REVIEW OF THE UK CONSTITUTION

Bennett Institute for Public Policy Cambridge

INSTITUTE FOR GOVERNMENT

A framework for reviewing the UK constitution

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About this report

This is the first paper to be published as part of the IfG/Bennett Institute Review of the UK Constitution. It looks at the purpose of constitutions, how the UK constitution fulfils that purpose and some of the key problems that have been revealed over the last five years.

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Foreword

Does the UK's constitution still work?

The nature and viability of the British constitution has long been the subject of debate. But at moments during the recent tumultuous period in British politics, questions about whether the UK constitution was working well led the news agenda, and different interpretations of its conventions and principles were weaponised by competing political actors.

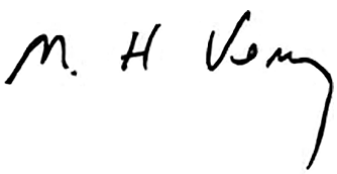
Leaving the EU has destabilised relationships between the executive, judiciary and parliament and put pressure on the devolution settlements. The Covid-19 pandemic revealed different priorities for central, devolved and local governments. It also illustrated the difficulties parliament faces in holding the government to account, particularly in moments of crisis. Public trust in the institutions and structures that govern the UK, which has been declining for some while, has been under more strain.

In these circumstances, there have been many calls to review the institutions of government and to recalibrate the UK's constitution, emanating from all parts of the political spectrum. There is an imperative now to consider the viability and performance of some of the core institutions of British government.

This report marks the launch of the Review of the UK Constitution, a project that arises from a major new collaboration between the Institute for Government and the Bennett Institute for Public Policy, based at the University of Cambridge. Our aim is to offer an evidence-based, non-partisan analysis of how the constitution is currently working and identify whether and how it may need to be reformed.

We have brought together a distinguished advisory panel to support our work and interrogate our thinking, including people with extensive experience in different government institutions and public roles, from different parts of the UK. We are especially grateful to them for the time and expertise they are giving to this project. They will work with us over the course of the review – although the judgments and recommendations that will emanate from its work are ours alone.

This initial paper sets out the framework of analysis that will guide the work of the review, and is the first in a series of publications and events in the coming year. We hope it will prompt wide-ranging and serious debate, and look forward to many future constitutional conversations.



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Summary

Historically, the UK constitution has been considered remarkable for its stability; it has survived successive crises – including wars and political transitions – and adapted to major cultural and societal shifts. However, the past five years have brought this enduring sustainability into question.

The UK's exit from the EU has raised fundamental questions about the legal order underpinning the governance of the UK and the arrangements for making decisions for the UK as a whole, and for each of its four constituent parts. Disagreement over the nature and process of Brexit precipitated major conflicts between the UK parliament, the government and the courts, with high-profile, politically charged attacks on the UK's institutions risking a further erosion of public faith in them. Most recently, the coronavirus pandemic, with the exceptional restrictions on people's personal freedoms it has brought, has highlighted questions around the appropriate balance between the need for swift and effective government action, and the need for democratic scrutiny.

Although it may still be unclear whether the events of the last five years are an aberration – taking place within an especially charged political atmosphere – or have led to a more permanent change in the way the UK is governed, they have exposed historically embedded, opposing interpretations of the nature of the UK constitution. This includes the debate over the extent to which the UK's constitution has become more 'legal' in nature, with a greater role for the courts, rather than purely 'political', where constitutional questions are still largely resolved by politicians, as well as over the extent to which the territorial constitution has been moving incrementally towards a federal model. As debates over the UK constitution have become more polarised, all sides have spoken about the need for change: from those who believe that fundamental reform is necessary to provide certainty and protect proper governance in the UK, to those who believe executive power has become too restricted in recent years.

The UK constitution is in transition as it adjusts to major constitutional changes – including devolution, the Human Rights Act and leaving the EU – that have taken place over the last 30 years. Some scholars have argued these have created a 'new constitution', others argue that the idea of a new constitution is overstated – with reforms insecure and vulnerable to reversal.[1] In either case, this moment – as the UK both adapts to life outside the EU's political institutions for the first time in a generation and begins to, hopefully, emerge from the worst of the pandemic – provides an opportunity to improve the functioning of the UK constitution so that it works better for the citizens of the UK. But it is not without risks. Without careful inquiry and a clear destination, the next 50 years may be characterised by continuing constitutional turmoil. It is in this context that the Institute for Government and the Bennett Institute for Public Policy at Cambridge University are launching their Review of the UK Constitution, to provide a non-partisan assessment of how it is working, where it is under most strain, and to consider ideas for improvement.

In this first paper we identify three key power relationships at the heart of the constitution that are currently under strain:

- between the UK's political institutions – including the UK government, parliament and the courts
- between the devolved nations, regions and Westminster
- between the public and the UK's political institutions.

We set out some of the key problems that have been revealed over the last five years, which we will explore over the course of the IfG/Bennett Institute Review of the UK Constitution.

The UK constitution is one of the few constitutions that does not consist of one core written document. It is a complex web of institutions, processes and responsibilities, understood through precedent as much as through its various documents and statutes. Although the executive and the legislature are fused, in contrast to the 'pure' separation of powers seen for instance in the US, the system has evolved to provide some of the checks and balances that other constitutions have deliberately designed. The UK constitution relies heavily on norms and conventions that set limits on the behaviour of political actors: many of the most important constitutional questions are resolved through political institutions rather than in the courts.

The flexibility of the UK constitution is considered one of its key strengths, allowing it to adapt to new and unforeseen circumstances. But political events in recent years have demonstrated the problems that can occur when the fundamental rules underpinning the political system are ambiguous, or can be disregarded with little consequence. This raises questions as to whether the UK's constitutional protections are strong enough to continue to be effective, and to withstand future tests.

In this paper, we explore the following problems:

1. Constitutional actors are able to ignore norms and conventions – and appear to have an increasing appetite for doing so

Historically, the UK constitution has relied on those working in different parts of the constitution – in the different governments and legislatures, as well as in the judiciary – having a shared understanding of the constitutional conventions that underpin it. Although these norms have always been disputed, in recent years there has been an increasing willingness for constitutional actors to ignore some of them, raising the question of whether these conventions can and should be strengthened or if a more fundamental change to the nature of the UK constitution is needed.

2. There is growing disagreement over the appropriate balance of power between institutions

A common and deliberate feature of most national constitutions in democratic countries is a system of checks and balances between three branches of government – the executive, the legislature and the judiciary. The UK has, in its historical evolution, placed greatest emphasis on parliamentary supremacy but with increasing executive dominance over parliament during the last century.

The UK parliament sits at the centre of the UK constitution, but a government with a majority in the Commons – which has usually been guaranteed by the UK's first-past-the-post voting system – can exert strong legislative control. There are differing views over whether this is beneficial. Some argue that it is necessary to ensure decisive action, allowing governments to deliver on their manifestos or carry out a rapid response to emergencies, as the government did at the beginning of the coronavirus crisis; others believe it hands too much control to the executive and ignores the wishes of many of the electorate — what Lord Hailsham famously termed an "elective dictatorship" in 1976. Regardless of the perspective, the relationship between the executive and legislature has clearly been frayed in recent years – most notably during the Brexit process – with backbenchers exercising more independence and the government increasingly trying to bypass parliament.

Some of the key institutions that have historically acted as an important check on executive behaviour increasingly lack a sense of popular legitimacy. Although the House of Lords plays an important role as a revising chamber, its effectiveness is constrained by the electoral mandate of the Commons. Similarly, while the monarchy retains constitutional powers that, in theory, can provide an ultimate check on government these are constrained by the monarch's need to act wholly apolitically. That was demonstrated by the attempted prorogation of parliament in September 2019, which the Supreme Court subsequently ruled unlawful.

The courts interpret and apply legislation passed by parliament, but during the Brexit process the Supreme Court was called to step in when the executive sought to bypass parliament completely. To some, this filled a vacuum left by other parts of the UK constitution and was an example of the checks and balances in the UK constitution functioning effectively. But for others, including the current government, doing so amounted to political interference and is cited as a case that demonstrates the need to introduce new limits on the courts' role.[2]

3. The UK's territorial constitution is under strain

The devolved administrations have a great deal of autonomy in some designated policy areas but UK parliamentary sovereignty means that this autonomy is granted by, and is contingent on, the will of Westminster. While aspects of the relationship between the UK and devolved institutions are codified in statute, much relies on norms and conventions that can be bent or broken. For instance, the Sewel convention, that Westminster will "not normally" legislate on devolved matters without the consent of the those legislatures, is in question after the UK parliament passed several Brexit bills despite strong devolved objections. In recent years the UK government

has been increasingly willing to assert its constitutional authority, which the devolved administrations have characterised as an attack on devolution, contributing to a rise in nationalism in all parts of the UK.

Good governance requires co-operation between the four governments of the UK; all have overlapping and interdependent responsibilities. But this is predicated on positive relationships that have been put under severe strain in recent years. The different constitutional positions of the governments of the UK – the Scottish government seeking full independence, the Welsh government greater devolution, the Northern Ireland executive deeply divided, and the UK government tending towards greater centralisation – have removed the incentives for the four governments to work together, and created fundamental disagreements over how and on what terms they should interact. Brexit has highlighted the difficulty of resolving disagreements between the UK and devolved institutions on core constitutional issues; a majority of people in the whole of the UK voted to leave the EU, but both Scotland and Northern Ireland voted to remain – this imbalance has driven up support for Scottish independence and disrupted the delicate constitutional balance in Northern Ireland.

These concerns are exacerbated by voting trends that mean the UK's Conservative government now predominantly represents England, with only a handful of representatives in Scotland, and none in Northern Ireland. Questions around the representation of England remain unresolved with continuing uncertainty around the arrangements for devolution within England, and England's place within a reformed union. These have been answered only partially by the patchwork of devolution deals established so far.

4. Citizens are disenchanted with the way the UK is governed

Disenchantment exists for different reasons. In democratic constitutions, representative institutions are intended to reflect the interests of citizens – but the UK constitution has been slow to adapt to societal changes. The primary mechanism through which citizens input into the political system has been through elections, but the UK parliament's first-past-the-post voting system excludes the views of many citizens. The public's expectations of their ability to influence decisions have grown over the last half a century as society has become less deferential and more accustomed to the assertion of individual views – especially in more recent years through social media.

The UK has begun experimenting with referendums and citizens assemblies but the use of more participative processes is still limited – with more interest in the devolved institutions than UK-wide – and those in power remain sceptical about their use. Direct and deliberative democracy can only supplement, not replace, the UK's representative institutions. But a lack of public understanding of how the UK constitution works may be hampering citizens' ability to engage with the political system and know where to direct their concerns. Social media, and the internet more generally, have changed the relationship between the people and their representatives as MPs have become more accessible to the public. While new media present many opportunities, society is still grappling with how to prevent abuse and keep political figures (as well as the broader public) safe.

Good government requires those working within the system to act in the public interest, but successive scandals – such as those concerning MPs' expenses and, more recently, lobbying and second jobs – have highlighted flaws in the mechanisms for upholding standards, and undermined public trust in key components of the UK constitution.

Constitutional change in the UK

The UK is unusual in that constitutional change can be achieved by a simple parliamentary majority; most other states require special thresholds, or additional processes such as referendums before the constitution can be amended. This allows the constitution to be adapted quickly in times of crisis or by a government with a majority and a reforming agenda. But initiating constitutional reforms is largely down to the government, which reduces the incentives to bring about reforms that do not elicit immediate electoral benefit or which may limit the power of the executive. The nature of the UK constitution – underpinned by the principle that parliament can make or unmake any law – also makes change difficult to entrench, as it is relatively easy for any government to overturn any reforms of a previous one.

As the UK begins life outside the EU, and faces growing challenges to its territorial integrity, it finds itself in a time of constitutional transition. This provides an opportune moment to examine these problems in detail, consider the appropriate balance of power within the UK constitution, and make proposals to help build public confidence in the institutions that govern the UK.

Introduction

The last 30 years have seen major constitutional change. That includes devolution to Scotland and Wales, the Good Friday Agreement and new power-sharing arrangements in Northern Ireland, and the Human Rights Act, all introduced in 1998, partial House of Lords reform in the early 2000s and the creation of the UK Supreme Court in 2005. For a country that often has the reputation abroad of being too interested in the past, the constitution remains very much in flux. Politicians are still trying to understand the consequences of, and adjust to, some of these major changes – while also making further reforms. There still appears to be very little broader vision informing this process. In the same period wider societal trends have led to a decline of deference and a revolution in access to information and communications.

Meanwhile the last five years have reignited questions about the proper functioning of the UK constitution. This debate is not new, but Brexit has served as a catalyst for experts, academics and practitioners to re-examine parts of the constitution and consider how it should function as the UK adapts to life outside the EU political institutions.

Leaving the EU meant leaving the legal framework that had been embedded within the UK for the previous 47 years, with implications for the territorial constitution, including the operation of the UK's internal market now that it sits outside the EU single market. And the process of Brexit itself tested the functioning of the UK constitution, with a breakdown in the relationship between government and parliament leading to two Supreme Court cases on the limits of executive power. It also showed the extent to which good governance relies on norms and conventions – and the risks that approach entails.

Disagreements about the appropriate role of different institutions during the Brexit process stirred up popular frustrations – with, in 2016, parts of the media labelling judges "enemies of the people" and, in 2019, politicians contributing to a narrative about the illegitimacy of a "dead" parliament. The public's lack of faith in the UK's system of government is startling; in the 2019 Hansard annual engagement survey, opinions of government were at the lowest they had ever been in the 15 years the survey has been running.[1] Failure to tackle the question of whether the UK's constitution is functioning well could allow public doubts about the legitimacy of the governance of the UK to grow.

The coronavirus pandemic has highlighted concerns about the potential for the government to bypass parliament even when imposing severe (in the eyes of some, draconian) restrictions on the UK population. Differing approaches to Covid measures – more stark as the pandemic progressed – taken by the UK's four governments has further reinforced the fragility of the relationship between the different parts of the UK.

There are high levels of support in Scotland for independence and growing support in Wales, as well as a lack of trust among some in Northern Ireland in whether the UK government will represent their interests in ongoing negotiations with the EU.[2] This may reflect a concern that those working in the institutions at Westminster are unable or unwilling to represent properly the whole of the UK – particularly given the electorate's preferences for different political parties across the UK. This issue applies also within England's own borders, with the question of how UK-wide institutions should represent England – or make decisions that solely affect England – never being successfully addressed. The centralised nature of government within England itself has likely contributed to the sense of alienation felt by many outside London and the south-east of England; despite repeated promises to devolve power within England, Whitehall retains a tight control.

For many people, on all sides of the argument, Brexit has reinforced existing opinions on the various problems of the constitution – and their solutions. But while there may continue to be disagreement about the appropriate direction of constitutional change, there is a widespread feeling that the current arrangements are not working well and that reform is necessary.

As a result, the Institute for Government (IfG) and the Bennett Institute for Public Policy at the University of Cambridge are launching the Review of the UK Constitution. Its aim is to consider whether reforms are necessary to make the UK's constitutional order more coherent, effective and legitimate and, if so, what they should be. We will examine three aspects of these questions: the relationship and power imbalances between the three branches of government – the executive, legislature and judiciary; the tension between the centralisation and devolution of power; and the relationship between the public and the state.

This paper is the first in a series of publications. In it we examine the case for constitutional reform and identify some of the key problems with the UK constitution, which we will explore in the review. We begin by examining the purpose of a constitution and how the UK constitution in particular is intended to function. We then look at the three central power relationships that animate the UK constitution and identify the key problems with the way they are currently functioning. We conclude by looking at the nature of constitutional change in the UK.

What is a constitution?

A constitution sets the rules according to which a society is organised. As UK constitutional scholar Vernon Bogdanor has put it:

> **"A society is distinguished from a mere conglomeration of individuals in that it comprises of a group of people bound together by rules; and a constitution is nothing more than a collection of the most important rules."**[1]

Constitutions reflect a country's history, traditions and circumstances. The French constitution was born out of the French Revolution, enshrining the values of "liberty, equality and fraternity".[2] The Swiss constitution gives a high level of autonomy to sub-national cantons and incorporates elements of direct democracy reflecting Switzerland's multi-linguistic state and democratic culture.[3] The architects of the German 1949 constitution – known as *Grundgesetz*, or Basic Law – "sought to create a constitution that would safeguard against the emergence of either the Weimar Republic's overly fragmented, multiparty democracy or the Third Reich's authoritarianism".[4] The post-apartheid South African constitution places a heavy emphasis on human rights, aiming to guard against future violations.[5]

Internationally, constitutions often consist of a single written document and a form of supreme constitutional law with which all other ordinary law-making must comply. But constitutions exist in many different forms; they can include ordinary legislation, unwritten rules, or a combination of both. For example, Austria has a codified constitution that is supplemented by a range of additional constitutional laws.[6] This allowed the inclusion of acts predating the 1920 federal constitution, such as the 1867 bill of rights, and has also been used more recently by governments seeking to protect certain legislation from judicial review.[7]

Nonetheless, the UK constitution is unusual in that it has no codified set of fundamental or basic laws. Instead, there are many texts and sources – dating back as far as 1215 and Magna Carta – including ordinary legislation, conventions understood through precedent and set out in various executive and parliamentary sources, unwritten rules and practices, and formal codes of conduct. No constitutional documents set out all possible applications, but most set down the rules and principles of government and rights in writing. There are not many other countries that have uncodified constitutions. New Zealand has a similar arrangement to the UK, having no written constitution but drawing on legislation and constitutional conventions. Israel, since its independence in 1948, has never passed a constitution and instead has 13 basic laws that underpin government and rights.

The absence of a single document in the UK could be attributed to the fact that, unlike many other states, it has not had a single constitutional moment at which the state has been created or reborn. Early political upheavals such as the English Civil War of the 1640s and the 1688 'glorious revolution' resulted in changes to England's governing arrangements, and were followed shortly by the 1689 Bill of Rights. But both of these predated the conception of a modern constitution and as the constitutional academic Martin Loughlin has observed: "Since the 17th century, there has been no fundamental breakdown in governmental authority that would cause the English to reconstitute themselves politically."[8]

Nonetheless the state has undergone many transformations – including the decline of the power of the Church of England and the fall of the British Empire. Over the last three centuries it has evolved from England, to Great Britain, to the United Kingdom of Great Britain and Ireland and later to the United Kingdom of Great Britain and Northern Ireland.[9] Over centuries, the constitution has also changed from a feudal system to a modern democracy based on constitutional monarchy. This has reflected changing attitudes towards society, including the extension of the franchise and introduction of universal suffrage, and the role of the state – with government assuming a wide range of responsibilities for social and economic regulation over the 20th century. The UK constitution could therefore be said to be a product of evolution rather than design. Nonetheless it is guided by principles and a purpose, which we will explore below.

What is the purpose of a constitution?

Broadly speaking, constitutional theorists have put forward two different but not mutually exclusive conceptions of the purpose of a constitution.

The first is **to place limits on the power of the state** and protect citizens from arbitrary power. According to this conception – which heavily influenced the US constitution – a well-functioning constitution will protect individual rights and liberties and prevent democratic systems from descending into autocracy.[10]

The second conception is that **constitutions empower the state to act on behalf of citizens**. According to the legal and political philosopher Jeremy Waldron, constitutions "establish institutions which allow people to co-operate and co-ordinate to pursue projects that they cannot achieve on their own".[11] According to this interpretation, a good constitution needs to facilitate effective government and be capable of bringing about the common good.

Whether playing a limiting or harnessing role, constitutions deal with where power lies, who can exercise it and under what conditions. Although the content of constitutions varies from state to state, they share common features. These are also characteristic of the UK constitution, which sets out the UK parliament as a source of power, enshrines key rights and principles, and has checks and balances to prevent power accumulating in a single institution.

The ultimate basis of constitutional power in the UK is the UK parliament

Most constitutions set out how constitutional authority – or sovereignty – is derived. Many contain the notion of popular sovereignty: that power is derived from the people. The 1789 US constitution begins "We the people", while the preamble to the 1958 French constitution states that "national sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum".[12] In these constitutions, the authority of the people is superior to that of the political institutions they establish, creating a form of higher law under which these institutions must operate.

The UK's constitutional system can be described as 'crown-in parliament': authority is derived from the monarch but exercised by the UK parliament. Parliamentary sovereignty, described by 19th-century constitutional theorist AV Dicey as the UK parliament's "right to make or unmake any law",[13] is the UK's central constitutional principle. Power can be said to be transferred to the electorate during elections; however, outside those times the legislature – the UK parliament – is the central constitutional authority to which other constitutional architecture is subordinate.

Yet conceptions of the UK constitution are contested. The exact nature and limits of parliamentary sovereignty have been the subject of long-standing debate throughout the 19th century to the modern day – including the extent to which parliament is constrained by the law. Most recently, there has been significant debate over whether and to what extent Labour's constitutional reforms in the late 1990s and early 2000s placed new limits on parliamentary sovereignty and fundamentally changed the British state.[14]

There are also debates about the nature of sovereignty in the UK's territorial constitution. Broadly speaking there are two conceptions of the UK: as a unitary state with the UK parliament as the central constitution authority, or as a union state made up of four constituent parts.[15] Within each part, there are also different constitutional understandings, informed by their unique historical circumstances.

Wales has a distinct national identity but is most closely integrated with England, reflecting its political and cultural incorporation in 1543. In Scotland the 1707 Act of Union informs a developed notion of Scottish popular sovereignty, including, for example, the 1989 Claim of Right for Scotland issued by the Scottish Constitutional Convention and later endorsed by the Scottish parliament. This acknowledged "the sovereign right of the Scottish people to determine the form of Government best suited to their needs", a claim which is significant for contemporary debates about a second Scottish independence referendum. Northern Ireland's membership of the union is conditional on the principle of consent as enshrined in the 1998 Good Friday Agreement.

There are protections for fundamental rights in the UK constitution

Constitutions set out the fundamental rights and liberties of individual citizens. Most common are civil and political rights, such as the right to vote or form political parties, the right to free speech and to assembly, the right to due process and protection from unlawful punishment. Some constitutions – in particular in South Africa, Latin America and post-communist states – also contain economic and social rights such as the right to housing, health care, education and social security.[16] In many cases these rights can be enforced by the courts, and laws can be declared 'unconstitutional' if they are deemed to be in conflict with these rights.

There are two key sources of protection for fundamental or constitutional rights in the UK constitution. The first is the common law, dating back to the 12th century. The courts may quash or declare unlawful acts of the executive on the basis that they have deprived citizens of their fundamental rights without legal authority, and will take account of the importance of constitutional rights when interpreting legislation.[17]

The second source of rights protection in the UK are statutes passed by parliament, including the 1689 Bill of Rights and in particular the Human Rights Act 1998 (HRA), which translated the rights protected in international law by the European Convention on Human Rights (ECHR) into rights protected by UK law. This framework protects, among others, the rights to life, not to be tortured, not to be enslaved, to liberty, to a fair trial, to a private life, to free speech and to marriage, and provides that legislation must be interpreted compatibly with these rights and that the executive cannot breach them.

However, whether under the common law or under the HRA, the courts have no power to strike down primary legislation for breach of fundamental or constitutional rights. Under the HRA, the courts can make a 'declaration of incompatibility' for breaches of incorporated ECHR rights, but these declarations do not take the legislation off the statute book. Instead, their purpose is to prompt the UK parliament to repeal or modify the law in question.

The UK constitution has a system of checks and balances between and within institutions

Constitutions set out the different political institutions in a state, including their roles and responsibilities. Most democratic states have three branches of government – the executive, the legislature and the judiciary (some constitutions also include a role for a monarchy, or religious institutions). In many of these, the independence of these separate branches ensures a separation of powers intended to ensure a balance of power between them.

The concept of the separation of powers was first developed by Montesquieu, an 18th-century French philosopher, after studying the English constitution. He argued that the division of powers between the monarch and the legislature – and within the latter, the aristocracy in the House of Lords and the people in the House of Commons – could help promote liberty.[18] This idea heavily influenced the US constitution, where the three branches of government are clearly separated, their respective roles and responsibilities clearly defined, and power distributed fairly equally between them.

Despite being the initial inspiration for the model, the UK constitution has never been 'designed', and the question of whether the UK constitution conforms to these ideas has been the subject of debate over the last three centuries. The UK executive – the prime minister and their ministers – is drawn from the legislature; and until 2009, the highest court in the land was part of the House of Lords. Many 19th and early 20th-century constitutional scholars – such as Walter Bagehot, AV Dicey and Ivor Jennings – eschewed the idea that such a separation existed in the UK constitution. In his 1867 work *The English Constitution*, Bagehot argued that it was the fusion of, rather than the distinction between, the executive and legislature that was the defining feature of the UK constitution.[19]

However, since 1990 the idea of the separation of powers in the UK constitution has enjoyed a resurgence, and understanding of the British state, and the concept itself, has developed.[20] Contemporary constitutional academics have argued that, while the UK constitution may not conform to the 'pure' separation of powers like in the US – including wholly separate institutions – there is still a partial separation of powers characterised by a network of checks and balances between different institutions.[21] Legal academic Eric Barendt has argued that the separation of powers "should not be explained in terms of a strict distribution of functions between the three branches of government, but in terms of a network of rules and principles which ensure that power is not concentrated in the hands of one branch".[22]

The concept of separation of powers has been referred to in judicial decisions and in political debates in the UK throughout the 20th and 21st centuries – including to justify the creation of the UK Supreme Court.[23] In recent years, however, ministers have pushed back against this interpretation and related reforms – but have emphasised the centrality of "a system of checks and balances" to the UK constitution.[24]

While parliamentary sovereignty may prevent the different branches from being legally equal,[25] the UK's political institutions have overlapping powers and functions that ensure that no institution can act independently of the others. The UK government administers the law, but relies on the UK parliament to make it; the courts apply it. The executive administers public spending but only once it has been approved by parliament. The government's very existence depends on the ongoing support of the legislature.

Although each branch of government may not be subject to clearly prescribed legal limits in the UK constitution, norms and conventions constrain the behaviour of constitutional actors, and allow them to exert pressure on each other.[26] Constitutional documents that guide practice – including *Erskine May*, the guide to parliamentary practice first published in 1844, parliamentary standing orders and the ministerial code – all contain rules, conventions and expectations about what is acceptable and unacceptable practice.

Checks and balances are present not only between institutions but also within them, for example between the House of Lords and the House of Commons. Checks on the power of the state can also come from outside the legislature and judiciary, such as from sub-national governments who may have certain rights or opportunities to influence, from regulators, from the media and from the public who can hold their representatives to account at elections.

The function of all these checks and balances is to prevent power accumulating in one institution and prevent abuses of power, ensuring that decisions made by each part of government are scrutinised and challenged. The different branches of government also have different compositions and structures, giving them different skills and expertise to bring to public decision making, meaning they are well-suited to perform different functions. However, there is a risk that dividing power too much can hamper swift and decisive state action.

There is active debate about the appropriate balance of power between and within each branch of the UK constitution. Some argue that the government should be able to deliver its manifesto without impediment, others that parliament should be better equipped to challenge the government. Arguments that the courts' role should be strengthened or weakened are regularly put forward. We will explore these debates in the next section.

Dimensions of power in the UK constitution

Constitutions also set out the key institutions of state and their respective roles and responsibilities. The UK constitution is multi-dimensional: there is a complex web of institutions, processes and conventions that interact and create checks and balances in each part of the constitution. Our review will focus on three axes of power.

- Institutional: the relationship between different branches of government
- Territorial: the relationship between different levels of government
- Democratic: the relationship between the state and its citizens.

These are summarised in the tables overleaf.

Institutions

The UK parliament is the centre of the UK constitution, but it is the UK government that sets the direction and delivers policy, with the judiciary ensuring it acts in accordance with the law. The monarch also holds constitutional powers over both parliament and government, but exercises these behalf of the government.

	Description	Role
UK parliament Bicameral legislature, made up of two houses:	**House of Commons** comprising 650 elected members of parliament (MPs) representing constituencies in different parts of the UK	• Considers, scrutinises and passes legislation – the Commons is the primary chamber • Authorises government expenditure • Holds government to account including through select committees and parliamentary questions • Forum for debate • Represents the interests of constituents
	House of Lords comprising over 800 peers including: • Appointed life peers representing political parties • Appointed cross-bench peers • 92 hereditary peers • 26 Church of England bishops and archbishops	• Considers, scrutinises and passes legislation – the Lords acts as a revising chamber • Holds government to account including through select committees and parliamentary questions • Forum for debate

UK government	• Led by the prime minister who can command the confidence of the House of Commons • Ministers are drawn from the UK parliament • Ministers are supported by a politically impartial civil service	• Exercises executive powers • Puts legislation to parliament • Designs and implements policy • Provides public services
Judiciary	Made up of three separate legal jurisdictions: • England and Wales • Scotland • Northern Ireland • Each has multiple tiers, including the UK Supreme Court	• Interprets and applies legislation passed by UK parliament and the devolved legislatures • Holds government to account if it acts in a way that is inconsistent with the law including through judicial review • The UK Supreme Court is the final court of appeal in most cases for all three legal systems and decides on devolution issues
Monarchy	• The head of state and source of constitutional authority • The head of the Church of England	• Approves acts of parliament, and acts of the devolved legislatures • Appoints the government • Opens and dissolves UK parliament • Exercises royal prerogative on behalf of the government

Territorial

In the UK there are several layers of government including UK-wide institutions, devolved institutions in Scotland, Wales and Northern Ireland, and local government. The devolved legislatures, established in 1999,* derive their authority from the devolution statutes passed by the UK parliament, which set out lists of 'reserved' (or in Northern Ireland's case 'excepted') powers – including defence, foreign policy and macroeconomic policy – that remain in the exclusive competence of the UK parliament. The devolution settlements vary between Scotland, Wales and Northern Ireland but all of these parts of the UK have extensive powers including over health, education, housing, agriculture, transport, tourism and local government.

Local government is a longer-standing aspect of the UK's governance landscape but local authorities have much more limited powers such as over the provision of neighbourhood services like libraries and waste collection. In some areas, combined authorities and metro mayors have further powers including over local transport and adult education. Reforms and reorganisations from successive governments have created a complex patchwork of devolution in England.

	Description	Role
Devolved legislatures	• Unicameral legislatures; the Scottish parliament, the Welsh parliament or Sennedd Cymru, and the Northern Ireland assembly • Derive their authority from the devolution statutes passed by the UK parliament	Fulfil the same functions as the UK parliament in devolved areas: • Pass legislation in areas of devolved competence • Scrutinise the activity of the devolved administrations • Represent their constituents and the electorate Vote on whether to consent to the UK parliament passing legislation in devolved areas

* Devolution in Northern Ireland dates back to 1921 but devolution was suspended between 1972 and 2000 (with the exception of a brief period between 1973–4).

Devolved administrations	• The Scottish government, the Welsh government and the Northern Ireland executive (a power-sharing government established by the Good Friday Agreement) • The Scottish and Welsh civil services are formally part of a single UK civil service but answer to devolved ministers • The Northern Ireland civil service is a separate organisation	• Fulfil the same functions as UK government in devolved areas, including designing and delivering policy • Participate in intergovernmental discussions with the UK government and other devolved administrations
Local government	• Local authorities are run by elected councillors, led by either an appointed or directly elected mayor • Some areas in England are covered by local devolution deals where several local councils form a 'combined authority' led by a directly elected metro mayor with enhanced powers over certain areas	Local government is a devolved competency, so its powers and composition vary between Scotland, Wales, Northern Ireland and England • Delivers services and functions on behalf of UK government or devolved administrations • Responsible for administering their own budgets but do not have law-making powers • Local councillors represent their local areas and electors in local government • Metro mayors represent their region in discussions and negotiations with the UK government

Democratic

Citizens' main role in the UK constitution is to vote in elections and, more rarely, in referendums. But there is a wider network of organisations that exist around the representative institutions – including political parties and civil society groups – that allow citizens to influence policy makers.

	Description	Role

The electorate	• People entitled to vote in the UK
	• Elections to the local, devolved and UK parliamentary elections have different franchises and voting systems*
	• UK parliament elections:
	  • Take place at least every five years
	  • Use the majoritarian voting system, first past the post (FPTP)
	  • All British, Irish or qualifying Commonwealth citizens over the age of 18 and resident in the UK are entitled to vote
		• Elect members of parliament, members of devolved parliaments and assemblies and local councillors
		• Can recall representatives in certain circumstances
		• Vote in referendums
		• Hold representatives to account by contacting them or signing official petitions

* The Scottish and Welsh parliaments and the London assembly use the additional member system (AMS). The Northern Ireland executive and Scottish local government elections use single transferable vote (STV). Local elections in England use first past the post (FPTP) with the exception of mayoral elections, which currently take place using the supplementary vote system, although the current government proposes changing this to FPTP. Welsh local authorities can choose between using FPTP and STV.

Political parties	• Political groups with similar beliefs, who act collectively to achieve shared aims • Almost all elected representatives belong to political parties • Members of the public can also join	• Members elect party leaders, who usually become candidates for prime minister or first minister in the devolved administrations • Select and support candidates at elections • Publish manifestos, a prospectus for government on which voters can make electoral choices • Hold government to account in the legislature: the 'official opposition' provides an alternative government
Civil society	Non-governmental organisations such as interest groups, lobby groups, think tanks or trade unions, charities and the media	• Lobby the government and elected representatives for specific policy changes or outcomes • Run public campaigns • Scrutinise government activity • Some civil society groups may also provide services, e.g. community services

Key problems of the UK constitution

The UK's constitutional arrangements are unusual internationally but have functioned effectively for hundreds of years, surviving many crises and maintaining a strong democratic culture. However, this does not mean that they are without problems. Brexit and Covid have exposed different constitutional views about the appropriate balance of power between the three branches of government, the relationship between the UK government and national and regional governments, and between the people and their representatives. These fundamental disagreements have been a source of conflict and put the UK constitution under strain.

In this section, informed by the discussions of our advisory panel, we identify the most pressing problems with the operation of the UK constitution that follow from this.

Constitutional actors are able to ignore norms and conventions – and appear to have an increasing appetite for doing so

The absence of codification and the principle of UK parliamentary sovereignty mean that constitutional norms and conventions are the primary means of ensuring appropriate limits on the exercise of power within the UK. These are subject to interpretation, and debate over what is and is not, or ought or ought not be, a constitutional rule is a consistent feature of UK politics.[1] To function effectively, and place limits on action and behaviour, politicians and other constitutional actors need to have a shared understanding of what these are – and a shared understanding of the culture that underpins behaviour in public life.

Many of the checks and balances in the UK political system rely on individuals exerting a type of 'soft power' – preventing others from pursuing a particular course of action or exercising their powers to excess for fear of political, rather than legal, consequences. Where there are guidelines, for example the ministerial code, decisions to censure misbehaviour come down to politicians' judgment rather than any legal process; in the case of the ministerial code this falls to the prime minister. The Whitehall historian Peter Hennessy refers to this as the "good chaps" theory of UK government – that those who enter high office know what the unwritten rules, conventions and norms are and are willing to follow them. This includes those working in different parts of the constitution – ministers, officials, the opposition, the Speaker, judges – and is central to maintaining broader trust in the way the UK is governed.

But these checks are effective only as long as constitutional actors feel bound by them. As we will explore below, in recent years some of this group have shown an increased willingness to push constitutional boundaries, with the risk of inadvertently altering them in the process. In 2019, Hennessy and the political scientist Andrew Blick argued the political upheaval during the Brexit process exposed the limits of this constitutional model,[2] offering various possible explanations: that it is increasingly difficult for actors to identify the correct course of action; that there are fewer "good chaps" in this political environment; or that there are fundamental flaws in this system of governance.

The "good chaps" theory has been called into question. Robert Saunders, scholar of modern British history, has argued against the idea that "good chaps" have always been the prevalent force in British politics. Instead, he points to historical examples of leaders being mistrusted by their peers through the 19th and 20th centuries, including Palmerston and Lloyd George.[3] However, Blick and Hennessy make a persuasive case for the need to re-examine whether there are ways to strengthen core elements of the constitution.

One answer is codification and for the UK to have a written constitution, and academics such as Jeff King, a professor of law and constitution theory, have argued in favour of this option. However, this could mean a greater role for the courts in deciding constitutional matters, which is itself a source of tension. Others argue in favour of preserving the 'political constitution' of the UK which JAG Griffith, a 20th-century Welsh legal scholar, justifies on the basis:

> **"not that politicians are more likely to come up with the right answer but that... they are much more vulnerable than judges and can be dismissed or at least made to suffer in their reputation."**[4]

Moving towards a legal model would mean a complete change to the constitutional underpinning of the UK, and would also probably require a fundamental review of some of its key features. An alternative approach is to consider opportunities to protect elements of the constitution and strengthen checks and balances without revising the UK's constitutional arrangements – although this may not go far enough.

There is growing disagreement over the appropriate balance of power between institutions

As set out in the previous section, parliament is at the centre of the UK constitution and the ultimate source of power, but it is the executive that wields much of this power in practice. Any government that has a majority in the House of Commons has considerable control over decisions in parliament, with the House of Lords' lack of public legitimacy preventing any major challenges to the government of the day. Parliamentary sovereignty also means the courts can only interpret acts of parliament, and not question their validity. As articulated by Vernon Bogdanor:

> **"The legal doctrine of the sovereignty of parliament has thus come to legitimise a political doctrine, the doctrine that a government enjoying an overall majority in the House of Commons should enjoy virtually unlimited power."**[5]

One way of characterising the different perspectives of the UK constitution is the legal academic David Howarth's conception of the Whitehall and the Westminster 'view'.[6] According to the Whitehall view, strong executive control is necessary to allow the government to act authoritatively and decisively, and to deliver the manifesto pledges it was elected on without impediment. The Westminster view contends that voters elect MPs for the whole country from both governing and non-governing parties, so to sideline parliament is therefore to sideline a significant proportion of the country. Below we examine the current balance of power within the UK constitution.

There are few limits on a government with a majority in the Commons

One of the most important relationships in the UK constitution is that between the executive and the legislature. Executive power is derived from parliament, and it is parliament's role to scrutinise government action and hold government to account. In practical terms, a government needs a majority in parliament to pass new laws; civil servants and ministers have to appear before select committees to account for their actions and decisions; and ministers have to answer questions from MPs and peers on the floor of the House.

But the nature of the UK's first-past-the-post electoral system – which has produced single-party majorities in 22 of the 28 elections since 1918 – means the government has considerable control over parliament as decisions are made by a simple majority. The central role of political parties in the UK's system of governance also means that, while any prime minister has to command the confidence of the House of Commons, they are usually the leader of one political party who has been selected by party members – a very small group of the electorate.

Central to the executive's control of the Commons is its control of time. It decides its agenda, including the length of time spent debating pieces of legislation through programme motions, and while there are opportunities for the opposition and backbenchers to decide activity – with a set number of opposition and backbench business days each parliamentary session – the government can choose when those take place. For this reason, even a government with a relatively slim majority can usually deliver its agenda.

There have been some steps to try to improve parliament's scrutiny of the executive – but only where the government itself has both endorsed and brought forward those changes. For example, select committee chairs are now elected by the whole House – rather than appointed by party whips – which is generally believed to have led to more detailed scrutiny of government activity, although select committees don't have formal powers to summon witnesses. But successive governments have failed to bring forward other proposals, such as the recommendations of the Committee on the Reform of the House of Commons (known as the Wright Committee) of a business committee to allocate time in the Commons, despite a commitment to do so by Gordon Brown and in the coalition agreement.[7]

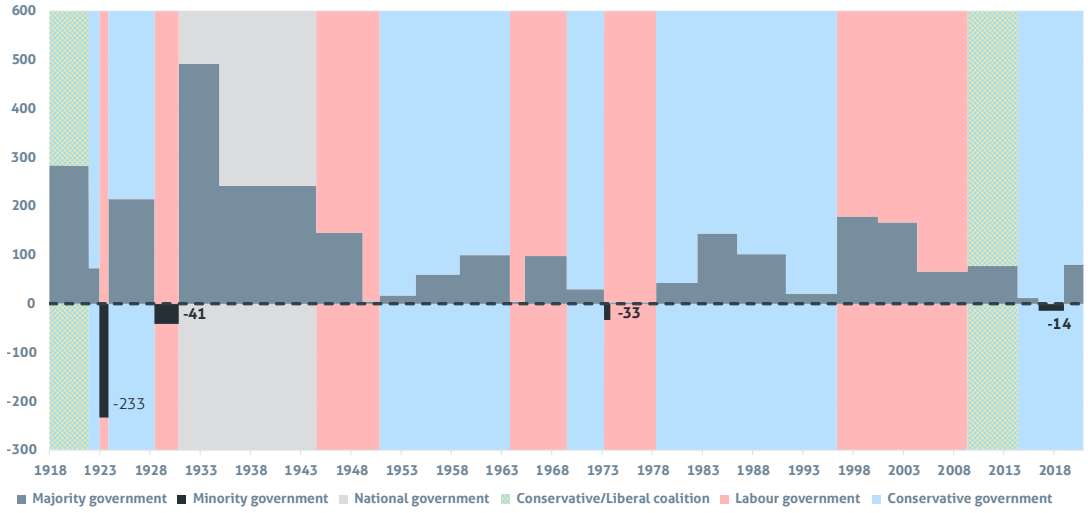
The benefit of strong executive control of the legislature is that it ensures that a government elected by the public is able to deliver its agenda, preventing the kind of gridlock that has become common in the US. It also allows the government to respond quickly in times of crisis – passing the Coronavirus Act 2020 in just six days (and only three days of debate) to ensure ministers had the powers necessary to respond to the pandemic. But there are risks in drafting and passing legislation quickly, as longer, more considered scrutiny can more effectively identify unanticipated consequences or mistakes in the drafting.

Strong central party control also means that in theory policies can be driven through parliament without broad support. The whipping system – where MPs are 'whipped' to vote with the rest of their party – means that there doesn't even have to be majority support for a policy on the government's benches for legislation to pass. This is not always straightforward – whips have to work hard to ensure that their MPs do continue to support government policy and in recent years backbenchers have become more independent-minded, forcing the current government into U-turns more regularly.[8] An in-depth study undertaken by Meg Russell and Daniel Glover at the Constitution Unit at UCL explores the role of different groups – including the opposition and government backbenchers – within parliament during the passage of primary legislation. They argue that the political influence of these groups is central to the legislative process, and provides an important check on the executive, even if they are rarely defeated in parliamentary votes on legislation.[9]

However, there are limits to relying on these political checks on government activity in the Commons. Recent reports from two select committees in the House of Lords have argued that the balance of power has shifted too much towards the executive and away from parliament. In particular, the committees are concerned about the increasing use of 'skeleton bills' – which gives ministers broad powers to use secondary legislation, rather than acts of parliament, to introduce policy change – as this greatly limits parliamentary scrutiny.[10]

A government with a minority has a different relationship with parliament: it may need to work with other parties, and could be under more pressure to change or adapt its policy proposals to get sufficient support for legislation. This can give parliament more power. Although the nature of Brexit, and the divisions within the political parties, were exceptional, this was evident in Theresa May's experience during the 2017–19 parliament. However, as Figure 1 demonstrates, because of the UK's majoritarian voting system, such governments are rare in the UK system. In the past century there have been only four minority governments.

Figure 1 **UK government majority size, 1918–2019**



Source: Institute for Government analysis of parliament.uk

Some have advocated for a change to the voting system to encourage more coalition or minority governments as a means of moving towards a more consensus-driven approach in parliament – changing the incentives for politicians' behaviour. This would not necessarily, however, change the control the executive exerts over the legislature, although could lead to a parliament that is more representative of voters' preferences – as we discuss below.

Where institutions lack legitimacy, checks are weak

The nature of the evolution of the UK constitution – with a gradual expansion of the franchise and curtailment of the role of the landed gentry – means that somewhat antiquated institutions still play an important constitutional role, even as the nature of that role has changed over time. However, the lack of democratic legitimacy, with parts of their membership based on birth right, can limit their ability to challenge elected institutions.

In theory, a second chamber in a national parliament provides an additional check on government activity and, unlike in the Commons, the government does not control the timetable – nor necessarily command a majority – in the House of Lords. However, the make-up of the second chamber, whose members are unelected and include political appointees nominated for life and bishops, has an impact on the way that it performs its role.

For example, peers perform detailed scrutiny of government activity and legislation, and are able to exert political pressure on the House of Commons, often asking them to 'think again' through amendments to legislation, but they do not challenge the Commons' primacy. Even if peers were to try to oppose legislation, the Salisbury Convention dictates that they won't oppose any that implements a manifesto commitment and the Parliament Act 1949 allows peers to delay the passage of legislation for only one parliamentary session.

Peers also do not propose amendments to, and cannot block, money bills as the Commons has financial privilege – a convention that dates back to the 17th century. But even when peers act within the constraints of the constitutional role, their lack of electoral mandate limits their effectiveness. Attempts to exercise their powers are frequently met with threats to limit them further, or to appoint new members more supportive of the government, as happened, for example, when peers threatened to remove clauses from the UK Internal Market Bill in 2020 that would have allowed the government to break international law. But any attempts to reform the chamber to make it more democratic would likely have implications for its role.

The role of the monarchy has also evolved over time and the nature of the monarch's constitutional role is, deliberately, somewhat ill-defined. The monarch's constitutional powers are, in theory, an important check on government, but are limited by both the need to remain apolitical and the convention that most powers are exercised on the advice of ministers or on the basis of the will of parliament.

Although these reserve powers are central to how governments are formed and maintained – including the appointment of the prime minister and the dissolution of parliament – they are rarely more than ceremonial formalities. If there is dispute about who is able to command confidence in parliament and therefore should be appointed prime minister, politicians are expected to resolve any impasse. Likewise, although the monarch can in theory refuse to grant royal assent to legislation passed by parliament, the last time this happened was in 1708.[11]

The constitutional difficulties that can arise with this arrangement were brought home in September 2019 when the government attempted to prorogue parliament for five weeks during a crucial period in the UK's exit from the EU. Convention dictates that the monarch allows a prorogation on the advice of the prime minister with little detail on any firm circumstances in which this can be refused. The Supreme Court ruled that Boris Johnson's advice on this was unlawful and therefore the prorogation had not occurred, but the case demonstrated the limits of the role of the monarch in the constitution and raised questions over whether the Queen could have actually refused the original request.

There is growing tension between the executive and the judiciary

Parliamentary sovereignty means that – if the government has a majority – it faces few binding constraints. It is possible that such a government could even pursue a policy agenda that was fundamentally at odds with core democratic values, bringing forward (and, with sufficient party discipline, passing) legislation that restricted fundamental rights, for example disenfranchising parts of the population.

The courts cannot prevent parliament from legislating as it chooses, but they do place important limits on the actions of government, ensuring that it acts in accordance with the law. In some cases, the courts do this by ensuring that the executive acts within the limits laid down by parliament. In others, they apply standards of decision making that have been developed by the courts, for example ensuring that the executive does not make decisions that affect people's rights without giving them an opportunity to be heard, and does not make arbitrary decisions with no rational basis.

In the second half of the 20th century, the courts' role in scrutinising the legality of executive decisions grew in importance. Both politicians[12] and judges have spoken of an 'explosion' in judicial review in recent decades. The enactment of the Human Rights Act 1998 has required judges to examine more closely the justification for decisions of the executive, not just asking whether they are 'irrational', but considering whether they strike a fair balance between the rights of the individual and the interests of the community.[13] Furthermore, during the UK's membership of the EU, the courts' role expanded to disapplying acts of parliament that were incompatible with EU law;[14] this jurisdiction remains in place, in modified form, for certain types of law that originated in the EU legal order.

The Brexit process increased political focus on the role of the courts. There were two cases where the Supreme Court prevented the government from attempting to bypass parliament – first, in 2017, when ministers sought to start the process of leaving the EU without a vote in parliament (*Miller I*), and second when they tried to prorogue parliament for several weeks in September 2019 to prevent it blocking a no-deal Brexit (*Miller II*). Several other high-profile court cases have also caused frustration in the executive: for example, cases about the ability of parliament to prevent the courts from ruling on some executive decisions at all, and about ministers' ability to set fees for access to the employment tribunal.[15]

Many would argue that these cases are examples of the checks and balances in the UK constitution functioning effectively. However, the current government argues that these cases and others have distorted the constitutional balance between parliament, the government and the courts. The opinion of Suella Braverman, the current attorney general, is that judicial review has become a tool to revisit political debates "by those who have already lost the arguments".[16] The UK government is considering plans to create a mechanism to put certain legislation outside the court's jurisdiction, and allow parliament to overturn judgments it does not agree with on a periodic basis, alongside a new Bill of Rights to replace the Human Rights Act.[17] This position is contested. Mark Elliott, professor of public law at the University of Cambridge, argues that, in the case of judicial review, it can – and should be able to – occur in contentious contexts, provided there is a clear legal question.[18]

Increasing disregard for norms and conventions has also increased pressure on the courts as a constitutional longstop. Although *Miller II* is one of the examples that Braverman used to demonstrate the overtly political nature of court decisions, this was a situation in which parliament was unable to have any say over government decision making, and so normal mechanisms of accountability had broken down. The courts stepped in to fill a vacuum that the executive had never before created; for this reason Lord Neuberger, former president of the Supreme Court, called this case "exceptional".[19] Yet the calls for reform that followed the case suggest that there is little consensus about whether this 'longstop' function is a proper part of the Supreme Court's constitutional role.

The UK's territorial constitution is increasingly strained

States are usually described as either unitary, with a single central government, or federal, with both a federal government and constitutionally protected sub-national governments. The UK does not neatly fit into either category. The three devolved parts of the UK – Scotland, Wales and Northern Ireland – have autonomy over a wide range of devolved policy areas, such as health, education and the environment. However, the principle of parliamentary sovereignty means that this autonomy is at the gift of the UK parliament. The devolved administrations do not have the same legal rights and protections that sub-national governments do under traditional federal constitutions.

The question of whether the UK should be seen as a union of nations or a unitary state – and therefore the nature of the relationship between the constituent parts – remains a recurring source of debate.[20] Perhaps most significantly, opinion is now divided between the four governments. The Scottish and Welsh governments take a union view, the UK government a unitary one, and the Northern Ireland executive is internally divided. This has contributed to different views on the appropriate relationship between the four governments.

This is further complicated by the UK government's role as both the government of the UK as a whole and the government for England in some areas. England, in which 80% of the UK's population resides, remains highly centralised following incomplete reforms to devolve power within the nation.

At the same time, the continued unity of the UK is in doubt. There is strong support for Scottish independence, growing support for Welsh nationalism (albeit from a low base), continued questions about whether the people of Northern Ireland might seek reunification with the Republic of Ireland in the future, and ongoing uncertainty around the arrangements for governing England. Below we outline the problems with the UK's territorial constitution as it now stands.

There is a lack of constitutional protection for devolution

The principle of parliamentary sovereignty means that the devolution statutes could, at least in theory, be repealed by a simple majority. The Scotland Act 2016 and Wales Act 2017 attempted to entrench the permanence of the Scottish and Welsh governments and parliaments, stating that the institutions may only be abolished on the basis of a decision of the Scottish or Welsh people in a referendum. But while it creates additional barriers to abolishing the institutions, and entrenches a convention that the consent of the people is required, in theory even this requirement could easily be repealed by Westminster.

The abolition of the devolved institutions is highly unlikely; like many aspects of the UK constitution, it is political barriers not legal ones that place constraints on government actions. However, as noted above the UK government has in recent years shown an increasing willingness to push the limits of the norms and conventions that are central to the relationship between the four political institutions of the UK and override the devolved institutions in areas of their own responsibility.

For example, while the UK parliament retains the ability to legislate in all areas, in accordance with the Sewel convention it will "not normally" legislate on devolved matters without the consent of the relevant legislature (usually expressed through a legislative consent motion). Since 2016, however, the UK government has repeatedly legislated without consent, most notably passing the European Union (Withdrawal Agreement) Act 2020 and the UK Internal Market Act 2020 without the consent of all of the devolved legislatures. While in the case of the former, the devolved legislature were arguably pushing the limits of the convention by registering their objection to the Withdrawal Agreement itself rather than the powers the Act gave to devolved ministers, the latter cut across a range of devolved policy areas, and every clause of the bill was subject to the convention.

The UK government argued that due to the "exceptional circumstances" of Brexit, it acted in accordance with the convention.[21] The need to pass legislation to enable ministers across the UK to implement the Withdrawal Agreement was clear. But the urgency and necessity of the UK Internal Market Act – which set the arrangements for regulating post-Brexit intra-UK trade – was less obvious, and the justification for breaching the convention, rather than trying to reach agreement with the devolved governments, was much weaker.

Despite opposition from the leaders of the devolved administrations, the UK parliament's constitutional right to act without limitation meant that there were few opportunities for them to challenge the UK government's action and seek redress. A breakdown in the relationships between the UK government and the devolved administrations meant that the political mechanisms that have been traditionally relied upon to allow the devolved administrations to exert influence on the UK government, and secure policy changes behind the scenes in exchange for public support, were not effective.

The vulnerability of devolution to the whim of Westminster has created a sense of insecurity in the devolved nations that they could be overridden even in devolved areas, and risks precipitating the break-up of the UK itself.

Co-operation between the four governments of the UK relies on good relationships

Devolution introduced a clear distinction between reserved areas (and 'excepted' areas in Northern Ireland) – including on foreign policy, defence, international trade and macroeconomic policy – where the UK government and parliament are responsible for making decisions, and devolved areas (or 'transferred' areas in Northern Ireland) like health, education and transport, that are the responsibility of the devolved administrations and legislatures. However, reserved issues like international trade have significant implications for devolved areas such as food standards, while devolved areas such as public health policies – especially important during the coronavirus crisis – require close co-ordination and intergovernmental work.

When devolution was introduced, ministers in the Scottish and Welsh executives (as they were then called) and the UK government were all members of the same party, allowing them to work together informally and resolve disputes behind the scenes. However, since 2010 there have been different parties in power in each part of the UK – including those with opposing constitutional positions – which makes working on a consensus-based or co-operative basis much more difficult. Successful intergovernmental working relies heavily on good relationships between ministers in different parts of the UK and a willingness to compromise and reach agreement. These conditions are not always present. In recent years the UK government has taken a more confrontational approach to its devolved counterparts, and the nationalist government in Scotland has had the incentive to criticise the UK government and argue that the union is not working.

Different constitutional understandings have begun to emerge in each part of the UK, which have sparked disagreement on the fundamental terms under which ministers from all of the four governments should meet. For example, the Welsh government argues that relations should proceed on the basis of "mutual respect"[22] and parity of esteem, while for the UK government, the primacy of the UK parliament remains the central constitutional principle and therefore the devolved administrations are – at least on reserved matters – subordinate. The four governments have recently agreed new structures for intergovernmental working, moving further towards jointly owned machinery, and participation on an equal basis on devolved areas.[23] But the effectiveness of such reforms still depends on the willingness of the four governments to co-operate and, where necessary, to compromise.

The difficulties of reconciling the interests of the UK as a whole, and of its constituent parts, was most clearly demonstrated during the Brexit process when the UK overall voted to leave the EU but Scotland and Northern Ireland voted decisively to remain. Despite an initial commitment to seek UK-wide agreement on the UK's negotiating position, the UK government went on to pursue a distant trading relationship with the EU, despite strong objections from the Scottish and Welsh governments. The first Brexit deal – Theresa May's Withdrawal Agreement – was approved by the UK parliament, but all three devolved legislatures refused to give consent to the legislation implementing the deal; the Northern Ireland assembly did so unanimously. This has highlighted the difficulties when majority opinion in the UK's political institutions conflicts with that of the devolved institutions on matters of fundamental importance.

The problem is exacerbated by the fact that the UK government can increasingly be said to primarily represent England. This is due to the UK's majoritarian voting system and the divergent political trends in each part of the UK. Ministers are mostly drawn from the governing party's pool of MPs and the two largest parties have few MPs in Scotland, and none in Northern Ireland, where the main parties in Great Britain stand few if any candidates. Following the 2019 election, 95% of Conservative Party MPs represented English constituencies and 88% of Labour MPs are also based in England. It has become increasingly difficult for devolved representatives to be present in the UK government, and for the UK government to be perceived as an independent

adjudicator of the interests of the whole of the UK. This is further complicated by the fact that in areas that are devolved to Scotland, Wales and Northern Ireland, the UK government acts for England only.

Representation for, and within, England is still unresolved

Despite English dominance of UK institutions, there are also unresolved questions about how its interests should be represented within intergovernmental discussions and how decisions should be made that apply to England only. While Scotland, Wales and Northern Ireland have separate governments and legislatures to make decisions on devolved areas, decisions about those areas in England are made in the same manner as UK-wide decisions: by Westminster and Whitehall.

Procedural reforms to try to address this anomaly aimed to ensure that legislation affecting England commanded a majority among England MPs – such as English Votes for English Laws (EVEL), in place between 2015 and 2020 – have been tried and repealed. Therefore Scottish, Welsh and Northern Irish MPs could vote on legislation on issues like health and education that have implications for England only. The 'West Lothian' question, as it is often referred to, could be particularly problematic if a UK government were to rely on these votes to implement controversial policies. But political and public support for an English parliament has remained consistently low: polling from October 2021 found only 31% supported the idea, and only 11% of those strongly supported it.[24]

The current arrangements for devolution in England can best be described as a patchwork. Alongside devolution to the nations, in 1997 the Labour government also had plans to bring more regional devolution in England. In 1998 the creation of the Greater London Authority was endorsed in a referendum, albeit on a low turnout of 34%, but plans for further regional assemblies paused when the proposition was rejected by 78% of voters in the North East.[25] Since 2010, a Conservative-led agenda of regional devolution has led to the creation of metro mayors in Manchester, Sheffield and Liverpool among others, and in regions like the West Midlands, and Cambridge and Peterborough. Powers vary on the basis of different 'city deals' but include regional transport, skills provision and economic development.

However, England remains highly centralised compared to many other countries, with most decisions still taken by central government. Even where decisions are devolved, tight central control of local budgets restricts the ability of regional governments to do things differently.

There appears to be political consensus that further devolution within England is desirable, but no clear idea of what form it should take. There are also questions as to how English regions, once empowered, should be represented at a UK level. So far, relationships between the UK government and metro mayors or combined authorities are bilateral, with no forum for regional leaders to come together to discuss issues and represent their different perspectives. But the creation of such a forum would inevitably raise questions as to who then spoke for those citizens who did not live in an area covered by an English devolution deal.

The English question is not only important to resolve the devolution gap within England, but it is also central to questions about how the union as a whole works.

Citizens are disenchanted with the way the UK is governed

As constitutional historian Anthony King has observed, the traditional constitutional arrangement was "voters voted, the government governed, and the voters then decided whether they wanted the government to continue to govern".[26] The past 50 years have seen broad societal, political and cultural changes that have fundamentally changed the public's expectations of their systems of government, and their ability to influence the decisions that affect them. But it is not clear that the UK's representative institutions – dating back hundreds of years – have fully responded to the scope or scale of this change, with elections remaining the primary means for citizens to input into their system of governance.

For political institutions to deliver collective action in the interests of their citizens, there needs to be robust systems to ensure politicians act in the public interest, faith in and understanding of the role of public representatives, and mechanisms to ensure the views of citizens are represented and, where necessary, sought directly. Below we consider how well the UK political system meets these requirements and identify problems in the relationship between the citizen and the state.

The voting system means not all voters' political preferences are represented in the UK parliament

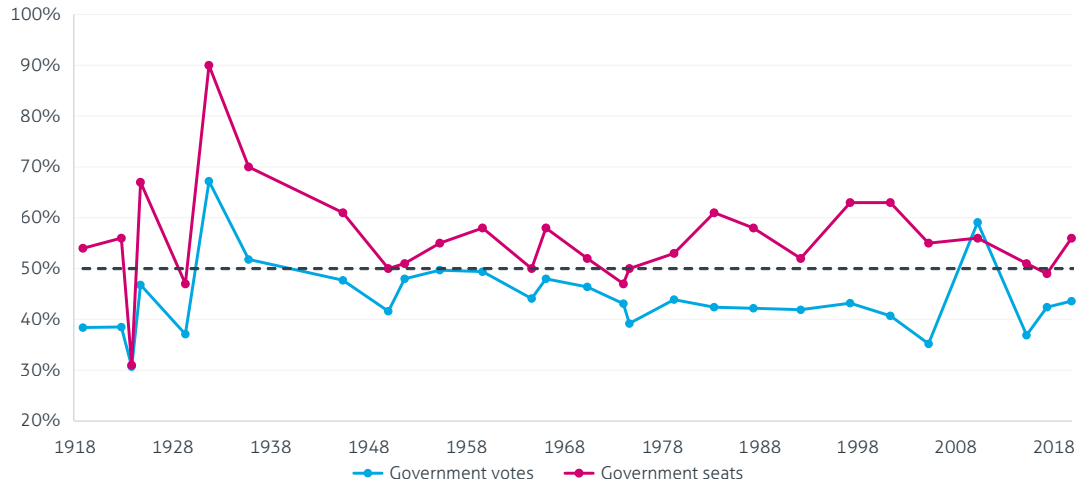
The constitution allows the public to pick their elected representatives through a vote every five years (at a minimum). But the UK's first-past-the-post (FPTP) system means that a great many citizens – particularly those who live in 'safe seats' that rarely change hands – feel that they are not able to be represented by the parties that they support. The UK parliament's majoritarian voting system, in which the candidate with the highest number of votes in each constituency wins, also often creates electoral distortions, making it easier for the two main parties, and harder for smaller parties, to win seats in parliament.

For example, in 2019 the Green Party won 866,000 votes and received one seat whereas the Conservative and Labour parties won a seat for every 38,000 and 51,000 votes respectively. In 2015 the UK Independence Party received 12.6% of the vote (3.8 million votes) yet won just a single seat in parliament. If a voter feels greatest affinity with one of the smaller parties, it is hard for them to ensure their views are represented in parliament.

Proponents of FPTP argue that it delivers clear outcomes, and stable governments that are able to deliver on the manifestos they were elected on. But it also allows for parliamentary majorities by parties who have *not* won a majority of votes, and more often than not the UK government does not command the support of the majority of voters. In the past century, governments have won more than 50% of votes on only three occasions: during the national governments of 1931–35 and 1935–37 and the Conservative–Liberal Democrat coalition in 2010–15. No single party government has ever won a majority of the public vote.

As discussed above, parliament is the ultimate power within the constitution, and parliament is largely controlled by the government of the day, therefore major changes and policies can be implemented without the support of most of the population. Although it could also be said that coalition agreements – which are more common under more proportional voting systems – can often include policies that have arisen through political agreement and that have not been directly endorsed by the electorate.

Figure 2 **Proportion of votes and seats in parliament won by parties forming government, 1918–2019**



Source: Institute for Government analysis of parliament.uk.

While FPTP has been in place in a majority of UK constituencies since 1884, newer political institutions in the UK have adopted different voting methods. The devolved nations have all adopted more proportional systems, and elections for metro mayors and the London mayor use a preferential system – the alternative vote, in which voters can choose a first and second preference* (although the current UK government intends to change the latter to FPTP).

Support for the current voting system for the UK parliament is low: in September 2021, a YouGov poll found that as little as 28% of the public supported the current voting system and 42% supported a system of proportional representation.[27] However, public dissatisfaction with the current system has not translated into a strong impetus for change and there remains a lack of consensus around which – if any – alternative systems are preferable. In 1997 the Labour government established an Independent Commission on the Voting System, which recommended the alternative vote system, with an additional proportional element. The coalition government held a referendum on whether to adopt the alternative vote (without the proportional element) in 2011, but it was rejected by the electorate, with 67.9% voting 'No' on a turnout of 42%.

* The Scottish and Welsh parliaments use the additional member system, which combines a FPTP element to elect constituency representatives, with additional 'top-up' seats elected by a party list system to create a more proportional result. The Northern Ireland executive uses single transferable vote – voters rank their preferences, which are then used to allocate seats on a proportional basis in multi-member constituencies.

There are few opportunities for people to participate directly in decision making

Outside of elections, there are a number of ways in which the public can engage with the political system, including contacting their MP, attending constituency surgeries and participating in public consultations set up by central and local government. However, many people feel frustrated that engagement and consultation does not always translate into meaningful change. In a 2021 exercise by the Constitution Unit, UCL, exploring citizens' attitudes to democracy, participants collectively made the statement:

> **We feel frustrated about how democracy is working in the UK today because there is a disconnect between people and the system. We do not feel listened to and there is no clear way to have influence. We need to feel that change can happen and that different voices are taken into account.**[28]

In the past half century, the UK government and parliament have been experimenting with new ways to involve people directly in decision making. Referendums have been one way for a government to pose a question to 'the people' and since the first referendum – the Northern Ireland border poll – was held in 1973, there have been 13 polls, including three UK-wide votes. They have been used to mandate major constitutional change such as devolution to Scotland and Wales, the approval of the Good Friday Agreement, and the decision to leave the EU.[29]

However, the use of referendums has at times come into tension with the UK's system of representative democracy. There are no clear rules around when they should be held, on what terms and how the results should be interpreted or acted upon.[30] Most notably, the lack of a clear plan for the UK's future outside the EU meant that parliament was left to interpret and implement a close and highly contentious result. It created a situation where the public had expressed a desire to leave the EU but parliament struggled to reach agreement on the terms of exit.

While in 2019 there was still a majority (55%) in favour of the UK government using more referendums to make decisions, this has declined from 76% before the vote to leave the EU.[31] Nonetheless, it is almost inevitable that referendums will be used again. Therefore there needs to be greater consideration of how their use should be integrated into the UK's system of democracy.

There has been increasing interest from both the public and politicians in the use of citizens' assemblies – deliberative forums that bring together a demographically representative group of citizens to learn about an issue, deliberate and make recommendations. Having become prominent due to their use in the Republic of Ireland, where they were able to break the stalemate on the contentious issues of same sex marriage and abortion, several experiments have already taken place in the UK. In 2018, two select committees in the House of Commons jointly commissioned a citizens' assembly on the future of social care and the Scottish government has also run two citizens' assemblies. The SNP committed to an annual citizens' assembly in its 2021 Scottish election manifesto.

Despite this, such deliberative and participatory techniques remain relatively unfamiliar in the UK political system. Campaigners have advocated their use on issues like climate change and the UK's territorial future but they are yet to be fully explored as a potential route to greater input from the public in government and policy, and many politicians and decision makers remain sceptical.

However, mechanisms for direct and deliberative democracy cannot replace representative institutions, which will continue to make most decisions on behalf of the country. Public understanding of the UK constitution is low; the 2019 Hansard public engagement survey found that 54% of people felt they had little to no understanding of how parliament works.[32] The UK's complex multi-level system of government can also mean that the public find it difficult to understand which institutions and individuals are responsible for different issues and to hold them to account. Public engagement with the political system more broadly will only be aided by greater public understanding of the constitution and its institutions.

Digital communication has brought people in closer contact with their representatives

The internet and social media have fundamentally changed the relationship between politicians and the public. There is a much greater ability to see what politicians do day to day, and to interact with MPs and ministers online.

The rise of online engagement has had benefits, such as the expanded public use of petitions.* The government petition website has had six petitions reach a million signatures and five of these have come in the past five years,[33] suggesting a greater desire for the public to have their say beyond general elections. E-petitions can allow the public to express a view on an issue, and have even led to changes in the law. Online activity has also made political engagement more accessible, allowing citizens to more easily contact their MP and amplifying voices or issues that have been historically under-represented in Westminster and Whitehall, although, in some cases, the nature of this kind of exchange can end up being more superficial.

Social media can also open MPs up to abuse and have a negative impact on public debate. There have been numerous convictions for members of the public threatening MPs online and in October 2021 SNP MP Carol Monaghan moved to a safe house after receiving a detailed death threat online.[34] This is not solely an issue facing politicians, but it could create an environment where people are discouraged from going into politics or making certain decisions for fear of threats and abuse received online.

There is a risk that MPs who feel threatened may not be able to meet their constituents, debate difficult issues or express their views freely for fear for their safety or possible reprisals. Many people – in particular women and ethnic minorities, who are subject to higher levels of abuse – may be dissuaded from entering politics altogether.[35] A smaller pool of potential MPs could reduce the range of views and perspectives represented in

* When a petition gets more than 100,000 signatures it must be considered for a debate in parliament.

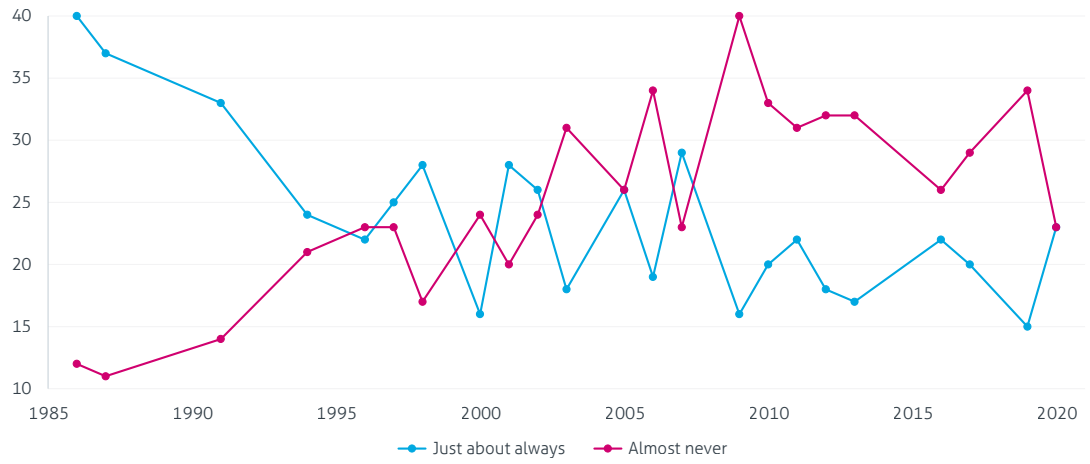
parliament, and therefore its efficacy. Greater public engagement with politicians due to social media can be a positive development, but it needs to be balanced with a need to keep MPs safe and avoid discouraging people from becoming MPs.

Political scandals have exposed weaknesses in systems for maintaining standards in public life

A functioning constitution, and good government, requires public figures to act in the public interest. The UK has a strong democratic culture, but any system of government is vulnerable to individuals acting in a way that is not consistent with the public good. Successive crises – including the 'cash for questions' scandal in the 1990s and the MPs expenses scandal in 2009 – have put the motives of elected officials in doubt.

The 2019 Hansard Society's Audit of Political Engagement found that only one third of people trusted the House of Commons (34%) or the government (33%) to act in the public interest.[36] This has declined steadily over the past several decades, from a high of 40% in 1986 to a low of 16% in 2009 during the MPs' expenses scandal. Belief in the government to act in the public interest spiked in 2020, but this was likely the result of the coronavirus crisis, rather than a more permanent shift in public opinion.

Figure 3 **Trust in government to put the needs of the nation above their party, 1986–2020**



Source: Institute for Government analysis of NatCen British Social Attitudes survey, 1986–2020.

A 2019 Eurobarometer poll found that two thirds of UK citizens (68%) thought that there needed to be better investigations and accountability for corruption in politics.[37] More recent political controversies, including parliament's handling of sexual harassment and bullying cases, former prime minister David Cameron's lobbying for Greensill Capital, various investigations into potential breaches of the ministerial code (and the prime minister's handling of these) and the furore over the government's approach to the sanctioning of Owen Paterson MP and the subsequent disquiet about MPs' second jobs, have prompted questions about standards in public life.

Many are now questioning whether the mechanisms to hold MPs and ministers to account, and uphold high standards, are sufficiently robust, especially when politicians, and other constitutional actors, fail to act in the public interest.[38]

The prime minister's dominance over enforcement of the ministerial code – stemming from their power over ministerial appointments – and the ability of the government to use its majority in votes on MP standards cases, means ministers and MPs do not necessarily face repercussions, even if they are found via independent processes to have broken the rules. For example, the home secretary, Priti Patel, remained in post after Johnson did not agree with the judgment of his independent adviser on ministerial standards, Sir Alex Allan, that she breached the ministerial code by bullying civil servants.[39] Instead, it was Allan who resigned.

In the Owen Paterson case, the government responded to the Commons Committee on Standards' recommendation of a 30-day suspension by whipping MPs to instead vote to reform the system. While there may be legitimate concern about the standards process, the perception that MPs were changing the rules because they didn't like the outcome provoked public outcry. Although the government almost immediately U-turned, this incident severely damaged the government's ethical credentials, as well as the reputation of parliament more broadly, which could undermine trust in one of the key pillars of the constitution.

When systems intended to maintain certain standards fail, this can lead to poorer public policy outcomes. A recent example is the 'VIP lanes' for procurement during the Covid crisis, which led to a stream of "non-credible" bids that took up the time of civil servants during the pandemic.[40] From February to December 2020 there were 13 contracts worth £255 million awarded to companies that had been formed less than 60 days prior to receiving contracts.[41] Perception of corruption also risks eroding faith in politicians and political institutions more broadly.[42]

Constitutional change in the UK

Compared to constitutions in many parts of the world, changes to the constitution can be easily made in the UK. The barriers are primarily political rather than legal. This means that it can be both difficult to entrench constitutional principles, as they can be amended by a government with a majority, and that long-standing issues often go unaddressed if it is not in the interests of the government in power to introduce constitutional reforms. As well as considering how well the UK constitution functions, the IfG/Bennett Institute Review of the UK Constitution will also consider how and under what conditions constitutional change takes place.

Only a simple majority in parliament is needed to enact changes to the UK constitution

Constitutions commonly set out the processes by which they can be changed. Many states have special processes for constitutional amendment; these can involve the requirement for special majorities in the legislature, referendums or even elections. For example, any amendment to the constitution of Australia must be approved in a referendum that receives a majority of all votes cast and a majority in four of the nation's six states. Amending the Canadian constitution requires a majority in parliament and the approval of two thirds of the provincial legislatures that make up more than half the population. The Indian constitution can be amended with a two-thirds majority in both houses but has certain clauses such as those relating to states' rights that must also be passed by a majority of state legislatures.

New Zealand has the most similar constitutional amendment process to the UK – requiring only ordinary legislation – but specific clauses in its Electoral Act 1993, such as voting age and the length of parliamentary terms, require either a 75% 'supermajority' in parliament or to be passed via referendum. The Japanese constitution, which requires a two-thirds majority in both houses and a national referendum, has not been amended at all since it was enacted in 1947.

The UK constitution can be changed in a number of ways, including establishing new political conventions or breaking existing ones. Precedents can be set by court judges, and changes to the UK parliament's standing orders can also change the constitution. For aspects of the UK constitution given effect in statute, constitutional change is enacted in much the same way as any other piece of legislation: a bill is introduced, debated and passed in parliament before receiving royal assent and becoming law. It requires only a simple majority in parliament to occur, making it easy for the government to initiate and implement change.

The UK constitution is difficult to entrench

The government of the day can amend the UK's foundational constitutional arrangements with relative ease and without broad support or consensus. Reforms may also be introduced by one parliament and reversed by the next. For example, the Conservative–Liberal Democrat coalition government passed the Fixed-term Parliaments Act 2011 which introduced set five-year periods between elections and a requirement for a two-thirds majority in the House of Commons to call an early election. But just 10 years later, the Conservative government introduced the Dissolution and Calling of Parliament Bill 2021–22, which will return the power to call elections to the government.

There are several ways in which certain constitutional principles have been given additional protection. Parts of or whole acts can be made a 'protected enactment'. This means that they are not subject to implied repeal, in which they could be amended or superseded by subsequent legislation passed in the UK parliament or the devolved legislatures. Any changes to these acts must be made explicitly by an act of parliament; legislation incompatible with a protected enactment can be struck down by the courts.

Referendums have also been used to entrench certain aspects of the constitution. Precedents that referendums will be held on certain issues – including EU membership, devolution, Scottish independence and Irish reunification – have been established and in some places codified in law. For example, as noted earlier, the Scotland Act 2016 and Wales Act 2017 require a referendum to abolish the devolved institutions, and the Good Friday Agreement and Northern Ireland Act 1998 requires a border poll to be held in certain circumstances. The European Union Act 2011 also required amendment to the EU's primary treaties be approved in a referendum – although the Act was repealed when the UK ceased to be a member of the EU. As noted above, the UK parliament could simply override these requirements if it wished, but this places an additional political barrier to amending certain aspects of the UK constitution.

Certain constitutional conventions have also been put into legislation in an effort to strengthen or protect them. For example, the Ponsonby rule (that most international treaties should be laid before parliament 21 days before ratification) was codified in the Constitutional Reform and Governance Act 2010, and the Sewel convention (that the UK parliament will "not normally" legislate on devolved matters without the consent of the devolved legislatures) was included in the devolution statutes. However, while putting such conventions in statute gives them formal recognition, it does not necessarily give them legal force. In 2017, in a case brought by the Scottish government, the Supreme Court ruled that as the Scotland Act was intended to enshrine a political convention in law, and that the "policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary".[1]

Although there a number of mechanisms that can be used to strengthen aspects of the UK constitution and raise the political barriers to repealing or overriding certain acts or principles, fundamentally within the context of UK parliamentary sovereignty and in the absence of a form of 'higher' constitutional law, most aspects of the UK constitution are vulnerable to change.

Political barriers can mean long-standing problems go unaddressed

While constitutional change may be legally easy, it can often be politically difficult: those with power in the current system can be reluctant to agree to changes that would reduce their power in future. Many of the problems we have identified in this paper are not new, but are long-standing criticisms of the UK constitution. Electoral reform was first proposed in the late 19th century in response to the rise of party government and growing power of the executive; Winston Churchill put forward proposals for regional government within England during the push for home rule at the end of the 19th and beginning of the 20th century.[2]

Despite much debate, and in some areas broad consensus that there is a problem, many of these issues have gone unaddressed. Having control of the House of Commons means the government is almost always the main instigator of constitutional change and few governments are willing to give power away, or place new limits on the executive. This can create barriers to reform, which means long-standing constitutional issues often go unaddressed. For example, the parties in power have few incentives to reform a voting system that has put them in power. The Labour government failed to fulfil its 1997 manifesto commitment to hold a referendum on a proportional voting system and the 2011 referendum on a preferential system happened as part of the 2010 coalition agreement as a compromise to satisfy the Liberal Democrats' commitment to a proportional system.

When constitutional change has taken place, it has often been the result of political incentives, even if combined with principled arguments. Although the impetus for Scottish devolution had built over decades of campaigning and organisation, key Labour Party figures sold it to their party colleagues as a way to "kill nationalism stone dead".* The EU referendum, which ultimately led to the UK's exiting the bloc, was in part motivated by David Cameron's desire to manage divisions within his Conservative Party over EU membership.[3]

A further barrier to constitutional reform is that even where there is consensus on a problem it can be difficult to build support for any particular option to address it. After widespread criticism of the Labour government's 2001 proposals for House of Lords reform, the government held a series of free votes in parliament on seven options for a new second chamber. The House of Commons rejected all seven, and the House of Lords voted against any form of elected chamber.[4]

* This quote can be attributed to George Robertson, shadow secretary of state for Scotland in 1995.

Several tools have been used to try to build broad support for proposals for change. The 1998 proposals for devolution to Scotland were heavily influenced by the 1989 Scottish Constitutional Convention. Royal commissions have also been established to look at constitutional issues such as devolution, voting reform and the House of Lords. More recently, the Welsh government established the Independent Commission on the Constitutional Future of Wales to "consider and develop options for fundamental reform of the constitutional structure of the United Kingdom".[5] The success of these endeavours is often dependent on a number of political factors.

Any attempt to recommend reforms to the UK constitution must therefore consider what can be done to overcome the political and structural barriers to addressing long-term problems.

Conclusion

The UK constitution has evolved in response to events and external pressures, and through the choices of different governments. In many cases this has led to constitutional innovation and to improvements to the way the UK is governed, but solving certain problems has often created others.

The UK is going through a constitutional transition as it adjusts to the implications of both Brexit and Covid, while also facing renewed questions about the future of the union. This creates a real opportunity to reinvigorate UK democracy, restore trust in the political system, and improve the way that government works, making it better able to deliver on the policies supported by the people of the whole of the UK. But without a clear vision of the destination, the UK risks a future of constitutional confusion and conflict.

In this paper, we have identified key problems with the operation of the UK constitution. Over the course of the next 18 months, our Review of the UK Constitution will examine each of these in more depth and identify solutions. In doing so we will draw on the extensive research that has been produced by others, the expertise of those with experience of operating the constitution – including our advisory panel – and the ongoing public debate about the constitution in each part of the UK.

We will publish a series of papers looking into key aspects of the constitution, conducting original research and making recommendations as to how practice could be improved. We will also collaborate with other academics and experts, drawing on the wealth of ideas and analysis that already exists. At the review's conclusion, we aim to present a package of constitutional reforms that we will argue should be adopted by this and future governments.

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