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# Westminster Beyond Brexit Ending the Politics of Division

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and Michela Palese  
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# Foreword



**Dr Jess Garland**



**Michela Palese**

1. ERS poll conducted by BMG Research (fieldwork 7–10 May 2019), sample 1,541 GB adults. Data weighted.

The health of our democracy is failing. Our outdated, broken voting system and unelected House of Lords reinforce Westminster’s power-hoarding tendencies, leaving voters powerless and distant from where decisions are made, with no real say over who represents them. New polling for this report shows that two thirds of respondents (67%) feel they have very few or no opportunities to inform and influence the decisions made by MPs at Westminster – only four percent feel they have a lot of opportunities.<sup>1</sup>

The need for a wholesale renewal of our democracy is now more urgent than ever. The political system is failing on its own terms and is not working as people think it should. Three in five respondents (61%) to our survey say the current political system discourages cooperation and compromise between political parties, while roughly the same number (64%) think that our system should be fostering these values.

Our broken Westminster system lies at the root of most of the problems we see in politics today, from a lack of trust in our institutions to the toxic polarisation which paralyses policy-making. We need to shift the balance of power away from the centre to combat Westminster’s hyper-centralisation, and bring power back to the people.

Citizens need to feel energised by their democracy again, but for this to happen, we need representative institutions which are responsive to people’s needs and spaces where citizens can directly engage in politics at different times and levels.

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The ERS has long argued for proportional representation for the House of Commons. This is central to fixing Westminster's broken politics. The complexities exposed by the Brexit process simply serve to highlight that if the First Past the Post voting system was ever fit for purpose, that time has long since passed. Beyond this, there are ways in which democracy can be strengthened and politics brought closer to citizens.

In this report, we set out a radical vision for how we can achieve a flourishing democracy where power is dispersed across political institutions and citizens are empowered and engaged. There are two key pillars to our proposals. First, we need to rebalance power at the centre by reforming the unelected and undemocratic House of Lords so that it better represents the people and can legitimately perform its scrutinising and revising role. We believe that an elected second chamber could serve as the forum where representatives from the UK's nations and localities could gather to discuss national and cross-border issues. Second, we need to bring power closer to the people and give them a genuine say in the future of their country and communities. Deliberative democratic processes can ensure that citizens are informed, are able to hear each other's views in a reflective and respectful environment, and can make decisions that have real impact.

These changes are not just institutional, but are centred around a shift in our political culture. We need to reimagine our political system in order to achieve the institutional change we need and it is this change that will enable us to start doing politics differently.

Now is the time to rebuild our democracy on stronger and fairer foundations – through this report we hope to show how this can be achieved.

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# Introduction

Since its construction in the mid-1800s the Palace of Westminster remains largely unchanged and as a result, the structure is fundamentally compromised with antiquated heating, ventilation, drainage and electrical systems; the roofs are leaking, the pipes are corroding and plumbing failures are causing permanent damage to the interiors.

It is hard not to draw a parallel with the state of politics within those stone walls. Stuck in a 19th century system, Westminster politics is failing; the structure is compromised and causing damage to people's faith in democracy.

Like the crumbling palace itself, the foundations of UK politics – the Westminster System – are at the root of most of the problems we see in politics today. The pillars of the Westminster System: an all-powerful executive, constitutional flexibility, a weak second chamber, a two-party system propped up by majoritarian and disproportional elections, have all been exposed by the Brexit crisis, and as a result, the façade of strong, stable government – the strengths on which the system has been lauded – has irrevocably fallen off.

The Brexit deadlock is not the cause of our constitutional crisis, but rather a symptom of it.

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The structural flaws in our system made it vulnerable to exploitation as we saw in the initial use of broad Henry VIII powers in the EU Withdrawal Bill, the lack of formal discussion with devolved governments and constitutional conventions being ignored or stretched to breaking point throughout the process. In light of this current crisis, we can finally see how fundamentally broken our system has become.

Proceeding from this lack of structural integrity, comes the further problem of the political culture it creates. The Westminster System leads to deeply oppositional and two-dimensional politics which, up until the eleventh hour, prevented leaders from even speaking to each other about Brexit, let alone working together to find a compromise. It is a culture that emphasises and prioritises overpowering the other side, a culture that lacks the basic decision-making tools of cooperation and negotiation. The rules of the game are to win, even if only by a single vote, and to do so by employing whatever tactics are expedient – a carefully worded amendment or last-minute offer – even if they reduce British democracy to a petty parlour game. This game has now been exposed and it serves as a reminder that the form of politics we get is greatly shaped by the structures that underpin it.

### **The Westminster System as dysfunctional**

The last 20 years have seen many changes to our democratic system but these reforms have largely taken place outside of the Westminster Parliament itself. At its core, UK democracy remains in its original form: the power of an absolute monarch transferred to Parliament.

The Westminster System, as famously outlined in Arendt Lijphart's seminal study *Patterns of Democracy*, is a model of democracy (also described as a majoritarian model) which 'concentrates power in the hands of a bare majority'.<sup>2</sup> It stands in

2. Lijphart, Arendt (1999). *Patterns of Democracy: Government Forms and performance in Thirty-Six Countries*. Newhaven and London: Yale University Press.

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opposition to a consensus model which ‘tries to share, disperse and limit power in a variety of ways’. Though countries tend to sit somewhere on the spectrum between these two ‘ideal’ models, the distinction is useful in understanding the balance of power at Westminster and the difference in outcomes it produces.

The distinctive features of an ideal-type Westminster System are: single party majority governments, executive dominance, a two-party system, majoritarian electoral systems and interest group pluralism. Westminster-type systems are also highly centralised, concentrate power in one part of the legislature, have flexible constitutions and lean towards Parliamentary sovereignty over the judiciary. They also have weak, dependent central banks.

Politics at Westminster has, as the name suggests, been for many years a prototypical case of the ‘Westminster System’. The UK has moved towards a consensus model over the last two decades, with devolution and the establishment of legislatures in Scotland, Wales and Northern Ireland; the London Assembly; the Human Rights Act, and later, the creation of the Supreme Court, an independent Bank of England and the removal of most of the hereditary peers in the House of Lords (previously ‘a relic of a pre-democratic era’ in Lijphart’s assessment). Such reforms have shifted the UK away from a traditional Westminster-type system, but in spite of this marginal movement, we continue to cling closely to this system as the ideal. The Westminster System prioritises strength and stability over representativeness and responsiveness, yet in recent years it has clearly failed even on these claims.

When it comes to the distribution of power, the possibility of ‘elective dictatorship’ is not far away. The centralisation of power at Westminster and the concentration of power in the executive under the Westminster System were clearly

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demonstrated as the UK sought to ‘take back control’ from the EU.

The Brexit process has been, for the most part, an exercise in executive power and constitutional flexibility. The initial EU Withdrawal Bill included broad Henry VIII powers which allowed ministers to amend primary legislation without full Parliamentary scrutiny. The legislation also initially drew powers back to Westminster before devolved governments. Until the Prime Minister reached out to the Labour Party in early April 2019, the Brexit process had been an exercise in the Westminster executive taking back control for itself.

### **Systems and cultures**

The Westminster/consensus distinction is illustrative in understanding which democratic principles we want our system to prioritise. The traditional trade-off of a Westminster System is an enhanced ability to change policy in exchange for sacrificing policy consensus. But perhaps the ability to ram through policy on a slim majority is not an ideal to which we should aspire. Being able to deliver manifesto promises is important of course, but in recent years, those manifesto promises have been supported by smaller minorities of the public, with governments in recent elections formed on less than 40 percent of the vote (and even smaller percentages of support from the population in general). In this context, the ability for said government to push through its manifesto seems less democratic than it might once have done.

Prioritising the ability to push through policy, rather than building support for it, creates an in-built shelf life for government programmes. When the government changes, so too does the policy. The short-termism created by a system designed to be oppositional means that policies are

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often repealed immediately after a change in government. Infrastructure projects – or indeed any programme extending beyond the five years of a Parliament – often suffer from this policy see-saw. In contrast, consensus democracies are more likely to see policies adopted for the longer term, as they have been underpinned by support built across the political spectrum. Disagreement is part and parcel of politics, an essential element, but it does not need to be everything.

Ironically, even this traditional strength of the Westminster System has been challenged in recent years, with a bare majority government relying on the votes of minor parties to get its legislation through.

The Westminster System is built around opposition, illustrated by the shape of the chamber itself which is designed for two-party politics. This can also be seen in the designation of an official ‘opposition’ party, funded on the understanding that its role is to oppose the government and hold it to account. Holding the government to account however, is frequently limited to throwing insults over the despatch box once a week, because under our system, a majority government whose backbenchers are whipped into line, combined with a weak second chamber limited by a lack of legitimacy, means the executive is rarely required to make any compromises. The culture of this oppositional system is not designed for building support and finding areas of agreement and the Brexit crisis starkly revealed this deficit for all to see – an absurd situation in which a majority cross-party position was possible, but the system provided no way of reaching it.

Our research shows that whilst 64 percent of people think that our political system should encourage cooperation between political parties, only 19 percent believe that it does.<sup>3</sup>

3. ERS poll conducted by BMG (fieldwork 7th-10th May 2019), sample 1541 GB adults. Data weighted.

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The Westminster two-party politics of opposition is propped up by a majoritarian and disproportional voting system designed to artificially force politics into this two-party shape. Democratic engagement and participation are sacrificed in favour of attempts to create single-party, majority governments, yet changes in voting patterns have stretched the two-party system in recent years. Party fragmentation has pushed the system to its limit and in two of the last three general elections, this majoritarian system has failed to deliver majority governments, much less stability.

Volatility in voter choice and party system fragmentation have put the system under strain, causing it to operate erratically and disproportionately. The 2017 election saw the second highest aggregate level volatility – the movement of votes between the parties – since 1931 (with the most volatile year being 2015) and with a system unable to accommodate for these changes in voter behaviour, results have been unpredictable.<sup>4</sup> In 2010, First Past the Post delivered a coalition government, the first since 1945, under a system designed to produce single-party majorities. In 2015, First Past the Post gave us the most disproportionate election to date, with a majority government secured by under 37 percent of the vote share. In 2017, despite over 80 percent of votes going to just two parties (the highest combined vote share since 1970), First Past the Post could not deliver a majority government.

Though 2017 saw a return to large results for the two largest parties, the amount of volatility in the system suggests that this return to two-partyism is temporary. Already, in the recent local council elections, a switch to other parties has been visible with significant gains for the Liberal Democrats, Greens and independent candidates. Recent polls also show a historically low combined vote share –

4. Aggregate volatility is measured as the combined change in vote shares for each of the parties divided by two.

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around 50 percent or less for the Conservatives and Labour – which indicates that voters are not only less closely aligned with the two ‘main’ parties, but wish to support a wider range of parties.

The failure of Westminster to function, even according to its supposed strengths, surely calls for a rethinking of the system and the principles we want it to uphold. Westminster politics is fundamentally dysfunctional and lacks the tools needed to perform effectively in a multi-party, volatile and values-driven era. Rather than continuing to patch up, cover up and press on with a system that – like the Palace of Westminster – is crumbling around our ears, perhaps it is time for wholesale renewal.

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# Strengthening Democracy

## Democratic principles

Beyond the ability to pass new legislation with little opposition and to hoard power at the centre, we might ask which other democratic principles are being undermined by our current system.

Do we want a democracy that gives the power of an absolute monarch to one party, or one which is representative and can work responsively and responsibly to deal with the issues facing the country? To understand why reform matters, and what changes it could bring, it is important to consider the principles underpinning our democracy – legitimacy, representation, accountability, transparency and fairness – and to consider how these principles interact with the outcomes we want from our political system: trust, engagement, participation and a thriving political culture.

Upholding these principles does not necessarily lead to these outcomes however. Whilst constitutional reforms over the last two decades have aimed to strengthen democracy, to improve trust, accountability and engagement, there has been, over the same period of time, a decline in engagement and trust in political institutions. There are many factors involved in these changes

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and the UK is not the only country dealing with democratic decline, but when assessing the need for reform, it is important to consider what type of reform will achieve your goals and to understand that reform cannot always be a top-down decision.

In some areas, reform does need to be led from the top, such as in securing a commitment to shifting power at the centre of politics. The Westminster System concentrates power and it is these power-hoarding elements that are most resistant to change. A commitment to shifting the balance of power is therefore essential, but Westminster is not the only place where politics happens. We know that citizens want to engage in politics closer to home and increasingly want greater decision-making powers. This needs to be real, informed and meaningful power, led by what citizens want.

Ultimately, we need to address the question of power. Reform will mean giving power away, moving from a model of centralised power-hoarding to a culture of power-sharing that celebrates the democratic principles of compromise and negotiation over cutthroat competitiveness and rivalry.

### **House of Lords and democratic principles**

During the many years of debate around House of Lords reform, the principles of democracy, legitimacy and representation have often been conflated.<sup>5</sup> It is clear that the House of Lords in its current composition lacks a democratic mandate; the second chamber after all, is not designed to be representative of the UK at large, but rather of the nobility and the clergy, being based on a structure that predates democracy. A lack of democracy is related to legitimacy and representation in less straightforward ways however. This lack of democratic mandate has, in the past, been held up as a positive trait,

5. For a full discussion see: Kelso, Alexandra (2006). *Reforming the House of Lords: Navigating Representation, Democracy and Legitimacy at Westminster*. *Parliamentary Affairs*, 59(4), pp. 563–81.

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preventing the second chamber from challenging the Commons and thereby helping to ensure the Commons primacy. A lack of democracy is, in this way, tied into a lack of legitimacy which is seen as bolstering its functional role.

This odd situation can be understood by unpicking what we mean by legitimacy. David Beetham's classic formulation of the legitimacy of the state in a liberal democracy<sup>6</sup> has three dimensions: 'performance in meeting the needs and values of citizens, public control with political equality and a sense of identity without which the legitimacy of the unit will be contested'.<sup>7</sup> The first of these can be considered 'output legitimacy', the way an institution performs its functional role. The second two are types of 'input legitimacy', the power the public has to determine institutional composition and political authority, and their identification with, and support for, the institutions that stem from this. Crucially for Beetham, legitimacy is not based on belief in the rules but on expressed consent to the power relationship.

Debates around the House of Lords have focused on the first type of legitimacy, based on output or performance. In this respect, the Lords is seen as mostly legitimate, performing its role in scrutiny and revision, despite a lack of democratic legitimacy. Indeed, this functional legitimacy argument is often used to argue that 'if it ain't broke, don't fix it'.

However, it is increasingly hard not to notice the relationship between input and output, particularly when we consider issues such as accountability and transparency. It should be acknowledged that the second chamber hosts many hard-working peers who conduct their Parliamentary role with skill, expertise and integrity, however the lack of accountability also makes it possible to abuse the power and privilege that accompanies a seat in the Lords, and there is a

6. Beetham, David (1991). *The Legitimation of Power*. Basingstoke: Macmillan.

7. Lord, Christopher and David Beetham (2001). Legitimizing the EU: Is There a 'Post-parliamentary Basis' for Its Legitimation?. *JCMS: Journal of Common Market Studies*, 39(3), pp. 443–62.

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seemingly endless roll-call of such abuses from lobbying to expenses scandals. The impression that peers can and do use Parliament to wine-and-dine business interests, get access to ministers for their friends, and continue to vote on legislation even when there are clear conflicts of interest, is damaging in itself, but these abuses also chip away at the legitimacy derived from functional output. The high standards of independence, expertise and sober reflection on which the chamber is lauded, are all brought into question by the abuses of power that are made possible by the system, even if those who are abusing the system are in the minority.

Notwithstanding the assumption of a high functional legitimacy; high legitimacy in one area does not compensate for a lack elsewhere: one cannot be used as a substitute for the other, and we should consider whether the assumed output is actually in the interests of the public. Can a chamber which embeds democratic inequality, ensure its output does not also maintain and entrench inequality? When the chamber allows access to the legislature for individual business interests, it is corporations not citizens who have power.

Lack of legitimacy also relates to how representative the chamber is. *How* the House of Lords represents is often left up to interpretation. Pitkin's classic conceptions of representation draws attention to the different ways 'representatives' can represent, in what they do as well as what they are.<sup>8</sup> A formalistic understanding of representation (reminiscent of pre-democratic theories) sees representation as being bestowed – a giving of authority – after which the representative is free to act as they choose. This is how representation is conceived of in the structure of the second chamber – with no specific people or regions for peers to represent and no specific

8. Pitkin, Hannah F. (1967). *The Concept of Representation*. California: University of California Press.

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issues to champion. Although there is an implicit suggestion that peers bring their professional expertise to the house, they are not representing those professions in any formal, substantive way.

Other types of representation place importance on who the representative is. Symbolic and descriptive forms of representation require representatives to 'stand for' those they represent. A descriptive form of representation calls for the legislature to 'look like' the population it represents, and this sometimes also requires different groups to be present in similar proportions to the voting population. Pitkin advances one further type of representation, that of substantive representation, whereby the representative acts on behalf of the represented, advancing their interests. This type of representation often follows from symbolic and descriptive representation as 'standing for' can easily become 'acting for'.

In reference to the second chamber, the focus is often on making the chamber more representative in descriptive terms as there is such an obvious lack here. Despite moves to diversify the Lords, it remains unrepresentative in age, class, gender, ethnicity and region. Though the Commons also fails to represent the full diversity of the UK, the second chamber is based almost entirely on appointment and therefore has more direct power (via the Appointments Commission and Prime Minister) to remedy this. Even with direct control of who comes into the house, the chamber struggles to address diversity and this failure is due to its structure.

There are still positions in the second chamber that are effectively reserved for men. Male primogeniture ensures all but a few hereditary titles can only pass to a male heir and this has meant that all but one of the 92 hereditary

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positions in the Lords are currently occupied by men. With only one female hereditary peer on the waiting list, this is a situation that will continue as long as the current structure of the Lords persists. Recent proposals to reduce the size of the Lords have left the number of hereditary peers untouched, meaning that the hereditary element of the second chamber would grow in strength proportionally, and so too, the proportion of places reserved for men.<sup>9</sup>

9. Lord Speaker's committee on the size of the House (2017). *Report of the Lord Speaker's committee on the size of the House*. <https://www.parliament.uk/documents/lords-committees/size-of-house/size-of-house-report.pdf>

Until recently, the places for bishops were also reserved for men, and today only five of the 26 bishops in the Lords are women. The tradition of moving ex-MPs into the second chamber and rewarding political allies, also works against women's representation in the chamber, by replicating the lack of equality elsewhere in politics. The very structure of the chamber is working against it becomingly more diverse and representative.

In discussing descriptive representation, Pitkin quotes Sidney and Beatrice Webb, who described the Lords as 'the worst representative assembly ever created, in that it contains absolutely no members of the manual working class; none of the great class of shopkeepers, clerks and teachers; none of the half of all the citizens who are of the female sex'.<sup>10</sup> Indeed only on the latter point has the composition of the Lords changed since the Webbs wrote this in 1920. Today the Lords has just one peer with a background in manual trade, very few teachers outside of higher education, and no discernible shopkeepers or clerks. Almost 39 percent of all peers previously worked in politics.<sup>11</sup>

10. Pitkin, Hannah F. (1967). p.61

11. Electoral Reform Society (2018). New figures reveal Lords is dominated by ex-politicians and South East. <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/new-figures-reveal-lords-is-dominated-by-ex-politicians-and-south-east/>

In discussion of the representativeness of the second chamber, another contemporary concern lies in representation of the parties' relative strength in terms of voters' choices. This type of representativeness has always proved difficult in an

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unelected chamber, as the requirement for party balance in the Lords creates an inbuilt pressure for Prime Ministers to fill the second chamber with appointees from their party. With appointments largely for life, this has, for many years, contributed to an expanding chamber at each change of government.

A lack of regional representation also clearly affects the chamber. As of June 2018, most peers (54 %) lived in Greater London, the South East or the East of England.<sup>12</sup> That the second chamber appears to be skewed towards London and the South East could be dismissed if we consider that the Lords is not meant to represent territorial interests in the traditional sense, however this imbalance seems to reflect an outdated version of the UK as a unitary state dominated by London. Clearly this is no longer the case.

All forms of representation considered here contain some form of accountability to the interests of those represented. Even the formalistic type of representation includes accountability through the option of replacement, usually through elections. Whilst the Lords may claim a formalistic type of representation, outside of the party whip the nature of this representation is left up to peers to decide. Whilst many take this duty seriously, with no accountability, there is no guarantee of this.

It is unsurprising that the Lords is unrepresentative, it was never intended to be, but this lack of representativeness has implications for both input and output legitimacy. Legitimacy is also tied to consent and identification, and a visible lack of representativeness erodes this link. The House of Lords starts from a place of maintaining class-based hierarchy rather than enfranchising and no amount of tweaking its size can cover for the fact that it fails on almost all democratic principles.

12. Electoral Reform Society (2018). Parliamentary Briefing: House of Lords 'abolition' – Westminster Hall debate. <https://www.electoral-reform.org.uk/wp-content/uploads/2018/06/Parliamentary-briefing-House-of-Lords-Abolition-Debate.pdf>

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## Role and legitimacy

As the second chamber of the UK Parliament, the House of Lords is officially tasked with performing a crucial role in scrutinising and revising legislation, as well as checking and challenging the government. In this way, the Lords supplements the work of the House of Commons.

In practice, the House of Lords' essential functions have been restrained by the chamber's lack of democratic legitimacy (both input and output). This lack of democratic legitimacy stems from the chamber's composition. Until the removal of most hereditary peers through the House of Lords Act 1999,<sup>13</sup> concerns about actual and perceived illegitimacy meant that the Lords were too timid to challenge government legislation, thus failing to act as an effective check on government and prime ministerial power.<sup>14</sup>

Since the 1999 reforms, the Lords has become more assertive and attempted to defend its role by emphasising its greater political independence and expertise compared with the House of Commons. The removal of most hereditary peers led to the elimination of the in-built Conservative majority in the chamber, leading to no single party having an overall majority and an increase in the proportion of independent and non-partisan crossbench peers. Despite these improvements, the Lords remains a highly partisan second chamber.<sup>15</sup> In the 2016/2017 session, 601 out of 862 peers (69.7 percent) took a party political whip and most were loyal to it. The average Conservative peer supported the government in 98.7 percent of the votes, while the average Labour peer voted against the government in 89.6 percent of votes. Partisanship is not offset by the presence of crossbenchers, given that they are fewer in number compared with political appointees and tend to vote less frequently.

13. *House of Lords Act 1999*. <https://www.legislation.gov.uk/ukpga/1999/34/contents>

14. Russell, Meg (2001a). What are Second Chambers for?. *Parliamentary Affairs*, 54, pp. 442–58.

15. Electoral Reform Society (2017). *The High Cost of Small Change: The House of Lords Audit*. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/the-high-cost-of-small-change/>

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Without significant reform to its composition, the House of Lords will continue to increase in size and cost, while its representativeness, legitimacy and effectiveness will continue to deteriorate. This has serious consequences for its ability to hold the government to account and to perform its revising and scrutinising functions.

### **Why reform the House of Lords first?**

Twenty years on from the House of Lords Act 1999, reforming the House of Lords remains firmly unfinished business. In the first three Parliamentary sessions of the 1997 Labour government, 20 bills were passed on constitutional change, devolving significant powers to Scotland, Wales and Northern Ireland, creating the Greater London Authority and the London Mayor, removing the majority of hereditary peers from the House of Lords, creating the Human Rights Act, introducing freedom of information and bringing transparency to party political donations. This period reshaped the constitutional landscape of the UK, but this job was left unfinished, with the House of Lords remaining unelected and 92 hereditary peers remaining in a seemingly endless 'interim' period.

In that 'interim' 20 years there have been at least nine cross-party committees and commissions considering the next steps for reform, but divisions over the details of this reform have ensured that the second chamber has remained largely unchanged. Devolution was also supposed to be the start rather than the end point, and the promise of fairer elections through proportional representation has never materialised.

During the many debates over the future shape and composition of the House of Lords, the context has changed dramatically. Since the House of Lords Reform Bill was withdrawn in 2012, the

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UK has been through unprecedented constitutional change which has changed both the context of reform and the constitutional questions that need answering. The 2014 Scottish independence referendum has led to further powers for Scotland but has by no means removed the question of independence and of the future of the union. The UK's protracted exit from the European Union has dragged our outdated political system into the limelight and caused many people to question the functioning of our democracy. The question of what a second chamber should do has therefore moved on and it is no longer enough to suggest that maintaining the status quo and adding a bit of democratic legitimacy will be enough – there is a pressing constitutional crisis which requires a bolder response.

There is no one perfect solution, but decades have gone into discussing the detail and in the meantime, vital reforms have fallen through because of disagreements over technicalities – the bigger picture has been lost. Drawing on both the debates of the past as well as comparative evidence, we will set out a way forward for reforming the House of Lords that answers the questions of our time while remaining mindful that a UK solution will be unique.

16. Clarke, Chris and Matthew Purvis (2009). *House of Lords Reform Since 1997: A Chronology* (updated July 2009). House of Lords Library. <https://www.parliament.uk/documents/lords-library/hllreformchronology.pdf>

Purvis, Matthew (2011). *House of Lords Reform: Chronology 1900-2010*. House of Lords Library. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2011-025>

### **Attempts at reforming the Lords**

Reforming the House of Lords has been on the political agenda for over 100 years and improving the House of Lords' democratic legitimacy (both actual and perceived) has been at the heart of most reform proposals.<sup>16</sup> Both the Parliament Act 1911 and the Life Peerages Act 1958, aimed to soften the hereditary element of the chamber, with the latter Act creating life peerages for both men and women, thus allowing for a non-hereditary route into the chamber.

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17. Labour Party (1997). New Labour because Britain deserves better. <http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml>

18. Royal Commission on the Reform of the House of Lords (2000). *A House for the Future: Royal Commission on the Reform of the House of Lords*. <https://www.gov.uk/government/publications/a-house-for-the-future-royal-commission-on-the-reform-of-the-house-of-lords>

19. Joint Committee on House of Lords Reform (2003). *House of Lords Reform: Second Report*. <https://publications.parliament.uk/pa/jt200203/jtselect/jtholref/97/97.pdf>

The most significant change to the House of Lords however, was the 1999 House of Lords Act enacted during Tony Blair's first Labour government. The party's 1997 manifesto committed it to a two-stage reform process 'to make the House of Lords more democratic and representative', while keeping its legislative powers unaltered.<sup>17</sup> The first step of this reform was to end the right of hereditaries to sit in the Lords, which removed all but 92 hereditary peers from the chamber.

The second step was to set up a committee of both Houses of Parliament to review options on how to make the Lords more democratic and representative, and to make proposals for reform. A Royal Commission was established, headed by Lord Wakeham (after whom it has come to be known as the 'Wakeham Commission'), to examine proposals for Lords reform. In its report, the Commission recommended removing the remaining hereditary peers and reducing the size of the House to around 550 members, a majority of whom would be appointed by an independent Honours and Appointments Commission, as opposed to the Prime minister.<sup>18</sup> A minority of members (around 12–35%) would be elected using proportional representation and regional boundaries.

Following the publication of the report, the government said it would establish a Joint Committee of both Houses of Parliament to consider the Wakeham Commission's recommendations. The Joint Committee, established in May 2002, recommended seven options for reform, including wholly elected, wholly appointed and five different mixed election-appointment models for a reformed House of Lords. All seven options were rejected by the House of Commons (the 80 percent elected option was defeated by the fewest votes), while the Lords voted in favour of a fully appointed House, rejecting all other options.<sup>19</sup>

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House of Lords reform stalled for the remainder of Labour's time in office, though proposals for reform continued to be made, such as the 2007 white paper which set out a policy for a mixed composition with 50 percent elected and 50 percent appointed members.<sup>20</sup>

20. HM Government (2007). *The House of Lords: Reform*, 7 February 2007, Cm 7027. [www.official-documents.gov.uk/document/cm70/7027/7027.pdf](http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf)

House of Lords reform was also on the agenda during the coalition years. The Programme for Government committed the governing parties to establishing a committee to 'bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation'.<sup>21</sup> The committee met seven times but disagreed on the size of the chamber and type of electoral system to be used.

21. HM Government (2011). *House of Lords Reform Draft Bill*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/229020/8077.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229020/8077.pdf)

In May 2011, the coalition government published a draft bill with proposals for an 80 percent elected house with members chosen via the Single Transferable Vote (STV).<sup>22</sup> This proposal was discussed by a Joint Committee which reported in April 2012 and recommended an 80 percent elected House of Lords.<sup>23</sup> The House of Lords Reform Bill was introduced shortly after and would have established a House of Lords which was mostly elected, with a three-stage transition to slowly increase the number of elected members.<sup>24</sup> If this process had been taken up, the Lords would have consisted of 360 elected members, 90 appointed members, up to 12 Lords Spiritual and any other ministerial members. Elections would have taken place on the same day as elections to the Commons and most members would have served non-renewable 15-year terms, but would also have been able to resign or could have been expelled/suspended. Elected members would have been selected through semi-open list elections for large regional seats in Great Britain, while the Single Transferable Vote would have been used for Northern Ireland. A House of Lords Appointments Commission would have been

22. Ibid.

23. UK Parliament (n.d.[a]). House of Lords reform. <https://www.parliament.uk/business/lords/lords-history/lords-reform/>

24. *House of Lords Reform Bill 2012-13*. <https://services.parliament.uk/bills/2012-13/houseoflordsreform.html>

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responsible for recommending potential appointees to the Prime Minister, following a specified set of principles and criteria. This bill was soon withdrawn in the face of opposition.<sup>25</sup>

25. BBC News (2012). House of Lords reform: Nick Clegg's statement in full. *BBC News*, 6 August. <https://www.bbc.co.uk/news/uk-politics-19146853>

26. *House of Lords Reform Act 2014*. <https://services.parliament.uk/bills/2013-14/houselordsreform.html>

27. UK Parliament (n.d.[b]). Lord Speaker's committee on the size of the House. <https://www.parliament.uk/size-of-house-committee>

28. Lord Speaker's committee on the size of the House (2017).

29. *Act of Union Bill [HL] 2017-19*. <https://services.parliament.uk/bills/2017-19/actofunion.html>

Minor changes were put forward in the House of Lords Reform Act of 2014, which allowed members to retire from the Lords and allowed for the expulsion of members in the event of non-attendance or serious offence.<sup>26</sup> Following this, in 2016, the Lord Speaker set up a committee to 'explore methods by which the size of the House of Lords can be reduced, commensurate with its current role and functions'.<sup>27</sup> As opposed to being motivated by concerns of democratic legitimacy, the Committee – chaired by Lord Burns – was established because of the 'persistent historic tendency of the House to increase in size.' The Committee did not consider the merits of an appointed versus an elected House, which it stated was 'beyond our remit'.

The Burns report was published in 2017 and recommended capping the size of the Lords to 600 – still appointed – members.<sup>28</sup> The report recommended the introduction of 15-year fixed terms for new peers and a 'two-out-one-in' system, which would allow a gradual reduction in the size of the House by ensuring that any new appointment could only be made once two existing members had left.

A final recent proposal for reform is contained in the Act of Union Bill 2018, a private members' bill sponsored by Lord Lisvane.<sup>29</sup> It proposes two options for House of Lords reform. One option would be the abolition of the Lords, with the Commons coming to be known as the UK Parliament. This UK Parliament would continue to have exclusive legislative competence in relation to central areas and to 'exercise the authority of the Sovereign Parliament of the UK'. Scrutiny

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Committees would be established for the UK as a whole and for each of the four sub-national legislatures (including an English Parliament; a separate proposal contained in the bill). These scrutiny committees would perform revising functions and other roles conferred to them. The UK Parliament scrutiny committee would be composed of members elected by the subnational Parliaments, while MPs from each nation would constitute the scrutiny committee for that particular nation.

A second option contained in the bill would be to restructure the Lords so that it would comprise of 292 members elected for a single 15-year term and 100 appointed members chosen by a House of Lords Appointments Commission to ensure they were non-partisan, had sufficient expertise and were independent of government. A scrutiny committee would be set up for each subnational Parliament to perform revising or other functions, though – unlike the abolition option – it would not include a scrutiny committee for English MPs nor a UK-wide scrutiny committee. At the time of writing, the bill is awaiting a second reading.

This section has outlined the piecemeal, incremental reforms to the House of Lords that have taken place in the past century. In the past 20 years alone, the amount of Parliamentary time spent looking at these issues has been extraordinary: there have been around nine attempts at reforming the House of Lords, only considering white papers, commissions, draft bills and acts. One thing is clear: while political will in both Houses of Parliament is necessary to push through change, it has – thus far – been hard to achieve. Despite this, engagement with reforming the Lords and frustration at the lack of progress, remain cross-partisan, meaning there is scope for a way forward to be found.

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At a Cabinet meeting in 1953, Churchill warned the Marquess of Salisbury of the difficulties in reforming the House of Lords. He said, ‘you won’t get agreement on a fancy House of Lords. And you may, by trying, weaken a structure which would otherwise creak on usefully for generations’. The question is: should we continue to allow the house of peers to ‘creak on usefully’ or will future generations lament our lack of determination to finally drag British democracy out of the past?



# Shifting Power at the Centre

## Strengthening democracy post-Brexit

Reforming the second chamber is one of the primary ways in which we can re-build our democracy on stronger, more equal, fairer and more representative foundations. The current House of Lords embodies many of the failures of our political system: it is undemocratic, unequal and unrepresentative, and – if left unreformed – it will continue to hinder the full flourishing of our democracy.

There is majority public support in favour of reforming the House of Lords right across the political spectrum. Our 2018 survey shows that 56 percent of people support electing the House of Lords and this is consistent among people who support different political parties, with around 61 percent of those who intend to vote for the Conservative, Labour and Liberal Democrat parties all supporting an elected House of Lords.<sup>30</sup>

Support has also been high over time and there has been majority support for an elected House of Lords since at least 2001.<sup>31</sup> In 2001, an ICM survey found 54 percent of people in favour of either wholly elected or majority elected second chamber. Only nine percent felt it should be wholly

30. BMG Research for ERS (2018). Sample 3,014 GB adults, fieldwork conducted 6–10 August 2018 (first wave) and 4–7 September 2018 (second wave). Data weighted.

31. See this House of Lords Library note for further information on the surveys of public opinion on House of Lords reform: House of Lords Library (2012). *Public Attitudes Towards the House of Lords and House of Lords Reform*. <http://researchbriefings.files.parliament.uk/documents/LLN-2012-028/LLN-2012-028.pdf>

Photo: A. D. White  
Architectural Photographs,  
Cornell University Library

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appointed. In 2003, a similar YouGov survey found 55 percent in favour of wholly or majority elected Lords, while only five percent felt it should be majority appointed. A YouGov survey in January 2007 found that 56 percent of those surveyed wanted complete reform resulting in a wholly or largely elected chamber. Similarly a YouGov and Hansard Society survey in February 2007 found that 82 percent of the public favoured either all, or part election compared to six percent who supported full appointment. Looking at those who stated they knew ‘very’ or ‘fairly’ well how the Lords worked increases this figure to 92 percent. A survey in November 2011 found that 56 percent of those surveyed supported election to the House of Lords (15 percent opposed and 29 percent were not sure).

In this chapter, we articulate our vision of a reformed second chamber. We begin by describing why and how a territorial second chamber could improve the health of our democracy by allowing fair and equal representation of the UK’s nations and localities in the post-Brexit era. As we have already witnessed during the passage of the European Union (Withdrawal) Bill (now the European Union (Withdrawal) Act), devolution will require additional protections in this post-Brexit age and a clearer understanding and formalisation of the UK’s core constitutional principles. The UK’s exit from the European Union will likely lead to increased engagement between the UK and devolved governments as they grapple with the constitutional implications of Brexit (such as repatriating powers from Brussels), and will highlight the tension inherent in England’s lack of representation in national, sub-national, intergovernmental and inter-parliamentary discussions.

We then consider international experience of territorial second chambers and identify some

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key differences and considerations which will need to be taken into account when considering second chamber reform.

Finally, we outline what we would need to consider when reforming the UK's second chamber.

### **Working together post-Brexit**

The vote to leave the EU has brought to the fore the deficiencies of our institutional set-up – first and foremost the considerable divisions and political inequalities across different parts of the UK. In doing so, it has also served as a prompt for thinking about the bigger picture of constitutional and institutional change, something previously relegated to the category of ‘not urgent’ and ‘too hard to fix’. As a recent report by the Institute for Government put it, ‘The overarching problem is that there has been too little consideration of the future of the UK as a whole.’<sup>32</sup> Addressing devolution and cross-border working between the nations and localities of the UK is one of the issues which has so far been neglected and dominated by ad hoc and informal conventions and structures.

The devolution settlements of the late 1990s were formulated within the context of EU membership which guaranteed the existence of a single market deriving from EU rules and consistency of legal and regulatory standards in all parts of the UK, including in devolved policy areas.<sup>33</sup> It also allowed the co-existence of Parliamentary sovereignty in Westminster with the permissive autonomy granted to the devolved nations, allowing them to become quasi-sovereign in their own territories.<sup>34</sup> Most relations between the UK's governments and Parliaments are informal, thus allowing the UK to preserve Westminster's Parliamentary sovereignty and the legitimacy and authority of the constitution, while letting the devolved legislatures enjoy de facto autonomy in their areas of competence.

32. Cheung, Aron, Akash Paun and Lucy Valsamidis (2019). *Devolution at 20*. London: Institute for Government. <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Devolution%20at%2020.pdf>

33. Bogdanor, Vernon (2019). The Constitution. In: The UK in a Changing Europe (2019). *Article 50 two years on*, pp. 28–9. <https://ukandeu.ac.uk/wp-content/uploads/2019/03/Article-50-two-years-on.pdf>

34. Sandford, Mark and Cathy Gormley-Heenan (2018). ‘Taking Back Control’: the UK's Constitutional Narrative and Schrödinger's Devolution. *Parliamentary Affairs*, pp. 1–19. <https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsy039/5151288?guestAccessKey=20f1ac85-18c1-4e63-b1fc-2e3c9b4fbff1>

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Brexit has significant implications for the future of devolution and the relationship between the constituent parts of the UK. The UK is no longer the administratively unitary state it was in 1973 and any post-Brexit territorial constitutional setup will require more technical precision and legal certainty than the constructive ambiguity that has been allowed so far. It will no longer be enough to patch up disputes through fluidity, informality, arm's-length intergovernmental relations and the avoidance of any formal constitutional debate.<sup>35</sup>

35. Ibid.

As Nicola McEwen has already found, 'Leaving aside the Joint Ministerial Committee (Europe) which since 1999 has met ahead of European Council meetings, there have been considerably more formal meetings between Scottish, Welsh and UK ministers in the 32 months since the 2016 referendum than in the 17 years of devolution that preceded it.'<sup>36</sup>

36. McEwen, Nicola (2019). Devolution. In: The UK in a Changing Europe (2019). *Article 50 two years on*, pp.40–1. <https://ukandeu.ac.uk/wp-content/uploads/2019/03/Article-50-two-years-on.pdf>

While there is still uncertainty around whether the UK will leave the single market and indeed, around whether it will leave the EU itself, new structures and processes will need to be created if and when EU law stops applying to the UK, with this being converted into 'EU Retained Law'. Common frameworks are an emerging area of intergovernmental relations whereby shared approaches to policy making in some areas are being agreed between the UK and devolved governments. The UK and devolved governments have agreed on six principles which should guide decisions where common frameworks will need to be created, and UK government analysis shows that UK-wide common legislative frameworks will need to apply to around 21 of the 160 areas that intersect with devolution.<sup>37</sup>

37. Cheung et al. (2019).

The repatriation of powers in the aftermath of Brexit proved to be one of the more contentious aspects of the EU Withdrawal Bill during its

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38. House of Commons Public Administration and Constitutional Affairs Committee (2018). *Devolution and Exiting the EU: reconciling differences and building strong relationships*, eighth report of session 2017–19. <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/1485/1485.pdf>

passage.<sup>38</sup> While the devolved governments in Scotland and Wales assumed that EU powers that affected devolved matters would be brought back to the devolved level, the UK government decided that the devolved powers returning from Brussels should be retained by Westminster – at least on a temporary basis – so as to preserve the UK’s internal market. This led to a clash between the UK and devolved governments in Scotland and Wales, with the latter refusing to grant consent to the EU Withdrawal Bill. After some concessions were made by the UK Government, Wales ultimately gave its consent to the Bill, while Scotland voted against it. This was the first Act of the UK Parliament to be passed without the consent of a devolved legislature, overriding the Sewel Convention according to which ‘Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament’. Nevertheless, the EU Withdrawal Act ultimately imposed less of a constraint on devolution than originally envisaged, thanks to the combined efforts of the Scottish and Welsh governments.<sup>39</sup>

39. McEwen (2019).

### **Inter-governmental relations in the UK**

One of the consequences of Brexit will therefore be the necessity for more formalised mechanisms for dealing with relations between the UK’s governments and Parliaments. Current intergovernmental relations (IGR) serve two primary functions: to act as a dispute resolution mechanism between the UK government and the devolved nations and to make joint decisions in areas of shared competence and responsibilities.<sup>40</sup> IGR are regulated by a Memorandum of Understanding which sets out that relations should be underpinned by good communication, confidentiality, cooperation and consultation.

40. Torrance, David (2018a). Intergovernmental relations in the United Kingdom, *House of Commons Library Briefing Paper*. <http://researchbriefings.files.parliament.uk/documents/CBP-8371/CBP-8371.pdf>

41. McEwen, Nicola, Michael Kenny, Jack Sheldon and Coree Brown Swan (2018). *Reforming Intergovernmental Relations in the United Kingdom*. [http://www.centreonconstitutionalchange.ac.uk/sites/default/files/papers/Reforming%20Intergovernmental%20Relations%20in%20the%20United%20Kingdom\\_nov18.pdf](http://www.centreonconstitutionalchange.ac.uk/sites/default/files/papers/Reforming%20Intergovernmental%20Relations%20in%20the%20United%20Kingdom_nov18.pdf)

42. UK Government (2013). *Devolution: Memorandum of Understanding and Supplementary Agreements*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

43. Torrance (2018a).

44. Sandford and Gormley-Heenan (2018).

45. McEwen et al. (2018).

46. Ibid.

The Joint Ministerial Committee (JMC) is the ‘central pillar of the UK’s intergovernmental architecture.’<sup>41</sup> It meets in both plenary – with the Prime Minister and First Ministers in attendance – and ‘functional’ formats (with ministers from particular policy areas attending). The JMC’s terms of reference are:

- ‘to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- to consider disputes between the administrations.’<sup>42</sup>

Despite being the ‘hidden wiring’ of the UK’s territorial constitution,<sup>43</sup> IGR are currently ad-hoc and informal, with no legal framework of shared rule, meaning they are dominated by the UK government<sup>44</sup>. Examples of this can be seen in the fact that JMC plenary meetings are chaired by a UK government minister and between 2007 and 2017 always took place in London and that the JMC’s dispute resolution process is also chaired by a UK minister and cannot thus be considered a truly independent mediation mechanism.<sup>45</sup> As McEwen et al. point out ‘the design of the machinery for intergovernmental cooperation appears more of an afterthought, taking a variety of forms as and when needed, or in response to demand.’<sup>46</sup>

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47. McEwen (2019).

48. Institute for Government (2019). The future of devolution: the UK after Brexit – keynote speech by Mark Drakeford. <https://www.institutefor government.org.uk/events/future-devolution-uk-after-brexit-keynote-speech-mark-drakeford>

49. McEwen et al. (2018).

50. Ibid.

The Brexit process has already exposed the central UK state's hyper-centralising and power-hoarding tendencies. For example, even though the Joint Ministerial Committee's terms of reference on the EU Negotiations commit the governments to seeking a 'common UK approach to Brexit', the devolved governments have had little influence in shaping the UK government's Brexit position and have been effectively excluded from EU negotiations.<sup>47</sup> The UK government concluded an agreement with Spain on the rights of Spanish nationals post-Brexit, which gives them the right to vote in Welsh local elections – an agreement concluded by the UK government without any reference to Wales.<sup>48</sup>

While its flexibility has allowed IGR to adapt to changing circumstances, the absence of a routinised schedule of meetings may have repercussions for the administration, operation and transparency of IGR in the future.<sup>49</sup> IGR mechanisms are relatively lacking in transparency (minutes of meetings are not generally published and there is no central register of outcomes/agreements), which has further implications for democratic accountability. The focus on 'consideration', as McEwen et al. point out, is also indicative of the fact that JMCs were not intended to be a forum for co-decision or routine co-ordination, which is why the JMC is 'is unlikely to be a sufficient vehicle in its current form for the coordination that is likely to be necessary during and after the Brexit process.'<sup>50</sup>

Furthermore, England lacks any formal, distinctive mechanisms and structures to make its views on national and cross-border issues heard in such forums. As Billing et al. have argued 'Most UK localities have no role whatsoever in the Brexit negotiations and have received no real guidance from central government, the result of which is

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51. Billing, Chloe, Philip McCann and Raquel Ortega-Argilés (2019). Interregional inequalities and UK sub-national governance responses to Brexit. *Regional Studies*, 53(5), pp. 741–60. <https://www.tandfonline.com/doi/full/10.1080/00343404.2018.1554246>

52. McEwen et al. (2018).

53. Torrance (2018a).

that local and regional authorities are largely left on their own in terms of thinking and planning for Brexit.<sup>51</sup> This has also implications for the devolved nations, with concerns being raised about potential conflicts of interests given the UK government's dual hats as a representative of both the UK as a whole and England in IGR forums.<sup>52</sup>

In spite of the establishment of an Inter-parliamentary Forum on Brexit in October 2017, inter-parliamentary relations are equally poor, with the UK and devolved legislatures lacking any role in scrutinising intergovernmental relations.<sup>53</sup>

Current mechanisms for inter-governmental and inter-parliamentary discussion and dispute resolution do not appear to be working as well as they should, and do not offer a genuine voice to the constituent parts of the UK vis-a-vis the UK government. While IGR mechanisms will need significant improvement, we also need other forums for discussing and dealing with cross-border relations, providing a space for union-wide collaboration and shared learning on an ongoing basis. In this context, we envision reform of the second chamber as a central pillar in any package of measures designed to strengthen and enhance the quality of our democracy, recognising the UK as it is, not as a pre-devolution, unitary state.

A reformed second chamber could serve as a forum in which the four nations (including English localities, depending on how they choose to be represented at the national level – see chapters 3 and 4) can work together in the 21st century. An elected second chamber could be the place where UK-wide, sub-national, and cross-border issues are discussed, where sub-national interests and concerns can be raised and given a fair hearing away from the more politicised and short-term ethos of the House of Commons. Whether directly or indirectly, an elected second chamber

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would have a link with the people its members represent, thus making it a truly democratic and equal forum for discussion. Reforming the second chamber could help the union work more effectively and fairly.

### **Second chambers: lessons from overseas**

Internationally, second or upper chambers are typically found in large or federal states as they allow for the representation of a diverse society with diverse interests – the classic purpose of second chambers.<sup>54</sup> Currently, the most common form of representation in second chambers is territorial, with all bicameral federal states having a territorial upper chamber.<sup>55</sup> Core benefits to having a territorial second chamber include: firstly, the representation of specific territories and their interests at the national level; secondly, the availability of a forum where territorial units can debate policies and agree common positions; and finally, the existence of a link between the national Parliament and sub-national assemblies/governments.<sup>56</sup>

Table 1 compares the features of some of the most well-known territorial second chambers in federal and unitary/quasi-federal states. As can be seen, there is considerable variation in the number of members (from 60 to more than 300), the method of composition (direct or indirect election, appointment) and the term of office (fixed or variable, from a minimum of around three years to no term limit).

54. Russell (2001a).

55. Inter-Parliamentary Union (n.d.). New Parline: the IPU's Open Data Platform. <https://data.ipu.org/home>

56. Russell, Meg (2001b). The Territorial Role of Second Chambers. *Journal of Legislative Studies*, 7(1), pp. 105–18.

**Table 1: Composition and Powers of Some Territorial Second Chambers**

	Australia <sup>a</sup>	Belgium <sup>b</sup>	Canada <sup>c</sup>
State Structure	Federal	Federal	Federal
Second Chamber Composition	Territorial	Territorial and linguistic	Nominally territorial
Number of Members	76 – 12 members per state and two members from each territory	60	105
Method of Composition	Directly elected via STV	Indirect election – 50 senators appointed by and from the community and regional Parliaments; 10 senators are co-opted, that is elected by the 50 senators on the basis of the elections of the House of Representatives	Appointment, as vacancies arise
Mandate	Citizens	Sub-national Parliaments	N/A – appointed
Term of Office	Six years for state senators and three for territory senators; half of state senators and all territory senators are elected every 3 years, usually on the same day as elections for the lower house	Four years	Senators serve up to age 75

a. Parliament of Australia (n.d.). Senate. [https://www.aph.gov.au/about\\_parliament/senate](https://www.aph.gov.au/about_parliament/senate)

b. De Belgische Senaat (n.d.(a)). De nieuwe Senaat. <https://www.senate.be/actueel/homepage/Staats Hervorming/Infobrochure.pdf> Belgian Senate (n.d.(b)). Belgische Senaat. [https://www.senate.be/www/?Mlval=/index\\_senate&MENUID=10000&LANG=nl](https://www.senate.be/www/?Mlval=/index_senate&MENUID=10000&LANG=nl)

c. Senate of Canada (n.d.). <https://sencanada.ca/en>

	Germany <sup>d</sup>	Italy <sup>e</sup>	Spain <sup>f</sup>	United States <sup>g</sup>
State Structure	Federal	Unitary/ Quasi-Federal	Quasi-Federal	Federal
Second Chamber Composition	Territorial	Territorial	Territorial	Territorial
Number of Members	69 – between three and six members from each state/Länder	315 elected members and six senators for life (309 are elected on a constituency basis, six from Italian citizens living abroad and six senators for life; some ex officio/appointed members)	266 (variable)	100 – two members per state
Method of Composition	Indirectly elected – delegates of the 16 state governments (Länder), between three and six delegates per state depending on population size	Directly elected	Mixed – 208 are directly elected (four per province, between one and three for insular provinces and cities); the remainder are indirectly elected by the Autonomous Communities, which appoint one senator each and an additional one for every million inhabitants in their respective territories	Directly elected via majority vote
Mandate	Sub-national government	Citizens	Citizens and sub-national government	Citizens
Term of Office	No fixed term/free mandate – members change when state governments change	Five years	Four years	Six years

d. Bundesrat (n.d.[a]). The Bundesrat. <https://www.bundesrat.de/EN/homepage/homepage-node.html>

e. Senato della Repubblica (n.d.). <http://www.senato.it/1009>

f. Senado de España (n.d.). <http://www.senado.es/web/index.html?lang=en>

g. United States Senate (n.d.). <https://www.senate.gov/>

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57. Russell (2001b).

58. Bundesrat (n.d.(b)). Composition of the Bundesrat. <https://www.bundesrat.de/EN/organisation-en/stimmenverteilung-en/stimmenverteilung-en-node.html>

Historically, this model of representation was the result either of different states uniting in a federal state (e.g. Swiss cantons) or of smaller, less populous states requesting equal representation in the second chamber (e.g. the US).<sup>57</sup> Embedding territorial representation in a second chamber can help guard against the ‘tyranny’ of larger/more populous constituent parts and act as a deterrent to policies unfavourable to smaller/less populous areas. In some cases, as in the US Senate, equal territorial representation in the second chamber can lead to disproportionality, with smaller, less populous sub-units coming to dominate the chamber. There are ways of balancing equal representation and proportionality however, ensuring that a few larger states cannot outmanoeuvre the others, while making sure smaller states cannot out-vote a majority of the population. In Germany, for example, each federal state has between three and six votes in the Bundesrat, which is weighted based on the number of people living in each state.<sup>58</sup> States with more than two million citizens have four votes; those with more than six million inhabitants have five votes, and those with more than seven million citizens have six votes. This graduated weighting of votes is a compromise between the ‘federative’ requirement that all constituent states must be treated equally, and the democratic ideal of voting rights reflecting the population numbers in each state.

### **Box 1: The German Bundesrat – a Territorial Upper Chamber**

The Bundesrat – the upper house of the German federal Parliament – is one of the most renowned examples of territorial upper chamber. It allows for the representation of the interests of the 16 constituent states (Länder) at the federal level, and for the states' direct participation in the decisions taken by the federation.

All 69 members of the Bundesrat have a dual role: they hold an office in the individual state and a federal office.<sup>a</sup> This means that they cannot overlook the impact state activities will have on federal politics, and in the state ministries they feel the direct impact of the federal policy they help shape. Though indirectly elected, members' democratic legitimacy is given by the fact that the Bundesrat's composition is determined by elections that express the will of the people (there is a German saying that states 'Your election in the state of Hesse counts in the Bundesrat in Bonn').<sup>b</sup>

In the chamber, each state has to cast its votes as a block, without vote splitting, even if the state government is a coalition. This is because the delegates are not independent members of the Bundesrat and do not have a free mandate, but are instructed representatives of the state governments.<sup>c</sup> If the members of a delegation cast different votes, then the entire vote is invalid. Given the frequency of coalition governments, states choose to abstain if they cannot agree a position, which has the same effect of a vote against.

The Bundesrat sees and comments on all legislation before introduction in the lower house. The extent to which the Bundesrat is entitled to participate in the legislative process varies depending on the content of legislation. The Bundesrat has absolute veto on bills affecting the states (around 50% of bills) and constitutional amendments; it has suspensive veto over other legislation. Decisions require a majority of all possible votes. Over the years, the Bundesrat has increased its legislative responsibilities by arguing for a broad interpretation of laws affecting the states.<sup>d</sup>

Most work is conducted in committees, with the Bundesrat typically meeting in plenary 12–15 times a year for the purposes of voting on

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a. Russell (2001b).

b. Bundesrat (n.d.[d]). Plenary Session. <https://www.bundesrat.de/EN/organisation-en/plenum-en/plenum-en-inhalt.html>

c. Bundesrat (n.d.[c]).

d. Russell (2001b).

legislation prepared in committees. All legislation, including draft bills, initiatives or ordinances, is discussed in detail in the committees before being put to a vote in a plenary session.

The Bundesrat also offers a forum for negotiation between central government and the states, which are responsible for implementing most government policy. Cooperation among the states, and between the states and the federation is promoted through regular meetings, as well as through other instruments. The relationship between the federal and state levels has been described as *politikverflechtung* (entanglement).

There is little pressure in Germany to reform the upper house – there is widespread respect of and satisfaction with the Bundesrat, which ‘has been described as the “single most important institution” of the German federal state’.<sup>e</sup>

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e. Ibid.

59. Russell (2001a).

60. Russell (2001b).

Territorial second chambers can represent the interests of one of three geographical units: the sub-national legislature (Belgium), the sub-national executive (Germany), or the people themselves (Australia, Italy and the US), or a mixture of these (Spain).<sup>59</sup> There are advantages and disadvantages to each of these types of second chamber. Directly elected chambers are accountable to the public and might thus enjoy greater democratic legitimacy and popular support, but have a weaker link to sub-national institutions. By contrast, indirectly elected chambers have an indirect link with the people (who elect the sub-national legislature or government), but a direct link with territorial institutions, though this is not guaranteed.<sup>60</sup>

Territorial second chambers also differ in the way in which they are granted territory-specific powers. This can be done by: granting second chambers exclusive powers/a veto over legislation

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affecting the territories (e.g. the German Bundesrat has absolute veto over this); organising seating and voting so that it reflects the nation's constituent parts (e.g. single weighted vote per territorial delegation as in Germany); granting the second chamber extra powers in debates and committees relating to territorial issues (as in Spain); allowing the second chamber to initiate legislation affecting territorial sub-units; making the second chamber accountable to territorial institutions (e.g. by requiring formal reporting at the sub-national level).<sup>61</sup>

61. Ibid.

### **A custom solution for the UK**

Overseas experience, as set out in the previous section, shows us that there are a range of different ways in which an elected second chamber can represent territorial interests. No international model however, can perfectly fit the unique challenges of the UK's quasi-federal state with asymmetric and unfinished devolution, and imbalances in population size across the constituent parts. So how might a territorial second chamber work in the UK and what considerations would need to be addressed to make this a custom UK solution?

Firstly, there is the composition of the chamber: should the second chamber be composed of representatives of citizens (as in Italy) or of sub-national/local government (as in Germany), or neither/some mixture of the two? How many members should make up an elected second chamber and how should territorial representation be achieved and balanced given England's dominance in population terms? Should each of the UK's constituent parts return the same number of members, or should this be decided on the basis of population or weighted to allow a more equal representation of smaller areas?

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Secondly, linked to composition, one must consider the election of representatives: should the chamber be fully or partly elected? By which type of election (direct/indirect) and method (electoral system)? If direct election by the people is used rather than indirect election by members of sub-national legislatures (which would be difficult to implement in advance of full devolution across the UK, including England), links between levels of government could be guaranteed through other processes. Also, should elections take place at the same time as those for the Commons or should they be staggered? It might be preferable to introduce some differences between elections to the House of Commons and the second chamber so as to ensure a distinct composition - these could be in terms of electoral boundaries, terms of office and/or electoral system (e.g. Australia uses STV to elect the Senate and the Alternative Vote to elect the House of Representatives).

Thirdly, there is the consideration of which powers would be given to a reformed second chamber over territorial issues. Consideration of the impact of legislation on different nations and localities can be built in with mechanisms such as a veto. As shown in the case of Germany (Box 1), the Bundesrat has absolute veto over bills affecting the states and its consent is required for other specific bills. Protecting the nations or localities which may be more affected than others by certain legislation could also be dealt with either by numerical representation or specific vetoes. Members of an elected second chamber could be granted the right to speak in the devolved legislature for their area, and conversely, members of the sub-national legislature could be given the right and opportunity to question members of the second chamber and/or address the second chamber directly.

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Then there is the question of the legitimacy of an elected second chamber in relation to the primacy of the House of Commons: if proportional representation were used, would this give the second chamber greater legitimacy and if so, how would this affect the pre-eminence of the House of Commons? An elected second chamber commanding democratic legitimacy may well prove to be a more assertive second chamber and might be more likely to use its powers. This is to be welcomed not feared. Power is incredibly concentrated in the British political system, a more assertive second chamber would complement the Commons and the role of Parliament as a whole in scrutinising and holding government to account. This does not equate to overriding the primacy of the House of Commons. Indeed, as Dr Alan Renwick argued in relation to the 2012 coalition bill, ‘claims that the proposed reforms would destroy Commons primacy are greatly exaggerated; in fact, they would probably lead to a limited increase in the power of the second chamber, and this change might well be desirable’. Dr Renwick went on to say that ‘the reformed second chamber would have greater democratic legitimacy; but it would still be constrained by the Parliament Acts and probably by some conventional constraints, and the government would still be based in the House of Commons.’<sup>62</sup>

62. Joint Committee on the Draft House of Lords Reform Bill (2011). Written evidence from Alan Renwick (EV 35). <https://www.parliament.uk/documents/joint-committees/draft-house-lords-reform-bill/JCHLR%20Written%20Evidence%20Web%20Version.pdf>

Electing the second chamber would therefore not mean increasing its (formal) powers. The primacy of the House of Commons is contained in powers that are not necessarily undermined by creating an elected second chamber.

- Government would still be based in the House of Commons and by providing the leadership of the government of the day (and opposition) the Commons would remain the governing chamber.

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- The second chamber would still not have power over Supply, with the Commons continuing to have full control over public income and expenditure.
  - In addition, restricted powers, different systems of election, longer term limits and proportionality can all contribute to maintaining the revising nature of the second chamber and to differentiating it from the Commons.

Finally, a territorial second chamber would need to account for evolving devolution, including to and within England. It is not unusual for second chambers to accommodate changing devolution patterns: in Italy, France and Spain, regional autonomy has developed after the establishment of the second chamber. Italy anticipated this change and designed its Senate around regional boundaries using direct elections. A key factor in these countries was that some sense of regional affiliation and identity existed prior to the set-up of the second chamber, but this has not prevented the chambers themselves adapting to changing identities. As we discuss later, the relationship between identity and institutions is not always linear.

## Reimagining the state

- Our democratic principles are not being well-served by the current political system. We need to rebuild our democracy on stronger and fairer foundations, and move from a model of power-hoarding centralisation to power-sharing across political institutions at different levels.
- Reform of the House of Lords has been on the political agenda for over 100 years and improving the chamber's democratic legitimacy has been at the heart of most reform proposals. Engagement with reforming the Lords has been long-standing and cross-partisan.
- Second chamber reform can improve the health of our democracy by allowing for the fair and equal representation of the UK's nations and localities, particularly in this post-Brexit era. An elected, territorial second chamber could serve as a forum in which the UK's constituent parts work together in the 21st century, supplementing our current mechanisms for cross-border working.
- International experience shows that there are a variety of ways in which a territorial second chamber can be constituted to perform its functions.
  1. Territorial second chambers can represent the interests of the sub-national legislature, the sub-national executive, the people themselves, or a mixture of these.
  2. They can be directly or indirectly elected.
  3. Territory-specific powers can be granted through vetoes/exclusive powers over legislation, seating and voting arrangements, extra powers in debates and committees, the power to initiate legislation, accountability to territorial institutions.
- Key considerations for reforming the second chamber are:
  1. Composition of the chamber
  2. Election of members
  3. Specific powers over territorial issues
  4. Relationship with the House of Commons
  5. Further devolution to the nations and localities of the UK – including to and within England



# Better Representation

## What about England?

Rethinking the possibilities of the Westminster Parliament necessarily raises questions of England's place in the union and the question of how to represent it. A revised second chamber would not fully address the lack of national devolution within England and the question of how England should be governed at national and local levels in ways that are democratic and situate power as close to the local level as possible.

England is the 'gaping hole in the devolution settlement'<sup>63</sup> and is now 'the only nation subject to permanent direct rule from Westminster'.<sup>64</sup>

Despite being the largest constituent part of the UK in both population and economic terms, England is rarely mentioned as a separate 'territory' by Westminster politicians. England also does not have a separate, distinctive political voice in the Westminster System, lacking its own executive and/or legislature. Governing England is not considered separately from wider governance of the UK, in part because, by creating an English government or Parliament, England's political and economic dominance could undermine the stability of the union and fuel nationalism in the other nations.<sup>65</sup>

63. Hazell, Robert (2006). *The English Question*. London: UCL Constitution Unit. <https://www.ucl.ac.uk/political-science/publications/unit-publications/130.pdf>

64. Paun, Akash, Michael Kenny and Iain McLean (2018). Understanding English identity and institutions in a changing United Kingdom. *The Constitution Unit Blog*, 29 November. <https://constitution-unit.com/2018/11/29/understanding-english-identity-and-institutions-in-a-changing-united-kingdom/>

65. Russell, Meg and Jack Sheldon (2018). *Options for an English Parliament*. London: UCL Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/179-options-for-an-english-parliament.pdf>

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So England remains highly centralised (in fact, it is one of the most centralised nations in Europe) and primarily ruled through British/UK-wide institutions. Devolution within England has been limited and piecemeal, not motivated by a comprehensive, long-term plan to give genuine political representation to ‘Englishness’ and voice to English citizens. The only – albeit still limited and relatively untested – reform in this regard was the introduction of English Votes for English Laws (EVEL) in 2015. But some argue that EVEL is merely recreating the West Lothian question in a new form, given its singular focus on England as a whole and its failure to consider relationships with the other nations and among and across English localities.<sup>66</sup>

66. Mycock, Andrew and Arianna Giovannini (2015). Behold the ‘Manchester Withington question’. *Open Democracy*, 19 November. <https://www.opendemocracy.net/en/opendemocracyuk/behold-manchester-withington-question/>

Devolution to Scotland, Wales, and Northern Ireland by contrast, has been much more well-thought-out and long-term. In Scotland, devolution was preceded by a long national debate which culminated in the work of the Constitutional Convention and a referendum which approved the establishment of a Scottish Parliament. In Wales, there was a more limited debate around governance before the late 1990s, but here as well the people were given a direct say on whether to establish a national assembly in the 1997 referendum (though this only passed by a very small margin) and in 2011, on whether the assembly should have full law-making powers. In Northern Ireland, devolution was intimately linked with the peace process which culminated with the signing of the Good Friday Agreement in 1998 and its endorsement by the people via referendums in both Northern Ireland and the Republic that same year.

67. Torrance, David (2018b). ‘A Process, Not An Event’: Devolution in Wales, 1998–2018, *House of Commons Library Briefing*. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8318>

But devolution is a ‘process not an event’, as former Secretary of State for Wales Ron Davies put it,<sup>67</sup> as proven already in Scotland, Wales and

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Northern Ireland. Any new institutional and constitutional structure for the UK will need to take this into account for England as well.

### **Identity, people and place**

It would be a mistake however, to move immediately from technical asymmetry to an institutional solution. What is most important about the question of England's place in the constitutional set up of the UK, is that England has not yet had a say in it. Within England, citizens have not had a chance to discuss their constitutional future or to consider whether an institutional change might be desirable.

The 2016 EU referendum was the first chance for most in England to have a say on their constitutional future and this chance was taken up. Not only did England vote more decisively for Brexit (53.4%–46.6%), pulling the rest of the UK into that decision, but there is also a clear connection between Englishness and the Leave vote: 73 percent of those who prioritise their English identity said they intended to vote leave, whilst just 35 percent of those who prioritise their British identity intended to.<sup>68</sup> National identity is becoming a political question and is therefore an important consideration for the future of the UK's constitutional arrangements.

Overlapping and blurred national identity attachments are common in England. Between 1997 and 2017 'equally English and British' has been the most popular identity, reflecting the position of around 30 to 40 percent of the population.<sup>69</sup> 'English only, not British' answers represent around a sixth of the public, and 'British only, not English' around an eighth. This both reflects the integration of English and UK constitutional arrangements but has also, in many ways, supported the institutional status quo.

68. Henderson, Ailsa, Charlie Jeffery, Dan Wincott and Wyn Jones (2017). How Brexit Was Made in England. *British Journal of Politics and International Relations*, 19 (4), pp. 631–46.

69. Curtice, John (2018). How do people in England want to be governed. In: Kenny, Michael, Iain McLean and Akash Paun (ed.). *Governing England*. The British Academy. OUP. pp. 247–270.

These surveys, which give options including ‘more British than English and ‘more English than British’ as well, find that those prioritising English identity (‘only English’ and ‘more English than British’) make up around 33 percent of respondents over the period that question has been asked). After an increase in English identification post-devolution in the late 1990s, forced choice questions (offering either English or British) have seen English identifiers remaining at around two-fifths.<sup>70</sup> There are of course other ways people choose to self-identify and seeing themselves as ‘Yorkshireman’, ‘Cornish’, ‘Brummie’, ‘Geordie’ or ‘Londoner’.<sup>71</sup>

70. Curtice, John (2018)

71. Cox, Ed and Charlie Jeffery (2014). *The Future of England: The Local Dimension*. <https://www.ippr.org/publications/the-future-of-england-the-local-dimension>

72. Wyn Jones, Richard, Guy Lodge, Ailsa Henderson, and Daniel Wincott (2012). The dog that finally barked: England as an emerging political community’, *IPPR* [https://www.ippr.org/files/images/media/files/publication/2012/02/dog-that-finally-barked-englishness-Jan2012\\_8542.pdf](https://www.ippr.org/files/images/media/files/publication/2012/02/dog-that-finally-barked-englishness-Jan2012_8542.pdf)

73. Wyn Jones et.al. (2012)

74. Denham, John and Daniel Devine (2017). *English identity and the governance of England*. <https://www.thebritishacademy.ac.uk/sites/default/files/English%20Identity%20and%20the%20governance%20of%20England.pdf>

The desire to see England represented in its own political institutions is higher amongst citizens identifying predominantly as English, yet this desire has yet to coalesce around a specific institutional change.<sup>72</sup> Of a range of institutional answers to the English question, including an English Parliament and English regional government, no one particular answer gets majority support, though the status quo remains supported by just over half the population.<sup>73</sup> EVEL is popular even amongst those identifying as British, and this support amongst those who prioritise a British identity over an English one perhaps reflects a sense that it is a more democratic approach to the previously inconsistent arrangement, rather than a desire for specifically English representation.

Though there appears to be a growing policy divide between English and British identity attachments, seen most clearly in Remain and Leave preferences, what these surveys show is that identities are often layered. Those who feel most strongly English also feel most strongly British and these identities may be seen as distinct or as interchangeable.<sup>74</sup> Being English can also mean

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different things to people in different parts of the country and more immediate regional identities may sometimes be stronger. There is no clear popular support for one particular institutional solution to the current asymmetry. This suggests that being aware of the overlapping identities within England and the potential to allow for the expression of identity at all levels is an important consideration in constitutional change. We should consider identity within our institutional set-up but also be aware that identities are layered and changeable – one need not necessarily lead to the other – and institutions can create identities as well as reflect them.

### **Regional division and economic inequality**

Of course, much of what drives opinion is not a sense of constitutional anomaly but a more immediate sense of having lost out – resentment at a perceived unfairness in funding arrangements and lack of trust<sup>75</sup> – and this has a strong territorial dimension, as Jennings and Stoker highlight. The ‘Bifurcation of England’ sees two culturally distinct Englands emerging from new divides between areas which are more socially liberal and positive about immigration and globalisation, and areas where more socially conservative views towards immigration and anti-EU sentiment dominate.<sup>76</sup> Similarly Andrés Rodríguez-Pose writes of the geographically ‘left behind’ and the revenge of places that don’t matter, highlighting the relationship between identity, place and the perception of unfairness which has dramatic political consequences.<sup>77</sup> Rodríguez-Pose demonstrates the political divides opening up between prosperous – usually urban – areas and those in long-term decline, not just in the UK but across the globe; driven by an economic approach that has stressed the value of cities. This has

75. Wyn Jones et. al. [2012]

76. Jennings, Will and Gerry Stoker (2016). The Bifurcation of Politics: Two Englands. *The Political Quarterly*, 87(3), July-September.

77. Rodríguez-Pose, Andres (2017). The revenge of the places that don’t matter (and what to do about it). *Cambridge Journal of Regions, Economy and Society*, 11 (1). pp. 189–209.

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created a divide between the places that matter and the places that do not and the revolt of the ‘places that don’t matter’ has taken place at the ballot box. Rodríguez-Pose argues that it is a territorial inequality rather than interpersonal inequality that has driven the most significant political shocks in recent years. The link between regional economic inequalities and political divisions is also illustrated by Los et al who highlight a ‘geography of discontent’ in which local economic characteristics interact with, and overlay, individual socio-economic characteristics.<sup>78</sup>

78. Los, Bart, Philip McCann, John Springford, and Mark Thissen (2017). The mismatch between local voting and the local economic consequences of Brexit. *Regional Studies*, 51 (5), 786–99.

This ‘geography of discontent’ is tied to a loss of trust in politics coupled with a sense of a loss of control. People’s communities have changed and the future does not always look better than the past. There is an element of distance, a territorial dimension, to this lack of control and hope: it is a feeling that politics happens somewhere else, not in the communities in which people live. For many, Westminster feels remote. In our survey we find that almost half (47%) of people do not feel at all or very represented by parties at Westminster and that two-thirds (67%) feel like they have no or very few opportunities to inform and influence decisions made by their elected representatives.<sup>79</sup>

79. ERS poll conducted by BMG Research (fieldwork 7–10 May 2019), sample 1,541 GB adults. Data weighted.

In this year’s Audit of Political Engagement, the Hansard Society finds that 47 percent of people feel that they have no influence over national decision-making. This is a new high for the Audit series which is in its 16th year. Those who ‘strongly disagree’ that political involvement can change the way the UK is run is up to 18 percent – another high for this long running audit. This year’s findings show that, whilst political engagement is relatively stable, ‘beneath the surface, the strongest indicators of powerlessness and disengagement are intensifying’.<sup>80</sup>

80. Hansard Society (2019). *Audit of Political Engagement 16: The 2019 Report*. [https://assets.ctfassets.net/rdwvqctnt75b/7iQEhtrklbLcrUkduGmo9b/cb429a657e97cad61e61853c05c8c4d1/Hansard-Society\\_Audit-of-Political-Engagement-16\\_2019-report.pdf](https://assets.ctfassets.net/rdwvqctnt75b/7iQEhtrklbLcrUkduGmo9b/cb429a657e97cad61e61853c05c8c4d1/Hansard-Society_Audit-of-Political-Engagement-16_2019-report.pdf)

A ‘geography of discontent’ coupled with a loss of trust and hope is a powerful force but it is also

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81. Spicer, Jason S. (2018). Electoral Systems, Regional Resentment and the Surprising Success of Anglo-American Populism. *Cambridge Journal of Regions, Economy and Society*, 11 (1), pp. 115–41.

one that has been fuelled by a historic lack of voice and representation. As Spicer has argued, rising inter-regional disparities have created the greatest political shocks in the UK and in the US, as inequality interacts with majoritarian electoral systems.<sup>81</sup> The failure of majoritarian electoral systems to represent the views of places left behind by globalisation, has led to insufficient state responses to this regional inequality and in doing so, has encouraged a rise in populism. The dominance of two-party politics has excluded a range of voices from the conversation, pushing locality-specific concerns to the margins as parties chase their national median voter. This ‘distinctly regional and spatial’ component of the crisis of representation is greatly exacerbated by our electoral system. Spicer argues that Brexit is an outcome of a system that has marginalised voters’ views, resulting in insufficient policy responses to rising inequality.

As much as reforming the centre is absolutely key to rebalancing politics, it cannot stop there. Building a new politics is also about recognition and respect, as well as the chance to have a say and be counted. Power and voice cannot be achieved without bringing politics closer to people. The solution cannot be divorced from the experience of citizens and it should not be imposed from the top down.

For the most part, devolution within England has been a top-down project. The failure of the North East Assembly referendum in 2004 drew discussion of devolution to English regions to a close. It was however, a very specific type of devolution, heavily influenced by the government’s agenda and in effect a top-down process. The early stages had involved a constitutional convention (North East Constitutional Convention) taking inspiration from the Scottish process and – as with

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82. Willett, Joanie and Arianna Giovannini (2014). The Uneven Path of UK Devolution: Top-Down vs. Bottom-Up Regionalism in England – Cornwall and the North-East Compared. *Political Studies*, 62(2), pp. 343–60

83. Willett and Giovannini (2014)

the Scottish convention –choosing its membership from regional stakeholders, politicians and academics. However, the convention took an ‘intrinsically technical and scholarly approach to regionalism, largely informed by the Convention’s membership’.<sup>82</sup> The North East was seen as the appropriate place for a regional assembly because of its logical administrative boundary and sense of regional identity, yet when it came to the referendum the proposals for a regional assembly were rejected. In an all-postal ballot, only 48 percent of the electorate voted and the proposals were rejected by 78 percent of voters. Despite a greater sense of territorial identity than perhaps other regions of England, this did not translate into a desire for political representation in an assembly. Perhaps the proposals, which gave little power away, were seen as too weak and administrative in focus, but they were also shaped more by the Westminster government than the people of the North East. This was not necessarily a rejection of English regionalism or a rejection of greater local powers, but the rejection of a top-down model of devolution without meaningful power. Willett and Giovannini compare the experience of the North East with the campaign for a Cornish assembly, which despite a strong and distinctive cultural, historical and social identity, was not given a referendum.<sup>83</sup> This again reflects the controlling and centrally-led approach to devolution so far. The popular movement for a Cornish assembly did not fit the model favoured by the government at that time which was focused on administrative regions (Cornwall being part of the larger South West region).

This top-down regionalism has developed most recently into so called ‘city deals’. The Conservative government adopted a ‘deal’ model for devolution – devolved powers in return for

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combined authorities and directly elected mayors. Driven by economic concerns rather than democratic ones, regional devolution has been pursued as a way of tackling economic underperformance, administrative inefficiencies and public service reform, not of empowering local democracy. In fact, the democratic aspect has been largely lost in deals decided by local and central elites. The 2012 referendum on having a directly-elected mayor for Manchester was rejected by the majority of Mancunian voters and there was no democratic sign off for the deal agreed.<sup>84</sup> The bespoke, purely economic approach to devolution sets areas in competition with each other while keeping power at the centre. The recent withdrawal of government funding for a housing deal with the Greater Manchester Combined Authority, in response to revised housing numbers, is an example of the limits of this model of devolution.<sup>85</sup> More delegation than real devolution and without the power to allocate resources as desired, there is little room for manoeuvre.

Growing economic inequalities across England are matched by asymmetries across England with respect to powers and representation. Around a third of the English population have a 'Metro Mayor', but there is no alternative model for the rest of the country.<sup>86</sup> A new, more bottom-up model will be needed for the future, giving citizens the chance to have a say in how they are represented and providing the legitimacy of consent for new governing arrangements. Regional devolution may be the answer, but it will need to start from a democratic perspective, focusing on people and locality, not economic competition.

Across Western Europe, the politics of identity and place are increasing. Understanding the need for self-determination is crucial, but this does not mean treating identities as a given. Institutions can

84. Moran, Mick, John Tomaney and Karel Williams (2018). Territory and power in England: the political economy of Manchester and beyond. In: Kenny, Michael, Iain McLean and Akash Paun (ed.). *Governing England*. The British Academy. OUP. pp. 189-206

85. Barratt, Luke (2019). Cancelled £68m Manchester housing deal will mean 'more unaffordable housing'. *Inside Housing*, 17 April. <https://www.insidehousing.co.uk/news/news/cancelled-68m-manchester-housing-deal-will-mean-more-unaffordable-housing-61069>

86. British Academy (2017) *Governing England* conference, July 2017 <https://www.thebritishacademy.ac.uk/sites/default/files/Governing%20England%20July%20Conference%20Write%20Up.pdf>

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play a role in constructing identities and good institutions, that reflect identity, can provide a foundation to give people and communities representation. Crucially though, this needs to take a more bottom-up approach.

Devolution should be about working together not in competition. We need to ask citizens what they want, give people space to debate their constitutional future and to create forums whereby people can debate together, not in competition. Sixty six percent of people think most big issues facing the country today do not have clear solutions<sup>87</sup> so coming together to debate and discuss is even more necessary. Trust is waning, not only in our democratic institutions but in each other. In this environment, we could see the rise of a politics of 'strong leadership' which plays on our fears and divides us, breaking democratic rules in the name of efficiency. Or we could try to save democracy by doing democracy differently.

87. Hansard Society (2019). p.16.

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## Bringing Power Closer to the People

The previous chapters have outlined how lack of trust, a feeling of powerlessness and a sense of distance from where decisions are taken, as well as an outdated and broken political system – characterised by institutions formed in a pre-democratic era – are threatening the health of our democracy. We have shown how shifting power at the centre and improving representation can help address these challenges.

But top-down institutional change, such as second chamber reform and the devolution of more powers to the nations and localities, is only one way of improving the health of our democracy. Fundamental constitutional change and a recalibration of how we practise our democracy cannot be imposed from Westminster. Bottom-up citizen involvement is necessary to ensure the legitimacy of, and trust in, our institutional set-up and democracy more broadly. The public needs to have a genuine say by being directly and actively involved in shaping the future of their democracy. This means creating and investing in spaces which allow for direct citizen input – we need to bring power closer to the people, as well as fixing the central state institutions.

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88. See, for example, Gastil, John, Elizabeth Rosenzweig, Katherine R. Knobloch, and David Brinker (2016). Does the public want mini-publics? Voter responses to the Citizens' Initiative Review. *Communication and the Public*, 1(2), pp. 174–92.

Allowing for bottom-up citizen involvement in decision-making can help foster and strengthen trust in the political system and institutions, as well as legitimising the decisions made. Research shows that citizens are more likely to trust decisions made by fellow citizens with whom they can identify and who are more likely to share their interests and concerns.<sup>88</sup> Devolving power to the local level, and to people themselves, gives citizens control over their lives and respects their right to self-determination. This is especially important in the context of England, where citizens' active involvement in determining their future is now seen by many as a necessary precondition for devolution to, and within England, in contrast to the top-down devolution proposals advanced by previous governments.

There are a variety of ways to bring power closer to people and engage them in politics and decision-making more actively. Forms of deliberative democracy are now being used more frequently around the world as a way of providing for citizen input in the policy-making process. Constitutional conventions and citizens' assemblies are two of the most well-known and most frequently called for deliberative formats, but there are other ways for citizens to be involved in decision-making at the local and sub-national levels and in a variety of settings, such as through participatory budgeting processes, civic lotteries or town hall meetings.<sup>89</sup> Participatory reforms and ideas are indeed already flourishing at the local level, with new organisations and movements being set up from the grassroots with their own structures and voices. The town of Frome in Somerset, for example, has trialled 'Flatpack Democracy'<sup>90</sup>, allowing citizens to be directly involved in decision-making by inviting them to attend local council meetings, which have been

89. The Participedia website contains an in-depth list of participatory and deliberative formats. It is available at: [participedia.net](http://participedia.net)

90. [www.flatpackdemocracy.co.uk](http://www.flatpackdemocracy.co.uk)

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91. Pavlou, Andreas (2019). Insight into Democratic Reform at the Local Level. *Involve*, 24 April. <https://www.involve.org.uk/resources/blog/opinion/insights-democratic-reform-local-level-somerset-spain>

92. Extinction Rebellion (n.d.). Our Demands. <https://rebellion.earth/the-truth/demands/>

93. Oxford City Council (2019). Oxford City Council to establish UK's first citizens assembly to address climate emergency. *Oxford City Council*, 23 April. <https://www.oxford.gov.uk/news/article/1064/oxford-city-council-to-establish-uk-s-first-citizens-assembly-to-address-climate-emergency>

turned into deliberative workshops.<sup>91</sup> The Extinction Rebellion group is advocating the establishment of a citizens' assembly to tackle climate change,<sup>92</sup> and Oxford has already announced that it will run such an exercise at council level.<sup>93</sup>

While there are various ways to bring power closer to the people, any such mechanism is contingent upon those at the top recognising this bottom-up, participatory, deliberative work as a valuable and necessary way of participating in democracy; and on their being willing to let go of some of their power in order to truly give citizens power and a voice. We should note that deliberative processes that involve people in decision-making do not and are not intended to supplant representative, parliamentary democracy – rather they are meant to complement and enhance the quality of our existing political processes, allowing for a different kind of policy-making which is closer to people's lived experience, centred on reflection and deliberation and which takes place away from the polarised and politicised environment found in most Parliaments.

This chapter considers different ways of bringing power closer to people through deliberative democratic processes at the national, sub-national and local levels. It begins with a brief explanation of what is meant by 'deliberative democracy' and then describes some of the best-known examples of deliberative democratic processes both internationally and in the UK. Drawing upon this experience, we then look at how we can bring power closer to the people in the UK and consider ways in which citizens can be involved in shaping the future of their democracy.

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## What is deliberative democracy?

Our understanding of democracy has changed significantly during the 20th and 21st centuries.<sup>94</sup>

Following the introduction of universal suffrage in most advanced democracies and changes to the conception of the state following the Second World War, democracy was conceived of and practised in ‘minimalist terms’ – voters would turn up to elect their representatives every so often and MPs were left to govern in accordance with the mandate they had been given until the next election.<sup>95</sup> From the 1960s until the 1990s, a ‘liberal’ conception of democracy dominated, which emphasised voters’ political rights, including the right to make free and informed decisions (which relied upon the availability of free information for all) and to participate in political debate.<sup>96</sup> In more recent years, conceptions and practices of democracy have become more participatory and deliberative: voters are expected to take part in politics and policy-making not just at elections, but throughout the decision-making process (such as through referendums or online petitions) and their participation should be grounded in high-quality information, discussion and reflection.<sup>97</sup> Deliberation (long and careful discussion in order to make a decision) allows people to adopt more nuanced positions on the issues at hand, with a better understanding of the trade-offs inherent in any given decision. For deliberation to be effective, it is important that sufficient time and resources are provided for people to familiarise themselves with the various aspects of a question and discuss and reflect on the issues away from the simplistic sloganeering of political campaigning. The outcome of a deliberative process should be one in which people feel more able to make an informed decision on a given issue. The legitimacy of political decisions

94. Renwick, Alan and Michela Palese (2019). *Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?* London: UCL Constitution Unit. [https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/184\\_-\\_doing\\_democracy\\_better.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/184_-_doing_democracy_better.pdf)

95. Ibid.

96. Dahl, Robert (1956). A *Preface to Democratic Theory*. Chicago: University of Chicago Press.

97. Renwick and Palese (2019).

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does not rest solely on voting and its aggregation of preferences, but on informed, reflective and deliberative public opinion.

Deliberative democracy thus allows for citizens to participate at different stages of the decision-making process and at different levels of government, bringing power much closer to the people. Indeed, in the current climate of polarisation and division, only real citizen engagement and reasonable, reflective discussion that brings people together in a de-politicised, high-information environment, can help tackle the complex issues with which we are faced and shift our current political discourse away from one dominated by divisive and simplistic soundbites.

### **International experience**

Deliberative democratic processes have been used in a variety of forms, contexts and levels of government/decision-making internationally. Some of the most well-known examples of these take place at the national level before or during an election or referendum campaign, either to set and refine the policy agenda prior to a popular vote or to frame the debate once an issue has been selected for a vote.<sup>98</sup> However this is not the only way to involve citizens in decision-making.

Deliberative processes can ‘market-test’ policy proposals and thus gather and convey public opinion on an issue, as was the case with an ‘AmericaSpeaks 21st Century Town Meeting’ on post 9/11 urban planning, or the deliberative polling on the use of green energy run by academic and deliberative democratic expert James Fishkin in Texas.<sup>99</sup> In Canada, Mass LBP runs public consultations and other deliberative processes to inform local and sub-national policy-making.<sup>100</sup>

98. Ibid.

99. Goodin, Robert E. and John S. Dryzek (2006). *Deliberative Impacts: The Macro-Political Uptake of Mini-Publics*. *Politics & Society*, 34(2), pp. 219–44.

Center for Deliberative Democracy (n.d.). *Deliberative Polling: Texas Electric Utilities*. <https://cdd.stanford.edu/1998/deliberative-polling-texas-electric-utilities/>

100. Mass LBP (n.d.). *Work*. [www.masslbp.com/work](http://www.masslbp.com/work)

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101. The Economist (2019). Emmanuel Macron ends his "great national debate". *The Economist*, 11 April. <https://www.economist.com/europe/2019/04/13/emmanuel-macron-ends-his-great-national-debate>

102. Van Reybrouck, David (2019). Belgium's democratic experiment. *Politico*, 25 April. <https://www.politico.eu/article/belgium-democratic-experiment-citizens-assembly/>

103. G1000 and Foundation for Future Generations (2019). German-speaking Community of Belgium becomes world's first region with permanent citizen participation drafted by lot. *G1000 and Foundation for Future Generations*, 26 February. [https://www.foundationfuturegenerations.org/files/documents/news/20190226\\_dgpermanentcitizensassembly\\_pressrelease.pdf](https://www.foundationfuturegenerations.org/files/documents/news/20190226_dgpermanentcitizensassembly_pressrelease.pdf)

More recently, French President Emmanuel Macron launched a 'great national debate' in response to the so-called *gilets jaunes* (yellow vests) movement – a series of town hall meetings and public debates, considering issues such as taxes and public spending.<sup>101</sup> In what has been described as a 'historic move', the Parliament of the German-speaking region in Belgium has committed to establishing a permanent citizens' assembly, drafted by lot, to involve citizens in shaping the future of their community.<sup>102</sup> From September 2019, a 'Citizens' Council' made up of 24 members will propose policy recommendations to the Parliament of the German-speaking region, drawing upon independent policy proposals drafted by regular citizens' assemblies. Parliament will then be required to respond to the Council's recommendations.<sup>103</sup>

The most well-known examples of deliberative democratic processes are those which have had the biggest real-world and policy impact, namely the constitutional conventions and citizens' assemblies that have taken place in Iceland, Canada and Ireland.

Both constitutional conventions and citizens' assemblies are deliberative democratic processes, though they vary in the extent to which citizens are involved and in their remit. Constitutional conventions do not necessarily need to include members of the public – though recent proposals to hold one in the UK recognise that some level of public involvement is necessary – and are tasked with discussing constitutional change, including revising an existing or writing a new constitution. In contrast, as their name indicates, citizens' assemblies include members of the public (though they can also include politicians or special interest groups) who are chosen at random from the general public, like a jury. The selection of members is stratified to ensure that participants

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are as representative as possible of the general population according to certain criteria; usually gender, age, ethnicity, geographical location, and social background. For this reason, citizens' assemblies are also referred to as 'mini-publics'. Random selection of members means that the wider public can be confident that assembly members are fellow citizens, like them, and are not representing special interests.

Iceland's experience is the most well-known example of a constitutional convention that directly involved citizens.<sup>104</sup> Following the financial crash in 2008 and subsequent so-called 'Pots and Pans' revolution, the Icelandic government established a Constitutional Assembly to write a new constitution to replace the provisional one adopted in 1944. The process advanced in three stages. First, Parliament convened a national assembly of 100 people selected randomly from the national register using stratified sampling to ensure gender, age and regional balance. The national assembly discussed the issues they wanted to see in a new constitution and produced a brief document covering concerns such as equal voting rights and public ownership of natural resources. The second step was to appoint a constitutional committee – made up of seven experts from different areas (law, literature, science, and so on) – to gather information, provide analysis and propose ideas. The committee was required by law to consider the conclusions of the national assembly and produced a 700 page report containing detail of how the new constitution could be composed including suggested text and analysis of specific issues. The third step was to elect a Constitutional Council, made up of 25 members elected by the Single Transferable Vote from a roster of 523 candidates. This was comprised of a diverse selection of citizens

104. Gylfason, Thorvaldur (2012). From Collapse to Constitution: The Case of Iceland. *CESifo Working Paper Series No. 3770*. <https://ssrn.com/abstract=2034241>

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including a farmer, a priest, a nurse, a philosopher and theatre director as well as lawyers, political scientists and politicians. The Council then set about its task of writing the new constitution. The final bill was agreed by 25 votes to zero. The Council's proposals were approved by the people at a referendum, but have thus far failed to secure the Parliamentary endorsement necessary for them to be implemented.

A web-based interface was established for the process with Council meetings broadcast live and all written work posted online for the public to read and comment on. The assembly posted its provisional articles in advance, so comments from the public could be factored into the discussions and after which revised versions were again posted on the website. The public were encouraged to make submissions – 323 formal proposals were received and discussed and 3,600 comments were posted on the website. The Council was advised by lawyers and others both in meetings and in written submissions. Notably, special interest groups (bankers, politicians, farmers, fishing boat owners) were not given special access over and above that accorded to ordinary citizens. For Iceland, whose constitution project was born out of the absence of effective checks and balances which had led to undue influence accorded to certain groups, it was essential that these groups should not be given special access to the process.

Other examples of deliberative democratic process, are the 2004 British Columbia and 2007 Ontario Citizens' Assemblies on electoral reform.<sup>105</sup> The British Columbia Citizens' Assembly was made up of 161 citizens – a man and a woman selected randomly from each of the province's 79 electoral districts, plus two Aboriginal members to represent Canada's indigenous people. The assembly involved a year of

105. Warren, Mark E. and Hilary Pearse (2009). *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge: Cambridge University Press.

Ontario Citizens' Assembly on Electoral Reform (2007). *Democracy at Work: The Ontario Citizens' Assembly on Electoral Reform: A Record of Ontario's First Citizens' Assembly Process*. <http://www.citizensassembly.gov.on.ca/>

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work for its members and was divided into three phases: a learning phase ran from January to April 2004 followed by public hearings in May and June; submissions were invited until September 2004, after which there was a deliberation phase in which the Assembly discussed and debated what its conclusions should be. Similarly, Ontario's Citizens' Assembly was comprised of 103 randomly selected citizens, one from each riding, plus a chair appointed by the government. Its work was divided into three phases and took place over twelve weekends, as in British Columbia. The Citizens' Assemblies' recommendations were put to a referendum in both British Columbia and Ontario, though they failed to gain the required support.

Turning to our final example, Ireland has perhaps the most renowned experience of deliberative democracy as a way of directly influencing policy-making. As in Iceland, the establishment of a deliberative process was motivated by the 2008 financial and economic crisis which had led people to question the efficacy of the country's political institutions and to consider constitutional reform as a solution.<sup>106</sup>

Indeed, all parties proposed constitutional reforms in their manifestos for the 2011 election and an unofficial deliberative process – the 'We the Citizens' pilot citizens' assembly – was run by a team of political scientists, led by Prof David Farrell of University College Dublin, with the aim of influencing the government's plans relating to the Convention.<sup>107</sup>

The Convention on the Constitution was established by Parliament in July 2012 and was the result of post-election negotiations among Fine Gael and the Labour Party, the two parties in the governing coalition. Fine Gael had proposed a 'pure' citizens' assembly (as in Canada) to consider political and electoral reform, while the Irish

106. Renwick, Alan and Robert Hazell (2017). *Blueprint for a UK Constitutional Convention*. London: UCL Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/ccblueprint-2.pdf>

107. Farrell, David M. (2013). *The 2013 Irish Constitutional Convention: A bold step or a damp squib?*. [http://www.openpolitics.ro/wp-content/uploads/UCD\\_Mar13\\_final1.pdf](http://www.openpolitics.ro/wp-content/uploads/UCD_Mar13_final1.pdf)

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Labour Party proposed a ‘mixed’ assembly comprising politicians and experts as well as ordinary citizens.<sup>108</sup>

108. Renwick and Hazell (2017).

The Convention on the Constitution met over 10 weekends from December 2012 to March 2014 and comprised 100 members – 66 citizens selected through stratified random sampling so as to be representative of Irish society, and 33 politicians appointed by the Chair.

The Convention was tasked with deliberating on a specified list of eight constitutional topics, including allowing same-sex marriage, reducing the minimum age for presidential candidates and removing the offence of blasphemy from the constitution, all of which were later put to a referendum. Given its packed agenda, the Convention could not devote multiple weekends to the same topic and spread out the learning, consultation and deliberation phases as had been the case in Canada. Indeed, a single weekend was devoted to most topics, with a report being prepared following each weekend on the Convention’s process, deliberation and recommendations.<sup>109</sup>

109. For more information on the Convention on the Constitution see: <http://www.constitutionalconvention.ie/Default.aspx>

Building on the success of the Convention on the Constitution, the Irish Parliament established a Citizens’ Assembly in July 2016. The 2016 government programme committed the government to ‘the establishment of a Citizens’ Assembly within six months and without participation by politicians, with a mandate to look at a limited number of key issues over an extended time period.’<sup>110</sup>

110. For more information on the Irish Citizens’ Assembly see: <https://www.citizensassembly.ie>

The Assembly was made up of 99 randomly selected citizens and an appointed Chair and met over 12 weekends from October 2016 until April 2018. Similarly to the Convention, it was tasked with debating a specified list of five constitutional topics, including amending the constitutional ban

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on abortion (which was put to a referendum in May 2018, leading to the historic removal of the abortion ban in Ireland), tackling climate change and the manner in which referendums are held. Unlike the Convention, the Irish Citizens' Assembly was able to devote more than one weekend to some topics; deliberations on the subject of abortion, for example, lasted five weekends and involved presentations from experts and women directly affected by the constitutional ban, as well as public submissions.

International experience is valuable in showing how constitutional conventions and citizens' assemblies can be convened to deliberate on a variety of issues – from the wholesale review of the constitution to specific proposals – and can be relatively easily adapted to the local context, needs and interests. Furthermore, the examples set out above demonstrate how deliberative democratic processes can be successfully integrated into representative Parliamentary systems, even where they have failed to deliver constitutional change. Indeed, such processes can help depoliticise contentious issues which might not otherwise be tackled, and offer politicians an additional tool for gathering citizens' informed opinions on certain issues, thus enhancing the quality of policy-making. In this way, deliberative democracy can work with, and successfully strengthen and refresh, our representative institutions.

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## Deliberative democracy in the UK

The UK also has experience of deliberative democracy at different levels of decision-making, albeit more limited than other countries and not directly affecting national policy-making. Citizens' juries have been convened to explore policy issues within the NHS and local government and<sup>111</sup> the ERS has been involved in, and helped to run, three citizens' assemblies: two regional assemblies focused on devolution proposals in South Yorkshire and the Solent region in 2015<sup>112</sup> and the UK-wide Citizens' Assembly on Brexit held over two weekends in September 2017, which made recommendations on the UK's post-Brexit policies for trade and migration.<sup>113</sup>

In addition, ERS Scotland set up 'Democracy Max', a programme to involve Scottish citizens in a conversation about what makes good democracy. It organised a 'People's Gathering' which brought together over 80 delegates from across Scotland to engage in radical thinking about Scotland's democracy. Following the People's Gathering, three sets of roundtables were convened to distil the ideas from delegates, consider the feasibility of their proposals, discuss why some of them had not yet been implemented and talk through the forces that prevent change. The reports from those roundtables were brought together to present a vision for a good Scottish democracy and ERS Scotland is now involved in the 'Act As If We Own the Place' project, exploring new methods of collective decision-making.<sup>114</sup>

The UK's first official citizens' assembly took place in spring 2018, when two Parliamentary committees established the Citizens' Assembly on Social Care to support their inquiry into funding options.<sup>115</sup> In autumn 2018, the Citizens' Assembly for Northern Ireland was held and focused on aspects of social care provision.<sup>116</sup>

111. Davidson, Stewart, and Stephen Elstub (2014). Deliberative and Participatory Democracy in the UK. *British Journal of Politics and International Relations*, 16, pp. 367–85.

Delap, Clare (2001). Citizens' Juries: Reflections on the UK Experience. *PLA Notes*, 40, pp. 39–42.

112. UK Citizens' Assembly (n.d.(a)). Democracy Matters. <https://citizensassembly.co.uk/democracy-matters/>

113. UK Citizens' Assembly (n.d.(a)). About the Citizens' Assembly on Brexit. <https://citizensassembly.co.uk/brexit/about/>

114. Our Democracy/Act as if We Own the Place (n.d.). <https://ourdemocracy.scot/>

115. Involve (n.d.(a)). How Can We Find a Sustainable Solution to Funding Adult Social Care. <https://www.involve.org.uk/our-work/our-projects/practice/how-can-we-find-sustainable-solution-funding-adult-social-care>

116. Involve (n.d.(b)). How Can Northern Ireland Break the Deadlock on Contested Issues?. <https://www.involve.org.uk/our-work/our-projects/practice/how-can-northern-ireland-break-deadlock-contested-issues>

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In the summer of 2018, ministers announced plans for piloting deliberative democracy across the UK, using a series of citizens' assemblies to engage people with politics, tackle complex and contested topics, and break through local political deadlock. Seventy local authorities expressed interest, eight of which were chosen and given £60,000 each to run the assemblies. The issues for discussion were varied: Waltham Forest sought to involve residents in seeking solutions around hate crime, Barking and Dagenham Council proposed an assembly to look at regulating the use of bailiffs in the borough and the Greater Manchester combined authority planned to use an assembly to look at the development of transport priorities across the city. However, the government shelved all but three of these plans, keeping only the least controversial on the table.<sup>117</sup>

117. Hurst, Greg (2019). Brexit: Deadlock derails bid for greater local democracy. *The Times*, 18 March. <https://www.thetimes.co.uk/article/brexit-deadlock-derails-bid-for-greater-local-democracy-mvt2gvfqj>

Finally, though it did not involve citizens directly, the Scottish Constitutional Convention – which took place between 1989 and 1995 – is perhaps the most significant example of deliberative democracy in action in the UK. The Convention was convened by the Campaign for a Scottish Assembly (CSA), a cross-party pressure group formed in the aftermath of the failed devolution referendum of 1979 as a way of keeping alive the case for self-government during the Thatcher government.<sup>118</sup> The CSA advocated some form of home rule for Scotland, given the centralisation of power in Westminster; the majoritarian voting system that favoured the two main parties and gave power to a government with only limited support in Scotland and a political system seen as increasingly unrepresentative. After the Conservative victory in the 1987 general election, the CSA established a Constitutional Steering Committee comprising 'prominent Scots, representing all sections of Scottish society (but

118. Renwick, Alan (2014). *After the Referendum: Options for a Constitutional Convention*. London: The Constitution Society. [https://consoc.org.uk/wp-content/uploads/2014/05/J1847\\_Constitution\\_Society\\_Report\\_Cover\\_WEB.pdf](https://consoc.org.uk/wp-content/uploads/2014/05/J1847_Constitution_Society_Report_Cover_WEB.pdf)

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119. Ibid.

120. The Scottish National Party initially agreed to participate, but then withdrew given that the Convention was unwilling to discuss Scottish independence as a constitutional option and required consensus for all its decisions. The Conservative Party said from the outset that it would not take part in the Convention.

121. Ibid.

not including prominent politicians)’ and asked it report on ‘all aspects of the case for reinforcing Parliamentary action by setting up a Scottish Constitutional Convention for the express purpose of securing the creation of a Scottish Assembly.’<sup>119</sup> The Committee published ‘A Claim of Right for Scotland’ in 1988 and recommended the establishment of a Convention. The Convention, which was eventually set up in 1989, consisted of 143 elected politicians/party representatives from Labour and the Liberal Democrats<sup>120</sup> and 16 civil society representatives. The Convention included more than 80 percent of Scottish MPs and almost all local authorities and at its inaugural meeting signed ‘A Claim of Right for Scotland’, which stated that the will of the Scottish people was sovereign. The Convention met in seven plenary sessions, but most of the detailed work was done by its Executive Committee.<sup>121</sup> In November 1990, it adopted and published its first report, ‘Towards Scotland’s Parliament’, which set out a broad framework for the new Parliament (including powers, responsibilities, financing of its spending, and representative structure). Following a period of inactivity, the second phase of the Convention’s work resumed in 1993. Two working groups were set up to consider preparation and procedures for the new Parliament, and the electoral system. An expert Scottish Constitutional Commission was created to make proposals in three areas: the electoral system to be used, gender and ethnic minority representation and the relationship between the future Scottish Parliament and the UK constitution. The Commission reported in 1994 and the Convention published its final report, ‘Scotland’s Parliament, Scotland’s Right,’ in 1995.

The Scottish Constitutional Convention brought together a wide range of representatives of Scottish opinion and secured agreement

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122. Priddy, Sarah (2016). Claim of Right for Scotland. *House of Commons Library Debate Pack Number 2016-0158*, 2 September. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2016-0158>

between Labour and the Liberal Democrats – parties that had previously disagreed sharply on the form of a Scottish assembly. It was an ‘important non-authoritative body for cross and non-party deliberation on aspects of devolution. There was a conscious effort to ensure that in form and in substantive conclusions, it would be an open, participatory form of decision-making’.<sup>122</sup> The Convention’s reports formed the basis of constitutional change and most of its proposals were implemented by Labour in 1997. Its bottom-up and top-down approach are likely to have helped it deliver actual constitutional change.

The UK has a rich and varied history of using deliberative democracy to address important local and national questions. The fact that their work and proposals have not been frequently and actively taken up at the national level – with the exception of the Scottish Constitutional Convention – is not because deliberative democratic processes are not valuable or are too difficult to run, it merely indicates that their worth has not been sufficiently recognised as a useful supplement to Parliamentary, representative democracy at the national level.

### **How can we bring power closer to the people in the UK?**

As shown by international and UK experience, deliberative democratic processes can allow for direct citizen input in addressing important constitutional and national questions, as well as in shaping local and sub-national policies. Not only does deliberative democracy help enhance the quality of decision-making – ensuring that decisions are formed on the basis of informed, reflective discussion and enjoy broad public support – it can build trust in and enhance the legitimacy and credibility of the political system,

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thus improving the quality of democracy overall.

We believe that people can and should be given the power to shape the future of politics in a more active and consistent way. This would take two primary forms: first, people should be involved in shaping the big constitutional questions of our time, supplementing the piecemeal and incremental work that has thus far been undertaken, primarily – if not solely – by politicians; second, people should be involved in politics throughout the decision-making process, not just at election time, with the creation of multiple entry points for democratic participation at different levels.

Involving citizens in shaping the UK's future constitutional settlement could take place at different levels and moments. As mentioned previously, the English have not been given the opportunity to re-consider England's place as a nation in a 21st century, post-imperial world. Solutions to England's future governance will need to be generated through this bottom-up deliberative and participatory process, rather than imposed from Westminster.

England's future governance encompasses devolution to and within England and must therefore address how England should be governed at both national and local levels in ways that are democratic. For this to be effective, legislation must be made by people elected from the area where it applies, effectively situating executive and administrative power as close to the local level as possible following the principle of subsidiarity. An English Constitutional Convention seems to be the obvious solution to addressing devolution to England, allowing for debate to flourish around England's political system as a whole and how it relates to Westminster and the devolved nations. An English Constitutional Convention can also

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consider devolution within England, building upon the work of local citizens' assemblies and other deliberative democratic processes, which would allow for the self-determination of English localities. Indeed, as past experience has shown, there is no single, easy way of sub-dividing England, given the multiple, layered and overlapping identities and ideas about governance that flourish at the local level. Asymmetry in this regard should not be feared, but rather welcomed as the positive expression of a locality's identity and self-determination. Following this initial phase, citizens' assemblies could and indeed should continue to be run at the local level in a more systematic and embedded manner to address local policy issues.

Similar processes should also take place in the other nations. While these have had more experience of debating their political and constitutional set-up, the ever-changing nature of devolution and politics more broadly means that each nation needs to reflect on their constitutional set-up, laid out most recently in the 2016 Scotland Act and the 2017 Wales Act. Indeed, new or revised Acts of Parliament might be necessary to address the demands and needs of the UK's devolved nations. Some of these issues might not be best addressed by a UK-wide constitutional convention or might need to take place sooner. In Scotland, demands for further devolution of powers continue to be made alongside independence and decentralisation of Scottish governance, so that more powers are given to local councillors rather than being hoarded at Holyrood. First Minister Nicola Sturgeon has already announced that she intends to run a citizens' assembly in Scotland to consider the type of country that Scots want to build, how they can overcome the challenges they face (including those arising from Brexit), and what

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123. Scottish First Minister (2019). Brexit and Scotland's future: First Minister statement, 24 April. <https://www.gov.scot/publications/first-minister-statement-brexit-scotlands-future/>

124. National Assembly for Wales (2019). Marking 20 Years of Devolution. <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=1970>

125. Whysall, Alan (2019). *A Northern Ireland Border Poll*. London: UCL Constitution Unit. [https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/185\\_a\\_northern\\_ireland\\_border\\_poll.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/185_a_northern_ireland_border_poll.pdf)

further information they need to make an informed choice about the future of their country.<sup>123</sup> Despite having had a more limited debate about its constitutional and political set-up prior to devolution in the late 1990s, Wales is also undergoing profound change, considering its future as a nation in much more depth as reflected by a recent Expert Panel report which recommended a larger Assembly. The Welsh Assembly Commission announced that it will run a citizens' assembly in the summer of 2019, where representative members of the public will gather to consider the main challenges facing Wales in the next twenty years – a proposal which has had cross-party support.<sup>124</sup> Northern Ireland has been without an executive since January 2017 and presents unique challenges of its own as the nation most directly affected by Brexit; given the border it shares with Ireland. This is exacerbated by the fact that the UK government relies on a confidence-and-supply arrangement with the Democratic Unionist Party for its majority, with implications for the delicate balance of power between unionists and nationalists in Northern Ireland. The possibility of a 'border poll' on Irish unification is now being widely discussed.<sup>125</sup>

More broadly, as we have long called for, a UK-wide constitutional convention should be established to address the future of the country in a holistic manner. Brexit could be the UK's long-awaited constitutional moment, serving as the impetus for thorough review and reform of Britain's constitutional structures.

The work of the other sub-national conventions and assemblies could feed into the UK Convention, which would then focus on the broader constitutional questions such as the relationship between the constituent parts of the UK. The exact remit of the UK Convention can

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vary and will depend upon the work of the other deliberative processes. It could be broad, as in Iceland, and review the entire constitution, allowing the development of a coherent overall reform package (though it would make it difficult to get into the details of the complexities of each topic), or it could be restricted to a selection of topics, as in Ireland, such as the future of the union or regional devolution. Similarly, membership of the convention might vary, including only/some randomly selected members of the public, elected non-politicians, politicians, representatives of organised civil society, or experts.

Another vital element of bringing power closer to the people is for citizens to participate in political and democratic processes more regularly and consistently. In addition to voting in elections and referendums and participating in constitutional conventions or citizens' assemblies, other avenues for political participation need to be created which involve people at different stages of the decision-making process. The 'Act as if You Own the Place' project run by ERS Scotland and Flatpack Democracy in Frome, are two examples of how these spaces can be opened up to citizens. Many more such opportunities will become available once power has been shifted away from the centre and brought closer to people, and it is imperative that citizens are and feel involved in the continuous shaping of their local communities and national policies. The empowerment of local communities and re-engagement of citizens at the local level can then be scaled up to the sub-national and national levels, thereby enhancing the quality of our democracy more broadly. Incorporating these forums and processes into our systems of governance will advance our democratic institutions so that they catch up with society. Deliberative processes also change participants

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themselves, with many becoming more active and informed citizens who demand to be involved in democratic decision-making. We build democratic capacity by giving as many citizens as possible opportunities to be involved in these deliberative forums.

A key assumption underlines the above exposition of how decision-making can become more deliberative and local in the UK: that power needs to be devolved from the centre to the local level, following the principle of subsidiarity, according to which decisions should be taken at the lowest possible level. In addition to offering a counterbalance to central power, decentralisation and devolution can lead to policies that are better tailored to local contexts and public opinion, can foster experimentation, innovation and lesson-drawing, and can help hold together states that might otherwise drift apart.<sup>126</sup> As mentioned throughout this report, devolution – especially in England – has not been valued as a mechanism for decentralising power and bringing it closer to the people. Instead it has proceeded in a piecemeal, ad hoc and short-term manner and, again in England, has not been the product of national debate and self-determination, but rather a top-down imposition attempting to run local authorities as private enterprises competing with one another. The very existence and role of local authorities throughout the UK are not guaranteed or protected in the UK's constitutional settlement. A shift in culture is therefore needed which views citizens and local government and councillors as co-creators of policy and collaborators in shaping the future of the country. All of this requires the active participation of politicians and their recognition of the value of deliberative democracy and devolution of power to the local level. National politicians will need to recognise the

126. Turner, Ed and Carolyn Rowe (2015). *A Race to the Top, Middle or Bottom? The Consequences of Decentralisation in Germany*. <https://www.ippr.org/files/publications/pdf/decentralisation-in-germany.pdf>

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value of local elected leaders as key to bridging the gap between grassroots civic processes and formal political power. The processes outlined above will allow politicians and citizens to reflect on what devolution should be for and will help to bridge growing divides in our society.

Our politics is in crisis, so what is the solution?

## Enhancing democratic participation

- England is the ‘gaping hole’ in the devolution settlement – citizens have not had a chance to discuss their constitutional future or to consider whether an institutional change might be desirable.
- The failure of majoritarian electoral systems to represent the views of places left behind by globalisation has led to insufficient state responses to this regional inequality and in doing so, has encouraged a rise in populism. The dominance of two-party politics has excluded a range of voices from politics, pushing locality-specific concerns to the margins as parties chase their national median voter.
- For the most part, devolution to and within England has been a top-down project, which continues to keep power at the centre. Power and voice cannot be achieved without bringing politics closer to people meaning bottom-up citizen involvement is necessary to ensure the legitimacy of, and trust in, our institutional set-up and democracy more broadly.
- Forms of deliberative democracy, especially citizens’ assemblies and constitutional conventions, are being used more frequently around the world as a way of providing for citizen input in the policy-making process.
  1. In Iceland, a constitutional convention of citizens was tasked with writing a new constitution following the 2008 financial crash.
  2. Two Canadian provinces – British Columbia and Ontario – held citizens’ assemblies on electoral reform in the early 2000s.
  3. The Irish Convention on the Constitution and Citizens’ Assembly were tasked with revising a variety of constitutional topics and making recommendations.
  4. The UK has a varied experience of deliberative democracy, with the ERS being involved in running three citizens’ assemblies and multiple local deliberative processes. The Scottish Constitutional Convention of the late 1980s/early 1990s is one of the most notable examples of deliberation leading to concrete institutional and political change.
- Citizens should be involved in shaping the UK’s future politics in two primary ways:
  1. Shaping the big constitutional questions of our time, including devolution to and within England
  2. Involvement throughout the decision-making process, creating multiple entry points for democratic participation at different levels.



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# Conclusion

## A Healthier Democracy

To find a path through the lack of trust and disillusionment and to get beyond the current Westminster dysfunction, we need to look back and understand the systemic weaknesses that have led us to this point. Understanding the underlying fragility of our ‘strong and stable’ Westminster system is crucial. One answer could be a more authoritarian and populist turn – after all, our system is designed to support sweeping change with power concentrated at the centre. As we have set out, the system underpinning our politics hands almost unrestrained power to the leader of the government, however few citizens voted for them. Our democracy is, in short, ripe for exploitation.

To save our democracy we need to reform it. We need to give our second chamber legitimacy to do its job, we need to create a political culture that contains the full range of political tools – including those of negotiation and compromise – and we need to find a space to bring together our nations

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in their shared interests, rather than allow the centre to dominate and override.

We must deal with the toxic polarisation of our politics by building mechanisms to bring people together to hear each other's views as well as expressing their own and we have to create opportunities for citizens to influence politics, both at the national level and closer to home, giving people a voice in shaping the future of their communities.

Reform needs to be both top-down and bottom-up. It is essential that citizens are brought into the debate about their constitutional future, but this will only have meaning if there is a commitment at the top to change – a bold vision of a new democracy which breaks with the past power-hoarding of the centre and paves the way for a fresh new way of doing politics that Britain can be proud of.





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