominating public support, and this is a pattern better suited to plurality rule elections – so that reform demands may decline (especially within Labour).</p>	<p>Westminster governments are likely to continue to be chosen by, and answer to, relatively smaller proportions of the population – especially older voters in ‘safe’ seats.</p> <p>Trends evident before 2017, for younger people to vote much less and for sections of the population to reject election outcomes as unrepresentative, may be re-established in future, after being reversed in 2017.</p>
<p>An incremental change to adopt the supplementary vote (SV) 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.</p>	<p>Westminster’s legitimacy may continue at a low ebb, or 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).</p>

How ‘unfair’ or disproportional are Westminster elections?

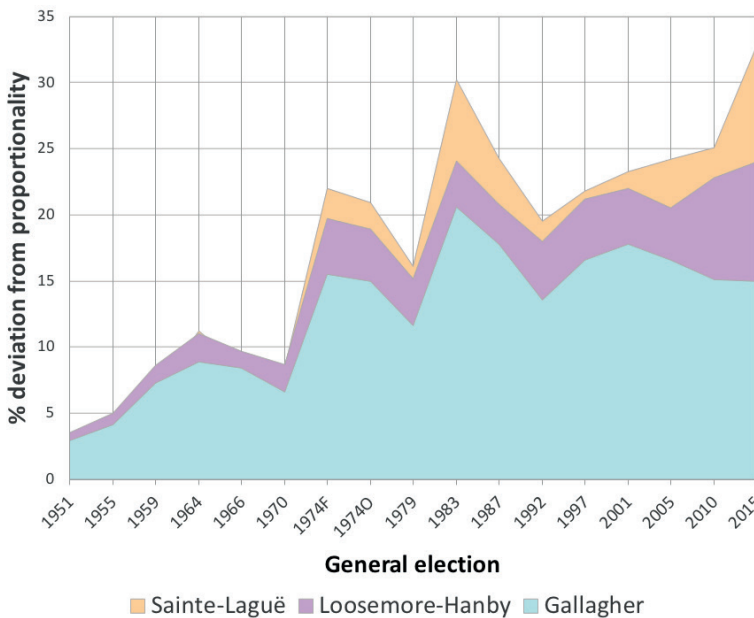
Political scientists have developed systematic measures of how accurately voting systems translate popular votes into seats in the legislature. The simplest and most intuitive measure is the ‘deviation from proportionality’ or DV score, which shows what proportion of seats have been ‘misallocated’ to 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 (Figure 2).

Figure 2: A simple example of how to calculate the deviation from proportionality (DV) score

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

Next add up the positive and negative numbers in the Deviations column, ignoring their signs, to get a number called the ‘modulus’ = 40.

To eliminate the double-counting involved in the modulus, divide by two, so DV score = 20.

Figure 3: How the disproportionality of Westminster elections grew over time, up to 2015

Source: Computed from data in [Renwick](#)

Notes: The DV line here (in purple; Loosemore-Hanby) shows the % of MPs elected to the Commons who are not entitled to be there from their party's share of the vote – in other words how inaccurately votes are translated into seats. The practical minimum for any voting system is around 5%. For explanations of the other two lines, see the main text.

To set any DV score in context, bear in mind that almost any electoral system will end up somewhat over-representing larger parties at the expense of very small ones (such as those too small to win seats even under proportional representation). The smallest feasibly achievable DV score is normally around 5% (and not zero).

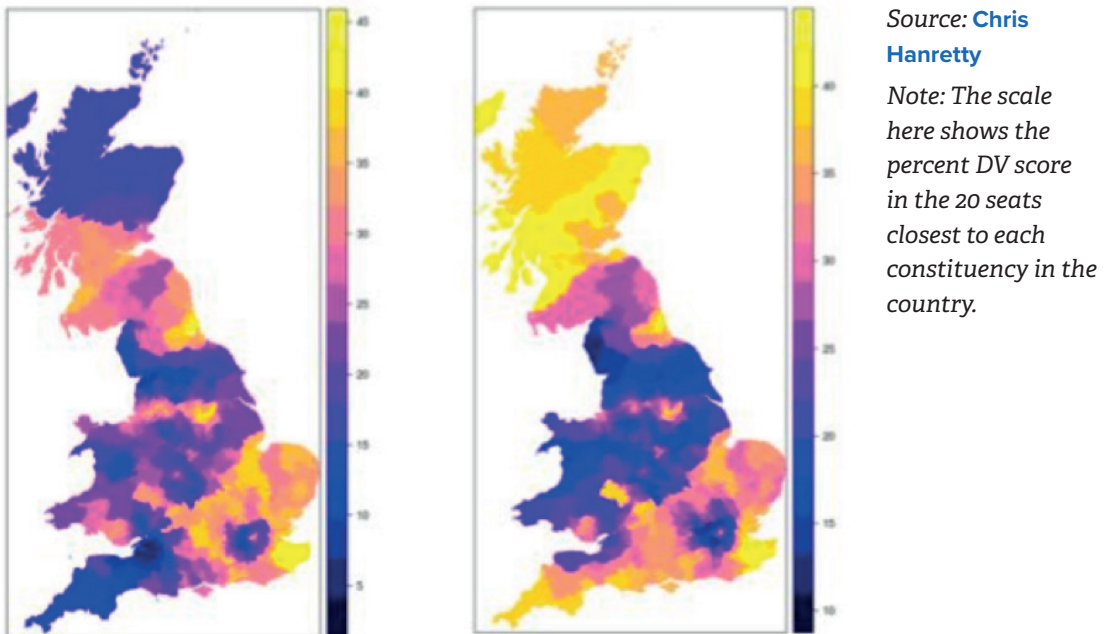
In the 2017 election, the big surges in support for Labour and the Conservatives produced a very close-fought election with historically very low levels of support for third or fourth parties in England (the dominant part of the UK). Yet neither of the top two parties emerged with a huge 'bonus' swathe of seats (as the winner would have done for most of the late 20th century). Instead their seats were far more balanced than might have been expected, so that the DV score fell to a very unusually low level of just 9.3%. This number is somewhat misleading because disproportionalities that favoured the Conservatives in their dominant regions are offset by other deviations where Labour did well in its heartlands. If we look within each region the disproportionalities are actually much higher. Nonetheless, the improvement from previous elections is a real one. So a critical issue now is whether the 2017 result is a one-off outcome. Is it likely to repeat in future, and become a new pattern – given that support for the top two parties also stayed high in national opinion polls in the year after the general election?

To see how exceptional the 2017 result is, consider how Westminster elections have performed on the DV measure over a longer period of time. Figure 3 shows the DV score (also called the 'Loosemore-Hanby' measure after its inventors) as the purple shaded area. The relationship between party vote shares and seats shares clearly waggled up and down a bit, but also became much 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 were not entitled to sit there in terms of their party's share of the national vote.

As with every aspect of political science measurement, there are also alternatives to the DV score. Figure 3 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 because the Liberal Democrat vote collapsed and UKIP (although almost unrepresented in MPs) had a smaller 14% vote share. The third measure, the 'Sainte Laguë' (shown in 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, how does their chosen party fare in winning seats in their surrounding area? We cannot compute DV for a single seat, of course, but we can look at the 20 seats nearest to every constituency across Great Britain and calculate the level of *local DV* that voters will experience in the area around them. Figure 4 shows the levels of deviation from proportionality that people experienced in the area around their constituency – with low scores shown darker, in purple, and high scores yellow. They ranged very high in both 2010 and 2015, with some local DV scores at or above 40% in the worst cases, often far higher than the national DV numbers (which were 23% and 24% in these two years). Some areas were of course lower as well.

Figure 4: How much deviation from proportionality do voters experience in the local area 'around them'? 2010 general election (left) and 2015 general election (right)



The side-by-side comparison in Figure 4 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, and Labour's vote growing but not enough to win seats, 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 has been consistently bad disproportionality 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 recognising 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 (see [Chapters 2.2](#) and [2.3](#)).

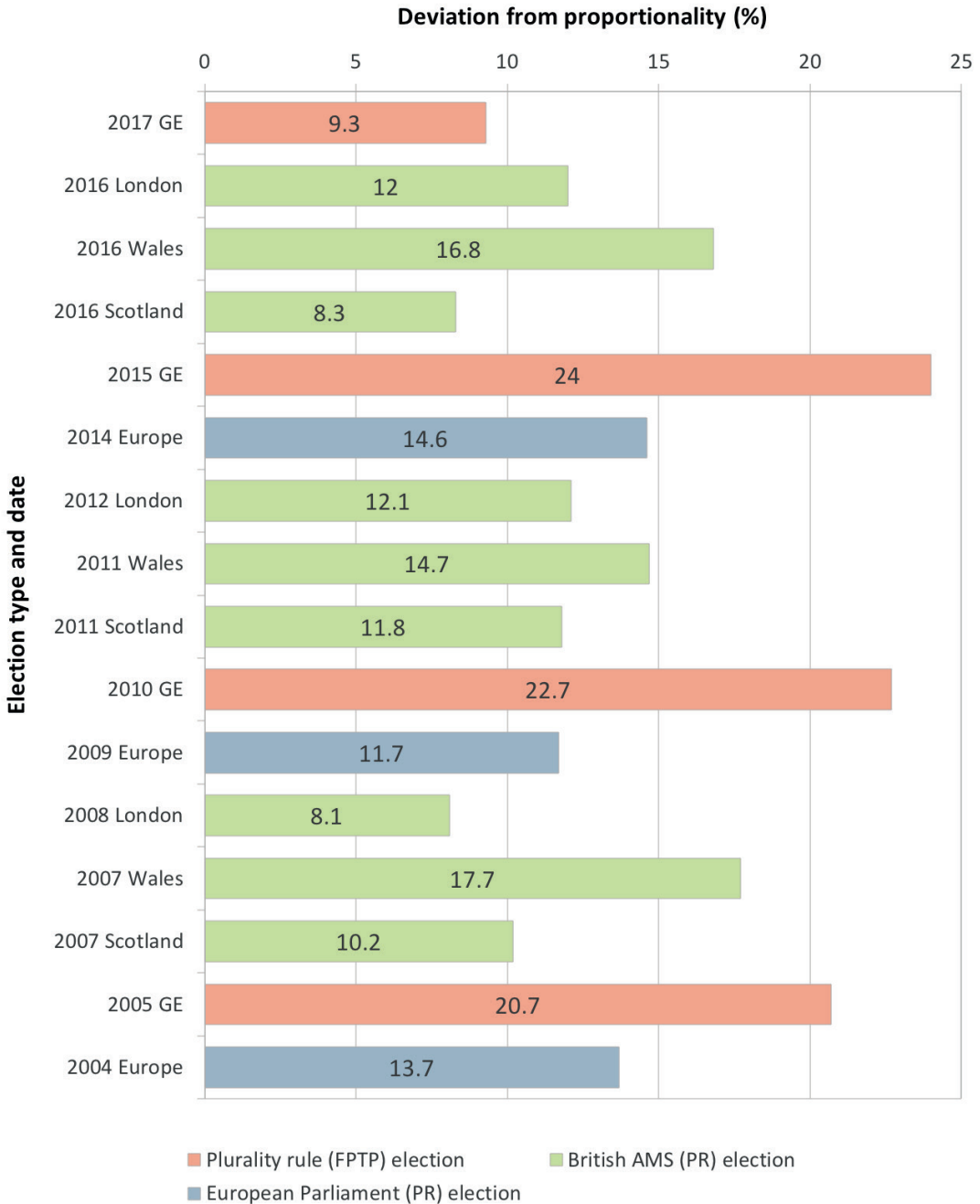
Figure 5 shows that Westminster elections have been far more disproportional than all the other major electoral systems now used in the UK. For decades now over a fifth of MPs in the House of Commons have been for parties over-represented at other parties' expense. In 2015 the Westminster DV score was a high 24%, only to fall back dramatically in 2017 to 9%, less than two-fifths of this number. This is a perfectly respectable showing and the lowest Westminster DV score for decades. It reflects the renewed ascendancy of the Conservatives and Labour, following the Liberal Democrat collapse in 2015 and UKIP's demise in 2017, plus the fall back of SNP support in Scotland from its very high 2015 levels. With just two parties, plurality rule elections can produce quite proportional results. (For example, in the USA DV levels can be as low as 7–8% – because the Democrat and Republican parties still dominate all politics there.)

The Scottish Parliament has consistently achieved DV scores under 11%, half the historic Westminster rate. And the London Assembly is not much higher at 12.5%, despite having only 25 elected members (which makes fine-grain proportionality impossible to achieve). In Wales, the National Assembly's Labour-designed electoral system has too few 'top-up' seats to give fully proportional outcomes, so the results there shows higher DV scores, over 14%, always in Labour's favour.

Elections for the European Parliament are also shown in Figure 5, for the period 1999 to 2014 when they used a regional proportional representation system. Its accuracy was restricted by the small number of seats per region, so again this delivered DV scores of around 14% – but this was still two-thirds of the 'normal' Westminster levels in these decades.

In other respects, too, the UK after 2017 seems very far from American patterns, despite the Conservatives' and Labour's predominance in national opinion polls. In local elections the support for the Liberal Democrats has been consistently higher than their general election score, and the top two parties combined have commanded only 65 to 70% support in the 2017 and 2018 local elections, as Figure 6 shows.

Figure 5: How disproportional have Westminster elections been over the last two decades, compared with other British elections?



Source: Patrick Dunleavy, GV311 lecture, LSE, 29 November 2017.

Note: The chart shows the % of MPs or representatives elected who are not entitled to their seats from their party's overall share of the vote – in other words how inaccurately votes are translated into seats. The practical minimum for any voting system is around 5%.

Figure 6: The 'national equivalent vote shares' for the main parties in the 2017 and 2018 local elections

Party	Vote share (%) in 2017	Vote share (%) in 2018
Conservatives	38	35
Labour	27	35
Liberal Democrats	18	16
All others	17	14
Total	100	100

Source: BBC estimates re-balancing local election votes show what the 'national equivalent' vote share would have been. This controls for local voting taking place in different areas from year to year.

Conclusions

Overall, recent elections suggest that plurality rule has become more erratic in its operations. The 2015 election represented a new post-war high in the UK electoral system's disproportionality, but the swing back to two-party pre-dominance in 2017 produced the UK's best DV score for decades. Second, the levels of 'unfairness' experienced by voters at the local and regional level are much higher than the national figure suggests. For instance, in 2015 the SNP nearly won every single seat in Scotland, despite only winning 50% of the vote. Third, Westminster elections are historically far more disproportional than other kinds of British elections held using different voting systems.

In comparative terms, the historic record of the UK's Westminster elections up to 2015 was almost five times more disproportional than the practicable minimum achievable in a modern electoral system. Plurality rule in the UK has consistently performed among the worst of any liberal democracies worldwide, until 2017's shock result. And the voting system continues to operate in its familiar way in English and Welsh local elections (see [Chapters 6.4, 6.8 and 6.9](#)), creating frequent large gaps between citizens' votes and the party balance of their representatives. A central issue for the future must be whether the next general election will show a re-growth of Britain's smaller parties and higher DV scores, rendering the 2017 result a blip (perhaps attributable to the special conditions of the disastrous 2017 Tory campaign)? Or whether instead the 2017 outcome marks a fundamental break-point in party politics and electoral behaviours, which might produce long-run improvements in how the UK's main voting system operates.

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2.2

The reformed electoral systems used in Britain's devolved governments and England's mayoral elections

Patrick Dunleavy and the Democratic Audit team examine how well citizens are represented by the two main reformed electoral systems used in the UK – the 'additional members system' (AMS) and the 'supplementary vote' (SV). How successful have they been in showing the way for more modern electoral systems to work well under British political conditions?

What does democracy require for an electoral system?

- ◆ It should accurately translate parties' votes into seats in the legislature (here, the Scottish Parliament, the Senned [or Welsh National Assembly] and the London Assembly).
- ◆ Votes should be translated into seats 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'.
- ◆ When electing a single office-holder (like an executive mayor), the system should maximise the number of people who can contribute to the choice between candidates, and encourage office-seekers to 'reach out' beyond their own party's supporters. Ideally single office holders should enjoy clear majority support, so as to enhance their legitimacy.
- ◆ 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 1997 voting systems in the UK have diversified. In its early years the first Blair government, acting with Liberal Democrat co-operation, created proportional additional member systems (AMS) for new devolved government institutions in Scotland, Wales and London. These had their fifth round of elections in May 2016.

Labour also created a second new electoral system, the 'supplementary vote' (SV) for **choosing the London mayor** (approved in a London-wide referendum and used successfully five times now). From 2010 to 2016 Conservative ministers in the two Cameron governments also encouraged introducing 'strong mayor' elections elsewhere, especially for new metropolitan/regional mayors (elected first in 2017 and 2018), further expanding the use of the SV system. However, in June 2017 the Conservative election manifesto proposed to replace all SV elections with plurality rule (first-past-the-post) voting. When the Tories failed to get a Commons majority, this proposal seemed to lapse.

Additional member systems in Scotland, Wales and London

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

How it works: In 'classic' versions of AMS (as used in Germany and New Zealand, and also known as a mixed-member proportional system) half of the members of these bodies are locally elected in constituencies using plurality rule or 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' overall seat shares match their vote shares as accurately as possible. Voters cast two ballots: one for their constituency representative, and one for a party to represent them at the top-up region level.

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 (Figure 1). In Scotland and Wales the top-up areas are sub-regions. For the small London Assembly the top-up area is the whole of London. In Wales, the proportion of top-up representatives at sub-regional level is just a third of seats. This is sometimes too small to ensure proportional outcomes, if one party (so far always Labour) is heavily over-represented in winning constituency seats.

Figure 1: The proportion of constituency and top-up seats under AMS in British institutions

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

Voters get two ballot papers, one for party candidates for their local constituency and one for party slates of candidates for the wider regional contest. They mark one X vote on each paper. In the local constituencies, whoever gets the largest pile of votes (a plurality) is the winner (with no need to get a majority).

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. The election officials 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 given 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 regional 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). The order that parties place candidates in their lists is crucial, since it determines who of their people are elected at any given level of support.

There's a formula for calculating the allocation of additional seats 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 had averaged 22.5% in the two decades up to 2015 – but which fell spectacularly to under 10% in 2017 (see [Chapter 2.1](#)). Compared with the historic Westminster outcome, Figure 2 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 were routinely two-thirds of historic UK general election scores – until 2017, when the Westminster result was more than comparable for the first time.

Figure 2: The deviation from proportionality (DV score) of British AMS elections

Scotland/Wales dates	Scotland	Wales	London	London dates
2016	8.3	16.8	12.0	2016
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	10.5	14.8	12.4	

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 around 5%.

Proportional voting systems tend to produce coalition or minority governments, unless a single party can command a clear majority of seats on its own. Figure 3 shows that the AMS systems have only delivered one single-party government outcome: when the SNP won an outright majority in the Edinburgh Parliament in 2011. This was preceded by a period when the SNP ran a minority government (2007–11), a situation that returned from May 2016 onwards. In Wales Labour has been continuously in government since 1999, but has never

had an outright majority. In London, mayors have always needed multi-party support in the London Assembly, although the mayor’s strong powers mean that they can almost get what they want done. In 2016 Labour won the mayor’s role and nearly had a GLA majority, but still needed Green support. In all three bodies the arrangements for forming governments (and ‘administrations’ in London) have always operated well, without prolonged uncertainty and with party divisions generally not being rancorous.

Figure 3: Governing outcomes of the additional member system elections

Scotland/ Wales dates	Scottish Parliament (129 MSPs)	Welsh Assembly (60 AMs)	London Assembly (25 members)	London dates
2016–	SNP (63 seats) minority government	Labour (29 seats) minority government	Labour mayor. Labour (12 seats) largest party, and majority with Greens	2016–
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)	Conservative mayor. Conservatives (11 seats) largest party	2008–12
2003–7	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	2004–8
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 Ken Livingstone. Labour and Conservatives both 9 seats	2000–4

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>We noted above the shortage of top-up seats in Wales, which explains higher DV scores here, especially in strong Labour years.</p> <p>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.</p>
<p>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.</p>	<p>In the first London elections (2000) one in six voters did not use their second ('top-up' list) Assembly vote. However, by 2008, 2012 and 2016 more people voted in the top-up election than in the constituency stage.</p>
<p>Election results for all three bodies have historically been more proportional than for Westminster elections (see above).</p>	<p>The London Assembly's disproportionality (DV) score is also raised because by law no party can win a top-up seat unless they get 5% of the London-wide (list) vote.</p>
<p>AMS is easy to count, and it is straightforward for voters to understand how the overall result happened at both the constituency and list elections. All outcomes have had high levels of public acceptance and legitimacy.</p>	<p>The detailed counting rule used to allocate list or 'top-up' seats (called the d'Hondt rule) somewhat favours the one or two largest parties in all three areas. 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.</p>
<p>Turnout levels have been highest in Scotland at 49–59%. Wales has averaged 43%. London turnout grew from 33% in 2000 to 45% in 2008 and 46% in 2016.</p>	<p>Critics of the 'two classes' of representatives under AMS argue that constituency members have more contact with people in their local area and respond to their problems more, whereas the representatives from top-up lists focus on party and committee work, and on introducing new legislation and policies. A 2018 study showed that top-up area representatives respond less to emails from constituents. But the authors caution that why people write will likely differ. Constituency representatives may get more correspondence about constituents' individual problems or issues that need a reply, while top-up area representatives may get more 'political' or general policy letters.</p>

Current strengths	Current weaknesses
<p>Under AMS, parties have incentives to put equal numbers of men and women on their top-up lists. Historically 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. But in 2017 Westminster began to catch up.</p>	<p>Outside London, the systems do not seem to have improved the representation of ethnic minorities or of people from manual backgrounds.</p>
Future opportunities	Future threats
<p>There are some reform demands to create more top-up members in the Welsh National Assembly. Such a change is likely to make seats results more proportional to votes cast.</p>	<p>Both Scotland and Wales are unicameral legislatures, so there is no upper house to constrain the behaviour of a party that becomes dominant there.</p>
<p>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 an increase in powers, and they have broad public support for such a change in their areas.</p>	<p>Critics argued in 2015 that the SNP had emerged as a 'dominant party' in Scotland, especially since the 2014 referendum, with adverse consequences for government responsiveness. There have been complaints of overly strong/unchecked executive rule by the party. However, 2016 saw a revival in the Conservative vote north of the border. And in 2017 the SNP's hegemony over Westminster seats in Scotland proved short-lived. In Scottish Parliament elections there are no 'electoral desert' areas without multi-party representation. No democratic electoral system can ensure a greater diversity of parties than citizens have voted for.</p>
<p>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.</p>	

The supplementary vote for electing executive mayors and police commissioners

Used for: Choosing the mayor of London; six new metropolitan or regional executive mayors in other English regions; executive mayors in **16 English local authorities** (see **Chapter 6.9**); and choosing all police and crime commissioners (PCCs) in England and Wales. From 2017 onwards SV has also been used to elect 'regional' executive mayors in six major areas outside London.

How it works: No voting system for a single powerful office (such as a mayor, governor or president) can operate in a proportional way, because the position involved cannot be divided between several parties. Instead the supplementary vote system tries to *involve as many voters as possible* in deciding who becomes the winner.

Voters have a ballot paper with two columns on it, one for their first choice and one for their second choice (see Figure 4). 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.

Figure 4: Example ballot paper for a mayoral election using supplementary vote

ELECTION OF A MAYOR		
Vote once X in column 1 for your first choice, and		
Vote once X in column 2 for your second choice		
	Column 1 First choice	Column 2 Second choice
Carol Crosby (Liberal Democrat)		
Denis Graham (UK Independence Party)		
Stephanie Mills (Green Party)		
Diane Morgan (Labour Party)		
Stephen Williams (Conservative)		

The key difference between the SV and FPTP systems 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 supporters to attract their second preference votes. Initially, only first preference votes 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 run-off stage on their own. All other candidates are knocked out of the race at the same time, and the second preference ballot papers of their voters 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 system, rejected at the 2011 referendum). And yet in practical terms they always have a majority of *eligible votes cast*. In repeated London elections, the winner has gained nearly three-fifths support.

Recent developments

The supplementary vote has been used to elect the London mayor since 2000, in numerous contests for other local mayors, for six new metropolitan/regional executive mayors outside London in 2017 and 2018, and in the 2012 and 2016 elections of police and crime commissioners. The London mayoral election has shown voters (and parties) learning how to use the SV system more effectively over time. Figure 5 shows that by 2016 nearly nine in ten voters took the opportunity to give both a first and a second preference vote. The same proportion of voters played a part in shaping the outcome, so that 'effective' votes rose from 78% in the first election to around 90% in the last three contexts. The number of second choice votes given to the top two candidates has remained steady.

Figure 5: London mayoral elections using the supplementary vote, 2000–16

Date	Millions of votes			% of all voters				Turnout (%)
	1st choice votes	2nd choice votes for top two candidates	All 2nd choice votes	Casting any 2nd vote	Directly shaping final outcome	Giving 2 choices for 3rd or lower candidates	Giving 2 choices for same candidate placed 3rd or lower	
2016	2.57	0.25	2.30	89.6	88.7	9.7	1.6	45.3
2012	2.21	0.19	1.76	79.8	92.7	5.6	1.3	38.1
2008	2.42	0.26	2.00	82.9	91.0	7.2	1.9	45.3
2004	1.86	0.27	1.59	85.4	80.2	16.1	3.7	37
2000	1.71	0.21	1.42	82.9	78.2	16.4	5.4	34.4
Total	10.77	1.18	14.8	Median 82.9	Median 88.7	Median 7.2	Median 1.9	Median 31.0

Source: Computed from Greater London Authority, various dates.

Notes: Votes shaping the final outcome are defined as the combined total of first and second choice votes for the top two candidates (those in the run-off stage).

Nonetheless the share of voters endorsing only a third or lower placed candidate has fallen, and Figure 5 shows that most of these people may have good reasons for casting an 'ineffective' vote – such as signalling two preferences for less popular parties in order to boost their future chances. Turnout levels in London also rose over time, from just over a third in 2000 to above 45% in 2008 and again in 2016.

The London mayor system has been very effective in giving unchallenged electoral legitimacy to five winners in a row (each of whom has ended up with roughly 60% of final counted votes). The model has inspired its imitation elsewhere as a key part of English devolution. Following deals negotiated between council leaders in seven areas and Conservative ministers to decentralise some Whitehall powers, new 'metropolitan or regional mayor' SV elections were set up and elected in 2017 in Greater Manchester (where the mayor controls health service and infrastructure spending), the West Midlands, the Liverpool City Region, Cambridge/Peterborough and the West of England. Another followed in Sheffield City Region (which covers Rotherham, Barnsley and Doncaster) in 2018, attracting interest despite the role of the metro **mayor not being finally defined** by the election date. Further elections may follow if proposals for a whole-of-Yorkshire regional mayor progress. Figure 6 shows that turnout levels were lower than with other SV elections, but this is normal the first time a contest is held, before any institutions have started operating or policies have been implemented.

Figure 6 also shows that outside London there has been a limited trend for some major cities and some towns to adopt the executive mayor system (like Watford, Bristol, Liverpool and Leicester). Elections there have generally operated in far more diverse ways. Figure 6 shows that in 16 out of 36 SV contests in conventional local authorities, one candidate won outright with clear majorities at the first-preference vote stage, so that second votes did not need to be counted. This pattern reflects a strong tendency for SV elections to be adopted in 'safe' Labour city or town areas, and areas with strong Liberal Democrat or 'other' voting (including some early support for independent candidates, which has decreased over time). As with the new regional/metro mayors, Figure 6 shows that the proportion of voters shaping elections (by casting either a first or second vote for one of the top two candidates) has generally been high in conventional local mayor contests, even when only a single count has taken place.

Finally, two rounds of police and crime commissioner (PCC) elections have also been held using the SV system. In 2012 these were **poorly planned**. They were held unexpectedly in November, at a cold time of year, with little advertising and separate from normal local elections – resulting in just a 15% turnout. There was little publicity about what the 40 new commissioners would do, or who the candidates were. And, of course, most voters outside London were using SV for the first time. Yet, even so, one in seven voters cast a second preference, nearly 71% of votes shaped the final outcome, and the results were accepted as a sound reflection of the views of those voting.

In 2016, the PCC elections were held at the same time as conventional local authority elections, and consequently turnout improved significantly. However, the number of voters casting second preference votes increased slightly to just over one in six. And second time around 83% of votes were cast for top two candidates across both rounds of voting. Only three areas returned (Labour) PCCs on the first round alone.

Figure 6: Recent major elections in England and Wales using SV, 2009–18

Date and type of SV elections	First choice votes (millions)	Second choice votes for top two candidates (millions)	% of all voters directly shaping outcome	Median turnout %
2017–18: Five new metropolitan/regional executive mayors elected with two counts (West Midlands, Tees Valley, Cambridgeshire/Peterborough, West of England, Sheffield metro area)	1.27	0.89	83.9	27.2
2017: Two new metro-mayor elections won on first count (Greater Manchester, Liverpool metro)	0.86	N/A	83.1	26.3
20 local authority mayor elections with two counts (2009–18)	0.78	0.17	79.4	40.5
16 local authority mayor elections won on the first count (2009–18)	1.14	N/A	75.1	36.5
Police and crime commissioners (England & Wales) 2016	8.88	1.49	82.8	26.6
Police and crime commissioners (E&W) 2012	5.36	0.72	70.8	15.0
Total votes (millions) using the SV system	18.29	5.72		Median 31.0

Source: Computed from House of Commons Library, 'Local Election Reports', various dates; and 'Police Commissioner Elections 2016', and 2012.

Notes: Votes shaping the final outcome are defined as the combined total of first and second choice votes for the top two candidates (those in the run-off stage). Where a candidate wins on first choices alone, then only the top two candidates' first choices are counted.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The supplementary vote (SV) was a novel system when introduced first in London in 2000, following recommendations by political scientist consultants. The system is now well established and has proved popular with voters.</p>	<p>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 (see Figures 5 and 6). But no other voting system for a single office holder can guarantee to achieve this elusive 'majority' in practice either.</p>
<p>The SV system is simple for voters to use. Supporters of smaller 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.</p>	<p>SV is like an 'instant run-off' version of double-ballot elections (used for example 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.</p>
<p>SV is straightforward to count, even at large scale – around two million votes are counted overnight in the London-wide mayoral contest, using electronic counting. Voters can easily understand how the count operated and how the result happened.</p>	<p>While the metropolitan/regional executive mayors were required by the Cameron government before they would devolve powers, English local authorities have had the free choice to introduce executive mayors or not since 2000. Now 23 cities, towns, London boroughs and regional/metro mayors use this system. In a few areas executive mayors were elected for a time but then abandoned following local referenda. In a larger number of council areas voters in the 2000s turned down executive mayors in local referenda.</p>
<p>Election results for the London mayor have shown the run-off winners getting nearly 60% of counted votes. All five results have been accepted as accurate, giving incumbents of the office very high levels of public acceptance and legitimacy, both within London and in national (and indeed global) politics.</p>	<p>One or two early mayoral elections saw victories for unlikely or allegedly 'joke' candidates with high name recognition. This pattern has now died out, with partisan candidates prominent in most competitions, but with some conventional independents also, especially in Labour-dominated areas.</p>
<p>Recent turnout levels for the London mayoral elections at 40–45% are quite high for local elections.</p>	

Future opportunities	Future threats
The extension of SV to the new regional and metro mayors has worked well, and broadened English voters’ experience of the system.	The Conservative election manifesto in 2017 suddenly proposed to scrap SV for all mayoral and police commissioner elections and revert instead to plurality rule (first-past-the-post). Following the Conservatives’ election set back and a hung parliament, this position has been formally reiterated once, but no action on it currently seems likely.
Turnout for police commissioner elections improved significantly in 2016, when they were run alongside local elections. This again may boost public awareness of SV.	Some local authorities with an executive mayor may still revert back to a council system after a local referendum. But again this is normally for wider political reasons, and not because of dissatisfaction with SV.
Some local authorities without elected executive mayors may adopt them in future.	

Is the supplementary vote threatened?

Despite the spread of the SV system, and the fact that more than 27 million English voters have used it successfully since 2000, the Conservative election manifesto for the snap 2017 general election pledged to scrap the supplementary vote for all mayoral and police commissioner elections. Drafted by Theresa May’s advisors, and coming somewhat ‘out of the blue’, a short clause proposed that standard plurality rule voting (first-past-the-post) would be used instead. Following the Conservatives’ failure to win the general election, and a hung parliament, this position was reiterated once by Sajid Javid when he had responsibility for local government. However, no further proposal to make any change has followed.

It seems unlikely that a change of this overtly partisan kind, made in one party’s interests, could progress through both Houses of Parliament before another general election. The proposed change might require referenda also, since the London and metro mayors (including how they were to be elected) were all approved first by regional referenda. It is also unclear why the May government should seek to reverse the Cameron government’s stance, or whether the policy is still ‘live’. No rationale was given, except for the claim that plurality rule was ‘simpler’ for voters.

Reverting to plurality-rule elections now, for purely partisan interest reasons, would be a highly destructive institutional change. It could dramatically lower the cross-party legitimacy of elected mayors, which has been key to their success in framing broadly supported policies for their cities. In almost all UK urban settings (except Liverpool) under plurality elections the winning mayoral candidate would lack majority support. And in a multi-party election, winners might be elected with quite low levels of support (30% or less), as has frequently happened in US mayoral elections and elections for the Japanese regional governors.

Of course, no voting system is perfect. SV obviously works better when voters can accurately identify who the top two candidates are in advance, so as to use their second preference vote effectively, if they wish to – as in London, the new metro mayor contests and in local authorities with previous experience of SV. 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. But many voters who choose to support two ‘no hope’ candidates may well do so deliberately – for example, seeking to signal their strongly held preferences or ideological views, rather than to shape the election outcome at the run-off stage. There are no grounds on which political scientists can validly class this as ‘ineffective’ voting, since it is a perfectly rational choice. The only genuinely ‘irrational’ pattern might be if people vote twice for the same ‘no hope’ candidate (who comes third or lower). Figure 5 (above) showed that one in 20 Londoners did this in 2000 – but that level has now fallen below one in 50.

Conclusions

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 Assembly elections have been seen as fair, and its scrutiny role has secured some public profile in holding to account the powerful executive mayor.

The supplementary vote system has also proved successful, working very effectively in London in elections so far, and because of that also spreading out to shape the choice of more directly elected public officials in England, with a high degree of non-partisan support. With more than 29 million votes having been successfully cast in this way, SV is a rare case of a reformed electoral system expanding incrementally to new bodies and policy areas, under governments of both the main parties.

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2.3

The UK's proportional electoral system: the single transferable vote (STV)

Patrick Dunleavy examines the proportional (PR) electoral system now used for smaller UK elections: the Northern Ireland Assembly, and Scottish and Northern Irish local councils. How has STV fared in converting votes into seats and fostering political legitimacy, under UK political conditions? An Annex also discusses the list PR system used to elect European Parliament MEPs from 1999 to 2014, but now discontinued as a result of Brexit.

What does democracy require for an electoral system?

- ◆ It should accurately translate parties' votes into seats in the legislature (here, local councils in Scotland and Northern Ireland, plus the Northern Ireland Assembly).
- ◆ Votes should be translated into seats 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.

Used for: Electing local councillors across Scotland and Northern Ireland; and for choosing members of the Northern Ireland Assembly. Elsewhere in the world, single transferable vote (STV) is only used to elect parliaments in Ireland and Malta, and for Australian Senate elections.

How it works: All representatives are elected in larger constituencies that have multiple seats (usually between three and six). STV seeks to allocate seats to parties in direct relation to their vote shares, so as to end up with minimum possible differences between their seat shares and vote shares ('high proportionality'). Within each multi-seat constituency, parties put up multiple candidates (up to as many as there are seats). Voters mark their preferences across parties, and within parties across candidates, using numbers (1, 2, 3 etc.). Voters therefore have the option to support candidates from across different

parties, so as to match exactly their personal preferences. A complex counting process then allocates seats in order to the candidates that have the most votes, to achieve the best overall fit possible between party vote shares and their number of legislators.

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. (For example, 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 (so 20,001 and upwards) gets a seat straightaway. Every time a seat is allocated, we deduct one quota share of votes from the total remaining, and any surplus votes of the elected candidate are redistributed to their voters' second or next choices.

Once this has been fully done, if there are still one or two seats not yet allocated, 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 or next 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 (the final seats can sometimes be filled by candidates who do not reach the quota, if they have the highest number of votes after all transfers have been made).

Recent developments in Northern Ireland

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 1968–2008. STV was part of the original arrangements for the Northern Ireland parliament after 1921, and when power-sharing was established it was viewed as desirable because it had operated successfully for many years in southern Ireland. It is a transparently 'fair' system – matching parties' seats in direct relation to their votes, unlike the large distortions possible with plurality rule voting (retained in Northern Ireland only for Westminster elections).

Because STV also lets voters choose to support candidates they like across party lines, British leaders 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 earnestly hoped-for effects did not materialise. The moderate Protestant party, the Ulster Unionists (UUP), lost ground gradually, to be displaced by the initially more vigorously Protestant party, the Democratic Unionist Party (DUP). Sinn Féin, 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 under STV, but their vote share remained small, and 'cross-voting' across sectarian lines has remained rare.

Still the STV elections for the 108 seats Northern Ireland Assembly (reduced to 90 in 2017) were successful for a long time in helping to create impetus for a development towards

peaceful coexistence between communities (and a degree of co-sovereignty of the UK and Irish Republic) in Northern Ireland. The accurate seats shares were also important in constituting the power-sharing Northern Ireland executive in a proportional way in the period from 1998 to January 2017. When this was operating, the party with most seats got the first pick of ministerial positions, the party with the second most seats got the second pick, and so on. This system collapsed in January 2017 over a political corruption scandal and the Executive and Assembly remain suspended at the time of writing.

STV also applies to all Northern Ireland local elections. It 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, stimulating a flurry of candidacies that increased the proportion of votes going to small candidates or parties, and so somewhat boosted disproportionality (see [Chapter 6.6](#)).

Especially since the transition to power-sharing, and perhaps more since the suspension of the Executive, local councils have played an important role in the political life of Northern Ireland. STV elections have helped to somewhat moderate previous sectarian elements in municipal government over the long term, especially in equalising service provision, although controversies over flags and sectarian symbols are still a focal point for tensions.

Recent developments in Scotland

STV elections spread to mainland Great Britain in 2006, when the Labour–Liberal Democrat coalition in the Scottish Parliament introduced the reformed voting system for the country's local authorities. The Liberal Democrats have been long-time advocates of STV as the most proportional voting system. The SNP accepted the reform, but were not that interested at first – ironically for it later proved to be crucial for them in opening up entrenched Labour municipal strongholds for their councillors. 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 proved to be vast areas indeed, the radical change went through.

The first Scottish local government elections using STV took place in 2007. Many voters were confused then because the AMS elections for the Scottish Parliament and the STV elections for councils were held simultaneously (which Labour felt would maximise their chances). On a high turnout of 53%, Labour and the SNP were neck and neck in terms of votes, with Labour slightly ahead despite losing 4% of its vote share. The seats allocations placed the SNP ahead, however, and the party made major advances in its local visibility.

The second set of Scottish STV elections were held in May 2012, and with no Scottish Parliament elections on the same day turnout fell to 40%. The SNP and Labour were again close in the lead in popular vote terms, and both gained seats, often from the Liberal Democrats (unpopular because of their Westminster coalition with the Tories). The results were highly proportional, with the SNP, Independents and Labour somewhat over-represented at a national level, and the Conservatives, Liberal Democrats and Greens somewhat under-represented. But these effects were very small-scale.

The two STV results 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. Labour's local party machine went into something of decline for a time, without large numbers of erstwhile councillor-activists to sustain it, setting the scene for the party's wipe-out losses to the SNP at the 2015 Westminster general election.

The 2017 STV elections were held a month before the Corbyn surge at the general election, with a higher 47% turnout. The SNP votes and seats stayed steady, but there was a 12 percentage point surge of Conservative support at Labour's expense. Labour lost another third of its council seats, while the ascendant Conservatives under Ruth Davidson gained 146% more seats, moving into second place in terms of councillor numbers.

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 (for example, a three- or four-seat constituency in a five-party system).
In theory it offers voters the chance to choose popular candidates as well as their preferred party, shaping who gets elected (and not choosing unpopular candidates that parties have put forward).	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. It grew only a little to 24% in 2012 and 29% in 2017.
	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.	Turnout in the Northern Ireland Assembly elections declined from 70% in 1998 to 54% in 2011 and 2016.
In Scotland local election turnout was 40% in 2012, but rose to 47% in 2017, good for local council contests. Questions around whether the more complex electoral system deters voters that arose in 2007 and 2012 have receded. As citizens become more familiar with STV there is the potential for it to be used more widely for other UK elections.	

How proportional is the single transferable vote in UK conditions?

In almost any voting system it is hard indeed to get the deviation from proportionality (DV) score below 5%, so we can regard this as a practicable floor for this measure. We noted in [Chapter 2.1](#) that DV scores for FPTP elections at Westminster historically averaged 22.5% between 1997 and 2015, until 2017 when they fell radically to 9.3%. Figure 1 below shows that both the Northern Ireland Assembly and the Scottish system have performed about three times as well as Westminster elections. In fact, the Scottish result in 2017 is almost as low as it is feasible to get, and other scores are consistently close. 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 a flurry of small parties and independents. In that year they garnered nearly one in eight votes in all, but this total was fragmented across many candidates and so was often insufficient to win seats.

Figure 1: The deviation from proportionality (DV) scores in recent STV elections in Scotland and Northern Ireland

Date	Election	National DV scores %
2017	Scottish local councils	5.9
2017	Northern Ireland Assembly	3.9
2016	Northern Ireland Assembly	4.1
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 councils	7.5

Conclusions

The adoption of STV in the UK has shown that PR can work effectively under UK political conditions, and that it is undoubtedly reliably proportional. That said, it is not without some weaknesses, such as tending to favour larger parties in multi-party systems, for example at the expense of the Liberal Democrats and Greens in Scotland. And STV elections using numbered votes cannot easily be held on the same day as elections using X voting, as the first Scottish local government elections showed in 2007. But otherwise Scottish and Northern Irish voters seem to have coped well with ranking their choices and accepting the fairness of STV's complicated counting process. The survival (indeed flourishing) of independent councillors in Scotland (despite perhaps overly small STV constituencies there) also suggests that voters can use their preferences across parties as intended.

The Liberal Democrats have long supported using STV for all UK elections, as has a well-funded NGO, the [Electoral Reform Society](#), which has propagandised for the system

for more than 120 years. However, Conservatives and Labour both resist the system (suspecting that it will favour the Liberal Democrats in England). Add in the fact that the electorate voted against electoral reform in the 2011 referendum, and the use of STV is unlikely to be expanded in the foreseeable future.

Annex: The list proportional representation system for electing the UK's MEPs, used from 1999 to 2014

In addition to STV, the UK operated a PR system for elected Members of the European Parliament, from 1999 to 2014, but this sequence came to an end with the 2016 Brexit referendum for Leave. The UK will not participate in the July 2019 European Parliament elections, nor in any future such elections. However, the experience of these elections is still relevant for understanding UK politics and electoral reform.

Was used for: Choosing the 70 British members of the European Parliament (MEPs); the three Northern Irish MEPs were elected via STV.

How it worked: The country was divided into 13 regions, ranging in size from the South East (ten seats) and London (eight seats) down to the North East and Northern Ireland (three 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.

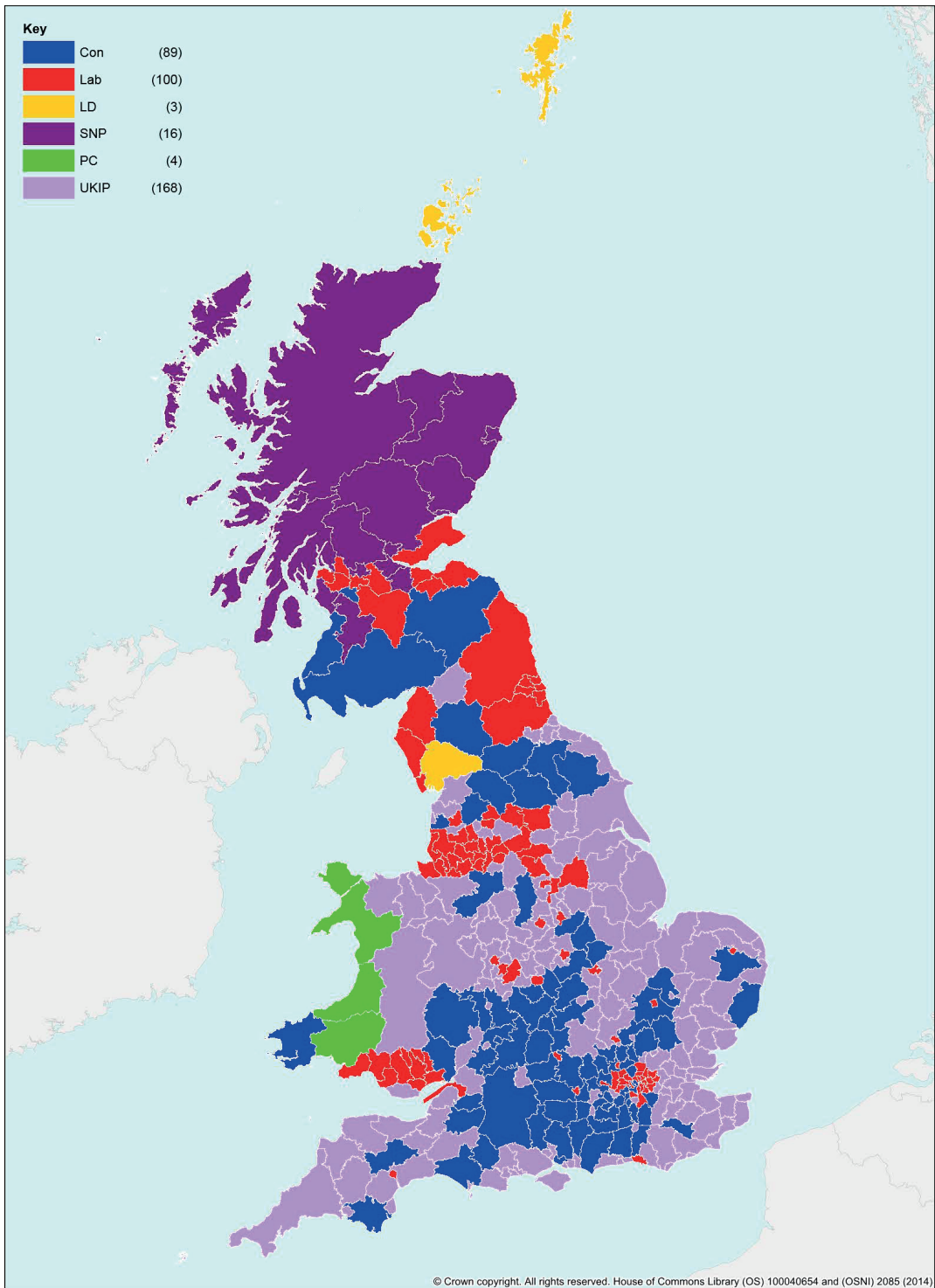
All the votes in each region were then counted and each party got seats in proportion to the party's vote share. So, suppose we had a region with ten seats where party A got 40% of the vote – they should end up with four of the available seats. This system is very proportional but it may favour larger 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).

Historic developments

The List PR system was first introduced in 1999 as a result of 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 (UKIP) surged and that for the Conservatives and Labour took a big hit. And because this was a PR system, UKIP's large vote shares converted into seats well, especially in 2014.

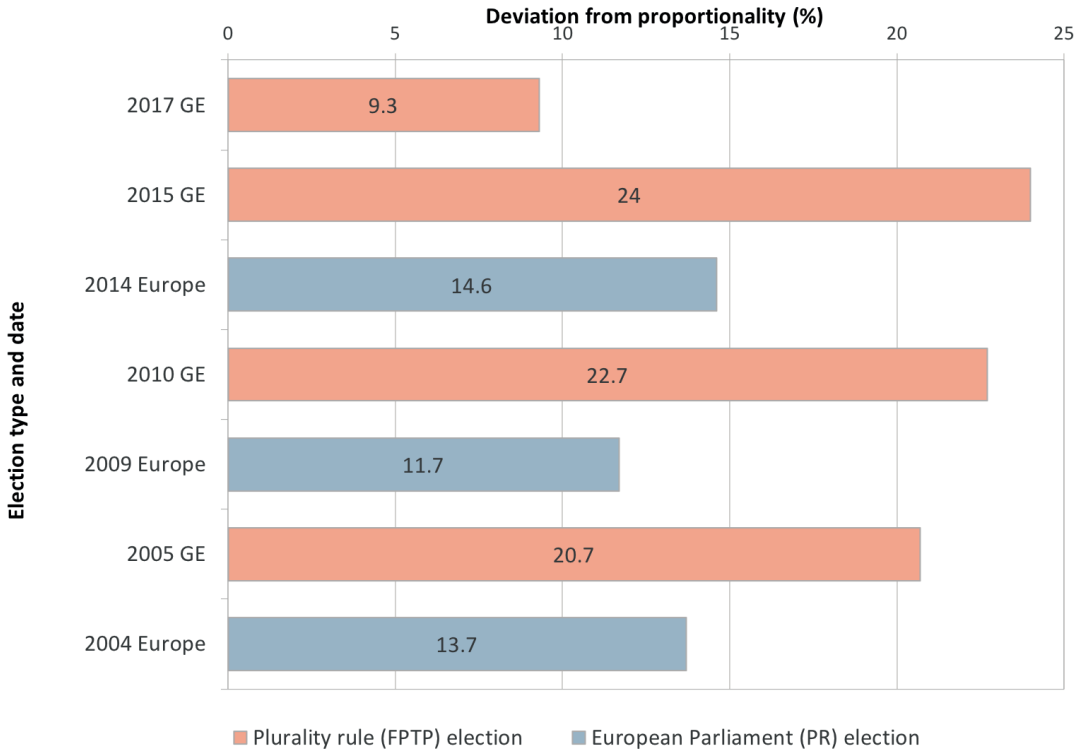
Figure 2: The largest party in the 2014 European Parliament elections, by local authority area



Source: Hawkins, & Miller, V, **European Parliament Elections 2014**, House of Commons Library Research Paper 14/32, p.32. Note: Covers Britain only.

This pattern played 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. Figure 3 shows the alternation of proportional list PR EP elections with the historically higher disproportional FPTP general elections – until the exceptional 2017 outcome.

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



Strengths and Weaknesses (SW) analysis

Strengths	Weaknesses
The system was simple to use. Voters mark one X for their first-choice party.	The system was 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 was straightforward to count at the large regional scale and it was relatively easy for voters to understand how votes convert to seats.	Allocating seats followed 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 its representativeness or useability emerged.	The UK's number of seats in the European Parliament fell over time because of EU enlargement. The seats were removed from UK regions in a rather ad hoc manner (again by civil servants), in only rough relation to their population.
	From 1999 to 2014 MEPs in the UK were very little known by citizens. Critics argued that the large regional constituencies used with list PR contributed to this 'isolation'. But it seems more likely that the UK's very inwardly focused political elites and media dynamics were chiefly to blame, since neither ever effectively engaged with the EU. 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.
	With only three seats each, the two smallest regions could only give seats to the top three parties. The North East of England could have been merged into one of its neighbouring regions, but Northern Ireland was an intractable case.

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2.4

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.*

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 candidacies, 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 party 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 are welcoming and safe opportunities for voters and candidates to express their views, whatever their political affiliations or social background. They are never 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 the franchise was not fully extended until 1928. The effectiveness of long-unchanged ‘legacy’ rules, and the administration and practice of elections, often decays over time, however. As society changes, the effectiveness of old rules can drift and new problems can emerge. The UK does not have electoral irregularities on the scale commonly seen in electoral autocracies (authoritarian states or where voting takes place but under rigged arrangements) or the almost unrestricted corporate funding of elections in the USA. However, there are many pressures on electoral integrity in the UK.

Recent developments: elections, referenda and external interference

The robustness and timeliness of the regulation of campaigns was brought into question after the 2016 Brexit vote. As with any referendum, parties were not the vehicles leading the campaign. Instead, special, one-off 'referendum fighting organisations' were established and regulated. An official campaign for Leave (Vote Leave) and another for Remain (Stronger In) were recognised by the government and Election Commission and each was assigned a relatively restrictive limit on their total spending. In addition, 'allied' organisations could register and be assigned smaller spending limits. After many allegations of malpractice by the Leave campaign, an Election Commission report found in June 2018 (two years after the vote) that Vote Leave had overspent its limit of £7.6m by passing a payment of £650,000 to a one-person associated 'campaign' (Be Leave, run by a graduate student). The main staffer of this organisation was on loan from Vote Leave and they used the money to hire a firm to do its social media analytics. Vote Leave claimed that the Commission had approved this at the time. Concerns were raised about how rules seemed to be easily circumvented by the campaigners and that an investigation from the Electoral Commission was only undertaken very belatedly and after a lot of prodding by media investigations.

A second closely related area has been a surge of concerns that external countries or agents can too easily influence UK elections. Suggestions have been made that units close to the Kremlin intervened in the Brexit campaign by establishing multiple robot sites to re-send Leave-favouring messages on Facebook and Twitter, so as to artificially magnify their apparent salience and influence. UK investigations are only **slowly proceeding**, however. Concerns had been raised before, at the 2017 general election, after Russian sites were boosting Labour-favouring social media messages, according to **one study**. The evidence base for these worries remains very minimal, but the claims have gained currency because of better-attested evidence of Russian interventions in the Donald Trump election campaign and the threat that they would pose to electoral democracy and the international order, if true.

'Dark money' and social media

These two developments illustrate a basic concern about '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.

A 2018 Electoral Commission report claimed that the UK's regulatory framework governing elections in the social media age **was radically inadequate**. It proposed an extensive modernisation of its powers to catch up by:

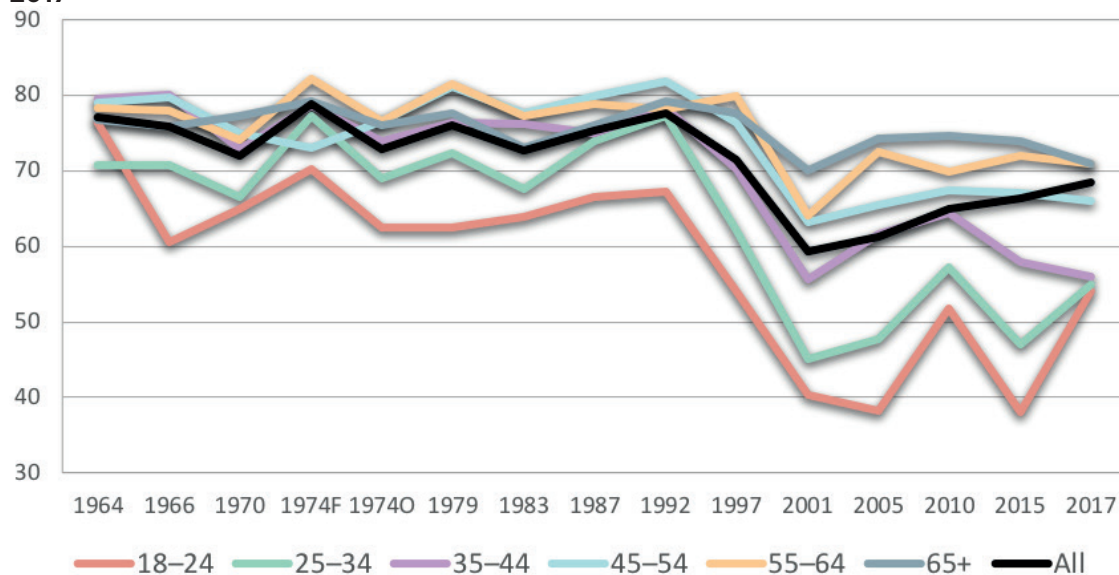
- ◆ requiring all online materials by candidates, parties and campaigners to state who created them;
- ◆ make all campaigners declare in detail what they spent on digital activities in campaigns;
- ◆ require social media companies to label all election and referendum adverts with their sources and create online databases of all such materials;
- ◆ give the Commission itself more investigatory powers, and the ability to levy bigger sanctions for breaches.

The government and opposition parties have not yet taken a stance on these proposals, so speedy remedial action seems unlikely.

The 'age gap' in voting

A third well publicised (and completely factual) development has been positive, namely the reversal of the long decline in turnout in UK general elections. Figure 1 shows that from the nadir of 2001, turnout rose by nearly 10 percentage points to 68.5% 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, Figure 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.

Figure 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 turnout remains a 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. The 2017 surge reflected somewhat unusual conditions and turnout remains chronically low for other electoral contests. Up to 2015 a new political cleavage had arguably opened-up based on age, education and social values rather than social class. **Jeremy Corbyn's Labour Party** has successfully focused on gathering support from a new electoral bloc – with the newly re-energised youth a key part of this. But whether this engagement can be sustained remains uncertain.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.'</p>	<p>One of the biggest problems 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 eight million citizens may be missing from registers in recent contests, around 16% of the adult population (see below).</p>
<p>No evidence has emerged that either flaws in campaign spending or foreign interference in either the 2016 Brexit vote or the 2017 general election changed or even significantly influenced the outcomes.</p>	<p>We noted above, there were apparent major flaws in the conduct and regulation of the 2016 Brexit referendum, plus the alleged vulnerability of UK elections to social media distortions of public debate and rigging of 'fake news'. Both raise acute new issues about whether current safeguards are adequate or adapted for modern digital conditions.</p>
<p>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).</p>	<p>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.</p>

Current strengths	Current weaknesses
<p>Procedures in polling stations are simple and liberal. Currently voters do not need to show ID but just give a name and address. This makes voting very speedy to do and facilitates maximum turnout. Polling stations are also very locally situated (mainly in primary schools or community centres), and around 75% of locations stay the same from one election to another, so becoming familiar to citizens.</p>	<p>There is an archaic, antiquated and illogical system for determining who is allowed to vote (see below). For instance, in Scotland (and soon Wales) teenagers of 16 and 17 can vote in elections for the Edinburgh Parliament and local councils, but not for Westminster MPs. In England and Northern Ireland they cannot vote at all. In addition, there remains little or no citizenship education in UK schools and available funds for this are tiny.</p>
<p>The UK's boundary review process responds to statute and its implementation timing is often politically delayed and influenced. However, the process of defining constituencies is independent from politicians, which prevents gerrymandering.</p>	<p>The robustness of the local and constituency regulation of electoral spending is problematic at the margins (see below). Constituency spending limits are set restrictively, but national spending levels by parties are completely unrestricted.</p>
<p>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 been willing to criticise the government when necessary and recently called for its powers to be extended (see above).</p>	<p>The legislative framework is 'complex, voluminous and fragmented' and in need of consultation. Isolated cases of electoral fraud remain. Some vulnerabilities in electoral registration remain. The system for securing electoral justice is archaic and slow.</p> <p>Critics argue that the regulation of campaigns requires modernisation – notably citing the 2016 Brexit referendum (see above). They also say that there is a need to update the communication of election and candidate information to citizens for the social and digital media age.</p>
<p>A modernised online electoral registration system implemented by local authorities has enabled many last-minute voter registration applications. Timely registration for upcoming contests is much better developed than in the past.</p>	<p>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 online communication of results back to voters are problematic. The apparatus for communicating with voters was basically defined in the 1880s and though candidates addresses 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.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>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 (see Chapter 2.1). In the media system the newspaper coverage of candidates and parties remains systematically unbalanced.</p>
Future opportunities	Future threats
<p>The Scottish government may bring legislation forward to reform Scottish electoral law and Welsh government is reviewing local elections in Wales (see Chapter 6.4). This could also provide opportunities for innovation and learning across the UK.</p>	<p>Pilots to make voters show ID have been introduced in five local authorities at England's May 2018 local elections. Early academic studies showed that the pilots were 'unnecessary and ineffective.' Future pilots and the permanent compulsory requirement to introduce voter ID may follow, which could reduce turnout.</p>
<p>The Brexit negotiations offer an opportunity for the concept of citizenship to be redefined and electoral rights to be realigned.</p>	<p>The Brexit process may still end up leaving many EU citizens resident in the UK with fewer electoral rights than they have had up to now.</p>
<p>UK-wide pilots of automatic registration could lead to cost efficiency savings, but may also strengthen levels of voter registration. The Missing Millions report from the All Party Group on Democratic Participation provides a roadmap for voter registration reform.</p>	<p>Under the new Individual Registration systems electoral turnout and registration levels have so far held up. But they may drift downwards at subsequent elections without the transitional efforts to boost registration rates or high profile electoral events such as the Brexit referendum.</p>
<p>A debate has opened up about the funding of electoral services with the Scottish Local Government and Communities Select Committee reviewing arrangements.</p>	<p>Political advertising, external boosting of particular campaigns, and other interventions via social media are currently very little regulated (see above). (See also Chapter 3.4.)</p>
<p>The Law Commission's proposals to consolidate the UK's 'complex, voluminous, and fragmented' sets of electoral law were published in February 2016 – and provides a blueprint for reforming electoral law.</p>	

Who is eligible to vote?

The electoral franchise, which 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, and can lend itself to partisan ‘voter suppression’ effort, as in many American states now.

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.

We noted in the SWOT analysis that 16- and 17-year-olds can vote in all Scottish elections, and that this is planned for Wales, whereas these young people cannot vote in Westminster elections, or in any other part of the UK. Theresa May has since **restated opposition** to extending voting rights to 16-year-olds. During the Brexit referendum lead-up, **Lords amendments** to grant 16- and 17-year-olds the right to vote were rejected by the government, a decision that probably affected the result. Where Conservative governments have been proactive in expanding the franchise is for British overseas electors. The **Overseas Electors Bill** will give them votes for life, if passed (compared with the current system where expats retain the franchise only for the first 15 years that they live overseas).

Many recent electoral contests with profound consequences for public policy may have had entirely **different electoral outcomes** if UK franchise arrangements were different. Current provisions are largely 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) any vote while serving their sentence.

Fraud and malpractices

The government ran pilots in five local authorities to require voters in England to present **voter ID** in the May 2018 local elections. But before those trials could be organised and the results analysed, the Conservatives rushed to make a **manifesto commitment** at the 2017 election to make this a permanent and compulsory reform. Critics argued that it could lead to many people being **denied their right to vote** because they do not have sufficient paperwork to hand on election day – or that voters would refuse to provide it on ideological grounds.

There is very little evidence that there is any significant voting fraud problem to justify the reform. Figure 2 shows data from a study of the 2018 English local elections which identifies the frequency of problems in polling stations. Suspicions of electoral fraud in polling stations was a tiny problem, and dwarfed by other problems. The overall **number of fraud cases** under the current ‘high trust’ system is exceptionally low.

Figure 2: Problems experienced by poll workers at the English local elections 2018

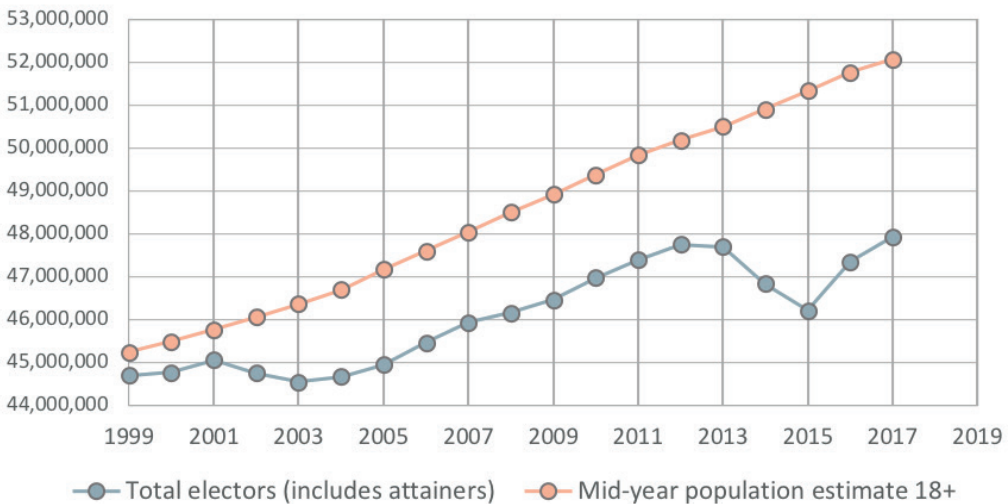
Potential problem	% of respondents reporting problem
People asking to vote but not on register	52
Disabled voters having problems completing ballot papers	14
Members of parties being where they shouldn't be	9
Disabled voters having problems with access to the polling station	9
People taking photos of ballot/ polling station	8
Members of parties intimidating public	8
People asking to vote whose identity I was unsure of	5
Suspected cases of electoral fraud	1

Source: Clark and James, 2018. Note: % exceeds 100 as workers can report more than one problem.

The 'missing millions' of unregistered citizens

Figure 2 also shows that the more significant problem was citizens turning up to vote only to find themselves not on the electoral register (although problems with accessibility for disabled voters are also common). Research shows that many citizens think they are registered because they access other government services and pay their council tax, when they often are not. Figure 3 below shows the number of people missing from the electoral register has gradually risen. 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. And if there are duplicate register entries, which there are, many more people may be missing. One assessment suggests the overall number missed off could be up to eight million people.

Figure 3: The growing gap between the eligible number of citizens/inhabitants and total electors

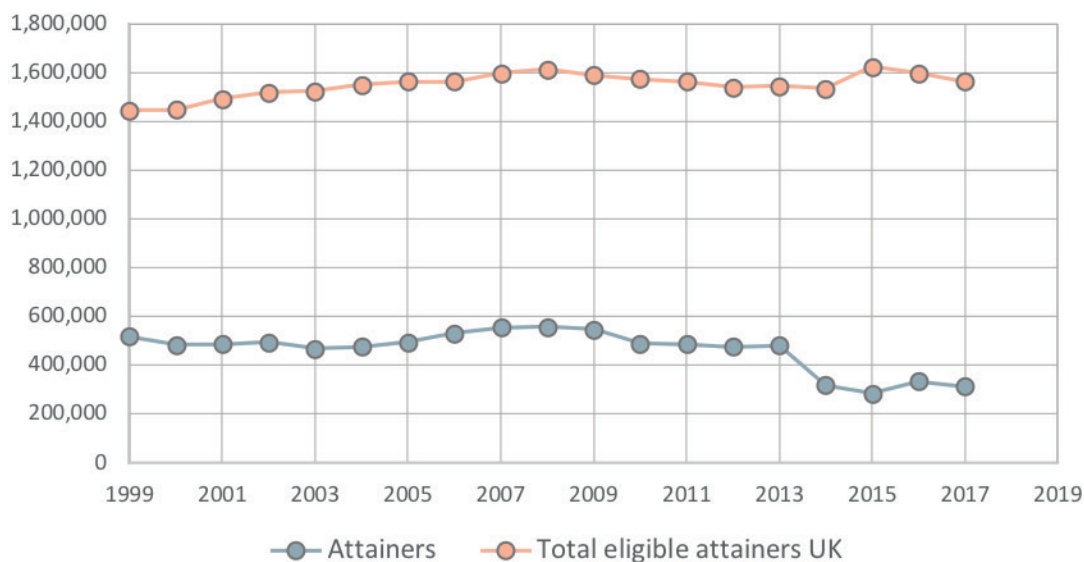


Source: Author compiled from ONS Population Estimates and Electoral Statistics from 1 December each year. The local electoral register is used because it has the higher franchise.

Under-registration is not equally distributed across the whole population, fuelling further political inequality. **Evidence** shows the register is less complete in urban areas (especially within London, where three out of ten people under 30 move borough every year). This chiefly affects recent movers and private renters, Commonwealth and EU nationals, non-white ethnicities, lower socioeconomic groups, citizens with learning disabilities and young people.

The most worrying trend is with attainers – those citizens who will shortly reach the voting age during the currency of the forthcoming register. Historically this was just 16- and 17-year-olds, as only 18-year-olds can vote. But in Scotland and Wales attainers for devolved and local elections can now be 14 or 15. And Figure 4 shows that from 2009 there has been a decline in the number of attainer electors on the register (the grey line) compared with mid-year estimates of 16- and 17-year-olds in the UK (and including 14- and 15-year-olds in Scotland after 2015). Most of the next generation of voters already seem to be missing from the register.

Figure 4: The gap between eligible attainers (people nearing voting age, who should be on the electoral register) and registered attainers



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

Two effects are at work here. The move from household to **individual electoral registration** was predicted to hit young people the hardest since their parents often previously registered them, despite some **counter-mobilisation** efforts from civil society which **helped to avert** this in the short-term. 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 other government ‘touch points’, for example, when they receive their national insurance card (needed for paid employment), or perhaps register for

post-16 education. Legislation was recently passed to **require universities to play a role in registering their students**, one of the most under-registered groups. This may have a positive effect in the longer-run.

Controlling election expenses at constituency level

Despite efforts to **monitor and regulate** electoral campaign spending locally, 2015 saw allegations of significant breaching of electoral laws by 22 Conservative MPs and their agents not declaring 'national' spending in fact carried out in their local area. The Tories claimed that they had abided by the rules as set out, and never intended to breach requirements. The Electoral Commission **found** significant breaches and that the Tory party nationally showed 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 charges were not pressed in many cases, not because the affair was trivial but because of 'insufficient evidence to prove to the criminal standard that any candidate or agent was dishonest.' **Critics question** whether current legislation requires such a high (or impossible) threshold of evidence, that it is difficult to prevent loose interpretations from parties. In addition, there was a worrying effort by the governing Conservatives and the MPs involved to criticise and discredit the neutrality of the Electoral Commission in unwarranted ways, rather than to accept or respect the result of investigations. Such partisanship can only undermine confidence in the electoral process in the longer term. An additional new concern is that **different requirements in Northern Ireland** provide a backdoor for influencing election contests the UK.

Reviewing Westminster constituency boundaries

The Conservative–Liberal Democrat coalition government agreed that the size of the House of Commons should be reduced from 650 to 600 MPs, with the populations of constituencies to be equalised exactly. This would remove the previous tolerance for seats being only broadly similar in size because of community and other factors, which meant that the smallest constituencies were often in inner-city areas held by Labour, while the largest constituencies were in fast-growing outer urban areas. A boundary review 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, and nothing further happened.

After the Tories gained a majority in 2015 fully equalised constituencies were revived and the Boundary Commission published proposals in 2017, redone after the 2017 election, with final details published in autumn 2018. Most estimates suggest that the Conservatives would make perhaps 20 seat gains from 600 equal sized constituencies, with Labour the chiefly loser. Yet some individual Tory MPs also risk seeing their established seats disappear, and may not be keen to see that happen. **Some press reports** in autumn 2017 suggested that the May government would drop the proposals (which would require re-legislating) altogether, since

they are hard to get through a hung parliament. At the least, many **observers expect** that no new boundaries may come into effect by the next general election.

This might be a positive development for electoral integrity. One notable feature of the new boundaries was that they used the December 2015 electoral register to estimate populations – a snapshot of the electorate where millions were missing from the roll. Those geographic areas or groups who are under-represented on the register would therefore be under-represented in a new parliament.

Conclusions

Elections are an indispensable way for citizens to have popular control of government, and they are a fundamental foundation of political equality. At a time when democracy is thought to be under threat, achieving these objectives has never been more important. UK elections largely do this, but there are some underlying problems and new emerging threats which require reform in many areas.

Arguably, the paralysis caused by Brexit and the difficulties in legislating without a government majority, might excuse a government for not having the capacity to undertake the important changes. Nonetheless, some reforms, notably extending the franchise for overseas electors and introducing voter ID requirements, seem to be forthcoming. The problem, however, is that these do not speak in any way to the heart of the core electoral integrity challenges faced in the UK and to some extent worsen them.

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3

How democratic are the channels for political participation?

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3.1

The political parties and party system

Patrick Dunleavy and Sean Kippin 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.

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

Parties (and now other forms of 'election fighting organisation', like referendum campaigns) are diverse, so four kinds of democratic evaluation criteria are needed:

(i) 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. Because they endure through time, parties should behave responsibly, knowing that citizens can hold them effectively to account in future.
- ◆ Main parties should help to recruit, socialise, select and promote talented individuals into elected public office, ranging from local council to national government levels.
- ◆ Party groups inside elected legislatures (such as MPs or councillors), and elites and members in the party's extra-parliamentary organisation, should help to sustain viable and accountable leadership teams. They should also be important channels for the scrutiny of public policies and the elected leadership's conduct in office and behaviour in the public interest.

(ii) Representing civil society

- ◆ The party system should be reasonably inclusive, covering a broad range of interests and views in civil society. Parties should not exclude or discriminate against people on the basis of gender, ethnicity or other characteristics.
- ◆ Citizens should be able to form and grow new political parties easily, without encountering onerous or artificial official barriers privileging existing, established or incumbent parties.
- ◆ Party activities should be regulated independently by impartial officials and agencies, so as to prevent self-serving protection of existing incumbents.

(iii) Internal party democracy and transparency

- ◆ Long-established parties inevitably accumulate discretionary political power in the exercise of their functions. This creates some citizen dependencies upon them and always has ‘oligopolistic’ effects in restricting political competition (for example, concentrating funding and advertising/campaign capabilities in main parties). To compensate, the internal leadership of parties and their processes for setting policies should be responsive to a wide membership, one 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.

(iv) 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 to parties or other ‘election fighting organisations’ (such as referendum campaigns) must not gain enhanced or differential influence over public policies, or the allocation of social prestige (such as honours).
- ◆ All donations must be fully transparent, and without payments from ‘front’ organisations or foreign sources. The size of individual contributions should be capped where they raise doubts of undue influence.

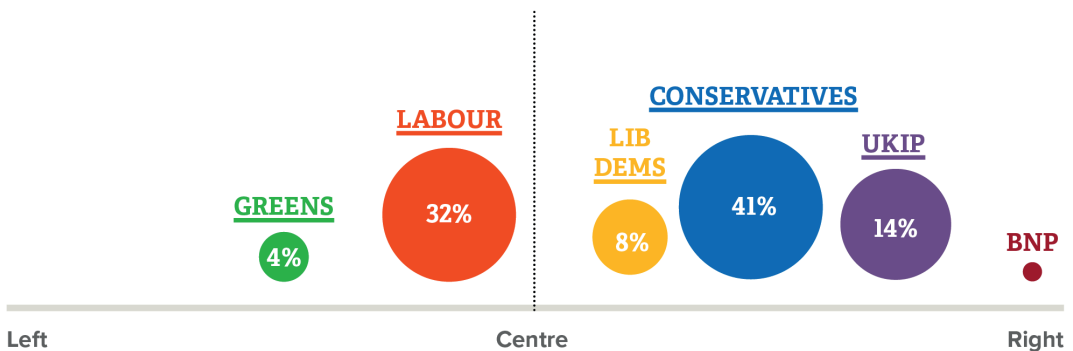
Recent developments: the party system

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 since 2014, party fortunes have changed radically in the UK, particularly in England and Scotland. In 2017 the top two parties secured more than four-fifths of votes in the UK (Figure 2), whereas in England (their ‘home ground’) their share was 73% only two years earlier (Figure 1). With the Brexit referendum won for ‘Leave’ in 2016 and its party leadership in chaos

without its former leader Nigel Farage, the UK Independence Party's (UKIP's) support in England in 2017 plummeted to 2% – whereas two years earlier they commanded one in seven English votes at the general election (and their opinion poll ratings were higher). Already in 2015, the Liberal Democrats' vote share had fallen sharply to just 8% in England (and lower elsewhere), around a third of its 2010 level – as the electors punished them for their 2010–15 'austerity' coalition government with the Tories. In 2017 their support still languished, although in local council elections in 2017 and 2018 they secured around one in six votes.

Yet the most fundamental difference in the UK party systems between the elections arose from the Brexit referendum in June 2016. Figure 1 below shows that in 2015 the competition space of British politics was still essentially one-dimensional – so that parties could still be organised on a classical left-right dimension, with the left standing for more public-sector spending and egalitarian policies, and the right standing for free-market solutions, less welfare spending and stronger policies on restricting immigration. There was a pro- and anti-European Union dimension in British politics in 2015 but only UKIP, with their advocacy of EU withdrawal, placed it centre stage. For the rest the issue was sublimated, with the Cameron-led Conservatives and Miliband-led Labour both offering very similar and quite consensual-seeming 'European' policy positions. Inside the Tories, although strong currents of Euroscepticism were beginning to predominate again behind the scenes, this issue hardly featured in Cameron's 2015 campaign.

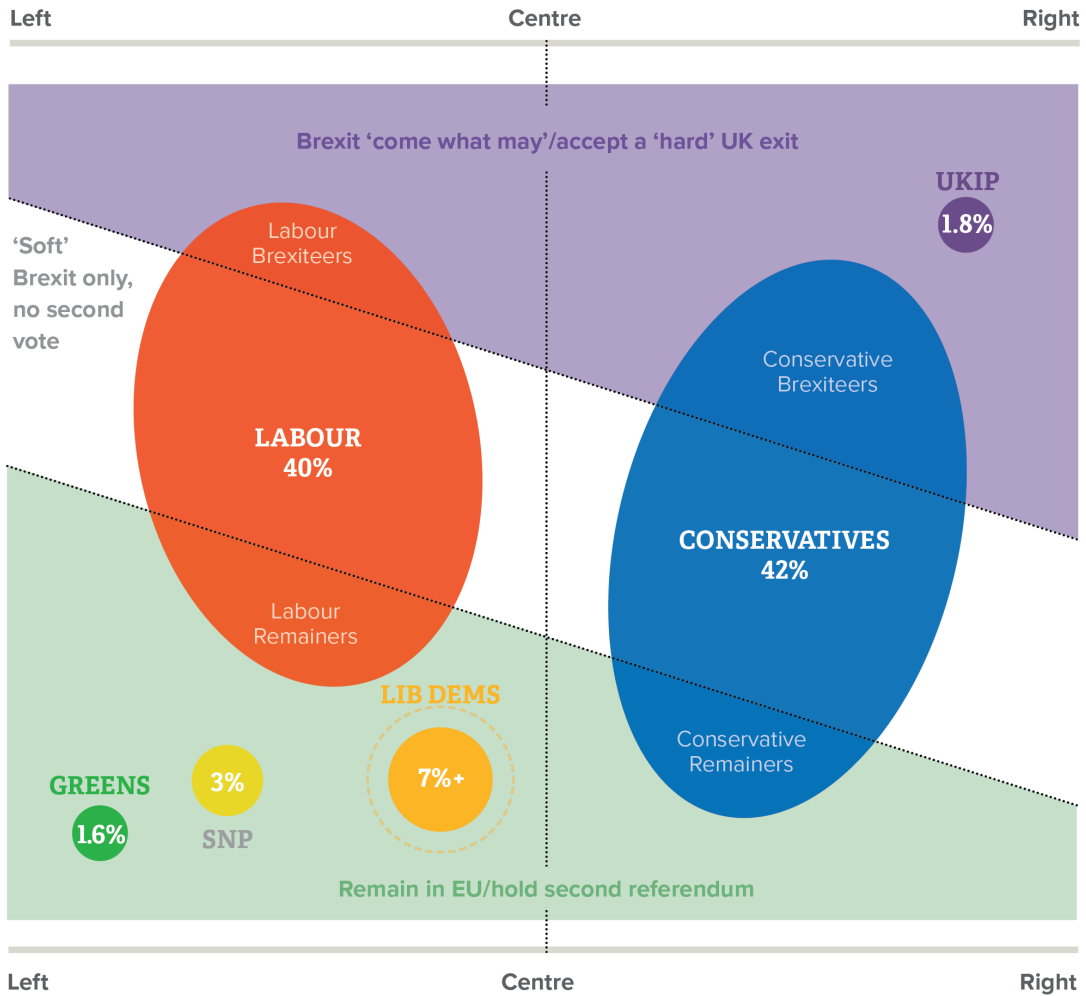
Figure 1: The party system in England, in the May 2015 general election



Source: P. Dunleavy, 2017 Lecture.

Notes: The positions of party 'circles' show their approximate left/right position; the size of the circles shows indicates their vote shares in England. Parties with names underlined won seats.

Figure 2: The UK’s changed party system at the 2017 general election and the subsequent Brexit negotiations phase



Source: P. Dunleavy, 2017 Lecture.

Notes: The positions of party circles show their approximate left/right position; the size shows their vote shares at the 2017 general election. The dotted line around the Liberal Democrats indicates their approximate level of support in 2017 and 2018 local elections (16%, calculated using the BBC’s national equivalent votes share measure).

By 2017, Figure 2 shows that a year after the shock June 2016 referendum vote for ‘Leave’ the space of party competition was clearly two-dimensional, with the left-right ideological spectrum now cross-cut slantwise by a three-fold cleavage between:

- ◆ Strong Eurosceptics committed to implementing the ‘Leave’ vote, whatever the consequences, perhaps even walking away from the EU with a ‘no deal’ outcome – shown in the purple-shaded area.

- ◆ Strong ‘Remainers’ committed to retaining the closest possible relationship with or full customs union and single market access to the EU, and perhaps to holding a second referendum for the public to approve the detailed outcome of withdrawal negotiations – shown in the green shaded area. Significant sections of public and elite opinion here were also willing to see the 2016 vote reversed if possible.
- ◆ In between, in the unshaded area, lie the largest blocs of elite and public opinion, committed to implementing the ‘Leave’ vote so that ‘Brexit means Brexit’ as May insisted, but also seeking the best possible compromise outcome for the UK in retaining links to the EU while yet not having to accept ‘freedom of movement’ of EU citizens into the UK, or any EU policies, or jurisdiction by the European Court of Justice.

These pro- and anti-Brexit lines of cleavage affect both the main parties. There are more Conservative ultra-Leavers and more Labour strong Remainers, but both the top two parties are internally divided into the three groups above. Only the Liberal Democrats, Scottish National Party (SNP), and the Greens came out fully for remaining in the EU or as close as possible, while the now-diminished UKIP was equally clearly for leaving ‘come what may’. The divisions within the main parties meant that although Theresa May called the snap 2017 election supposedly to strengthen her bargaining hand in negotiations with Brussels, in fact the EU withdrawal issue was again handled in a *‘sub voce’* manner by both Conservatives and especially Labour – whose policy position concentrated on domestic issues and remained deliberately very vague on European issues.

A succession of parliamentary votes on Brexit legislation in 2017 and 2018 has so far only confirmed the picture in Figure 2, with Labour’s position varying quite markedly depending on the detailed wording of each vote. Significant numbers of Conservatives have voted against the May government’s ‘shaky compromise’ strategies at various stages, while many Labour MPs in strong Leave-voting constituencies have supported the government against their party line on occasion (while others, particularly London MPs, have rebelled for pro-EU amendments). Jeremy Corbyn has especially kept Labour’s policy line so subtly modulated as to be almost invisible outside Parliament itself.

So British party politics has never in recent history been so complex, and party labels have rarely been so little use in predicting how people stand on the dominant issue facing the UK. At the same time the successive ‘suicide’ decisions of the Liberal Democrats (in 2010–15, by backing the Cameron-Clegg coalition government and implementing austerity policies for five years) and of UKIP (by losing Nigel Farage as leader at the height of the party’s Brexit success, and being unable to replace him in any coherent way) have boosted the Conservative–Labour dominance of the political process. The apparent two-party predominance broadly endured in opinion polls into mid-2018 raising questions about whether the UK (or at least England) has decisively shifted back in love with ‘two-party’ competition? Or will multi-partism survive (as it clearly has at local level) and grow back once the stress of Brexit decisions eases?

Recent developments: inside the parties

Labour: In the extended 2017 election campaign Jeremy Corbyn reversed a 20 percentage point deficit in the opinion polls at the outset, thanks to a growth in younger supporters and sophisticated online campaigning. Aided by May's campaign misfiring, his leadership produced an unprecedented 10 percentage point growth in Labour's vote share over six weeks.

This performance cemented Corbyn's leadership and the policy changes that he had implemented, shifting the Labour Party decisively leftwards in opposition to austerity cuts; and contemplating re-extending public ownership again for the railways, water and perhaps other industries. He maintained support for implementing the 2016 Brexit vote, while successfully masking or finessing this stance with pro-Remain supporters (not least amongst the young). His triumph came after two torpid years. In summer 2015 Corbyn was only just allowed to stand for the leadership at all by the naive generosity of some centrist MPs in getting him 15% of the Parliamentary Labour Party (PLP) signatures. His runaway victory, with over three-fifths support amongst the party's newly enlarged membership, was greeted with horror by the PLP's centre-right, but showed how astonishingly out of touch most Labour MPs had got from their activists. In summer 2016 Corbyn's perceived failure to campaign overtly enough for Remain was the trigger for four-fifths of his Shadow Cabinet to resign, triggering another leadership election. Yet the attempted coup was almost farcically mis-handled. No viable alternative candidate had been identified in advance, and an attempt to make Corbyn re-gather nominations from 15% of MPs before he could stand again also failed. He subsequently romped home with 62% support from members, against a lacklustre and previously unknown centrist candidate, Owen Smith.

At long last the PLP had to accept his leadership, and Corbyn and his MPs held their nerve when May called a snap election. They gave her the two-thirds consent of the Commons that she needed under the Fixed-term Parliaments Act, despite Labour lagging badly in the polls. The process for defining a Labour manifesto then worked well, producing a popular document with few hostages to fortune. And in the aftermath of the narrow 2017 defeat, Corbyn steered a rule change through the party's National Executive lowering the PLP nominations bar to 10% of MPs, so ensuring that a future left candidacy for the leadership should be feasible. Most of the new MPs in 2017 are Corbynites, the Shadow Cabinet has worked well (despite Labour's evasiveness on Brexit), and Labour's poll ratings have broadly tied with the government's into summer 2018. The alleged influence of Momentum, a parallel movement of Labour supporters, has not so far produced clear evidence of far-left 'entryism', and threats to sitting MPs from the left have been relatively few.

On another front Corbyn has faced strong and vocal criticism by UK Jewish organisations that Labour has failed to crack down on anti-semitism within its ranks. An official Labour report found that the problem **was small scale**. And the NEC subsequently took actions to **strengthen disciplinary penalties** for members breaching the party's code of conduct – whose most prominent casualty included former London mayor Ken Livingstone, who **resigned from the party** in spring 2018 over the issue. The party's vulnerability to attack here reflects three factors: the re-growth of the Labour left (who condemn the illegal permanent Israeli occupation of territories seized after the 1967 war); Corbyn's identification

with this position, and Labour's remodelling itself as a multi-ethnic urban party. The PLP has demanded a stronger definition of anti-semitism in the code of conduct – eventually enacted (see [Chapter 7.3](#)). However, the party's defenders argue that the pro-Israel lobby in the UK systematically categorises every criticism of that state as anti-semitism – in order to close down criticism of Israeli repressive actions against Palestinians.

Conservatives: The party under Theresa May also increased their 2017 vote share, reaping a dividend from UKIP's collapse. Yet this was not enough to retain a Commons majority against the Labour surge, nor to save May's legitimacy with her party for 'wasting' David Cameron's (small) 2015 majority. May became a party leader and Prime Minister on notice, with an expectation that at some point she would be superseded, either by resigning or by a leadership contest being triggered. Her original accession in 2016 (with only an aborted election, from which all other candidate fell away) turned into a liability when May proved an uncharismatic (allegedly 'robotic') performer on the campaign trail. And her two top aides were widely blamed for mishandling a 2017 manifesto pledge on taxing the elderly to fund social care, resulting in the advisors' subsequent speedy departure.

May also faced a difficult task of party management over its Brexit strategy, which constantly plagued her during her first two years in office. She ensured that Brexiteers formed a third of her Cabinet, gave them some key negotiating roles (notably David Davis, supposedly in charge of negotiations) and brought her main erstwhile rival for the leadership, Boris Johnson, into the Cabinet in the (deliberately?) inappropriate role of Foreign Secretary. In July 2018, she forced a long-delayed confrontation over the UK's Brexit negotiating position with the Brexiteers in the Cabinet at a Chequers awayday, only to see Johnson and Davis both resign two days later and a guerrilla war escalate in Parliament with her large group of Brexiteer MPs.

The Conservative's key problem is that both wings of the party have suffered cataclysmic defeats in intra-party battles in living memory, which were so fundamental for both sides that maintaining the Tories' famous capacity to coalesce under pressure has become very difficult. For the right, the 1990 ejection of Margaret Thatcher from the leadership by the pro-European centre-left created a 'stab-in-the-back' myth that fuelled a bitter Euroscepticism that grew and became more intense over nearly three decades. For the centre-left, the Brexit Leave vote became a symmetrical disaster, causing the consequent ejection of David Cameron (and his Chancellor/heir apparent George Osborne) from Downing Street. The Tory right's role here was one Remainners find equally hard to forgive – reversing as it does 43 years of centre-left policies on the EU.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Britain's party system is stable, and the main parties generally provide coherent platforms consistent with their 'brand' and 'image', despite the party cleavages caused by the Brexit issue (see above).</p>	<p>Party membership in the UK has increased from a low base in 2010, but it is still low. Around 950,000 people are party members, out of a population of 65.6 million, with Labour and the SNP both showing strong recent growth. Conservative membership is now perhaps the most elderly of all the parties and remains small relative to Labour's renewed mass membership.</p>
<p>Britain's political parties continue to attract competent and talented individuals to run for office.</p>	<p>Plurality rule elections (see Chapter 2.1) privilege established major parties with strong 'safe seat' bastions of support, at the expense of new entrants. 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.</p>
<p>Entry conditions vary somewhat by party, but it is not difficult or arduous to join and influence the UK's political parties. Labour initially opened up the choice of their top two leadership positions to a wider electorate using their existing trade union networks and a £3 'supporter' scheme (in 2015), but later reverted to full members only voting, after tensions with the party's MPs.</p>	<p>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. At local level, some one-party dominant areas also produce councils with no opposition councillors at all.</p>
<p>All the main parties (except perhaps UKIP) have recruited across ethnic boundaries, helping to foster the integration of black and ethnic minority groups into the mainstream of UK politics.</p>	<p>Labour has had long-running difficulties with allegations of anti-semitism amongst some party members in recent years (see above). Some critics argue that the Conservatives have failed to tackle Islamophobia within their ranks.</p>
<p>Labour has involved a wider set of 'supporters' in its affairs and used digital campaigning more. And the separate group Momentum has helped channel back disillusioned, left-leaning people who had left the party under Blair and Brown, and younger people into 'parallel' Labour involvements through both 'clicktivist' and more 'old school' activism.</p>	<p>Most mechanisms of internal democracy have accorded little influence to their party memberships beyond choosing the winner in leadership elections. Jeremy Corbyn claims to be counteracting this and listening more to his members. However, in consequence, Labour struggled to delineate the relationship between MPs in the parliamentary party and the enlarged membership (who may not reflect Labour voters' views well).</p>

Current strengths	Current weaknesses
<p>The UK's main political parties are not over-reliant on state subsidies and can generally finance themselves either through private membership fees, individual donation and corporate donations, or (in Labour's case) trade unions funding.</p>	<p>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).</p>
<p>In the restricted areas where it can regulate the parties, the Electoral Commission is independent from day-to-day partisan interference.</p>	<p>The 'professionalisation of politics' is widely seen as having 'squeezed out' other people with a developed background outside of politics (but see below).</p>
Future opportunities	Future threats
<p>Before the 2016 Brexit vote the UK seemed to be historically evolving towards multi-party politics, a trend that also found expression in elections beyond Westminster and English local government. New and 'outsider' parties strengthened anti-oligopoly tendencies. Since then, however, public opinion showed a renewed emphasis upon top two party competition.</p>	<p>Critics argue that the cross-cutting of both the top two parties by Brexit positions shown in Figure 2 means that party labels and identities are no longer effectively structuring (but instead obscuring) the dominant issues in UK politics.</p>
<p>Some strong 'new party' trends have emerged towards broadening involvements using digital means and extended outreach/lowered barriers to membership within Labour and the SNP. These developments could strengthen party ties with civil society, reversing years of weakening. Alternatively these effects may ebb away again (see below).</p>	<p>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 all other parties' MPs there. The SNP's strong support in 2014–16 threatened to create a 'dominant party system' in Scotland, where party alternation in government ceases for a long period. However, this prospect soon receded with both Tory and Labour revivals north of the border.</p>
<p>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.</p>	<p>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.</p>

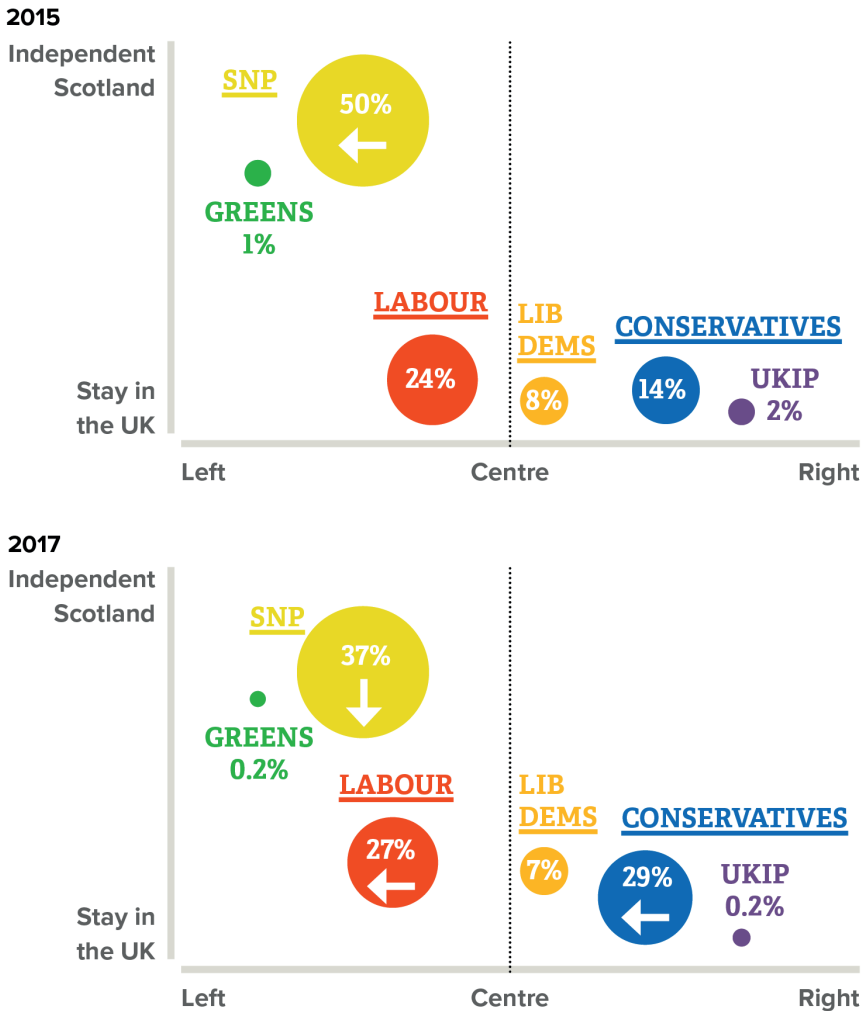
Future opportunities	Future threats
<p>The advent of far greater ‘citizen vigilance’ operating via the web and social media like Twitter and Facebook creates a new and far more intensive ‘public gaze’ scrutinising parties’ internal operations. Tools such as ‘voting advice’ application apps or the Democratic Dashboard also allow voters to access reliable information about elections and democracy in their area – information that neither government nor the top parties has so far either been able or willing to provide.</p>	<p>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’s changes to electoral registration and redrawing of constituency boundaries may all have such effects, even if implemented in non-partisan ways.</p>
<p>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. Therefore, the UK’s adversarial political culture does not rule out cross-party cooperation where electoral outcomes make it necessary.</p>	

Changes in the Scottish party system

By contrast to England, and to a large extent Wales also, in Scotland politics has long operated across two ideological dimensions, with left/right cleavages cross-cut by another issue of equal (sometimes greater) salience: should Scotland stay in the UK, or not? And how much power should be devolved to Edinburgh? Following the extraordinary mobilisation around the 2014 independence referendum (which was narrowly lost by 55% to 45%) this line of cleavage greatly benefited the SNP (and the Scottish Greens in a much smaller way). It tended to undermine and push together the other four parties, all of which campaigned to keep the union with the UK.

Despite their ‘Indy’ referendum defeat, the SNP’s enhanced membership and morale meant that by the time of the 2015 general election they gained a pre-eminence as the ‘voice for Scotland’ against the prospect of a clear majority Tory UK government, as shown in Figure 3a. Gaining half of all Scottish votes in 2015, they won all but three of the country’s 59 seats, leaving Labour’s traditional dominance of Scottish representation in the UK Parliament shattered with just one MP, the same number gained by the Conservatives and Liberal Democrats. For a time, it looked as if the SNP would exert a hard-to-challenge dominance in Scottish politics, controlling as they did both the Scottish government in Edinburgh, a majority of all MSPs and almost all Scottish representation at Westminster, against a multiply-divided opposition.

Figure 3: The Scottish party system at the 2015 and 2017 general elections



Source: Dunleavy, LSE Lecture Notes for course Gv311.

Notes: The size of each party circle indicates its rough size and salience in the party system, and its approximate position in two-dimensional space. The numbers in each circle show that party's vote share percentage in Scotland. Parties with names underlined won seats.

In the 2016 Scottish Parliament elections, however, the SNP as incumbents lost a little ground in votes (down to 42%, and 63 of 129 seats), while the Tories jumped nearly 11% to become the main opposition on 23% support, and Labour fell back badly to third. The Liberal Democrats were unchanged, but the Greens moved from 2 to 6 seats, becoming critical for the SNP staying in power. Nicola Sturgeon looked to have four more years as First Minister, and when Scotland voted by 62% to 38% not to leave the European Union, her allies quickly raised the prospect of holding a second referendum on independence far more speedily than anyone had previously envisaged – not least to resist a Westminster 'land grab' for EU powers that the SNP argued could permanently reset the devolution settlement in the UK's favour.

By 2017, however, public support for any second independence referendum amongst Scottish voters was clearly a minority view. The new Scottish Conservative leader, Ruth Davidson, moved her party's position decisively towards the political centre, endorsed more devolution of powers to Scotland, and sharpened criticisms of the SNP's government at Holyrood. The Tories perhaps attracted more support from pro-union Labour and Liberal Democrat voters as the most viable unionist opposition.

In addition, during the June 2017 election campaign Jeremy Corbyn's UK national leadership also shifted Labour's image leftwards, and brought the party back in line with the Scotland's left-leaning political spectrum. The party also backed more powers for Scotland and slightly blurred its rejection of independence (for instance, no longer making support for independence inconsistent with Labour membership). These changes caused a significant swing back to a multi-party system, shown in Figure 3b above. The later easy victory of Corbynite Richard Leonard as Scottish Labour leader consolidated these changes, although he has yet make much of a mark with voters at large.

The SNP could not sustain its 2015 majority vote share, losing a quarter of its support. Its seats were slashed back from 56 to 35, just under three-fifths of the total of Scotland's 59 MPs. The scale and speed of these seat reversals was damaging. It was not until spring 2018 that the SNP dared to **publicly re-launch** the idea of an Indy 2 referendum, at some point after Brexit had occurred, perhaps in 2020 or 2021. 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 – clearly had receded after 2016.

Structuring competition and party 'brands'

We noted above that the main alternative dimension in England has been the pro- and anti-EU one, increasingly overlapping in UKIP's campaigning with anti-immigrant sentiments. The right-wing press have also explicitly **played to anti-immigrant views**, notably in their Brexit coverage, but officially the Tories have not played along. However, Theresa May's insistence on maintaining the net immigration target of below 100,000 people a year, which was set under the Cameron government when she was Home Secretary, and which has never been even vaguely approached by actual, much higher migration levels, undoubtedly reflects a *sub voce* Conservative appeal on the same lines. 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, less dominated by its working class/trade union lineage.

Both the top two British parties have had chronic difficulties in organising around the EU/immigration aspect of politics, maintaining an agreed strategy of not vocally campaigning on immigration, lest it stir up ethnic tensions. As we saw above, Labour has become progressively more pro-EU since Brexit (echoing more the strongly European stances under previous leaders) and the Conservative MPs (if not their leadership) have become more anti-EU and pro-Brexit.

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 in 2017 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 altogether, to the Tories' great benefit.

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 some of these arrangements now look as if they are likely to change or fall into abeyance. Jeremy Corbyn's two commanding party leadership election wins in 2015 and 2016 set him up to almost succeed as a campaigner in the 2017 general election, and the changes lowering the share of MPs needed for nomination (noted above) may guarantee that Labour's internal elections remain critical for the party in future.

However, in the other two leading parties, the members' voice has recently been deactivated and leadership competition denied. In June 2016, following Cameron's shock resignation, complex politicking amongst Tory MPs meant that Boris Johnson did not even make the nomination stage and Michael Gove was ignominiously eliminated at the 'winnowing out' second ballot of Tory MPs. The clear frontrunner Theresa May was left facing only the relatively unknown Brexiteer Andrea Leadsom in a run-off vote by party members that would in theory take all summer long. Leadsom withdrew, making May the unelected but initially unquestioned leader. Effectively the Tory MPs' fix denied their party members any chance to vote.

However, May's subsequent huge problems as party leader, and her lack of success as a campaigner at the 2017 general election, may mean that the next Tory leadership contest will have to run by the book and involve members after all. The complex politics of precipitating a new contest without seeming to be 'disloyal' put many alternative leaders off in 2017–18, especially while May could be left to bear the burden of the Brexit negotiations. But as time wears on, the pressure for a resolution of her perceived 'caretaker only' leadership tenure will intensify.

The second party where members effectively lost a vote was the Liberal Democrats. When they came to elect a new leader after their 2015 general election losses their party had only eight MPs left in the Commons to choose from. Tim Farron took the helm in 2015 but

made little impact. In 2017 he stood down and the elderly returning MP Vince Cable was the only candidate to replace him. By mid-2018 he had largely failed to improve the party's lowly opinion poll ratings, perhaps reflecting Cable's own close involvement in the 2010–15 coalition government. The party's deputy leader, Jo Swinson, may be the party's best hope of remaking its image in time for a 2022 general election, by passing the leadership baton to a new gender and generation.

Internal democracy for policy-making

All the parties have moved to greater transparency and openness in their affairs, and have different arrangements for intra-party democracy to periodically 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). Conservative Party members have relatively little formal influence over party policy, with key decisions 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, but in local government has had to tighten up in the few areas where it has exercised power (such as in Brighton).

Recruiting political elites

The main political parties regularly sustain 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 only candidates with professional, back-office backgrounds are being chosen. 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.

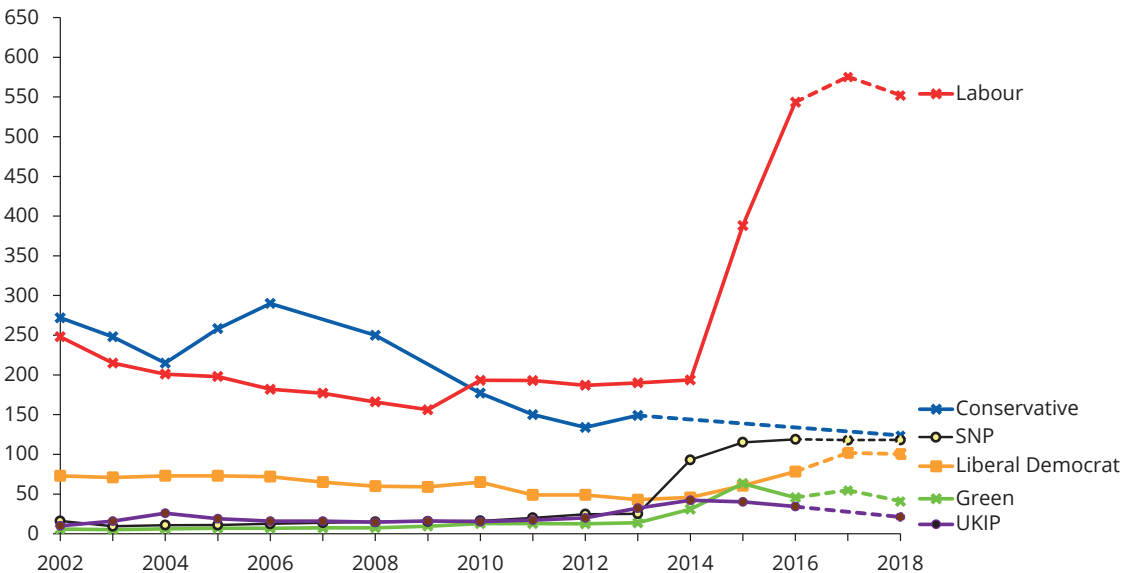
In terms of wider social diversity, the 2017 parliament is in some ways (notably gender and ethnicity) the most diverse and representative ever. Yet as **Hudson and Campbell** noted in 2015 (when the same claim was made): 'To put the progress made in perspective, the UK would need to elect 130 more women and double the current number of black and ethnic minority MPs to make its parliament descriptively representative of the population it serves.' Just 2% more MPs were women in 2017. The problem is that research continues

to show that all the main parties' membership is disproportionately white, male, middle aged and middle class, with the problem being most severe for the Conservatives. Against this background achieving sustained and rapid improvements in the recruitment of diverse prospective candidates is tricky.

Representing civil society

The standard theme of now dated 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 Figure 4 shows that this narrative of continuous decline has not been accurate for British parties as a whole in the 21st century.

Figure 4: The membership levels of UK political parties, 2002–18



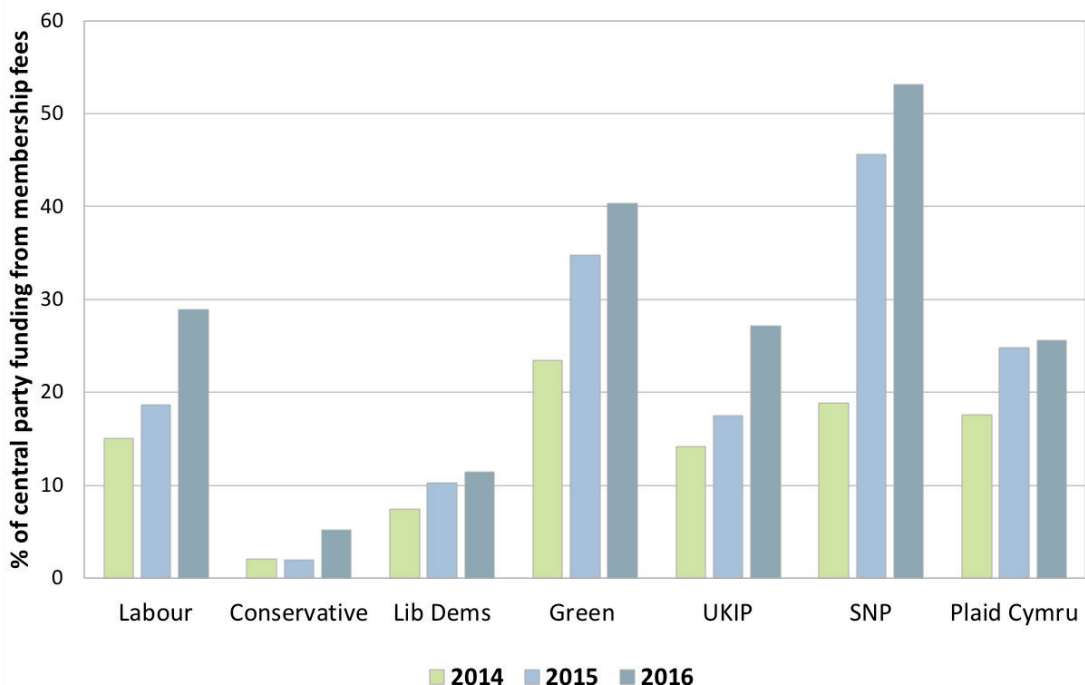
Source: Lukas Audickas, Noel Dempsey, Richard Keen, [Membership of Political Parties](#), House of Commons Library Briefing Paper SN05125, 1 May 2018, p.8

Notes: The vertical axis here shows thousands of members, from annual accounts submitted to the electoral commission, data from parties' head offices and, in the case of the Conservatives, media estimates. The Labour Party membership numbers of 2015 and 2016 include full party members and affiliated supporters, but not 'registered supporters' (who paid only £3). Dotted lines show estimates based on media reports.

The last four years in Figure 4 show soaring numbers of members for the SNP since the independence referendum and of the Labour Party since easier membership rules, low cost fees, and the post-general election changes. Some observers point out that now with **522,000 individual members**, a Corbyn-led Labour has gained perhaps £8m in annual fees and so may be able to reduce its dependence on affiliated trade unions' block fee payments – a goal that eluded all previous Labour leaders. The Conservatives also moved against the unions again. The Trade Union Act 2016 introduced an 'opt-in' requirement for political levies for new members of trade unions, replacing the previous opt-out provision. This may (gradually) hit Labour's union income in future years, or it may be mitigated by improvements in union communication practices.

All these changes mean that parties now draw very different proportions of their income from membership subscriptions. Figure 5 shows that the Greens and SNP are the parties for whom membership fees count most as a source of income, with the Conservatives bottom, and the Liberal Democrats next. Labour, Plaid Cymru and UKIP are in the intermediate group.

Figure 5: 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. Some **new left parties** committed to a different kind of 'close to civil society' politics emerged on the left (like **Podemos in Spain** and Syriza in Greece). More often though populist, anti-EU/anti-immigration parties grew markedly 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 (see [Chapter 2.1](#)) 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 have proved resilient so far, but they may still not endure if either party experiences setbacks in future.

Political finance

The core foundations of the UK's party funding system lie 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 any paid-for broadcast advertising by parties in favour of state-funded and strictly regulated party election broadcasts (set by votes won last time). Opposition parties also have the benefit of a degree of state funding (called 'Short money' and again related to votes received) but this is only available to those parties with at least one MP (see [Chapter 4.1](#)). The bulk of the funds so far has gone to fund the leaders' offices of Labour, the SNP and Liberal Democrats.

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.

Figure 5: Donations to political parties, 2013–17

Party	£ millions						Total 2013–17	% of all donations
	2013	2014	2015	2016	2017			
Conservatives	15.9	29.2	33.2	17.5	37.1	132.9	50.5	
Labour	13.3	18.7	21.5	13.9	16.1	83.5	32	
Lib Dems	3.9	8.3	6.7	6.4	6.30	31.6	12	
UKIP	0.67	1.2	3.3	1.6	0.65	7.4	2.8	
SNP	0.04	3.8	1.2	0.14	0.87	6.5	2.5	
Green	0.19	0.66	0.43	0.18	0.28	1.8	0.7	
Total	34	62	66	40	61.3	263.3	100	

Source: [Electoral Commission](#)

Notes: Percentages may not sum to 100% due to rounding.

In terms of private donations Figure 5 shows that the Conservative Party gained just over half of the total across the 2013–17 period, mostly from very rich people. Labour, meanwhile, received a smaller 32%, partly from mass membership and trade union fees, with some large individual donations also. The Liberal Democrats, in government until 2015, also gained some large gifts – as did UKIP.

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). In the past 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. The Tories (and Liberal Democrats in a lesser way) continue to take full advantage of this. However, Corbyn has made few Lords appointments, and the SNP will take no seats there. Meanwhile the Liberal Democrats have far and away the highest ratio of peerages and knighthoods amongst their past 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 to change party finance rules in ‘sectarian’ ways that maximise their own individual party interests and directly damage opponents. In the UK’s ‘unfixed’ constitution, only elite self-restraint, **Tory party misgivings** or perhaps House of Lords changes (which made a difference to the anti-union law in 2016) can prevent directly partisan manipulation of the opposition’s finances.

Conclusions

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, utilising 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 Brexit divide cuts across party lines in an acute way, producing deliberate vagueness in what each of the two top parties say to voters on this crucial issue. The provisions for party members to elect leaders were left unused in the Conservative Party in 2016, and for a time created almost insupportable strains within Labour under Corbyn. The problem of a ‘club ethos’ uniting MPs in the main parties was 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 democracy controls or influence over parties' policy stances and manifestos; and in the sheer scale of parliamentary party remoteness from membership views that can arise.

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3.2

The interest group process

*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 this key form of input politics operate? And how effectively are all UK citizens' interests considered?*

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

- ◆ Elected representatives and politicians should recognise a need for continuous consultation and dialogue with different sections of the public over detailed policy choices. Procedures for involving interest groups in decisions affecting them should cover the full range of stakeholders.
- ◆ The resources for organising collective voices and political 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 autonomous collective actions and mobilisations by different groups of citizens.
- ◆ 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 should 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 most easily or able to insure against them.

Between elections, the interest groups process generates a great deal of useful and perhaps relatively 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.

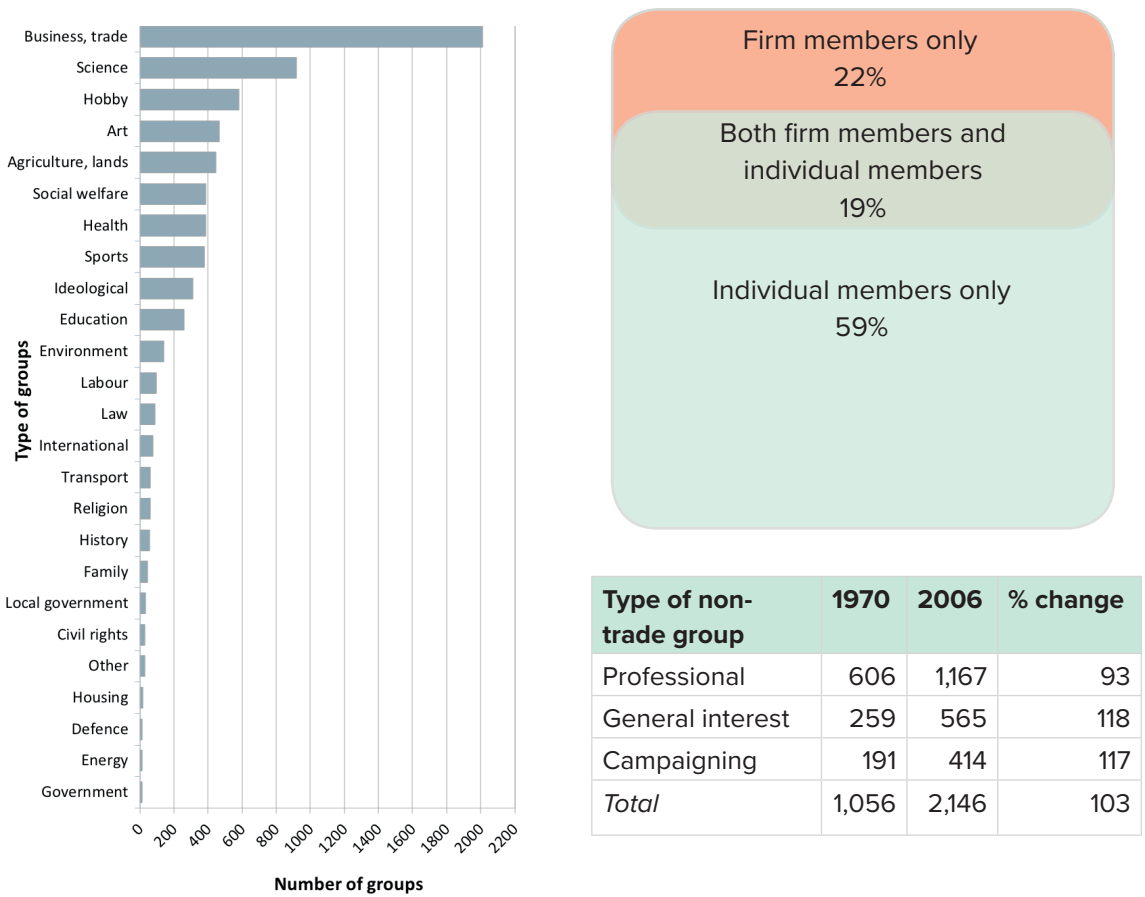
Actions like sending back a pre-devised public feedback form, writing to an MP, supporting an online petition to the government, or tweeting support for something, are cheap to do and so only indicate a low level of commitment. Joining (and paying membership fees to) an interest group or going to meetings 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.

From a somewhat elderly 2006 study, we know that in the UK there were over 7,800 interest groups registered by group directories for the field. **Jordan and Greenan** demonstrate that business trade associations (many very small) were by far the greatest number, followed in numerical terms by professional groups and learned societies. Campaigning and pressure groups ranked only fifth of their category types. Some individual groups have grown very large memberships in the millions or hundreds of thousands – such as the UK’s few trade unions, which have coalesced into a few very large membership bodies, or the National Trust or Royal Society for the Protection of Birds.

As Figure 1 shows, four out of five interest groups recruited individual members, and three out of five *only* recruited individuals – so their significance for elected politicians was based quite heavily on their size. Those that can engage the participation of almost all the people in a given occupation or role will carry especial weight, as with the well-organised medical professions. Over time the numbers of non-business groups (with individual memberships) grew substantially from 1970 to 2006, as the table part of Figure 1 shows. Campaigning groups grew slightly more in numbers than the general trend.

The remaining fifth of interest groups (all of them business or trade associations) only recruited firms as members, and a further fifth recruited both firms and individual members. Here legitimacy may be based on what proportion of a given industry or type of business are engaged with bodies claiming to represent them. Often rather divergent voices have claimed to represent business interests – as in the long-run rivalry between the Confederation of British Industry (CBI; which represents big firms and operates in a

Figure 1: The distribution of UK interest groups in 2006



Source: Jordan et al, 2012, Table 7.2, p. 151, & Jordan & Greenan, 2012 Figure 4.1 p.82 & p.92.

politically neutral, corporatist way) and the Institute of Directors (which is more eclectic and more right wing). Some industries are dominated by a single interest group, like the National Farmers’ Union, which in the past achieved 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 and most continuous losers since the 1980s. Their membership numbers radically reduced with the decline of manufacturing industry and large firms. Numbers and unionisation rates held up better in the public sector, but even there, members became markedly less willing to go on strike in recent years. Meanwhile environmentally aligned groups and NGOs (non-governmental organisations) have flourished. Some big groups that shifted away from restrictive ‘legacy’ modes of recruiting members and adopted 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 – a succession of which led to the 2014 Lobbying Act. This introduced an official register of paid lobbyists contacting MPs in Westminster and in touch with Whitehall departments, affecting commercial lobbying firms most, together with some groups with developed governmental or parliamentary liaison operations. The lobbying industry in the UK is estimated by some sources to be worth £2bn a year, but still remains mostly self-regulated, especially perhaps in the new ‘digital influencing’ areas.

The large data analysis and lobbyist firm **Cambridge Analytica** became a focus of controversy in 2018 in the USA and Britain, after it emerged that it had extracted a large amount of users’ personal data from Facebook without their knowledge, and used the information to construct sophisticated psychological profiles to target voters in the Trump campaign, and used by a closely allied company to help the Brexit Leave campaign. The firm fought a rearguard action against its critics, but it had to close down when its UK chair was caught on video in a ‘sting’ by a UK TV programme, boasting of using illicit influence techniques to ruin the reputations of rivals to its clients. With business clients drying up the firm shut its doors within a few days. The chief executive attended two grillings by a House of Commons select committee, and official investigations continued at the time of writing. Critics argued that the incident shone a light on **lax regulation** of new influence technologies, a conclusion that a Commons select committee shared in a critical mid-2018 report on **fake news and social media**.

Digital technologies could also play a role in allowing decision-makers to elicit and cheaply incorporate mass public views. The UK government re-established 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 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 chance of reaching the 100,000 target in the time allowed. In 2016 thousands of petitions were started but only 10 reached the 100,000 threshold, 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 receded into the long grass until the summer of 2018. And when it did take place it was carefully organised to keep the famously touchy US President completely away from London and other UK cities where mass protests occurred.

Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>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 the incumbent government's policies. Governing parties in the UK have a strong record of pushing through partisan commitments, and 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 commonly 'talk up' any support their proposals secure, while ignoring or belittling unfavourable feedback.</p>
<p>Parliamentary processes, including the consideration of legislation, questions to ministers, and select committee hearings, 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. However, select committee inquiries access quite a restricted and biased range of 'recognised' interests. Public involvement processes in the devolved Scottish, Welsh, Northern Ireland and London legislatures/assemblies are generally far more systematic and inclusive.</p>	<p>There are sharp inequalities in the capabilities of different social groups to monitor policy proposals and to get effectively involved in official consultation and legislative 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, business interests have well-developed government and parliamentary liaison units, and ready access to professional lobbyists, public relations consultants, marketers and media experts – giving corporations and well-off elites inherent advantages that are hard to counteract.</p>
<p>UK decision-makers are alert to the potentially excessive power of lobbyists and of well-resourced groups best able to afford lobbyists and other organised and commoditised means of influence. Most (if not all) politicians discount heavily for the 'industrialised' 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 – as the Cambridge Analytica case demonstrates.</p>	<p>Lobbying in the UK has historically focused most attention on creating private links with civil servants and ministers, exercised at early stages of the policy process, and often carried out without transparency. Concertation of ministerial decisions and business interests have been fuelled by incidents like the hundreds of emails between News International and the private office of the responsible minister, Jeremy Hunt, during a take-over battle he had to adjudicate in 2010–12.</p>

Current strengths	Current weaknesses
	<p>As the powers of the House of Commons committees have slowly grown, and coalition governments operated in hung parliaments in 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.</p>
<p>For elected politicians, what matters most is the vote-power of groups, which is a function of their <i>size</i> (large membership groups are more influential than small ones), the <i>intensity</i> of their preferences (groups that care a lot outweigh apathetic ones), and their <i>pivotality</i> (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.</p>	<p>For politicians the <i>realpolitik</i> 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.</p> <p>Both ministers and civil servants also routinely extract a ‘good behaviour’ 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 proposals go public. They must normally mute any public criticisms altogether, or tone them down to be non-confrontational or expressed ‘responsibly’.</p>
<p>Saturation media coverage, and now social media coverage as well, 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 sustain effective participation in policy debates, counts for more than simple voting power or financial might. A more <i>deliberative</i> interest group process has emerged, which has evened up access to the policy terrain.</p>	<p>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.</p>

Future opportunities	Future threats
<p>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 (for example, patients affected by a particular disease, or citizens with a shared specialist interest) have become far more feasible and influential.</p>	<p>Lobbying and public relations professionals have extended the techniques and services they use for commercial and other well-funded interests so as to increasingly manipulate social media in expert ways. A new and powerful ‘data-industrial complex’ has recently emerged, as the Leave campaign for the Brexit referendum aptly demonstrated.</p>
<p>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.</p>	<p>By increasingly ‘delegating’ the job of representing diverse relatively powerless societal interests to NGOs and charities, and restricting their own participation to digital means, well-educated and altruistic middle-class people have created another spiral in the further ‘professionalisation’ of democratic politics. Groups that slip between the gaps of NGOs’ concerns (for example, perhaps ‘Fathers for Justice’) can lose out badly from this system. Their inexpert autonomous efforts to organise become ever more marginalised in the political world.</p>
<p>Crowdfunding via the internet has increasingly emerged as a way that large and dispersed groups can fund previously difficult mobilisations. The anti-Brexit lobbyist Gina Miller used this technique to back anti-Brexit candidates in the 2017 general election, as did other satellite campaigns. (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 to operate more effectively in competition with business hierarchies.</p>	<p>The virulent tone of the Brexit referendum campaign upset many charities. The chief executive of the National Council of Voluntary Organisations said he regretted they had not spoken out enough because of fear of running foul of the 2014 lobbying regulations, plus being pilloried in the media. In Brexit policy development up to summer 2018, ministers and Whitehall have seemed reluctant to bring in outside voices, and groups have felt excluded, despite their EU expertise, according to Jeremy Richardson.</p>
<p>Interest groups were keen to get involved in the Brexit negotiations, not least because they know a lot about the EU policy process – but pro-Remain industry interventions were fiercely attacked by Brexiteer politicians.</p>	

'Managing' decision-making consultations

Elections inherently give policy-makers only a crude and infrequent idea of public opinion. Parties must aggregate issues together into programmes and manifestos. Citizens can only cast a single vote, with no capacity to indicate which issues 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, regularly influential and perhaps closed to outsider groups. Alternatively there may be a looser 'policy network', linking the main groups that regularly comment on policy issues, but with more weakly tied or changeable sets of participants.

A well-organised civil society may seem to leave Whitehall and ministers in a weak position, and in the past some political scientists **rather fancifully described** a 'hollow crown' that has resulted in the UK. 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. 'Insider' groups have the ear of policy-makers, while more strident, public and 'extreme' voices are routinely discounted.

Finally, sophisticated opinion polling now allows both politicians and the public to regularly learn how different types of citizen feel about issues – so the policy influence of public opinion as a whole has improved and magnified. A lot of media and social media coverage and commentary also ensures that policy-makers continuously '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 was 'tied by a thousand threads' into doing things that owners of capital want. And 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 for Democratic Audit, **David Beetham** drew attention to how dominant financial corporate sectors in the UK economy first caused the 2008 economic crash by forcing through rash financial deregulation. But these same interests were then differentially rescued by unprecedented state bailouts by the biggest banks. And to stop a wider decline, ‘quantitative easing’ by the Bank of England 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 ‘**tax-shaming**’ **mobilisations** by online activists have dented this regime (for example, a **consumer boycott** forced Starbucks into ‘voluntarily’ paying nominal amounts of UK corporation tax), and forced a rethink of previous pro-multinational tax policies across the OECD.

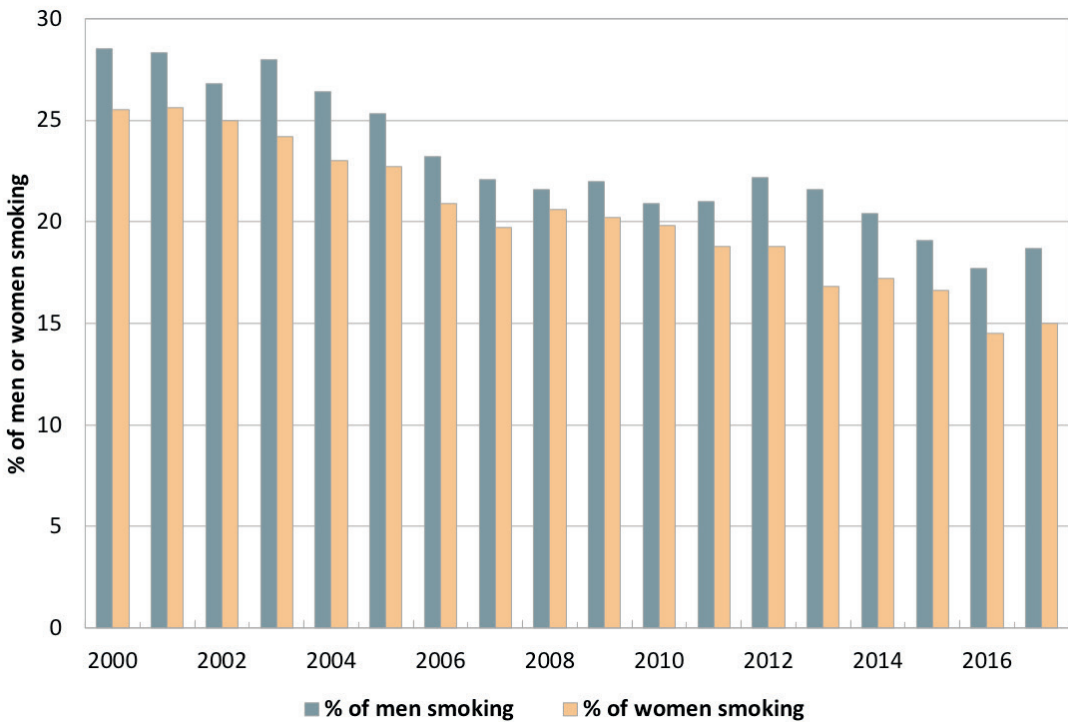
Competition between ‘advocacy coalitions’

A more benign view of changes in the interest group process is given by the ‘**advocacy coalition framework**’ (ACF). This modern pluralist view argues that the key influences on public policies now are cognitive ones, turning on empirical evidence, research and cognitions. Old-style, ‘big battalion’ groups – like big corporations, media barons and 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 process of cognitive competition where rational arguments and evidence chiefly sway policy-makers, not political self-interest alone.

Nor are the battles that matter fought any longer by single interest groups, but rather by competing ‘advocacy coalitions’ that bring together diverse clusters or networks of groups aligned 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 – and Figure 2 shows impacts in terms of falls in the number of smokers. 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 against smoking regulation 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 (as defenders of the UK’s policy apparatus might say), 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.

Figure 2: The proportion of men and women smoking in Great Britain, 2000–17

Source: [Office of National Statistics Dataset](#), 2018.

Conclusions

Nobody now claims that the UK's interest group process is an equitable one (a position wrongly attributed to pluralists by their critics). Even common sense requires that we recognise 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 policy-makers 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 policy-makers remains an uphill struggle. Business dominance is perhaps reduced by restrictions on lobbying and extra transparency from social media. But it is still strong, despite some shifts towards cognitive competition over policy solutions and towards more deliberative and evidence-based policy-making.

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3.3

The media system

*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 how much a country's media system conditions 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.*

What does liberal democracy require of a media system?

- ◆ The media system should be diverse and pluralistic, including different media types, operating under varied systems of regulation, designed to foster free competition 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 broadcaster (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 avoid forms of intervention that 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 are easy to access, at no or low cost. The system should operate as transparently as possible, so that truthful/factual content predominates, it quickly 'drives out' incorrect content and 'fake news', and that 'passing off' and other lapses are minimised and rapidly counteracted.
- ◆ People are entitled to published corrections and 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 democracies, centring on five components:

- (i) **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 only a weak code of conduct and system of redress in the event of mistakes in reporting or commentary.
- (ii) **A publicly 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.
- (iii) **A few private sector broadcasters** whose political coverage is regulated by the same set of rules to be politically impartial – which are also set and enforced by Ofcom, insulated from control by politicians, the state and from the broadcasters themselves.

- (iv) 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.
- (v) **Social media**, which are an increasingly salient aspect of the 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. However, 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. (See [Chapter 3.4](#) for a detailed discussion of social media.)

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 digital social media has enabled people to originate, find and share information in ways that challenge the traditional hegemony of state-funded broadcasters and the national press.

The biggest source of concern about the democratic qualities of the UK's media system has been that most of the press perennially back the Conservative Party (in very forceful ways in most cases). Far fewer papers normally back Labour, and the Liberal Democrats receive only episodic support from smaller papers. Once predicted to become just another depoliticised operation of conglomerate corporations, in fact newspapers are still run in a hands-on, 'press baron' fashion by powerful companies or media magnates (like Rupert Murdoch and the Barclay brothers). Figure 1 shows that the fiercely anti-Labour and pro-Brexit *Sun* is by far the biggest newspaper, and Rupert Murdoch also owns the *Times/Sunday Times*. The *Daily Mail*, *Daily Express* and *Daily Telegraph* complete the Tory press hegemony. The Labour-backing Trinity Group newspapers (owning the *Daily Mirror*, *Daily Record*, and *The People*) have smaller readerships, as does the *Guardian*. Some papers also take a neutral or more varied political line.

Figure 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	Political stance	% used in last 3 days	% used in last week
BBC News (TV & radio)	Regulated non-partisan	53	64
ITV News	Regulated non-partisan	20	33
Sky News	Regulated non-partisan	14	21
Sun (& Sunday Sun)	Conservative, Brexiteer	7	15
Daily Mail (& Sunday)	Conservative, Brexiteer*	8	13
Metro (free)	Non-political	6	11
Regional or local newspapers	Varied	4	11
Daily Mirror (SM, Daily Record)	Labour, EU pragmatic	6	10
Channel 4 News	Regulated non-partisan	4	10
Commercial radio news	Regulated non-partisan	7	10
Times/Sunday Times	Conservative, EU pragmatic	3	7
Guardian/ Observer	Labour, Remainer	2	5
London Evening Standard (free)	Conservative, Remainer	2	4
Daily Telegraph (& Sunday)	Conservative, Brexiteer	2	4
'I' (newspaper)	Independent, Remainer	2	4
CNN	Regulated non-partisan	1	4
Daily Express (& Sunday)	Conservative, Brexiteer	1	2
Political orientation of source	Regulated non-partisan	99	142
	Conservative	24	47
	Labour	8	15
	Independent, non-political press	8	15
Brexit orientation of source	Brexiteer	18	34
	Neutral or EU pragmatic	105	153
	Remainer	4	9

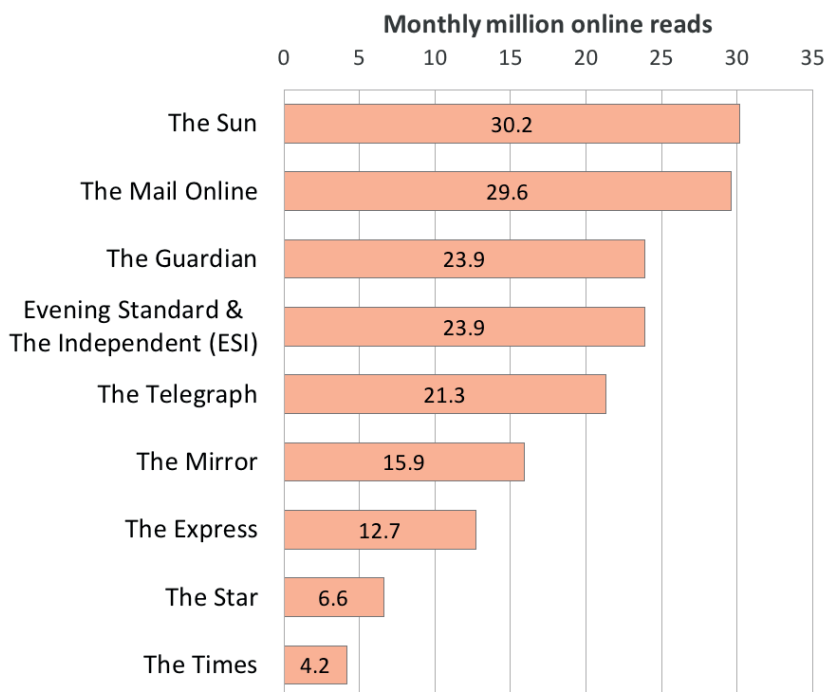
Source: Data from [Reuters Institute Digital News Report 2018](#) (Express from full survey data supplied). Classifications of political orientations by the authors.

Note: Percentages sum to more than 100% because people use multiple media sources. *The Daily Mail was strongly pro-Brexit, but the Mail on Sunday supported Remain.

However, Figure 1 also shows that in terms of media exposure the non-partisan broadcast news media have maintained far more reach and regular use than print newspapers. In modern times a trio of TV news outlets (BBC, ITV and Sky News) plus radio have provided much of people's political information. All broadcasters operate under political neutrality rules that apply with special force during election campaigns. They must achieve a bipartisan balancing of Conservative and Labour issues and viewpoints (given their historic dominance in shaping general election voting) plus the broadly proportional representation of other parties – for example, giving the SNP in Scotland equal prominence. Optimists about the media system would point out that in Figure 1 four times as many people have used non-partisan media than have read Conservative-aligned newspapers. Similarly, more than five times as many people have used sources that take a neutral or pragmatic view of Brexit than have used strongly pro-Brexit sources. Figure 1 also shows that most people use multiple media sources and thus are exposed to a mix of partisan and non-partisan coverage of issues and politics.

However, newspaper-run websites now provide major sources of revenue for the press, and they compete for online attention with the broadcasters' websites and online-only publications. Figure 2 shows that the papers' online readership produces a greater balancing of political alignments in the digital world. During the 2015 and 2017 election campaigns Labour enjoyed the backing of the *Guardian* 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*.

Figure 2: The online monthly readership of UK newspaper websites (in 2017)



Source: UK Press
Gazette

These modifying factors perhaps have begun to blunt the ‘power of the press’ compared with (say) the 1992 general election, when Murdoch’s leading title boasted ‘It was the Sun wot won it’ for John Major. In 2017, the *Sun*’s election day ‘Cor-Bin’ front page was no less strident in denouncing Jeremy Corbyn. On the day before polling, the *Daily Mail* devoted **13 pages to anti-Corbyn** and anti-Labour stories and commentary, with the cover headline ‘Apologists for Terror’). The levels of political bias exhibited can also be strikingly unconstrained, verging into ‘fake news’ generation, with, for example, the front pages of the *Sun* and *Daily Mail* both explicitly linking top opposition politicians to terrorist threats.

Yet **optimists** about the media system 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
<p>Figures 1 and 2 demonstrate that the UK’s media system remains essentially pluralistic when taken as a whole, especially in the complementary nature of a free press offset by bipartisan regulated broadcasting.</p>	<p>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 Rupert Murdoch) perennially distorts political power away from political equality. Traditional forms of joint agenda-setting by journalists (‘wolf pack’ questioning on top issues) and new developments (for example, press preview programmes on 24-hour TV and press front pages on broadcaster websites) mean that press distortions can drag public service broadcasters into line with a press-led agenda.</p>
<p>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 (Figure 1). Although its audience is ageing somewhat, the BBC’s broadcast news coverage continues to reach two-thirds of the public each week.</p>	<p>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 media regulator’s request, this happened only after readers had voted.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>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 press brands and perhaps other media. 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.</p>
<p>Several new versions of self-regulation have emerged, with Impress and Ipso offering different models (see below). The closure of the <i>News of the World</i> over its toxic phone-hacking culture still looms large in editors' and journalists' consciousness.</p>	<p>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 Crime and Courts Act (see below). Complaints mechanisms are often weak and unclear, especially among new entrants.</p>
<p>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 and politicians' hostility to it.</p>	<p>Court injunctions to force the press to respect people's privacy are the preserve of the very wealthy, though are now declining in numbers. Ordinary citizens typically find it hard to achieve redress or corrections for mistakes from newspapers.</p>
<p>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.</p>	<p>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. Like local authority-run newspapers, this is a problematic development.</p>
Current opportunities	Current threats
<p>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.</p>	<p>Mainstream media and journalists are increasingly distrusted by the public, particularly on the left, for their perceived biases and remoteness from 'ordinary people'.</p>

Current opportunities	Current threats
<p>Citizens have mobilised on social media to counteract newspaper partisan or commentary excesses – for example, Stop Funding Hate's campaign to shame big advertisers into boycotting newspapers accused of anti-Islam coverage and stirring up racial hatred. As online sources grow more salient, so a somewhat less partisan style of 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.</p>	<p>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 have 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 (for example, the Canary and Evolve Politics) claimed extensive influence in the 2017 general election, while the alt-right (and possibly Russian intelligence) seems to have helped sway the EU referendum campaign towards 'Leave'.</p>
<p>Recognising the dearth of local news reporting, some efforts are being made to fund and train reporters (see below).</p>	<p>Official proposals for a modernised Espionage Act could threaten whistleblowers and introduce a further chilling effect to journalists' ability to pursue stories relating to the 'secret state'.</p>
<p>Hyperlocal news models continue to evolve, with the ease of making micro-payments offering the possibility of an (albeit unpredictable) revenue stream (see Chapter 3.4 on social media).</p>	<p>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.</p>

The BBC and Sky

The regulated TV 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 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' and liberal causes bias. Conversely, in 2015–17, when Jeremy Corbyn's Labour leadership was controversial, some 'alt-left' outlets attacked the BBC (and in particular its political editor, Laura Kuennsberg) for bias against him. The BBC is now externally regulated by Ofcom, putting it on a par with other regulated broadcasters, instead of the previous exceptional situation where the BBC Trust was both 'judge and jury' on major complaints. The BBC's once very extensive online web presence has also been greatly 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** that 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. In Scotland SNP supporters have regularly argued that the BBC is pro-union and called for a separate Scottish Broadcasting Corporation to be set up. Across the UK, 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 BBC's referendum guidelines sought to give '**due weight**' and prominence to all the main strands of argument and to all the main parties, rather than being an overly simplistic 'seesaw' approach to 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. After the vote criticism continued from both Leavers and Remainers.

At the height of the *News of the World* phone hacking scandal, the Murdoch-run 21st Century Fox (the ultimate owner of the *Sun* and the *News of the World*) withdrew a bid to assume full control of Sky that had previously seemed likely to succeed. After an interregnum, the bid was renewed and Ofcom was lobbied to block it on the grounds that Murdoch's companies failed a 'fit and proper' persons test. Ofcom did not agree and let it continue, but the issue was referred by the minister to the Competition and Mergers Authority. Their initial findings in January 2018 said that the merger was not in the public interest because of media plurality concerns. In July 2018, 21st Century Fox successfully bid for Sky, on condition that Sky News was divested to a buyer that will fund it for a decade and guarantee its independence.

This bidding war also reflected a new and salient challenge to the established broadcasters (and Hollywood film studios) posed by new media players Amazon, Netflix and some similar competitors focusing on paid-for, on-demand streaming of drama and entertainment only, paralleling the earlier growth of sports and specialist channels. As millions of consumers migrate to these services, so the audiences for regular bipartisan TV news may be eroded – because fewer people are following TV services offering a mix of services with regular slots for news.

Newspaper closures and online paywalls

For the 'free press' across the UK, the viability of newspaper titles is crucial. With sales and advertising revenue falling, the *Independent* newspaper ceased all print editions to

become online only, 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** 500,000 regular paying supporters and a further 300,000 one-off contributors.

Regional papers in big cities outside London, and local publications across the country, also experienced a drop **of 12%** in digital and print revenues in 2015–16. Across the UK **198 local papers** closed in 2005–16, **plus 40 more** in 2017. Falling advertising revenues have been the principal driver of local journalism's decline, but not the only one. More people have been renting privately and moving between local areas. The sociologist Anthony Giddens argued that social life has become 'dis-embedded' from the local level, so that 'we cannot 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 72 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 (see **Chapter 3.4**).

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, owning newspapers has often helped different capitalist interests to advance their own interests in regulatory matters and other public policy concerns, especially where press titles and broadcast channels are owned by the same mogul or firm. Elected politicians may want to keep powerful media owners onside and so give them the benefit of the doubt in regulatory decisions.

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/Sunday Times*, as the dominant player. These, along with the *Daily Mail* (DMG Media), the *Daily Express* (bought by Trinity Mirror in 2018) and 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 on 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). 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.

New entrants are overwhelmingly digital, but in print media the free *Metro* and small-scale print publications such as the anti-Brexit weekly the *New European* (owned by Archant Media) – have also meant that UK media are more pluralistic than ever before. Some new players are not transparent about their ownership and do not always choose to join a regulator. 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 also presents a new set of challenges to democratic debate (see [Chapter 3.4](#)).

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

Poor or inaccurate media reporting (especially by the press) may generate a great deal of misery for the people involved. 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 Yard proved strangely reluctant to act until long after the large scale of scandal became apparent. In 2014, the BBC’s sensationalist live reporting of the search of singer Cliff Richard’s home as part of an investigation into allegations of sexual offences, featuring helicopter shots of a police raid, was apparently based on police leaks. With the case later dismissed, it proved controversial, and the Corporation eventually had sizeable damages and legal costs awarded against it for invading Richard’s privacy, in a court judgment that some critics argued would [constrain future press freedom](#).

The phone-hacking scandal produced a long-delayed [Inquiry into the Culture, Practices and Ethics of the Press](#) chaired by Lord Leveson. It deemed the previous Press Complaints Commission ‘not fit for purpose’ and it was dissolved. But Leveson’s call for

an independent, self-regulatory body to create and uphold a new standards code for the media failed to get press cooperation. The only government-created (but independently appointed) **Press Recognition Panel** (PRP) is Impress, which regulates **over 100 small, chiefly local and digital publications**. Most national newspapers have joined the Independent Press Standards Organisation (**IPSO**). However, the *Financial Times* and 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.

To try and make publishers join a PRP-approved regulator, section 40 of the coalition government's Crime and Courts Act 2013 gave those that have done so the opportunity to settle libel action through a low-cost arbitration scheme. If they did 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 *Financial Times* 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'. In March 2018 the responsible minister announced that section 40 **would be repealed**, and the previously proposed second part of the Leveson inquiry scrapped – leaving the shape, let alone the effectiveness, of any future press regulation or self-regulation unclear.

Libel law and 'gag' orders

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 2013** simplified 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 around 60** in the three years 2014–16. 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) if the subject can claim their privacy would be damaged. In recent years these have declined greatly, because such information can easily be published by third parties online, and court proceedings 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 almost all citizens, pre-emptive action against breaches of privacy is out of the question, and post-hoc privacy actions are likewise impossible. Self-regulation and effective means of redress therefore take on an even greater importance.

Leaking of government secrets and a proposed Espionage Act

The UK government operates a system (called D notices) where the responsible minister can exceptionally bar papers or broadcasters from running items that would endanger a clear national interest (for example, 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 material from the US National Security Agency (NSA) to the *Guardian* and *Washington Post* which revealed details of government surveillance programmes, also involving GCHQ (the UK's electronic surveillance agency). GCHQ requested the *Guardian* to handover its copy of the material. Instead, warned that the security services were considering taking legal action to halt its reporting, the paper 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.

As a result, the Law Commission, a normally neutral, expert legal body, undertook a **review** of the Official Secrets Act, and recommended its replacement with a modernised Espionage Act in 2016. The proposals immediately created fears that they would **criminalise receiving and handling any data** that the government deems damaging to national security, even if editors and journalists were merely examining leaked material. The influential **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.' However, the Commission's 'public consultation' was badly mishandled, and its publicity was even worse. The proposals were sent back for more work, initially planned for autumn 2017 and then postponed to September 2018. The Commission **insists on its website** that under its proposals:

'An offence is only committed if the defendant "knew or had reasonable grounds to believe his or her conduct was capable of benefitting a foreign power and intended or was reckless as to whether his or her conduct would prejudice the safety or interests of the state". Currently someone can commit an offence under the Official Secrets Act 1911 even if he or she thought their conduct was in the interests of the UK.'

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 most 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 news information 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 unregulated power concentrated in the hands of a few press barons (often pushing their corporate agendas as well business interest), and a wider profession resistant to any meaningful professionalism or effective self-policing of journalistic practices. In the wings, UK government and official sources have proposed 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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3.4

Social media and citizen vigilance

*Social media technologies (such as 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 it connects to political processes. 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** examine how far the UK's social media system operates to support or damage democratic politics. Does it help to ensure a full and effective representation of citizens' political views and interests?*

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

- ◆ Social media should enhance the pluralism and diversity of the overall media system, lowering the costs for citizens in securing political information, commentary and evidence, and improving their opportunities to understand how democracy works.
- ◆ Social media should be easily accessible for ordinary citizens, encouraging them to become politically involved by taking individual actions to express their views in responsible ways, and enabling them to take collective actions to promote a shared viewpoint.
- ◆ The overall media system should operate as transparently as possible, so that truthful/factual content predominates, it quickly drives out misinformation, and 'fake news', 'passing off' and other lapses are minimised and rapidly counteracted.
- ◆ The growth of social media should contribute to greater political equality by re-weighting communication towards members of the public and non-government organisations, reducing the communication and organisational advantages of 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 of 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, these large companies also reap important network and oligopoly effects that increase their discretionary power, and their platforms have become increasingly salient factors in democratic politics. Therefore, regulation of their activities should be considered if they create monopolies or oligopolies, suppress rival competitors, unfairly undermine the viability of established media, fail to deal with extremism and hate speech, or damage the integrity of elections or other political participation processes.
- ◆ 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 problems created by social media, or to existing problems that are re-scaled or change character because of them. Where existing controls or actions to mitigate effects are already feasible in law, their implementation needs to be prioritised and taken seriously by police forces and regulators.
- ◆ 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.
- ◆ Adverse by-product effects of social media use on established or paid-for journalism and media diversity needs to be taken into account. Social media companies argue that their activities are similar to ‘disintermediation’ (‘cutting out the middle man’) processes in other industries, allowing citizens more choice in how they gain information or services. Yet losses of advertising revenue to platform corporations that critically threaten the viability of existing media (like broadcasting and print/paid-for newspapers) may have net negative effects on the overall media system.

- ◆ Facebook and Google provide a cheap way for any political campaigner with money or large numbers of supporters to reach voters, often in a highly targeted way. Policy-makers need to consider how the new capabilities here affect the autonomy of citizens' voting decisions, and whether electoral law – which imposes obligations and restrictions on broadcasters – should be extended and adapted to encompass political advertising on social media platforms.

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'. [Yascha 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 Pethiyagoda](#) 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/WhatsApp/Instagram, Twitter, Google/You Tube and Apple).

Many providers seek to 'wall-in' millions of users within their proprietary domains. At the same time, almost all the content they carry is generated by individuals, firms or NGOs 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 for customers – and hence standing outside conventional media regulation provisions.

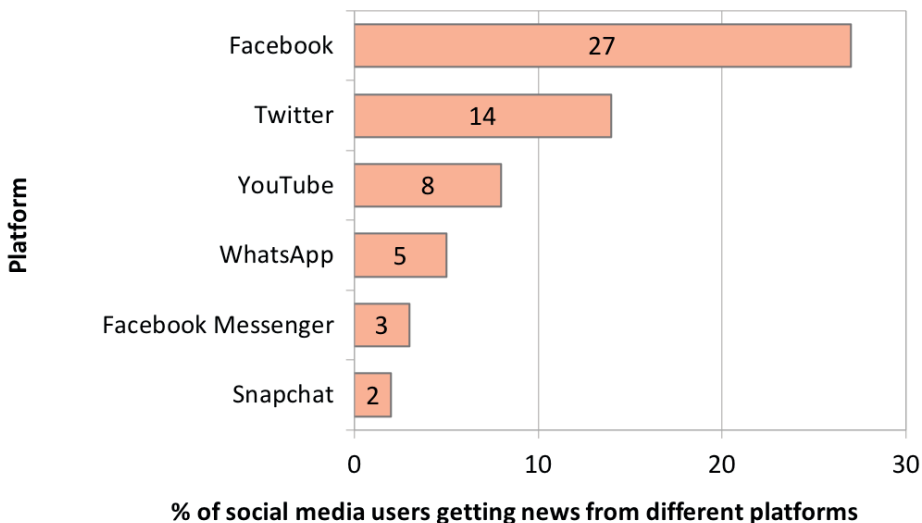
Recent developments

In the realm of news and current affairs, the growth of social media in the UK has shrunk the audience for free **TV news bulletins**. For the BBC, the change means UK viewers can watch and consume news on PCs or smartphones, often playing clips rather than full bulletins. The readerships of most paid-for/print daily and Sunday newspapers has also fallen, although some Sunday titles and the free *Metro* are exceptions. Newspaper publishers that want to reach users on social media must either rely on existing readers recommending their content, or pay to advertise – even as papers’ digital advertising revenues **fail to live up** to publishers’ hopes and are scooped up instead by Google or Facebook. In addition, Facebook has reduced the amount of news in its newsfeed and announced that ‘trusted’ publishers – to be determined by public poll – will be given prominence. Thus social media are widely seen by journalists and others as posing an existential challenge for legacy publishers. (See **Chapter 3.3**.)

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, Snapchat and, in particular, Facebook.

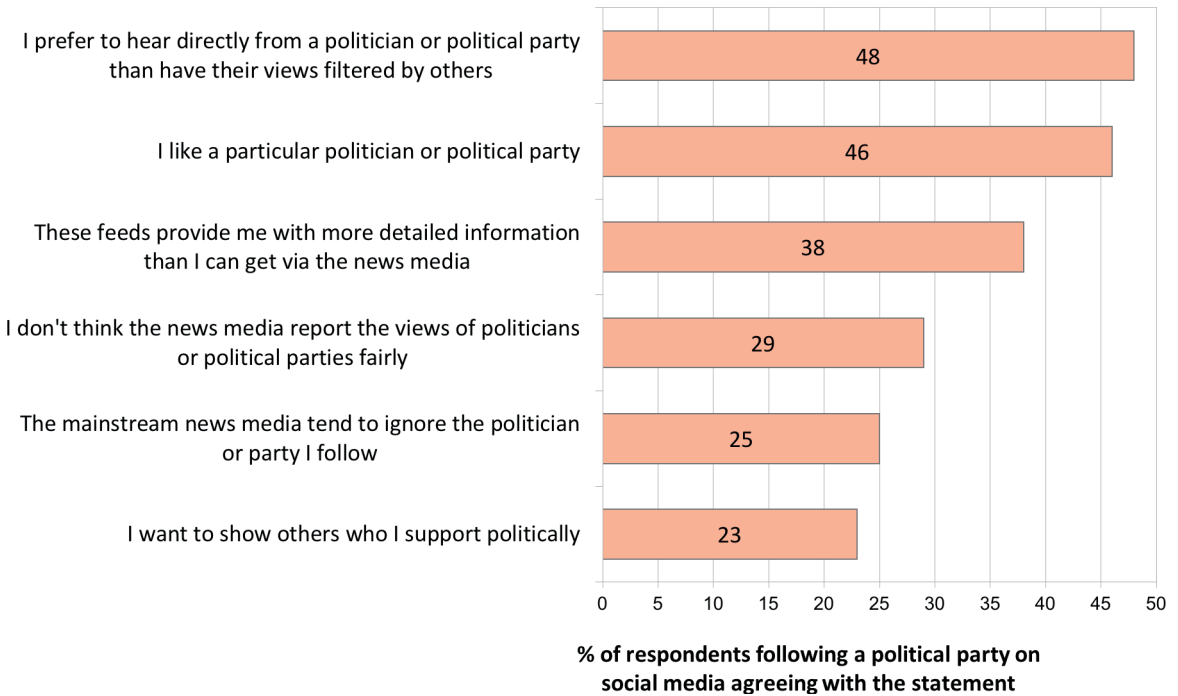
Figure 2 also shows that people value the ability to directly monitor what their political representatives and candidates are doing, and social media offers an easy way to do so. Currently 18% of all UK citizens **follow a politician**. In the case of councillors or even MPs, social media commentary is often the first thing to draw politicians’ attention to causes and public concerns that do not reach them via constituency surgeries, council meetings or emails. The ability for people to click and comment in their own terms instantly helps to indicate the breadth and depth of public feeling on a particular issue.

Figure 1: Most used social media platforms for news consumption by people in the UK, 2018



Source: Reuters Institute **Digital News Report 2018**

Figure 2: Why people in six countries (including the UK) follow politicians on social media



Source: [Reuters Institute Digital News Report 2017](#)

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.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>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. Some politicians – not just in the US – use Twitter as a channel for angry and often inaccurate polemic, and corrections are rare and often go unnoticed.</p>

Current strengths	Current weaknesses
<p>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, Facebook ‘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 online National Voter Registration Drives.</p>	<p>Most ‘retweeters’ and ‘likers’ are not professional journalists writing for fact-checked publications, but ordinary citizens with lower levels of information. So 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.</p>
<p>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 <i>Le Monde</i> 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.</p>	<p>Digital-only publishing by highly committed or partisan publishers has also enabled them to flood online platform systems with multiple biased or untrue messages in ways that are completely non-transparent. The ongoing US 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, and allegations of similar influence in the 2016 Brexit referendum and 2017 election have been made. (See Chapter 2.4.)</p>
<p>Social media apps are nominally free to set up and use. Quite sophisticated media (like blogs, video streams and photo sites) are now also very cheap to run, and need no special training. Hence the growth of social media expands the foundations for a pluralistic and diverse media system.</p>	<p>There is evidence that online abuse and harassment, particularly of women, children, ethnic minorities, and socially unpopular groups, 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.</p> <p>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.</p>

Future opportunities	Future threats
<p>The EU's new General Data Protection Regulation (GDPR) began operating in late May 2018. It imposes more stringent requirements on social media companies operating in the EU (including the UK still) to better explain privacy rules to users and to get their active consent to their information being collected via cookies. Users can also more easily get redress if their information is leaked inappropriately or their privacy compromised.</p>	<p>The platform providers (especially Facebook) launched big damage-limitation exercises in mid-2018, using the GDPR to claim advances in users' control. However, most users have no choice but to accept the complex 'terms of service' that companies enforce, or else lose the functionality, services and networks that the major platforms provide.</p>
<p>The scandal around Cambridge Analytica's political operations (see Chapter 2.4) prompted major investigations of how millions of Facebook users' data leaked to them without users' authorisation. These developments triggered the questioning of Mark Zuckerberg by the US Congress and European Parliament.</p>	<p>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 and a further €4.3bn for antitrust practices in 2018, a substantial disincentive to monopolistic practices.</p> <p>However, 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 stronger rulings were made, the UK is a much smaller and less salient market for these firms than the EU as a whole. In spring 2018 Zuckerberg declined a request to appear before a House of Commons select committee, going instead to the European Parliament.</p>
<p>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.</p>	<p>The media landscape risks atomisation as citizens turn to news sources that are specialised to their political view, interests or local area (but see below), with a corresponding decline in the political salience ('valence') of top media issues.</p>

Future opportunities	Future threats
<p>Social media enables rapid and unprecedented scrutiny of policy-making and politicians' pronouncements, with stakeholders' and experts' opinions freely available on Twitter. Some liveblogs have tried to curate them, but this body of knowledge and inputs remains diffuse. It can be linked to formal mechanisms, such as select committees of the House of Commons.</p>	<p>Armed with huge cash reserves (often gained from setting up complex tax-avoidance schemes), the giant platform corporations have diversified into social media conglomerates. Facebook (which owns Instagram and WhatsApp), Google (which owns YouTube) 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.</p>
	<p>Outside the UK and US, growth in some key social media (like Facebook) appears to be levelling off in favour of the more closed environment of messaging applications. This poses its own challenges, given the difficulty of monitoring activity in private channels.</p>

How social media users behave

Many critics of social media claim 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 – concerns famously expressed by Cass Sunstein. Evidence for filter bubbles is mixed, with **one study** suggesting social media users are exposed to more viewpoints than they would otherwise be. People are **more likely** to read news their friends and family recommend. Increasingly, however, research suggests that the roots of political polarisation lie in wider societal changes rather than social media behaviour.

In the social media world, the key metric of successful content is its ability to generate retweets or Facebook '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. **Ofcom research** on how news is consumed through social media suggests that users are less engaged and rarely remember the source of a story.

Fake news

The term ‘fake news’ is inevitably subjective and contentious. In some instances it is difficult to draw a clear line between fabricated stories online and the hyper-partisan coverage of several British tabloids. **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. 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 – and one of their false tweets fostering anti-Islamic sentiment was **retweeted by the US President**, Donald Trump (with no later apology). Britain First was banned from Facebook in early 2018.

As with traditional media (see **Chapter 3.3**), 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 in the 2016 election, 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.

Threats to female politicians and activists

Misogyny on social media remains a problem, despite the introduction of stricter rules by Twitter. 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 just as responsible as men for originating misogynist threats. Police action against hatred and threats online seemed to take a long time to get started, but a man and a woman were given prison sentences in 2014 for posting threats on Twitter against the feminist campaigner Caroline Criado-Perez.

‘Trolling’ of women politicians or those from ethnic minorities clearly inhibits their freedom to develop and express opinions and debate on Twitter and other social media, and so represents 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 in terms of mental harm and even suicides. There have been repeated criticisms of platform providers (many of whose founders espoused socially libertarian ideas) for being reluctant to take down hate speech content and self-regulate their content effectively. The sheer volume of content posted on networks makes the task of policing hate speech difficult. In Germany, enforcing the **NetzDG** law – which makes platforms liable for certain forms of hate speech – has proved costly for Facebook. The social media companies tend to only help state authorities with clearly illegal material, such as encouraging terrorism or promoting suicides. While Facebook has significantly revised its content moderation rules, they are not always enforced. Critics argue that the major platform providers could enhance their automated checks (for example, by developing better ‘artificial intelligence’ systems), but have been dragging their feet so as not to lose the clicks (and ad revenues) that sensationalist ‘fake news’ attracts.

Hyper-local social media

A more positive trend has been the development of hyper-local news, with half of sites run by people with some form of mainstream journalistic experience. Good quality sites may be able to partly offset the rapid decline of paid-for local newspapers across the UK by attracting crowdfunding and subscriptions. Micro-payments are another possible revenue stream, though they have developed much more slowly than anticipated. Hyper-local news **strengthens the voices** of community groups and members of the public, whereas the traditional local press 'are very authority-oriented in their sourcing strategies'. But, Andy Williams explains, most outlets depend heavily on volunteers: 'Despite the impressive social and democratic value of hyper-local 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 hyper-local and community journalism by offering online training and funding advice, chiefly in Wales, which has a particular democratic deficit in coverage of regional/local news.

Conclusions

Social media clearly offers unprecedented opportunities for voters to debate and scrutinise public policy, albeit on terms heavily conditioned by the platform providers. 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. Yet there is also a constant 'arms race' between citizens finding their online voices and the countervailing development of industrialised/professionalised social media campaigning by companies, large vested interests, political parties and some government actors. For good or ill – as the Trump presidency vividly demonstrates – social media allow politicians to communicate directly with citizens, enthusing the electorate and reinforcing their bond with supporters.

The blooming of multiple voices enables those who have traditionally been on the fringes of debate to make their voices heard, such as citizens with disabilities. 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 users choose whom they follow and can exclude unwanted or dissenting voices, critics argue that social media can foster and sustain conspiracy theories and fake news. And because social media make strongly held (sometimes abusive) opinions so visible, they risk stoking social polarisation and alienating other people from the 'normal' political processes. Political advertising on platforms, meanwhile, poses an urgent challenge for electoral law – one that the **Electoral Commission** has recently highlighted.

Are the current main platforms **fit for purpose** in liberal democratic societies, either in being transparent about their user-monitoring policies, or the extent to which they cooperate with governments for security purposes, or their ability to foster democratic deliberation and thoughtful social learning? Fears that the hegemony and ubiquity of these platforms could be nudging people towards extreme political behaviour have already

triggered criticism of the social media model that ‘moves fast and break things’. Some form of regulation looks increasingly likely – or at the very least policies designed to moderate platform power and safeguard elections.

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4

How democratic is the Westminster Parliament?

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4.1

The House of Commons: control of government and citizen representation

How well does the House of Commons work via floor debates, questions to ministers and as a general means of scrutinising and passing legislation, and monitoring policy implementation? Has the return of a hung parliament since 2017 changed how the House of Commons functions as a legislature? Artemis Photiadou and Patrick Dunleavy consider if the traditional model of Parliament as primarily supporting a showcase political clash of government and opposition has changed to make the Commons a more effective focus of national debate or to create stronger control of the executive.

What does democracy require for the legislature?

(i) 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' floor debates and question times 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.
- ◆ Legislators should regularly and influentially scrutinise the current implementation of policies, and the efficiency and effectiveness of government services and policy delivery.
- ◆ 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 serving the public interest.

(ii) 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.
- ◆ Ideally pre-legislative scrutiny will ensure that the consequences of new laws are fully anticipated, changes are made to avert 'policy disasters' and risks are assigned to those societal interests which can most easily insure against them.

Recent developments

If the parliament elected in June 2017 endures for five years, as by law it could and should, then by June 2022 the UK will have experienced ten years of hung parliaments out of the last 12. The Conservative–Liberal Democrat coalition government of 2010–15 would be joined by up to five years of a Tory minority government sustained in office by a 'confidence and supply' agreement with the Democratic Unionist Party (DUP). One year of minority government has already passed as we write. In between these supposedly 'unusual' peacetime conditions, there would be only a single year's inter-regnum (2015–16) when the Cameron government had a small but clear overall majority and operated on the traditional pattern. There was also a further year of Tory majority government under May, but it was marked by a good deal of post-Brexit Leave–Remain conflicts that made her parliamentary situation very weak.

All of this might make the 'Westminster system' of disproportional elections producing 'strong' majority governments, and the associated 'British political tradition' look more suspect than ever before. But how far has it affected how the House of Commons operates? In particular, has it transferred power over policy-making from the executive to Westminster, or from ministers to MPs acting as a body, or to the opposition, or to backbenchers in the governing party?

In the Conservative and Liberal Democrats coalition (2010–15) – the first in peacetime since 1945 – David Cameron as Prime Minister was uniquely exposed to right-wing Tory backbenchers and centre-left Liberal Democrats dissenting from government policies. Philip Cowley showed that, not surprisingly, some level of backbench dissent **affected 35%** of Commons divisions in 2010–15, a post-war record (with the Labour government of 2005–10 as the nearest parallel). Yet how much did any of this matter? A listing of explicit government defeats in the Commons shows only six for the Cameron coalition, of which two were minor ambushes by the opposition and one a private members' bill. In 2015–16 there were two substantial votes against government policy supported by Tory MPs, but none between June 2016 and the 2017 general election under May.

Since Theresa May lost her majority, the government has been defeated on 13 Commons votes, of which the most serious was an amendment to a Brexit bill to give Parliament a vote on the final Brexit deal. Ministers have also had several narrow escapes (for example,

a win by three votes in July 2018). Two other defeats are Brexit-related, three concerned the Universal Credit reform of social security (which was running into many problems that ministers seemed to be in denial about) and two others reflected the 2017 electorate's message to the government that pay austerity in the public sector had gone on for too long. Suggestions that Tory MPs in particular had now got the habit of dissenting were also buttressed in the Queen's Speech debate in June 2017, when Labour backbencher Stella Creasy tabled a relevant amendment to fund abortion operations in mainland UK for women from Northern Ireland – and the government was forced to agree the change in order to avoid a defeat.

This example shows the familiar limits of only looking at explicit defeats that follow from the 'rule of anticipated reactions'. This says that if B always does what A says, this may be due to A being so powerful that B must always comply; or to B being so powerful that A never proposes anything they will vote down; or to some mix of the two. Much of MPs' influence over public policies undoubtedly takes the form of ministers amending or abandoning proposals to forestall defeats – as May did in July 2018 by accepting four Brexiteer amendments to avoid a defeat over the government's Brexit strategy.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The House of Commons' long history, and its key position cross-nationally as an exemplar of sound parliamentary practice, give MPs a strong sense of corporate identity. This clearly motivates some public interest behaviours that blur otherwise rancorous partisanship.</p>	<p>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.</p>

Current strengths	Current weaknesses
<p>The collaboration of government and opposition to manage the Commons also contributes to a certain degree of elite self-restraint and avoidance of unconstrained partisanship that is essential to the operations of the UK's 'unfixed' constitution.</p>	<p>The top two parties are not only normally over-represented in terms of MPs vis-à-vis their vote share, but also collude to run Westminster business in a 'club way' (for example, via whips' cooperation, and archaic bodies like the Privy Council). These practices maximise their joint power but exclude from influence all small parties. A disastrous combination of these two biases produced a Commons walkout by SNP MPs in June 2018, when all the devolution aspects of the main Brexit bill – the European Union (Withdrawal) Bill – were allocated a derisory 15 minutes' debating time.</p> <p>In 2015, the Tory government unilaterally made 19% cuts in the state funding given to opposition parties in Parliament (known as short money). The move inhibited their ability to conduct parliamentary business and critique ministers effectively, without making any worthwhile savings. In 2017–19 nearly 80% of the money will go to Labour, with the SNP next.</p>
<p>Some parliamentary institutions operate effectively, engaging the attention of MPs, media and the public – especially Prime Minister's Question Time (and to a lesser degree, ministers' question times), and the operation of select committees (see Chapter 4.2).</p>	<p>Only a few component parts of the legislature's activities work well. Much time and energy is consumed in behaviours that are ritualistic, point-scoring and unproductive in terms of achieving policy improvements – as when a Tory MP shouted 'object' to block a 2018 private members' bill against 'upskirting' that enjoyed almost universal support. Anachronistic and time-wasting division voting procedures are also used in a digital era. Most attempted modernisations remain stalled on traditionalist MPs' objections.</p>
<p>The post hoc scrutiny of policy implementation via select committees has greatly improved the Commons' role since 1979, adding to previous strengths in post hoc financial scrutiny (see Chapter 4.2).</p>	<p>The Commons' ex ante budget control is non-existent. Finance debates on the floor of the House are simply general political talk-fests for the government and opposition. Parliamentary 'estimates' are odd, specially constructed and out-of-date numbers, of declining value in relation to the real dynamics of public spending.</p>

Current strengths	Current weaknesses
<p>Moves to make the Commons more family-friendly and its culture more diverse are having some success.</p>	<p>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. Much more could be done at zero cost to make the Commons more women- and family-friendly, and to normalise its now odd culture.</p>
<p>MPs’ small constituencies have fuelled their role as grievance-handlers for constituents having trouble with public services, which has expanded in recent years.</p>	<p>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). Some 30% of MPs have second jobs. MPs also run their own offices as small businesses, employing whom they like. So, some do a good job and others perform poorly.</p>
<p>The Liaison Committee’s generalist sessions with the Prime Minister (ranging across a wide set of policy areas) are a useful if modest innovation.</p>	<p>At 650 MPs, the House of Commons is an exceptionally large legislature. Most MPs don’t have enough useful things to do (hence the second jobs held by three in ten, and a plethora of ethically dubious ‘outside interests’).</p> <p>The government has created a huge ‘payroll vote’ of ministers and unpaid pseudo-ministers on the first rung of a promotion ladder, simply to help maintain control of these excess numbers by dangling a chance for preferment.</p>
<p>The Backbench Business Committee enables backbenchers to raise topics for debate in a more effective way, adding to the Commons’ overall steering capabilities.</p>	<p>Fuelled by the coalition period, and the post-2017 hung parliament, the amount of secondary legislation is growing. Primary legislation is increasingly drafted in ways that 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.</p>

Current strengths	Current weaknesses
<p>MPs can raise issues with the government through Early Day Motions (EDMs), very few of which are ever debated. Many topics tend to be trivial. The Procedure Committee in 2013 nonetheless found that there should be no changes. EDMs have generally declined.</p>	
Future opportunities	Future threats
<p>E-petitions started via Parliament in 2015. They give the public a new opportunity to raise issues with the government by triggering a parliamentary debate if 100,000 signatures are obtained. By June 2017, over 31,730 petitions had been launched, two-thirds of which were rejected, but nearly 11,000 accepted. Only 65 were debated in Parliament. In these two years 31 million signatures were added to petitions, and 14 million discrete email addresses used. So far this popular option has proved inconsequential in changing policies, though it is an effective way for groups to raise public awareness or show public discontent (nearly 1.8 million people signed a petition to ban President Trump visiting the UK – he still did, but he did not come to Westminster).</p>	<p>Enacting the English votes for English laws (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?</p>
<p>The Parliament website is very large but poorly structured and hard to use.</p>	<p>Large distortions in the regional representation of parties (for example, the almost elimination of non-SNP parties in Scotland 2015–17) further reduces the legislature's already tattered representativeness under first-past-the post voting.</p>

Future opportunities	Future threats
	<p>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 instituted by the EU Withdrawal Act, 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.</p>
	<p>Many MPs and select committees have only made limited steps to connect with voters via social media.</p>

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 Prime Minister. Historically the Prime Minister 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 – for example, 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 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. But earlier promises made by Gordon Brown and William Hague that formal changes would be made have not been acted on, so that a Prime Minister can still do things **without explicit parliamentary authorisation**. The complex history of UK involvement in Syria is an example. In August 2013, MPs defeated a proposal by the coalition government 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 majority of 174 to extend anti-IS airstrikes to Syria. In April 2018 May **approved air strikes in Syria** without consulting the Commons, and in July despatched 440 more UK troops to Afghanistan. The early parts of this sequence would seem to suggest that the power to go to war is now subject to approval by the Commons, but the later ones would not. Similarly, in mid-2016 it emerged that some UK ground forces were being secretly deployed in anti-IS actions in Libya, without even any notification to Parliament.

What do fixed-term parliaments mean?

Almost the only major constitutional changes to survive from the 2010–15 coalition government period is the **Fixed-term Parliaments Act 2011**. This requires that general elections are held every five years, unless either:

- (i) the government loses a vote of confidence, the Prime Minister resigns and no other government can be formed; or
- (ii) two-thirds of MPs vote for an earlier dissolution, which would normally require that (most) MPs from both the government and the main opposition parties support the motion.

Nick Clegg saw fixed terms as a key safeguard against Cameron calling an election early and terminating the coalition with the Liberal Democrats at a time when they might suffer – but his party's support fell by two-thirds anyway at the end of the government. The Act initially made the Tories look like a strong beneficiary, with a five-year term apparently securely guaranteed to Cameron in 2015.

Yet May's decision in April 2017 to 'call' an early election for June changed all that. It produced a defiant 'bring it on' reaction from Jeremy Corbyn and Labour MPs, despite their party being 20 percentage points behind in the early opinion polls. A supermajority of 522 to 13 MPs backed the government's motion for a new election, at which voters subsequently went on to deny the Conservatives a majority. Where does this leave the FTP law? Clearly it could be another piece of completely dud legislation, if every future opposition always feels compelled by bravado to say yes to any dissolution. On the other hand, May's disastrous choice in 2017 confirmed UK voters' dislike of unnecessary elections, and so is likely to deter any future Prime Minister with a majority from going back to voters before at least a four-year gap from the last election – which was already the historical status quo ante.

Another area of ambiguity exists. If the Prime Minister of a majority party resigns, as David Cameron did in June 2016, and the governing party chooses a new leader, she is automatically asked by the Queen to form a government. However, should the Prime Minister lose a no-confidence vote instead, the process to be followed under FTP is still unclear. Some commentators on FTP claim that the monarch's role here has been completely excluded, and so a robo-law transition to a new election must follow immediately from a no-confidence vote in a Prime Minister. However, within a 14-day period under the Act, could the monarch ask another member of the largest party to try to form a government without any immediate dissolution (since no party leadership election could easily be organised in that time)? Or does she then ask the Leader of the Opposition to perhaps form a minority government?

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 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. As Leader of the Opposition, Jeremy Corbyn has experimented with 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-à-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 getting into the Commons. The members of the government’s frontbench are expected to always vote with the executive, as are parliamentary private secretaries (who are unpaid pseudo-ministers). The last **official data of the payroll vote** in 2010 showed that approximately 140 MPs are 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 small number of Conservative MPs in the 2015 and 2017 parliaments, the ratio will still be high. If the Commons seats ever do fall to 600, then the prominence of the payroll vote would increase, unless government roles for MPs were cut back.

EVEL: English votes for English laws

In the 2014 Scottish independence referendum, Labour and the Liberal Democrats joined with the Tories to solemnly pledge major new powers for the Scottish Parliament. The morning after the result Cameron announced a previously hidden codicil to this deal, that English and Welsh MPs would vote alone in the Commons on laws just affecting them.

This potentially substantial constitutional change was then bounced through by the 2015 Tory majority amending the House of Commons’ standing orders – with no real public consultation, no House of Lords approval needed, no Supreme Court decision on the scheme and no judicial review. A new ‘England-only’ committee stage came in for laws affecting only England (and including Welsh MPs for English and Welsh laws) with a ping-pong process between the committee and full House (including Scottish and Northern Ireland MPs) possible at report stage. At the close of the Commons’ consideration, a Legislative Grand Committee of only England MPs would then vote to accept or reject the final bill as a whole. The House of Lords process for these laws was not changed, but a Commons Grand Committee composed of only English MPs now considers any Lords amendments, as well as full the Commons. The Speaker is also repeatedly involved in determining which laws or provisions within laws must be subject to this process. The Public Administration and Constitution Committee’s 2016 **report on EVEL** was highly critical.

Academic research into **EVEL’s first year of operation** found that the process is too complex; that English and Welsh MPs have the power to veto laws passed by the entire House; that the process undermines the coherence of UK-wide government; and that it

fails to facilitate a meaningful expression of England's voice. Whether the scheme will be much used, and if it can survive a non-Tory majority, both seem unclear at present. The Conservatives anticipated being the great beneficiaries of the EVEL change, but they now depend on the votes from Northern Ireland MPs in the DUP in order to pass any UK legislation.

Conclusions

Public confidence in Parliament was 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 (see [Chapter 4.2](#)). 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. Structural reforms to make the Commons a more effective legislature, and to modernise ritualistic behaviours and processes, are still urgently needed.

Five years of coalition government between 2010 and 2015 and a return to a hung parliament since 2017 have both somewhat reduced executive predominance over Parliament – as they were almost bound to do. In addition, the effect of Brexit in cross-cutting party lines (see [Chapter 3.1](#)) produced a highly complex set of votes in the Commons on relevant laws. At several points, legislative progress seemed almost deadlocked in 2018. Perhaps any more powerful legislature may operate like this – as often getting grid-locked as it provides a clear, independent lead on policy choices. Critics of Parliament have easily interpreted this experience as MPs trying to 'frustrate' the 2016 referendum verdict.

Yet even such major developments as these may not break the tradition of strong executive control over the Commons. After the 2017 general election there were some signs of an amelioration of party discipline and more cross-party working in the public interest being possible (for example, in MPs insisting that the Universal Credit reorganisation of welfare payments be improved). Yet these proved to be temporary.

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4.2

The Commons' two committee systems and scrutiny of government policy-making

*In addition to their floor debates, a crucial role of legislatures is to scrutinise government law-making and policy implementation. The House of Commons looks at legislation via bill committees, and its select committees cover each of the Whitehall departments to scrutinise implementation. **Patrick Dunleavy** and the **Democratic Audit team** consider how well current processes maintain parliamentary knowledge and scrutiny of the central state in the UK and England.*

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 specific and often 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 to 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.

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. Some recent political science work has painted a more active picture of MPs' influence. Beyond the floor debates in the main Commons chamber (see [Chapter 4.1](#)) – and the rowdy weekly showcase of Prime Minister's Question Time – the House of Commons also does a lot of detailed work in committees 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 solely on the work of the democratically elected Commons.)

Recent developments

The House of Commons' select committee system shadows the work of every civil service department and 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. Following the 'Wright' reforms made after 2009, however, committee chairs can be elected by MPs, if there are multiple candidates. Figure 1 shows that only nine contests were held for the 26 chair positions in July 2017. However, this low number reflects the fact that many influential and well-liked chairs continued unchallenged from the 2015–17 parliament.

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

Party	No.	Experience	No.	Type of committee	No.	Competition for post	No.
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: From data in [HC Speaker, 2017](#)

Figure 1 also shows that half of the chairs have ministerial experience, with nine having earlier been Cabinet ministers or Shadow Cabinet spokespersons – showing 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 (PAC) is best known. The distribution of chairs broadly follows the proportion of MPs belonging to each party. After the 2016 EU referendum the Department for Exiting the EU Committee, chaired by Labour's Hilary Benn, was set up to scrutinise the work of the new DExEU, and similarly the International Trade Committee supervises the new Whitehall department DIT.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>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 being '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.</p>
<p>Select committee chairs are now paid a worthwhile salary increment and attract a good deal of media attention. So this role has grown in salience. It increasingly attracts serious ex-ministers and genuinely expert and less-partisan backbenchers, who can command regular engagement from their committee members.</p>	<p>Both departmental and bill 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. It 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.</p>
<p>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 help shape how ministers and top officials make these appointments. Out of a set of 59 hearings to 2017, 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.</p>	<p>There is strong evidence of a past lack of diversity in who is invited to give evidence (see below), 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 were 93% male from 1979 to 2017. Women MPs are most prominent on the health and education committees.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>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.</p>
<p>The Public Accounts Committee (PAC) benefits from research by the National Audit Office's 800 professional staff in 60 'value for money' (VFM) reports per year. (NAO is the leading parliamentary agency providing an independent check for MPs that monies voted to the government were spent for the correct purposes and in an effective manner.) PAC hearings and final reports regularly attract media attention in addition to the NAO reports themselves.</p>	<p>Many PAC reports currently concern only single-department subjects, and could more helpfully be processed by the relevant departmental select committees. These other committees could also benefit greatly from gaining access to the NAO 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.</p>
<p>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 mega-projects for instance.</p>	<p>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. 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 also produces around 10–15 VFM reports per year that are never reviewed by any parliamentary committee because of capacity limits in the PAC.</p>

Current strengths	Current weaknesses
<p>Some political scientists (like Louise Thompson) have called for a re-evaluation of the dominant views of bill committees (also called legislative committees). She found that around three-fifths of bill committee members have relevant specialist expertise and she argues that some committee sessions achieve impressive levels of deliberative quality.</p>	<p>Many critics see scrutiny of legislation via partisan whipped bill committees (with many inexperienced MPs just voting a party line) as always ritualistic, ineffective and normally of very little value. Government whips can completely dominate proceedings, with the committee majority accepting only government amendments. Many (two or more out of five) members are still just 'cannon fodder' attendees, primed to vote the party line, whatever problems emerge in discussion.</p> <p>The separation of bill committees from select committees is unhelpful and reduces the ability to have legislation reviewed by genuinely expert MPs. The deliberative quality of legislative committee sessions has also been seen as low, reaching a nadir when the timetabling for bills gets under pressure (as it often does).</p>
<p>'Revisionists' have also defended bill committees as showing up the 'viscosity' of different measures – they alert ministers about where changes are needed, even if the changes involved are always those proposed by ministers.</p>	<p>Bill committees have been widely seen as ineffective in securing effective scrutiny. Only half of 1% of accepted amendments in and after the committee stage are from the opposition. Even Thompson finds that the vast bulk (84%) of changes made are still government ones. (11% are also changes to regulations or guidance for bills made by departments.)</p>
<p>Parliament has no separate procedures for considering major government projects in technical or expert consideration ways before money is spent on them – contributing to what critics see as the prevalence of 'policy disasters' in the UK.</p>	<p>All NAO and PAC scrutiny activities occur 'after the fact', and so are 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, for example, checking the economic growth estimates included in the Chancellor's annual public spending statements.</p>

Future opportunities	Future threats
<p>The 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 on improving specific policies – as occurred in 2017–18 over a troubled social welfare reform, Universal Credit.</p>	<p>The Brexit process is likely to involve extensive use of statutory instruments, over which parliamentary surveillance has generally been weak.</p>
<p>Proposals for incremental reforms, such as allowing the NAO to advise departmental select committees more, and for MPs there to discuss more single department VFM studies in their area, could bring worthwhile improvements quickly, increasing the expertise available to select committees.</p>	<p>Reports on single department and smaller spending issues could be run through other select committees. The PAC could then focus more effectively on cross-departmental, inter-governmental and major spending areas. However, radical proposals such as these, or even their more moderate versions (see opposite), seem unlikely to be adopted, with select committees still locked into obsolescent and high cost ways of calling ‘witnesses’.</p>

Bill 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 many of the remaining MPs are just those deputed by the party whips to serve on each committee. Each committee 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. Over **99% of ministerial amendments** moved at the committee or report stages succeed, while the success rate for non-government amendments is below 1%. Opposition amendments almost never 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 also shape how ‘line by line’ any scrutiny is, with guillotines often invoked. And **Berry notes** that ‘sometimes whole sections of bills pass through committees without scrutiny’.

Some recent authors have argued for a more optimistic picture. **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.'

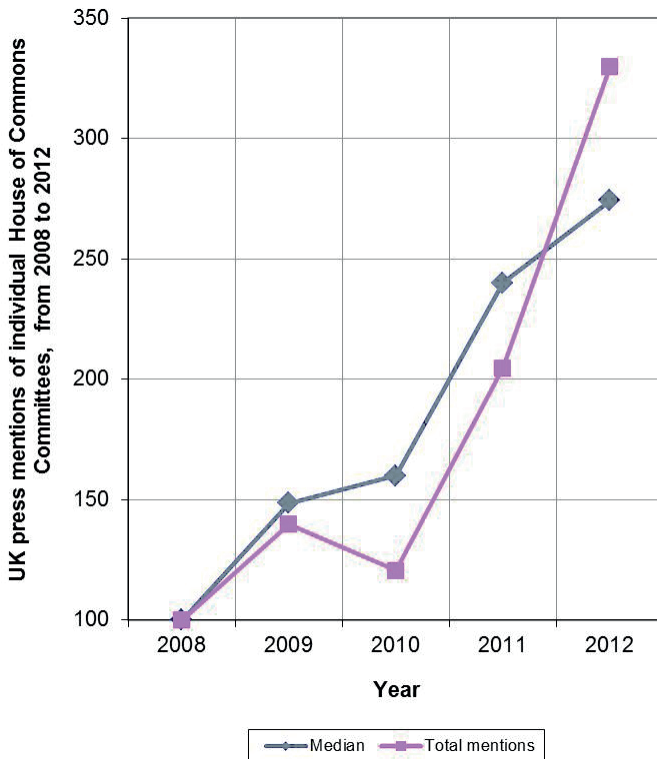
Similarly **Thompson's** 2015 study argued that:

'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 of government uses executive capabilities and administrative discretion to deliver services, make regulations or undertake interventions in particular ways. From its foundation in 1979, the select committee system has provided an ever more influential mechanism for 'shadowing' each department and bringing legislators' views to bear. Having MPs elect committee chairs, and paying them extra salary, has especially helped them to evolve into better independent forces for policy scrutiny. 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. Figure 2 show that press mentions of Commons committees in the UK press broadly tripled from 2008 to 2012 in terms of both total press mentions and the average (mean) for committee mentions.

Figure 2: Increase in press coverage of House of Commons Committees, 2008–12

Source: [Dunleavy and Muir, 2013](#). *Analysis of Lexis-Nexis press database*.

Figure 3 provides a detailed view of which committees became more salient in this period, and which did not. The pink rows show that much of the total increase in mentions in this period took place in four exceptionally prominent committees:

- ◆ The Public Accounts Committee (see the SWOT analysis above). At this time it had a dynamic new chair in Margaret Hodge MP.
- ◆ The Home Affairs Select Committee, 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 another already important committee in 2008 under the Conservative chair Andrew Tyrie. In 2017, the former Tory Cabinet minister Nicky Morgan won election as chair, quickly assuming a pro-active approach.
- ◆ The Culture, Media and Sport committee. Its 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 in 2011, attracting global media coverage. This interest continued during the subsequent Leveson Inquiry process.

Figure 3: 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
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.

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

The green rows in Figure 3 also show that seven other Commons committees enjoyed a consistent growth of press coverage in this period. Overall, 14 committees more than doubled their press mentions between 2008 and 2012. A further four saw smaller increases, while seven committees received less coverage.

More recently select committees have moved into other controversial areas, with the Work and Pensions and the Business committees both summoning **Sir Philip Green** to attend a hearing in June 2016 to answer questions over the collapse of BHS with hundreds of millions of pounds apparently missing from the pensions fund.

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 of recommendations to government made by seven select committees over a long period, and then set out to chart how many of these were recommended, and how many were subsequently acted upon. Figure 4 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’.

Figure 4: How recommendations from seven select committees were implemented by the government, or not (1997– 2010)

Scale of change in recommendation	% of total recommendations implemented					Row totals
	Fully	Partially	Limited attempts	Unclear if acted on or not	Clearly not acted upon	
No or 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 (PAC) and Treasury. The period covered was the Blair and Brown governments.

However, Figure 4 shows that this is a highly 'stretched' interpretation of the actual findings. The numbers in orange cells 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%) (in the green shaded cells) were at the same scale and were clearly rejected by government (while in a further one in seven cases implementation was unclear). Large-scale changes accepted by minister in fact formed only 2% of recommendations (the dark orange cells), whereas those rejected at this scale were 3%.

Of course, our interpretation here excludes the top row in Figure 4 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 Figure 4 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.

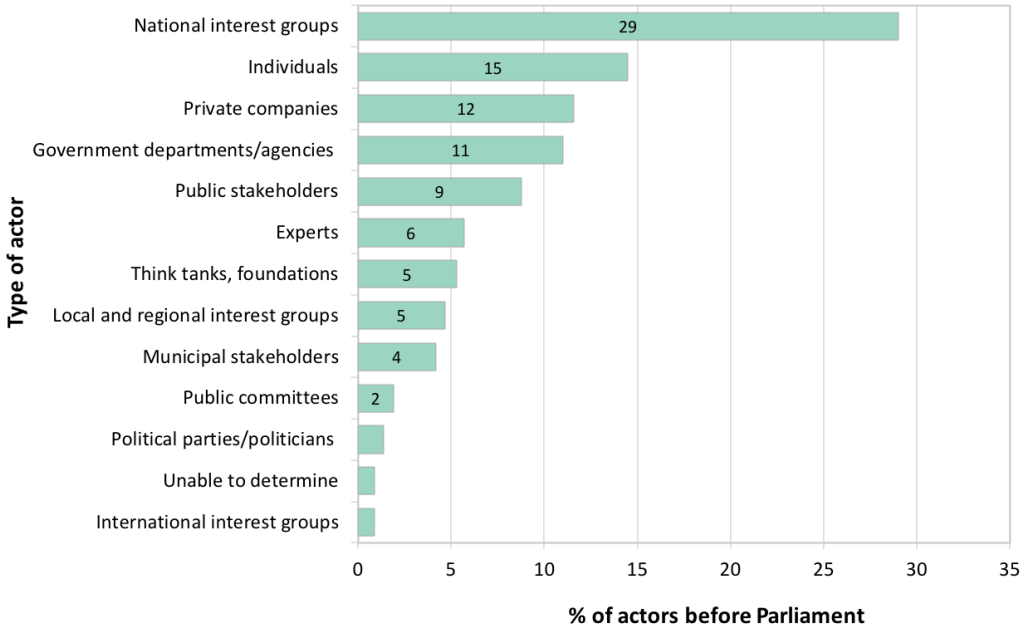
Nevertheless, although committees' hit rate for acceptance and implementation of recommendation is perhaps far less than some over-enthusiastic accounts suggest, it is still a pretty creditable record. Select committees remain one of only two areas where the Commons is clearly contributing to detailed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

Who does Parliament ask for their views?

Because Westminster relies so heavily on calling witnesses as a way of bring in outside knowledge to the scrutiny of legislation and of policy implementation it matters a lot who submits evidence. Academic research shown in Figure 5 found that most submissions came from interest groups, individuals and private companies – and that surprisingly only one in 16 submissions came from 'experts' and slightly less from think tanks.

However, witnesses who give oral evidence in person before committees, and hence can be questioned by committee members, are generally those judged more important or more knowledgeable by chairs (and their clerks). A study of all witnesses who gave evidence to select committees only in the 2013–14 session of parliament showed that civil servants and public-sector agencies were the biggest group (see Figure 6). A further one in eight witnesses were ministers or parliamentarians, so that almost half of those appearing were from Whitehall and surrounds, as one might expect. The civil society sources for witnesses were NGOs, think tanks and interest groups, and then private sector companies and trade associations, with academics from higher education third.

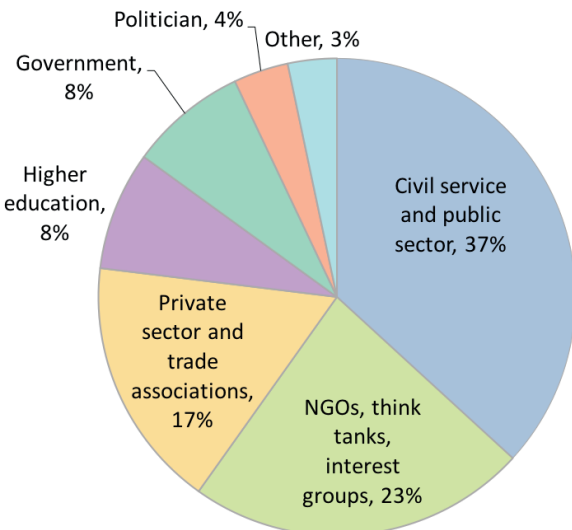
Figure 5: The main actors who gave evidence to Westminster legislative and select committee in the period 2010–11



Source: Helboe et al (2015), Table 2.

Notes: Data on oral and written evidence collected from the UK Parliament’s website, August 1, 2010 to July 31, 2011. Percentages of N = 8431.

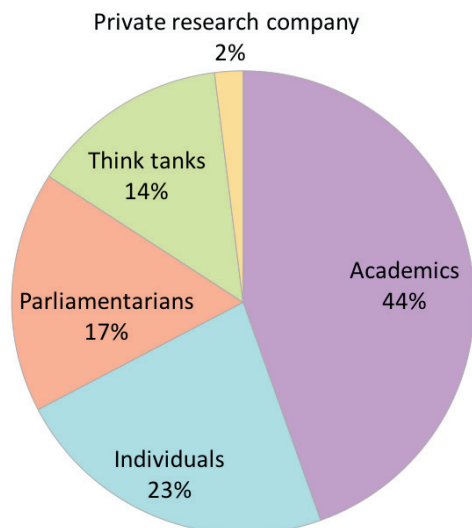
Figure 6: The organisational affiliations of oral witnesses to all select committees, 2013–14 session



Source: Re-calculated from Geddes, 2018

Notes: We have moved trade associations into the ‘private sector’ category here, and out of the ‘NGOs and think tanks’ category.

Figure 7: The organisational affiliations of 120 expert witnesses to select committees, in two months, autumn 2013



Source: [Berry and Kippin, 2014, Figure 4.](#)

Notes: Data covers 120 expert witnesses giving oral evidence to select committees in October–November 2013.

Percentages of $N = 541$.

A broadly similar picture is also given by a [Democratic Audit](#) study of nearly 600 witnesses who appeared before 153 hearings in autumn 2013. That analysis also looked in depth at the make-up of 120 ‘expert’ witnesses, whose role may be especially helpful for MPs in uncovering well-founded (rather than partisan) evidence. Figure 7 shows that academics were exceptionally prominent (accounting for nearly half of all expert witnesses in person), plus think tanks and trade associations.

A more disturbing finding of both the 2013–14 studies was that in this period around 75% of witnesses going to committees were men. Some committees like PAC heard from nine men for every woman appearing. Following on from their research in 2014, the Democratic Audit staff involved met with committee clerks, and Parliament later took some remedial actions to seek greater diversity amongst witnesses.

Legislative supervision of UK government spending

In international terms the UK has a strong system of 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). 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 one-third of witnesses to the PAC, and HM Treasury personnel for

another 30%. Only seven ministerial departments or major agencies had more than four witnesses a year (Health, Defence, Defra, HMRC, Education, the Home Office and DWP), and another six had over one. Eight departments had one or none per year. In this period, the NAO issued 40 VFM studies that tackled cross-government issues (like digital change in government services, or environmental issues). But **the PAC held hearings** on only half of these (see Figure 13 in this source). 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 (known by senior civil servants as ‘bayoneting the wounded’) has typically earned the PAC chair more headlines than engaging with more difficult task of fostering sustainable improvements in policy delivery systems.

More generally MPs’ stress on ex post scrutiny reflects the fact that they have almost no *ex ante* influence over budgeting in the UK. Very strong party discipline explains some of this, but a lot stems from restrictions in the House of Commons standing orders. These prohibit any ordinary MP from proposing any amendment to adding even £1 extra on to public spending, unless they can provide the Commons clerks with a certificate signed by a minister – which of course, is never supplied. This blanket ban has spread from the UK to other Westminster system countries and to France and Ireland. It largely explains why **Joachim Wehner’s comparative 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 research has ‘talked up’ MPs’ collective influence, with some justification in recent hung parliaments. Yet the Commons is still far from having the ‘full spectrum’ policy influence, genuine deliberation or decisive voice that democratic criteria suggest are needed. Party loyalties greatly inhibit public criticisms and undermine evidence-based reasoning about policies. Consideration of budgets before money gets spent 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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4.3

Accountability of the 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?

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

- ◆ Under normal circumstances, elected legislators usually 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 – for example, 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 special 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.

The ISC operates in a quite dissimilar way to the Commons select committees. Its members are drawn from both Houses of Parliament (currently seven MPs and two Lords). They are nominated by the Prime Minister in consultation with opposition party leaders, before being **approved by Parliament** and they are security-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 Prime Minister, 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 Figure 1). Some people on the ISC are also members of the Privy Council, an appointed executive body sometimes used for handling secret issues and briefings. The publication of ISC reports is also 'negotiated' with the government beforehand, in the past quite speedily, but more recently with **longer delays**, and even pre-emptive leaking by Whitehall in 2018.

The ISC is a kind of 'compromise' solution of a type 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: up to 2015

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, 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. Later a judge-lead inquiry was put in place, but that was wound up in 2013.

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 ISC

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 five special reports.

One 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 ISC reports on the Investigatory Powers Act (IPA) was released in 2016, 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.

In June 2018, the ISC released new reports on the treatment of detainees and on rendition, one covering the periods 2001–10 and another covering more recent material. They made a considerable stir. A **recent summary** (by Blakely and Raphael) argued:

'The two ISC reports are hard-hitting. The first, documenting British involvement in torture in the early 'war on terror', makes previous UK governments' denials of involvement completely untenable. Although Jack Straw famously asserted that only conspiracy theorists should believe the UK played any role in rendition or torture, we now know that British intelligence knew about, suggested, planned, agreed to, or paid for others to conduct rendition operations in more than 70 cases. In hundreds of others, UK officials knew that their allies were subjecting prisoners to cruel, inhuman or degrading treatment (CIDT), and yet continued to supply questions to, and receive intelligence from, those who were tortured.'

The second report is no less important. It catalogues a series of failures in government policy, as well as in training and guidance provided to UK security services. The implications are serious: there is every possibility British collusion in torture is being, or could be, repeated.'

Despite this recent activism and evidence of greater ISC independence, demands for further reform remain on the agenda. **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.’

And currently only one of nine ISC members is a woman, so greater diversity is clearly needed there.

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 parliamentary 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 <i>Today</i> 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.

Current strengths	Current weaknesses
<p>Under Dominic Grieve’s chairmanship, the ISC has shown a willingness to defend privacy concerns in the face of bulk surveillance. The two 2018 reports on rendition and torture of detainees show a (lagged) movement towards greater openness.</p>	<p>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.)</p>
<p>The Committee has also reported on UK drone strikes, although that report was heavily redacted.</p>	<p>The Committee has no legal obligation to investigate and make public the kinds of intelligence service work that may create controversy because of invasions 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.</p>
	<p>The ISC remains a one-off and heavily ‘siloes’ body with little transfer of knowledge or expertise from a core group of representatives to the wider Parliament.</p>
Future opportunities	Future threats
<p>The current ISC chair (Grieve) has a good reputation for taking rights issues seriously, and legal knowledge.</p>	<p>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. Similarly, issues around foreign powers potentially intervening in UK elections and referenda have not been speedily addressed by the ISC, unlike in the USA.</p>
<p>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). The ISC now has its own, dedicated staff – which may help it to take a more independent attitude over time.</p>	<p>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.</p>

Future opportunities	Future threats
<p>One of the least well-covered and most secretive areas of UK state activity concerns the operations of the large and well-funded UK ‘special forces’, including the SAS. Here blanket secrecy has been maintained, but the ISC chair (Dominic Grieve) observed in 2017 that: ‘in a modern democracy, having areas of state activity that are not subject to scrutiny at all by parliament is not a very good place to be.’ Critics argue that either the ISC’s remit should be extended from intelligence to also cover special forces operations, or that the Defence Select Committee should have oversight.</p>	<p>If the government deems an issue a military one then it falls outside the ISC’s remit. Changing methods of warfare (for example, towards digital weapons and drones) make this an increasingly likely occurrence.</p>
	<p>Some observers detect signs of Whitehall mobilising against a more combative ISC – for example, in the pre-emptive leaking of misleading details of the 2018 rendition reports.</p>
	<p>Security issues are supposed to be safeguarded in the UK’s exit from the European Union, but uncertainty clouds many issues here. It is not clear that the ISC can match the level of vigilance and speedy scrutiny that other commons select committees have demonstrated on the implementation of Brexit.</p>

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. Figure 1 below shows that only Ann Taylor had served in ministerial positions that did not pertain to security matters prior to her appointment.

Figure 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	2010–15	Foreign Secretary* Defence Secretary* Transport Secretary Scottish Secretary	Conservative
Kim Howells	2008–10	Minister for Foreign Affairs* Higher Education Minister Transport Minister	Labour
Margaret Beckett	Jan–Oct 2008	Foreign Secretary* Environment Secretary Leader of the Commons President of the Board of Trade	Labour
Paul Murphy	2005–8	Welsh Secretary Northern Ireland Secretary*	Labour
Ann Taylor	2001–5	Government Chief Whip Leader of the Commons	Labour
Tom King	1994–2001	Defence Secretary* Northern Ireland Secretary* Employment Secretary 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 that it views as important. For example, in November 2014, it produced a report on the murder of an off-duty soldier

Lee Rigby in a London street by two jihadist terrorists. The range and frequency of reports increased with ‘[Women in the Intelligence Community](#)’ in March 2015, and a follow-up one on diversity and inclusion in 2018. In 2015 it also published ‘[Privacy and Security: a modern and transparent legal framework](#)’. 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.’

Conclusions

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 with 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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4.4

How undemocratic is the House of Lords?

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 bicameral legislatures. Now an almost-all appointed Chamber, the Lords has achieved recent prominence on Brexit and tax credits by exerting some bipartisan influence moderating Commons proposals. However, its members remain creatures of patronage, and wholly unaccountable to the UK's citizens. All parties except the Tories now support its replacement by an elected Senate. Increasingly only the Tories and Liberal Democrats are still appointing any peers – although there are also a fifth of peers who are 'crossbenchers', not taking a party whip.

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 and to ensure the social and partisan representativeness of all groups.

- ◆ In any bicameral legislature, an upper house should be designed to realise a combination of specific constitutional and political advantages. A second house should:
 - 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.
 - Facilitate the technical operation of legislative drafting, scrutiny and amendment. Improve the accountability of the executive as a whole to the legislature and to public opinion.
 - Increase the number or range of access channels from civil society to the executive, in equitable and accountable ways.
 - Re-balance the geographical representation of different parts of the country compared with the lower house – for instance, to secure more equal or greater influence for all component regions/provinces/states within a country.
 - Improve the social representativeness of legislators.
 - Widen the range of expertise amongst legislators as a whole.
 - Provide a mechanism to encourage the continued engagement of ‘emeritus’ politicians in public life.
 - Offer a measure of policy continuity, especially on issues where civil society actors must make decisions with some long-run predictability.

Recent developments

The UK’s House of Lords is an almost all-appointed upper chamber, whose members are nominated by some (but not all) main parties. Once appointed they effectively sit for life and attend more or less when they wish, never facing re-appointment, nor of course any form of re-election. The Lords’ powers in law-making are limited to amending or delaying non-financial bills, and its members have generally followed a convention acknowledging the ‘primacy’ of the Commons. In addition, the ‘Salisbury convention’ means that the House will give a second reading to bills for which an elected government in the House of Commons has a majority and a manifesto commitment.

In the flurry of Brexit legislation tabled in parliament’s 2017–18 session most observers did not expect that the House of Lords would play a very consequential role, given that both the Conservative government and the Labour Party had campaigned at the 2017 election on a platform of implementing the UK’s exit from the EU. However, by the end of the process, the government had been defeated 15 times in some fairly significant Lords votes, which some observers felt had the effect of forcing MPs to **face up to some vital constitutional choices**. On some of these generally ‘pro-Remainer’ changes the government accepted a need for change and introduced their own versions of them. Others were more or less reversed in the Commons, but not without difficulty and with additional concessions extracted from Theresa May and ministers by both right-wing

Brexiters and liberal Remainers in the Tory party. As a result, the Lords earned some new critics in the right-wing Brexiteer press (previously amongst its great defenders).

Clearly then the House of Lords still matters in UK legislative politics, but on what basis? The pro-Remain majorities in the Lords essentially reflected the feelings of UK elites at the historic periods when members were appointed, with most of them occurring in the 43 years 1973–2016 when the UK seemed a secure member of the EU. As well as pro-EU Liberal Democrats (now massively over-represented in the Lords relative to their current popular support), most long-established Tory and Labour peers are pro-Remain.

Meanwhile the third largest party in the House of Commons since 2015, the SNP, refuses to nominate anyone for appointment to the Lords, and because UKIP has never secured any significant MPs at elections (despite gaining 13% of votes in Britain in 2015) it too is represented there only by two or three Tory defectors. The SNP stance has been followed (almost) by Jeremy Corbyn as Labour leader since 2015. He has made only four appointments on specific grounds, promised to scrap the Lords as currently constituted, and required all new appointees to vote for creating an elected House in future. A prospect thus opens up of the Lords becoming just a two-party (Conservative/Liberal Democrat) House, representing only England, mitigated for the moment only by the ‘legacy’ group of ‘cross-bencher’ peers and past Labour nominees.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>In recent years, while observing the primacy of the Commons, and 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.</p>	<p>The House of Lords remains completely unelected. All peers can hold their seats until they die (if they want to) and thus are not accountable to or removable by citizens in any way. However, peers can now ‘retire’ if they wish to from the Lords (but still use its facilities as a London ‘club’) and some members have taken this course.</p>
<p>There have been some highly questionable appointments of peers over time, even in recent years. Still a substantial part of the public, many MPs and elites, and the Lords members themselves (almost universally) believe that peers bring valuable additional expertise into public life.</p>	<p>The value of patronage power for Prime Ministers and party leaders means that the Lords has increased hugely in size (see below). 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 £11,090 each, despite not speaking in the main chamber during the 2016–17 session.</p>

Current strengths	Current weaknesses
<p>The social diversity of membership in the House of Lords has slightly improved in this century. In 2018 there are now 204 female peers (26% of the total). In 2017 there were 51 black or minority ethnic peers (6% at that date).</p>	<p>Although outside peerage appointments are scrutinised by a weak regulator (the House of Lords Appointments Commission), party nominations of peers seem to be only lightly and inadequately appraised, and HOLAC's remit is very constrained. Many citizens and commentators believe that major party donors can still effectively 'buy' peerages.</p>
	<p>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.</p>
	<p>Ministers from the Lords are not held accountable to the same degree as their counterparts in the Commons.</p>
	<p>In all 91 hereditary peers still sit in the Lords, with vacancies supposedly being 'elected' from a wider pool of hereditaries who cannot sit. In effect this is just a self-perpetuating oligarchy selecting new members from among the aristocracy with a tiny 'electorate'.</p>
	<p>Uniquely amongst UK religions, 26 Church of England bishops still have seats in the Lords.</p>

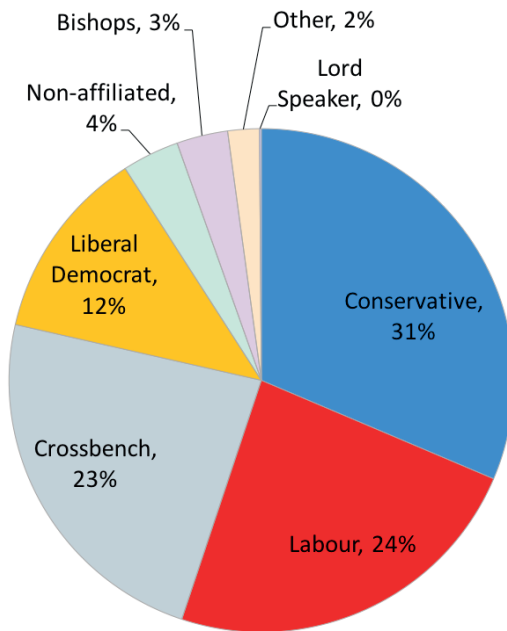
Future opportunities	Future threats
<p>All parties in the centre and on the left of UK politics are now committed to scrapping the Lords in favour of a wholly elected Senate.</p>	<p>The Conservatives remain resistant to any substantial reform of the Lords of any kind, but especially to introduce elections.</p>
<p>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. This weakens many of the traditional arguments put forward by Lords' defenders (pointing to small advantages of existing bicameralism as if they would be lost altogether, or suggesting that reform must create new tensions between the chambers).</p>	<p>Most existing peers will undoubtedly seek to wreck any serious reform of the chamber, resisting to the last ditch (as illustrated by the survival of 91 hereditaries).</p>

Future opportunities	Future threats
<p>After the 2014 Scottish independence 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.</p>	<p>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.</p>
<p>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). Grocott tried again in the 2017–18 session. Some critics argue that the move is not a reform, but just designed to make the status quo seem more palatable.</p>	<p>Vague threats to 'stuff' the Lords with more Brexiteer peers have been made by Tory critics of its pro-Remain majority. But there is no apparent way this could be done, since the (divided) Tory party as a whole is now the only large-scale nominator of peers now.</p>

The unelected and swollen House of Lords

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 elected by a system of proportional representation, but where a substantial minority of peers would be appointed more or less as they are 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 minor 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.

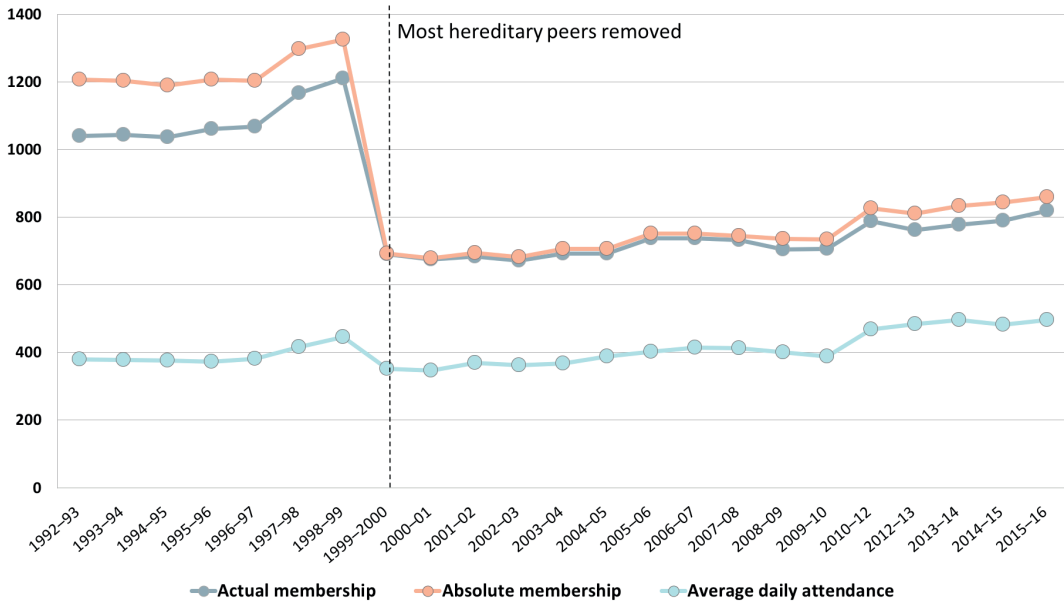
Calls for reform have persisted, particularly since the deputy speaker Lord Sewel was forced to resign, following revelations that he had been filmed taking drugs with sex workers and commenting in derogatory terms on the Lords' expenses system. Widespread public and media outrage over a string of misconduct 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. Their deliberate and long-term absence makes the Lords even more grossly unrepresentative and south-east England-centric than ever. Figure 1 shows the current party make-up of the House.

Figure 1: The Lords by party or group in 2018

Source: [Parliament.uk](https://www.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. In 2018 there were 793 peers – 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. Figure 2 shows the size of the Lords in between 1992 and 2016; the vertical line indicates most hereditary members were removed in 2000. By 2016 the total possible peers attending increased by 27% and amongst actual eligible members the increase was 27%. (Absolute 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 grey line of actual membership.) There is a constant tendency for potential members to decrease, as elderly peers die, offset by bouts of Prime Ministers creating new peers for their party (and pro rata-ing for other parties making nominations). Public criticism of rising numbers has led to a small decline in recent years.

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 2015 general election, Cameron’s Conservative majority government and later Theresa May’s minority Tory government have had the support of less than a third of peers. Both faced Labour and Liberal Democrat peers in opposition (nearly two-fifths of the House).

Figure 2: House of Lords membership and attendance from 1992 to 2016

Source: Russell, Taylor, *Size of the House of Lords*, House of Lords Library note, 2016

Notes: The dotted line here marks the 2000 exclusion of most hereditary peers from the House.

To cope with this, Cameron appointed 40 more peers (of whom 26 were Conservatives) in the 2015 dissolution honours and a further 16 (13 of them Conservative) in his **resignation honours**. This final list attracted particular criticism for its alleged ‘cronism’, with a number of key Conservative aides and donors awarded peerages. The only Labour nominee, Shami Chakrabarti, had chaired an inquiry that 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 Prime Minister before him. May has slowed the rate, but in early 2018 appointed nine new peers, three of them former Tory ministers.

These efforts to increase Tory representation did not prevent ministers being defeated **98 times** in the Lords between May 2015 and June 2017, 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’. In 2016 the Lords speaker, Lord Fowler, argued that the increase in the Lords’ size was ‘**hard to justify**’, and called on ministers to stop ‘**faffing around**’ with the House’s oversized condition. After 2016 May’s Brexit legislation also created some large defeats in the Lords of major government plans, often backed by Conservative Remainer peers (see above).

Issues around membership

Analysis by the SNP showed that nearly three-quarters of the 62 peers appointed in the second half of 2015 were former MPs, special advisors or party aides. Only four academics and two NGO or third-sector figures entered the Lords in this time, suggesting that little diversity or expertise is being brought into play by the current House. Just over a quarter of eligible peers are women and only 6.4% are black or minority ethnic. 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.

By 2020 more than a quarter (211) of peers will be over 80, and Lord Steel has suggested introducing a retirement age. However, Meg 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 Prime Ministers tend to appoint overwhelmingly from their own party.

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. An attempt to end the hereditary peerage by-elections, in which some or all of the House picks replacements to top up the remaining 91 hereditary peers after one dies, also failed in late 2016 after not receiving government support. It was revived in 2017–18 and, if successful, would mean that the number of hereditary peers would gradually dwindle as their current eligible members die off.

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. Currently no Secretaries of State sit in the House of Lords, but in the recent past important figures were there – for example, Peter Mandelson was virtually Deputy PM there in 2009–10, and Business Secretary before that in 2008–9. However, 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

Defenders of the chamber argue that it continues to act with a reasonable degree of independence from the government, as shown by 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), when peers mauled ministers' proposals, which contributed to

a ‘pause’, re-consultation and some redesign of the legislation, as well as the tax credits defeat in autumn 2015 (discussed below). In 2016, the Lords rebelled over the right of EU citizens to stay in the UK after Brexit, which were followed by extensive Brexit legislation defeats for the government in the 2017–18 session. This development towards a more even-handed scrutiny has come as something of a shock the Conservatives, who always dominated the Lords under the hereditary system and so were therefore used to suffering far fewer defeats when in power 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 some of these cases the amendments passed by the Lords, or the amended government proposals responding to Lords defeats, were accepted by the Commons, often bringing about better policy-making. 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.

The 2015 revolt on tax credits and ‘Strathclyde review’

Most of the time amendments moved in the Lords are reversed in the Commons under governments with a majority, of which 2015–17 is the only recent example. However, in October 2015 peers very unusually voted to delay changes to tax credits until certain conditions were met – in the process verging into budgetary matters where normally they have no competence. This move sparked outrage from Conservative ministers, who argued that peers were overstepping their constitutional powers 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.

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 (see above), 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.

Proposals for Lords 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. Subsequently Corbyn insisted that any new Labour appointees must pledge to vote for a wholly elected second chamber in future.

The Liberal Democrats previously reiterated a commitment to reform based on proposals in the failed 2012 Bill, but their 2017 manifesto was clearer in calling for an elected chamber, a call joined by the Greens. The SNP and UKIP manifestos in 2017 supported scrapping the Lords altogether.

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 numerous appointments.

In their 2017 manifesto the Tories declared that 'comprehensive reform' of the House of Lords is 'not a priority'. How long the Tories can go on defending an unreformed House when essentially all the other parties have withdrawn most legitimacy from Lords remains one of the great questions of British politics. All the other parties' stances seem to recognise the past attempts at 'tweaking the Lords' have not addressed the chamber's systemic problems, and it is likely that only a fresh, elected Senate can really bring about the changes that are needed.

Conclusions

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 Lords 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 now 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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5

How democratic and effective is UK national government?

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5.1

The basic constitutional law

*The foundations of any liberal democracy lie with its constitutional arrangements, the key means by which the powers of the state are specified, distributed across different institutions and regulated. Constitutions set out how the state is structured, what its major institutions are, and what basic principles govern their relations with each other and with citizens. In the UK these provisions 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.*

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, politicians and officials.
- ◆ Some ambiguities or disputes about these rules are inevitable. Some generally accepted processes (both legal and political) are needed through which issues 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 the ultimate responsibility for crucial decisions.

- ◆ Opportunities for citizens to engage with and influence 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 **June 2016 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 that imposes. Now Brexit will see domestic constitutional law reshaped to reverse many of these changes. The future supremacy of EU law over domestic law will be removed on exit day by the European Union (Withdrawal) Act 2018. And we will very likely see the return of law-making competence from the European Union institutions to the UK Parliament, and (subject to some controversial centralising by Westminster) 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. These include 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 referenda 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 Scotland voted to stay within the UK, the 2014 referendum did prompt further **far-reaching devolution of powers** to Edinburgh. It also raised expectations in other devolved governments, leading to further devolution for **Wales** and **Northern Ireland** (although the Northern Ireland Assembly and Executive both remain suspended through most of 2017 and 2018, which left a major constitutional and democratic vacuum at a significant time). 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 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 2022 (the legally due date) also looks more likely than not.

The Supreme Court

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 21st 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
<p>The 'manner and form' theory of parliamentary sovereignty holds that the UK Parliament possesses a legislative authority that is not legally limited. It can pass laws with any content that it chooses. And it can also change its own legislative procedures in any way it chooses.</p> <p>This provides a secure basis for a strong executive government, founded on a democratic responsiveness to the wishes of a majority of voters, and subject to political accountability in the UK Parliament. It also ensures there are few formal barriers to radical (democratic) constitutional reform.</p>	<p>Alternative accounts of how the UK's basic constitutional set-up now works allocate a larger role to the Supreme Court and judges in regulating how the core institutions of the state operate. On the 'common law constitutionalist' theory, 'the UK's constitution is higher law made by the conscious decisions of a legislature to create principles of fundamental significance'. This view may lie behind the Supreme Court's January 2017 decision that because Brexit entails changes in legal sources and rights, it requires an explicit Act of Parliament to start that process – and could not be done under the executive powers to make and unmake treaties, as initially claimed by the May government.</p> <p>Yet this may be part of a shift from the UK's 'political constitution', in which the constitutional constraints on a UK executive with a Commons majority primarily flow from politics. Such limits are less formal, more fluid, and their effectiveness is hotly disputed – but it is far from clear whether a move to greater constitutional limitation through legalism will produce better democratic government.</p>

Current strengths	Current weaknesses
<p>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, as is the case with the further devolution of powers to democratic institutions in Scotland, Wales and Northern Ireland, or proved resilient to retrenchment, for example, the Freedom of Information Act 2000.</p>	<p>Despite the era of reform, non-democratic institutions remain, and wield considerable power. The House of Lords is only partially reformed and still unelected, yet it is increasingly relied on as a check on government and the House of Commons.</p> <p>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.</p>
<p>Frequent opportunities exist for the electorate to freely express their will, both in parliamentary elections and referenda, and for citizens to shape the policy agenda, such as via the parliamentary petitions website.</p>	<p>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; continuing 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.</p> <p>Moreover, establishing English votes for English laws in the Westminster Parliament may initially have seem an underwhelming change, but it could yet have consequences for the equality of MPs. And a failure to obtain the consent of the Scottish Parliament for the European Union (Withdrawal) Act 2018 raises concerns about the authority of the democratic principles and conventions underpinning the structures of devolution.</p>

Current strengths	Current weaknesses
	<p>Only limited critical or considered debate has taken place about the recent 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. Human rights litigation has also produced some frustrating, fragmented, and inaccessible judgments on major issues, for example on assisted dying (<i>Nicklinson</i>) and abortion rights (<i>NIHRC</i>).</p>
Future opportunities	Future threats
<p>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.)</p>	<p>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.</p>

Future opportunities	Future threats
<p>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 return to a hung parliament after the 2017 election may present a further opportunity for critics to press the case for reform to the voting system, to establish a system of proportional representation.</p>	<p>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.</p> <p>Rather than reverting to such pure representative democratic systems, ways of deepening the electorate's involvement in democratic methods of reform should be further explored, such as via a constitutional convention or citizens' assemblies.</p>
<p>The lack of social diversity amongst judges has gone beyond the point of being indefensible. The appointment of a new Lord Chief Justice in 2017 offered little hope in this regard. However, Lady Hale is now the President of the Supreme Court, and she has been joined by two further female Justices. Yet formal quotas would still be required to alter substantially the dynamics of judicial appointments, and accelerate current glacial progress.</p>	<p>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.</p>

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) Act 2018** (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. A new parliamentary review process has been designed to sift through the estimated 800–1,000 subordinate laws which may need to be enacted. A Commons European Statutory Instruments Committee will examine all proposed secondary legislation in preparation for Brexit, and flag those that ought to be subject to debate and the positive approval of Parliament.

The 2016 referendum result may provide the government with a mandate to deliver the UK's exit from the EU. However, 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. 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 are crucial to this. The consent of the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales should have been required to make legislative changes to the devolution statutes and competences. Yet only the Welsh Assembly gave its approval to the European Union (Withdrawal) Act 2018. The UK government pressed ahead without consent from the Scottish Parliament, raising serious concerns about the extent to which democratic principles underpinning devolution are being respected, and bolstering calls for a second independence referendum in Scotland. Political and statutory commitments have been made to ensure the UK Parliament gets a ‘meaningful vote’ to approve a Withdrawal Agreement negotiated by the government, and any deal will be for Parliament to implement through new primary legislation. Parliament has also legislated to require the government to report on progress if ‘no deal’ becomes a likely outcome, providing an avenue for this to be challenged in the legislature.

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, is still to be assessed. The pace and scale of change has been rapid, and hard to keep up with – suggesting that we must also try to take stock to establish future priorities.

It is not a straightforward question to answer ‘**where is the UK constitution now?**’ because 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 believed in ‘constitutional modernisation’, but had no overarching vision of what that meant in order to structure the reform programme it actually carried out. This may explain why a systematic approach has subsequently proved elusive. What New Labour produced is a constitution that we can think about holistically and explicitly, and be prepared to change in a proactive way. But if the goal of ‘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. We must at least attempt to sketch some kind of coherent vision of the overall constitution that 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 in its processes.

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 observers this may be **a democratic deficiency**. As the UK political system 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 (like referenda), 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 any particular 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 where much more remains to be done.

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5.2

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 accountable and responsive to Parliament and the public is this ‘core executive’? And how effective are these key centres of decision-making and the rest of Whitehall government, in making policy? Do they consistently serve UK citizens’ interests?

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 their activities with reasonable assurance about future government policies.
- ◆ 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 effectively scrutinised by and politically accountable to Parliament. Ministers and departments/agencies must also be legally accountable to the courts for their conduct and policy decisions.

- ◆ Policy-making and implementation should be as transparent as possible, while recognising that some special core executive matters 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 (that is, at lowest cost). Consultation arrangements should ensure that a full range of stakeholders can be and are 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, with ministers 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 and immigration, 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 that gets done remains confidential at the time.

Recent developments

In July 2018 Theresa May summoned her Cabinet to the Prime Minister’s country home at Chequers and briefed them on the negotiating position for UK withdrawal from the EU. After months of wrangling and disagreements between Leave and Remainer ministers, and between Whitehall departments, the White Paper she required them to vote to accept had been drawn up by staff in the Cabinet Office **under her direction** (chiefly by Oliver Robbins) and discarded a quite different paper that the Department for Exiting the EU (DExEU) had been working on for months. Faced with an ultimatum the Cabinet voted to agree, but two days later Boris Johnson (the Foreign Secretary) and David Davis (the DExEU Secretary of State) and a strongly Brexiteer junior minister at DExEU resigned. Five other Leave Cabinet ministers, who had concerted positions with Johnson and Davis the night before

the Chequers showdown, decided to stay on. A few days later, the government took the Chequers deal to the hung Commons, but had to back down and accept four amendments proposed by Tory Brexiteer MPs from the European Research Group. The amended proposals passed the Commons by margins as low as three votes, as Conservative Remainers defied their party's whip.

This incident marked one climactic peak (there will likely be others) in the conflictual executive politics between Leaver, pragmatists and Remainers that marked the May government from the outset, and intensified as the UK's withdrawal negotiations with the EU neared critical decision points. Previous UK core executive conflicts were mainly 'dyadic', two-way struggles between a Prime Minister and a rival or successor in one of the top four Cabinet roles – Chancellor, Foreign Secretary, Home Secretary and sometimes Defence Minister (see 'weaknesses' in the SWOT analysis below). The transition to triadic or three-way conflicts reflects the strong divisions within the Conservative Party (see [Chapter 3.1](#)). It was made worse by May's 'closed decision-making' style, and her habit of briefing symmetrically against her leading colleagues in 2016–17 – for example, in the run-up to the mishandled 2017 election May's staff clearly signalled the press and her MPs that Philip Hammond (Chancellor) and Johnson would be dumped in her new government.

In a weakened position after losing her majority, May was unable to act on either of these ambitions. Even her new appointments, like the not-very-well-known Gavin Williamson as Defence Secretary, began using resignation threats overtly in the press to seek bigger budgets. The government abandoned practically all the controversial components of the damaging Tory manifesto, and May called for inter-party co-operation. But the Prime Minister 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.

However, one root of May's collapsing authority can be traced back to David Cameron's position after winning a narrow Conservative majority in the 2015 general election. The result seemed to signal the resumption of 'normal service' for peacetime government in Britain. The **apparatus** of the five-year Conservative–Liberal Democrat 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.

Cameron had alighted on the pledge of an in/out referendum in early 2013 as a tool to keep the dissidence of the Tory right's MPs 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. Jockeying between the relatively few Cabinet Eurosceptics and the strongly pro-EU 'Cameroons' became more vigorous as the Prime Minister moved to deliver on his election pledge to hold an in/out referendum on the European Union. Buoyed up by their experience of (narrowly) winning the Scottish

independence referendum with a ‘big fear’ campaign warning of disastrous consequences, Cameron and Osborne re-ran almost the same playbook and for a long time seemed to be winning. Yet Eurosceptic ministers were allowed to campaign for Leave, and a significant minority did so (while May and some others were ‘apathetic Remainers’). This suspension of collective Cabinet responsibility during the referendum campaign meant that Eurosceptic ministers need not resign their posts, despite publicly contradicting everything that the Prime Minister and Chancellor were saying. In the end it was the committed Eurosceptic Michael Gove and the initially more diffident late-convert Johnson whose **campaigning** caused the ‘doom and gloom’ Brexit campaign to be lost on 23 June, 2016. 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 Prime Minister after a two-week interregnum. She initially 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 the major Eurosceptics David Davis (DExEU) and Liam Fox (International Trade) 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 Parliaments 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 ten 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 quasi-Deputy PM the more accommodating Damian Green, but he lasted only a year before resigning over a porn scandal.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>British government before 2010 was normally strongly unified, with clear Prime Ministerial and Cabinet control, strong ministerial roles within Whitehall departments, single-party governments, and relatively clear and distinct strategic policy stances. All of these features were briefly visible again in 2015–16, and some were present in 2016–17 – but not in the other six years since 2010 under hung parliaments.</p>	<p>The Prime Minister's 'three As' powers are extensive. She appoints Cabinet ministers, allocates their portfolios and assigns policy issues across departments. Theoretically she can so arrange ministers' policy trade-offs that they will perfectly implement the premier's preferences. In 'normal' times, most ministers are highly dependent on the Prime Minister's patronage and access for influence.</p>
<p>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.</p>	<p>In pursuit of purely political advantages, Prime Ministers have often re-jigged ministerial roles by pushing through reorganisations 'making and breaking Whitehall departments' (see below). This administrative churning is costly, short-termist and disruptive, reaching a peak under the Blair and Brown governments. A near-moratorium on reorganisations followed under Cameron's premiership (2010–16), only to be succeeded by drastic changes and a wholesale reshuffle of ministers under May in June 2016.</p>
<p>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' (for example, 60% agreement) basis, especially in crises or situations where the status quo is worsening.</p>	<p>Cabinet decision-making no longer operates in any effectively collegial manner. Prime Ministers control the routing of issues through committees and can bypass them via 'bilaterals' and 'sofa government'. For example, even the weakened Theresa May was able to re-centralise power from her DExEU Secretary, creating a Cabinet Office unit that in the end wrote a completely different White Paper by summer 2018 from the one the department had been working on. In 'normal times' strong integration of government communications also enforces complete solidarity across all ministers, without any guarantee of participation in decisions. Ministers mainly fight back by 'adversarial leaking', which is in turn routinely denied.</p>

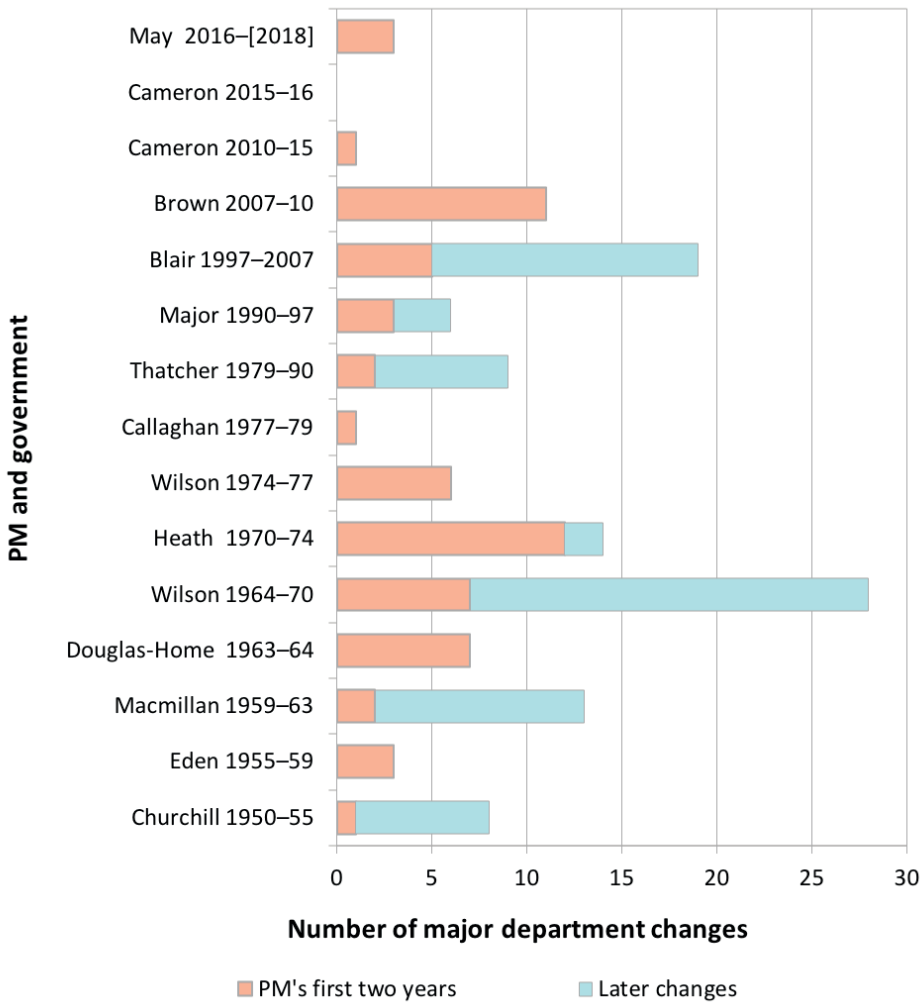
Current strengths	Current weaknesses
<p>Because of these processes, the principle of ‘collective responsibility’ binds Cabinet ministers to publicly back every agreed government policy, and not to talk ‘off their brief’. Wider ministerial solidarity also requires all junior ministers to follow the government line (for example, resigning if they do not vote the government line in the Commons). This convention held even over the July 2018 three-way Chequers agreement battle.</p>	<p>The UK still has a ‘fastest law in the West’ syndrome, with the fewest checks and balances of any liberal democracy on the Prime Minister or the core executive – especially in one-party governments with secure Commons majorities. But even May made her own EU negotiating position far weaker by triggering Article 50 to leave with only a two-year period to go. 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.</p>
<p>Policy-making can take place swiftly when needed. Whitehall’s resilience in crisis-handling and its capacity to respond to demanding contingencies are generally high.</p>	<p>Recurring ‘groupthink’ episodes have produced major ‘policy disasters’ – 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 (see below).</p>
<p>UK institutions are long-lived and can draw on a strong tradition of relatively effective government, confident and immediate administrative implementation of ministerial decisions (when they are clear), and (normally) high levels of public acceptance and legitimacy</p>	<p>There is little evidence of much substantial policy-learning capacity within the core executive. All British Prime Ministers 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.</p>
<p>It is expected that the government will consult (most) affected interests on major policy changes.</p>	<p>‘Policy fiascos’ occur when Prime Ministers and governments choose to ignore credible warnings of foreseeable policy disasters. Even on relatively mundane legislation, ministers and departments often choose to ignore or override the feedback received.</p>
<p>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.</p>	<p>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 out, unless a scandal takes root.</p>

Current strengths	Current weaknesses
	<p>Long-running dyadic power conflicts have occurred between Prime Ministers 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 Prime Minister wants to happen in key policy areas, usually those related to their brief. Under large majority rules this frustrates implementation of the Prime Minister’s preferred policy. It either results in inaction, or on extra time being spent to achieve a bargained compromise between the Prime Minister 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).</p>
Future opportunities	Future threats
<p>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 (see Chapter 5.6). 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.</p>	<p>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.</p>

Future opportunities	Future threats
<p>The government accepted motions backed by a majority of MPs requiring a Commons sifting committee to scrutinise the Brexit-related statutory instruments. The efficacy of this arrangement versus the information advantages of ministers and Whitehall remains to be established.</p>	<p>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.</p> <p>As originally drafted, the May government relied heavily on ‘Henry VIII’ clauses in Brexit legislation, which would allow ministers to vary inherited EU laws using some 900 hard-to-scrutinise statutory instruments instead of new legislation in Parliament. This is now altered but there remain concerns that new ‘sifting’ measures remain too weak.</p>
	<p>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.</p>

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. Prime Ministers can scrap, merge, de-merge and reorganise ministries at will, often creating new ones to reflect their priorities or to respond to external changes. Figure 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 each premiership. Research shows that **political priorities** in Cabinet-making dominated administrative ones in most of the reorganisations – many of which were done by Prime Ministers 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.

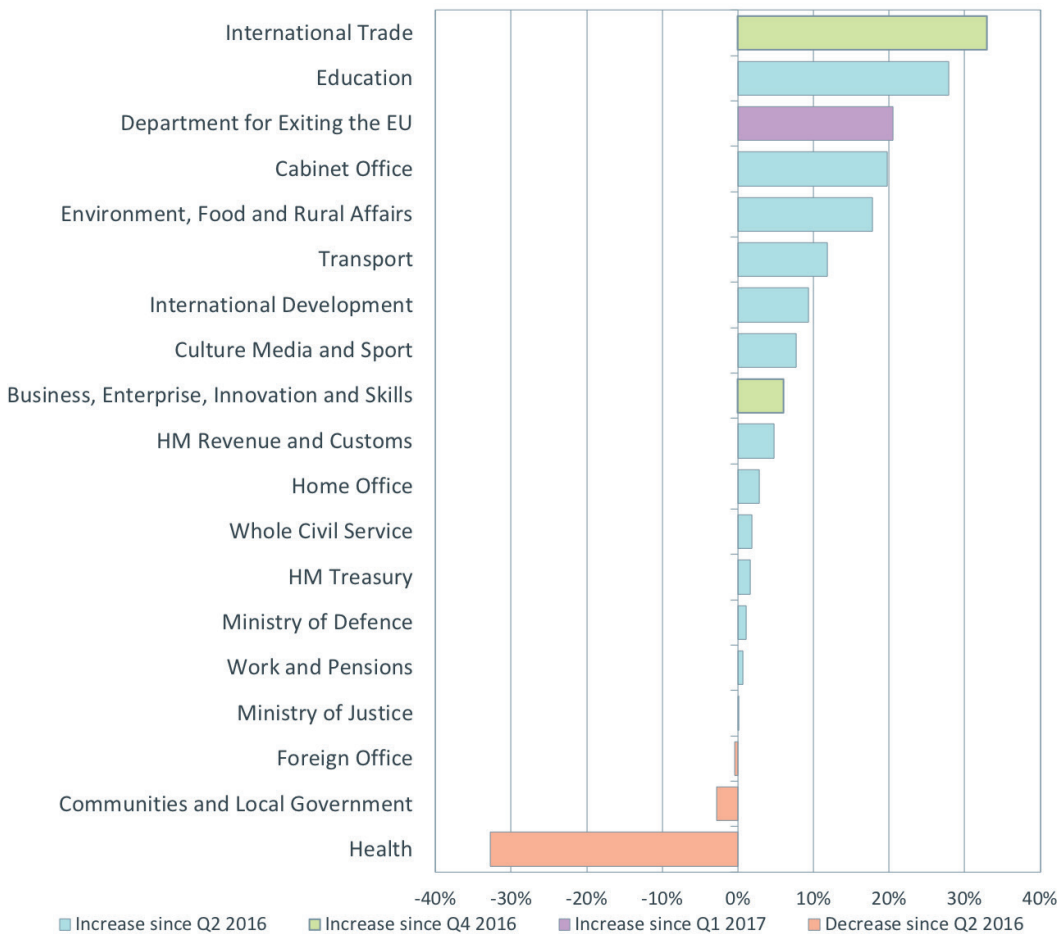
Figure 1: Major reorganisations of Whitehall departments by Prime Ministers, 1950 to 2018

Source: Up to 2010: [White and Dunleavy, 2010, Figure 8, p. 20](#). From mid-2010 on: *Institute for Government, Whitehall Monitor series*.

In 2010, David Cameron decided not to reorganise Whitehall, a course which he saw as a costly distraction when the UK's priority was cutting public sector deficits. He contented himself with abolishing a recent Labour-created department (called DIUS). (His Tory Secretary of State for Health, 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 little. 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 new ministries: DExEU, to manage the Europe Union 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, abolishing the previous Department for Energy and Climate Change and transferring most of its functions to BEIS, the department for Business, Energy and Industrial Strategy. In line with previous yo-yo changes over the decades, the responsibilities for skills plus universities and research moved back to the Education Department. Figure 2 shows that these changes plus the Brexit preparations created some substantial boosts to many policy departments' staff; but the biggest employers (HMRC, DWP and MoD) remained stable. DExEU is almost designed to not last too long, although DIT look as if it may endure. Instead of DExEU, an alternative strategy would have been to create a neutral Cabinet Office unit under Prime Ministerial authority to run Brexit negotiations. Effectively May belatedly followed this course from autumn 2017, sucking much of the momentum out of DExEU and helping trigger David Davis' resignation nine months later.

Figure 2: Changes in Whitehall departments' staffing levels, 2016–18



Source: **Institute for Government, Whitehall Monitor 2018, Figure 2.3.**

Notes: Some DExEU staff are on loan from FCO and other departments, and so may be counted twice.

The Cabinet committee system

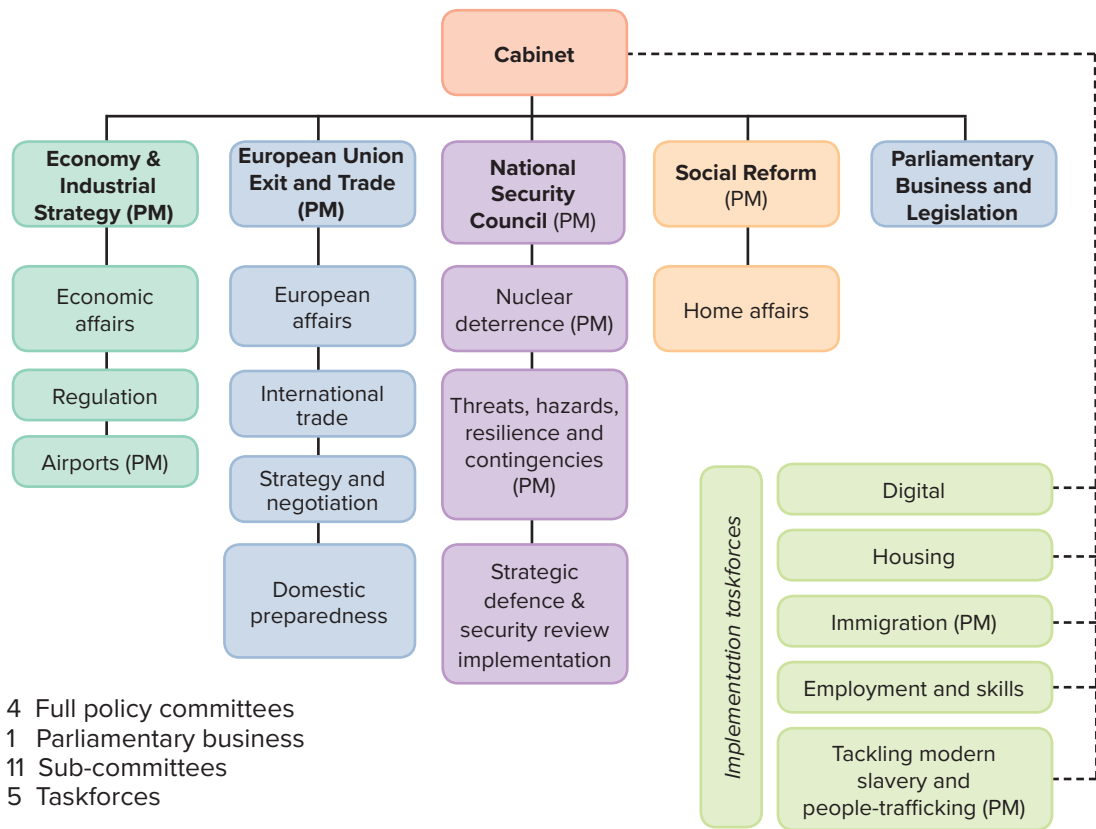
Below the large, 23-member Cabinet, the Westminster system has traditionally operated one of the most elaborate committee systems of any liberal democracy. All relevant Cabinet departments sit on related committees, but in the past there were many more committees, arranged in a complex hierarchy. ‘Prime Ministers decide how to organise [committees], who to appoint to them, and how actively they are involved in them’. However, Nicholas Allen and Nora Siklodi **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]: [Our emphasis.]

By November 2017, May’s tuning of the government machine to yield her kind of administration, plus the huge load increasingly associated with the Brexit negotiations (which shut down a lot of legislation and activity on other issues), produced the Cabinet committee structure shown in Figure 3, perhaps the smallest in living memory – with just 16 policy committees and sub-committees and only five taskforces. Almost half of these new bodies were chaired by the Prime Minister herself (as shown), including all the main substantive committees, a historically unusual level of centralisation.

Critics argue that May favours a **‘closed decision-making’ style**, with power concentrated in her hands, plus 10 Downing Street and a few favoured delegates. 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. 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.

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. Figure 4 shows that in summer 2016 the new bigger committees and some sub-committees gave a place to almost everyone on almost everything, so that the Prime Minister’s share of positional power was less than 11%. Comparing **earlier research** shows that May’s number was greater than John Major’s 7.6% score in 2001, but down on Tony Blair’s score of 14.9% in 1997.

Figure 3: Theresa May's Cabinet committee structure in November 2017

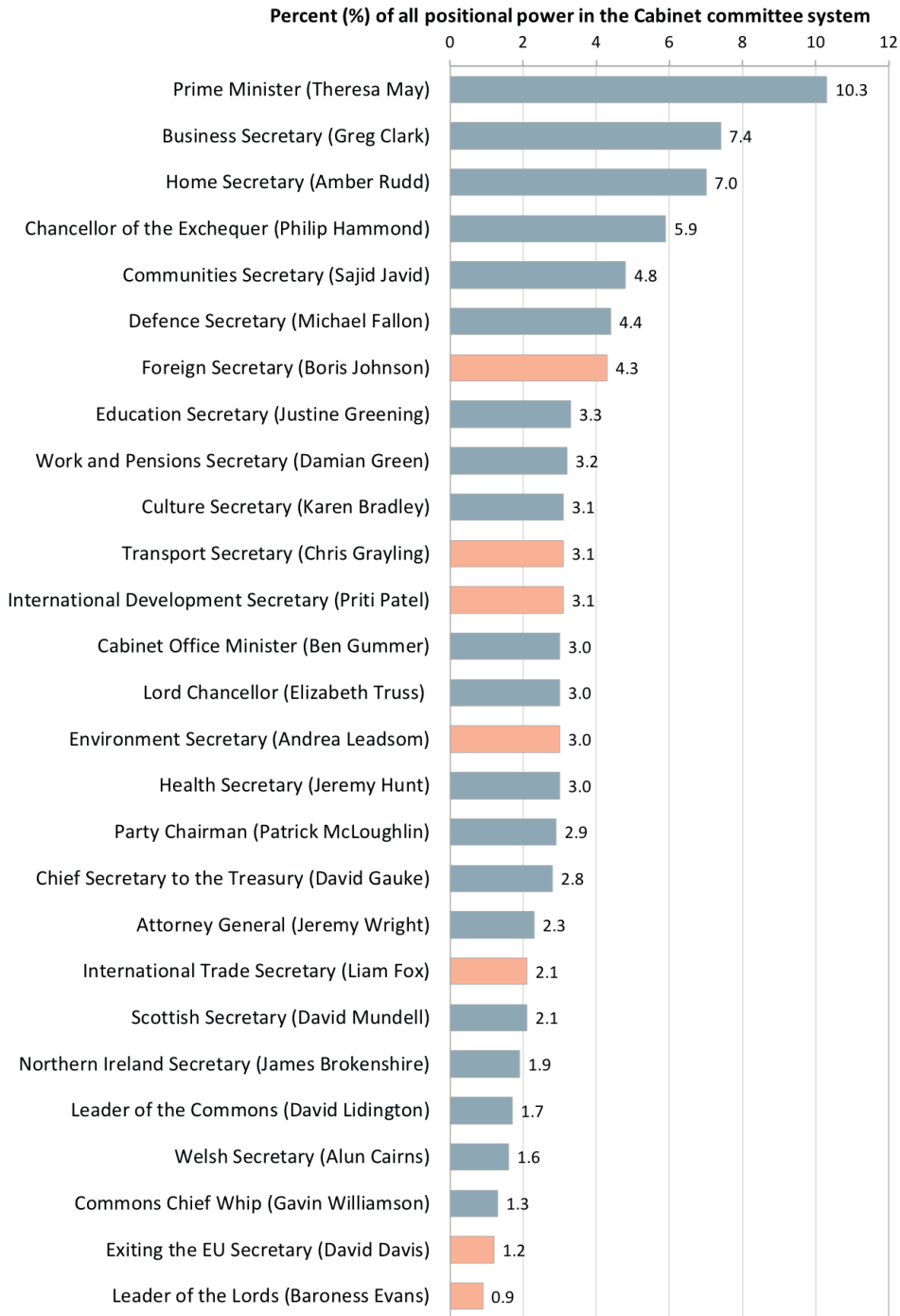
Source: [Institute for Government, 2018](#), redrawn from Figure 1.7

Note: Prime Minister chairs committees marked (PM)

Of course, positional power is not the only kind of power that ministers have, as shown by the low rank at this time for David Davis (in the early days of Brexit one of the most powerful ministers under May). 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 effectively invisible to the public. Voters saw the government as almost exclusively dominated by the Conservatives, because Nick Clegg had naively allowed them to hold the top ('secretary of state') ministerial portfolios in all but one of the major policy departments.

Amongst the several other power bases that matter, ministers control the substantial administrative power of their own department fiefdoms, where they set policy priorities, control key policy-making processes, and shape how a lot of public money is spent. Informal alliances 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 Prime Minister'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.

Figure 4: The positional power of Cabinet members in the Cabinet committee system, summer 2016



Source: [Allen and Siklodi, 2016](#)

Note: Ministers in pink are prominent Brexiters.

Budgetary control within government

The other core co-ordination mechanism is tight Treasury control of public spending, which reached a peak under the Cameron-Clegg governments' austerity programme, maintained for a further year by Cameron after 2015. 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 costs of such policies only became apparent after lags – for example, big increases in some categories of serious crime followed in 2017–18 after police cutbacks. And in the 2017 general election many voters sent a clear message to Conservative MPs and ministers that public sector pay restraint had to end. A 2018 Theresa May pledge to guarantee long-term NHS real-terms budget increases, and her difficulties with defence spending, both reflected 'incubated' problems resonating with the public. The strategy of 'cutting back until the shoe pinches' by this stage had clearly rising political costs.

The apparatus of Treasury control makes 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 it uses 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

The UK's still substantial secret state is the last surviving 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 Prime Minister. Following the ‘dodgy dossier’ episode where intelligence was manipulated by the Prime Minister’s aides in the lead up to the Iraq war, 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 £3.1bn (including £470m of capital spending) 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, hand-picked by the Prime Minister from the Commons and Lords. Committee members were previously criticised as ‘trusties’ but there is now more **parliamentary input** into their selection (see **Chapter 4.3**).

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 meetings 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 2017 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 US renditions and torture of terror suspects** 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 generally been proved reasonably well-founded. For example, in summer 2018 a report by Parliament’s Intelligence and Security Committee found that UK intelligence agencies had tolerated US renditions and derived benefit from CIA tortures of prisoners (for example, submitting questions to people whom they knew were being water-boarded). Arguments for a pattern of ‘deep state’ cover-ups followed by belated admissions have also gained added

contextual credence from evidence of policy fiascos perpetrated elsewhere by the UK state – such as the police cover-up over mass deaths in 1989 at the **Hillsborough football stadium**; and the Department of Health’s actions over the **poisoning of NHS patients** over many years with hepatitis B from blood for transfusions imported from the USA.

Policy fiascos and disasters

Critics have long argued that the UK is unusual in the extent to which it suffers from acute policy disasters and policy fiascos (perfectly foreseeable disasters) – and that the key sources of these problems are **the lack of checks and balances** in the UK core executive. Majoritarian government, strong Whitehall traditions and a pronounced lack of accountability to the legislature all interact badly with the ‘legacy’ hangovers of an over-strong executive government tradition using Crown prerogative powers, plus the malign influence of ‘new public management’ thinking on core civil service competencies (see **Chapter 5.3**).

Other observers see the 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**’. However, this is arguably an implausibly politically focused analysis, which over-locates responsibility with particular minister and party advisors, neglecting the role of the civil service (see **Chapter 5.3**) and the specificities of major projects like **large-scale IT investments**. Ministers may be unrealistic in how they approve schemes like the **Universal Credit changes in social welfare**, and then may deny and bluster about problems when implementation starts going wrong. Yet all politicians in liberal democracies are policy amateurs, and yet the UK scale of problems is rarely matched in other long-established European democracies.

The risks of unconstrained executive action are especially severe where a Prime Minister and close advisors fall prey to ‘groupthink’, as **May and advisors clearly did** in triggering the 2017 early general election. In overseas and defence policy many of the factors above are further compounded by a lingering British empire tradition of foreign and defence policy-making that is elite-dominated, insulated from public opinion and Parliament, and (arguably) lacking in realism. In the spring and early summer of 2018, Theresa May and her Defence Secretary Gavin Williamson were involved in a bitter wrangle over defence budgets. During it the Prime Minister created shock in the ‘defence establishment’ by questioning whether Britain could any long afford to retain its long-prized goal of being a **‘Tier 1’ defence power** – an ‘article of faith’ for the defence and foreign policy establishment.

Overseas policy disasters

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 intervention** was minimal and ham-fisted.

As a result, greatly increased flows of refugees began crossing the Mediterranean to reach EU countries, fuelling part of the anti-immigrant momentum that fed into the anxieties of the UK’s Brexit voters five years later. And Islamic jihadist forces (such as Isis and al-Qaeda) soon secured footholds 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. The Libya commitment reflected an over-homogenisation of views by the Prime Minister and colleagues, and an over-confidence (bordering on delusional) about the UK’s state capacities in the modern world. Little wonder that Barack Obama publicly described the episode as the **‘worst mistake’** during his presidency, and in private reputedly called it ‘a shit show’.

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 15-million words) was soon lost to view. It painted a bleak picture of how the UK’s core executive operated at that time. Blair as Prime Minister and his communication chief (Alastair Campbell) clearly steamrolled 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.

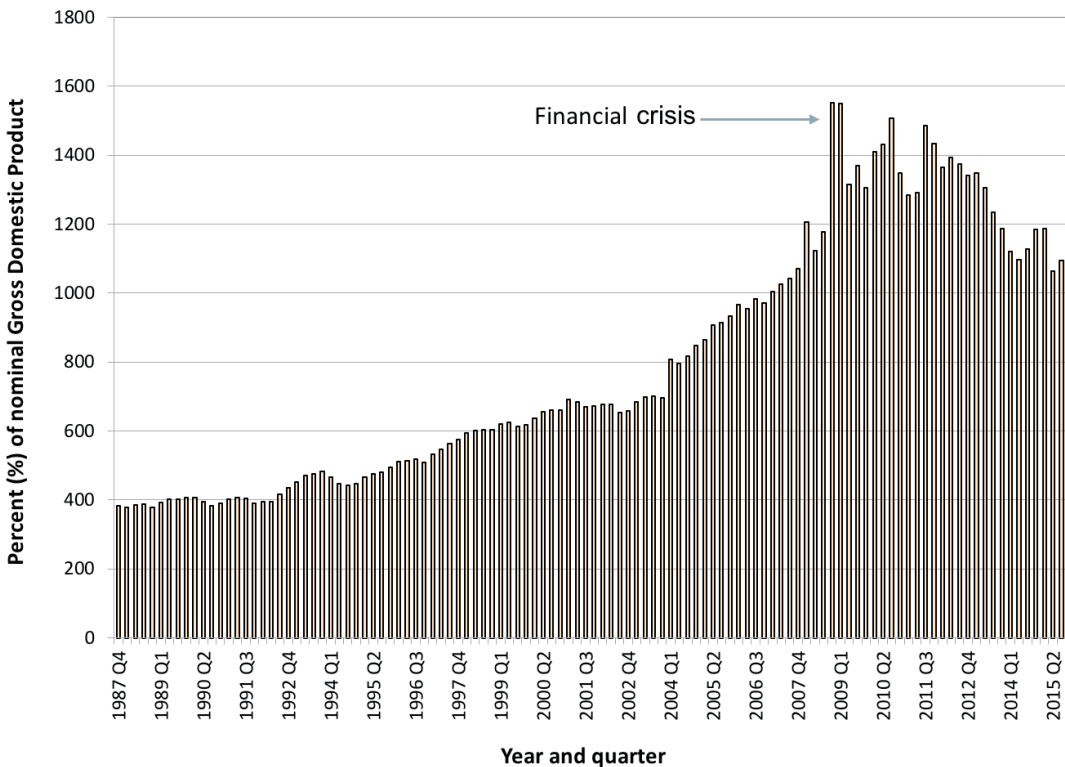
Domestic policy disasters

In terms of domestic policy disasters, the onset of the Brexit referendum in 2016 (discussed above) is perhaps the leading case 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 knocked out or withdrawing.

Two other recent policy crises illuminate different aspects of the limitations on UK core executive operations. First, the onset of the global financial crisis in 2008, and the forced renationalisation of most UK banks that followed, imposed a decade of acute austerity on UK government, and a considerable burden on taxpayers. These difficulties were made far worse than they might have been by an almost unacknowledged change whereby under Tory and Labour governments the UK state allowed bank liabilities – for which taxpayers were the ultimate guarantor – to expand from early post-war modest levels around half of GDP to a peak just before the crash.

Figure 5 shows that the liabilities of UK financial corporations were almost four times nominal GDP in 1987, and then rose past ten times GDP by 2006, peaking at 11 times GDP just before the GFC broke. Throughout this period, the Treasury, Bank of England and enthusiastic key ministers like Nigel Lawson, Margaret Thatcher and Gordon Brown all fuelled the massive expansion of the UK’s finance sector, without imposing any form of ‘macro-prudential’ regulation of the scale of liabilities the UK state was taking on. Instead

Figure 5: The financial liabilities of financial corporations in the UK, as a percentage of the country's nominal GDP, from 1987 to 2015



Source: Computed from [Office of National Statistics, 2016](#), Figure 1.

financial de-regulation and 'light touch' regulation were repeatedly pushed by ministers – creating an almost completely ineffective apparatus which collapsed precipitately once the crisis struck. In the subsequent recession, financial corporations' liabilities kept on rising, briefly touching levels 15 times GDP in 2009–10 and only plateaued out at 11 times GDP again from around 2014 onwards.

A second example concerns the Grenfell Tower fire in June 2017, when a London tower block was completely devastated by fire in a couple of hours, killing 72 people and injuring hundreds more. The May government ran into immediate trouble, failing to trigger the COBRA emergency committee to manage the disaster, and providing only a woefully inadequate initial state response to the catastrophe. It rapidly emerged that the fire spread so quickly because the block was clad all over in inflammable materials in a disastrously cheapskate refurbishment carried out by the Tory Kensington and Chelsea borough under austerity pressures.

However, by the time that a public inquiry started it became clear that the conditions for the fire had been created by two core executive failures. A long-run campaign to de-regulate building safety and foster 'technical innovation' had begun under the Blair and Brown Labour governments and been sustained by the coalition government and Tory

administrations since 2010. Fire service roles in safety were pared back, regulations were written in incredibly vague and ineffective ways, and building contractors allowed to self-certify materials and designs. Second, the relevant department (DCLG; Communities and Local Government) was repeatedly warned of cladding fire dangers from 2011 onwards from a succession of incidents, and lobbied by an all-party group of MPs to urgently review regulations. But whereas the Scottish government acted on the same evidence to ban flammable materials in all its high rises, several Tory ministers (plus one Liberal Democrat) at Westminster repeatedly deferred taking any corrective action at all. Add in the incidence of ‘public service delivery disasters’ (see [Chapter 5.3](#)) and the contemporary diversity and significance of UK public policy mistakes is clearly considerable.

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 eight 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 this tarnished record may be capped by the looming threats of either leaving the EU on poor economic terms under a ‘hard Brexit’ strategy, or of being trapped in an unsatisfactory ‘soft’ Brexit, where the ‘dirty’ component of a ‘quick and dirty’ exit turns into **enduring disadvantages**.

The clouds in the form of recurring ‘policy disasters’ and ‘fiascos’ have also gathered. Both the Conservative and Labour party elites and leaderships, and Whitehall elites themselves, have seemed 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’.

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5.3

The civil service and public services management systems

Citizens and civil society have most contact with the administrative apparatus of the UK state, whose operations can powerfully condition life chances and experiences.

Patrick Dunleavy considers the responsiveness of traditionally dominant civil service headquartered in Whitehall, and the wider administration of key public services, notably the NHS, policing and other administrations in England. 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?

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

- ◆ Services provision and implementation, and the regulation of social and economic activities, should be controlled by democratically elected officials so far as possible. Policy-making at this level 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.
- ◆ The management of all public services management at all levels of government (within national, regional, local and micro-local agencies) 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' rules followed in adjudicating their cases or entitlements.
- ◆ Wherever 'para-state' organisations deliver services on behalf of or subsidised by government (for example, non-government organisations [NGOs] or private

contractors), these public value standards (action within the law, equal treatment and access, respect for human rights, and freedom from corruption) should all apply in exactly the same way.

- ◆ The importance of ‘public value’ considerations is especially heightened in government legal and 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.
- ◆ Public services, contracting and regulation should be completely free from corruption, with swift action taken against evidence of possible offences.
- ◆ The civil service and public services organisations should recruit and promote staff on merit, having 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 state-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 (at implementation levels) that seriously harm one or a few persons, or that affect large number of people in highly adverse ways, public service organisations should show a committed approach to recognising and rectifying problems, and to rapid organisational learning to prevent them from recurring.

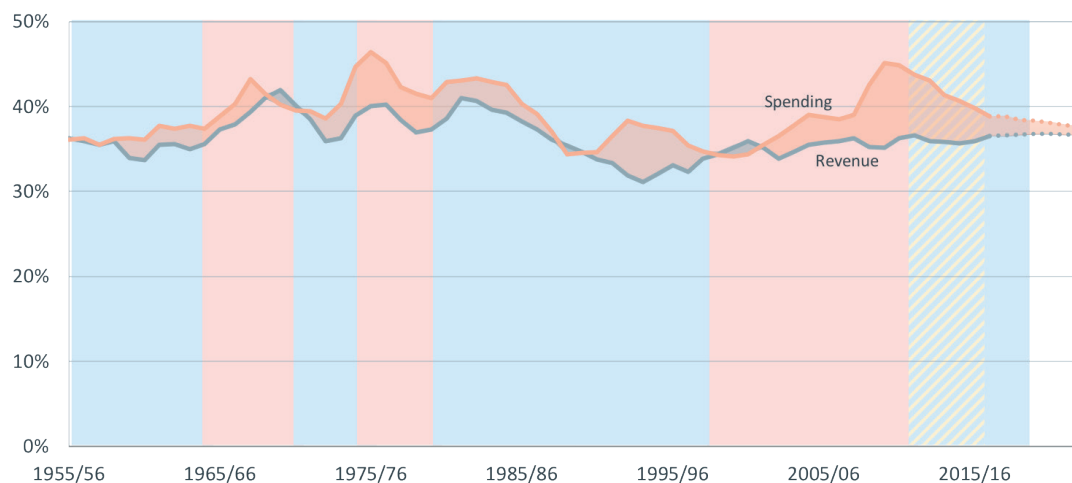
In liberal democracies, citizens and politicians expect that the civil service and other public service organisations will meet all of the multiple requirements listed above, simultaneously. If lapses occur in any aspect, public trust in these bodies can be severely impaired, usually increasing their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

Yet the different expectations 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 also 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

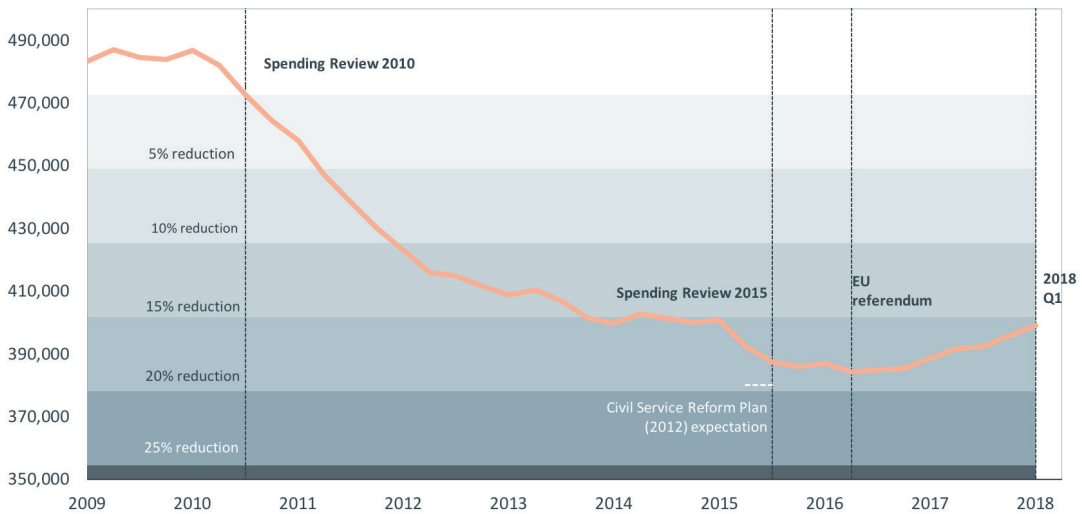
The recent history of public services has been dominated by the austerity programme of the 2010–15 Conservative–Liberal Democrat government, which sought to restore a balance between public spending and government revenues, primarily by cutting back welfare payments and the running costs of public services. Figure 1 shows that their plan sought a rarely achieved balance of current spending and receipts, initially by 2020 but now postponed past 2023. Public spending would (in theory) stabilise at around 37% of GDP – pretty much above the level it has been since the late 1980s.

Figure 1: Tax receipts, public spending and UK deficits as a proportion of gross domestic product from 1995 to 2016, and projected to 2023



Source: Institute for Government, [Whitehall Monitor 2018](#), Figure 3.3.

Notes: A dark pink gap between the spending and revenue lines shows a public sector deficit, and a grey gap shows a (rare) surplus. The government in power is shown by the background shading: pale pink Labour; blue Conservative; hashed Conservative–Liberal Democrat coalition. Dotted lines are projections under autumn 2017 government plans.

Figure 2: The size of the UK civil service, 2009 to first quarter of 2018

Source: Institute for Government, [Whitehall Monitor 2018](#), Figure S7, and updated for Q1 2018.

The NHS was exempted from austerity with spending maintained in real terms, but the higher costs of health inflation were 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 Figure 2 shows that for a year in 2016 the number of civil servants fell below 385,000 – its lowest level since 1940 (when the UK’s population was also far smaller). By 2017, though, this total was rising again as Whitehall geared up for the 500-plus projects involved in leaving the European Union.

Much of the apparent fall in Figure 2 may also be rather **deceptive**, because of the growth of a para-state of contractors (and a few NGOs). These organisations now carry out many functions previously done by Whitehall but do not count in the personnel numbers. In 2017 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. There are no grounds for believing that this has in any way saved money, and it also carries large risks because just a few oligopolistic firms dominate public services work. In January 2018 one of these contractors, Carillion with 65,000 employees, went bankrupt, imposing **costs of up to £148m** on UK government in finding and paying alternative providers to take over their work at short notice. Other firms, including Capita, were on a watch list for similar problems in mid-2018.

In its 2017 general election campaign, Labour called for an end to austerity and ending the multi-year public sector pay quasi-freeze (with rises limited to 1% for all public sector workers, cutting their real pay by around 2% a year). This theme 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. Shortly afterwards the **Grenfell Tower** fire catastrophe dramatised the radical erosion of building and fire safety regulation (see below). Contrary to David Cameron’s sanguine 2014 assessment that spending cuts had **done little damage**, voters clearly felt that NHS waiting list backlogs, an

epidemic of badly potholed roads, ‘banana republic’ safety regulations, and disappearing police and fire personnel mattered a lot. Tory MPs returned from the 2017 campaign to press ministers to end the pay freeze for government sector workers.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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 strongly held in Whitehall, but less so than in many other liberal democratic countries thanks to cross-departmental movements of personnel over their careers.</p>	<p>The lessened but still-dominant ascendancy of the generalist ‘policy profession’ within Whitehall feeds into and encourages an ‘amateurish’ pattern of policy-making. It overvalues short-run administrative and organisational changes as keys for increasing public policy effectiveness. This undervalues the importance of long-run and substantive changes, which rely on managers having greater professional expertise specific to each policy area (and requiring more advanced higher education than most UK policy profession staff actually have).</p>
<p>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 (generally) replicated in other public services.</p>	<p>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’. They especially have not been able to curtail ministerial hyper-activism (for example, changes made solely for the sake of demonstrating a new minister’s control), pointless party political policy churn, and legislation that was little used after its passage into law.</p>
<p>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), but less so now (see below).</p>	<p>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’ (NPM) approaches. NPM greatly over-values the importance of ‘managerialism’, ‘leaderism’ (exaggerated faith in strong leadership) and public/private ownership for substantive service development. It greatly under-values the salience of digital change, evidence-based policy-making, workforce expertise commitment, and the incremental improvement of services in continuously growing productivity.</p>

Current strengths	Current weaknesses
<p>Whitehall has a strong tradition of contingency planning and rallying around in resilient ways in crises, plus an ability to see issues through despite resources being scarce.</p>	<p>The same over-orientation towards managerial reorganisations and strong leadership has been spread strongly into policing, local government and the NHS by Whitehall interventions.</p>
<p>Corruption and fraud in the civil service is rare and through central government vigilance this norm has been extended into devolved governments and other sub-national agencies.</p>	<p>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.</p>
	<p>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 risk (as with the Carillion bankruptcy, see above) and poor productivity change (see below).</p>
	<p>There have been some notable and recurrent lapses in the equal treatment of some black and ethnic minority citizens, women and people with physical or mental disabilities within the police, prisons service, NHS and local government, with a succession of adverse scandals. The Windrush saga exposed a systematic race-biased Whitehall policy stance enforced over many years (see below).</p>

Current strengths	Current weaknesses
	<p>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 contracting and commissioning by private sector firms in services areas, and by 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.</p>
	<p>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.</p>
Future opportunities	Future threats
<p>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.</p>	<p>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. Nothing like this level of extra resource has so far been made available.</p> <p>Even though post-Brexit regulatory changes will now be ‘sifted’ by MPs, the planned extensive use of ‘Henry VIII’ powers in the Brexit transition to make new executive orders with reduced parliamentary or public scrutiny means some Whitehall powers may go unchecked.</p>

Future opportunities	Future threats
<p>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.</p>	<p>The UK civil service will need to rebuild key skill sets and forms of expertise (for example, 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.</p> <p>Some critics also argue that during the Brexit referendum and the prolonged negotiations in 2016–19 Brexiteers amongst ministers and MPs repeatedly undermined the legitimacy of civil service advice, alleging a pro-Remain bias amongst senior officials whenever policy papers presented information that they found unpalatable.</p>
	<p>As austerity eases off, some of the pressure for digital changes has also ebbed away, with the Government Digital Service (GDS) budget cut back and an absence of any clear ministerial lead (see below). May has moved digital change out of the Cabinet Office to an expanded Department for Digital, Culture, Media and Sport (DCMS), a ministry with a poor history in this area and little clout with other departments.</p>
	<p>A loss of EU migration is likely to adversely impact labour shortages, most particularly in the NHS.</p>
	<p>‘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 some 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 (see below).</p>

New public management, austerity and ‘zombie NPM’

Critics of conservative, state-shrinking policies often characterise them as ‘neo-liberal’, 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 1996–97). 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 2010–13 (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 zombie-NPM ‘reform’ was a reorganisation of NHS administrative structures pushed through by Cameron’s first Health Secretary, Andrew Lansley. Eventually implemented in 2012–13, 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 have grown over a ‘postcode lottery’ in access to costly drugs or fertility treatments. Some prominent private sector contracts for acute hospital services have also already failed.

In spring 2018 May and the then Health Secretary (Jeremy Hunt) **criticised the Cameron-era changes**, admitting that they were dysfunctional. The Prime Minister commented:

‘I believe that, as our NHS evolves, and delivers more joined-up care across different services, we should make sure the regulatory framework keeps in step and does not become a barrier to progress... So I think it is a problem

that a typical NHS Clinical Commissioning Group negotiates and monitors over 200 different legal contracts with other, different, parts of the NHS. It is too bureaucratic, inhibits joined-up care, and takes money and people away from the front line.'

May promised new legislation to streamline the system, but the chances of this are currently hard to assess.

Meanwhile in Whitehall austerity **meant reversing** many earlier NPM changes. The high salaries for leaders under 'incentivisation' schemes proved unaffordable, as did the luxury of multiple executive agencies created in the 1990s. Top pay was promptly capped to the level of the Prime Minister'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 June 2017 showed that building controls and fire safety had been deregulated into meaninglessness (see below).

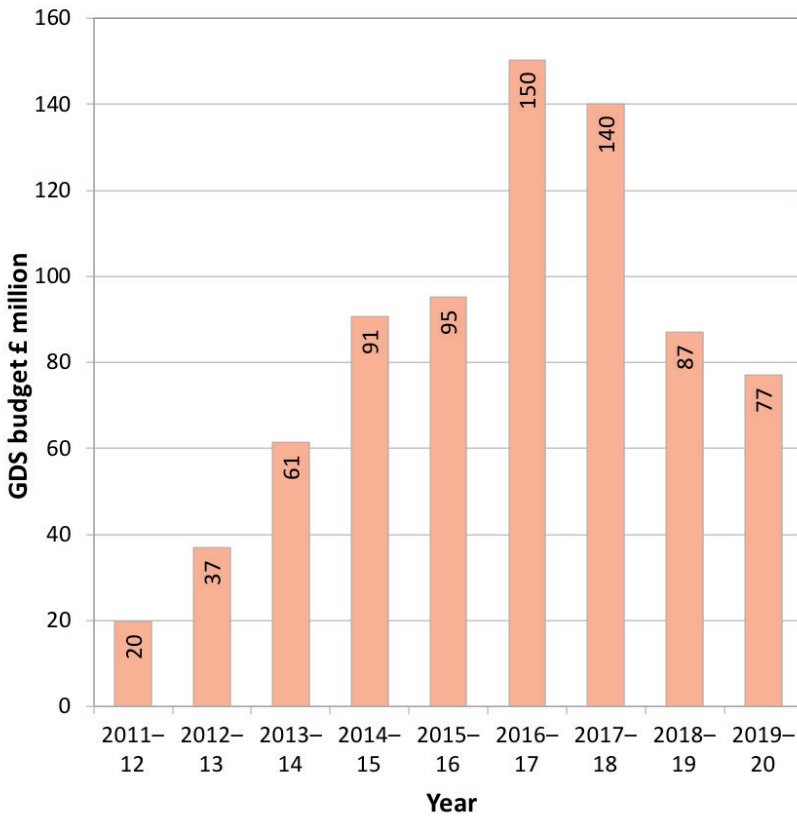
Detailed analysis of new public management's claims to have saved money and improved government efficiency also suggested that the whole NPM experiment did not realise **any cost reductions** or efficiency improvements. And while the structural costs of austerity were diffused, by 2017 evidence accumulated 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 some parts of Whitehall finally adopting a completely different public management strategy under Cameron, 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 trained only in 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 for 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 Secretary of State for Work and Pensions (and former Tory leader) Iain Duncan Smith.

With the backing of Cabinet Office Minister Francis Maude and the Prime Minister, a Government Digital Service was established in 2011 and assigned increasing amounts of

Figure 3: The budget for the Government Digital Service, 2011–2020

Source: [National Audit Office, 2017](#)

funding to develop a single main government website (gov.uk) and put in place online services. Figure 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 has now declined appreciably.

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 national 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 DCMS in 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

We noted (in [Chapter 5.2](#)) that 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 ‘service delivery disasters’ (SDDs). These are not due directly to misguided decisions from the top (although these usually play some role). Rather, SDDs are **unintended implementation catastrophes** arising through the complex choices and interactions of overloaded or misguided ‘street-level’ bureaucrats.

A critically important recent SDD example, whose huge implications for public management are still unfolding at a major public inquiry, is the shocking Grenfell fire disaster in June 2017. Here 72 people were burnt to death and hundreds more injured in a high-rise tower block in Kensington by a fast-moving fire. The blaze spread rapidly through the flammable cladding materials with which the block had been clad in a recent renovation. In the aftermath of the catastrophe it emerged that the building regulations system in England had been rendered completely ineffective by years of de-regulatory activity. Multiple changes had cut back fire service and later local authority involvement in regulation, in favour of making landlords responsible for ‘self-certifying’ safety. At the behest of aggressive building supply contractors, regulations on permissible materials had also been watered down into complete meaninglessness, with a host of radically new cladding technologies introduced for high-rise buildings with no effective checks of their flammability. The end result, clear by summer 2018, was that hundreds of high-rise buildings owned by local authorities were at risk of the same fate as Grenfell.

In addition to dozens of cumulative mistakes that had already created a bad situation, the SDD in the Grenfell case was magnified by many other failures. The responsible Whitehall department (DCLG) had been warned many times by coroners and MPs that fire safety needed new regulations, but did nothing, most notably after **a 2009 fire that killed six people** and showed the problem acutely. **No fire sprinkler systems** were fitted in any of around 500 social-housing tower blocks with a single staircase. When Kensington council renovated Grenfell Tower three years before the fire, they failed to spend £200,000 on sprinklers that might have kept its 300 families safe, and went with a lowest-price contract from a marginal contractor and using the very cheapest possible (and as it turns out highly inflammable) materials. The poor workmanship and faulty designs that made the fire worse were not spotted by local building regulations staff. Finally, to compound all these problems, the fire service teams who attended the fire spent their first two-and-three-quarter hours there mistakenly advising residents to stay in their flats (the previous safety advice from smaller fires to avoid smoke), rather than to flee. Some residents were reached and evacuated, but of those who heeded official advice, most were unreachable and died where they stayed.

Other serious service delivery disasters 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** over a long period of years, 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 led 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%** of opinion poll respondents.

A final, purely Whitehall scandal emerged in 2018 over the denial of UK citizenship to dozens of elderly black citizens who had arrived in the UK during the 1950s and early 60s (the so-called 'Windrush generation', after an early ship many travelled to the UK on) and been resident here ever since. In 2010 Theresa May became Home Secretary and began cracking down on immigration in an attempt (never remotely successful) to approximate the Tory pledge to reduce net immigration to 'ten of thousands' of people. As this policy increasingly seemed fruitless, in 2013 May enforced a 'hostile climate' for migrants. Immigration officials who had contact with Windrush generation people began demanding documentation which had never been supplied to them at the time, and refusing to accept evidence of long residence. By 2018 numbers of elderly black people had actually been deported back to Caribbean islands, before it emerged that official documentation of their arrival had existed in the Home Office (in the form of 'landing cards') but been lost during reorganisations in intervening years. Cross-partisan pressure from MPs forced the abandonment of the 'hostile climate' for Windrush people and their children.

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 in healthcare. As delivery worsens, and expenditure cutbacks became more evident, so citizens have become inured to falling 'service' standards and to not getting redress for things going wrong. From 2005 on, 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 were repeatedly stymied by Cabinet Office indifference.

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 restraint, 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 'new public management' the British state's administrative apparatus is now **a fragile thing**, vulnerable to acute failures and 'public service delivery disasters', and devoid of many of the 'strengths in depth' that once sustained it.

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5.4

How transparent and free from corruption is UK government?

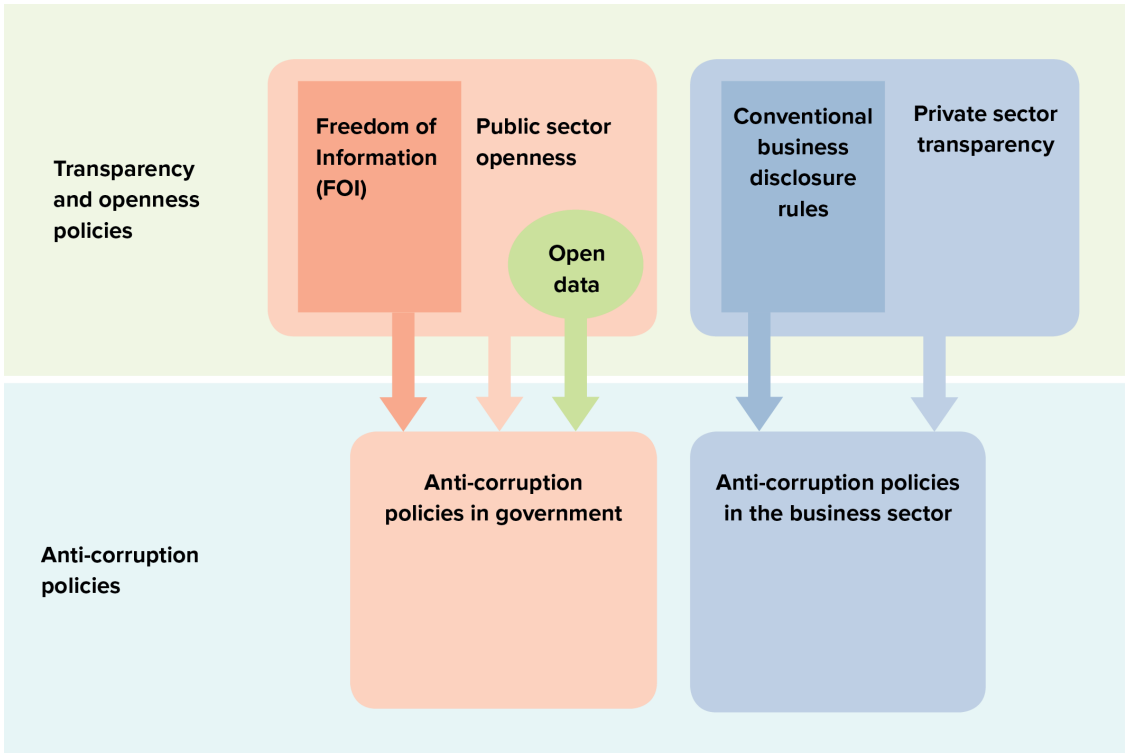
*For citizens to get involved in governing themselves and participating in politics, they must be able to find out easily what government agencies and other public bodies are doing. Citizens, NGOs and firms also need to be sure that laws and regulations are being applied impartially and without corruption. **Ben Worthy** and the **Democratic Audit team** consider how well the UK government performs on transparency and openness, and how effectively anti-corruption policies operate in government and business.*

What criteria for openness, transparency and freedom from corruption should government and public sector bodies meet in a liberal democracy?

- ◆ All government departments, agencies and public sector bodies should be open to public scrutiny through various easy-to-use means such as freedom of information legislation or open data, with clear channels and procedures for explaining policies and statistics in straightforward ways.
- ◆ Openness policies should extend fully to the private contractors and other providers (like NGOs and 'third sector' bodies) delivering services under contract to public authorities. Elsewhere in the private sector, registers detailing company ownership should be fully open, enforced and complied with across UK and associated territories.
- ◆ Extensive information on policies, change plans and options should be published pro-actively (voluntarily) by public bodies without the need for citizens to act or ask.
- ◆ Public bodies and politicians should promote an 'open culture' and create a series of deliberative and participative tools to allow citizens to take part in policy-making and key decisions.
- ◆ Anti-corruption policies should be well-developed, and rigorously and independently enforced. Citizens and enterprises should be confident that public administration and services will be delivered impartially, equitably and within the rule of law. 'Whistleblowers' should be protected and allegations of bribery or corrupt payments for services or lax regulation should be rigorously investigated.

The openness and transparency of government and public institutions critically influences the health of democracy. Information flows between government and society are one of the key foundations on which public participation, the interest group process and an active civic culture are built. Figure 1 shows the main parts of this picture and how they interact.

Figure 1: The main types of transparency and anti-corruption policies



In the UK, a central and well-established element of *government openness* is provided by the Freedom of Information (FOI) Act, passed in 2000 and operational since 2005. It allows people to request information covering policies, implementation, spending and activities by over 100,000 public bodies, from government departments and agencies to local government, the NHS and police. It is overseen and regulated by an independent Information Commissioner.

The legal presumption is that all information in the government sector should be made available if requested. As with similar laws across the world, there are major exemptions for all intelligence and security issues (which are kept completely secret). Departments and agencies may also refuse to supply information that covers parts of the policy-making process, that is commercially sensitive, or in cases where an ‘excessive cost’ would be involved in assembling and providing what is asked for. Although it remains a ‘complex’ legal grey area, FOI can also be used to obtain information material ‘held by a private company “on behalf of” a public authority with which it has a contract’. Alongside FOI stand a host of sector-specific laws, governing everything from access to medical records to food labelling, as well as the General Data Protection Regulation that enables access to personal data.

A second wider set of policies that support ‘public sector openness’ includes the production and publication of official statistics, legislation and regulations and public registers of the interests of politicians. These sit alongside older forms of publicity such as select committee meetings in Parliament or local government meetings that are open to the public.

Most recently, governments have sought to make data available in digital formats that can be easily re-used – known as open data. The government portal data.gov.uk now hosts more than 46,000 datasets covering a whole range of topics from departmental spending to health and safety statistics and ministerial gifts. At local government level, all councils publish online any spending over £500. Here the presumption is of ‘following the money’, so that if taxpayers have already paid to produce information, it should be made available free of charge – a radical revision of ‘new public management’-era policies of charging for bulk official information wherever possible. Data published by the government and other public bodies can also drive new platforms or apps. Some important innovators include MySociety’s [TheyWorkForYou](#) (on MPs’ activities) or [Public Whip](#) (with MPs’ voting records), while others such as [Spend Network](#) gather raw data on procurement.

Turning to the issues around *private sector openness*, most firms require commercial confidentiality in certain areas to protect their business. However, some degree of openness is also needed for markets and the business world to operate effectively, and to develop trust between businesses. This has long been achieved by conventional business disclosure requirements – such as registering company activities, annual reports and accounts with Companies House, listing directors of firms and providing information needed for publicly listed companies. Firms, executives, suppliers and customers all need to know something about the counterparts with whom they are dealing if markets are to work well. There are also transparency requirements where government meets business, with, for example, greater openness around contracts and coverage of business information held by public bodies or over ownership (see below).

However, the conventional business disclosure requirements are perfectly consistent with companies and wealthy people taking elaborate precautions to disguise the full scope or nature of their interests and activities behind ‘front’ companies and delegated personnel. In some cases, corporations have created complex (often byzantine) chains of ownership, where the true owner of a business, property or assets may not be easy to find. Accordingly, the newer private sector openness policies shown in Figure 1 seek additional information and clarity about who owns what, both for citizens, for those doing business with corporations, and for tax authorities. Some civil society movements and politicians also seek to force more information on into the public realm on [corporations’ tax payments](#), which remain confidential (see below).

Transparency and anti-corruption policies are closely linked and overlap. Greater openness and publicity is seen as a vital means of preventing and exposing corrupt activity, as the arrows in Figure 1 indicate. Although the UK civil service, Whitehall and its agencies claim to be an open and ‘clean’ government, serious corruption problems have existed before – and they still recur across issues such as party funding, the self-regulation by politicians of their expenses, and the regulation of some kinds of business, from UK arms sales to overseas government customers to shell companies and UK tax havens.

Recent developments

All recent Prime Ministers have promised greater openness in government. However, Theresa May's actions appear to have been less than meets the eye. She has often seemed to want to reject the style of the Cameron core executive that preceded her, and has been a **secretive Prime Minister**, unenthusiastic about any forms of transparency that could damage her government – especially after the loss of her majority in the Commons in 2017.

May inherited from David Cameron a series of ongoing anti-corruption reforms, as between 2010 and 2016 the UK sought to position itself as a global leader in anti-corruption at home and abroad. As Home Secretary, May had championed openness around 'stop and search' and police disciplinary openness – although, as critics pointed out, she was keener on her opponents' transparency than on her own. May also led the UK's work as part of the anti-money laundering action taken by the EU. In 2016 the government published a wide-ranging anti-corruption plan, and followed this up with a government-wide strategy in late 2017 (see below).

Some of these reforms appeared to lose momentum once Cameron resigned – perhaps as an unavoidable by-product of Brexit eating up parliamentary time, but perhaps also due to a lack of ministerial interest. The anti-corruption champion appointed by Cameron stepped down, and there was no replacement for more than six months. Other Cameron-era global initiatives on making business more transparent have become mired in controversy or were delayed (see below).

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The general climate around openness and transparency agendas in the UK is positive, with cross-party support. A mixture of openness laws, executive instruments and technology have together created a flourishing openness ecosystem, with some strong forces pressuring for openness and preventing corruption.</p>	<p>The modern UK has only recently transitioned from a long-established administrative culture that used an all-encompassing notion of 'official secrets' – in which everything not explicitly published was treated as confidential.</p>

Current strengths	Current weaknesses
<p>The Labour governments of 1997–2010 put in place a series of important openness reforms. The unusual conservatism of the Cameron–Osborne Prime Minister and Chancellor team (2010–16), plus the presence of the Liberal Democrats in the coalitional government with the Conservatives (2010–15), produced a further period of UK government activism on transparency issues, especially around private sector openness, though enthusiasm for making government more open dwindled.</p>	<p>Since 2016 momentum has been slowing, and public sector openness policies have especially appeared to slow down if not stagnate.</p>
<p>Freedom of Information has important effects in increasing the openness of UK government and changing previously restrictive official cultures of secrecy. The 2005 legislation has frequently been lamented and queried by Whitehall mandarins and Westminster politicians, not least Tony Blair, who pushed through the law then regretted it. However, it has endured for 15 years and most attempts to increase restrictions have been fought off, while it has expanded in some areas.</p>	<p>There are already considerable exemptions under FOI legislation that allow government agencies to reject requests. There has been a notable decline in performance regarding FOI, with more requests refused over time and some reduction in the number of requests being made (see below). There are also recent examples of high-level political resistance in Scotland and Northern Ireland in 2018.</p>
<p>Public sector openness has increased in the digital age because large amounts of previously closed data and information can now be cheaply and effectively published online in forms that facilitate further analysis. ‘Open data’ policies have made an impact, especially in tandem with the growth of the Government Digital Service (GDS) during 2010–18.</p>	<p>There has been a slowing in open data publication, with some promised information lagging well behind formal timelines (see below). GDS has had its budget cut severely from 2019 on (see Chapter 5.3).</p>

Current strengths	Current weaknesses
<p>Private sector openness policies designed to ensure that UK companies behave responsibly in developing countries have had some impact – for example, the UK has signed up to the OECD convention to curtail the bribery of foreign officials. Within the UK, greater transparency has been achieved in forcing public disclosure of who is the ‘ultimate beneficial owner’ of firms and properties, with new plans outlined for extending this to foreign companies, as well as with UK extractive companies working internationally. Greater business openness about gender pay inequalities have improved business social responsiveness.</p>	<p>Progress on several other anti-corruption fronts has been limited. Policies designed to force more disclosure about the use of natural resources from companies with large extractive industry holdings are ongoing but controversial. The Cameron government introduced a new ‘Google tax’ designed to raise more revenues from US and other MNCs paying little or no corporation tax in the UK, but by 2017 it raised only £270m, a fraction of the ‘missing’ taxes according to ‘tax shaming’ campaigners, and as it turns out not actually paid by Google or other similar tax-avoiding MNCs.</p>
<p>Anti-corruption policies in government are well developed. Britain regularly scores highly as a country free of corruption, usually ranking 8 to 10 in perceptions of corruption out of 176 states covered worldwide. Nonetheless, organised networks of open government and anti-corruption activists have pushed for further reforms.</p> <p>Under David Cameron, the UK was a founding member of the Open Government Partnership (OGP) in 2011. This involved a commitment to a UK government-wide anti-corruption plan and, later, an anti-corruption strategy. DfID have proved a high-profile champion. Devolved governments also have a series of openness initiatives in train.</p>	<p>Despite claims of being corruption free, problems persist. In Northern Ireland, a major scandal involving a Renewable Heat Incentive (RHI) scheme was uncovered in late 2017, with severe political consequences for the government. Yet the discovery of past long-run ‘cop-culture’ cover-ups (such as that over the Hillsborough football stadium disaster or undercover cops having relationships with surveillees), plus more recent evidence of official inaction on some child sex abuse and other malfeasance cases, has raised fears of a wider official malaise in UK public life. The issue of funding of political parties has continued to prove controversial and, in particular, the funding of the ‘Leave campaign’, as has MPs’ links to donations. The #MeToo campaign (following allegations of harassment in Hollywood) extended to the UK and led to new independent procedures, introduced in July 2018 (see below).</p>

Current strengths	Current weaknesses
<p>Anti-corruption policies in business are complex to introduce, since business law has to be carefully tuned so as not to deter investment nor hinder UK success in international trade. However, action has been taken to yield more information on UK companies' beneficial ownership overseas. UK tax agency HMRC has also worked with Swiss authorities to identify potential British tax evaders following reduced banking secrecy there, and HMRC has also followed up on the 'Paradise Papers' leaks of apparent tax evasion structures used by wealthy people and companies in November 2017. The opening up of UK dependencies and overseas territories that are tax havens, begun under David Cameron, is ongoing.</p>	<p>There is a lack of government support and interest in promoting openness or anti-corruption in business. A number of key anti-corruption policies appeared to have slowed down or lost momentum. Major questions have been raised but left unanswered about whether bribes or commissions are paid on some very large overseas contracts, especially in the area of arms sales – where British Aerospace (BAe) is the world's third largest armaments company.</p>
	<p>There is a general push for secrecy around Brexit, while a lack of UK resources and perhaps declining powers of scrutiny outside EU law may increase the potential for domestic corruption.</p>
	<p>There are also obvious areas of weakness around the transparency of political parties' funding and funding of campaigns, as shown with claims around 'dark money' and the Brexit referendum campaign (see Chapter 2.4).</p>

Future opportunities	Future threats
<p>The ongoing Whitehall commitments under the Open Government Partnership, plus experiments at devolved government level, offer opportunities for more transparency and anti-corruption activities. Local government is often a site of openness experiments and the new metro mayors may also offer an opportunity here.</p>	<p>Brexit will take time, energy and attention away from many other reforms. Leaving the EU may also have adverse effects on particular pieces of previously operating openness legislation, especially over environmental disclosures and information.</p>
	<p>A range of potential sources of political corruption, such as over expenses, lobbying and funding of party and referendum campaigns, have not yet been fully addressed.</p>

Freedom of Information

The Freedom of Information (FOI) Act has been in place since 2005. It played a part in opening up the MPs' expenses scandal in 2009 and a host of important stories. Behind the headlines, FOI is primarily a local tool, and around four in every five requests goes to local government: in 2012 an FOI request even led to the **mass resignation of one village council**. Although most requests are for micro-political or small issues, FOI has had some unexpected benefits, such as leading to an **online postbox finder**. And, by pressuring for the release of local restaurant hygiene inspection reports, it ushered in the **'scores on the doors'** system of hygiene ratings.

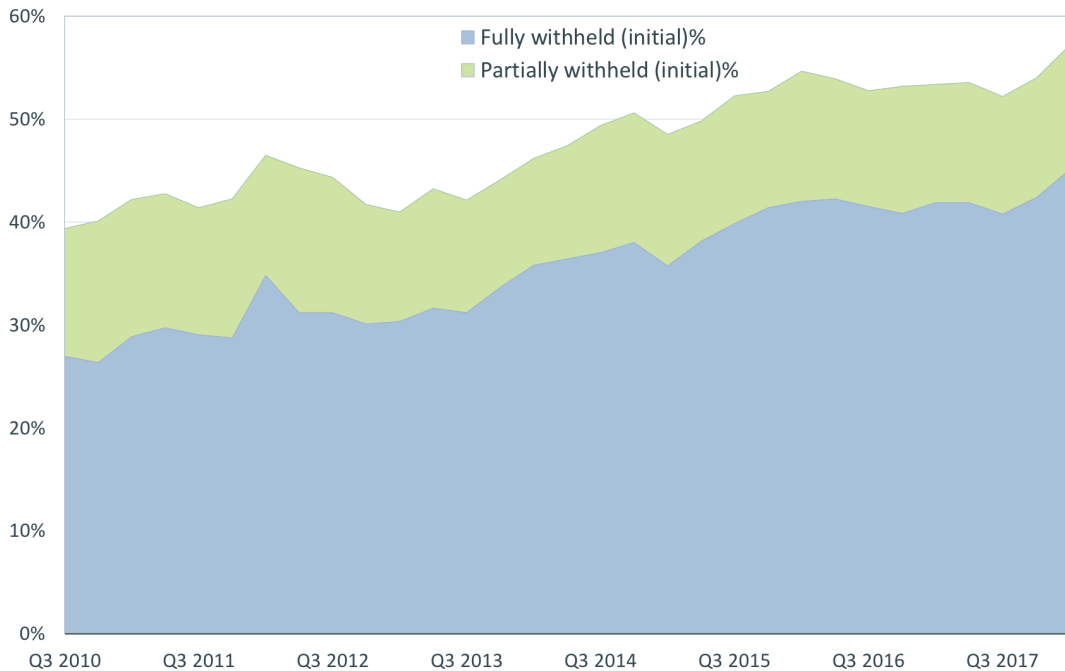
The scope of the FOI law has also gradually expanded. Since 2012 it has covered exam bodies and databases, and in 2015 the strategic rail authority came under FOI, owing to a change in its accounting designation. Scotland's separate FOI (Scotland) Act (FOISA) for devolved matters has also gradually extended to cover independent schools and certain leisure trusts.

The UK's **Third National Action Plan** for the Open Government Partnership (OGP) committed to implementing the recommendations of a 2016 independent review commission, which included greater pro-active transparency over pay for public bodies and enhanced publication of FOI statistics. Changes were to be enshrined in a new code of practice issued under section 45 of the FOI Act. It was due in the summer of 2016 but was delayed, and was finally published in the summer of 2018.

There has also been pressure to strengthen FOI's legal control over private contractors working for government – on which UK central government spends over £180bn a year. Section 5 of the Act allows governments to extend the law to cover companies within the scope of the Act itself, a power that the Commons' Public Accounts Committee and others have previously urged should be implemented. However, successive governments have not extended FOI to private sector contractors, despite manifesto pledges and promises to do so. Since 2016, the Information Commissioner has championed the inclusion of private sector bodies directly under FOI, something that the independent review suggested and that MPs have continually pushed through a series of Private Members' Bills.

Recently evidence has accumulated of a slowdown in FOI responses across central government. The numbers of requests to central government per year fell by 6% from a high point of 51,000 in 2013 to **46,681 in 2017**. One worrying **assessment concluded** that departments are 'withholding more information in response to FOI requests' and showed that 'since 2010, departments have become less open in response to FOI requests'. While **39% of requests** were 'fully or partially withheld' in 2010 a full 52% were 'fully or partially withheld' in 2017. This is probably a combination of austerity and a lack of staff but also dwindling enthusiasm and negative signals from above. There may also be a negative cycle at work whereby as more departments perform badly, so it becomes less likely that there will be any repercussions. Analysis by the BBC also pointed to **a lack of action by the regulator**.

Figure 2: The percentage of Freedom of Information requests where government departments refused a response, from 2010 (third quarter) to 2018 (second quarter)



Source: Institute for Government [Whitehall Monitor, 2018, p.95](#), and updated data [June 2018](#)

Notes: IfG analysis of Cabinet Office and Ministry of Justice data; covers resolvable cases only.

As well as dwindling enthusiasm and co-operation, since 2005 there have been a series of ‘behind the scenes’ attempts at ‘dismantling’ or chipping away at parts of the law, with roughly one proposal floated every 18 months to two years. They began under Tony Blair with a proposed introduction of fees or change to the cost limits in 2006, followed by an attempt via a Private Members’ Bill to remove Parliament from the FOI law in 2007. Under Gordon Brown in 2010 there was a proposal to remove from the scope of FOI the monarch and heir (Prince Charles). The Conservative–Liberal Democrat coalition then mooted a clampdown on ‘industrial users’ of FOIs (2012–13) and the Conservative government suggested extending the ability of departments to refuse information (2015). In 2016–17 the UK government proposed that fees should have to be paid for the second stage of FOI appeals (which had previously been free). However, a ruling on a related issue over access to justice from the Supreme Court in July 2017 [put this policy in doubt](#). In June, the draft Patient Safety Bill also sought to [make secret certain investigations in hospitals](#).

Figure 3 shows that most Prime Ministers have been somewhat ambivalent about the Act. In his autobiography, [Tony Blair](#) famously bemoaned passing the law:

‘The truth is that the FOI Act isn’t used, for the most part, by “the people”. It’s used by journalists. For political leaders, it’s like saying to someone who is hitting you over the head with a stick, “Hey, try this instead”, and handing them a mallet’ (2011, pp.516–517).

Though the evidence does not support this claim, it tells us much about how politicians see it. Just as Blair regretted his innovation, so Cameron described FOI as a ‘buggeration factor’ and claimed it was ‘furring up the arteries of government’.

Figure 3: UK Prime Ministers and policies on FOI, 2005–2017

Prime Minister	Extension	Pushback
Tony Blair	Passed FOI Act in 2000 (but in his memoirs regretted it).	Fees for FOI applications were mooted (c.2006), and Blair (tacitly) supported an attempt to have Parliament excluded from the scope of FOI in 2007.
Gordon Brown	An extension of the 30-year rule was made in 2009. A slight extension of FOI was made to new areas.	Excluding the Cabinet from FOI was considered. The monarch and heir were specifically excluded from FOI provisions in 2010.
David Cameron	An Open Government Policy (OGP) was adopted, especially an open data agenda (from 2010 onwards) and transparency about the beneficial ownership of firms (introduced in 2013).	Considered changes to limit ‘industrial users’ of FOI requests (in 2012–13) and appointed a FOI commission to review the Act’s operations (2015–16).
Theresa May	OGP commitments were made to strengthen FOI, but then delayed.	Proposed removing a free right to a second appeal against FOI decisions in 2016.

Despite repeated claims by politicians and officials, there is in fact little evidence that FOI is harming records or efficiency. However, there appears to be growing resistance and avoidance at the top of government, strengthening in the course of 2017–18.

Issues around FOI have been particularly controversial in Scotland, which has its own FOISA law covering Scottish matters. It **differs slightly from the UK-wide law**. In 2018, following complaints by Scottish journalists, a **report by the Scottish Information Commissioner concluded** that the government had sought to create a ‘two-tier’ system delaying journalists or politically sensitive requests. At the same time, Northern Ireland’s most senior civil servant, David Sterling, informed the inquiry into the Renewable Heat Incentive (RHI) scheme that records had not been kept of certain sensitive political meetings, as politicians wished for a ‘safe space where they could think the unthinkable and not necessarily have it all recorded’. Given the nervousness of both the DUP and Sinn Féin, officials had **‘got into the habit’ of not recording all meetings**.

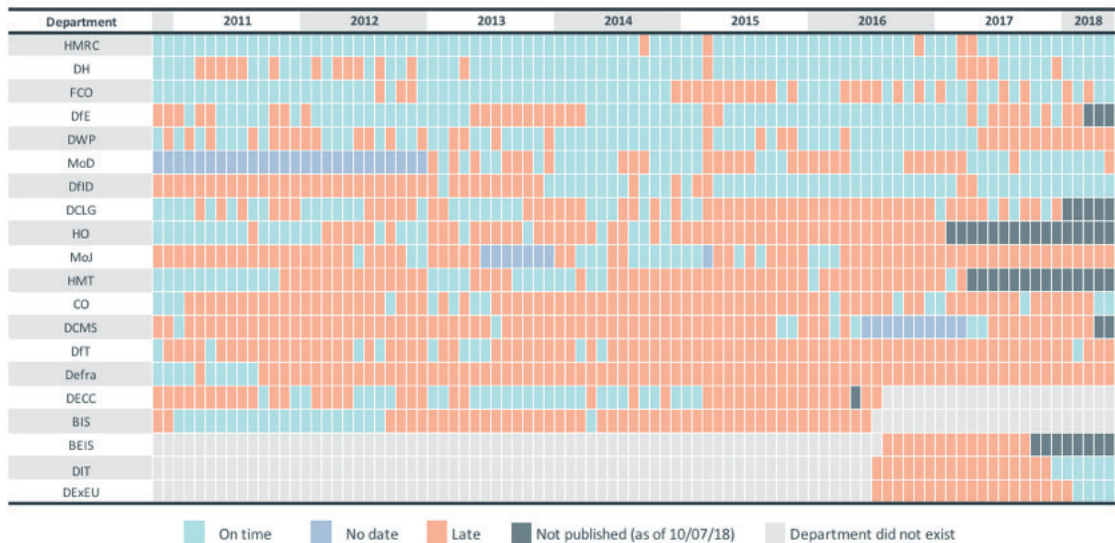
As well as a reaction against FOI, there were a series a series of attempts to limit openness or control information more generally. Perhaps most significantly, the UK government passed the Investigatory Powers Act in 2016, which gave a legal right to bulk data collection by intelligence agencies and, as one newspaper put it, **‘legalises a range of tools**

for snooping and hacking by the security services’. Although there were independent judicial checks built into the Act, there was considerable national and international concern at the potentially wide-ranging powers it gave intelligence agencies. In parallel, the Law Commission examined the possibility of strengthening the Official Secrets Act, which would, campaigners argued, **make whistleblowing more difficult**. This rapidly ran into media controversy for its flawed consultation processes and was put aside for further consideration until autumn 2018 (see [Chapter 3.3](#)).

Public sector openness and ‘open data’

Successive governments have also pushed a series of ‘open data’ reforms, enshrined in variety of codes or released via data portals. Whitehall and local government has voluntarily published more of its data sets to allow private sector and civil society actors to analyse them, and potentially to develop new applications. Early in his premiership David Cameron promised that all Whitehall departments would publish every spending decision worth over £25,000. The move aimed to help small businesses so they could see where opportunities for tendering might exist, and to give citizens oversight of what was being contracted on their behalf. At the same time local government in England was asked to publish all spending decisions over £500. Figure 4 shows that while many central departments complied, publication remains patchy and was often late, perhaps falling off also in recent years.

Figure 4: How well different Whitehall departments have met the UK government’s pledge to publish monthly details of all spending over £25,000



Source: Institute for Government, [Whitehall Monitor 2018](#), and updated data up to July 2018

One key focus for open data is procurement. Public sector contracts in the UK are currently worth around £93bn per year according to the Information Commissioner's Office (ICO). Successive governments have innovated with open contracts, publishing central and local government contracts according to the Open Contracting Standard. It has also developed (and subsequently re-developed) the one-stop **Contracts Finder** website, a searchable database of public contracts.

A series of parliamentary select committees and MPs have kept up the pressure for more openness about procurement, and have identified 'significant gaps' in contractual data. The Institute for Government **pointed out** that, despite Contract Finder, 'there is no centrally collected data outlining the scope, cost and quality of contracted public services across government... it's currently impossible to find out precisely how well contractors delivering government services perform'. In the wake of the collapse of the large government contractor Carillion, **one select committee** called for greater published information about contracts and how procurement arrangements have worked or met its targets, while also suggesting coverage by FOI. Campaigners have also called for greater openness of local government procurement: as **one pointed out** 'the day after Carillion's collapse it was only possible to locate less than 30 of the 400+ government contracts with Carillion through the national Contracts Finder dataset'.

Elsewhere across government, the Department for International Development (DfID) have used open data as part of their anti-corruption strategy, creating a **development tracker** that allows users to see development spending around the world. In 2018 the government also announced the publication of a tranche of OS master map data covering a range of property boundaries and other crucial 'building block' data of great use to developers.

Other open data commitments have fared less well. A commitment to publishing local election results data according to a common standard proved slow-moving because of the need to carry with it local authorities. And an initiative to push for publication of election candidate diversity data under section 106 of the Equalities Act, which would enable us to see any gender gap in those running for office, **has been delayed** repeatedly.

The OGP national action plan assigned a lot of weight to extending the UK's single official website, gov.uk, built by the Government Digital Service (GDS), which also consulted data users in shaping the future of open data, sought to identify core data assets and published information on grants data. There are concerns that GDS is showing signs of lacking both overall vision and that there was '**an absence of really deep thinking**'. This links to criticism of the government's lack of an overall strategy or joined-up thinking across government and from 2018 the GDS budget was cut back (see **Chapter 5.3** on the civil service). In April 2018, digital policy and control of GDS was transferred to the Department for Digital, Culture, Media and Sport (a department with a poor digital record in areas like libraries policies). DCMS is also not a core department (unlike the Cabinet Office) and there was further concern that the move would lead to a lessening of priority, especially with rapid ministerial turnover.

There is also considerable movement on openness at the devolved level. Both the Welsh and Northern Irish governments (following proposals ongoing before the Assembly's

collapse) are also making reforms to their own data portals, and the Welsh government's Well Being Act of 2015 also mandates publication of information and targets. The Scottish government published a separate openness plan with commitments to more transparent budgets and greater local community involvement.

Anti-corruption policies in the government sector

The UK is rated highly by most international indexes on anti-corruption policies in government. For instance, the leading NGO, Transparency International, **assigns it a score of 82** (out of a maximum 100 points) and ranks it as the eighth least corrupt country globally. The 2016 OGP national plan included pledges to 'incubate an Anti-Corruption Innovation Hub to connect social innovators, technology experts and data scientists with law enforcement, business and civil society to collaborate on innovative approaches to anti-corruption'. It also pledged to 'develop, in consultation with civil society, and publish a new anti-corruption strategy ensuring accountability to Parliament on progress of implementation'. A **strategy document to 2022** was published in 2017 but contained few specific new actions. The Labour opposition also **applied pressure** on what it claimed was the government's failure to push ahead with its anti-corruption agenda.

However, highly consequential corruption issues have none the less occurred, notably in 2017–18 in Northern Ireland when the Renewable Heat Incentive (RHI) scheme, known as the '**cash for ash scandal**', broke. Begun in 2012, this policy initiative aimed to create an incentive for businesses in Northern Ireland to switch from gas and oil to wood pellets. However, owing to errors in the scheme, businesses could profit from it (for example, by farmers just burning wood pellets pointlessly to attract the subsidy). The bill for the policy reached £500m and, after officials expressed concern that it was being used fraudulently, the scheme was rolled up in 2016. Although whistleblowers sought to expose the problems as far back as 2014, it was not until further claims were investigated by Stormont's Public Accounts Committee that the scandal broke. The inquiry **remains ongoing** with controversial claims over access, undisclosed contacts and officials failing to record key meetings.

A motion of no confidence in Arlene Foster, the minister who initially set up the scheme, but who was by the time the scandal was exposed, the leader of the Democratic Unionist Party (DUP), the largest party in the Executive, failed due to Stormont's cross-community procedures. Foster called instead for a full public inquiry, which has not materialised. The scandal contributed a great deal to the resignation of Sinn Féin's Martin McGuinness and the collapse of the Northern Ireland Assembly and Executive in January 2017. In June 2017 Foster and the DUP offered Theresa May key backing to stay in office at Westminster on a confidence and supply basis, in return for a 'bung' to boost spending in Northern Ireland by a reputed £1.8bn. The Assembly remains suspended.

Many civil society critics argue that corruption is deeply rooted in the link between money and UK politics, in particular areas such as expenses and funding of parties and campaigns.

There has been controversy over use of **expenses in the House of Lords** and the influence of donations and **dark money in the Vote Leave** campaign. In November 2017 the electoral

commission announced **an investigation into donations by Arron Banks** to the Leave campaign. In 2018 it emerged that he met with the Russian ambassador and other officials **11 times** in the run-up to the referendum, when his potential involvement in businesses in Russia was also discussed. In July 2018, the Electoral Commission concluded that Vote Leave had broken the law, and fined them £61,000 and passed the information to the police. The Select Committee for Digital, Culture, Media and Sport continued detailed scrutiny, despite refusals to appear by key witnesses including Dominic Cummings, campaign director of Vote Leave. Research by Peter Geoghegan and others has also raised a series of **unanswered questions** over other Leave donors, including a substantial contribution to the campaign routed via the DUP in Northern Ireland. The government legislated to open Northern Ireland political donations henceforth, but conveniently limited transparency to **all donations made after July 2017**.

In the last years of the Major government (1992–97) allegations of Tory ‘sleaze’ became influential, linking together both corruption issues and allegations of sexual misconduct. This media focus has not returned, but in October 2017 sexual harassment revelations and allegations about the Hollywood producer Harvey Weinstein triggered internal publicity and the #MeToo campaign which spread to the UK. A series of allegations of harassment by MPs and ministers were made, with an anonymous list circulated of alleged abusers and scandals. As Rainbow Murray pointed out, the scandal was ‘not just about sex, it’s about power’ and the abuse is rooted in the silence and **secrecy that surrounds the operation of the whips and party loyalty**.

Within a year, two Cabinet ministers (including the First Secretary of State Damian Green) and two whips resigned from the government over alleged sexual misconduct issues. MPs from across parties have faced allegations, with the whip withdrawn from several Conservative and Labour MPs. The Conservative Party instituted a new code of conduct and disciplinary procedures while Labour set up an independent inquiry. The same strand of scandal also spread to the Liberal Democrats and to the Scottish Parliament. Elsewhere in Parliament, a series of high-profile figures were accused of bullying, including the Speaker John Bercow and Labour MP Keith Vaz.

In the summer of 2018, further scandal hit parliament with Transparency International opening up issues around **hospitality from corrupt regimes** including Azerbaijan, Russia and Bahrain. In the same month, DUP MP Ian Paisley Jr was suspended from Parliament over undeclared lavishly funded holidays and paid advocacy, with the possibility raised that the UK’s 2015 recall law could be used to trigger a by-election (although the constituency petition required ultimately did not receive enough signatures for this to take place).

At local government level the abolition of the audit commission, the decline of the local press and the relatively weak power of **Overview and Scrutiny Committees** inside local authorities generated fears that municipal corruption could become more likely or, at least, less detectable. Critics hope that new citizen based innovations such as the Bureau of Investigative Journalism’s ‘**bureau local**’ and **people’s audit** can help maintain some scrutiny. England’s new elected metro mayors do not answer to an assembly (unlike the London mayor), but instead face only scrutiny by **councillors from local authorities from across the metro area** under arrangements that citizens will find hard to follow.

Transparency in business

We noted above that legally mandated disclosure and registration of conventional business information is important for market actors to know whom they are dealing with when contracting for the supply of goods and services, accepting payments or extending credit. The UK system is run from Companies House and fulfils these needs reasonably well, so that basic information on companies and directors can be found. In addition, of course, this information is critically important for the efficacy of both government regulation and tax collection.

However, this system contains enough loopholes for companies to stay disguised behind ‘shell’ and ‘nominee’ companies and interlocking holdings by wealthy people and corporations, while also sheltering various (legal) tax havens in some form under the UK’s jurisdiction. (In theory, tax authorities should be able to get further than other actors, but in practice their enquiries are also often frustrated.)

At first sight, these might seem to be issues that Conservative ministers would not want to pursue. The Tory Party is pro-business, deplors the regulatory burden on companies, and so is generally against increasing it. It is also not keen on imposing barriers to innovations. Yet in the coalition period Cameron, Clegg and Osborne publicly took a dim view of such loopholes leading to tax losses. With the austerity pressures acute from 2010 to 2016, the potential missing revenues from non-disclosure of ownership and legal tax avoidance were matters of concern to ministers, as was the symbolism of closing (or critics would say, to be seen trying to close) ‘tax haven loopholes’ in UK overseas territories and dependencies at a time of deep cuts. Ministers could make political capital from the symbolism of targeting ‘abuse’ of the system and the link to money laundering and crime. The politics of this, sometimes labelled the **‘Nixon goes to China’ effect**, meant that such action would be easier for a Conservative politician to bring in than for a Labour politician.

David Cameron promised an open register of ‘beneficial owners’ of UK businesses in 2013, under which all companies would have to identify their real owner or **‘people with significant control’**. Since June 2016, all companies have been mandated to keep such a register and submit the data to Companies House. As of 2018 more **than 3.6 million companies had registered data**.

Global Witness argued that the data had illuminated a huge area of business activity, attracting large public interest and setting a new agenda for more reform, especially over the opening up of previously opaque areas such as Scottish Limited Partnerships. As a measure of the success, the Companies House data had more than **two billion hits since June 2015**, compared with six million per year before. However, analysis of the data also revealed significant issues with **data quality and compliance**, with ‘thousands of companies...filing highly suspicious entries or not complying with the rules’, including ‘a statement that the company has no [person with significant control], disclosing an ineligible foreign company as the beneficial owner, using nominees or creating circular ownership structures’.

In 2016, following consultation and an open government partnership commitment, the UK promised to extend beneficial ownership specifically to ‘establish a public register of

company beneficial ownership information for foreign companies who already own or buy property in the UK, or who bid on UK central government contracts'. The government aims to have the **new extended register operational by 2021**, though others have called for it to be sooner.

A related issue that spans across both public and private sector openness concerns the (still completely confidential) tax arrangements of large companies in the UK, which often involve 'booked activity shifting' to the most tax-efficient locations in a multi-national corporation's (MNC) operations. From 2008 onwards a range of social movements sought to 'shame' MNCs (especially American ones) into paying more corporation tax, which is extensively evaded by elaborate ownership and domicile arrangements.

Tory ministers began to be concerned that, in addition to the Exchequer losing tax revenues, there were complaints from medium and small British businesses that they were facing unfair competition from the likes of Amazon because they paid corporation tax and the multi-nationals did not. To head off these criticisms without tackling the much larger underlying legal problems, Osborne created a special tax of 25% levied on large company profits that were diverted via 'contrived arrangements' to tax havens. Some giant companies (like Amazon) announced that they would stop booking profits via Luxembourg to avoid paying the tax, but the anticipated revenue gain to the Exchequer proved to be relatively small.

The push for private sector openness also led to the UK government taking part in the international Extractives Industries Transparency Initiative and publishing data on UK extractives companies. This **means that** 'more than 90 oil, gas and mining companies incorporated in the United Kingdom or listed on the London Stock Exchange (LSE) now publish their reports on payments to governments each year under UK law'. In parallel, the government has developed greater openness in this area through a series of EU regulations. A government review in the summer of 2018 **concluded** that 'the law had been a success in bringing greater transparency to the sector with no unnecessary costs to business, and found no indication that it harms companies' commercial interests'. A working group continued meeting on this into 2018, but some changes have **become mired in controversy** between government and civil society.

One of the most high-profile recent controversies over business disclosure rules occurred over companies publishing data on gender pay gaps. A legal requirement to publish gender pay data was first contained in section 78 of Labour's Equalities Act of 2010, but was then not implemented by the Conservative–Liberal Democrat coalition. The Cameron government then committed in 2015 to mandate all companies over 250 employees to publish data, with the promise that this would 'put the UK at the forefront of gender pay transparency'. The May government continued (and took credit for) the bipartisan policy so that from April 2018 companies have had to produce the data. By July 2018 some 10,660 business had reported and the gov.uk website **includes a searchable database** of all reports, so employees can find out how their firm is performing.

The issue received high levels of media attention and kickstarted a Twitter campaign and grassroots initiatives encouraging female employees to speak up in their organisations.

However, a survey for the **Young Women's Trust** found that many businesses were unconvinced: '44% of those making hiring decisions say the measure introduced last April will not lead to any change in pay levels'. In 2016, the **Women and Equalities Select Committee** concluded that pay publication focuses attention on the issue, but is not in itself a solution: 'It will be a useful stimulus to action but it is not a silver bullet'. It recommended that 'the government should produce a strategy for ensuring employers use gender pay-gap reporting'.

Anti-corruption policies and business

Aided by the shifts towards more business openness, at the global level the UK under Cameron also sought to become a champion of anti-corruption in business, pushing national and international anti-corruption commitments. Reforms included extending new beneficial ownership regulations and, as a continuation of the coalition government's efforts, some clamping down on tax havens and money laundering.

The initiative on beneficial ownership (above) partly reflected a desire by ministers to meet acute concerns expressed domestically and internationally that corrupt or 'dirty money' was flooding into the UK, with the property market in London being especially used to 'launder' large amounts of cash. Investigations into **anonymous foreign property ownership in London** found that of '14 new landmark London developments... four in 10 have been sold to investors from high corruption risk countries or those hiding behind anonymous companies'. There was further analysis of home ownership in the **elite areas of Kensington and Chelsea borough** in the wake of the Grenfell Tower fire disaster.

David Cameron pledged in 2016 to open up information from the (many) tax havens numbered amongst the UK's dependencies and overseas territories by adopting public registers of beneficial ownership. Under Cameron, these were **only partially successful**, resulting in data-sharing agreements and promises to create (non-public) registers, and further undermined by revelations of Cameron's own tax affairs.

Corporate corruption and issues of tax avoidance continued to dominated the headlines towards the end of 2017 with the leak of the so-called 'Paradise Papers', which comprised **13.4 million documents from the Appleby legal firm** based in Panama and detailing the offshore arrangements **of a host of UK wealthy people and companies**. Revelations included the offshore investments of the Queen, **linked to a company accused of exploiting the poor**, and the secret tax and company arrangements of key Conservative donor Lord Ashcroft, who had committed to paying UK tax in order to **sit in the House of Lords**. When Transparency International examined Scottish Limited Partnerships, it described them as the UK's 'homegrown secrecy vehicle', with **more being set up in one year** than in the whole of the last century.

Theresa May had committed to continuing Cameron's agenda of **clamping down on tax avoidance**, but she and the Chancellor Philip Hammond refused to promise a full register of off-shore trusts **following the 'Paradise Papers' leak**. In May 2018, **a cross-party group of MPs** pressured the government to open up beneficial ownership registers to British overseas territories such as the British Virgin Islands and the Cayman Islands. The

government **agreed to do so** but has since met resistance and even calls for '**constitutional separation**' from some of the territories.

One area where the May administration has pushed a number of 'signature' openness reforms has been for greater transparency over executive pay. In mid-2017 the BBC was forced to make changes and publish the pay levels of its senior figures and stars paid over £150,000. These details generated a heated controversy over the stars' remuneration and the organisation's striking gender pay gap. However, in August 2017 the government watered down its election promises to open up business executive pay more generally.

Elsewhere in the UK, there has been new anti-corruption policy innovations. In June 2017, the Welsh government launched a new **Code of Conduct for ethical employment in supply chains** designed to prevent modern slavery and blacklisting of workers. The new Code is applicable to all its suppliers and the government hopes it will spread across the Welsh economy.

Brexit

Transparency and anti-corruption issues have featured heavily in the Brexit process. In 2016 the government appeared **committed to a closed process** with, as May put it, no 'running commentary'. The UK government sought to use the powers of the royal prerogative to shield the negotiations (and to cover up divisions with government). However, a combination of leaks, rulings from the courts and pressure from Parliament has led, so far, to more openness than the government intended. This has included a White Paper, two Prime Ministerial speeches and a series of appearances in front of select committees. Although the government has been slow to publish position papers compared with the EU, these began emerging late on.

Freedom of Information provisions played a role with requests exposing turnover of officials at the new DExEU and the lack of preparation in the new Department for International Trade. Requests were used to attempt to access legal advice allegedly held by the government on whether Article 50 can be revoked. FOI and parliamentary questions and motions, including arcane procedures employed by the Labour opposition, were used to attempt to force the government to publish 50 papers on the effects of Brexit. In a single day in November, six select committees were **examining various aspects of Brexit**. In 2018, FOI was also used by Sky News to examine local authority Brexit contingency plans, finding that few could identify any benefits, and were looking into contingency planning for unrest or traffic chaos.

However, as the UK seeks new trade deals across the world, questions hang over the future of its anti-corruption reforms. The OECD warned that a combination of **distraction and pressure to water down bribery laws** may undermine the UK's anti-corruption policy. As one expert **argued**: 'With Brexit, and the need to hunt out new business in developing markets, a process of benign neglect may set in.' It may be that 'there is the danger of (more or less deliberate) neglect of the UK's previously high profile anti-corruption thinking'.

Conclusions

Attitudes inside the UK's government and public services towards transparency and openness have changed a great deal since 2005 and the advent of FOI. The changes made have attracted support from across the political spectrum, so that reforms have been cumulative and (so far) un-reversed. Yet the risks of openness being again eroded, or of matters that have become transparent closing up again, remain substantial. And, despite British politicians' evident conviction that the UK's experience holds lessons for the world, some serious gaps in anti-corruption policies remain.

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5.5

In terms of Brexit

Many political and constitutional steps are needed in order for the UK to leave the European Union, after 45 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 can meet democratic criteria for such a momentous transition, or may fall short of these standards.

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 a highly technical process that only Parliament can navigate successfully – because there cannot be a plebiscite on each sub-issue. Parliament is accountable only to the electorate. The composition of voters can change at the next election, and previous voters can also change their minds.
- ◆ Cross-party co-operation and engagement are needed, especially in a hung parliament, as now. The full Brexit process will not be resolved by March 2019, but will take several more years, perhaps even multiple parliamentary terms. So it necessitates careful deliberation from all MPs and parties in Parliament. Parliamentary democracy ought to epitomise informed debate by elected representatives and the capacity to compromise on the best course of action.
- ◆ Government must openly communicate with the public about the achievable outcomes and feasible timelines for Brexit. Acknowledging the complexity of the task can (re)build 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-EU/European Community law for the UK to rely upon, and people have built their lives and businesses on the certainty of

the law of the last 40 years. Sensibly reforming the law to reflect the UK in a post-Brexit era 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.
- ◆ 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 Brexit's implementation 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** (see **Chapter 5.6**). Navigating this cannot be done by Westminster imposing a solution.

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 put 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 paradigms, auditing the democratic legitimacy of Brexit is challenging. However, there are clear and manifest issues with regards to the process by which Brexit is accomplished, rather than the outcome and the decision itself.

Recent developments

Since the 2016 referendum, subsequent change of Prime Minister, and advent of a hung parliament in mid-2017 much has happened. There was hard-fought litigation on parliamentary sovereignty to trigger Article 50, and the government decision to go ahead began a two-year countdown. The European Union (Withdrawal) Act aims to solve the issues of the separation of the UK from the EU within two years of exit day (at the end of March 2019). 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 and to provide certainty in the leadership for the Brexit process, and 'stability' in government. In fact it resulted in a loss of both. While Brexit was a **key election issue**, neither of the top two parties engaged with each other on the detailed strategies to be pursued following the election. Both remained deeply divided on them throughout 2018

(see [Chapter 3.1](#)). Since the election, then, the only certainty has been uncertainty, with viable Brexit options evolving in ways that have made analysis of them one day obsolete the next.

By March 2018, one year after the triggering of Article 50's two-year timeline, there was [a draft agreement with the EU](#), though with considerable differences remaining over key issues such as the Northern Ireland border, the process of dispute resolution, and at that stage little progress on a future UK-EU relationship (post transition). By early autumn 2018 the Prime Minister had dragooned her Cabinet (after two key resignations) into accepting the '[Chequers agreement](#)' plan for the UK to retain free trade in goods with the EU countries, but not in services – denounced by critics as [a fudge](#). Whether this compromise would succeed against Tory backbench rebels or be accepted by the EU negotiators remained unclear at the time of writing, with the UK government also publishing papers outlining '[a calamity](#)' if the UK should instead leave on a 'no deal' basis.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>By respecting a slim majority vote in an 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. What national sovereignty concepts can mean in the contemporary world remains unclear.</p>
<p>In promptly following up the Brexit vote, the government shows democratic respect for the (narrow) majority result of the EU referendum.</p>	<p>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 a backlash by pro-Brexit media and politicians, whereby expressing any doubts about the consequences of Brexit is seen as an attempt to undermine the people's verdict.</p>
	<p>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.</p>

Current strengths	Current weaknesses
	<p>The long delays in developing any clear UK negotiating position, and its late arrival in summer 2018, mean that negotiations with the EU may come to an end without a deal having been achieved. Embracing the possibility of a 'no deal Brexit' is a failing in the withdrawal negotiation process, because the public cannot easily estimate what may follow the March 2019 deadline on this pathway.</p>
	<p>Rare and unjustified public attacks on the judiciary by leading politicians and powerful media following the Miller decision are a concerning trend, one eroding the separation of powers and respect for the institutions of democracy.</p>
Future opportunities	Future threats
<p>The Brexit process presents an unprecedented opportunity for large-scale legal reform over a broad range of areas. The flexibility that could arise from the separation from EU norms presents a very significant opportunity for new practices and policy to develop.</p>	<p>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, which is undemocratic by nature and design.</p>
<p>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 potential opportunity for increasing decentralisation and devolution of power to the most appropriate level of government, those closest to citizens.</p>	<p>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. Yet the de facto 'legislative supremacy of government' seems likely to increase further. In addition, concerns remain that more power will be centralised in Westminster, and the current powers of the devolved governments to act under EU law could be diminished (or even lost in some cases).</p>

Future opportunities	Future threats
<p>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.</p>	<p>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 it becomes politically expedient to do so.</p>
	<p>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.</p>

Is the European Union (Withdrawal) Act undemocratic?

The **European Union (Withdrawal) Act 2018** 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 will:

1. repeal the European Communities Act 1972;
2. convert directly effective EU law into UK law; and
3. 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 was the parliamentary act that previously (and until March 2019) gave effect and supremacy to EU law in the UK. It underlay 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 Act 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 process. The most significant issue relating to the democratic legitimacy of Brexit concerns the use of delegated powers by ministers. The EU (Withdrawal) Act delegates power to 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 Act.

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. Following criticisms in

the Commons and Lords during the Withdrawal bill debates, a compromise was agreed to create a ‘sifting committee’ of MPs who will scrutinise statutory instruments. Yet this remains a weak device. And in some limited cases, instruments may even be made without any **draft** being laid before Parliament.

The likely delegation of legislative power away from Parliament raises pressing concerns for the accountability and transparency of the new arrangements, strengthening the **legislative supremacy** of the executive. Beyond the ‘sifting committee’ scrutiny, 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 main ‘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; the settlement concerning the UK’s remaining financial liabilities to the EU; and of course the future terms of trade between the UK and 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 the UK 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 remains part of the complex resolution of the future relationship between the UK and the EU, and will depend on whether it will be necessary for participation in the single market at least for goods.

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 did 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, further questions around the Brexit process concern the immunisation of executive power from judicial challenge, and the removal or weakening of individual rights, by virtue of how withdrawal is implemented. Both of these concerns are at issue in the context of the European Union (Withdrawal) Act. It is highly likely there will be extensive litigation arising as a result of Brexit. The July 2017 *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?

The 2016 referendum delivered a result so surprising to all sides that no clear preparations had been made for a Leave vote, and subsequent revelations about the Leave campaign's breaches of spending limits and Russian interference in the campaign have both raised question marks about the legitimacy of the narrow Leave vote. However, campaigners for a second referendum for a long time faced barriers such as whether the Court of Justice of the EU (CJEU) would **accept a second referendum after Article 50** had been triggered, and whether a second vote might not just easily produce another (perhaps larger) Leave majority.

However, **opinion on the ground** has changed and the lack of clarity about what Brexit deal will happen, including the continuing possibility of a no deal outcome, have strengthened demands for a referendum to confirm or reject the final arrangements. 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 EU elites still believe it is likely in

the **affirmative**. However, as the EU institutions and member states commit large time and investment in preparation for UK withdrawal, such political will may dissipate.

Critics (including this author) argue that such a referendum is at once too early and too late. It is too early for a deal to have been concluded (even in abstract) 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. In practical terms, there is no frame of question that could be presented to the electorate that would satisfy all sides and be immune from accusations of bias or betrayal.

From a fundamental constitutional perspective, there should *not* be a second referendum on Brexit – because that would only serve to further **undermine** the system of parliamentary democracy. Unless we accept a radical reformulation of the constitutional foundations of the UK, a democratic Brexit process is one that reasserts Parliament's sovereignty over the 2016 referendum, but recognises that this sovereignty extends only to the UK borders – while Brexit reaches far, far beyond them.

Conclusions

Brexit has raised a great variety of legal issues and the development of the process has had some heartening and some worrying consequences for the UK public's understanding of the role of Parliament and legislation on the one hand, and of judges and the courts on the other. Amongst the most worrying have been 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. Similarly virulent attacks on Remain MPs as '**saboteurs**' for exercising judgement on implementation arrangements for Brexit reflect a poor understanding of what a legislature is for.

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5.6

The basic structure of the devolution settlements

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

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

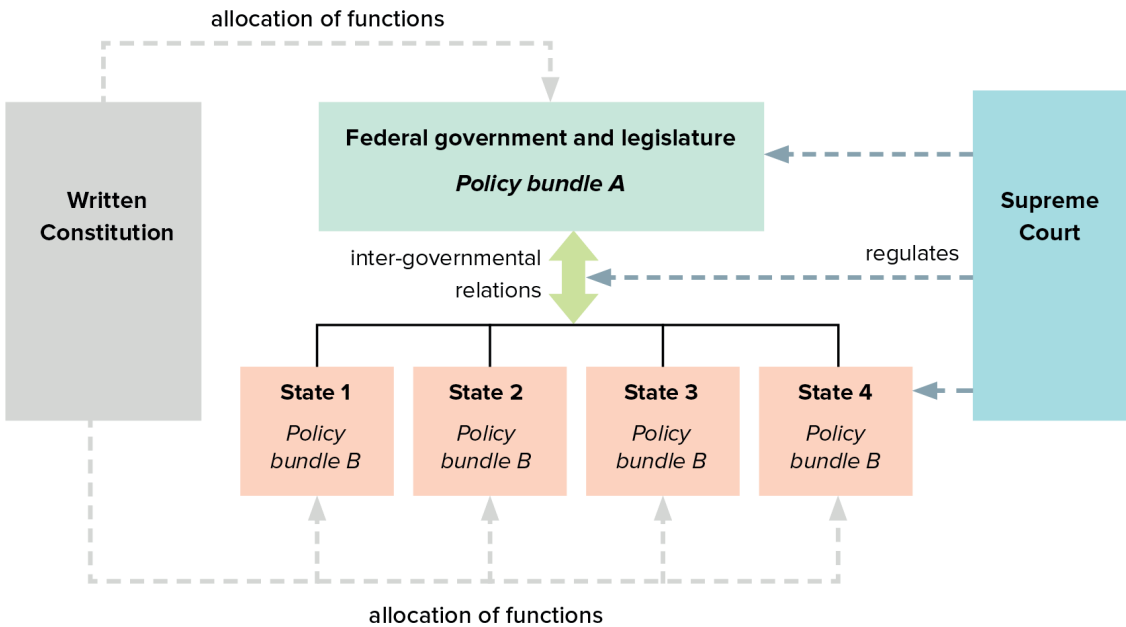
- ◆ Devolved institutions must be *representative and legitimate*. They must rely upon freely and fairly elected institutions, built on and promoting democratic principles. Regional and local democracy should bring decision-making closer to the citizens. Devolved institutions should be created with popular endorsement to strengthen their legitimacy.
- ◆ Devolution arrangements should be *transparent and intelligible* to the people they serve. The powers and competences devolved (that is, what functions are exercised and by whom) should be clear and comprehensible to the wider public. And 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. They are also key for policy actors at all levels of government in fostering 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 – such as setting their electoral arrangements and the size and nature of their political institutions.

- ◆ Devolved institutions should be *inclusive, and promote citizen participation* by creating new venues and mechanisms for engagement on a wide range of issues: from early constitutional deliberation on the form and nature of self-governance adopted, through to the final 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 for resolving disputes over powers and competencies between tiers of government. A system of inter-governmental and inter-parliamentary 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 wider trends in other medium to large democracies.

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 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 in federations have the same powers. 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.

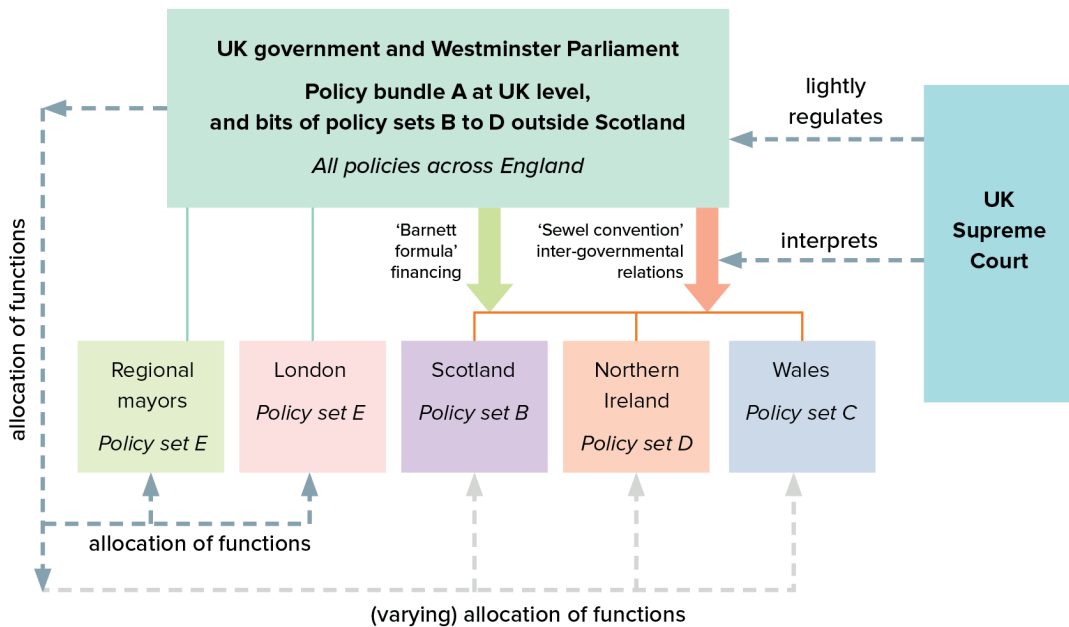
How does change happen in federations? The federal centre may pick up new functions not specified in the constitution, and it may equalise financial capacities across states. It can also subsidise the states to do things on its behalf, or otherwise intervene in society. But it cannot (easily) change the constitution’s existing 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.

Figure 1a: How a federal government system works

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 (see [Chapter 5.1](#)). Alongside this, the highly political nature of the constitution allows for organic development to happen over time without the constraints of traditional constitutional amendment. A set of major policies (especially defence, foreign affairs, and most tax-raising and welfare) are ‘reserved powers’ belonging solely to the UK centre. Different sets of policy functions have been devolved to national institutions in Scotland, Wales and Northern Ireland, in ways that politically seem binding, and may provide some constitutional protections to these governments. 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.

The extent to which devolved powers in Scotland, Wales and Northern Ireland are protected constitutionally is still somewhat obscure, and the picture is different in each area, and has changed rapidly. The Scotland Act 1998 (and as amended since, most recently in 2016) set things up so that unless a policy area was *explicitly* reserved to Westminster then across most internal or domestic fields (excluding tax, social security and trade) all responsibilities within Scotland belonged by default to the Edinburgh Parliament and government. By contrast, in Wales a list of powers was initially just given as ‘conferred matters’ that the Cardiff Assembly and government could run. In 2017 a new Wales Act moved towards the Scottish model, so that in a (more restrictive) list of areas the Assembly is now the default legislature.

Figure 1b: The UK's devolved government system



In Northern Ireland there is a legacy (imperial-type) provision for devolved powers to be suspended and then taken over and run solely by the Westminster government – and this ‘direct rule’ situation applied from 1972, when the old Stormont model folded, until 1998 when the Northern Ireland Executive and Assembly first began operating. Since February 2017 the Assembly and Executive have been suspended because of political deadlock (see below), but (in theory) the devolved institutions remain in being and direct rule has not been formally triggered. This has left the Northern Ireland civil service to operate established policies on a ‘caretaker basis’ without any (explicit) political control.

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

There is also an as yet unsophisticated system of inter-governmental relations within the UK, in which Westminster/England is 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 fixed ratio of English spending. So if the UK government cuts or raises public expenditure in England, the same happens to the transfers from Westminster to fund the devolved governments’ services.

Second, the UK centre has recognised a convention (named after a peer, Lord Sewel) which says that Westminster will not pass laws falling within the policy sets or responsibilities

of Scotland, Wales or Northern Ireland without the consent of their legislatures and governments. 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. What this means in practice is much debated (see below).

The UK's Supreme Court has begun to play a key 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) executive government to operate effectively.

Recent developments: Brexit battles

In the Brexit referendum Scotland and Northern Ireland, plus the devolved city-region in London (with roughly the same population size as the other two combined), all voted strongly to remain in the EU. But most of the rest of England and Wales voted to leave. In the lead-up to the March 2017 triggering of formal 'leave' processes under the EU's Article 50 a Joint Ministerial Committee (JMC) of the three devolved countries and Whitehall ministers was resurrected by the May government to facilitate dialogue and consultation. (The Committee had previously been in abeyance.) It had some success on making progress on detailed issues, but also generated a lot of dissatisfaction. A series of key inter-governmental disputes have occurred throughout the Brexit process. The legal fog around the varying allocations of powers between tiers of government in the UK noted above remains pretty intense still because in essence:

- ◆ On the one hand the Brexit process involves the UK as a whole leaving behind a series of international treaty obligations, and treaty-making is clearly a Westminster reserved function;
- ◆ in addition, Westminster ministers argue that where a common policy previously applied within the EU to the whole UK territory (as with international trade) then for economic integration reasons it must continue to have a common policy stance post-Brexit.

However,

- ◆ on the other hand, many of the EU powers that are being repatriated under Brexit cover areas, such as agriculture, fisheries, transport, regional development and infrastructure, that clearly fall within the ambit of the devolved government in Scotland and (to a lesser degree) Wales.

Figure 2 summarises a complex series of battles that have taken place since June 2016, up to the time of writing (September 2018).

Figure 2: Three Brexit battles involving the devolved governments

Issue or case	What the Scottish, Welsh and Westminster governments argued	What happened?
Miller case	<p>In December 2016 Gina Miller argued at the Supreme Court that the UK government could not trigger Article 50 to leave the EU without getting approval from the Westminster Parliament. Ministers argued that they did not need parliamentary approval, but lost this issue.</p> <p>The devolved governments supported the Miller challenge, and raised the supplementary question of whether, if Parliament were to so legislate, would that Act require the consent of the devolved legislatures? UK ministers argued that, because leaving the EU was a treaty matter, it fell wholly within their reserved powers. This was the first legal challenge around the Sewel convention.</p>	<p>The result was disappointing for the devolved governments. The Supreme Court concluded rather ambiguously:</p> <p><i>‘[T]he 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’</i> (p.48).</p>
EU Withdrawal Act 2018	<p>Both devolved governments argued that the Act could not proceed without the consent of their legislatures, because many of the powers transferred back from the EU to the UK related to policy areas where they have default responsibilities. Leaving UK ministers to decide where repatriated powers should sit between Westminster and the devolved governments could unilaterally alter the balance of UK-tier versus devolved-tier powers.</p> <p>The UK government argued that some filtering at UK level was needed to maintain UK-wide policies in its areas of reserved powers, but that agreement would be reached with the devolved governments.</p>	<p>The Scottish Parliament voted in summer 2018 to withhold consent for the EU Withdrawal Act, supported by all parties except the Scottish Conservatives. The issue of whether Westminster can proceed without Edinburgh’s consent will be tested in the courts.</p> <p>The Welsh government initially sided with Scotland, but later agreed to the broad legal framework proposed by Westminster – and on a process for working through the details of which powers will be devolved to them and when (which is not yet clear). Wales then withdrew its opposition to the Act.</p>
Continuity Bills	<p>Both the Scottish Parliament and the Welsh Assembly passed statutes by 2018 asserting their sole right to legislate after Brexit in those areas passed back from the EU that fall within the scope of their devolved powers.</p> <p>The UK government argued that both legislatures had exceeded their powers.</p>	<p>As part of its agreement with UK ministers on the process for transferring powers, the Welsh government promised to repeal their continuity statute.</p> <p>The Scottish government maintained the legality of their continuity statute and the issue was before the UK Supreme Court at the time of writing.</p>

The process has become acrimonious in large part because, **critics argue**: ‘The devolved governments have been largely excluded from the process of defining the UK’s approach to Brexit and its negotiations with the EU, despite early promises by Westminster to the contrary’. How this major clash of constitutional claims, and the continuing Scotland/UK dispute over Brexit processes, will be decided remains unclear. But some resolution will be needed before the end of 2018.

Meanwhile, of course, since February 2017 the Northern Ireland Executive and Assembly have been suspended, leaving UK ministers simply talking directly and separately with political parties there about how powers will be transferred post-Brexit.

Recent developments: the growth of devolved powers

Scotland: In the 2014, Scottish independence referendum voters chose to remain in the UK by 55% to 45%, but only after the Prime Minister David Cameron had promised major new powers for Scotland’s government. Devolution of tax-raising powers to Scotland has always been important in the context of enhancing the Edinburgh government’s autonomy and salience for voters. It was the centrepiece of both the **2014 Smith Commission Report**, and the 2016 Scotland Act. This gave Edinburgh new powers to set air departure tax, to make an add-on to income tax rates and vary its thresholds, and to control various land and building taxes. The proportion of the Edinburgh government’s budget raised directly in Scotland will increase from 10% in 2014–15 to 52% by 2020.

In the area of social security, the Scottish government gained new powers over carers’ and disability welfare benefits, on topping-up reserved benefits run by the UK, and on creating new benefits (see below). In April 2018 the Edinburgh Parliament **unanimously approved** the SNP government’s proposals for Scotland to take over administration of these parts of social security spending, which will cost £2.8bn annually by 2021. The benefits covered are chiefly those for elderly and disabled people – personal independence payments, carer’s allowance, attendance allowance, disability living allowance and other disability benefits, winter fuel and cold weather payments, maternity grants and discretionary housing payments. This will be a **substantial change**: ‘When the social security powers are in place, [the Scottish government] expects to process as many [benefits] transactions in a week as it currently does in a year’.

In Whitehall, raising taxes and paying out social security have long accounted for around half of the UK civil service and a similarly large chunk of running costs. The Westminster government **transferred £200m** to cover the transition costs for Edinburgh as it takes over these responsibilities, but Audit Scotland found that the total transition bill is likely to cost a further £60m. This seems a relatively small sum for the scale of changes, shedding an interesting light on the likely **transition costs** of Scotland becoming an independent state, which **created controversy** during the 2014 referendum. A **2018 SNP Commission Report** (drawing on analysis by Dunleavy at Annex B5) found that transition costs will be modest. By 2021 Scotland will already have substantial tax and social security administrations fully in place. So the additional administrative costs involved in Scotland going independent in future could be further lessened. (For Scotland, see also **Chapter 6.1.**)

Wales: The Wales Act 2017 also marks a significant reshaping of the Welsh constitutional settlement with a transfer of additional powers (for example over energy and 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. Welsh ministers can now borrow up to £1bn for capital spending without needing Whitehall permission. And (like Scotland) the Cardiff Assembly and government now have default control over any policy area not specifically retained by Westminster. They have notably gained extra powers to regulate transport. An interesting development occurred in 2017 when the Assembly passed an Act that (taken at face value, and if upheld by the courts) disapplies in Welsh public services some provisions of a 2016 Westminster trade union law.

However, the likely durability and robustness of the Wales Act was criticised heavily, both while the law was under legislative scrutiny and **after receiving Royal Assent**. Constitutional preferences amongst citizens in Wales point to strong support for greater autonomy. Given the choice between the ‘Assembly to have more powers / Assembly to have same powers as now’, the largest group of respondents to the regular **BBC/ICM St David’s Day Poll** in March 2017 chose more powers.

With the new powers to self-regulate Welsh affairs, the Presiding Officer of the National Assembly appointed an **expert panel on Assembly electoral reform**, which reported back in December 2017 recommending an increase in the Assembly size (to 80–90 AMs), lowering the voting age to 16- and 17-year-olds, changing the electoral system and introducing prescriptive legislative gender quotas. The Assembly commission’s follow-up consultation (in 2018) sought the views of the Welsh public on these recommendations and will introduce legislative proposals in two stages to further shape the Welsh constitutional settlement (see **Chapter 6.3**).

Northern Ireland: The devolution settlement in Northern Ireland has not been working as intended since February 2017, when the top two parties (the Democratic Unionist Party and Sinn Féin) could not agree to form a power-sharing Executive (see **Chapter 6.5**). Despite new elections in March 2017, the Executive and Assembly remain suspended. If and when **the reduced size Assembly** (cut from 108 to 90 seats in 2016) and Executive restart, then some of its powers (on welfare reform, and corporation tax) have also been increased.

England: The process here long focused on the already powerful executive London mayor (and Greater London Authority), who is acquiring (over the next few years) commissioning, strategic planning, funding and regulation powers in health and social care. Outside the capital, new governance and leadership arrangements focusing on regional or metro mayors emerged piecemeal from 2014 onwards, initially in the absence of a clear legislative framework. The 2016 **Cities and Local Government Devolution Act** streamlined this process, and to date 11 devolution deals have been negotiated, and seven of them started working with direct mayoral elections in 2017 and 2018 (see **Chapter 6.9**).

Some wide-coverage English devolution deals include areas such as all urban 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 has given 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).

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Devolution appears to be firmly entrenched in the national polities in Scotland and Wales, and also in London. Lesser devolution to elected regional or metro mayors has expanded radically within England in 2017–18. Northern Ireland’s arrangements are not operating currently, but may restart, and retain basic support from voters there.</p>	<p>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. The weaknesses of this mode of proceeding are demonstrated by the continuing constitutional clash over Brexit between the UK and Scotland, and the suspension of the unique Northern Ireland arrangements from February 2017 onwards forced by major parties refusing to co-operate.</p>
<p>Electoral systems used in the mainland devolved administrations (Scotland, Wales and London) secure broadly proportional representation (see Chapter 2.2). They arguably redress some of the representational defects inherent to Westminster’s plurality rule (FPTP) system.</p> <p>The supplementary vote system used to elect the London mayor and new regional and metro mayors has also worked well to maximise their legitimacy.</p>	<p>Devolution deals in England have been negotiated in ways that lack transparency and have received little public scrutiny.</p>
<p>Some devolved legislatures have better records on gender representation than Westminster (see Chapter 7.2). There have never been under 40% women members in Wales, and never been under 30% in Scotland. Northern Ireland is still somewhat a laggard.</p>	<p>Turnouts in the new devolved mayor elections in England in May 2017 were somewhat lower than normal for local government (29% in Greater Manchester for instance). But turnout in any elections for new bodies (that have not yet done anything, and whose responsibilities are little known) is often lower.</p>
<p>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.</p>	<p>The English votes for English laws (EVEL) process has not created an institutional ‘voice’ for England. It remains an opaque and complex parliamentary procedure, little known, very little known, and even less understood by the general public (see Chapter 4.1).</p>

Current strengths	Current weaknesses
<p>Stronger levels of citizen engagement with national legislatures have become the norm in Scotland and Wales, whereas they remain the exception at Westminster.</p>	<p>Inter-governmental relations between the devolved countries and the UK are very poorly developed, and do not include London. Perhaps as significantly, inter-parliamentary relations are vestigial.</p>
Future opportunities	Future threats
<p>The Brexit process has already initiated 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.</p>	<p>There are concerns that as a result of the Brexit process, powers repatriated from the EU will accrue overwhelmingly to Westminster and Whitehall – as the original draft of Clause 11 of the EU Withdrawal Bill specified. To date the division of competences has only partially been resolved in outline. In April 2018, the Welsh government reached an agreement with UK ministers, but the Scottish government has not (see above). Critics argue that after the top-down Brexit process run by the May government devolution will be ‘yet more variable and even more disjointed’.</p>
<p>As Wales moves from a conferred power model (where Westminster says what it could control) to a devolved power model (where responsibilities in broad policy areas rest with them by default, unless otherwise specified) so there may be a better constitutional alignment with devolution practices in Scotland.</p>	<p>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.</p>
<p>If the UK government acts to repatriate powers from the EU honestly and in the spirit of subsidiarity, there are new opportunities for enhancing the powers and competences of all the sub-national legislative assemblies and governments.</p>	<p>The level of dispute and contestation both in the courts and politically has already clearly increased as a result of Brexit. A Westminster ‘act alone’, UK-centric approach to repatriation of powers, which seeks to evade proper parliamentary scrutiny and genuine involvement with the devolved legislatures, could pose a serious threat to the principles of democratic devolution.</p>

Future opportunities	Future threats
<p>The SV mayoral elections in future years will be opportunities to revitalise local democracy and to improve the visibility of devolution deals.</p>	<p>The Conservative 2017 election manifesto unilaterally proposed scrapping the supplementary vote voting system used for elected mayors in London and various regions, and replacing it with first-past-the-post, which would radically lower the 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.</p>

The further unfolding of Brexit

As the Brexit process enters a new stage of detailed 'divorce' negotiations with the European Union, a raft of new legislation will be needed to give effect to the multiple changes involved. It will cover policy such as agriculture, fisheries, transport, and economic and environmental regulation where the three devolved countries are primary actors within their own territories. The [Legislating for Brexit: White Paper](#) (2017) suggested 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 a subsidiarity principle was followed in a full-hearted way, then devolved administrations and legislatures would see their functions and responsibilities greatly enhanced, and could play a vital role in the process. However, 'legislative consent' by the devolved countries went completely unmentioned in the White Paper, nor was there any indication of inputs to be made by the devolved legislatures. By April 2018, after many criticisms from the House of Lords and the opposition parties in the Commons, the UK government was **still insisting** that:

'The offer we put forward on clause 11 at Committee stage [of the EU Withdrawal Bill] would see the vast majority of powers flow directly from Brussels to Edinburgh, Cardiff and Belfast, just as the Scottish and Welsh Governments have argued. However, it is also vital we retain a mechanism to protect our internal market, our common resources, and our reputation as a credible international trading partner.'

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 governments and Parliament/Assemblies (or those of Northern Ireland when operating) then 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, in every year that devolution has operated, 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 now applies to Wales 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 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. We have seen (above) that it remains to be clarified if the specific repatriation of powers from the EU proposed by the May government by summer 2018 falls foul of the Sewel convention or not.

The growing powers of the devolved governments

As late as 2017 the varying powers of the devolved governments could still be diagrammed relatively easily, as in Figure 3 – which shows the proportion of each Whitehall department’s duties assigned to Scotland, Wales and Northern Ireland (if its devolved

mechanisms were working, and not suspended, as at present). At the top of Figure 3 are ‘domestic’ departments where most powers were devolved, and at the bottom are the UK’s outward facing ministries where nothing was then devolved. In between there was not much of a spread. A few Whitehall departments retained some minority powers in Scotland and Wales, while a few other central departments had ceded minute fractions of their role to the devolved governments. So the idea of a ‘clean split’ still confronted anomalies, such as Northern Ireland having zero control over justice, due to earlier sectarian problems; or Scotland and Wales having fewer Cabinet Office roles than Northern Ireland.

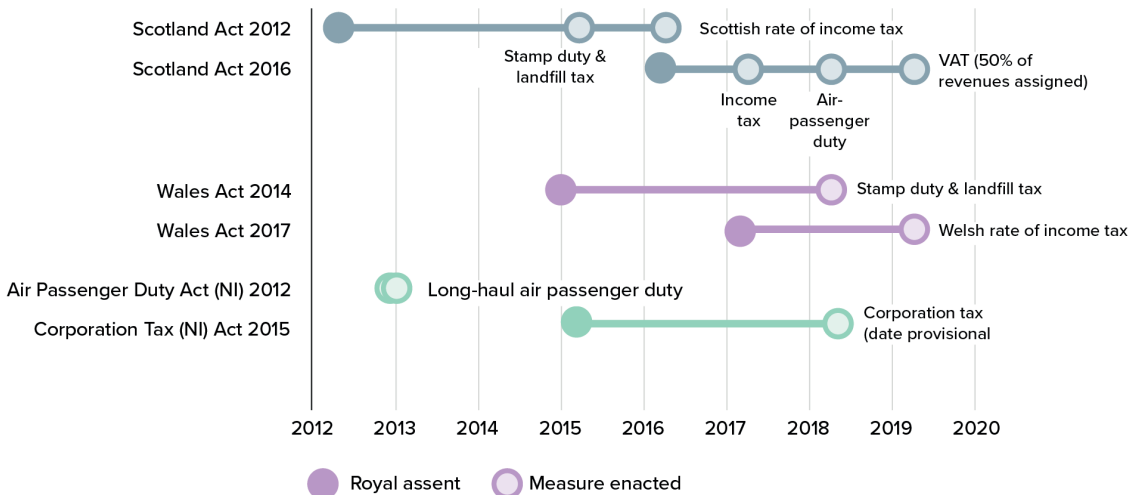
Figure 3: The estimated proportion (%) of each Whitehall departments’ functions devolved to the three nations in 2017

Percent of each department’s work devolved	Northern Ireland	Scotland	Wales
99–100%	Department for Education; Department for Communities, Housing and Local Government; Department for Health; Department for Environment, Food and Rural Affairs		
100%	Ministry of Justice		
100%	Department for Work and Pensions		
91–92%	Home Office; Department for Transport		
81%			Department for Transport
79–80%	Department for Digital, Culture, Media and Sport		
10–15%	Business, Enterprise, Innovation and Skills		
4–5%	Cabinet Office		
1–2%		Department for Work and Pensions	
Less than 1%		Cabinet Office	
Less than 1%	HMRC, HM Treasury		
Zero			Ministry of Justice
Zero	Ministry of Defence; Foreign Office; Department for Exiting the EU; Department for International Trade; Department for International Development		

Source: Rearranged from [Institute for Government, 2017](#)

The mixing and overlap of roles is certain to increase because of changes already made to stave off Scottish independence in 2014. Figure 4 shows that the devolved governments have each received substantial tax-setting powers, with more to come in stages until 2019, and that their administration has been put in place over recent years. So a substantial set of powers are moving from HM Treasury.

Figure 4: Tax devolution since 2014



Source: Institute for Government, [Whitehall Monitor 2018, Figure 3.16](#)

How the Brexit process works through in the probably extended period it takes the UK to separate from the EU will also affect the further blurring of functions across the two tiers. Arrangements are only likely to **get more complex**, as away from the headline disagreements, the two tiers of government have already:

‘Agreed to the principle of establishing UK-wide “common frameworks” in key areas. For their part, UK ministers have repeatedly committed to the idea of some EU powers being exercised exclusively at devolved level after Brexit, and have now backed away from placing a reservation on “retained EU law”’.

Conclusions

Devolution in Scotland, Wales and London has strengthened representation, legitimacy and the inclusiveness of policy debates there. It also played a key role in Northern Ireland, and is likely to do so again, although arrangements there have been suspended now for 18 months. Devolution in England outside London to regional and metro mayors has just begun but may help redress important democratic and scrutiny deficits within some parts of England. However, all 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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6

How democratic are the UK's devolved government arrangements?

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6.1

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.*

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

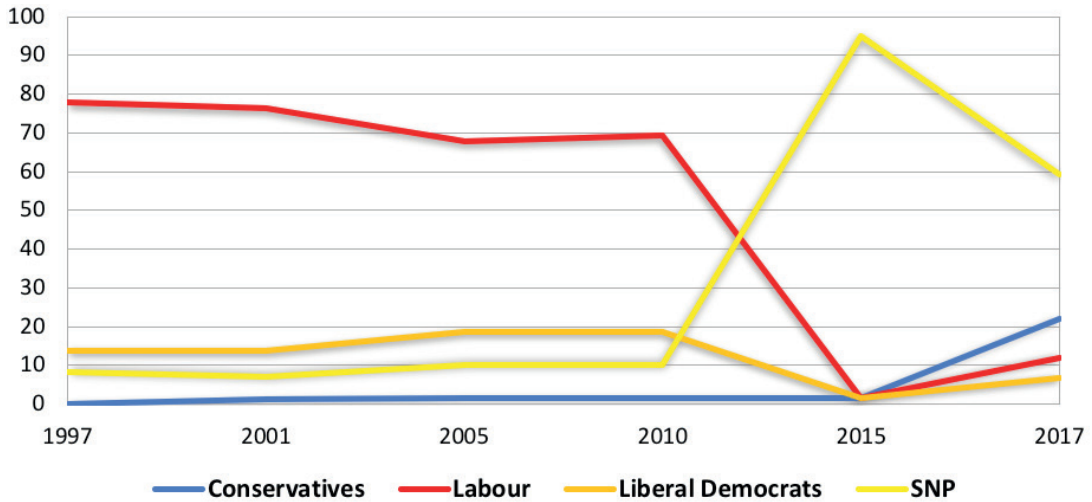
representation system – the additional member system (see [Chapter 2.2](#)). A Scottish executive was set up to run all the devolved policy areas, using a directorate structure (instead of the separate departments found in Whitehall). Its policy responsibilities have steadily expanded and the now Scottish government supervises the **£58bn** of spending in Scotland that are devolved functions. Most domestic spending (on education, health, transport, housing, local government and the economy) is devolved. The key areas excluded from their control – and which would accrue only to an independent Scotland – remain most social security, most major taxation, defence and foreign affairs. However, as a result of greater devolution pledges made during the 2014 referendum campaign, the Edinburgh Parliament now has significant tax-raising powers and also runs some significant social security benefits domestically (see [Chapter 5.6](#)). 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

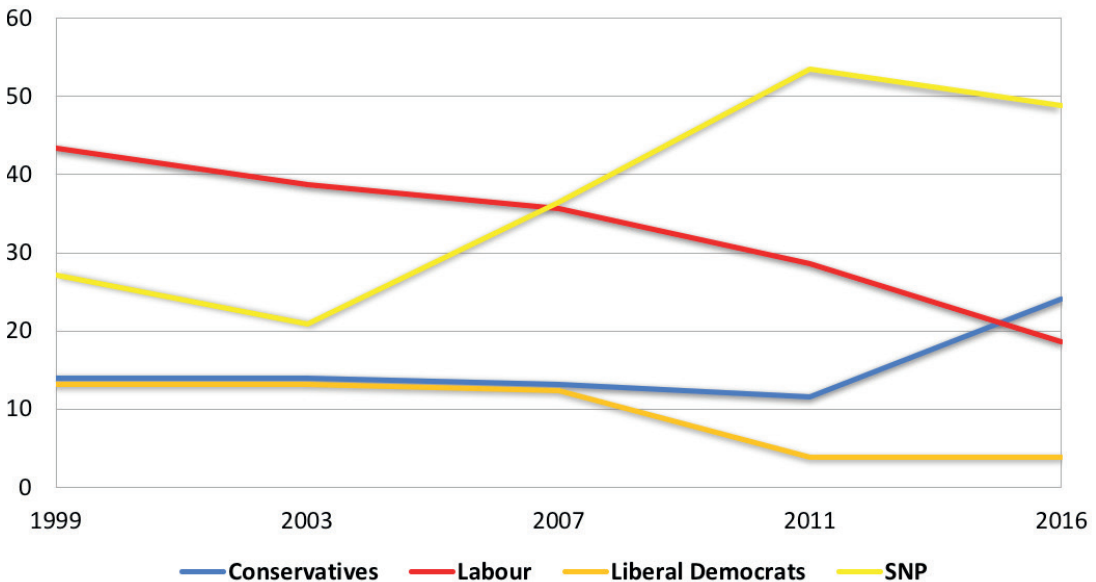
Despite electing MSPs via proportional representation, which tends to stabilise political alignments, Scottish politics has undergone a period of significant political and constitutional upheaval over the past half decade. In 2011 the SNP returned 69 of the 129 MSPs – a majority government, for the first 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%.

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 watermark 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 with Green support. The SNP subsequently lost a third of its Westminster seats in 2017 (down from 56 to 35), with the Conservatives and Labour both gaining a lot at their expense.

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 11 different leaders (five 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 Labour with Liberal Democrat support in 2006. 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.

Figure 1: Percentage of Scottish Westminster seats won by each party 1997–2017

Source: UK Election Statistics 1918–2017, Parliament UK

Figure 2: Percentage of Scottish Parliament seats won by each party 1999–2016

Source: UK Election Statistics 1918–2017, Parliament UK

Figure 1 shows how suddenly and completely Labour's Westminster predominance was abruptly terminated in 2015, with the party losing all but one of the 41 seats it held in 2010. While Labour won back six more seats in 2017 (up from one), for a party that had dominated Scottish politics for nearly half a century, this remained a stunning reversal of fortune. Signs of this decline were already apparent under Gordon Brown's premiership, but the shock effect was accentuated by weak UK Labour leaders (Miliband and Corbyn before 2017), who had little electoral appeal in Scotland.

Labour's once equally strong unionism was squeezed in the 2014 referendum campaign 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 achieved some gains against the SNP in 2017, and has since selected Richard Leonard as the Scottish Labour Party leader, who is broadly supportive of Corbyn.

Meanwhile, since the 2014 referendum the Scottish Conservatives have staged a significant revival, becoming the main opposition party to the broadly social democratic SNP. In 2017, the Scottish Conservatives' leader, Ruth Davidson, ran a considerably more successful campaign than Theresa May. In the Scottish Parliament, 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 to be the official opposition. This was largely because their clearer and complete opposition to independence suddenly projected them as the safer option in defending the UK union. In 2017 the Conservatives were also the second party in Scotland in terms of Westminster seats, holding 13 to Labour's seven and the Liberal Democrats' four.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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.</p>	<p>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. Some observers have argued that the majoritarian culture of Westminster has transferred to and endured within the devolved legislatures.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>The committee system of the Scottish Parliament, established to fulfil the function of both Westminster bill 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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
	<p>The operation of the additional member system has created a closed party system in Scotland. No new parties have entered 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% of the list vote, in order to secure MSPs at this stage.</p>
	<p>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.</p>

Future opportunities	Future threats
<p>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. The extent of these new powers is a matter of dispute with the UK government.</p>	<p>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.</p>
<p>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.</p>	<p>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.)</p>
<p>The Presiding Officer's 'MOT' review of the Scottish Parliament (see below) and willingness to actively examine the operating procedures is both timely and a recognition that there are ways in which the parliament can improve.</p>	

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):

- ◆ '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, how has the Parliament performed? 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 some pieces of private members’ legislation piloted by Tavish Scott and Tommy Sheridan were passed into law.

However, from 2011 to 2016 there was an overall SNP 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% 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 people, and those who identify as having a disability, have also not 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 was a qualified referee and regularly featured at Scottish and European games (since becoming an MP in 2017, he has been **criticised for absences** from Westminster in key debates). 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**, chaired by John McCormick, reported in June 2017 examined 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.

Its **recommendations** included strengthening committees by introducing direct elections for their conveners (chairs) by Parliament and offering additional salaries for them, as in the House of Commons, as well as improving the time and resources committees had available. It also recommended strengthening the Parliament's processes for pre- and post-legislative scrutiny, increasing the stages from three to five, and removing scripted diary questions from First Minister's Questions.

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 2011–16, 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'. It is also **in dispute** with the UK government about whether the Scottish government or Westminster should be responsible for some key policy areas that will return to UK control from the EU – with the Scottish government arguing that Westminster is undertaking a '**power grab**' through the EU Withdrawal Act. The Edinburgh Parliament passed its own Continuity Bill, a Scottish equivalent of the EU Withdrawal Act, which the UK government is challenging. The case will be decided by the Supreme Court in autumn 2018 (see **Chapter 5.6**). 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 suggested 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, in May 2018 the SNP released a report from an **internal party commission** (the Wilson report) which outlined what it claimed was a sustainable future for an independent Scotland in economic terms. The party was clearly seeking to revive the idea of a second referendum campaign, yet by August 2018 **experts** still felt that the public opinion support to buttress such a move was not yet there. SNP supporters claim 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, which is true, so that 'movement effects' in a renewed second campaign could create a majority, though this remains unclear.

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6.2

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.*

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.

There were, therefore, 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. However, the then dominant Labour elites in Scottish politics largely ignored the report, ensuring that centralisation broadly continued.

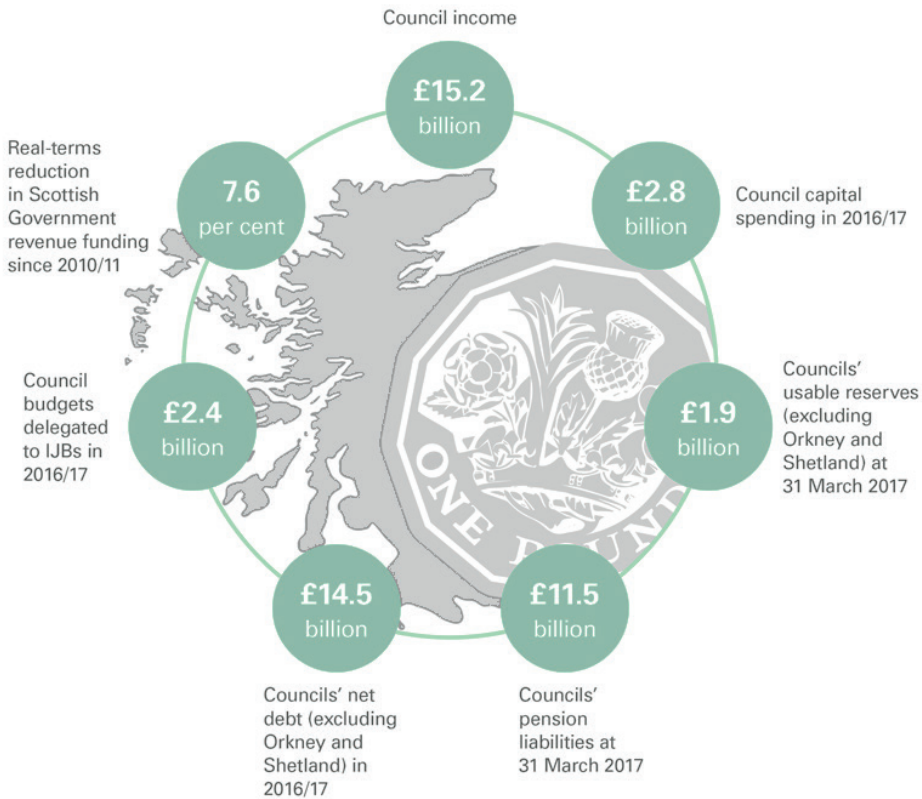
The SNP minority government elected in 2007 signed a **Concordat** with the Convention of Scottish Local Government that removed many of Scottish central government's detailed controls over councils. But over time SNP ministers have tended to revert to the pattern of their predecessors in centralising power. Sometimes centralisation is borne out of Scottish government frustration that policies are undermined at local level, but at other times it 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

Local elections were held across Scotland in May 2017, the third set using single transferable vote (see **Chapter 2.3**), during the early run-up to the snap general election of June 2017. There were some boundary changes, and though the SNP won the **greatest percentage of seats** overall (30%), after the elections all 32 councils in Scotland were now under '**no overall control**'.

Much 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 Figure 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.

Figure 1: Financial challenges for Scottish local government, 2017



Source: Audit Scotland, [Local Government in Scotland: Financial overview 2016/17](#), published via an Open Government Licence

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
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>The Scottish government provides well over half of local authorities' revenues (see Figure 2 below), which creates a high level of dependency by councils, and inhibits their capacity for independent decision-making.</p>
<p>There is also a high level of underlying agreement between the Scottish government and local government on councils' key roles in service provision.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>Past problems of local government corruption in one-party areas have generally lessened in recent years.</p>	

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.
	National politics intrude a lot into local campaigning – exemplified by the Conservatives' emphasis in the 2017 council elections on opposing an independence referendum (which is wholly outside the competence of local government).
	The Brexit process and the second referendum controversy may weaken Scottish economic growth. Brexit may potentially accentuate the centralisation of power in Scottish or UK central government. Independence for Scotland might lead to a squeeze on councils' resources.

Local government finances

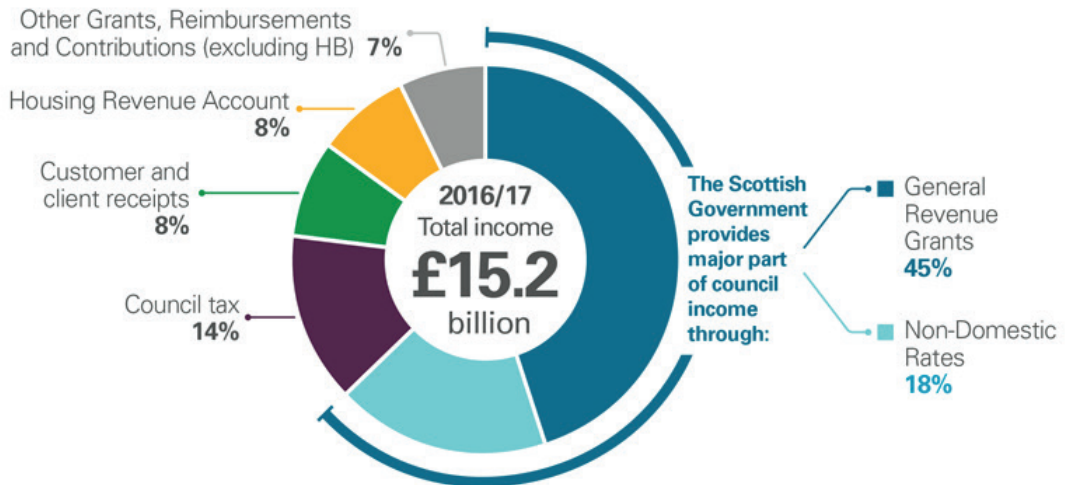
The dependence of local authorities for Scottish central government financial support undermines council's autonomy. The 2007–18 council tax freeze cut their freedom to raise revenues themselves, although central grants to local authorities did at least take account of lost revenue. In all 57% of local 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% 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' (p.5 and p.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.

Figure 2: The sources of Scottish councils' income, 2016/17



Source: Audit Scotland, [Local Government in Scotland Financial Overview 2016/17](#), p.11, published via an Open Government Licence

Notes: Does not include all income collected for services delivered through council arm's length external organisations and Integration Joint Boards; excludes housing benefit; customer and client receipts are 2015/16 totals at 2016/17 prices.

Demographic projections also suggest that Scotland's population will grow by about 9% 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% 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 possible⁷.

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 healthcare (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** offering potential support for the local economy and for a range of local authority projects.

In the 1990s many councils emphasised securing EU funding via ‘grantsmanship’, seeking 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 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. During the 2014 vote a campaign for **Our Islands, Our Future** set out a bold prospectus for island governance, showing how well-organised local government interests could insinuate themselves into even such a highly adversarial battleground. Another (and likely crucial) referendum might offer new opportunities to broaden that debate to include the role of local government.

Conclusions

In common with municipal 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 still point to stormy times ahead.

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6.3

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 seen 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.*

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 referred to as the Senedd, after the building in which it sits) 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 (until autumn 2018, when he plans to stand down), who leads a coalition of Labour, plus a single Liberal Democrat and an independent AM drawn from the Assembly.

The Labour Party drew up the initial plans for the Assembly in a one-party manner, without any formal apparatus of public or cross-party decision, in contrast to the Constitutional Convention that operated in Scotland. Elections for Assembly Members use a ‘British’ additional member system method, with 40 constituency AMs, the vast majority of whom are from the Labour Party. 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 1999 – 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 the last two decades, 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. 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). Whitehall had 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 **Sewel convention** (governing Westminster/devolved country relations) would seem to require the consent of the devolved legislatures. While this legal struggle between Westminster and Scotland remains, the Welsh government (with fewer powers at stake) reached a **compromise** with Westminster over the process of **power transfers** (see **Chapter 5.6**).

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The National Assembly for Wales has long been seen as a success story in terms of representing all four main parties in Wales.</p>	<p>The National Assembly has not seemed to be a relevant institution in the day-to-day lives of the Welsh public. Levels of participation and interest in the institution have been low.</p>
<p>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 achieved a further milestone, 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.</p> <p>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 elected. 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 and 27% of constituency AMs.</p>	<p>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 percentage 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%).</p>
	<p>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%).</p>

Current strengths	Current weaknesses
	<p>The 2011 referendum on further powers for Wales provided a far more positive result for proponents of devolution. Some 63.5% of the population voted in favour of giving the Assembly more powers – yet only 35% of registered voters turned out to vote.</p>
Future opportunities	Future threats
<p>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 on together.</p>	<p>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 will test the capacity of the Welsh political institutions.</p>
<p>The publication of a non-partisan expert panel’s report (see below) means that there is now a real chance that electoral reform and a reshaping of the Assembly could gain cross-party support. Any proposal for change would still have to pass a super-majority threshold of two-thirds support (built into the original scheme), but it is at least a possibility, with votes at 16 the likely first step.</p>	<p>The challenges of Brexit will occur almost simultaneously with the devolution of tax powers (which could encounter implementation difficulties) and a possible reduction in the number of Welsh MPs at Westminster (weakening Wales’ voice within UK institutions).</p>
<p>The devolution of tax powers to Cardiff will also bring a new level of accountability to the Assembly (see Chapter 5.6). 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.</p>	<p>Leader of UKIP’s Assembly group, Gareth Bennett, has announced plans for the party to adopt a policy of advocating for the abolition of the Assembly. Although opposed by at least two AMs in his own group, such a policy could appeal to the small but not insignificant number of people in Wales who wish to see an end to the Assembly. Although this is very much a minority opinion among the Welsh public, any campaign that feeds into feelings of political alienation and apathy (which are considerably more widespread) could pose a threat to the legitimacy of the institution if it gains support amongst the electorate.</p>

Voting systems and elections

The British-style additional member system (AMS) used for the Welsh Assembly (sometimes also called mixed-member proportional or MMP) gives voters two votes, one for a candidate in a constituency, with the winner decided by plurality voting ('first-past-the-post'), and one for regional candidates allocated to even up overall party regional seat shares with their votes there (see [Chapter 2.2](#)). Critics in Wales have argued that increasing the size of the Assembly so there could be more top-up seats would lead to far more proportional outcomes. An expert panel, established by the Assembly's Presiding Officer (see below) and given the task of exploring reform of the electoral system, recommended changing this system to single transferable vote (STV; see [Chapter 2.3](#)). Substantial changes to the electoral system are unlikely however, as any new system needs a super-majority of two-thirds in the Assembly. This would require a large amount of support from Welsh Labour AMs, who benefit greatly from the current electoral system. That said, there have been some signs that the Assembly and the Welsh government may be moving, albeit slowly, towards electoral reform. In February 2018, the Assembly established a public consultation on [increasing the size](#) of the Assembly to 80 or 90 members. New legislation will also be introduced by the Welsh government to lower the voting age to 16 in all Welsh elections, in line with Scotland.

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 proposals, it discussed 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 floated 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 single 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 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.

Proposals to reshape the Senedd

In addition to providing the Assembly with power over its electoral system, the Wales Act (2017) also provided the Assembly with the ability to change its name. Y Llywydd (the Presiding Officer) has since announced the Assembly will change its name to the Welsh Parliament, by 2021. Proponents hope this name change will raise the salience of the institution among voters, impressing the relevance of the decisions made there to their everyday lives. If such a change in attitudes is to take place, however, it will likely take more substantive action than the makeover these new powers allow for.

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 could be compounded by a likely reduction of up to one-quarter of Wales' current MPs at Westminster, as recommended by the Boundary Commission for Wales (cutting their numbers from 40 to 29). This is the largest proportional reduction of any of the four nations of the UK.

The media system in Wales

Unlike Scotland, Wales has never had a strong or distinctive domestic media. Welsh Election Study (WES) data show that in 2016 less than 7% of the electorate in Wales regularly read a 'Welsh' newspaper. Additionally, in contrast to Scotland, UK-wide newspapers do not provide Welsh editions. Therefore, they typically won't contain information or news about the Assembly or politics in Wales. Furthermore, there is 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 still faces 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 or listen to Welsh content. This means that 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 **£8.5m** a year in extra funding.

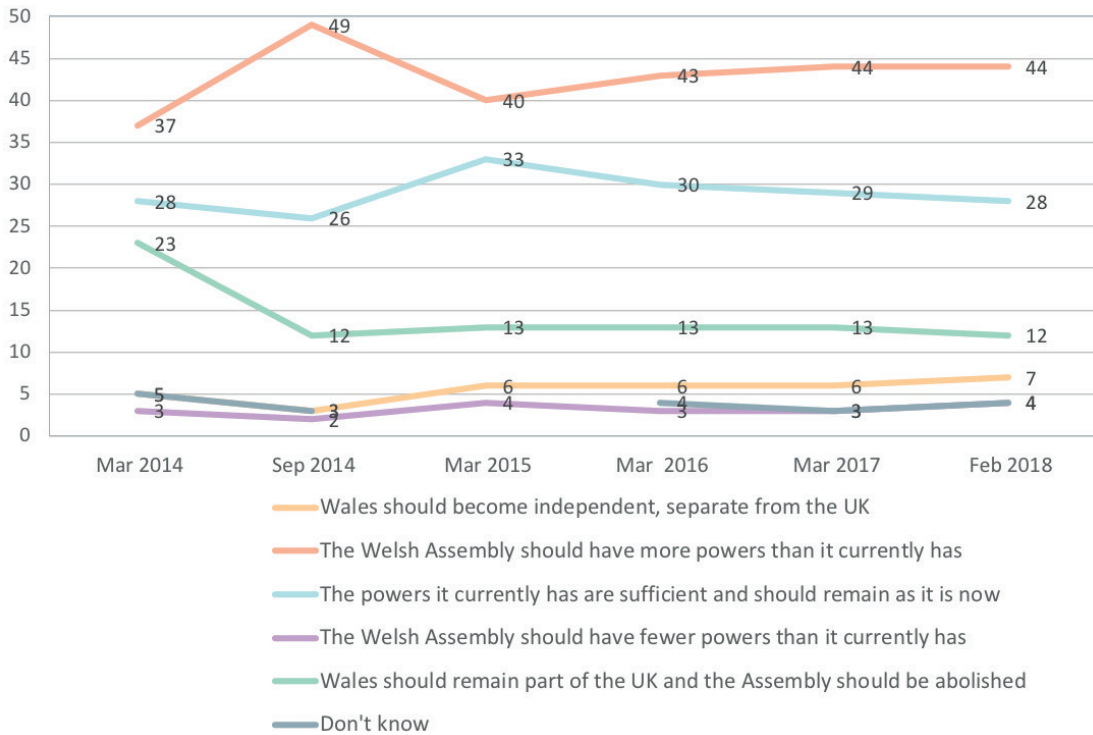
Support for Welsh independence

Unlike Scotland, support for Wales to become an independent country has never been widespread, so relatively little polling has been 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 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 despite the polling

taking place across a uniquely turbulent time in UK politics. A clear plurality of respondents favour more powers for the Assembly, with approximately 30% of voters thinking the Assembly should stay as it is.

Figure 1: Constitutional preferences for the Welsh Assembly (BBC/ICM St David's Day poll, 2014–18)



Source: ICM polling research

Conclusions

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. Brexit will test the institution's competence, capacity and ability to adapt to rapidly changing circumstances. New tax powers will also accrue to Cardiff, which should bring new scrutiny to its practices. To continue to be an effective legislature, the Assembly must convince the public that it is a relevant institution to their everyday lives. For now, the majority of the Welsh public remain generally supportive of the Assembly (although we have little information on the intensity of this feeling). Yet low turnout and a lack of knowledge of Welsh politics threaten this support.

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6.4

Wales: local government and politics

Within Wales, 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.

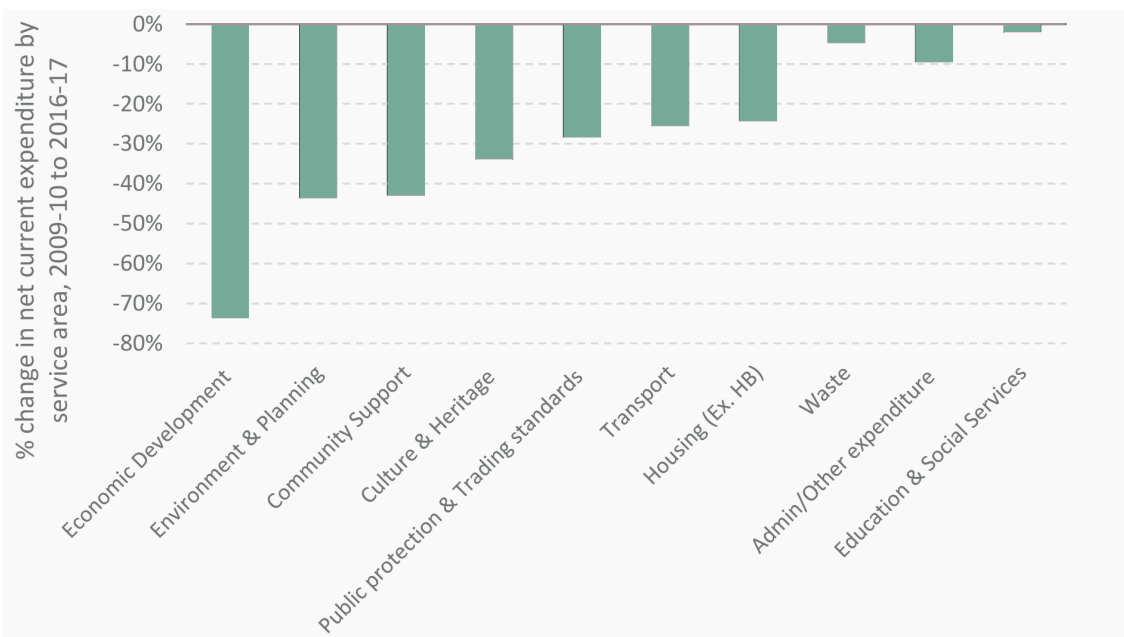
What does democracy require of local governments in Wales?

- ◆ 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. However, 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 administrative developments

As elsewhere in the UK, the impact of austerity was the biggest challenge facing Welsh local government. Councils are responsible for 28% of Welsh public service expenditure. Yet local authority revenue fell substantially between 2009–10 (the last year of Labour government at Westminster) and 2016–17 (the first year of the May government). At a time of great uncertainty, Welsh councils had to make tough decisions about where to devote scarce resource and considered new ways to deliver services to people. Figure 1 shows that spending on education and social services were largely protected, where cuts above 40% were made to environment and planning and community support, and 70%+ cuts in economic development spending.

Figure 1: Cuts to net current service spending by service in Wales, 2009–10 to 2016–17 (at constant 2017–18 prices)



Source: [Ogle et al, 2017](#)

The ongoing squeeze on local spending in large part accounts for the repeated controversies over replacing the current structure of 22 local councils in Wales with a 'streamlined' structure of ten or fewer councils. First proposed by a 2014 Commission, this idea was live in 2014–16, when the Welsh government dropped reorganisation proposals in favour of the existing councils simply co-operating more on services on a regional basis. However, in 2018 a similar plan was once again floated to save money (see below), but a comprehensive merger plan was dropped again.

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, amounting to £1.8bn in 2007–13.

It is also still due a **further £2bn** from EU structural funds in the period 2014–20. Yet 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.

Recent political developments

Politically, many south Wales councils were historically dominated by Labour, reflecting its dominance of Welsh government (see [Chapter 6.3](#)) and politics at a national level. In 2017, independents formed the second largest set of councillors after Labour, 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 assigned Labour disproportionately more seats than votes, and they still control nine councils. Most other councils are controlled by a coalition, reflecting Wales’s multi-party system and the importance of independent councillors. With effectively five parties (including independents) competing in most areas, plurality rule voting operated fairly proportionally (with a deviation from proportionality or DV score of 11%), advantaging Labour and disadvantaging the Conservatives, but only moderately at an all-Wales level.

Figure 2 shows that in the May 2017 local elections (held before Jeremy Corbyn’s bounce back at the general election) Labour’s vote share fell appreciably (down 4.5%) and they lost 112 councillors and control of three councils (Blaenau Gwent, Bridgend and Merthyr Tydfil), but retained control of seven. The Conservatives gained nearly 19% of votes, added 80 more councillors, becoming the second largest political party (but behind the independents) and winning control of a council (Monmouthshire). Plaid Cymru came third with one in six votes, increased their councillors (by 38) and also gained control of one authority (Gwynedd). The Liberal Democrats’ vote share fell below 7% and they lost ten councillors. The deviation from proportionality (DV) score fell a little to 9%, a good result by UK standards.

Figure 2: The outcomes of the 2017 and 2012/13 local government elections in Wales

	2017			2012/13		
	votes%	seats	seats%	votes%	seats	seats%
Labour	30.4	468	37.3	34.9	580	46.3
Independents	22.5	309	24.6	23.8	300	23.9
Conservative	18.8	184	14.7	12.5	104	8.3
Plaid Cymru	16.5	208	16.6	16.0	170	13.6
Liberal Democrats	6.8	63	5.0	8.0	73	5.8
Others	4.9	22	1.8	4.8	28	2.2
Total	100	1,254	100	100	1,254	100

Source: [The Elections Centre](#)

Note: In 2012, elections were held in all Welsh local authorities except Anglesey, where they were held in 2013. The figures listed are the total of both years. In 2017, elections were held for all 22 local authorities.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Compared with other EU countries, the ratio of councillors to the electorate in Wales is relatively high, and the traditional council areas are relatively local and well-understood.</p>	<p>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.</p>
<p>Councils make significant efforts to keep councillors and the public informed of their decisions (but see below).</p>	<p>Critics argue that the 1,254 Welsh councillors are disproportionately 'pale, male and stale'. Studies show that most are over 60 years of age, and 99 in every 100 are 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.</p>
<p>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.</p>	<p>Despite its commitment to less micro-managing, the Welsh government in Cardiff 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). Critics accept that the Welsh government must continue to make strategic decisions, but argue that it should allow local authorities the power to decide how they deliver things.</p>
<p>Local authorities have a generally good working relationship with the Welsh government, which has recognised that they '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).</p>	<p>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-focused 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.</p>

Current strengths	Current weaknesses
	<p>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’.</p>
	<p>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 17 indicators going up and twelve indicators showing a decline.</p>
Future opportunities	Future threats
<p>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.</p>	<p>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.</p>
<p>A new, robust performance framework needs to be 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.</p>	<p>The new regional collaborative arrangements need to be scrutinised from the start. Previous public service collaborations were not fully held to account.</p>

Future opportunities	Future threats
<p>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.</p>	<p>The Brexit process may be damaging to local government in Wales, where disadvantaged areas have received considerable regional subsidies from the European Union which will no longer be available.</p>
<p>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.</p>	
<p>A new Local Government (Wales) Bill (see below) will be introduced in 2019 to enable voluntary mergers to take place. The formation of these arrangements is currently being discussed.</p>	

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.) They have also compared well with the Assembly turnouts.

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.

Welsh politics is multi-party, and in addition Figure 2 above shows that at the local level ‘independent’ councillors were the second largest group, especially so in rural areas. As elsewhere, the plurality rule electoral system produces some distortions. In 2012, Labour

gained around 46% of the councillors with a vote share of just under 36%. In 2017, a vote share of just over 30% gave the party more than 37% 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 a 12.5% vote share which delivered around 8% of seats. And in 2017, a vote share of nearly 19% gave them under 15% of seats.

The Welsh government have recently consulted on introducing a range of reforms to modernise electoral arrangements including the proposal 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, but where and if it happens, Scotland's experience suggests that the introduction of STV would be a substantial reform. The Welsh government is also proposing lowering the voting age to 16 for the council elections in 2022.

Councils could 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.

Local government area reforms

There has been much debate about whether the 22 local authorities in Wales are too small for the effective delivery of public services. 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). 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 proposals for creating only eight or nine councils.

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 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.

But then, despite the previous record, in spring 2018, the Welsh government suddenly resurrected the idea of merging councils and offered councils three options in a Green Paper: voluntary mergers; phased mergers; or a single comprehensive programme of mergers, so as

to cut them down to **just ten authorities**. The consultation process revealed little support for fundamental reform and the Welsh government has gone back to the drawing board (again) by setting up a working group to find common ground and a plan for change.

Conclusions

Critics argue that a successful balance has not yet been struck between the top-down direction from the Welsh government and Assembly and the policy discretion that local councils need. Cardiff ministers' approach to local authority reform continues to be 'top-down', confused and inconsistent. Letting councils decide on different mechanisms of holding decision-makers to account, as well as on different voting systems, is likely to be confusing for citizens and prevent reforms happening where they were most needed. For example, it seems very unlikely that Labour-dominated councils over long periods will adopt STV voting, although that may be where a change would yield most benefits in reducing electoral disproportionality. If the current Welsh councils can survive, they will clearly have to try and 'join-up' behind the scenes and with other services (like the NHS) so that the public's experience of services is not adversely affected.

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6.5

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 inter-communal 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 Whyssall** and the **Democratic Audit team** explore how democratically and effectively the institutions of government have performed in Northern Ireland.*

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 its voting behaviour. Given this, and 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 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.

However, since 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.
- ◆ The Executive should in particular tackle cogently the most acute problems of the economy and society, and be capable of responding decisively to events.
- ◆ The devolved government 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' unionist and nationalist parties. 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. In response, nationalists denied the legitimacy of any government arrangements in Northern Ireland, arguing that 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.

Until they were suspended in January 2017 the essence of the devolved government arrangements were:

- ◆ *An Assembly, now of 90 members*, is elected using a proportional voting system called single transferable vote (see **Chapter 2.3**). Its members designate themselves nationalist, unionist or other.
- ◆ *A First Minister (FM)* is nominated by the largest party in the Assembly, and a *Deputy First Minister (DFM)* 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, are 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 has threatened its survival. The 2016 Assembly elections were held on the basis of the 'Fresh Start' agreement between the Democratic Unionist Party (DUP) and Sinn Féin (who provided the First Minister and Deputy First Minister respectively). The smaller parties, who had been in the Executive previously, moved into opposition, for which new provision had been made. The DUP and Sinn Féin maintained a public appearance at least of working together until late 2016.

At that point, serious and costly failings in a renewable heat incentive (RHI) scheme became public. The scheme had been introduced by the First Minister, Arlene Foster, when she was 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, 2017 (see below). This failed to produce any change in Sinn Féin or DUP attitudes and so the Assembly and Executive were suspended.

As this situation dragged on, it became clear that more fundamental tensions had been building within the Executive before the break. 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.

The suspension of the Assembly and Executive

By the end of August 2018 (our time of writing), the suspension of Stormont had lasted for 589 days, and created **a new record** for the longest delay in assembling a governing coalition in any European country. It also **generated some citizen protests** as Northern Ireland taxpayers paid out nearly £8m (£78,000 per head) to Assembly members who were essentially doing nothing. In May 2018, the Labour leader Jeremy Corbyn called for the Stormont arrangements to be **revived as a high priority**. But the May government has not been able to achieve any visible progress, and since June 2017 has depended on the DUP to stay in power at Westminster (see below).

Meanwhile, the running of the country fell largely to senior civil servants. Yet the legality of their making decisions over major projects was called into question by a May 2018 court judgment **that struck down** a decision to proceed with a waste incinerator as exceeding their powers. A backlog of major projects had already begun to accumulate, for which political approval was required. In autumn 2018 there may also be a UK Supreme Court case challenging the legality of all administrative decisions taken while Stormont is suspended.

Brexit and Northern Ireland

In 2016's Brexit referendum, 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 (UUP), 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 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 **statements** throughout the process say there should be no physical infrastructure on the border. This stance was reiterated in **the Chequers proposals** of mid-2018. But their political viability and administrative 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. But a sea border between the whole island of Ireland and the British mainland would equally be anathema to the DUP, on whose continued support May relies at Westminster.

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

The March 2017 election was a divisive one. Even though the elections failed to break the Stormont stalemate, the results still 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 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.

Figure 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	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)	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	90	9

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 in 2017. 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, with 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 ten 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 £1bn 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 some to question 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. The statutory deadline for the Secretary of State to call a further Assembly election passed, and political negotiations to resume the Assembly have stalled. Since the end of 2017, the Secretary of State has set the budget for Northern Ireland, but has stopped short of direct rule, leaving much of the political decision-making in the hands of Northern Irish civil servants.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

The foundations of the Northern Ireland system, unlike those in Scotland and Wales, are clearly fragile, and so the ability of outsiders, notably the British and Irish governments, to intervene is also important to the soundness of democratic arrangements.

Current strengths	Current weaknesses
<p>In historical perspective, the devolved institutions had been an enormous success up to 2017, 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 previously not been possible.</p>	<p>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 since January 2017. Consequently they have not provided all the social and economic stability that was previously hoped for, and delivered.</p>
<p>The political settlement paved the way to cross community acceptance of policing. Given the acute social conflicts that went before, this is a remarkable advance.</p>	<p>When it was operating, the Executive had limited success in tackling the serious economic and social problems that beset Northern Ireland. The private sector economy remains very small, and has declining relative competitiveness. Northern Ireland is dependent on public spending – at levels per head that are 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.</p>

Current strengths	Current weaknesses
<p>Power-sharing devolved government has made it much harder for paramilitaries on both sides of the sectarian divide to thrive. They continue to be active, although on a much reduced scale, in occasional limited terrorism and more prevalent gangsterism.</p>	<p>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, and over flying of flags and other symbols, which created a crisis in government in 2012 in some local councils (see Chapter 6.6).</p>
<p>During the time of the new institutions, most of the remaining inter-community conflicts at street-level disappeared. However, the summer of 2018 saw some nationalist crowds in Derry briefly turn violent.</p>	<p>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 an example of lack of scrutiny.</p>
<p>More broadly, the new institutions at first generated a spirit of optimism and rebuilding that made much social progress possible.</p>	<p>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.</p>
<p>There has also been some economic success, in particular a good record in securing foreign direct investment. Unemployment is well down from the very high levels once found in Northern Ireland.</p>	<p>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.</p>
<p>People in Northern Ireland do not seem excessively troubled by political difficulties: personal well-being measures are well above the UK national average.</p>	<p>The Assembly has 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.</p>

Current strengths	Current weaknesses
	<p>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: for example, 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.</p>
	<p>A whiff of corruption remains in political life. The DUP Westminster MP, Ian Paisley Jr, was suspended from the House of Commons for accepting gifts from the Sri Lankan government. Prior to this, 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.</p>
	<p>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.</p>
	<p>The suspension of the Assembly, and the structure of sectarian politics, has hindered the advancement of rights for women and LGBT citizens compared with the rest of the UK and the Republic of Ireland. Whereas the Republic of Ireland has introduced gay marriage and will introduce legislation to legalise abortion, both supported via referenda, both remain prohibited in the North, putting it at odds with its neighbours and public opinion.</p>

Future opportunities	Future threats
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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 an issue with nationalists.</p>
	<p>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.</p>
	<p>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. Some Brexiteers at Westminster have seemed willing to downplay concerns about the Irish border and maintaining the achievements of the Good Friday Agreement during the Brexit process.</p>

Can the Northern Ireland institutions be made to work again?

It is still (just) possible to see devolved government resuming in the medium term, despite the current lengthy suspension, and even to envisage **measures** to improve the way it functions and to bolster future stability. The Northern Ireland parties and institutions might then progress beyond achieving the necessary but scarcely sufficient requirement of embodying cross-community working, towards the objective of delivering effective

government, which is the main expectation of political institutions elsewhere. Still more ambitiously, they might set about setting out a positive vision of the future (irrespective of constitutional destiny).

However, for the present, and especially while key Brexit issues remain unresolved, it is not clear we shall reach that point. The two main parties appear to be moving further apart, and reverting to the rhetoric of earlier days. There may not be sufficient commitment to restore devolved government while the Brexit negotiations produce a succession of grounds for disagreement between the parties.

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 when agreement sufficient to sustain devolved government is not possible, but already much disliked by nationalists. Northern Ireland has drifted for all of 2017 and 2018 without any devolved government. It seems unlikely that any resumption is imminent.

However, 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. 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 between 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.

Conclusions

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. However, 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. Though an immediate increase in violence is unlikely, violent people have in the past flourished when constructive politics was weak.

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Changes for the 2018 Audit were made by the Democratic Audit team from Alan's 2017 text.

6.6

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 (which have not been functioning for over a year and a half at the time of writing). Local councils can act as checks and balances on the domestic concentration of power. **James Pow** explores how democratically local councils have operated in difficult conditions.*

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 their own sufficient 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. However, they should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an

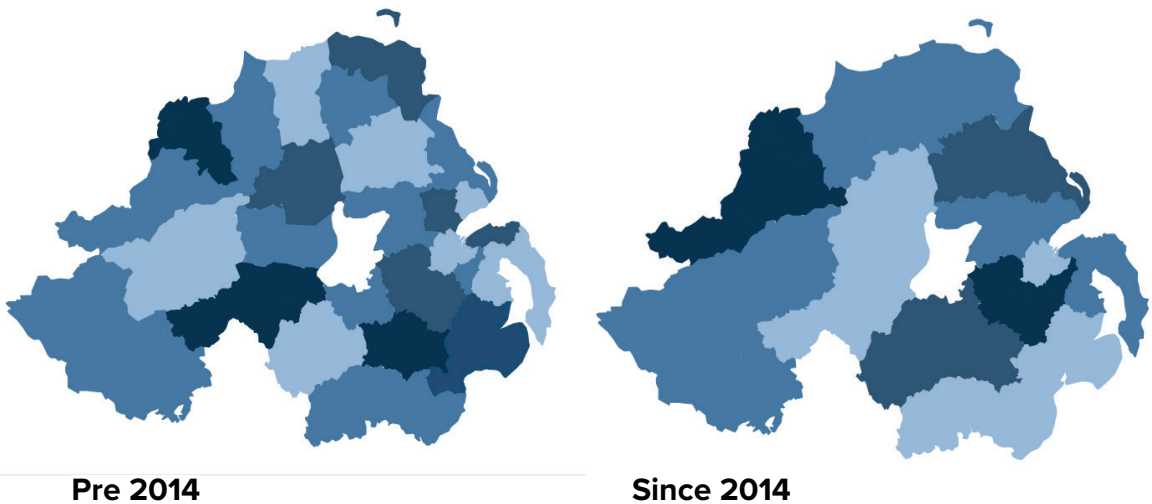
assurance that they cannot simply be abolished, bypassed or fully programmed by their supervisory tier of government.

- ◆ 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

In 2014 local government areas and structures 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.

Figure 1: How structural reforms changed local government district areas



Source: James Pow

The first elections in the 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 hope for these reforms was also that councils themselves would improve 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.

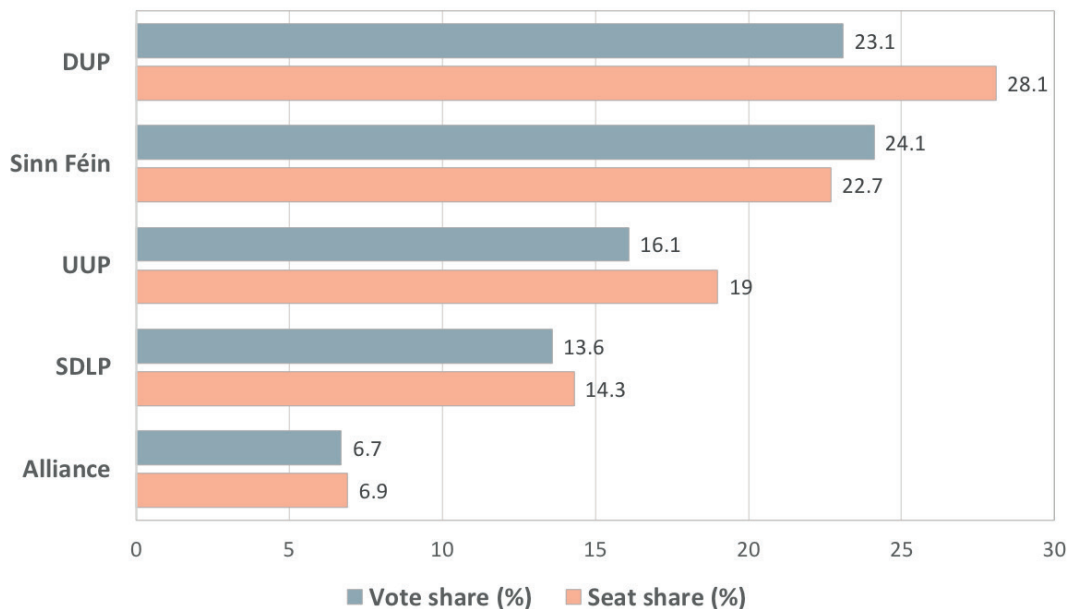
Northern Ireland councils have fewer responsibilities than councils elsewhere in the UK, partly because the province's relatively small population means some services can be delivered province-wide. In addition, the previously deeply divided nature of its society led

to an emphasis on using non-sectarian quasi-governmental bodies rather than politicised councils to deliver services. 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 technically an executive non-departmental public body (or NDPB), and 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. While the Executive is not functioning they operate in a non-political way.

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 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 produced a deviation of proportionality (DV) score of 11.1%. Historically this is much lower than the normal average scores for Britain's Westminster elections, using plurality rule voting (see [Chapter 2.1](#)). However, it is somewhat higher than the DV scores for Scottish local government using STV, or for the Northern Ireland Executive elections (see [Chapter 2.3](#)).

Figure 2: How the main parties' shares of votes compared to their share of seats in the 2014 council elections



Notes: DUP: Democratic Unionist Party; SF: Sinn Féin; UUP: United Unionist Party; SDLP: Social Democratic and Labour Party.

STV elections are *preferential* (so 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 divided their votes and harmed 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 voters who supported smaller parties are not necessarily left unrepresented – their first preference party may be knocked out, but they are represented by one lower down but still positive in their preferences.

Northern Ireland voters historically participate more in local government elections than those elsewhere across the UK. In 2014 the level fell back to just over 51% of registered voters, a historic low for councils in the province, but still far more than 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 normally encouraged by holding council elections concurrently, that is on the same day as either Westminster or Assembly elections. However, in 2014 the only other elections held on that day were those for the European Parliament.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Local authorities across the UK have no entrenched constitutional protections. However, following their protracted and controversial creation in 2014, and especially during the prolonged inactivity of the Executive and Assembly, the current Northern Ireland councils now seem insulated from further changes in the foreseeable future.</p>	<p>Despite a proportional electoral system, important groups are under-represented. Only a quarter of councillors are women, less than in the Assembly. Citizens who identify as neither nationalist nor unionist may also not be adequately represented.</p>
<p>The STV electoral system is a proportional. (PR) system, although in 2014 its was less effective than normal for STV. The preferential voting aspect of the system minimises the likelihood of wasted votes.</p>	<p>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.</p>

Current strengths	Current weaknesses
<p>Participation levels in local government elections are relatively high, facilitated by a tradition of holding them concurrently with elections to other levels of government.</p>	<p>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. Since the first sitting of the new councils in 2015, there have been 69 co-options across Northern Ireland, at least one in every district. The highest number was on Belfast City Council, where 28.3% of incumbent councillors were unelected as of August 2018.</p>
<p>Councillors are no longer permitted to hold multiple mandates. The shift away from ‘double-jobbing’ is designed to promote clearer electoral accountabilities.</p>	<p>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.</p>
<p>The transfer of local planning powers to councils may help to promote transparency in and engagement with local decision-making.</p>	

Future opportunities	Future threats
<p>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.</p>	<p>The elections for the Northern Ireland Assembly on 2 March, 2017 were 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.</p>

Future opportunities	Future threats
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 in some form, the oversight responsibilities for three key quasi-government agencies with urban roles – the Housing Executive, Education Authority and Transport NI – would likely transfer to Westminster, depending on the nature of the arrangement. 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 bipartisan 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 in 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'. However, the one-off councillor vacancies left by MLAs vacating their seats were filled by 'co-option' 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 instigating 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.

Symbolically important decisions can be contested

Given councils' carefully limited powers of local government, it may be somewhat surprising that their decisions still spark intense 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, Northern Ireland has been without a devolved power-sharing government for over a year and a half. After a snap Assembly election on 2 March, 2017 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 (see [Chapter 6.5](#)). Meanwhile, civil servants have been left to manage government departments without ministerial direction or oversight, with the UK government reluctant to introduce direct rule from Westminster. If the UK government does eventually assume responsibility for matters devolved under the Northern Ireland Act (1998), it will diminish potential oversight over public services from Northern Ireland's voters, especially on housing, education and road maintenance (see above), with particular alienation likely to be felt from Irish nationalists. Connections with local council services may 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 brought the DUP into supporting the Conservative's minority government at Westminster. This complicated matters by potentially jeopardising the UK government's ability to be seen as impartial arbiters in Northern Ireland politics.

Conclusions

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 been the only elected officials making public policy decisions in Northern Ireland for over a year and a half. Despite their comparatively narrow remit, local governments have maintained some reality behind devolved powers across the region.

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6.7

London: devolved government and politics at metropolitan level

*Devolved government in London – focusing on the executive mayor and 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.*

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.
- ◆ The Greater 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% on a 34% 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).

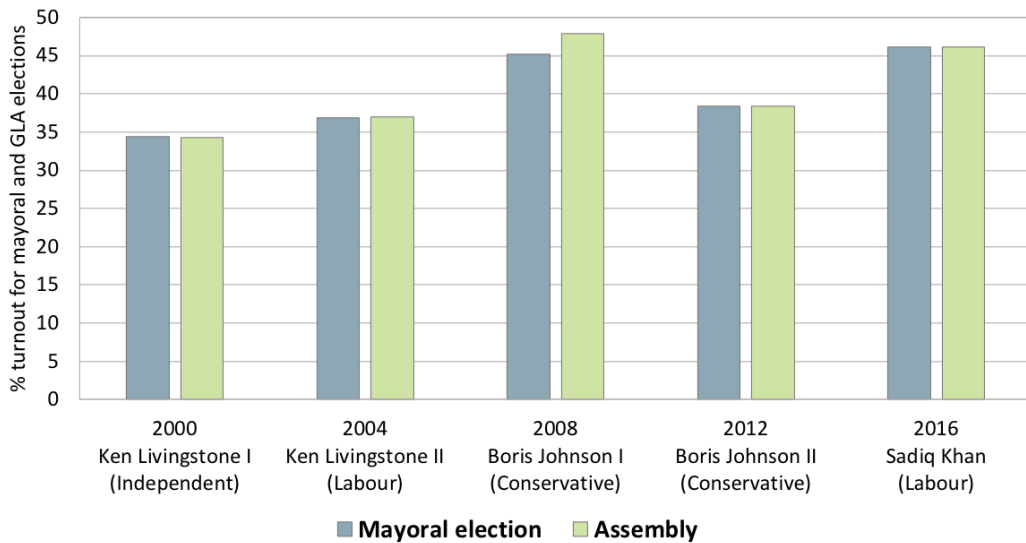
The GLA was deliberately set up by Tony Blair to be a slim top-tier body, with a strong mayor and a weak Assembly, whose members would be forced to focus on London-wide issues, and not local ones. The Assembly's only clear powers are that it can reject or amend the strategies or the budget that the mayor 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

The fourth round of the mayoral elections were held in 2016, again using the supplementary vote (SV) election system (see [Chapter 2.2](#)), 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) within London's congestion charging zone, which applied from late 2017 onwards.

The Assembly election uses a form of additional member system (see [Chapter 2.2](#)), 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 seat 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%, matching the 2008 peak when Boris Johnson was first elected.

Figure 1: The percentage turnout in the five London mayoral and Assembly elections since 2000



Source: [Data.london.gov](https://data.london.gov)

In the June 2016 Brexit referendum, just under 60% 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 Khan 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.

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 Grenfell fire tragedy also attracted criticism for the initial response by the small Kensington and Chelsea borough and by Whitehall departments. From the start of the 2018 public inquiry, attention was also directed to the funding and management of public housing that had gone before; the apparent inadequacy of fire regulations policed by the GLA-controlled fire service; and the advice to 'stay put' in their flats given to Grenfell residents by the fire service and not changed until very late in the catastrophe. 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, and stronger political control over public services, including re-regulation of building safety.

The extent of cutbacks in the capital's police force and fire services also became a focus of acute controversy, with Labour and many in the public services involved claiming that

citizens' safety was compromised, and the government insisting that the centrally allowed spending levels were adequate. In early and mid-2018 a series of murders and violent crimes and an increase in knife crimes (with the latest statistics available showing knife crime **rising 21% nationally** in 2016–17), prompted disputes about which part of government was responsible. It seemed clear that **greater liaison** in responses will be needed.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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, and has risen overall.</p>	<p>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.</p>
<p>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).</p>	<p>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 preference ballots cast by voters supporting eliminated candidates are examined, and any second 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.</p>
<p>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.</p>	<p>Despite the high level of public attention around mayoral elections, turnout in elections has fluctuated between the low 30s and mid-40s (see Figure 1) – levels found in other local elections, and well below those in the devolved countries.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>When parties win top-up Assembly seats, the successful candidates are chosen in order from a ‘closed’ party list, which voters cannot influence.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Ten of the 14 Assembly local constituencies are such safe seats that they have never changed party control, which may lead to complacency and inertia.</p>
	<p>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 – for example, despite strenuous efforts, mayors have made little discernible impact on decisions about London airport capacity.</p>

Future opportunities	Future threats
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>If tensions between the GLA and the London boroughs grow, plans to build affordable housing may be hampered.</p>
<p>Brexit could be used to justify the argument that London should have independent capacity to respond flexibly to the challenges leaving the EU creates.</p>	<p>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 did not win a majority in the 2017 election, with the manifesto rated disastrous, and in the hung parliament at Westminster this proposal seems to have been dropped for now.</p>
	<p>A Conservative government could be reluctant to transfer significant new powers to or otherwise cooperate with the now Labour-dominated GLA.</p>
	<p>Further devolution to England may be concentrated on cities or regions that did not previously have it, so that London might lose out.</p>
	<p>The Assembly's limited role may become harder to justify in future, given its relative insignificance in constitutional and governmental processes.</p>

How the Authority works

The **Greater London Authority** was established under the Greater London Authority Act 1999, with the inaugural elections to the 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 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.

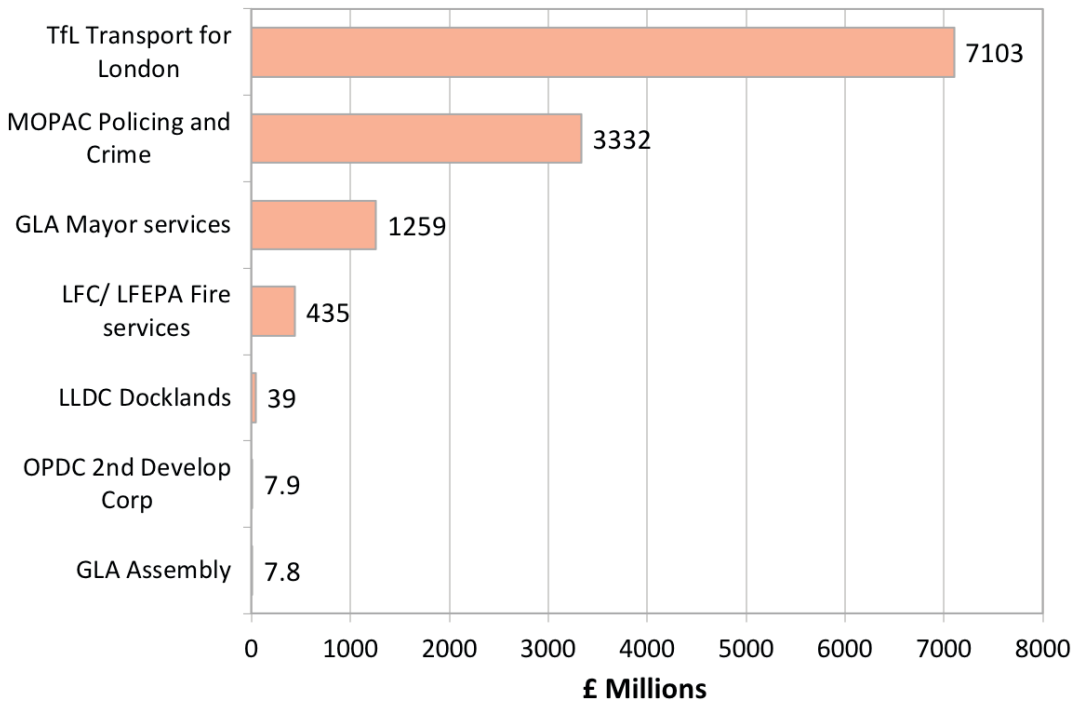
Areas in which the mayor has the power to operate are policing, economic development, housing and regeneration. These powers are exercised via four functional bodies:

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 Figure 2 shows the scale of GLA operations is vast, with current spending of just under £12.2bn. Because of transport receipts, the Authority actually generates over 70% of its own resources, but depends on Whitehall for grants of over a fifth of its income, and also has somewhat less than half its 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.

Figure 2: Current spending by the Greater London Authority in 2018–19

Source: [The Greater London Authority Consolidated Budget and Component Budgets for 2018–19](#), p.6

This situation may look quite favourable, but Whitehall grants were severely cut in the austerity period (2010–17), with drastic consequences for London police and fire services where personnel numbers had to be greatly reduced. Central government departments also control the authorisation of much of the GLA's vital capital budgets, which are very large because of major transport projects.

The London Finance Commission, 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 (some of which are now devolved in Scotland). 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 transferred to cities or city regions within England.

Two-tier government

The GLA's predecessor as a London-wide body was the Greater London Council, abolished by the Thatcher government in 1986. One of the key reasons was conflict between the Labour-controlled GLC and many of the 32 London boroughs under Conservative control, produced by an overlap of functions. The GLA created by the Blair government in 1999

was therefore designed to keep the mayor (and especially the constituency Assembly members) from interfering in purely local issues. This design aim has generally been achieved. Yet there are inevitably some tensions between the more dynamic GLA and the small and slower-moving London boroughs – for example, 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. Even the harring of Sadiq Khan by irate and **wildly inaccurate tweets** and **interview comments** from US President Donald Trump is an ironic testimony to the international salience of the capital’s executive mayor. 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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6.8

London: government and politics in the boroughs

*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.*

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 (plus the City of London) and the Greater London Authority (the GLA, consisting of a mayor and Assembly; see [Chapter 6.7](#)). The latter has no supervisory responsibility over the former.
- ◆ Boroughs should represent local and neighbourhood interests whereas the GLA represents London-wide ones. The second-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.

The **London 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 substantial municipalities by international standards. Two of the outer boroughs are forecast to have populations in excess of 400,000 by the early 2020s. The scale of London's 8.9 million population makes it hard to envisage a system of government that did not include a local-scale tier capable of representing neighbourhood and community interests. The boroughs (and the still surviving City of London) are relatively powerful units of sub-national government in London. Taken together, their total budget is broadly twice the spending of the top-tier Greater London Authority. So the capital's arrangement can be characterised as a bottom-heavy, two-tier system.

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.

In common with local authorities throughout England, the London boroughs' responsibilities for service delivery have been much reduced by the growth of micro-local agencies (like schools), 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 15 of these elections since the boroughs were created in 1964.

Recent developments

As with local government elsewhere in England, London borough elections use the first-past-the-post ('plurality') voting system (see **Chapter 2.1**). Figure 1 shows that the system greatly advantaged Labour in both 2018 and 2014, with the party winning a 'leader's bonus' of an extra 18% of seats compared to its vote share in 2018 (down a little on 21% in 2014). The Conservatives' vote share across London rose 2.4%, but their numbers of councillors elected dropped by nearly one in six. UKIP had one in eleven votes in 2014 but lost almost all of them in 2018. The Liberal Democrats' vote share improved a good deal in south-west London, but only somewhat across the capital as a whole. The Greens' vote share dropped back, but they gained a handful more seats. The 'other' councillors elected were for local residents' groups. Overall the deviation from proportionality (DV) score (see **Chapter 2.1**) improved a little to a still high 17.6 % (compared with 20.7% in 2014).

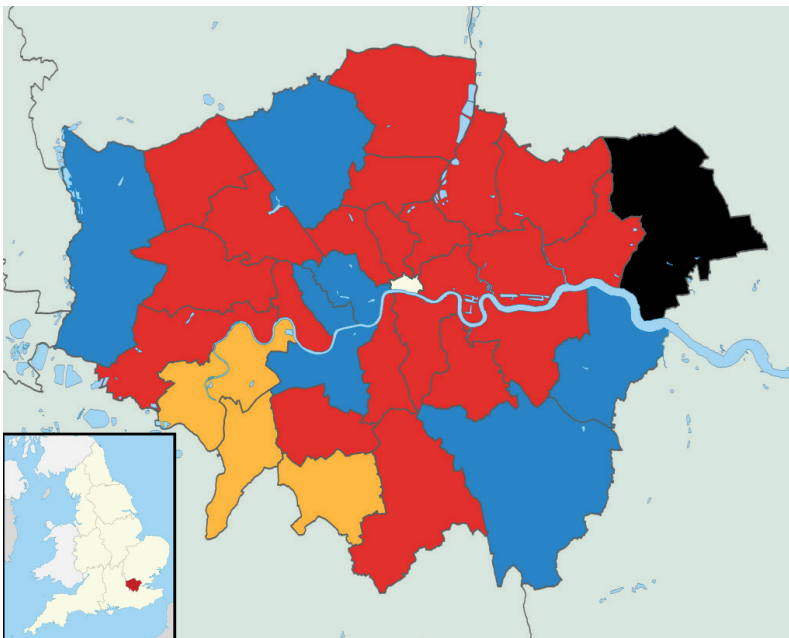
In terms of whole councils changing hands, Figure 2 shows that Labour gained one more to control 21 boroughs (adding Tower Hamlets), but failed to topple Tory control in their inner-urban strongholds of Westminster and Wandsworth. The Conservatives controlled seven (down by two net). The Liberal Democrats won three councils (an increase of two), with one council in no overall control. (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.)

Figure 1: The outcomes of the 2018 and 2014 London borough elections

Party	2018			2014		
	votes%	seats	seats%	votes%	seats	seats%
Labour	43.9	1,128	61.5	37.6	1,061	58.3
Conservative	28.8	508	27.7	26.4	600	33.0
Liberal Democrats	13	152	8.3	10.6	118	6.5
Green	8.6	11	0.6	9.8	4	0.2
UKIP	0.9	0	0.0	9.5	9	0.5
Others	4.8	34	1.9	6.1	27	1.5
Total	100	1,833	100	100	1,819	100

Source: Re-computed from [Wikipedia, 2018](#)

There were also four mayoral elections, in the Labour boroughs of Hackney, Lewisham, Tower Hamlets and Newham, all of which the party easily retained. In Newham the 23-year leadership of [Sir Robin Wales](#) (16 of them as elected mayor) was ended when an election amongst Labour Party members and affiliates (attracting nearly 1,400 votes) chose [Rokhsana Fiaz](#) instead of him as their candidate. She duly won over 73% of the first preference votes in May 2018, becoming the first directly elected female mayor for any London borough. She has promised to hold a referendum on whether to keep a directly elected mayor or go back to a council with 'party leader' model.

Figure 2: Political control of London boroughs after the 2018 elections

Source: [Wikipedia](#) 2018, created using Ordnance Survey maps

Notes: Black indicates no overall control

In 2018, the turnout was estimated at 36% for all the English local elections that took place. In years unaffected by general elections, the highest-ever turnout was 48% in 1990 and the lowest was 32% in 2002. Turnout in the 2014 borough contests averaged 39%. (It was 62% in 2010, when the borough elections were held on the same day as the general election.)

In late 2014, after complaints of election fraud and corruption in Tower Hamlets' administration, the central government **appointed commissioners** to take over its running, 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, the May 2014 election of Tower Hamlets' executive mayor **Lutfur Rahman**, who drew heavily on support from the Bangladeshi community, 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. Some critics argued that the episode highlighted **systemic weaknesses**. However, subsequently, a new Labour mayor was elected and the commissioners were stood down. In 2018, the Labour mayor was re-elected and Tower Hamlets returned to majority Labour control.

In June 2017, a disastrous fire occurred at Grenfell Tower in Kensington and Chelsea borough, killing 72 people, with at least 223 people 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. A major public inquiry began in mid-2018 and its findings are certain to have far-reaching consequences for London governance, building regulation and councils' relations with their tenants. Nevertheless, the borough was retained by the Conservatives in the 2018 election.

Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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. However, in 2018, only 9.5% of votes cast in the borough elections went to parties other than the big three (down from over 26% in 2014). This resulted in 'others' winning only 2.5% of seats.</p>	<p>Because of distortions produced by plurality rule voting (see Chapter 2.1) there is far less democratic competition in some boroughs than others. In Lewisham, Newham and Barking and Dagenham Labour holds all the seats on the council – although Labour also gained 77% of votes in Barking. In Islington the majority party holds all but one and in Lambeth Labour won 54% of votes but holds nearly 91% of council seats: the five opposition councillors left cannot cover everything. The number of minority party councillors on a number of councils is below 10% of the total. The make-up of the electorate and ward boundaries often compound the problems. There are also other boroughs, such as Tory-controlled Westminster and Kensington and Chelsea, where there has never been a change of control, though there is a sizeable opposition in both.</p>
<p>Turnouts at 38–39% have been around 5–6% 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.</p>	<p>Turnout levels, which are historically around 36–39%, are just on a par with other UK local elections, and low by international standards. In 2018 turnout across Kensington and Chelsea rose to 39% but was as low as 30% in Barking and Dagenham, though Richmond achieved 51%.</p>
<p>Stability is a key attribute of the London boroughs. Because 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.</p>	<p>The City of London's democratic position is anomalous and has been for decades. Its franchise includes business votes, a characteristic that 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.</p>

Current strengths	Current weaknesses
<p>Local responsiveness is perhaps the single most important virtue of London boroughs and their councillors. There are over 1,800 councillors in London (compared to 73 MPs and to 25 London Assembly members, only 14 with constituency roles). So London borough wards cover an area or neighbourhood that is small enough to allow easy access to elected representatives. In a city as large as London (1,572 sq km), residents have a need for both local and city-wide voice. Borough councillors make locally sensitive representation possible.</p>	<p>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 participation by the wider local membership.</p>
<p>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 and 2018 – in line with the 2017 general election when just over 16% of London's MPs came from BME backgrounds. Only a third of London councillors are female.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>

Current strengths	Current weaknesses
	<p>(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.</p>
<p>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.</p>	<p>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% 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% or more over seven years. The National Audit Office reported in March 2018 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.</p>
<p>London's boroughs are stable and effective. Despite very large reductions in centrally set funding in recent years, they 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.</p>	

Future opportunities	Future threats
<p>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.</p>	<p>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 taxation powers were to be devolved.</p>
<p>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.</p>	<p>Any recession, whether or not linked to Brexit, could also threaten the boroughs’ capacity to deliver the large numbers of new homes needed. The softening of the London property market during 2016–18 changed the economics of many boroughs’ regeneration plans.</p>
<p>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. The mayor seeks significant additional ‘genuinely affordable’ housing. 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.</p>	<p>The fallout from the Grenfell Tower disaster has inevitably included a need for many London councils to spend substantial amounts of money on improving the safety of their high-rise housing blocks. How far central government will assist in funding of these upgrades still remains somewhat unclear. Boroughs affected 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.</p>

Future opportunities	Future threats
<p>The boroughs can assist the mayor with the delivery of the planned Crossrail 2 trans-London 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.</p>	<p>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.</p>

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 significantly 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, waste disposal 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 one borough there is a majority administration of one party (see Figure 1). 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 quite **separate responsibilities**. 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 for the public to understand the differences between the boroughs' responsibilities and those of the mayor. There is probably greater confusion amongst citizens about how the boroughs' responsibilities for social care link to 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 the rest of England.

In the 18 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 at times disagree, for good democratic reasons.

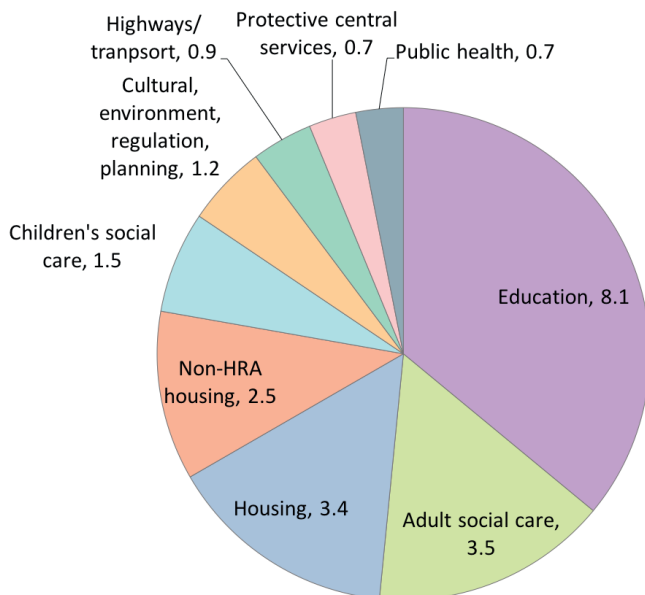
The capacity of each tier of London government to represent different interests: 'local' and 'metropolitan' is, in effect, part of a de facto constitutional settlement for the capital that balances citizens' own different needs. Despite the lack of a formal UK constitution or a London city charter to 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 (that is, 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'.

Figure 3 shows the biggest services in London borough government (although over £6bn of the education amount shown is forwarded directly to schools, with councils mainly shaping the capital spending). The large bulk of the monies that councils directly control is spent on social care for the elderly, ill and children, and on housing, local roads and transport, plus planning/regulation services.

Figure 3: Total expenditure across services (in £ billions) by the 32 London boroughs in 2016–17)



Source: Re-computed from [London Councils](#)

Notes: All numbers are in £ billions and sum across revenue and capital spending. HRA stands for Housing Revenue Account, roughly housing in local government ownership.

In terms of the income to cover this spending, over four-fifths of the boroughs' revenue expenditure is funded by government grants from Whitehall or re-distributed business rates (which are still largely centrally controlled). Less than 20% of revenue spending is funded by the local, property-based, 'council tax'. The latter is effectively capped at a 6% increase per annum for London councils (until 2018 this was 2%). To raise any more than this a council would have to propose and then win a local referendum. However, since 2015 the two Conservative governments 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% 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.

Conclusions

The variegated nature of London's population means that the London boroughs reflect multiple differences that go beyond those related purely to a geographical area. Many groups of ethnic and other 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 the broadly benign picture for the boroughs. London remains an unequal city, and 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. Occasionally events occur which are seen, rightly or wrongly, as systemic in their implications. The [widespread riots in 2011](#) were of this kind, as was the 2017 [Grenfell Tower disaster](#). 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 are now increasingly mindful of.

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6.9

England: local government and politics

*Outside the capital, England is one of the largest areas in the liberal democratic world that still lacks any form of regional governance and its own parliament and government, unlike the rest of the UK. Here, local authorities are the only other tier of elected government. Councils and mayors play a key role in the democratic life of cities, towns and regions. **Colin Copus** and the **Democratic Audit team** explore how democratically they have operated.*

What does democracy require of England's local governments?

- ◆ Councils and mayors should engage wide participation with local citizens in their own governance via voting in regular elections, and through consultation with individuals and interest groups.
- ◆ Local voting systems should accurately convert parties' vote shares into seats on councils and should be open to new parties entering into competition. Voting systems for mayors and other single office-holders (like police commissioners) should maximise the ability of citizens to influence who gets elected.
- ◆ 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 and reflect communities of place that are important in civil society (and not be structured purely for administrative convenience).
- ◆ Local government should be genuinely independent centres of decision-making, with sufficient financial resources 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. Council leaders and executive mayors should be subject to regular and effective scrutiny from the council members as a whole, and publicly answerable to local citizens and media.
- ◆ Local government is typically subject to some supervision on key aspects of their conduct and policies; in England this is conducted directly by the UK government. However, councils and executive mayors should enjoy a degree of constitutional protection (or 'entrenchment') for key roles, and an assurance that they cannot

simply be abolished, bypassed or their fundamental operations altered for solely partisan reasons by central government.

- ◆ The principle of subsidiarity says that all policy issues that can be effectively handled in decentralised ways should be allocated to the lowest tier of government, closest to citizens.

Recent developments: elections

The local elections held in 118 areas across England in May 2018 were the first major test of public opinion following the surprising 2017 general election outcome. Both Labour and the Liberal Democrats gained councillors (compared with four years earlier), while the Conservatives suffered modest losses. Figure 1 shows that Labour won somewhat less than half of the seats, while the Liberal Democrats showed greater local resilience than their national poll ratings, claiming more than one in seven victories. The Conservatives won under a third of seats, as often happens to incumbent governments in English local elections. The results were broadly similar to those in May 2017.

Figure 1: The outcomes of the May 2018 elections in England (outside London)

Party	2018		Cumulative number of councils controlled
	Councillors elected	Percent of seats elected	
Labour	1,225	47.5	53
Conservative	824	31.9	39
Liberal Democrat	390	15.1	6
Independents	89	3.4	0
Green	28	1.1	0
Residents	21	0.8	0
UKIP	3	0.1	0
Liberal Democrat	1	0.0	0
No overall control councils			20
Total	2,581	100.0	118

Source: [Wikipedia 2018](#)

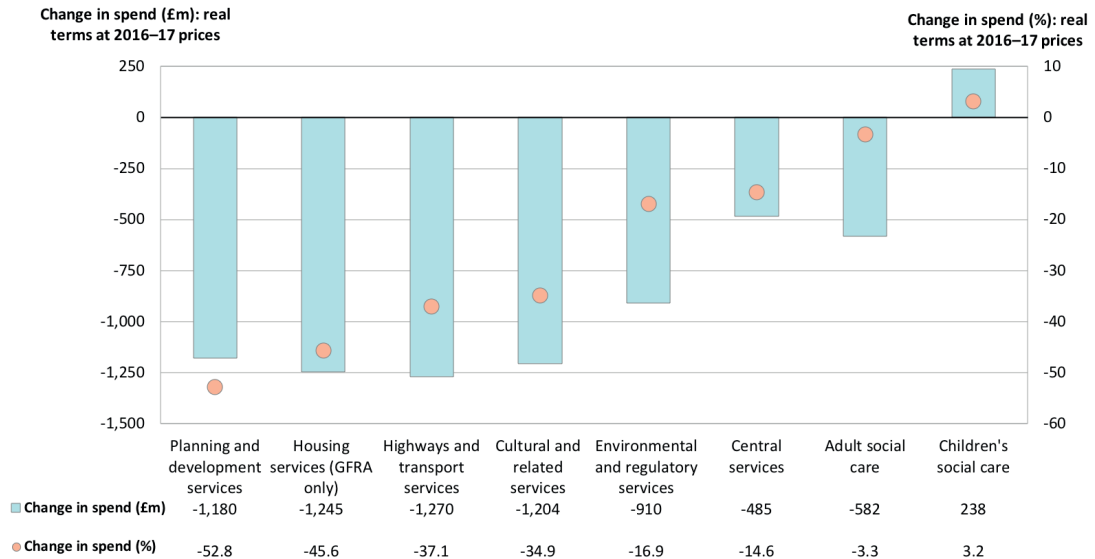
The parties' 'national equivalent vote shares' in 2018 (calculated by the BBC to allow the variations in which council areas are running elections in a given year) saw the top two parties tied on 35% each at the UK level, with the Liberal Democrats on 16%. In the 2017 local elections in England and Scotland (which took place a month before the June general election), the same national equivalent vote shares had put the Conservatives on 38% (winning many new seats), while 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 results of the May 2018 English local elections saw the three main British parties – Conservative, Labour and Liberal Democrats – end up holding some 92% of council seats across England. That figure shows a stunning penetration of local politics by national political parties who in turn shape the local political dynamic and aid the process of centralisation by pursuing national politics locally.

The government headed by Theresa May delivered on previous coalition and Cameron government promises of promoting devolution by creating elected executive mayors to operate on a sub-regional level. Designed to end the decade-long stasis on devolution within England, the new regional or metro mayors would take on functions previously run from Whitehall or quasi-government agencies. In 2017 mayoral elections were successfully held in six areas: turnouts were low, although this might be expected for brand new roles unfamiliar to voters. In 2018, the **Sheffield City Region** held its first metro mayoral elections, attracting a good turnout even though in this case the devolution plans were incomplete at the time of the election. These developments revived the somewhat flagging momentum towards more use of elected mayors (see below).

Recent developments: spending pressures

The impact of UK government austerity policies since 2010 has hit home hardest in English councils. The National Audit Office found that there had been an overall real-terms reduction in Whitehall funding for all English local authorities of 49% since 2010/2011. Figure 2 shows that councils have chiefly, and understandably, cut back 'discretionary' spending which has affected services such as road maintenance, library, museum and leisure services and refuse collection. Councils have also implemented staff redundancies; sold off assets such as land and buildings; and spent 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 some central funding has been made available to ameliorate the worst effects. What we see here is local government as financially bound to and controlled by central government with little room for manoeuvre when it comes to replacing lost government funding.

Figure 2: Changes in English local authority spending on different services between 2010–11 and 2016–17



Source: *Financial sustainability of local authorities 2018*, National Audit Office, 2018, Figure 7

Notes: Data shown are net current expenditure. Adult social care includes transfers from healthcare bodies. GFRA is the General Fund Revenue Account. This provides revenue funding for the bulk of local authority services and is funded primarily by government grants, business rates and council tax. It is separate to the housing revenue account which is used to maintain local authority housing stock and is funded primarily through rental income.

The Local Government Association calculated in July 2017 that the then 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 [including London] would have £15.7bn less central government funding by 2020 than it did in 2010'. Around half of all local councils will get no grant support at all.

Yet social-care spending pressures in particular have steadily increased with growing numbers of elderly people requiring support. Public anxieties about the deteriorating availability and quality of social care surfaced strongly in the 2017 general election campaign. During that campaign the Conservative manifesto included proposals (that were later dropped) for raising the capital a person could own before they were required to contribute to their own social care costs from £23,000 to £100,000. As social care is a devolved responsibility these proposals would have applied only in England.

At the same time local authorities' ability to raise council tax is restricted by Westminster and monies raised from business rates remain nationalised and handed over to the government. Currently, a long drawn out process of business rate retention is being undertaken by government, allowing local government to re-localise business rates so they are collected by and stay with the councils concerned. Such a process however, is a long

way from being concluded satisfactorily for local government. In response to sustained austerity some councils are beginning to use their reserves to maintain essential statutory services. One **experienced observer** noted:

'Social care continues to be the main drain on resources as 66.2% of local authorities with social care responsibilities were forced to use their financial reserves in 2016/17... [Yet] even the richest county, Surrey, is more than £100m in debt, having used up its financial reserves and with no viable plan for the future.'

In early 2018, Conservative-controlled Northamptonshire County Council issued the first local government section 141 notice for 20 years. A 141 notice imposes strict financial controls on the council and prevents any expenditure except on statutory obligations (see below for more details). As a result of this move, itself prompted by financial decisions taken by the council, the Conservative government appointed two commissioners to oversee the county council. By mid summer it became clear that the authority's problems were **extremely serious** and indeed that:

'The scale of the cuts needed are huge. The council must make up £70m savings from its £441m budget over the next few months, and a further £54m savings in 2019–20. It must try to do this while demand for services soars, notably from children's services and social care services for elderly and disabled adults.'

A two-week investigation of the council in the shape of a **'best value'** review conducted by a government-appointed independent commissioner (not the two commissioners mentioned above) concluded in a report that:

'the problems faced by NCC are so deep and ingrained that it is not possible to promote a recovery plan that could bring the council back to stability and safety within a reasonable time scale' (para 4.16). *'A way forward with a clean sheet, leaving all history behind is required'*, (para 4.17).

The report asserts that the above would be best achieved by abolishing the county council, and the seven well-performing district councils, and replacing them with two new unitary councils.

The government undertook a brief consultation process on this suggestion and if two of the eight Northamptonshire councils agreed to the reorganisation proposals all the councils would be replaced with two new unitary councils probably from April 2020. Most of the districts agreed with great reluctance to their own abolition. The move to unitary local government in Northamptonshire fits with a trend across England where previous 'two-tier council' structures (with county councils as the top tier above district councils) have been replaced by 'unitary' authorities. England already has the largest units of local government across Europe and the British government currently wants to see new unitary councils formed with population ranges of 300,000 to 800,000 inhabitants (see below).

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The development of multi-party politics (before 2017) somewhat reduced the number of completely one-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.</p>	<p>Local council elections in England use plurality rule ('first-past-the-post') voting (see Chapter 2.1). It often produces severely disproportional election outcomes, especially over-representing the largest party in a local area. Some councils become completely one-party for long periods, and others are dominant-party systems, where the same party holds power for decades.</p> <p>First-past-the-post elections sometimes provide for a clear winning party but it does not adequately reflect a wide range of political views. If local policy-making is to be a deliberative process where debate takes place in public, a more proportionate electoral system would strengthen local democracy.</p>
<p>The voting system used for executive mayors is the supplementary vote, a system that gives citizens first and second choice votes (see Chapter 2.2). It ensures that the person elected must secure over 50% of the votes from '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.</p>	<p>The supplementary vote used for electing executive mayors and police commissioners is majoritarian not proportionate. If a voter's second preference is not for either of the top two candidates it will not count in the latter round of voting.</p>
<p>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.</p>	<p>Local electoral turnout in England is among the lowest across Europe. It 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.</p>
<p>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.</p>	<p>Currently approximately 50% of local government revenue funding comes from the centre in the form of grants, many of which, such as grants received for schools, are ring-fenced 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.</p>

Current strengths	Current weaknesses
<p>As locally elected representatives, councillors are located closer to the public than MPs and MEPs. They are, therefore, able to make policy decisions, or decisions about the provision of public services, in ways that closely reflect local needs and priorities.</p>	<p>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.</p>
<p>Councillors – and the council as an organisation – are easily accessible to the public and provide channels into local political decision-making.</p>	<p>The large size of English local government – compared to much of Europe – makes it remote from local citizens and undermines it as a truly local institution.</p>
<p>Councils provide for a set of electorally legitimised processes for arbitrating and deciding between competing local views and issues, and resolving them.</p>	<p>Local government can be re-shaped, re-structured and 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.</p>
<p>Local authorities in England have coped creditably with very drastic spending cutbacks forced on them by Whitehall.</p>	<p>Councils and mayors have borne huge reductions in spending, while their statutory duties remain extensive (especially in social care), and their ability to raise local taxes has been controlled by ministers. The financial problems experienced by Northamptonshire, and wider problems across all councils, underline the extent of service cutbacks made and the pressured role of local decision-makers.</p>
	<p>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 functions and limiting councils' tax-raising powers.</p>

Future opportunities	Future threats
<p>Central government's policy of devolution has seen major public service responsibility and some budgets devolved from the centre to new combined authorities. In May 2017 voters in six such combined authorities directly elected a mayor to head the new body. In 2018, Sheffield City Region followed. It is likely that further devolution to local government, through combined authorities, will form a part of government thinking.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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 different local government departments. The processes involved can be confusing, slow and bureaucratic. Taking back control within the UK will speed things up and produce simplified decision-making processes.</p>	<p>There are no guarantees that the UK government will pick up and replace EU funding to 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.</p>

Elected executive mayors

Throughout the 20th century, English mayors were honorific office holders, chairing council meetings and opening civic events, but otherwise devoid of power. Local political power instead lay with the majority party group on the council whose leadership typically formed a 'submerged executive' little known to citizens and not visible to the local media.

The Blair government changed this historic pattern through legislation passed in 1998 to introduce a powerful executive mayor for Greater London. The first mayor was directly elected by voters in 2000 using the supplementary vote (SV), which guarantees that the mayor has clear majority support in their area (see [Chapter 2.2](#) for how this voting system works). The success of this innovation led to local citizens anywhere in England gaining the power through the Local Government Act 2000 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. Figure 3 shows the councils where directly elected mayors exist and the year in which they were introduced. A legislative change in 2007 allowed councils to resolve to move to a mayoral system of governance without a referendum, but only Leicester and Liverpool have used this method. So far there have been 53 referenda and currently there are 16 directly elected mayors heading traditional English councils. Two authorities (Hartlepool and Stoke-on-Trent) had directly elected mayors but subsequently abolished the office.

Figure 3: Elected executive mayors in England in municipalities and the new metro/regional areas

Elected mayors in conventional local authorities	Established
Bedford, Doncaster, Hackney London borough (LB), Lewisham LB, Newham LB, Mansfield, Middlesbrough, North Tyneside, Watford	2002
Torbay	2005
Tower Hamlets LB	2010
Leicester	2011
Bristol, Liverpool, Salford	2012
Copeland	2015
Regional or metro-mayors	
Cambridgeshire and Peterborough; Greater Manchester;	2017
Liverpool City Region; Tees Valley; West of England; West Midlands	
Sheffield City Region	2018

Direct election of local office-holders was adopted by the coalition government for the police and crime commissioners (PCCs), introduced across England and Wales in November 2012. These SV elections attracted only a 15% turnout and of the 37 PCCs in England, when the Conservatives won 15, Labour 12 and independent candidates won a not inconsiderable 10 PCCs. In May 2016, the second PCC elections were held alongside the local elections. This time 21 Conservatives, 16 Labour, 3 independents and 2 Plaid Cymru commissioners were elected (see [Chapter 2.2](#)).

In 2017, the Conservatives' general election manifesto 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 has meant that such a move is unlikely to be given much priority.

Regional or metro-level executive mayors

Since May 2017, a new type of mayor and a new type of sub-national political institution has been introduced, the combined authority, in the seven areas shown in the bottom half of Figure 3, with directly elected regional or metro mayors. The devolution initiative stemmed from the Local Democracy, Economic Development and Construction Act 2009 and the Cities and Local Government Devolution Act 2016.

As the name suggest, the combined authorities are groupings of existing local authorities that have negotiated a devolution deal with the government. The key consequence of each deal is that the councils acting together receive devolved responsibilities for a range of services and devolved budgets. Several metro mayors (including Manchester) have taken 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 and influence across public services. 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 functions, and early developments were promising.

The first elections for the new mayors were held successfully in 2017 and 2018, attracting an encouraging turnout for first-time elections (see [Chapter 2.2](#)). Some mayoral contests [attracted 'big hitter' politicians](#) as candidates. The former Cabinet minister Andy Burnham won the 2017 Greater Manchester contest for Labour against the run of polls, and was quickly prominent in the response to the Manchester Islamist terror bombing. The former John Lewis executive Andy Street won the West Midlands for the Conservatives, while prominent Labour [MP Dan Jarvis](#) easily won in 2018 in Sheffield.

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. At times the 'devolution deals' appear to lack imagination and the process of negotiating deals has been a contested one among the councils as was the [case in Sheffield](#) City Region. The protracted debates about realising a proposed [mayor for the whole of Yorkshire](#) demonstrates the complex problems involved in bringing council areas together for regional-level functions as well as the intensity of local politics.

Some politicians – notably the Blair government – have made siren calls for regional government in England. While England lacks its own Parliament such proposals would simply divide England, breaking it into disputing factions. There is no strong regional identity in England that replicates that found in other European countries, and in 2004 when the Blair government gave voters of the North East of England – deemed by some to have the strongest regional identity – a referendum on regional government almost 78% of voters rejected the idea. Moreover, the administrative regions of England do not reflect

real places in the same way as German Länder or Spanish and Italian regions. Indeed, six of the eight English regions are merely compass points – north-east, south-west – that just so happen to reflect NUTS 1 regions within the EU rather than ‘real’ parts of England. England also lacks its own Parliament, government and First Minister, unlike Scotland, Wales and Northern Ireland, and therefore England is at a great disadvantage when faced with the rest of the UK when it comes to a distinct English voice in the competition for resources from the UK government. It is a disadvantage that no type of local government or sub-regional entity can overcome no matter how local government may be reorganised.

Reorganisation of local authority areas

There has been a long-term and consistent trend in English local government, almost since the creation of recognisably democratic councils by the 1835 Municipal Corporations Act, towards larger and therefore fewer, units of local government. The trend continued in a semi-ad hoc fashion until the Local Government Act 1972 reduced the number of English councils from just over 1,200 to 377 and reduced the number of councillors by around 50% to approximately 20,000. Since then further ad hoc reorganisations have taken place, further reducing the number of councils to 352 (with further reduction in councillor numbers to around 18,000).

Figure 4 shows the most recent reorganisation carried out in 2009 (under the Brown Labour government), which focused in more rural areas with two tiers of district and county councils. These changes saw 44 existing councils abolished and replaced by just nine new councils with a loss of over 1,300 councillors, a 63% reduction in the areas affected.

Figure 4: 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

The unitary debate continues, with austerity and cost-saving often being used as a rationale for abolishing the two-tier system, replacing it with a county-based unitary model. Areas such as Buckinghamshire, Dorset, Leicestershire, Nottinghamshire and Oxfordshire, to name a few, are in a reorganisation battle (some are further on in that battle than others). The first shot in such wars is normally fired by a voracious county council seeking to abolish

its district councils and take on their responsibilities and functions. Some districts however, are not going meekly to the slaughter as in Northamptonshire mentioned above, but are campaigning to keep local government close to communities.

Council reorganisations in England over many decades have created some of the largest units of local government across liberal democracies. They were justified in terms of efficiency and creating a simpler structure of unitary authorities, that is more understandable for citizens. While evidence does not consistently show that larger councils will be more efficient or effective, the British government presses ahead with its unitarisation policies, regardless. Fewer councils mean fewer elected members which means 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 often replaced, which can create more communicative distance between councils and citizens. Subsequent reorganisations of local government, and boundary reviews, have led to a piecemeal reduction of the number of councillors, in a **'stealth process'** that some have argued lacks transparency and any democratic rationale. 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.

Local cabinets and scrutiny committees

The historic patterns of how councils were run in England changed with the Local Government Act 2000. Prior to that all councillors were collectively engaged in decision-making through committees and no single councillor legally held decision-making powers. In reality however, the majority party group of councillors would get 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, whose existence voters were largely unaware of.

From 2000 onwards, all councils were obliged by law to distinguish between councillors holding executive positions within a cabinet headed by an executive leader (or directly elected mayor), and the remainder of the council membership. Executive councillors hold portfolios and if the council decided, can have individual delegated authority. Councillors outside the cabinet no longer have day-to-day decision-making powers, but 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. Overview and scrutiny committees, however, cannot make decisions, only produce reports and recommendations for others to consider.

The Localism Act 2011

The opening 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. A conflict exists here between the legalistic view of local government and a political/governing attitude to 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.

In 2013 the Political and Constitutional Reform Committee, then chaired by Graham Allen MP (and not re-formed after the 2015 election), 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 localism and autonomy could be introduced. It proposed radically new local law-making powers for councils, constitutional protection against being abolished 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.

Conclusions

The striking weakness of English regionalism may be partly due to citizens' strong local loyalties to their existing councils (as well as to Englishness). Local authorities have done a remarkable job in trying to protect their communities from the worst consequences of austerity policies. But councils and mayors 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 (see [Chapter 3.3](#)), plus the dominance of UK national parties in 'first-past-the-post' local elections (see [Chapter 2.1](#)) that only weakly relate parties' seats to their vote share.

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7

How far are equalities essential for liberal democracy secured?

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7.1

Human rights and civil liberties

*A foundational principle of liberal democracy is that all citizens are equal, and so the protection of fundamental human rights is of critical importance for democratic effectiveness. In many countries a statement of citizens' rights forms part of the constitution, and is especially enshrined in law and enforced by the courts. This has not happened in the UK, which has no codified constitution. Instead **Colm O'Coinneide** evaluates the more diffuse and eclectic ways in which the UK's political system protects fundamental human rights through the Human Rights Act and other legislation, and the courts and Parliament.*

How must human rights and civil liberties be protected in a democracy?

- ◆ Liberal democratic states are now expected to respect a range of fundamental human rights set out in international human rights treaties such as the European Convention on Human Rights ('the Convention'). These extend from freedom from torture, to the right to fair trial and freedom from discrimination.
- ◆ It is generally recognised that the functioning of any genuine democracy must be based on respect for these rights, without which individuals cannot participate freely or effectively in the political process.

In the UK constitutional system it is generally assumed that the political branches of government should play a leading role in resolving disputes about the scope and substance of individual rights. However, the courts have become increasingly involved in adjudicating human rights issues over the last few decades. The protection of individual rights is now usually viewed as forming part of the 'mission statement' of the judicial branch of government, and human rights cases now form a considerable element of the case-load of the UK's superior courts.

The Human Rights Act

The Human Rights Act ('the HRA'), passed in 1998 by the first Blair government, is central to the current system of rights protection. It avoided the knotty problem of specifying a list of

particularly 'British' rights by imposing a duty on all public authorities (aside from Parliament itself) to act compatibly with the rights covered in the European Convention of Human Rights (hereafter 'the Convention'), to which the UK has been a signatory since 1951. The Act also gave the UK courts the power to overturn decisions by UK public authorities which breached Convention rights, but not to overrule legislation passed by Parliament. The courts were given the power to declare such legislation to be 'incompatible' with the Convention, and to interpret it where possible in a Convention-friendly manner. However, the ultimate decision whether or not to change legislation that has a negative impact on Convention rights was left in the hands of Parliament – which therefore retains the final say as to what constitutes British law.

If an individual fails to get a remedy before the UK courts under the HRA, they can take a case to the European Court of Human Rights in Strasbourg, as happened over voting rights for prisoners in UK jails. Any judgments made by the European Court of Human Rights against the UK are not binding upon UK public authorities or Parliament. However, strong expectations exist that such judgments by the Strasbourg Court will be complied with by the UK, along with all the states in the Council of Europe.

In addition to the HRA, the common law and other statutes passed by Parliament also play an important role in protecting individual rights by imposing important legal constraints upon public authorities. For example, the Equality Act 2010 prevents public authorities discriminating on the basis of race, sex, disability and other grounds of equal treatment. However, these extra sources of legal rights protection play supporting roles when compared to the HRA.

Despite these various layers of legal protection, human rights nevertheless remain a contested concept in the British political tradition. They are capable of being interpreted and understood in different ways. Deep disagreement often exists as to what exactly constitutes a breach of a fundamental right. Furthermore, different views exist as to when and how the courts should intervene to protect individual rights. Politicians regularly subject the HRA to criticism, and bemoan the influence exerted by the jurisprudence of the European Court of Human Rights (ECHR) over UK law. In 2010 and again in 2015 the Conservative election manifesto proposed replacing the HRA with a 'British Bill of Rights', although in practice Tory governments since 2015 have not been able to implement this idea.

Successive UK governments have also introduced legislation that has diluted protections for civil liberties and fundamental rights in the spheres of national security/counter-terrorism, immigration and socio-economic entitlements: it is likely that this pattern will continue. Brexit is posing further challenges, by in particular removing the safety blanket for certain non-discrimination, migrant and labour rights formerly provided by EU law.

The place of both the HRA and European Convention of Human Rights within the UK's legal system thus remains open to debate, as does the status of human rights values more generally: no consensus yet exists as to how human rights should best be protected within the framework of the British constitution. And while the scope of legal rights protection in the UK is relatively strong, it is limited. Socio-economic rights are particularly poorly covered, and international human rights law has very limited impact on UK law or policy.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The UK's constitutional culture values civil liberties (at least in the abstract). There is a formal embrace of human rights values within government. Plenty of lip service is paid to human rights values both within and outside of government. The UK is also an advocate for extending and improving human rights protection internationally.</p>	<p>Little political consensus exists as to the actual substance of human rights guarantees. The existing framework of UK legal rights protection (based on the HRA and European Convention) is vulnerable to political attack, with Conservative calls for a 'British Bill of Rights' to replace them. Judgments by the ECHR in Strasbourg that go against UK policies or impede ministers' executive action capabilities regularly spark public attacks on the Court.</p>
<p>Current legislation provides a strong legal protection for core civil and political rights via by the interlinked HRA and European Convention on Human Rights mechanisms.</p>	<p>Brexit is removing the safety blanket for certain non-discrimination, migrant and labour rights formerly provided by EU law. The EU's Fundamental Charter of Rights is terminated by the 2018 legislation to withdraw from the EU.</p>
<p>In UK civil society, there is a strong commitment to rights values and activism. Human rights and civil liberties enjoy relatively strong political support, in particular from younger age groups and in the devolved regions.</p>	<p>UK governments have been repeatedly able to introduce legislation diluting rights protection, especially in areas like national security, immigration and socio-economic entitlements.</p>
<p>The UK has a relatively strong institutional framework for protecting rights, which extends beyond the courts – including the Equalities and Human Rights Commission, and the Joint Committee on Human Rights in Parliament (see below).</p>	<p>The scope of legal rights protection in the UK is limited. Social and economic rights (for example, to receive appropriate healthcare) are the most poorly established and protected. International human rights law has had a very limited impact on UK law or policy.</p>

Future opportunities	Future threats
<p>Attempts to reform the existing Convention/ HRA framework led to a pushback that has mobilised political support in favour of retaining them. So far the potential political costs involved, and the inherent difficulties of creating any alternative framework, has meant politicians have not tried to implement major changes from the status quo.</p>	<p>Human rights remain contested concepts in British political culture, and vulnerable to political attack – especially when the rights of terrorist suspects, migrants, members of unpopular minority groups and other disfavoured social groupings are at issue. For now, the place of legal rights protection within the UK’s constitutional culture remains uncertain.</p>
<p>The divisive nature of Brexit process may actually serve to highlight the importance of legal rights protection.</p>	<p>The rise of right-wing populism as a political movement, with its intense anti-immigration focus and proneness to seeking ‘naïve statist’ solutions, has created a political climate where rights risk being swept away to placate ‘nativist’ sentiment.</p>
<p>Enthusiasm for human rights values remains very strong among younger age groups: they also continue to attract support from both intellectual opinion-formers and wide swathes of civil society. This bedrock of support could provide a platform for further expansion of existing rights protection in the future, in particular in areas such as socio-economic rights.</p>	

The UK’s slow and cautious embrace of human rights

The UK only became a democracy in a meaningful sense of that term by 1918 with the achievement of universal (male) suffrage after a long process of constitutional struggle. In the previous decades a wide political consensus had emerged to the effect that the Westminster Parliament should exercise its sovereign law-making powers (within the UK mainland itself) in a manner that respected both the rule of law and basic civil liberties. (For obvious reasons, the legal rules applying in the British empire’s colonies were treated differently – see [Chapter 1.3](#).) These political constraints, taken together with the limited degree of protection afforded by the common law to personal liberty, helped to give rise to a culture of individual freedom that was **comparatively well-developed** for its era.

Until the Second World War and even into the post-war period most lawyers shared the complacent view of the turn-of-the-20th-century legal scholar [A. V. Dicey](#) that ‘the securities for personal freedom are in England as complete as the laws can make them’. He [argued](#):

‘In England no man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law; every man’s legal rights

or liabilities are almost invariably determined by the ordinary Courts of the realm, and each man's individual rights are far less the result of our constitution than the basis on which that constitution is founded.'

As **Anthony Lester** has commented, 'the prevailing British constitutional ideology... treated British subjects as "subjects of the Crown" without the benefit of fundamental constitutional rights'. The liberties of the subject were 'residual and negative in their nature'. The individual was free to do anything that the law had not forbidden, but enjoyed no embedded or constitutionally protected positive entitlements that could not be altered by new legislation or the exercise of ministerial prerogative powers. Respect for rights and freedoms in the UK thus depended on Parliament showing restraint when it legislated on matters that affected civil liberties. Even on the political left this stance was accepted by the Labour Party and trade unions. They feared that formally listing human rights would restrict their future ability to legislate in Parliament to achieve social or economic reforms. It might also introduce (conservative) judges as arbiters of what legislation was permissible.

However, as the 20th century progressed, this Diceyan consensus gradually began to be called into question. The parliamentary restraint needed was not always forthcoming. For example, at various periods parliamentary legislation imposed substantial constraints upon civil liberties in areas such as national security and counter-terrorism, trade union activity, and freedom of speech and the press. The wide-ranging discretionary powers enjoyed by public authorities were also prone to abuse, especially when it came to colonial governance in the British empire, and to the treatment of immigrants, minorities and other groups lacking political power even within the home islands.

From the late 1960s on, this 'legacy' state of affairs came under increasing criticism from civil society organisations campaigning in the field of law reform – such as Justice, Charter 88 and Liberty (then called the National Council for Civil Liberties). In Northern Ireland, during the years of the armed conflict between 1969 and 1995, agents of the state were clearly involved in widespread human rights abuses. Taken together with growing concerns about the treatment of ethnic minorities and other vulnerable groups within British society, these developments dealt further blows to any lingering complacency about how liberties and rights were protected within the UK. The rolling back of the UK welfare state that began in the 1980s, combined with the bitter controversies generated by the trade union conflicts of that era, also helped to erode confidence in the status quo.

The political momentum in favour of reform was also amplified by the emergence of the international human rights movement in the wake of the Second World War. As the language of human rights gained in popularity, states committed themselves to respecting an ever-growing range of fundamental rights. Beginning with the European Convention on Human Rights ('the Convention') in 1951, the UK ratified a variety of UN and Council of Europe treaty instruments setting out a range of binding human rights standards. Many of these commitments became the focus of civil society activism, and began to influence policy-making across a range of different fields. However, the ever-increasing salience of 'rights talk' also began to highlight areas where UK law and policy fell well short of established human rights standards.

In this respect, the civil and political rights set out in the Convention and the interpretation given to these rights by the European Court of Human Rights (ECHR) in Strasbourg became particularly influential. Over time, the Court's jurisprudence established a floor of minimum standards that all European states were expected to respect. And, from the early 1970s on, judgments of the Strasbourg Court began to expose the existence of gaps in human rights protection in UK law. As a consequence, the Court's jurisprudence resulted in significant changes being made to UK law in areas such as freedom of expression, privacy, freedom from discrimination, freedom from inhuman and degrading treatment and the right to fair trial. However, this also drew attention to the lack of a domestic counterpart to the ECHR, and the absence of any legal mechanism within British law which could perform the rights protective function being played by the Strasbourg Court.

The development of the European Union's equality law, as interpreted and applied by the separate Court of Justice of the EU (CJEU), had a similar impact, highlighting the gap that often existed between rhetoric and reality when it came to the UK's commitment to principles of equality, and to non-discrimination more generally. Other areas of human rights law also brought into focus new shortcomings in the UK's track record, in particular when it came to the positive obligations imposed upon the state to take action to protect vulnerable individuals and groups at especial risk of harm – such as children, persons with physical and mental disabilities, refugees and migrants, and the homeless.

All of these factors contributed to fuelling growing disenchantment with the UK's historic approach to human rights issues, and in particular with the lack of any substantial legal human rights protection. In response, British courts began in the early 1990s to identify the existence of a limited set of 'common law rights' such as freedom of expression and the right of access to courts. They now interpreted legislation as subject to a presumption that Parliament did not intend to permit public authorities to violate these common law rights, unless the statutory text contained express or clearly implied provisions to that effect.

However, the major shift in rights thinking was a political one. In 1995 a newly formed (and evanescent) group (the Labour Rights Campaign) circularised Labour constituency parties with a model resolution calling for the incorporation of the European Convention on Human Rights into UK law. This made it onto the final Conference agenda, and was carried overwhelmingly, becoming official Labour policy, and attracting **continuing elite support** within the party. By 1997, when the Labour Party returned to power after 18 years of being in opposition, the political climate was ripe for reform – which cleared the way for Parliament to enact the Human Rights Act (HRA) in 1998. Piloted through by **Lord Irvine** (but almost ignored in Tony Blair's autobiography) the Act qualifies as one of the most significant constitutional innovations since the establishment of the UK's modern democratic structures.

The UK's current system of legal rights protection

The **HRA** incorporated the key rights set out in the **European Convention on Human Rights** into UK law and made it possible for individuals to sue public authorities when these rights are violated. It thereby introduced for the first time a comprehensive form of 'rights

review' into the British legal system. The Act also set out to strike a delicate constitutional balance – by leaving parliamentary sovereignty intact, while making it possible for courts to play an active role in protecting human rights.

A section of the Act [s.6(1) HRA] imposes a **duty on all public authorities** (aside from Parliament) to act compatibly with Convention rights. If a public authority violates a Convention right, then a court can award the victim of the breach a 'just and appropriate' remedy. The courts nevertheless cannot set aside parliamentary legislation (unlike the case with EU law). This leaves Parliament with the final say when it comes to determining the law as it relates to human rights issues. But the courts are required to interpret primary and secondary legislation under one section [s.3 HRA] 'as far as possible' so as to maintain conformity with Convention rights. Alternatively, where that is not possible, under another section [s.4 HRA] the courts can issue a non-legally binding 'declaration of incompatibility', stating that the legislation in question is incompatible with the Convention. Ministers and Parliament are under no (legal) obligation to respond to such a declaration, beyond the political embarrassment involved. But it was designed to draw Parliament's attention to the existence of a situation of incompatibility with the UK's human rights obligations under the Convention – potentially resulting in a fast-track change of the law, if the politicians agree.

The HRA scheme of rights protection was designed to work with the grain of Britain's constitutional traditions, rather than against it. It preserved parliamentary sovereignty while attempting to ensure that Convention rights will nevertheless '**exert a magnetic force over the entire political and legal system**'. Furthermore, since coming into force in 2000, the machinery of the Act has by and large functioned according to its purpose. Its provisions have enhanced awareness of rights in government, while also making it easier for individuals to challenge national laws and practice which infringe their rights.

For example, decisions by the UK courts applying Convention rights in line with the HRA framework have reformed defamation law by extending protection for freedom of speech, enhanced the rights of patients undergoing mental health treatment, granted new rights to unmarried would-be adoptive parents in Northern Ireland, and clarified the rights of persons with serious disabilities. Furthermore, certain major legislative reforms, including the Mental Health Act 2007, the Coroners and Justice Act 2009 and the Protection of Freedoms Act 2012, were passed partially in response to HRA judgments – which had identified problems with the justice and fairness of existing laws.

The legal protection afforded by the HRA has been complemented by other institutional structures. For example, the Westminster Parliament has established a Joint Committee on Human Rights (JCHR), composed of members from both the Commons and the Lords, which scrutinises the human rights impact of legislative proposals and existing law. Outside of Parliament, the official **Equality and Human Rights Commission** has been established to promote the UK's compliance with human rights and non-discrimination. Furthermore, all the devolved authorities, including the Northern Irish and Welsh Assemblies and the Scottish Parliament, are required to comply with Convention rights by virtue of specific provisions set out in the devolution statutes. This limit on the powers of the devolved authorities reflects the assumption underlying the HRA that Convention rights constitute a floor of legal rights protection that all public authorities should respect: it also demonstrates

the extent to which rights protection has been woven into the fabric of the UK constitution in the wake of Labour's constitutional reform agenda of the late 1990s.

Other statutes, such as the Freedom of Information Act 2000 and the Equality Act 2010, have also come to play an important role in protecting rights. In particular, the 2010 Act prohibits public authorities from discriminating on the basis of race, sex, disability and a range of other grounds and requires all public authorities to give due regard in the performance of their functions to the need to eliminate discrimination and promote equality of opportunity. The ongoing development of the 'common law rights' jurisprudence by the superior courts has also contributed an additional layer of legal protection, highlighted by the UK Supreme Court's recent finding in *R(Unison) v Lord Chancellor* that the imposition of employment tribunal fees had breached the common law principle of access to justice.

Outside of the legal context, human rights values attract substantial support – in particular from civil society groups. They also have attracted a certain degree of buy-in from many public authorities, even if the extent of this can vary considerably. UK foreign policy remains committed to promoting respect for the international human rights architecture, and most mainstream UK political voices endorse the importance of rights – in the abstract, at least.

Challenges to the legitimacy of UK human rights protection

Yet real problems remain with the protection of human rights in the UK. Legal rights protection mechanisms such as the HRA focus on core set of civil and political rights. Other types of human rights – in particular socio-economic rights – lack substantive legal protection, with the majority of the UK Supreme Court confirming in *R (SG) v Secretary of State for Work and Pensions* that unincorporated human rights treaty instruments do not form part of UK law. In many areas – in particular the spheres of immigration control, national security/counter-terrorism, freedom of association and speech, and the treatment of persons with mental disabilities and other vulnerable groups – UK law has been the frequent subject of criticism from human rights expert committees at the UN and the Council of Europe.

Furthermore, the manner in which the ECHR and HRA serve as the keystones of the current British system of legal rights protection has come under sustained political attack (from the right or conservative forces) over the last few years. A right-wing press narrative has developed that portrays human rights adjudication as 'fetishising' or being excessively concerned with the rights of minorities at the expense of the public interest. The *Hirst (No. 2)* decision of the European Court of Human Rights in Strasbourg on prisoner voting rights attracted **considerable political hostility**, as have judgments by the EU and UK courts which have imposed constraints on the power of ministers to deport non-nationals. Calls have been made for a fundamental re-think of the UK's relationship with the Strasbourg Court, and by extension with the Convention/HRA scheme of rights protection more generally. For example, Lord Hoffmann in 2009 suggested that an international court like Strasbourg lacked the 'constitutional legitimacy' to impose its interpretation of the abstract rights set out in the text of the Convention on national parliaments and courts, and attacked what he saw as expansionist tendencies within the jurisprudence of the Court. Leading

politicians and conservative think tanks have **voiced similar views**, expressing concern in particular that the HRA and ECHR unduly extended judicial power at the expense of political decision-making.

In turn, there has been a pushback against many of these claims. NGOs, academic commentators and political figures (**even liberal Conservatives**) have defended the HRA and the Strasbourg Court's jurisprudence. They argue that its 'living instrument' interpretative approach allows the Court to maintain the integrity of its case law by ensuring that it reflects contemporary moral and social understandings of the core content of human rights. The argument has also been made that the UK's membership of the ECHR has been a positive force for good, helping to enhance respect for human rights and providing an important safeguarding function in the context of Northern Ireland. Supporters of the legal status quo also make the case that the ECHR link and the provisions of the HRA is wholly compatible with the UK's constitutional values, including the principle of democratic self-governance as reflected in the doctrine of parliamentary sovereignty.

Despite this, critics of the HRA continue to argue that radical reform is needed. Important elements of the **Conservative Party** in particular support repeal of the HRA and its replacement by a 'British Bull of Rights', which would reduce the influence of Strasbourg on UK law and limit the existing scope of judicial protection of rights in areas such as national security and immigration control. The Prime Minister, Theresa May, has even suggested that serious consideration should be given to **the UK leaving the European Convention** system of rights protection.

However, formidable political obstacles lie in the way of any such radical reform. The devolved governments remain very hostile to any tinkering with the HRA, which would require adjustments to be made to **devolved governance arrangements** – and, in the case of Northern Ireland, might breach the terms of the Belfast Agreement 1998. Any move on the part of the UK to withdraw from the ECHR is likely to meet stiff diplomatic resistance from other European governments. Furthermore, any attempt to repeal the HRA is likely to generate substantial legal uncertainty, and to trigger considerable political push-back within the UK.

All of these factors mean that Conservative Party ambitions at various times and in varying strengths to amend/repeal the HRA have thus far not been translated into concrete legislative proposals. However, it remains to be seen how this situation will play out in the future. Brexit is already reshaping important elements of rights protection in the UK. The EU (Withdrawal) Act 2018 gives sweeping powers to the UK government to amend or repeal existing legislation/regulations which give effect to EU law. Many observers fear that these powers could be used in the future to undermine the protection currently **afforded by EU law** in areas such as equality law, labour law and migrant rights. Furthermore, the international climate has grown much more hostile to human rights values more generally, with the rise of aggressive populism (especially nationalist-based) and majoritarian/anti-migrant perspectives in many different states. These trends also surface regularly in British political debates, making the future of human rights protection in the UK look very uncertain.

Conclusions

Once established on the statute books bills or charters of rights have mostly tended to become more and more embedded over time in the thinking and operations of the countries involved. The longer that they can endure and operate, the more difficult it becomes for their critics or opponents to abolish or replace them. The inaction so far on earlier Tory pledges of a 'British Bill of Rights' instead of the HRA since 2010 might be evidence of such an effect. And the bedrock of support for human rights amongst younger age groups, intellectual opinion-formers and wide swathes of civil society could yet provide a platform for further expansion of existing rights protection in the future, in particular in areas such as socio-economic rights where the UK currently falls short. This is also the area highlighted most by the Brexit process, with its polarising impacts on UK society. Potentially, then, repeal of the HRA or withdrawal from the ECHR may fall off the political agenda. In fact, the Brexit process may actually serve to highlight the importance of legal rights protection, and to strengthen support for the status quo accordingly.

However, human rights law and concepts remain vulnerable to political attack – especially when they seem to protect anti-social minorities like terrorist suspects, or unpopular minority groups, like migrants. Right-wing populist political movements, and some sections of the press, with their intense anti-immigration focus, have created a political climate where rights risk being swept away to placate nativist sentiment. For now, the place of legal rights protection within the UK's constitutional culture remains uncertain. Much may depend upon the political fall-out from EU withdrawal, and how UK society responds to the current crisis of neo-liberalism.

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7.2

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. Are previous historical inequalities and discrimination against women being rectified, and is the pace of recent change fast enough?

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).
- ◆ 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 stand for public office and rise to the top in political life.
- ◆ 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, although political parties are not allowed to discriminate against women, they are not obliged to seek gender parity in the candidates they put before voters.

The representation of women in some public roles (such as MPs or member of devolved assemblies) has improved significantly in the last five years. This is reflected by the fact that the Conservative Prime Minister, Scottish First Minister, and the leaders of the Scottish Conservatives, Plaid Cymru, the Democratic Unionist Party and Sinn Féin are all women, as is one of the Green Party's two co-leaders. However, we remain a long way from achieving parity of representation for women in public life.

Furthermore, some new developments, such as the use of social media 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. Yet government proposals here have **apparently stalled**.

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>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).</p>	<p>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.</p>
<p>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.</p>	<p>In tabloid newspapers and other popular media women in public life continue to be treated in unfair ways, and so, for example, are judged on their appearance (the infamous 'Legs-it' <i>Daily Mail</i> cover) or family roles.</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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’.</p>
	<p>Transgender people continue to suffer discrimination and prejudice, including regular unfavourable commentary from some sections of the press.</p>
Future opportunities	Future threats
<p>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.</p>	<p>There is a danger of complacency, of seeing intractable issues as resolved, when many years’ work may still lie ahead.</p>
<p>With Labour leading, parties are adopting quotas and other activist methods to boost women’s representation.</p>	<p>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.</p>

Future opportunities	Future threats
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 prominence in public life, especially in cultural, and media fields.	

Women's representation in UK public life

Everywhere in public life women still remain a minority, despite proactive efforts in some areas, illustrating the very long timespans for changing historic patterns of women's under-representation. 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. This highlights that efforts to support women candidates and elected representatives need to be sustained.

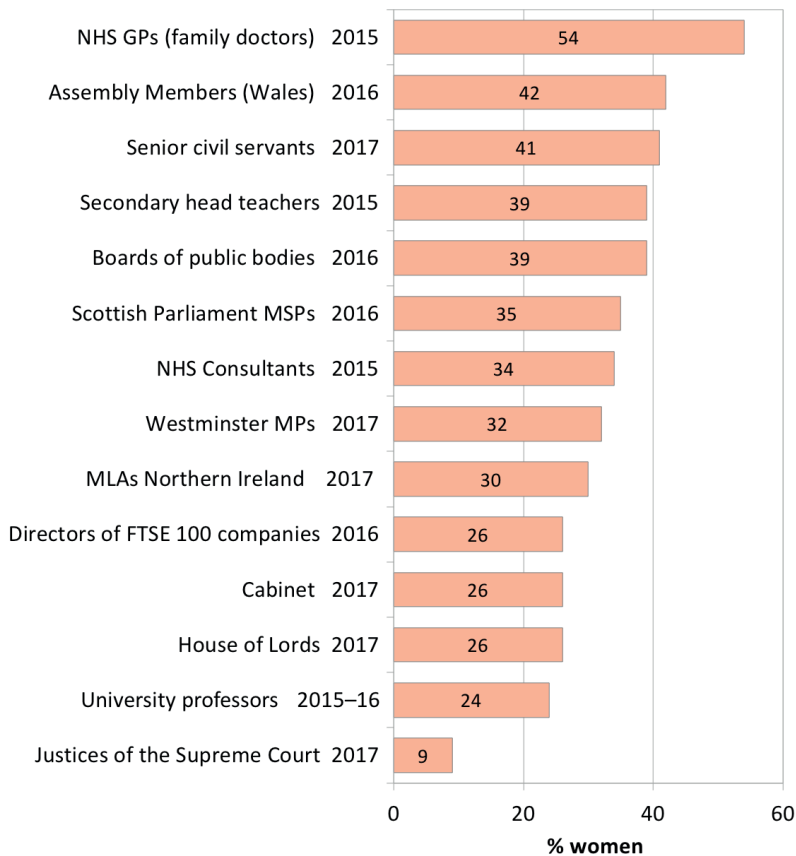
Figure 1 shows that by 2016/17 (or near that date) there were still sharp differences in the extent which women have been able to break into positions of seniority within UK politics and public services. Despite the visibility of women in top political leadership positions, representation in Parliament remains a long way from parity. Only one set of public service positions in Figure 1 (family doctors in the NHS) surpassed 50%, with three others at around 40% (the senior civil service, secondary heads, and the boards of public bodies).

In 2015 less than a quarter of court of appeal and high court judges in England and Wales were women. However, even this was a significant increase on 2010, when only 8% of court of appeal judges and 15% of high court judges were women.

More women have become MPs recently in a large part because most of the main parties fielded more women candidates in 2015 and 2017, and both the Tories and Labour placed women in winnable seats. For example, the Conservatives ran women candidates in **38%** of retirement seats and Labour put 53% of women candidates in winnable seats in 2015. In 2017, the snap election and resultant hurried **candidate selection process** for some seats hindered measures to improve representation. Labour did field **41%** women candidates (up from 34% in 2015) and Conservatives 29% (up from 26%), though not always 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**. However, the flagging Liberal Democrats (previously apathetic about gender disparities) did introduce all-women shortlists for the first time in 2017. They increased their number of women MPs to four out of 12, up from a dismal one. UKIP candidates were predominantly men, and in Northern Ireland only 25% of candidates running for Parliament were women. The Democratic Unionist Party (DUP) did not field any women for Westminster (although their party leader is a woman).

Figure 1: The proportion of women in a range of major roles in UK public life (2015–17 figures)



Source: Vyara Apostolova, Carl Baker & Richard Cracknell (2017). **Women in Public life, the Professions and the Boardroom**, House of Commons Library, Briefing Paper SN5170

David Cameron fulfilled his promise that one-third of his cabinet would be women by 2015. This contrasted starkly with previous Conservative-majority Cabinets, which had a maximum of two women. Theresa May's first cabinet was 29% women. Her January 2018 reshuffle was presented as increasing gender representation, but in fact **included just six women** out of 23 Cabinet ministers (26%). This was **reduced to five** following Amber Rudd's resignation as Home Secretary, although four other female ministers could also attend Cabinet. 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.

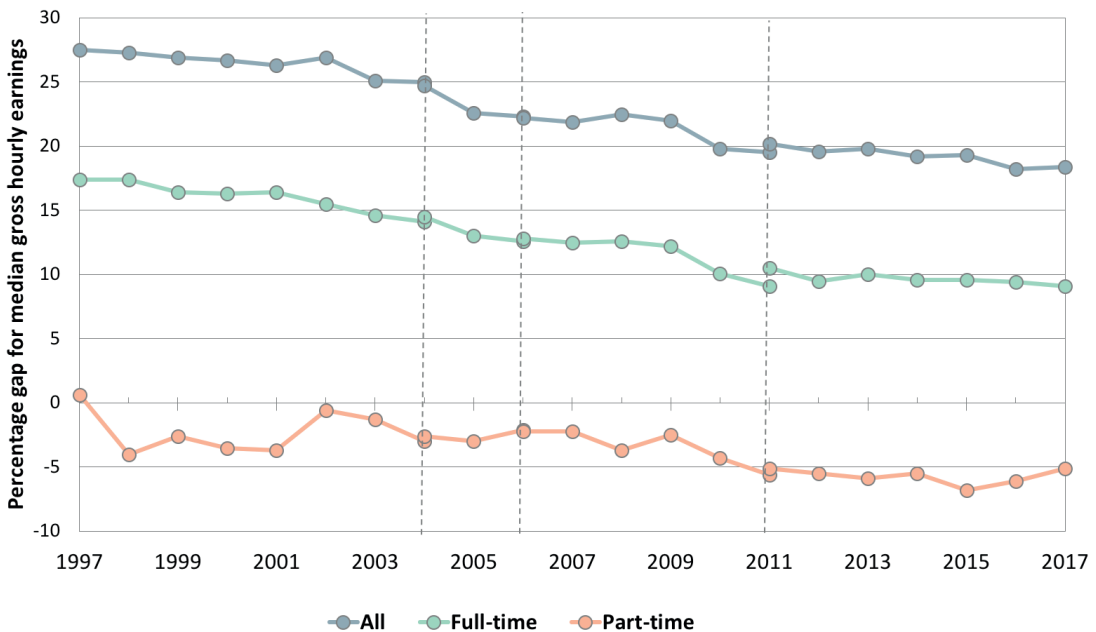
The proportion of women MSPs in Scotland has been significantly better than Westminster. However, recent patterns across three main Scottish political parties (SNP, Labour and the Liberal Democrats) suggest **either a stalling or falling** in the number of women MSPs elected since 2003, a pattern that **still holds**. 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. For a time, the SNP, Scottish Labour and the Scottish Conservatives were all led by women, though Kezia Dugdale resigned as Leader of

the Scottish Labour Party in 2017 and was replaced by Richard Leonard. 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, recent EU-wide research proved the commonly expressed fear that voters are reluctant to support women candidates **unfounded**.

Employment and income

Figure 2 shows that the gender pay gap for median earnings of full-time employees in the UK was 9.1% in April 2017. Although there has been little progress in recent years, this gap in how much men and women are paid for the same work is the lowest since the survey began in 1997, when the gender pay gap was 17.4%. Furthermore, women in part-time work earn just over 5% *more* than their male counterparts – and their rates of part-time pay have exceeded men’s since 1998. Since April 2018 onwards, companies with more than 250 employees have had to **report their gender pay gaps** (see **Chapter 5.4**). The figures have highlighted the persistence of the pay gap in different sectors, but they do not address problems of pay disparity associated with the inadequate representation of women in senior roles, and of part-time pay disparity.

Figure 2: The gender pay gap for median gross hourly earnings (excluding overtime), UK, April 1997–2017

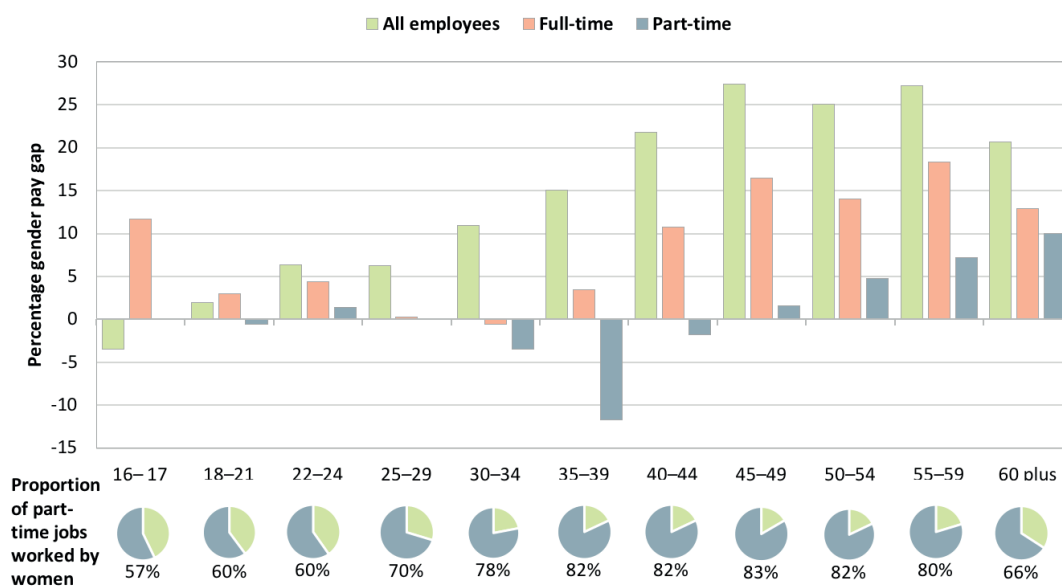


Source: Office for National Statistics, **Annual Survey of Hours and Earnings**, Figure 6.

Notes: Earnings excludes overtime. Full-time defined as >30 paid hours per week. Dashed lines represent discontinuities in the 2004, 2006 and 2011 estimates; 2017 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**. Becoming a mother can still be seriously damaging to women's earnings and the range of jobs that they feel able to take. 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. ONS data show that the full-time pay gap varies according to age group: the differences are relatively small in age groups up to 30, with part-time incomes for women better than their male counterparts in their 30s. It is during their late 30s, 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 earnings persists, uptake is likely to be limited.

Figure 3: Gender pay gap for median gross hourly earnings (excluding overtime) by age group, UK, April 2017



Source: Office for National Statistics, [Annual Survey of Hours and Earnings](#), Figure 16.

Notes: Employees on adult rates, pay unaffected by absence; figures represent the difference between men's and women's hourly earnings as a percentage of men's earnings; full-time defined as employees working more than 30 paid hours per week (or 25 or more for the teaching professions); 2017 data are provisional.

In addition, 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 women's participation in the workplace are important developments and help boost the UK's commitments under the Convention on the Elimination of all forms of Discrimination against Women (**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 2015 LSE report **Confronting Gender Inequality** focused 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.

Conclusions

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 cultures 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. In 2017 it **rose again slightly to 15th**, but still scored poorly on women's economic participation and opportunities. If gender imbalances are to be tackled effectively and in a lasting manner, a much more holistic approach is required.

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7.3

Equality and ethnic minorities

Sonali Campion and Ros Taylor examine the extent to which the media and political representation of ethnic minorities in the UK, and their consequent treatment in public policy terms, tend to foster 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 UK society is moving backwards in terms of tolerance and equality for all?

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 significant part due to immigration from former UK colonies since the Second World War, 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 and a rise in the number of people who identify as Muslim and Hindu.

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 conflicts in the Middle East and Afghanistan and the rise of Islamic jihadist movements (see [Chapter 1.1](#)) have fuelled tensions between communities. More recently, the European migrant crisis and the growth of populist/nationalist Eurosceptic and pro-Brexit sentiments have aggravated some existing divides and added new lines of possible conflict.

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. While other social attitudes (such as over gay marriage) have changed quite radically, racial prejudice seems not to have budged at all. Over recent decades, the percentage of British people who describe themselves as **somewhat racially prejudiced** has never fallen below 25%.

Political responses to external threats have in many cases done little to alleviate tensions. In some areas they may 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 capacity to discuss contentious issues or deliver effective civic education.

One-dimensional reporting about ethnicity and religion has also fed into tensions. One example is *The Sun's* headline in November 2015 claiming: '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**'. But 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 up to 2016 also seems to have gone hand-in-hand with a revived acceptance of '**banal racism**' in areas of the media and public life. During the Brexit campaign UKIP's 'Breaking Point' **poster** depicted a crowd of refugees and urged voters to 'break free of the EU'; the image was widely circulated on social media (Figure 1). It was also widely condemned. The trade union **Unite called it** 'a blatant attempt to incite racial hatred and breach UK race laws', and reported it to the police (without success). Key figures in the official Leave campaign, such as Michael Gove and Chris Grayling, sought to distance themselves and the campaign from this messaging, but the damage was clearly done.

Figure 1: The controversial UKIP Brexit referendum poster

Source: UKIP

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 legitimisation from tabloid press headlines that repetitively cover immigration issues in an alarmist and stigmatising fashion.

Crime classified as race-related hate crime **rose 74%** in England and Wales between 2011/12 and 2016/17 while crime incidents based on religion rose 268% in the same period. At the same time, the Equality and Human Rights Commission **has noted** increasing incidents of hate crimes, with racial, Islamophobic or anti-semitic motivations in England. **In Scotland**, religiously aggravated charges rose 14% between 2015–16 and 2016–17. (These were often incidents of religious abuse between Catholics and Protestants – a third of the charges recorded were at the Scottish Cup Final, May 2016.) Police noted **peaks in race and religious hate crimes**: after the murder of soldier Lee Rigby in 2013; after the Charlie Hebdo terrorist attack in Paris in 2015; in July 2016, immediately after the EU referendum (the biggest spike in recent years); and following the terrorist attack on Westminster bridge in March 2017.

Current policy debates around ethnic inequalities and religion and belief are therefore taking place in a highly charged environment, 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 that the President’s ‘part-Kenyan’ roots were to blame for his ‘anti-British’ attitude.

Early on in his failed London mayoral campaign in 2016, Zac Goldsmith started using the word ‘radical’ to describe his opponent Sadiq Khan, a Muslim from a Pakistani-origin family. 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 Islamophobic undertones, especially when a *Daily Mail* article by Goldsmith 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. Many **commentators argued** that Goldsmith’s defeat by Khan, and his later loss of his Richmond seat to the Liberal Democrats in a parliamentary by-election, can be attributed in a significant part to a backlash against an apparent attempt to exploit or exacerbate London’s ethnic divisions for political ends. Accusations of ‘Islamophobia’ amongst Tory members also resurfaced in 2018. Baroness Warsi **called for an independent inquiry**, emphasising that ‘absolutely nothing tangible has happened’ in response to concerns she has raised in relation to anti-Muslim prejudice since 2015.

Nor has Labour managed to escape rows over religion and ethnicity. In April 2016 Naz Shah, MP for Bradford West, was suspended for an anti-semitic graphic she shared on Facebook 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: he later resigned from the party. Jeremy Corbyn at first **launched an inquiry** into racism in the Labour Party (chaired by Shami Chakrabarti, who was subsequently made a Labour peer), but this was denounced as a whitewash by most Jewish groups.

The controversy continued and burst into flame in the summer of 2018, focusing on Jeremy Corbyn’s past declarations, apparently stalled investigations into other accused Labour members, and Labour’s reluctance to adopt the inclusive, international definition of anti-semitism outlined by the International Holocaust Remembrance Alliance (IHRA). Despite Corbyn’s repeated denials and public rejection of anti-semitism, a range of Jewish leaders made exceptionally **strong personal attacks** on him as an alleged ‘anti-semite’, and in August 2018 the veteran Labour MP Frank Field resigned from the party in protest. In September, Labour finally **adopted** IHRA’s definition in full. The effects of this row on public attitudes remains unclear, but it seem unlikely that it will be positive in combating still **widespread (if low level) anti-Jewish prejudice**.

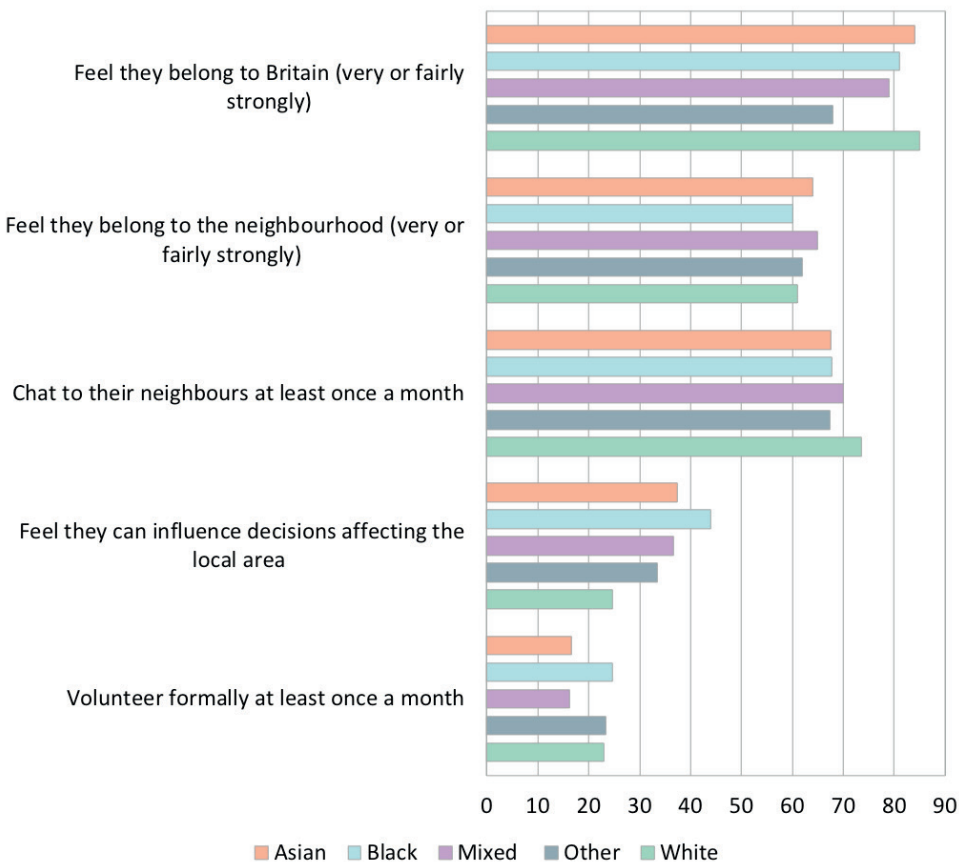
The Windrush scandal and ethnic disparities in public policy

Public servants in the UK generally pride themselves on operating in ‘race-blind’ ways, and legislation prohibiting any form of race or ethnic discrimination, or impairment of people’s human rights is very specific and well-policed. Yet in 2010, when Theresa May became Home Secretary and initiated a ‘hostile environment’ for illegal migration, the Home Office effectively began discriminating against longstanding UK residents of Caribbean origin who formed part of the ‘Windrush generation’ that arrived in the late 1950s and early 1960s (see **Chapter 5.3**). The government eventually admitted to the policy and apologised but not before dozens of elderly people of Caribbean origin were detained and even deported

back to islands they had left decades before. More widely, it emerged that during this same ‘hostile climate’ period Home Office officials had made **5,700 changes** to the immigration rules, doubling the length of the immigration rulebook and creating a moving target that was hard for migrants and would-be citizens to keep up with.

An early promise of the May government was to conduct a racial disparity audit of UK political institutions in order to ‘check how race affects how [citizens] are treated on key issues such as health, education and employment, broken down by geographic location, income and gender’ and to ‘shine a light on how our public services treat people from different backgrounds and influence government policy to solve these problems’. The data was **published in October 2017** (much of it collated from other government departments, or dating from the census in 2011), but was welcomed as an important step forward in some areas. For instance, Figure 2 shows that survey evidence suggested little difference between ethnic groups in their contributions to civil society, taken as a measure of ‘social capital’ – for example ethnic minorities are noticeably more confident than white people that they ‘can influence decisions affecting the local area’. Though intended as a means of compelling departments and public bodies to act, it is unclear whether the data will now be used to inform policy and change.

Figure 2: Measures of ‘social capital’ across ethnic groups in 2017



Source: Cabinet Office, **Race Disparity Audit 2017**, Figure 3.3. (Data from Department for Digital, Culture, Media and Sport, **Community Life Survey 2016–17**.)

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Politicians in the ‘mainstream’ parties (especially the Conservatives, Labour, Liberal Democrats, Greens, and the SNP and Plaid Cymru) have normally renounced any resort to ‘dog whistle’ politics that exploits for partisan ends voters’ evident concerns over immigration and the changing social character of some cities. 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.</p>	<p>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.</p>
<p>Britain has a reasonable track record of promoting the integration of immigrant communities, particularly when compared to neighbours like France and Belgium.</p>	<p>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.</p>
<p>Austria, Germany, France and Denmark have all witnessed local or national bans on Muslim women’s dress that obscures the face. However, there have been few such calls in the UK. In 2018 a much reported press column by Boris Johnson made comments about women who cover their face, which many deemed highly offensive, but argued against any ban.</p>	<p>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.</p>
<p>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, for example, those of Indian origin and descent.</p>	<p>Political responses to immigration issues have tended to focus on economic responses, without fully engaging with cultural concerns held by anti-immigration voters.</p>
	<p>Multicultural policies, while they are associated with more peaceful societies, can also make ethnic majorities feel unsafe and discriminated against.</p>

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.	Since 2016, terrorist attacks in Paris, Brussels, Manchester and London have prompted a rise in hate crime. Xenophobic violence also surged after the EU referendum.
The government has announced recent plans to promote learning English among migrants to offer greater support for tackling discrimination and disadvantage among minority communities – and such provision could easily be expanded. Poor English is worst amongst women in the Bangladeshi, Pakistani, Chinese and Indian communities.	The evolution of migration pressures on the EU as a whole, and specifically on the UK (for example, via the now demolished Calais 'jungle' camp) will assuredly influence UK voters' attitudes further after Brexit.
In Germany the potential problems of racism are far greater for historical reasons, and because of recurring violence against immigrants. The federal government there spends substantial sums (€100m in 2017) on political interventions designed to combat racist ideas early on, combined with curbs on the far right. The UK has no similar programmes as yet.	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, with some indications by summer 2018 that EU migration levels have noticeably decreased in advance of the UK's withdrawal.
Liberal values (for example, 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 ongoing 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.

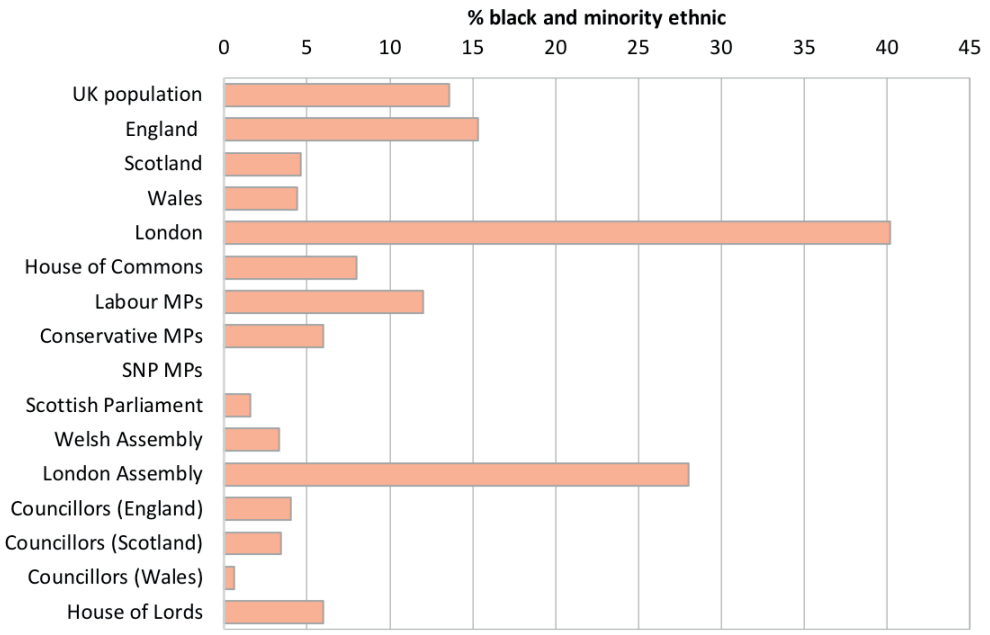
Representation in political life

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, that is, 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. 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).

In government Sajid Javid and Priti Patel were the only non-white members in Theresa May’s first cabinet in 2016. Only Javid remains in 2018, though he is the first person from an ethnic minority to become Home Secretary, and to be discussed seriously as **future Tory leader**.

Figure 3: The percentage of ethnic minorities in various political bodies and populations



Source: [House of Commons Library](#)

Diversity in the media

Ethnic minorities make up 6% of journalists, though that figure conceals major variation between ethnicities, with black journalists accounting for **just 0.2%** of the workforce. But

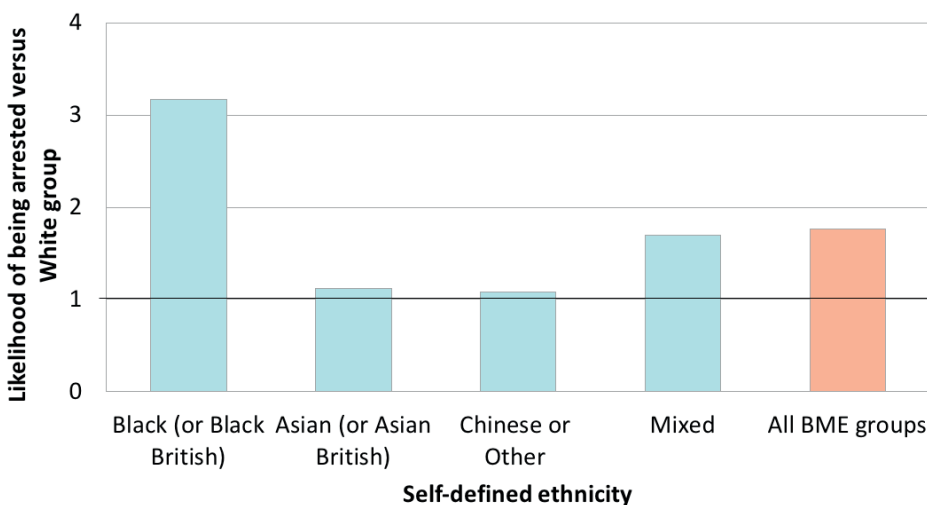
the problem extends beyond just such numbers. There is a lack of diversity in the kind of stories that are reported. And excluded voices are often only brought in to stories dwelling on extremes or ‘otherness’. On the flipside, BAME journalists who do break into the industry are frequently expected to **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 differences between 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%) than the population at large (28%).

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. Over many years BAME people have been one-and-a-half times as likely to be arrested as whites, as Figure 4 shows. Black people were over three times as likely. BAME groups are also more likely to receive longer sentences. Average **custodial sentences** vary a bit from year to year, but were 17 months for white defendants, compared to 24–25 months for black or Asian people, and 21 for mixed-race defendants.

Figure 4: The likelihood of being arrested by people’s self-defined ethnic group, compared with those from white ethnic groups: England and Wales, year ending March 2017



Source: **Home Office** Figure 3.6.

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.

Data from the Youth Justice Board indicated that in 2014–15, 40% of prisoners in young offenders' institutions came from a BAME background. In 2016 Muslims accounted for 14.6% of the prison population, sharply up from 7.7% in 2002. Data show that while the percentage of young people in custody **has declined** since 2004/5, the same proportion has increased for people from black and Asian backgrounds.

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. Likewise, the 2017 **Lammy Report** found a particular problem with youth prisoners, with the proportion from BAME backgrounds rising from 25% to 41% in the decade 2006–16.

In a few parts of the criminal justice sector, ethnic minorities are well represented in relation to population – notably within the Ministry of Justice and the Crown Prosecution Service. However, they are poorly represented in police forces, 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 (12%) has remained fairly stable since 2002. However, they are now much more likely to be Polish (10% of imprisoned foreign nationals) or Romanian (7%).

Reforms to civil law justice, such as reductions in the availability of legal aid, adversely affected ethnic minorities more than others, in part because people in these communities tend to be more reliant on legal aid financial support. The 2017 Lammy Report also highlighted **a lack of trust** in legal aid solicitors which was limiting access to justice by ethnic minority defendants. In addition, many types of immigration and housing cases relevant to BAME groups and Roma are now ineligible for public funding, with **Amnesty reporting** that migrants and refugees have been disproportionately disadvantaged by changes to legal aid. 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. The restoration of legal aid for employment tribunal cases is the only positive sign in this area (see **Chapter 7.1**).

Education

In England between 2007/08 and 2015/16, the percentage of undergraduate university entrants from the Asian, black, mixed and other ethnic groups combined **increased** from 17% to 23%. However, this improving trend is less marked in Wales and Scotland. Meanwhile gypsy and traveller pupils continue to have the lowest attainment levels of any ethnicity,

and the gap here has not changed. 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.

However, in terms of educational attainments some ethnic minority groups place a lot more emphasis on getting to university. The Race Disparity Audit noted (paragraph 2.12) that:

'Pupils from Pakistani and Bangladeshi backgrounds are achieving almost as well as, and progressing better than, White British pupils, whereas the attainment and progress of Black Caribbean pupils is much lower. White pupils from state schools had the lowest university entry rate of any ethnic group in 2016.'

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% of families of Bangladeshi and Pakistani origin live in low-income households, compared to less than 30% of Indian origin. **Research** by 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 than the richest.

A 2017 report by the Equality and Human Rights Commission examined the **occupational pay gap** between ethnic groups, defined as 'the average pay gap within individual occupations, in which people do broadly similar work'. They concluded:

'Among men, ethnic minorities typically earn less within occupations than their White British counterparts. The picture for women is more mixed, with certain ethnic minorities outperforming [White British] women in terms of pay. However, among both men and women, Bangladeshi and Pakistani people have experienced a large and growing occupational pay gap over time.'

The TUC has identified a **23% pay gap** between black and white graduates, with the gap for those educated to GCSE level at 11%. Since this research, pay levels more widely have continued to lag behind inflation.

Employment rates continue to be higher for the white majority than for ethnic minorities (75% compared to 59%). In 2015, [analysis released by the Labour Party](#) indicated that there had been a 49% 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 two percentage 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 tackling ethnic inequality as they have to addressing gender imbalance. For instance, ministers have been urged to push companies to increase the diversity of FTSE 100 boards, or to require the mandatory disclosure of ethnicity pay gaps by companies, a change that has been implemented for gender (see [Chapter 5.4](#)). The Greater London Authority reported a median [ethnicity pay gap](#) of 16% between its BAME and white workforce. The government commissioned the McGregor-Smith review into [race in the workplace](#) in 2017, and then launched a review into measures the first review recommended in February 2018. But ministers have so far [ruled out](#) legislation on enforcing change.

Conclusions

Conceptions of what counts as equality between ethnic groups have changed a great deal in the last decade, and much of the previous elite complacency towards the difficult issues around living in a multicultural society has been punctured. The UK's record of legislating against discrimination within its territory is generally a creditable one but the implementation of improvements in inequality has been slow. Policies relating to immigration, borders and citizenship, together with some aspects of policing and imprisonment, continue to affect different ethno-religious groups unevenly. This partly reflects an increasingly polarised political climate and media landscape around immigration. The Windrush scandal also demonstrated how easily new or disguised forms of officially implemented racial or ethnic discrimination can arise in this environment.

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7.4

The rights of workers

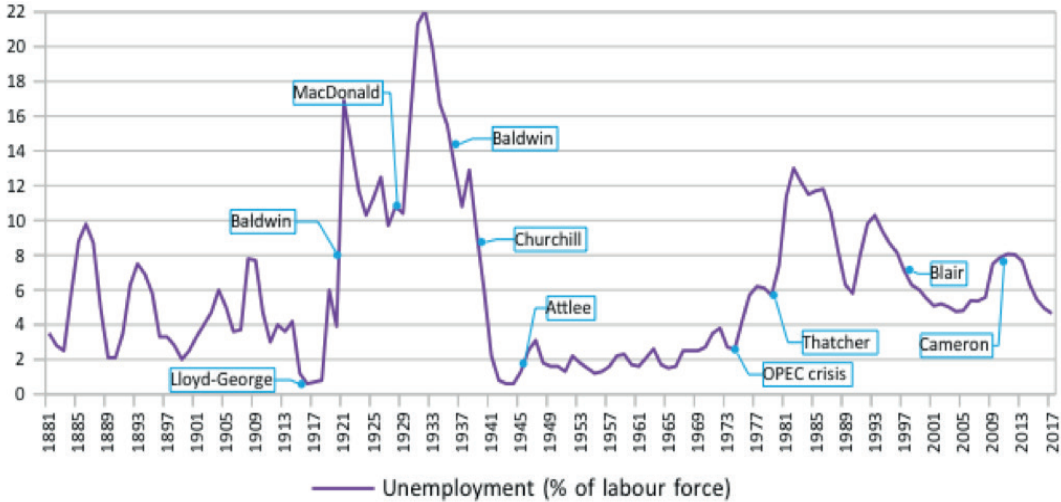
*During the 20th century, developed societies increasingly accepted that democracy could not stop at politics, and had to extend to aspects of the economy as well. Democracy in the economy began – and continues – with workers' rights. **Ewan McGaughey** and the **Democratic Audit team** explore how far they have been handled democratically and effectively in the UK.*

What does democracy require for the protection of workers' rights?

- ◆ A minimum floor of workplace rights, that nobody falls through. It should ensure that everyone has the basic income, time off work, and dignity that they need to pursue the true values of human life: nature, family, participation in community life, science, philosophy, art, music, sport and personal development.
- ◆ 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 because of 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: (i) workers get reasonable notice of termination; (ii) dismissal can take place only on fair terms, judged by one's peers and the law of the land; and (iii) severance pay exists to halt socially unjustified redundancy.
- ◆ Full employment (around 2%) would be central to every government's fiscal, monetary and trade policy. Figure 1 shows how far this was achieved in the UK between 1945 and 2017.

In every democratic society the labour movement 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 create and protect **universal rights** that are not up for sale.

Figure 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 have taken place. The combined effect is that by 2014 British people had 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. Since then (up to spring 2018) real wages **stagnated**. 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% 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 that **Jobseeker's Allowance** would be refused if people turned down (non-exclusive) '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 basic pensions was **delayed between two and ten 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 childcare leave with one another was delayed until 2011, and implemented only in 2015. Last, Theresa May as Home Secretary scrapped the Equality Act 2010 duty on public bodies to promote socio-economic equality. It was, she said, '**ridiculous**'.

Some changes fluctuate. As Home Secretary May **halted virtually all investigations** by the Gangmasters Licensing Authority into the exploitation of migrant and agricultural workers. However, as new issues of 'slave' labour continued to emerge, the agency was renamed the Gangmasters and Labour Abuse Authority in 2016 and its powers were expanded to all industries, and there followed an **increase in reporting** of suspected cases. Its **2018 report** noted that: 'The UK is described as being one of the main destinations of trafficked workers in Europe'.

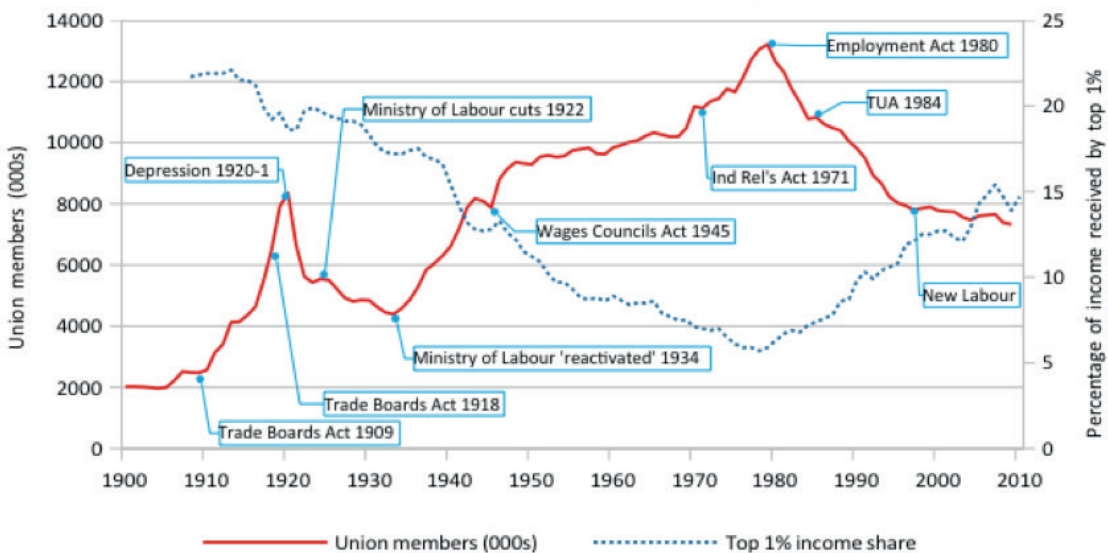
The methods used by Whitehall and ministers to frack the floor of minimum rights has often bypassed representative democracy by using '**Henry VIII clauses**'. Increasingly, Acts of Parliament are passed with the ability of any Secretary of State to amend legislation at will. Social rights are being 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 has risen since 2010, and is promised to be £9 an hour by 2020. But people do not want the minimum-living wage, which provides only 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 can still easily say, ‘You’re fired.’

Figure 2 shows the consequences of labour rights reductions since 1980 (and wider ‘deindustrialisation’ trends) for union membership and inequality. In 1979, collective agreements covered 82% of the British workforce, and now the figure is around 20%. Union membership has continued to wither, and continuous calls for more anti-union laws are still made in the Conservative Party. Figure 2 also shows a useful measure of social inequality, the share of total incomes in the UK going to the top 1% of the population. Correlation is not always causation. But in the UK, the relationship is clear. The loss of voice at work contributed to making inequality soar.

Figure 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, for seven years the government simply refused to engage in meaningful collective bargaining. Instead, from 2010, it froze public sector pay to a maximum 1% increase, cut pensions and made mass-redundancies: all to shrink (without any particular principle) the size of the state. In the 2017 general election the backlash against these austerity policies impressed even Tory MPs and the pay freeze began to be partially and slowly lifted by 2018 – chiefly because of staff shortages and the economic damage that gradually accrues when workers can only increase wages by moving between jobs.

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 and Russia). 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** has been conducted into e-balloting for unions by retired fire chief Sir Ken Knight. It recommended **a pilot of e-balloting** for some non-statutory votes. The Act requires that at any strike 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
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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% and 11.9%. This has led to millions of hardened lives, in poverty and precarity, and squandered trillions of pounds in lost prosperity.</p>
<p>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.</p>	<p>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).</p>

Current strengths	Current weaknesses
<p>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.</p>	<p>UK laws, as Tony Blair said in 1997, are 'the most restrictive on trade unions in the western world'. This has lowered the ability of people to achieve fair wages, beyond the minimum, in their sector. By 2018 low wage growth was a main restriction on the UK economy's capacity for economic growth.</p>
<p>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.</p>	<p>The UK fails to ensure enforcement and universality of core labour rights, particularly on dismissal protection, childcare 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.</p>
	<p>For many decades the UK maintained state-sponsored sex discrimination in childcare leave, even after the 2010 Equality Act. Historically, there was very low paid maternity leave, and virtually nothing for paternity – which had potent effects in harming women's economic advancement. However, from 2015 the government introduced shared parental leave and shared parental pay that can be taken up by either mothers or fathers. The UK's normal minimal standard of income replacement remained, however.</p>
	<p>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.</p>

Future opportunities	Future threats
<p>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.</p>	<p>Under the European Union (Withdrawal) Act 2018 the EU's Charter of Fundamental Rights no longer applies in the UK, potentially opening the way for a post-Brexit Britain to transition further towards a low-wage, minimal labour regulation (even tax haven) economy – a development path enthusiastically foretold by some prominent Brexiteers.</p>
<p>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 (i) raising the minimum wage; (ii) tentative proposals about workers having a voice in company board rooms; and (although now expired) (iii) a commitment to report on getting full employment included in the Welfare Reform and Work Act 2016, section 1.</p>	<p>Major corporations, both UK and multi-national, 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.</p>
<p>Through new social media trade unions have gained unprecedented capacity 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. This new reach can operate independently of politics, and potentially reach social groups previously hard for unions to contact – such as part-time or 'gig economy' workers.</p>	<p>Long-lived and organisationally conservative trade unions may fail to seize the chance to pursue an active strategy to expand their membership, independently from politics. They may also lag in demanding new routes to achieving a voice at work through collective bargaining, and in corporate governance, pension and asset management reform.</p>
	<p>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.</p>

Future opportunities	Future threats
	<p>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 labour law’ – so that the USA 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.</p>

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.

A prevalent ethos in Silicon Valley recommends ‘move fast and break things’ – and especially pushing regulatory systems to a limit hoping to create a customer base that will help companies resist regulatory pushback. For example, the ‘ride-sharing’ company Uber knew the majority of legal opinion states that it is an employer of its drivers. But just as it ran as an illegal, unregistered taxi company until it was banned in Germany, it generally refused to abide by the law and pay tax until made to do so. Arguably 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 ‘Taylor Review’ was **unable to alter this**, but in any case appears to have sided with multi-national 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 the Second World War.

The true problem is not only a fraction of the size of that historic challenge, but also of considerably less social complexity. For instance, automation will not create 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 of those that surrounded the reverse of the British Nationality Act 1948, including the restrictions implemented against citizens of Commonwealth countries by the Commonwealth Immigrants Act 1962, and Enoch Powell's 'rivers of blood' speech in 1968. Within the EU, the UK and Ireland were the countries most open to the ten new member states in 2004. Britain declined to apply transitional restrictions on free movement, but changed its stance when Romania and Bulgaria joined in 2007.

Since 2010 and Theresa May's 'hostile environment' for immigration in pursuit of unattainable reductions in net immigration, the climate has hardened. Even though the war and the rise of 'Islamic State' partly result from the US/UK invasion of Iraq in 2003, Conservative governments were slow to respond to the resulting refugee crisis. By 2018, ministers had agreed to take **23,000 refugees by 2020** from the civil war in Syria (of which 11,000 have been admitted to date after the first scheme **began in earnest** in autumn 2015). The missing element of immigration policy is any serious commitment to international, regional and full employment. People move between states 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 extreme confusion over UK policy following the disappearance of the Tory majority at the 2017 general election, poses an existential threat to all workers' rights, including those deriving from EU law. Historically, 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 applicable throughout 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

If the UK leaves the EU in a ‘hard’ or a ‘no deal’ Brexit’ any workers’ rights that are not already contained in primary legislation (an Act) could be repealed at will by a secretary of state. In any Brexit, British workers also lose the right to vote on the standards that apply across borders. Like the UK itself, they consequently lose bargaining power in a global economy. This does not necessarily mean that workers’ rights will be repealed, but so long as any major political party proves consistently and ideologically hostile to labour rights, nothing is safe.

This Brexit vulnerability does not mean that all EU law has been good for workers’ rights. The extent of EU law’s impact on the UK is disputed. If labour rights and public services are not equally supported everywhere, then the four core EU freedoms (movement of people, capital, services and establishment, or goods) can exacerbate underlying inequality of bargaining power. The Court of Justice of the EU in three major cases (*Viking*, *Laval*, *Rüffert*) held that trade unions’ collective action capabilities, and pro-labour government procurement policies, might both have to be used proportionately to (ostensible) business freedoms. Its theories of ‘market access’ were largely derived from arguments developed by British academics and lawyers (particularly in *Viking*). The results included 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 policies that banned contractors to the public sector paying their workers ‘poverty’ wages.

Within the EU, the Court’s interpretations were resisted by all European trade unions and social democratic parties, so that regressive policies were sometimes changed or circumvented. In this way, ‘social Europe’ generally proved more resilient than ‘social Britain’. However, the European Central Bank and Commission have also 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 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 wider world (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 greater 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 lags behind, and only maintains votes at work (without transparency, in highly imperfect ways, 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 would 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.

Conclusions

Workers' rights are at a critical juncture in the UK in 2018, 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, restricting collective bargaining narrowly within 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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7.5

Class disparities and social inequalities

*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 the adverse effects of class 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.*

How should a genuinely democratic society promote greater class equality?

- ◆ Public policy should focus on addressing and mitigating the structural causes of social and occupational class inequalities, rather than taking refuge in individualised explanations.
- ◆ Positive policies are needed to ensure that working-class people have an equal political voice.
- ◆ Class is not yet a protected characteristic covered by the UK's equality legislation – it should become the tenth such characteristic.
- ◆ 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 working classes – 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.

Class is a **highly charged word** which politicians, media commentators and others are often reluctant to use. Not so long ago now, some serious social scientists doubted the societal importance of class. Even when it was not denied, classed inequality was often discussed implicitly – as disparities of ‘income’, or via euphemistic or distracting ideas of ‘poverty’ and ‘the poor’; ‘economic disadvantage’; or socio-economic ‘deprivation’.

Yet now class is increasingly **recognised** as having enduring significance for describing the distribution of advantage and disadvantage. 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 class inequalities are also about how we relate to others and to ourselves – and class ‘intersects’ with other social divisions such as gender, ethnicity and age.

Recent developments

The highly class-privileged – the upper class, the elite, the ‘super rich’ – have attracted attention in the face of deep economic inequalities post-crisis. High incomes were defined by HMRC as a minimum gross pay of £162,000 in 2014–15, but much executive pay in the private sector is far greater. In addition, 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).

Very high pay levels and the wealth held by ‘the 1%’ 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 a **unity of the many** against the privileged few. Protest movements against severe inequalities 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.

The middle class was forecast (incorrectly) to fare most poorly in a projected ‘first middle-class recession’ from 2008 on. It also appeared, later, in the ‘squeezed middle’ narratives of the Labour Party under Ed Miliband – reflecting the political attractiveness of this more ‘striving’ or ‘aspirational’ labelling. (Yet the same ‘squeezed’ group was identified **by some observers** as contributing to the Brexit Leave momentum.)

By 2016, however, the working class were central too to the discourses about the ‘just about managing’ and ‘ordinary working families’ in the 2016 Brexit campaign. In her first statement as Prime Minister, 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).

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.

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).

One of the more subtle ways that class disparagement works is via the vocabularies used. Outside the careful phrasing of manifestos, class-disadvantaged groups are characteristically depicted at best as the ‘deprived’ and ‘under-privileged’. 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**’.

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, as Figure 1 shows.

Figure 1: The official view of occupational classes in 2017, and their gender balance



Source: **Quarterly Labour Force Survey, April–June 2017**

Nearly a third of the working population are officially categorised as professionals or managers (the two leftmost groupings in Figure 1), while including the ‘associate professional and technical’ group would place 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 still overwhelmingly predominate in the ‘skilled trades’ and ‘process, plant and machinery operatives’.

The 2011 ‘**Great British Class Survey**’ (involving the BBC) moved beyond the emphasis on occupation as a signifier of social class and collected information on the economic, social and cultural capital of 160,000 people. The authors concluded that traditional depictions of class (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 Figure 2.

Figure 2: The ‘Great British Class Survey’ categories and their sizes in 2011

GBC categories	% of UK population	Brief description
Elite	6	Very high economic capital (especially savings), high social capital, very high highbrow cultural capital.
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 capital.
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 in Figure 2 form almost a third of UK respondents, with a technical middle class and new affluent workers constituting a further fifth of the population in the middle. 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.

Despite the fall in (manual) jobs traditionally seen as ‘working class’, successive British Social Attitudes (BSA) surveys found that 60–63% of British 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. And between 2005 and 2015 people became 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, 2016).

Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis

Current strengths	Current weaknesses
<i>In terms of working lives</i>	
<p>Unemployment in mid-2018 stood at 4%, its lowest level since 1975 (ONS August 2018). Positive consequences include reduced class gaps in labour force participation rates, and perhaps increases in levels of wages and income.</p>	<p>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’ (see Chapter 7.4). 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.</p>
<p>The UK has a national minimum wage which rose to £7.83 per hour in 2018 (for people over 25), almost matching the level in Germany. The NMW is set to increase substantially leading up to 2020. It will henceforward be officially called the National Living Wage.</p>	<p>The NMW is very low for younger workers – dropping to only £5.60 an hour for 18–20 year olds. Real earnings in 2018 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.</p>
<p>Free childcare expanded to 30 hours a week in September 2017 (see below). The change can assist more women into paid work, although trials suggested the entitlement was being taking up more by middle-class parents.</p>	<p>Class inequalities persist in the support available for working parents. Given scarce supply, the extension of free childcare could deepen rather than reduce class inequalities in childcare 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.</p>

Current strengths	Current weaknesses
<i>In terms of living standards</i>	
<p>According to the Office for Budget Responsibility (2017, p.5), the UK government spends around £486bn (26% of GDP, 2015–16) on the welfare state.</p>	<p>Systematic cutbacks in public spending continued into 2017 and some 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.</p>
	<p>Since April 2017, the child tax element paid to new claimants of the ‘Universal Credit’ scheme has applied only for the first two children in a household. This is predicted to cut the benefits of 515,000 larger families by 2020.</p>
	<p>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, have adversely impacted the lives of hundreds of thousands of poor people – both those who are out of work (often because of disabilities) and those in low-paid and insecure jobs.</p>
	<p>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.</p>
<i>In terms of housing provision</i>	
<p>The Conservative Party’s 2017 manifesto promised reinvestment in ‘short-term’ social housing. Some small increases in funding followed. In 2018, a consultation paper on the future of social housing was launched by the government.</p>	<p>More long-term and larger-scale solutions are needed to combat the current lack of affordable and social housing.</p>

Current strengths	Current weaknesses
<p>One substantial disincentive to well-off people or companies purchasing multiple 'buy to let' properties was introduced in 2016 with a Stamp Duty surcharge.</p>	<p>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. In some cities and locations Airbnb and similar schemes have reduced the supply of rental housing for local people.</p>
	<p>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 shocking lapses in securing basic safety in social housing revealed by the Grenfell Tower catastrophe.</p>
<p><i>In terms of representations of class</i></p>	
<p>There was a small increase in the numbers of MPs from less privileged backgrounds at the 2017 general election. Fewer MPs than before came from conspicuously privileged backgrounds, and there was the lowest proportion of privately educated MPs on record (29%).</p>	<p>The dominant media and political representations of working-class people, and of the places where they live, remain disparaging. In particular, structural or systematic inequalities are normally presented as the consequences of individual failings. Both the political and media elites (including the BBC) continue to be dominated by people who are themselves drawn from elite-class backgrounds.</p>
<p>There is some evidence of softening public attitudes towards benefit claimants.</p>	<p>The negative portrayal of benefits claimants, especially in the right-wing press disables working-class people in politics, legitimises austerity and deepens class inequality.</p>

Future opportunities	Future threats
<i>In terms of working lives</i>	
<p>The government-appointed Taylor Review of modern working practices made clear that the quality of jobs is a key area for action.</p>	<p>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.</p>
<p>A 'real Living Wage' campaign has sought to persuade employers to voluntarily pay workers (aged 18 and older) a minimum of £8.75 an hour (or £10.20 in London, where living costs are greater). Its spread and success has ramifications for narrowing the wage gap in those firms.</p>	<p>Because it is a voluntary and non-statutory approach, only a minority of employers seem likely to sign up to a 'real Living Wage'.</p>
<p>The rigid 1% cap on public sector wage rises (affecting nurses, teachers and civil servants from 2012 to early 2018) attracted mounting protests, and from 2018 was scheduled to (gradually) end.</p>	<p>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.</p>
<i>In terms of living standards</i>	
<p>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.</p>	<p>Weak economic growth and cuts to welfare are predicted to power the biggest rise in inequality by 2020–21 for the last four decades (see below). Already planned cuts to benefits will impact more on low-income households.</p>
	<p>Cuts to social care budgets signal threats to the most vulnerable in society, including those that require care and caregivers.</p>
<i>In terms of housing provision</i>	
<p>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.</p>	<p>Further gentrification continues to threaten to displace the working classes – who may be priced out of more desirable areas, particularly in central London.</p>

Future opportunities	Future threats
<p>Proposals to reintroduce local rent caps ('rent controls') 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.</p>	<p>Ministers have recognised that benefits flowing via tenants to private landlords may just raise local rent levels. But they have not moved towards controlling rents, instead developing proposals for controlling the amount of rent that is eligible for housing benefits across local areas. This might have some weak effects in keeping local rents down. Alternatively, it may just further impoverish people living on the now lowered benefits.</p>
<p>A greater democratisation of social housing management and policy may follow the Grenfell Inquiry report, where Kensington and Chelsea's supposed 'tenant management organisation' in fact gave residents little influence.</p>	
<i>In terms of representations of class</i>	
<p>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). 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.</p>	<p>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.</p>
<p>Achieving further increases in MPs from less privileged backgrounds could rebalance political representation.</p>	
<p>More positive representations of working-class life in the media and public sphere could counteract key forces worsening the experiences of a classed society. Achieving more diversity in key media professional occupations might also help.</p>	

Living standards stress and benefits changes

Working-class lives are marked by far more strained living conditions than other classes. Their low and middle incomes are accompanied by weak financial safety nets, if any. In 2016, 64% of people living in low- and middle-income households reported having less than £1,500 in savings. The **same 2017 study** found that in 2014, the lowest 15% of people on a wealth scale either owned no assets at all or were in debt. Working-class people especially scrape by, reporting relentless and demoralising everyday worries about spending and accumulating debts – such as some parents **caring for children** whilst unable to heat their homes or afford hot water. A 2016 **estimate** was that six million families were ‘just about managing’. Financial problems grew so intense in the UK 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.

The UK is committed to meeting the United Nation’s (UN) 2030 ‘Sustainable Development Goals’. Target 10.1 is to: ‘progressively achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average’. Yet **research** 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 (2007–8), after adjusting for inflation, indicating only a ‘glacially’ slow growth over time. **Another analysis** estimated ‘that typical incomes increased by just 0.9% (after housing costs) in 2017–18. This is weak, representing less than half the average annual growth rate recorded between 1994 and 2007.’

Because recent levels of unemployment have been low, fewer people in Britain were without any earnings at all, and this has held income inequality down. A ‘Minimum Income Standard’ (MIS) for the UK, which reports on how much income households need to afford an acceptable minimum standard of living, also **identified** a steady decline partly because of the introduction of the higher ‘National Living Wage’. In 2017, the adequacy of incomes fell again, particularly for households with children, because of inflation and the freezing of benefits. Few families can reach this MIS with only one person working full-time on the national minimum wage. Projections to 2020–21 suggest that 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 changed little and showed about 22% 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 deepened, 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 4.1 million children living in poverty in 2016–17, amounting to 30% of all children in the country.

Poverty adversely impacts people’s lives in manifold ways. For example, fully 50% of families in the bottom income quintile would like to take their children away on holiday for

just one week a year, but **cannot afford to**. ‘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 2017 and March 2018, the Trussell Trust **supplied** nearly 1,333,000 three-day emergency food supplies, a **13% increase** on the previous year, with the three main reasons for lack of income being debt, benefit delays and changes in household circumstances.

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 (for example, paying an extra £74 for car insurance and an additional £227 in grocery bills in locations poorly served by supermarkets).

Benefit cuts and changes

‘Reforms’ 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 rollout 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 six 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 affects women most, who are commonly responsible for budgeting, shopping and feeding families.

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. 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**’ about life 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, first implemented in 2013, 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). 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, caring arrangements (especially for disabled people whose carers can no longer stay overnight), 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.

Changing working lives in a class society

Although UK employment levels were high by mid-2018, the quality of jobs (rather than their quantity) is widely seen as a major UK problem. This issue is structured along class lines. The lead author of the Taylor Review into 'Employment practices in the modern economy' declared at its launch:

'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 and Industrial Strategy 2017**).

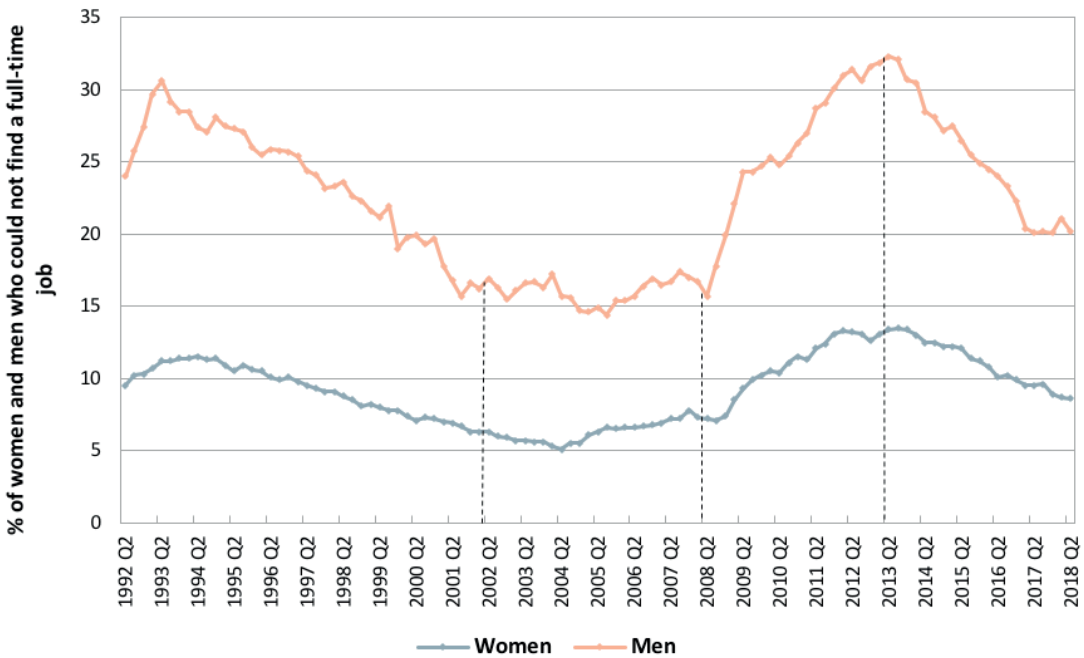
In 2017 real earnings were **still lower** than before the recession hit. Incomes for the bottom earners were supported by the national minimum wage (NMW), which has clearly not increased UK joblessness (as many critics on the right had predicted) and has improved the wages of those in lower-level occupations. The proportion of workers covered by the 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**). In the 2017 general election both parties committed to raise NMW substantially by 2020 (to £8.75 an hour from the Conservatives, and £10 from Labour). The Low Pay Commission claimed that after the government rate was 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 UK 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 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.

Another markedly classed **phenomenon** has been **work-time underemployment** (WTU). This disproportionately affects workers in low-paid occupations, including part-timers who want but **cannot find a full-time job**, resulting in financial and psychological **distress**. To survive some participants can work in up to seven different jobs a week. WTU is linked with severe financial hardship, and was a growing **cause** of work-life imbalance for the working class.

However, by 2016–17 ‘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 found it harder to attract staff on poor conditions. Figure 3 shows that the proportion of part-timers working part-time involuntarily rose steeply from 2008 to 2012, but then began to fall back almost as sharply. A number of legal judgments have expanded rights for ‘gig’ workers 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.

Figure 3: 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

Parents and work

There have been 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) 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 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 (**350 closed** in England in 2010–16, while just eight new ones opened).

How housing inequalities condition class

Being able to secure a stable home in a particular area has huge implications for people’s access to jobs, transport costs, and the environment in which they can afford to live. Yet 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. The conventional wisdom held that middle-class gentrifiers had the biggest impact on the class structure of London, but **new evidence suggests** that the global elites of many countries colonised central London, pushing less advantaged social classes towards its outskirts.

Growth in homeownership (once expected to be dominant in the Thatcher years) has ebbed away because of ‘buy to let’ purchasing, making private renting resurgent. After the 2008 financial crash middle-class home owners and investors experienced unexpected greater uncertainty, historically low interest rates and government and Bank of England **financial policies** propping up asset values. Large amounts of capital switched into ‘buy to let’ housing, pushing prices out of reach of middle- and working-class people in many areas.

Conservative and coalition government policies responding to the ‘housing crisis’ focused mainly on subsidies to get first-time buyers on the housing ladder – despite evidence that tenure alone does not prevent poverty. (**Over half** of those living in poverty were homeowners.) Yet Thatcher’s ideal of a **property-owning democracy** (boosting political stability and Tory voting) has dwindled for the lowest paid. 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, with a study by the Joseph Rowntree Foundation finding that ‘the poorest fifth of the population [are] spending more than a third of their income on housing’.

Past social housing policies in Britain recognised that much of the working class faced a chronic (perhaps perpetual) housing crisis. In 1979, 42% of the UK population lived in council housing; today it is **only 8%**, chiefly because of the Thatcher government's 1980s right-to-buy scheme. Although initially sold to sitting tenants, many former council houses are now in the hands of profit-seeking private landlords, who frequently do not maintain them to former standards, and charge significantly higher rents – mostly subsidised from public funds paying housing benefits. For instance, **one study** showed how a 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.

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 included 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 these houses would return to the market after 10–15 years, to be sold privately via automatic right-to-buy policy.

The Grenfell Tower disaster

Many issues of class and its intersections with other inequalities were shockingly revealed by the Grenfell Tower disaster, where 72 people died in a fire on 14 June 2017 that spread rapidly throughout the council tower block. This occurred just a few streets away from some of London's wealthiest housing in Kensington and Chelsea (one of the UK's richest local authorities), dramatising the extreme inequalities within 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 (see **Chapter 5.3**). 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** by the Conservative local council. The cladding used during refurbishment was made from flammable material and had been chosen as a cost-cutting measure. 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. The tragedy amply demonstrates how damaging and stigmatising representations of tenants have delegitimised and undermined working-class voices, and so excluded them from central and local state concerns.

Representations of the working class

The ways that working-class people and the places they live are pictured and portrayed for the rest of society play 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**', 'slums', 'council estates' and 'sink estates', and even the names of particular places, all contain classed assumptions. **Sociologists argue** that working-class people are seen by more powerful groups as unable to understand or usefully articulate their experiences.

Sometimes working-class people are reproduced as ‘disgusting subjects’ through discriminatory descriptions of their bodies, clothes, behaviour and taste, for example tracksuited ‘chavs’.

Pierre Bourdieu’s concept of social distinction **illustrates** 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, as pathological and immoral. Bourdieu termed this struggle over culture ‘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.

The popular ‘**poverty porn**’ TV sub-genre exemplifies these processes of social classification, symbolic violence and disgust. Beginning in 2013 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 is represented as a lifestyle choice, with benefits claimants depicted as living it up at taxpayers’ expense – further undermining welfare provisions. The **2017 BSA survey** found evidence of softening attitudes towards benefits recipients, yet more people remain critical of benefit fraud than tax evasion.

Politicians and policy-makers often use the areas where the working classes live as **signifiers** for dangerous people and places. They use deprived areas as backdrops to make political claims that certain areas entrench poverty and disadvantage – for example, David Cameron’s war on ‘sink estates’. These depictions deflect attention away from the external forces that produce the conditions of existence for residents there, and instead stigmatise neighbourhoods further. Such 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 illustration of adverse representation concerns the way that working-class people were blamed for the Brexit vote to leave the European Union, although the picture is actually **far more complex** than this. An instant narrative was coined portraying Leave voters as being from disadvantaged areas, ‘left behind’ by globalisation, particularly de-industrialised northern English towns (that is, implicitly *white* working-class communities) – an interpretation that deepened already existing social divisions along axes of class, ethnicity and migration status.

Conclusions

Class inequality and injustice in the UK in 2017 ‘intersects’ with other social divisions with ramifications for how we understand the lives and life chances of different groups of working-class women and men. In a liberal democracy like the UK some control over class disparities and narrowing of class inequality gaps can only be achieved 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, making class a 'protected characteristic' in future Equality Acts could actively combat discrimination and the still-prevalent stigmatisation of working-class people and neighbourhoods.

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8

Assessing democratic quality and renewing the potential for democratic advance

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8

Assessing democratic quality and renewing the potential for democratic advance – Patrick Dunleavy

When people must live subject either to the power of a controlling opponent, or to the weight of institutions accumulated in history, they experience outcomes that are ‘determined, objective, and an already fixed projection of the past’. Powerless people have ‘a future poor in alternatives’, as the German social theorist **Niklas Luhmann** put it. For the part of the British public that in 2016 chose to ‘take back control’ both from the EU, and from the ‘globalising’ elites of the main UK parties, such considerations seemed remote. Yet the post-history of the Brexit vote has shown that breaking free in any long-experienced context is a complex business. How much more is that also true of a whole political system, where citizens and elites alike are struggling to live up to and evolve liberal democratic ideas, while yet maintaining an effective system of government and valued inherited institutions.

This final part has two main tasks. The first is to give an overall assessment of the UK’s changing liberal democracy, looking across all the areas covered in the preceding chapters. The second involves standing back and drawing some wider-out implications – around the loss of a previously influential ‘Europeanisation’ narrative, the roles of micro-institutions, and the sheer difficulty of achieving a sustainable democratic state.

8.1

The UK's recent democratic gains and losses

In the **2012 Democratic Audit**, the immediate predecessor of this volume, Stuart Wilks-Heeg and colleagues wrote that: 'Democracy is not an "end state". Few would argue that the UK is already as democratic as it would be possible, or desirable to be'. Yet their assessment then was broadly positive on the central components of the UK's polity. They recorded improvements in most aspects of democratic operations since two Audits in the previous decade, despite the adverse impacts of austerity measures that were already emerging following the onset of the great financial crisis in 2008 and the 2010 election.

In particular, although the UK in 2012 had a 'hung' parliament (as it does now), the smooth formation of a Conservative–Liberal Democrat coalition (with a clear majority of MPs in the Commons and of votes at the 2010 general election) meant that little changed from 'business as usual'. The core institutions of government in Parliament/Westminster and the Cabinet/Whitehall apparently went on operating in ways that showed some remarkable continuities with the Blair–Brown governments that came before them. A coalition agreement seemed almost as 'effective' and able to grapple with hard choices as traditionalists had always claimed single-party majority governments to be.

Today, after the populist upsurge of diffuse discontent captured in the Brexit referendum, the dramatic loss of the May government's majority a year later, and the protracted, lagging and trouble-prone efforts to devise a basis for the UK to leave the European Union, it is the core institutions over which hang the greatest question marks. The poor ability of the party system to cope with Brexit; the inability of May or Corbyn to foster cross-party co-operation in Parliament to develop or steer through anything other than a partisan strategy for Brexit; and the continuation of high levels of political uncertainty around the issue that two-thirds of the public rate as in the top three for importance – all these have created an almost unique period of ineffectiveness and fraught deadlock at the centre of UK government.

Elsewhere in the UK system there have been some important positive developments for liberal democracy. Devolution changes and the growth of civic nationalism in Scotland; a modernisation/ liberalisation of social attitudes around gender, race and identities; and a greater questioning of 'established' institutions that covered up wrongdoing – these have all signalled important extensions of the 'liberal' component of liberal democracy across

mainland Britain (but less so in Northern Ireland). Yet these changes cannot compensate for the critical failures around the core.

To summarise the conclusions of our analysis, Figure 1 lists a whole series of areas that are important for assessing the democratic quality of any political system. The middle column here shows these key aspects and issues, roughly in the same sequence as the chapters in Parts 1 to 7. For each heading, in the two rightmost columns we show our answers to this qualitative question: 'Have positive and substantial pro-democratisation trends occurred?' And in the two leftmost columns we show our answer to the question: 'Have substantial threats or problems to democratic quality emerged in this area?' Obviously the ideal situation for liberal democratic advance would be one where there have been clear advances, and no worrying adverse trends to offset them. Yet this is not a commonly occurring situation. Instead in most topic areas Figure 1 shows that there is a far more mixed picture, with some positive developments and other adverse changes occurring at the same time.

In order to tie down these judgements more firmly, we borrow a technique from an approach in social science called '**qualitative comparative analysis**' (QCA) – but here used to look across many aspects of one big case. One key QCA step is to ask relatively complex and qualitative questions, such as those at the top of Figure 1, but then provide answers using numeric codes to try to firm up and to systematise the judgements involved. There are many sophisticated ways of doing this in QCA, but we have used the simplest – which focuses on a five-point scale:

Number score	Which means:
1.0	Clearly Yes to the question posed
0.75	Tending towards Yes
0.5	Impossible to say Yes or No to the question – indeterminate
0.25	Tending towards No
0	Clearly No to the question posed

(Another way of framing this coding scheme in a comparative way might be to ask for each aspect if the UK falls into the set of countries that show positive developments towards greater democracy, or into the set of countries showing signs of democratic backsliding or decay?) We show the code for positive developments on the right of each topic heading as a green-shaded cell that has one of the five values above. And we show the code value for adverse trends on the left of the topic heading. At the right end of each row we briefly list the positive developments that give rise to the green score. And at the left end of each row we list the changes that explain the pink-shaded problems and threats score.

Figure 1: Positive developments and adverse developments for aspects of the UK's democracy

Have substantial threats or problems to democratic quality emerged in this area?	Problems/ threats score	Institutional or topic area	Gains/ positives score	Have positive and substantial pro-democratisation trends occurred in this area?
<ul style="list-style-type: none"> Under plurality rule local and regional levels of deviation from proportionality (DV) are still high. And 'electoral deserts' are widespread. The historical record and political science theory both predict higher national DV if multi-party politics revives. 	1	Voting system fairness across parties	0.5	<ul style="list-style-type: none"> National deviation from proportionality (DV) scores fell in 2017, making the result the most proportional for more than two decades. But this was highly contingent on four-fifths of voters backing the top two parties.
<ul style="list-style-type: none"> The obsolescence and ineffectiveness of UK electoral integrity laws are apparant for digital campaigning and the social media era. Possible Russian influence in the Brexit referendum. Failure to control 'Leave' campaign over-spending. 	0.75	Electoral integrity and participation	0.75	<ul style="list-style-type: none"> Turnout improved in 2017, and at the 2016 Brexit referendum. The age gap in turnout was reduced in 2017 and youth participation increased.
<ul style="list-style-type: none"> Procedures for electing party leaders in the Conservatives and Liberal Democrats in 2016–18 were short-circuited in ways that meant party members never got to vote on choosing a leader. The inability to arrange a political succession to Theresa May, and some of Corbyn's problems from his MPs and the press, show that the legitimacy of members electing party leaders is still widely impugned. 	0.5	The democratic roles of political parties	0.75	<ul style="list-style-type: none"> Party memberships have grown strongly in the Labour Party and SNP. Mass memberships and 'clicktivism' via social media both seem to have fostered more member and supporter participation.
<ul style="list-style-type: none"> Powerful business lobbies are still overtly obstructing action against evident harms, as with pollution from diesel cars, sugar in food and an obesogenic environment. 	0.5	The interest group process	0.5	<ul style="list-style-type: none"> A process more focused on cognitive competition may be developing.
<ul style="list-style-type: none"> The partisan press still sets wider media news agendas, and shows a strong pro-Tory imbalance. Brexit press titles have stoked up polarisation by strongly adversarial press coverage. 	0.75	Media support for democracy	0.5	<ul style="list-style-type: none"> There some signs that the political influence of the strongly partisan press has slipped as people's sources of news and opinion have diversified. Post-Leveson press behaviour has slightly improved, from a low base. Rights of redress for inaccuracy and privacy invasions are still weak.

Have substantial threats or problems to democratic quality emerged in this area?	Problems/ threats score	Institutional or topic area	Gains/ positives score	Have positive and substantial pro-democratisation trends occurred in this area?
<ul style="list-style-type: none"> • Fake news and manipulation of information chains, plus libertarian hangovers in major platform companies have dramatised major lags and deficiencies in the regulation of online spaces in the public interest. • Any new medium of communication can give greater prominence and efficacy to harmful social actors, especially where regulation lags behind current social practices (as with trolling, hate speech, and other anti-social communication). 	0.75	Social media support for democracy, and civic participation	0.75	<ul style="list-style-type: none"> • The depth, speed and efficacy of ordinary citizens' vigilance over their elected representatives, government and the public services has clearly improved. • 'Clicktivism' is widely practised and seems to have enhanced (rather than reduced) other forms of civic participation.
<ul style="list-style-type: none"> • Brexit threatens to produce a tidal wave of executive action/ statutory instrument changes with only reduced levels of parliamentary scrutiny. 	0.25	The democratic effectiveness of Parliament	0.75	<ul style="list-style-type: none"> • The return of a 'hung' parliament in 2017, after only two years of majority government has increased the influence of Parliament and of MPs. • Select committees in the Commons have grown in influence, and some analysts argue that bill committees are not as weak as previously thought.
<ul style="list-style-type: none"> • The upper chamber of the legislature is completely unelected. • Appointments are often linked to party donations and leaders' use of patronage. • The Lords did not curb the Conservative–Liberal Democrat government (2010–15). 	1.0	The House of Lords	0.5	<ul style="list-style-type: none"> • The Lords has restrained Tory governments since 2015, forcing significant moderating re-thinks on welfare and Brexit issues.
<ul style="list-style-type: none"> • The UK's 'homeland security' apparatus has greatly expanded in areas that seem to be little covered by parliamentary scrutiny. • Parliamentary scrutiny of UK military actions overseas (for example, bombing in Syria and drone assassinations of alleged terrorists) remains very weak. 	0.5	Civilian control of the military, police, homeland security and intelligence	0.5	<ul style="list-style-type: none"> • Since August 2013 Parliament has perhaps had greater <i>de facto</i> (if not <i>de jure</i>) control over the Prime Minister's use of war powers. • The Intelligence and Security Committee under Dominic Grieve has become more effective and disclosure about (long) past intelligence service activities has improved a little.

Have substantial threats or problems to democratic quality emerged in this area?	Problems/ threats score	Institutional or topic area	Gains/ positives score	Have positive and substantial pro-democratisation trends occurred in this area?
<ul style="list-style-type: none"> • Specific severe policy disasters (for example, Iraq 2003–10, Afghanistan 2007–12, Libya 2013, Universal Credit, defence planning, Brexit delays, and the Grenfell catastrophe) have highlighted enduring and widespread failures in central government. • The overly deep enforcement of austerity and its over-long maintenance increased Whitehall's poor grasp on its cumulative adverse effects, and created widespread administrative malaise. • This in turn helped fuel Brexit populism. 	0.75	Effective core executive – the apex of governance	0	<ul style="list-style-type: none"> • The return to a hung parliament in 2017, plus intra-party divisions over Brexit, and the failure to develop any government and opposition joint working on it, created party management and legislative problems that were debilitating and unfamiliar for No. 10, ministers and the Whitehall apparatus to manage.
<ul style="list-style-type: none"> • Austerity effects have contributed to a loss of core institutional capacity, exemplified by the crisis of light-/no-touch regulation around Grenfell. 	1	Civil service and public services	0.25	<ul style="list-style-type: none"> • It is hard to see signs of any positive changes or improvements, except perhaps some partial protection of NHS services via inflation increases.
<ul style="list-style-type: none"> • A steady stream of fairly minor corruption or integrity scandals has occurred. • UK arms sales remain an area with major ethical problems (for example, in supplying arms clearly used against civilians in Yemen). 	0.5	Integrity in public life	0.5	<ul style="list-style-type: none"> • Past institutional cover-ups (for example, over Hillsborough and in institutions like churches) have been exposed. • Some areas of greater openness show progress (for example, identifying Persons with Significant Control of companies).
<ul style="list-style-type: none"> • Whitehall centralism over Brexit has engendered acrimonious battles over the transfer for EU functions. • The 2017 Tory manifesto threat to the legitimacy of mayoral elections shows a rash willingness to jeopardise well-working democratic institutions solely for minor partisan advantage. 	0.25	Devolution within mainland Britain	1	<ul style="list-style-type: none"> • The strong decentralisation of powers to Scotland and Wales since 2014 have transferred key functions. • The changes have also created a somewhat stronger inter-governmental process, with some Supreme Court overview. • More powers for the London mayor and the creation of new metro/regional mayors have begun to address the gross over-concentration of English governance powers in Whitehall and the previous lack of regional-tier democracy.

Have substantial threats or problems to democratic quality emerged in this area?	Problems/ threats score	Institutional or topic area	Gains/ positives score	Have positive and substantial pro-democratisation trends occurred in this area?
<ul style="list-style-type: none"> • The partial collapse of devolution institutions and arrangements in Northern Ireland, and the border woes there over Brexit are worrying. • The DUP providing 'confidence and supply' to the May government since 2017 puts a question mark over Westminster's impartiality between Northern Ireland communities and parties. 	1	Devolution in Northern Ireland	0.25	<ul style="list-style-type: none"> • So far there have not been major adverse consequences of the suspension of devolved government.
<ul style="list-style-type: none"> • Drastic austerity measures have extensively hollowed out local services and administrative competencies. • The fiscal position of local authorities under austerity policies has become unsustainable. • The value of local democratic politics has been eroded as it becomes solely about the management of unsustainable cutbacks. 	1	Decentralisation to communities and public services	0	<ul style="list-style-type: none"> • No easing of adverse financial pressures on English local government has yet occurred. • Social care for the elderly was a central issue in the 2017 election but funding arrangements remain unsustainable, severely squeezing all other forms of municipal spending.
<ul style="list-style-type: none"> • Government ministers have regularly proposed fees or restricted eligibility criteria for people to access administrative tribunals and other channels for citizen redress. • The very restricted availability of legal aid plus high legal costs shut out most people from effective access to the courts and legal redress. 	0.75	Rule of law and access to justice	0.5	<ul style="list-style-type: none"> • The Supreme Court has been active in defending access to legal aid, and has begun to play a more important and active role in protecting citizens' rights against Whitehall, shaping how devolution arrangements operate, and how Brexit is accomplished.
<ul style="list-style-type: none"> • Proposals for mass surveillance and cracking down on unauthorised access to official papers are recurrently brought forward by ministers or advocated by intelligence agencies. 	0.5	Civil and political rights	0.5	<ul style="list-style-type: none"> • Past Conservative threats to the 1998 Human Rights Act by introducing a 'British Bill of Rights' or even leaving the EHRC court in Strasbourg appear to have receded.

Have substantial threats or problems to democratic quality emerged in this area?	Problems/ threats score	Institutional or topic area	Gains/ positives score	Have positive and substantial pro-democratisation trends occurred in this area?
<ul style="list-style-type: none"> The Brexit decision as implemented in the 2018 EU Withdrawal Act means that the EU's Charter of Rights is no longer applicable within the UK. Executive orders made under this law may radically reduce previous rights in areas like employment. 	0.75	Economic and social rights	0.5	<ul style="list-style-type: none"> Fees for employment tribunal access have been struck down by the Supreme Court. Some 'gig economy' workers' rights have been protected by legal decisions.
<ul style="list-style-type: none"> Brexit populism apparently fuelled a decline in toleration and increased political rancour. The prolonged delay in developing a clear Brexit position gave the lie to previous assumptions about the 'efficiency' or 'effectiveness' of the UK's democratic government. 	1	The UK's influence on the development of democracy worldwide	0.25	<ul style="list-style-type: none"> Some moves in the UK to more socially liberal attitudes can be seen as contributing to similar shifts elsewhere (for example, in Ireland on divorce and abortion, and in Australia on legalising gay marriage).

It is also useful to consider the different topics and areas above in terms of those showing the strongest pro-democracy trends versus those showing the greatest cumulation of adverse developments. Figure 2 shows just the numeric scores for each topic area, showing that negative scores overall outweigh positive.

Figure 3 lists them in order, with the highest net positive scores at the top and the worst net negative scores at the bottom of the table. The clearly positive areas cover devolution within Britain, the roles of Parliament and political parties – shown with green shaded backgrounds. Electoral integrity and the role of social media and civic participation also show strengths, but also some major problems of the digital era. A whole raft of areas have clear negative scores, shown shaded in light pink. In the middle of the table these categories are somewhat offset by equivalent positive changes, but at the bottom of the table they are not.

Overall Figures 2 and 3 makes for somewhat grim reading. In many different respects the UK's liberal democracy is still historically flawed or eroding under modern trends, and these areas outweigh the undoubted positives still occurring, often begun in earlier periods.

Figure 2: Positive and adverse developments in different areas of the UK's democratic life – summarised

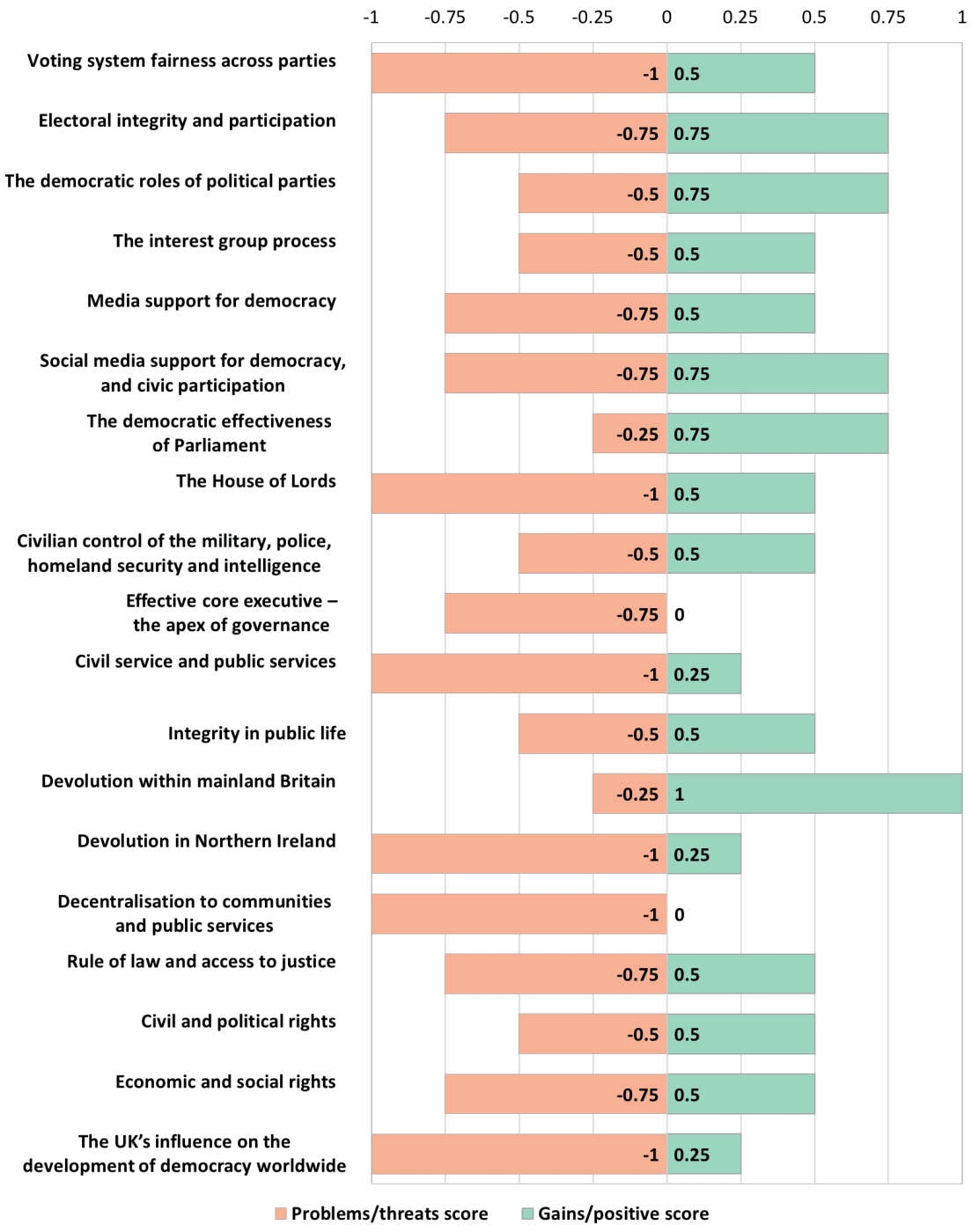


Figure 3: The balance of scores for positive and adverse developments in different areas of the UK's democratic life

Topic or institutional area	Net 'democratic improvement' score	Score for positive developments	Score for adverse developments
Devolution within mainland Britain	+0.75	1.0	-0.25
The democratic effectiveness of Parliament	+0.5	0.75	-0.25
The democratic role of political parties	+0.25	0.75	-0.5
Electoral integrity and participation	0	0.75	-0.75
Social media and civic participation	0	0.75	-0.75
Civilian control of the military, police homeland security and intelligence	0	0.5	-0.5
The interest group process	0	0.5	-0.5
Civil and political rights	0	0.5	-0.5
Integrity in public life	0	0.5	-0.5
Media support for democracy	-0.25	0.5	-0.75
Rule of law and access to justice	-0.25	0.5	-0.75
Economic and social rights	-0.25	0.5	-0.75
Voting system fairness across parties	-0.5	0.5	-1.0
The House of Lords	-0.5	0.5	-1.0
UK influence on the development of democracy worldwide	-0.75	0.25	-1.0
Civil services and public services	-0.75	0.25	-1.0
Devolution in Northern Ireland	-0.75	0.25	-1.0
Effective core executive – the apex of governance	-0.75	0	-0.75
Decentralisation to communities and public services	-1.0	0	-1.0

8.2

Counteracting democratic decay

The UK's mixed, at times even shaky, record of recent changes is just the latest chapter in a series of evolving developments that have created a strong domestic tradition on which citizens, politicians and public servants can draw to adapt to new challenges. This is both a considerable strength and a weakness in several masked ways.

As **Chapter 1.3** argued, the modern UK state apparatus and elite decision-making cultures still bear many legacies of the lengthy imperial state period – principally manifest in an elite culture (spanning the executive, legislature and the senior judiciary) that disdains any fine-tuning of democratic control in favour of prioritising the ability of government to govern. From the mid-18th century to the late 1960s, UK Prime Ministers and Cabinets grappled with jointly running a home island state that was constitutionalising and democratising, while also governing colonies overseas that were essentially run in an authoritarian fashion.

In addition, the long survival and adaptability of the 'British political tradition' bred a kind of superiority complex, in which British decision-makers (and many voters too) thought of the UK as a world leader in democratic practices, the home of the 'Mother of Parliaments', and so not in need of any careful introspection about domestic democracy, still less of learning any lessons from overseas.

These attitudes have waned somewhat in influence but they remain powerful. The currently weak global situation of liberal democracies makes maintaining either stance highly inappropriate, and dangerously complacent. Taking democratic reform in the UK seriously from 2018 onwards is likely to involve three main changes, discussed in turn below. First, the UK's imminent departure from the European Union may (or may not) mark the end of a two decades' long process of the UK's politics and constitutional set-up 'Europeanising'. Does Brexit mean the loss of this potent 'modernisation' pathway for future development? Second, our analysis re-confirms that liberal democratic governance is far more complex than many previous analyses have allowed. In addition to the big and obvious macro-institutions of a democratic state, there are also a host of micro-institutions whose set-up and operations can make a major difference to how the overall political system operates. Finally, the rise of debased semi-democracies, plus extensive backsliding amongst many states previously thought of as securely within the liberal democratic camp, shows the need for a radical reappraisal of the difficulties of sustaining liberal democratic processes on a pathway of growth and positive development.

(i) Losing the ‘Europeanisation’ narrative for modernising British democracy

The 2016 Brexit referendum vote has already marked a key turning point in the UK’s political system. Its significance also extends beyond the economic and governance changes that are directly involved to its likely cultural and symbolic consequences. One of these may be the disappearance of a previously influential narrative of what has been happening to British democracy, and of a template for where it will go in the years ahead. The advent of the Labour government under Tony Blair in 1997 sparked a whole series of major constitutional changes. Traditionalist critics (like Anthony King in his book *The British Constitution*) complained that there was no coherent plan behind Labour’s changes, that ministers had tinkered with a huge range of institutions without being clear what they were trying to achieve.

There is an alternative interpretation, however, namely that from 1997 to 2016 the UK was strongly Europeanising, falling into line with patterns of political development that were (and still are) common to almost countries across western Europe. The cumulative effect of these changes was to ‘normalise’ and ‘modernise’ UK democracy, moving away from past patterns of British exceptionalism and uniqueness compared with neighbouring states. Figure 1 shows some of the most important ‘Europeanising’ trends over these two decades, and asks whether they are likely to continue post-Brexit.

Can the ‘British political tradition’ provide an alternative modernisation template to the Europeanisation/ normalisation pathway after exit from the EU in March 2019? Some **critics argue** that Brexit, plus the SNP push for Scottish independence, plus a prevailing mood of ‘anti-politics’ distrustful of established elites, mean that the Westminster model has never been more contested. Its ‘focus on strong rather than responsive government distances Westminster from citizens’, according to Marsh and colleagues.

Figure 1: Six main ‘Europeanisation’ trends within the UK 1997–2016, and their likely future prospects

Main Europeanising trend	Prospects from 2016 on
Multi-party politics – with a standard five or six parties across the country, including far right, greens, social democrats, conservatives and liberals.	The political ‘suicides’ of the Liberal Democrats (in joining a Tory-dominated government 2010–15) and of UKIP (after Brexit was won) cut back multi-partism in England at the 2017 Westminster elections, but not in the devolved polities or at local level. How long the current focus on the top two-parties will endure is difficult to guess.
Coalition or minority governments (in hung parliaments), because no party wins an overall majority.	Since 2010, only two years have seen a (slender) majority government. But after the Liberal Democrats loss of two-thirds of their voters in 2015, future coalition governments seem unlikely. Minority governments with ‘confidence and supply’ arrangements seem more likely.
Proportional representation voting systems – as in Scotland, Wales, and London.	The public’s rejection of the Liberal Democrats’ doomed 2011 referendum attempt to introduce the alternative vote (AV) electoral system has probably killed off change in this area at a UK level. (Some voting system reform might still happen in Welsh local government.)
Elected executive mayors (and police and crime commissioners).	Executive mayors have spread incrementally under Labour and Conservative governments, so some further expansion is possible.
Civil rights codified in a constitution or single document – as with UK’s Human Rights Act 1998.	The HRA has survived strong Tory mobilisations against it, and looks likely to endure – especially with the UK abandoning the EU’s Charter of Fundamental Rights in 2019 as part of Brexit.
Clear constitutional separation of executive from judiciary – as with the creation of UK the Supreme Court and Ministry of Justice.	Initially opposed by judges and lawyers, the Blair government’s stronger separation of executive from the judiciary has been a considerable success. The UK Supreme Court is likely to grow in influence over time.
Shifts of functions to quasi-federal sub-national governments – as with devolution to Scotland and Wales.	The UK’s devolution arrangements are messy and partial compared to most large European nations, but their successful expansion makes further developments likely in future.

Nonetheless, given the history of the UK's political evolution, it is not out of the question that Brexit leads to a re-emphasis on British exceptionalism, a renewed emphasis on traditional or historical themes in a 'back to the future' mode. Echoes of such a position are strongly present amongst Conservative Brexiteers, and powerfully underlie Boris Johnson's (much misquoted) [complaint against May's Chequers deal](#), that: 'We have wrapped a suicide vest around the British *constitution* – and handed the detonator to [the EU]'. What might be the elements of a resurgence of UK exceptionalism? Some possible pieces are already on the board, including the 2011 referendum rejection of the alternative vote (AV) electoral system as a 'reform' of plurality rule, the revival of two-party dominance (produced by the successive collapses in support for the Liberal Democrat and UKIP) in England, and the re-creation of some mass membership parties. Combined with the cultural backlash that Brexit represents, especially if a charismatic leader like Johnson becomes Prime Minister at any stage, it is conceivable that these and other developments may bring the Europeanisation trends above to a juddering halt, so that the UK's previous 'exceptionalism' from European democratic patterns continues indefinitely.

The final scenario is that Europeanisation trends peter out over time, but that the challenges posed by Brexit and some radically new problems (like adapting to digital-era politics and the growth of social media) mean that the UK's political system stagnates, or deadlocks, or moves randomly from one uncertain situation to another, with no coherent map or narrative of future development. 'Taking back control' of economic regulation, trade, immigration and much more is the biggest change in UK governance for half a century. It has already produced enduring crises for the party system, Parliament and the core executive, with uniquely contested governance over critical issues, and a rapidly changing political landscape. There may well be more of the same ahead.

(ii) Micro-institutions matter, so fix small defects

Past history offers many examples where social and political scientists have been influenced by developments in the STEMM disciplines (science, technology, engineering, mathematics and medicine) in how they seek to understand society. Of course, no direct read-across can occur – but the methods involved in STEMM research often inspire social scientists to do something similar, if they can. For instance, in a range of areas now, 'big data' and the application of artificial intelligence are likely to have extensive consequences for social science methods, just as they already have in STEMM and business research. And the models that STEMM scientists develop often furnish influential *analogies* – especially in understanding how complex causation of events can work.

In terms of causation analogies, the modern development of genetics research has been most recently influential. A decade or more ago geneticists confidently anticipated that they would be able to 'explain' the onset of many different human conditions and diseases by identifying small numbers (ten to a dozen) of genetic markers in the human genome – and that this in turn would open the way to potential remedies at the genetic level. The first

part of these expectations has been confounded however by the far greater complexity of genetic conditioning than anticipated. The **modern picture** is that:

'Many small genetic changes are involved in the expression of a single trait, and each change is correlated with a tiny tweak to the human form. To find the tiny effects that individual letters of the genome have on traits, disease, and behavior, you need enormous data sets to separate signal from noise.'

In particular, although there are some critically important 'main effect' genes, how they operate turns out to be fundamentally shaped or conditioned by many other 'small effects' genes that often switch on or off, or radically modify, the impacts of the 'main' genes. The result is a far more complex and holistically shaped set of influences, requiring the most careful analysis to unpick hundreds of different effects operating simultaneously.

This picture is interesting when set against the far simpler causal patterns that are still being explored in political science, economics and sociology. Most research about the pre-conditions for and influences shaping liberal democracies' development still focuses on some tens or dozens of macro-institution variables – such as the kind of electoral system being used, the number of parties in the party system, the level of 'consensus' in legislatures or executive government, or the fiscal decentralisation of government. Much modern research is still just about trying to quantify macro-institution variables' effects more precisely (with more statistical controls), or to understand their operation in more qualitative ways. But a relatively small causal repertoire is still being discussed.

The approach we have adopted here is informed by a different approach, one that assigns a lot of significance to multiple factors interacting in highly complex causal nets. To start with, creating and maintaining any state is a **not a simple thing**. And controlling that apparatus in liberal democratic ways greatly increases that complexity. It involves meeting many different necessary conditions, all at the same time. These inescapable linkages justify the approach adopted here, of making an in-depth assessment of the quality of the UK's democratic life across multiple different topic areas.

If semi-democracies have taught us anything it is that a genuinely democratic polity is constructed both from a small set of macro-institutions (such as a voting system, or a Parliament), plus *dozens or even hundreds* of different micro-institutions (for example, sets of rules governing which parties or candidates can stand for elections, or how politically balanced any state-controlled media must be between parties). Micro-institutions often play complex roles, some switching on or off the effects of macro-institutions, and others changing radically how macro-institutions operate. Micro-institutions are small-scale rules and regulations, or minor cultural practices. They often sit well outside the scope of any formal 'constitution', instead lurking in the detailed supplementary practices or mores that grow up around how macro-institutions operate. They are also often found in administrative codes that apparently have little direct connection with the macro-institution they shape.

A clear example for the UK concerns Parliament's role in budgeting. Since the English civil war was resolved by restoring the monarchy in 1659, our (uncodified) constitutional law says beyond any doubt that the House of Commons sets the government budget. But a tiny little rule, sitting in the Standing Orders of the House for decade after decade, also says that

no MP can present any proposal for spending even £1 of public money unless they have a certificate signed by a minister, which is never given. At a stroke this requirement means that only ministers can present a budget, and that Parliament can perhaps cut spending out of it, but can never add in anything new. This is a key foundation for the normal *de facto* dominance of the government over the House of Commons, no matter what the formal or apparent constitution may say. In principle, of course, a simple majority of MPs *could* amend the Standing Orders to remove this requirement, but the cultural and attitudinal rethink needed for any such change after so long means that it is not something that ever ‘comes up’. And of course, the elite of the top two parties have a joint incentive to keep it in being.

Even in a designed constitution micro-institutions matter a lot. For example, James Maddison designed the US Electoral College as an elite-level safeguard for ensuring that only ‘moderate candidates’ would reach the Presidency – but the subsequent development of strong parties quickly reduced the College to a constitutional cipher.

We have only just begun to absorb the importance of micro-institutions, so many questions around them are up for discussion – such as how to distinguish one, and (most importantly) count how many there are. Systematically mapping micro-institutions is just beginning, but the relevant numbers within the UK polity are likely to be numerous – on theory grounds alone. The implication of micro-institutions is that many more combinations of ‘big’ and ‘small’ institutional arrangements matter than either most quantitative analyses (still testing ‘toy models’) or institutional theory itself are prepared to admit.

How many combinations might matter in real-life situations though? Suppose that there are three institutions that operate as switches with a range of settings, running in 1% increments from 0% (fully off) to 100% (fully on) for each switch. There would then be 833 different combinations of switch outcomes. Extend this scenario to ten such switches acting at the same time and the number of combinations exceeds two million combinations. If either of these seems unlikely consider that in 2010 in a Commons with eight parties there were only two or three ‘minimum winning coalitions’ (those with no ‘spare’ members), of which only the Conservative–Liberal Democrat alliance was judged feasible by elites. By 2017 no minimum winning coalition passed the parties’ acceptability tests, and the simplest one-party minority government formed instead.

It behoves political scientists to be modest, and to admit that as yet we have only ‘broad brush’ ideas of how macro-variables interact to sustain liberal democracy or not. And we have barely begun to scratch the surface of assessing micro-institutions’ significance – especially in switching on or off, or altering, how macro-variables operate. It seems clear from our analysis above that many different micro-institutions matter across all the chapters, and that political elites and citizens should take alterations in how they are set up seriously. To best sustain liberal democracy, we need a whole ‘swarm’ of micro-institutions to operate in supportive and effective ways – and we should not tolerate persistent small defects that corrode overall democratic quality.

(iii) Reappraising the difficulties of maintaining liberal democracy

The best way of preventing ‘backsliding’ in established liberal democracies is to be constantly aware of the difficulties and complexities in maintaining effective political equality and institutional responsiveness. To be sure of moving forwards it seems sensible never to ‘rest on your laurels’, but instead to maintain a strong focus on making democratic advances – sustaining continuous improvements in how citizens can seek to influence political elites, raising the standards of performance we expect from our institutions, and removing solvable institutional defects, especially the ‘legacy’ hangovers from past practices that impede current progress.

‘All government is an ugly necessity’, said G. K. Chesterton.. So there will always be extensive room for debate and deliberation about exactly how continuous democratic advance is to be achieved. Yet it seems clear that in the modern world, states are effectively ‘immortal’, and are not going to die away, despite the free-market rhetoric of the neo-liberal right or the communitarian dreams of left anarchists or ‘deep green’ ecologists. As long as states, communities and the need to make collective choices endure, then the relevance of liberal democracy will also.

It is surely also long overdue for liberal democrats to reconsider the quietist stance of recent decades, where positively advocating free and fair elections and defending human rights and civil liberties have been characterised by many opponents and critics as at best simply ethno-centric (Western-appropriate) reasoning, and at worst a ‘cultural colonialist’ effort to homogenise the world on globalist lines. Effectively counteracting these now commonplace camouflages for semi-democracies in industrialising countries will involve liberal democracies in questioning their own governance assumptions and unacknowledged cultural limits in far-reaching ways.

Liberal democratic states like the UK and USA can only regain their lost ‘city on a hill’ soft power influence when they make far clearer to any observer that they are operating majority rule in genuinely fair, frequent and inclusive elections, enacted with commitment, and genuinely seeking widely distributed control of policy-making by the state – mostly by achieving ‘consensus’ majorities (rather than narrow, partisan sectarianism). A commitment to democratising business and civil society organisations, and increasing social transparency, also needs to underpin the full access to civil and social rights.

Externally, liberal democratic states surely need to show clear concern for their neighbours, for migrants, and for global jeopardy issues, while respecting international law and the autonomy of other legally run states. A dynamic of internal and external democratic advance has already achieved a lot in fields like environmental policy, even where the ‘law of the least progressive actor’ operates. Extending these lessons to try and better resolve regional and global issues around the inequalities generating large-scale movements of people across state boundaries (apparently now ‘fixed for ever’) is likely to continue to influence the domestic democratic quality of politics and other liberal democracies.

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All phrases in **bold** refer to links in the text; links correct as of August 2018.

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