

# DEMOCRACY IN BRITAIN

## ESSAYS IN HONOUR OF JAMES CORNFORD



Edited by Guy Lodge and  
Glenn Gottfried

With contributions from  
Stuart White, Martin O'Neill,  
Stuart Wilks-Heeg, Colin Crouch,  
Mathew Lawrence, Jessica Asato,  
Jamie Bartlett, Sarah Birch,  
Mark Elliott, Alan Trench,  
Michael Kenny, Ed Cox,  
Vivien Schmidt and  
Lord Kenneth Macdonald

February 2014  
© IPPR 2014



DEMOCRACY IN BRITAIN  
ESSAYS IN HONOUR OF JAMES CORNFORD

Edited by Guy Lodge  
and Glenn Gottfried  
2014

## ABOUT THE EDITORS

**Guy Lodge** is an associate director at IPPR.

**Glenn Gottfried** is a research fellow at IPPR.

## ACKNOWLEDGMENTS

First and foremost we would like to thank Anthony Tomei, then at the Nuffield Foundation, and Nick Pearce at IPPR, who provided the initial spark for this edited collection as a way of celebrating the life and contribution of James Cornford. The book was then made possible with a generous grant from the Nuffield Foundation. We would also like to thank Sharon Witherspoon and Rocio Lale-Montes at the Nuffield Foundation and Sean Kippin at Democratic Audit for their help, as well as Graeme Cooke and Rebecca Hall at IPPR. Finally, and most of all, we would like to record our appreciation to all the authors for helping to produce such a stimulating and thoughtful collection.

## ABOUT IPPR

IPPR, the Institute for Public Policy Research, is the UK's leading progressive thinktank. We are an independent charitable organisation with more than 40 staff members, paid interns and visiting fellows. Our main office is in London, with IPPR North, IPPR's dedicated thinktank for the North of England, operating out of offices in Newcastle and Manchester.

The purpose of our work is to assist all those who want to create a society where every citizen lives a decent and fulfilled life, in reciprocal relationships with the people they care about. We believe that a society of this sort cannot be legislated for or guaranteed by the state. And it certainly won't be achieved by markets alone. It requires people to act together and take responsibility for themselves and each other.

IPPR  
4th Floor  
14 Buckingham Street  
London WC2N 6DF  
T: +44 (0)20 7470 6100  
E: [info@ippr.org](mailto:info@ippr.org)  
[www.ippr.org](http://www.ippr.org)  
Registered charity no. 800065

This book was first published in February 2014. © 2014  
The contents and opinions expressed in this paper are those of the authors only.

# CONTENTS

## Preface

<b>James Cornford, 1935–2011</b> .....	1
Garry Runciman, Trinity College, Cambridge	

## Foreword

Nick Pearce, director, IPPR.....	2
----------------------------------	---

## Foreword

Sharon Witherspoon and Anthony Tomei, Nuffield Foundation.....	3
--	---

About the authors .....	5
-------------------------	---

## 1.

<b>Introduction</b> .....	7
Guy Lodge and Glenn Gottfried	

## 2.

<b>What kind of democracy should we want?</b> .....	17
Stuart White	

## 3.

<b>The New Labour That Wasn't: The lessons of what might have been</b> .....	31
Stuart White and Martin O'Neill	

## 4.

<b>Tackling the power gap: A new constitutional reform agenda</b> ....	41
Stuart Wilks-Heeg	

## 5.

<b>Dealing with corporate political power</b> .....	55
Colin Crouch	

## 6.

<b>Democratising the economy</b> .....	67
Mathew Lawrence	

## 7.

<b>Tomorrow's political parties</b> .....	79
Jessica Asato	

## 8.

<b>Populism, social media and democratic strain</b> .....	91
Jamie Bartlett	

9.	<b>Citizens excluded</b> .....	97
	Sarah Birch	
10.	<b>Law, rights and constitutional politics</b> .....	107
	Mark Elliott	
11.	<b>Devolution and the future of the union</b> .....	119
	Alan Trench	
12.	<b>The English question: Identity, diversity and nationhood in England</b> .....	133
	Michael Kenny	
13.	<b>Decentralisation and localism in England</b> .....	145
	Ed Cox	
14.	<b>Dealing with Europe's other deficit</b> .....	161
	Vivien Schmidt	
15.	<b>Democratising secrecy: Overseeing security and intelligence...</b>	171
	Lord Kenneth Macdonald	

PREFACE

# JAMES CORNFORD, 1935–2011

GARRY RUNCIMAN

TRINITY COLLEGE, CAMBRIDGE

James could easily have had a normal and successful academic career. As a young research fellow of his Cambridge college, he did work on Conservative politics which is still cited by historians today, and at the early age of 33 he was elected to the professorship of politics at the University of Edinburgh. Although he never wanted to be a career politician, he did always want to be a participant in, and not merely an observer of, the formulation, execution and evaluation of public policy.

He was exceptionally well fitted for that on account of both his temperament and his talents. He was not just highly intelligent but quick-witted, independent-minded and scathingly contemptuous of pomposity and cant in all their forms. He was as critical of what he saw as the sanctimoniousness and self-deception on the political left as of any callousness and complacency on the right. He was shrewd but compassionate, radical but realistic. In the best sense of the term, he was no respecter of persons.

He could also be very funny. He used to say to his would-be rebellious students at Edinburgh that he was grateful for the prospect of two weeks at home on full pay, but if they really wanted to close the university down then they must make sure to occupy and hold the telephone exchange as well as the library. And he had hilarious stories of attending SNP meetings at which Highland lairds and Clydesdale shop stewards shared the platform in a spirit of brotherly love sustained by nothing but an equally exuberant hatred of the English.

He was, in consequence, entirely at home in the world of thinktanks, pressure groups and research institutes seeking to persuade the holders or prospective holders of political office to think what they wouldn't otherwise think and perhaps, if they had the stomach, to do what they wouldn't otherwise do. His achievements at IPPR, which are commemorated in this volume, were paralleled by his contributions to the other organisations he served successively with the same combination of original thought, diligent application and tactical good sense. The more people like him that there are in voluntary bodies directed to the improvement of the institutions and policies by which we are governed, the more grateful we all have reason to be.

# FOREWORD

NICK PEARCE  
DIRECTOR, IPPR

James Cornford left an indelible mark on both the character and the concerns of the Institute for Public Policy Research (IPPR), stamping it with his own unique combination of intellectual rigour, restless creativity and an ability to tread the tricky line between insider and outsider status. He was a radical by temperament and conviction but pursued his ideas in the mainstream of British politics. ‘Put not your trust in princes’ he wrote to friends after finishing his stint as a special adviser in Whitehall, evincing the healthy scepticism of power that radicals throughout history have possessed. But he also led or founded a succession of institutions – IPPR, the Nuffield Foundation, the Paul Hamlyn Foundation and the Constitution Unit – that have each, in their different ways, contributed to lasting social and political change in Britain. He was not a pamphleteer or scribbler at the margins of British democracy and public life, but a thinker and activist within it.

His abiding concern with democratic and constitutional reform is the source of inspiration for this collection. At IPPR, he was the driving force behind the drafting of a written constitution, a formidable achievement for what was then a small and cash-strapped thinktank. It proved to be highly influential on progressive thinking in the 1990s and remains a landmark document for constitutional reformers. He had a lifelong commitment to freedom of information – which he took with him into Whitehall – and commissioned significant pieces of research at IPPR on regional government, civil service reform and human rights, all of which played their part in shaping the agenda of the Labour government in 1997.

Democratic and constitutional reform in the UK has largely stalled since that initial burst of change between 1997 and 2001. At the same time, formal political participation has fallen and political inequality has risen. The pent-up energies for reform that James and his collaborators were able to harness in the early 1990s are now largely in abeyance. These are difficult times for radical democrats – some would even say they are ‘post-democratic’ times.

The contributors to this collection have been asked to set out elements of a new democratic reform agenda for Britain, picking up on newly emergent issues and concerns, such as the rise of political Englishness, the imbalance of power within the economy, and the mounting disaffection of citizens with the political class. Our hope is that these essays will inform the ambitions and strategies of a new generation of reformers, inspired by the spirit and legacy of James Cornford, in whose honour this collection is published.

# FOREWORD

SHARON WITHERSPOON AND ANTHONY TOMEI  
NUFFIELD FOUNDATION

It is fitting that this collection examines how democratic scrutiny and participation can be deepened in the 21st century. James Cornford was passionate about these issues – as he was about the need for practical proposals to be based on thought and argument, and about the importance of *doing* good, not just thinking great thoughts. Indeed, he had a remarkable record of helping to set up and lead new organisations – such as the Outer Circle Policy Unit, IPPR and the Constitution Unit – that brought these interests together.

So it may seem odd that it was partly these very passions that made James Cornford such an influential director of the Nuffield Foundation. The foundation has no particular political leanings – it is resolutely non-partisan – and it is certainly deeply committed to research quality and rigour. It has a long history and can seem conservative in its approach to change, and James was not. But he came to the foundation at a time when it had to face the straitened circumstances brought on by the belated sale of its British Leyland shares, and was grappling with the fact that it no longer had the resources it once did. Over time, he played an important role in refocusing the foundation's programmes, returning to the central aims set out in the deed of trust: to do good particularly, though not only, by means of research, rather than to support research as an end in itself. In the middle of his tenure this took practical as well as symbolic form as the foundation moved from a grand villa in Regent's Park to a more appropriate and approachable home in Bloomsbury.

The outcome was a clear and, more importantly, shared sense of what an endowed foundation with relatively modest means could accomplish, and a reinvigoration of practical experiment, as well as evaluation and evidence for practice or policy. The appreciation of him published in the foundation's report for 1986–1988 testifies to the high regard in which trustees held his political skills, as well as his shrewd judgement and clear intellect. It also gives one of the more forthright accounts of the decline in the foundation's endowment and how this arose – a clear example of putting the sunshine principle into practice.

Under his leadership, the foundation supported a number of important activities, including inquiries into pharmacy and town and country planning. It returned to fostering school science curricula, and played an important role in encouraging integrated education in Northern Ireland and a strategic approach to interpretation services for health care and court users. James instituted a radical reorientation of the foundation's

Commonwealth fellowship programmes, away from academics and towards support for other professions and occupations, such as trade unionists and journalists. Towards the end of his tenure, the foundation started discussions that led to the establishment of the Nuffield Council on Bioethics; later James helped to initiate some of the discussions that led to the founding of the Constitution Unit, funded by the Nuffield Foundation and headed by Robert Hazell, another foundation director.

Eclectic though these activities may be, all came into being because of his openness to good ideas based on evidence or intelligent argument, and his understanding of how institutions and politics work. He wore this knowledge lightly, even elegantly, and punctured pomposity whenever possible. Though never solemn, he was a deeply serious man, and the foundation owes him much.

The foundation made a modest grant to produce this volume as a way of commemorating James Cornford, recognising that many of his concerns – about how institutions can foster democratic participation and accountability, and what evidence we have for trying new things – are still works in progress. He would have enjoyed that.

# ABOUT THE AUTHORS

**Guy Lodge** is associate director for politics and power at IPPR, Gwilym Gibbon fellow at Nuffield College, Oxford, and co-editor of *Juncture*, IPPR's quarterly journal of politics and ideas.

**Glenn Gottfried** is a research fellow at IPPR and an honorary research fellow in the Department of Politics at the University of Sheffield. His research includes democratic reform, public political attitudes and European Union politics.

**Stuart White** is a lecturer in politics at the University of Oxford. He is the author of *Equality* (2006), writes at OurKingdom, the UK section of the OpenDemocracy website, and is co-editing with Niki Seth-Smith a forthcoming e-book, *Democratic Wealth*.

**Martin O'Neill** is senior lecturer in moral and political philosophy in the Department of Politics at the University of York. He is currently on research leave (2013–2014), working on a project on 'The Significance of Inequality', funded by the Institute for New Economic Thinking. He is co-editor (with Thad Williamson) of *Property-Owning Democracy: Rawls and Beyond* (paperback edition, 2014) and is a commissioning editor of *Renewal: a Journal of Social Democracy*.

**Stuart Wilks-Heeg** is a senior lecturer in social policy at the University of Liverpool. He was the director of the Democratic Audit of the UK from 2009–2012.

**Colin Crouch** is an emeritus professor at the University of Warwick and external scientific member of the Max Planck Institute for Research on Societies, Cologne. His recent books include *Post-Democracy* (2004), *The Strange Non-Death of Neoliberalism* (2011), and *Making Capitalism Fit for Society* (2013).

**Mathew Lawrence** is a research fellow at IPPR, leading on research into workplace democracy and new institutions of democratic wealth, and is assistant editor of *Juncture*, IPPR's quarterly journal.

**Jessica Asato** is chair of the Fabian Society, vice chair of the Electoral Reform Society and Labour's parliamentary candidate for Norwich North. She writes here in a personal capacity.

**Jamie Bartlett** is director of the Centre for the Analysis of Social Media, a collaboration between the thinktank Demos and the Text Analytics Group at the University of Sussex. He has recently completed a major series on how social media is changing political movements.

**Sarah Birch** holds a chair in comparative politics at the University of Glasgow. She has published extensively on participation, electoral institutions and attitudes towards politicians.

**Mark Elliott** is reader in public law at the Faculty of Law, University of Cambridge, and a fellow of St Catharine's College, Cambridge.

**Alan Trench** is professor of politics at the University of Ulster, having previously worked at the Constitution Unit (University College London) and the University of Edinburgh. He is currently specialist adviser to the House of Commons Welsh Affairs Committee, and is working with IPPR on its 'Devo More' project.

**Michael Kenny** is a professor of politics at Queen Mary, University of London. He currently holds a major research fellowship awarded by the Leverhulme Trust and is the author of *The Politics of English Nationhood* (forthcoming, Oxford University Press, 2014).

**Ed Cox** is director of IPPR North, IPPR's dedicated thinktank for the north of England. He leads an extensive programme of research on economic development, decentralisation and neighbourhood change, and brings local and regional perspectives to bear across a wide range of public policy issues.

**Vivien Schmidt** is Jean Monnet chair of European integration, professor of international relations and political science, and founding director of the Center for the Study of Europe at Boston University.

**Lord Kenneth Macdonald** is a Liberal Democrat peer and was previously director of public prosecutions between 2003 and 2008.

# INTRODUCTION

GUY LODGE AND GLENN GOTTFRIED

James Cornford was responsible for some of the most pioneering and influential work on constitutional and democratic reform in the UK in recent times. As director of IPPR, he was the driving force behind *The Constitution of the United Kingdom* (IPPR 1991) which provided the blueprint for much of the constitutional change enacted by the New Labour governments and which remains to this day, as Trevor Smith (2011) rightly contends, ‘the most comprehensive and ambitious attempt so far to draft such a proposal’. As chair of the Campaign for Freedom of Information, he passionately championed the cause of open government – a cause he believed Labour promoted with far too much timidity in office. As cofounder of the Constitution Unit, he and Robert Hazell established a team of experts tasked with drawing up practical plans for achieving constitutional change. His clear thinking and his restless energy as a campaigner explain why he was so influential in beginning the process of reforming Britain’s *ancien regime*.

To celebrate his contribution to constitutional debates, IPPR has produced this edited volume, which attempts to set out new directions for democratic reform in 21st-century Britain. Consistent with James’ own thinking, the essays aim to develop radical but practical solutions for strengthening our democratic institutions and culture that are rooted in a clear understanding of the contemporary challenges facing British democracy.

Indeed, our starting point is to acknowledge that while some long-standing problems persist, our democratic institutions today face a range of challenges that differ in their nature and intensity to those James and his colleagues were responding to in the 1990s. As the political, economic and cultural context has changed so too must the objectives and priorities for democratic reform, an aim we hope is well reflected in the essays in this volume (see the chapter summaries below).

Perhaps the most striking development is the deepening of public disaffection with representative democracy, which raises profound questions about the legitimacy of our governing institutions. Whatever its other merits, the impressive wave of constitutional reform enacted in the last two decades has done little to challenge this malaise. Indeed these reforms coincided with a *rise* in political disengagement.

British democracy – in common with many other advanced democracies – is characterised by some alarming features. Political participation has not simply declined but become dramatically more unequal,

strengthening the voice and influence of the affluent over the poor; membership of political parties has collapsed making them – and the elites that run them – more remote and disconnected from the population at large; professionalisation has led to a narrowing of routes into politics, particularly for people of working class backgrounds who are no longer socialised in to political activism through trade unions; and our politicians are held in contempt by large sections of society, creating a void into which populist parties and the antipolitics rhetoric they espouse are able to flourish.

The capacity to govern effectively and thereby demonstrate a level of responsiveness necessary to maintain public faith in politics is being tested by a number of long term trends that are more visible than in the past. For instance the decline of social class as an organising principle of politics has fractured voters' interests, making them harder to represent, while greater electoral volatility and widening geographic fragmentation of political support for the main parties means that political consent is harder to achieve – let alone workable majorities in parliament. The decline of tribalism and rise of political pluralism are to be welcomed – they are signs of a healthy and mature democracy – but they undoubtedly add to the complexity. As does the sharpened intensity of the 24/7 media and the relentless pressures governments come under to show they are making a difference – even it means sacrificing long-term strategic policy in the interests of tomorrow's headlines.

So-called 'post-democratic' theorists are particularly pessimistic: global economic forces, they believe, have eroded the state's room for manoeuvre to such an extent that democratic politics and contemporary capitalism are no longer compatible. Citizens know that they live in a kind of 'post-democracy', because the state is structurally constrained from responding to their concerns by the dominance of financial markets, the lingering fiscal crisis and the continued drift of power to technocratic institutions such as the Bank of England and European Commission. Don't be surprised, they say, if voters therefore turn away from politics. While advocates of 'post-democracy' overstate their case – democracies are more versatile and adaptable than they presume – their analysis underlines the scale of the challenges facing a democracy like Britain.

More troubling still, however, is that the recent wave of institutional crises experienced simultaneously across our major public institutions – from parliament, the big banks, the BBC and print media, the police, to GCHQ and the security services – has exposed what happens when popular representative democracy becomes so hollowed out that the space for political governance becomes dominated by networks of powerful but increasingly unaccountable elites.<sup>1</sup>

---

1 See 'Politics as a Vocation in a Post-Democratic Age', a Warwick University Distinguished Lecture by Nick Pearce, 28 January 2014.

Reflecting on 'the crisis of British democracy', David Runciman recently wrote:

'What these institutional failings have in common is that they arose from a growing sense of impunity among small networks of elites. As British society has become more unequal it has created pockets of privilege whose inhabitants are tempted to think that the normal rules don't apply to them. In any democracy, people with power will abuse it. All public institutions follow the path of least resistance over time. The usual democratic remedy is for other public institutions to rein them in: it is the job of the press and the police to keep an eye on the politicians, just as it is the job of the politicians to keep an eye on the press and police. In Britain, it looks like the opposite was happening. A managerial political class, with extensive links to other elites in media and business, colluded in the sort of lax scrutiny that served their joint interests. Much of this behaviour coincided with a period of unparalleled political stability and economic prosperity: the long boom that lasted from the early 1990s until 2007. But when boom turned to bust, the cosy world of the elites became a joint liability.'

Runciman 2013: 170

What links the crises that have recently engulfed the banks, parliament and the media is that they have ultimately been triggered by concentrations of unaccountable power. Runciman's account highlights, in particular, the interplay between political and economic power – and by implication the self-reinforcing relationship that exists between economic inequality and growing sources of political inequality. The rise in inequality in the 1980s across most advanced economies – accompanying the processes of financialisation, deindustrialisation and the breaking of trade union power – has created unhealthy concentrations of power in the economy which seek to assert their interests in the democratic process at the expense of ordinary citizens.

A root cause therefore of political disaffection is the widespread belief that democratic politics has become too captured by the interests of powerful elites, and consequently insufficiently responsive to the wider citizenry. Whereas the affluent can use their wealth and networks to set the agenda, the less well-off, and especially the poor, lack the resources to feel like their inclusion in politics will make a difference.

Britain is not the US; nevertheless, developments there should be a cause for concern. Research has demonstrated that US politicians are significantly more responsive to the views of higher-income groups than they are to the less well-off. Jacob Hacker and Paul Pierson (2010) argue, for instance, that the chronic levels of income inequality that have opened up in the US are best explained not by structural conditions in

the labour market but by the dominance of corporate and elite interests in the American polity. Larry Bartels writes that 'economic inequality is, in part, a *political* phenomenon (Bartels 2008).

Responding to and tackling concentrations of power and the corresponding political inequalities they generate should be at the heart of the next wave of democratic reform. In outline, this suggests the following:

- First, democratic politics needs to reassert itself and begin to challenge and open up all forms of power 'hoarding' in the economy, in society and in the state itself. Democratic principles of limiting power through effective checks and balances must be vigorously applied to institutions in our economy and polity.
- Second, if democratic institutions are to break down concentrations of power they will need to be much better insulated from the pressures placed on them by vested interests. Access to political power needs to be radically democratised, which means reforming party funding and exposing the lobbying world to much greater scrutiny. It also underlines the need for significant devolution to localities and the creation of new sites of political power: the more political power is dispersed the less vulnerable it is to being 'captured' – and the easier it is to open up politics to citizens themselves.
- Third, the fact that our democratic politics is prone to privilege some interests over others means that we cannot rely on reform of our formal political institutions alone to tackle power inequalities. Pressure will have to come from outside. Key here is the concept of 'the other democracy' advanced by Pierre Rosanvallon and the role that civil society, social media, forces in popular culture can play in holding political and economic elites accountable.
- Fourth, routes into our politics need to be radically opened up to counter the growing disconnect between the political class and society. Elizabeth Anderson argues that the imbalance of political power is a result of something more existential – what she refers to as 'social segregation'. This segregation promotes a form of social isolation for the most disadvantaged, who are cut adrift from the political resources, human and cultural capital and social networks needed to achieve political and economic influence. Politicians must possess empathy to understand the needs of different groups.

We believe that an agenda for political reform that starts with an account of how power should be most effectively and sustainably exercised in a 21st-century democracy is likely to capture the public mood in a way that so many recent debates about constitutional reform have failed to do.

## Chapter summaries

We open our collection by addressing the conceptual framework surrounding our ideals of democracy. What *kind* of democracy should Britain be? Drawing on insights from democratic theory, Stuart White (chapter 2) argues that the purpose of political reform should be to foster a democracy which is participatory, deliberative and contestatory. To avoid a tyranny of the majority, power must be underpinned by institutional checks and balances that disperse power.

Crucially, however, White also suggests, drawing on the work of John McCormick, that internal checks and balances are an insufficient safeguard against the threat posed by ‘oligarchic power’ – the tyranny of the *minority*. If representative democratic institutions are to avoid being captured by the interests of a narrow group of powerful elites they will need to be complimented with new institutions and practices that provide citizens with a direct input into the democratic process. White asks what form a 21st-century version of the Roman republic’s Tribune should take.

The following two chapters reflect on the shortcomings of New Labour’s approach to constitutional reform, before considering how to revitalise a programme of democratic renewal. Stuart White and Martin O’Neill (chapter 3) provide an intriguing counterfactual history of what might have been. They remind us how in its infancy New Labour was influenced by thinkers such as Paul Hirst, Will Hutton and David Marquand, who argued that Britain’s structural weaknesses were rooted in the failings of its economic *and* political institutions. Their insight was that economic and political reform must march together: a stakeholder economy demanded a pluralist polity. In power Labour largely ignored this logic (as well as many of the specific ideas espoused by these thinkers), treating the two agendas as distinct entities.

White and O’Neill contend that the big takeaway lesson from this recent history for today is that if Ed Miliband’s responsible capitalism agenda is to be realised, it will require complementary change to our democratic structures. This is surely right: greater egalitarianism in the labour market requires new institutions that can perform key tasks, such as coordinating employers to organise apprenticeships and deliver work-based training. Some of these institutions will be trade or sector-based but a major plank of institution building will need to take place at the city or city-regional level, which will require a radical devolution of power from Whitehall to localities.

Stuart Wilks-Heeg (chapter 4) follows this with an account of how the reforms initiated in the mid-1990s conspicuously failed to address the ‘power gap’, the UK’s central democratic problem. Rising political inequality, he argues, risks unleashing a cycle of under-representation and disaffection which threatens the very fabric of our democracy.

Wilks-Hegg concludes with a series of proposals that explicitly aim to close the power gap by opening up access to political power, through restricting the role of 'big money' in politics, regulating lobbyists, and fixing the revolving door between government and large business. In unison with White and O'Neill, he suggests that for these reforms to become transformational they need to be combined with wider changes to the distribution of economic power in society.

If our democratic culture is to be strengthened and public confidence restored then our politics must seek to hold power accountable, wherever it resides. Most obviously, democratic politics needs to hold economic power to account. The global financial crisis demonstrates the catastrophic consequences that can arise when toxic levels of power build up in a capitalist economy.

Yet constitutional reformers – who are mostly concerned by considerations about how to limit and check power exercised by and within the state – have traditionally neglected this important territory. Partly this is a reflection, as Colin Crouch (chapter 5) argues, of the dominance of neoliberal orthodoxy, which supposes that the deregulated free market will spread power so diffusely that individual firms will be deterred from seeking to convert economic wealth into political influence. The less government involves itself within the economy, this argument goes, the less incentive there is for business to involve itself with government.

But perfect market conditions are a fallacy, says Crouch: power has not been dispersed but hoarded in hugely powerful corporations, who use their lobbying power, money and influence, to defend and further their interests. In this context economic power has become – contrary to economic theory – intensely *politicised*. Democratic institutions must respond by using the law to restrict the political deployment of wealth. Crouch adds that the active enforcement of regulation – or more accurately re-regulation – of corporate power should not be left to public bureaucracies alone. Groups in civil society – this is Rosanvallon's 'other democracy' – will need to keep a beady eye on them too.

Mathew Lawrence (chapter 6) develops this analysis and argues that if democracy is to move towards becoming a 'way of life', we must explore ways to democratise the market economy and embrace economic institutions that can forge democratic relationships in the workplace. Deepening democracy in this sense requires strategies for: reining back financialisation; strengthening employee representation on boards and remuneration committees; achieving greater profit sharing; and growing the employee-owned sector.

Jessica Asato (chapter 7), Jamie Bartlett (chapter 8) and Sarah Birch (chapter 9) bring together questions surrounding the current state of political parties and their role in our wider political culture. Asato believes

that political parties can and must survive. But to do so, she suggests, they must become broad movements and jettison the tribal instincts that so alienate the public. If political parties resist this transformation then the costs to democracy could be dire, as Bartlett demonstrates in his chapter on the rise of populism. Populism has flourished by tapping into deep wells of public discontent with politics, and exploiting this through highly innovative uses of social media. Traditional parties have been slow to adapt to these technologies but, says Bartlett, they provide the best means for them to 'connect, react and mobilise'. Closing this stanza, Sarah Birch argues that political disengagement is motivated by public concerns about the rise of a 'professional' political class that is perceived to be hopelessly out of touch. She considers ways in which routes into politics can be diversified and the implications of such measures for the role of political parties in the democratic system.

The Human Rights Act was a landmark achievement of the previous Labour government, but, as Mark Elliott (chapter 10) points out, the failure to secure popular support for it has undermined its reputation. Elliott assesses the main options for reform, including the case for a more residual British bill of rights. These options will vary significantly depending on whether the UK remains a part of the European Convention on Human Rights (ECHR). On this point, he warns those who wish to withdraw that human rights will nevertheless remain embedded in the common law.

Devolution was famously intended to 'kill nationalism stone dead'. As Scots prepare for a referendum on Scotland's independence later this year, it is clear that unionists underestimated the SNP. A 'Yes' vote would of course precipitate a dramatic change to the UK's constitution. But, as Alan Trench (chapter 11) shows, if the outcome is a 'No' vote – which is what current polls suggest is the most likely outcome – then Scotland's relationship with the other nations of the UK will still continue to evolve. Scots like devolution and they want more of it. Drawing on research from IPPR's 'Devo More' programme, Trench outlines what a sustainable model of enhanced devolution would look like and why it is necessary for preserving the future of the UK.

Michael Kenny (chapter 12) reflects on one of the most significant phenomena of recent years: the resurgence of Englishness. What, he asks, is this a response to? Europe, economic change, immigration – he suggests – have done more to shape this nascent Englishness than events north of the border. But the real drivers of Englishness are to be found within England itself: Kenny points to the inherently plural nature of contemporary Englishness, tracing the development of different strains of national consciousness, which are themselves symptoms of deep-seated changes in the economic, political and cultural experiences in English society. Kenny identifies a conservative but tolerant strain of English nationhood; a liberal, more multicultural dimension; and

a narrower strand, with more explicitly nationalistic undertones. England, he argues, must be given substantially greater recognition in the political and cultural life of these islands.

The next two essays make a case for institutional reform below and beyond Westminster. First, Ed Cox (chapter 13) explores the recent history of decentralisation in England, highlighting how the significant barriers to greater localism can be overcome. Centralisation, he insists, has had its day. It is bad for prosperity and growth, as towns, cities and rural communities outside London are deprived of the necessary levers to foster economic development. It is bad for democracy, because it means most voters are governed by remote and increasingly unresponsive political institutions at Westminster. And it is bad for fairness and social justice: decades of centralism have conspicuously failed to tackle the widening geographic inequalities that have taken hold across England – in fact, they have become more severe.

Turning to Britain's other political union, Vivien Schmidt (chapter 14) considers how public confidence in EU institutions can be rebuilt. The EU's democratic deficit has long been talked about but little has been done to address it. This partly explains why Euroscepticism – long believed to be primarily a British phenomenon – is on the rise across Europe. Such Euroscepticism is being propelled forward by a number of extremist and populist parties, who are likely to do very well in this year's European elections. At the heart of their critique – and central to explaining their electoral appeal – is the claim that EU institutions have subverted national democratic cultures, leading to rule by remote and unaccountable elites in Brussels. Yet the reason why this populist critique resonates so strongly with voters is that it is partly *true*. EU institutions have, after all, acquired significant powers without any serious attempt to deepen the accountability of their governance structures. Remaking the case for Europe must start with a reform agenda that seeks to democratise EU institutions and bridge the chasm that has opened up between Europe's elites and its citizens. If Europe is to survive, let alone thrive, democratisation is *sine qua non*.

The collection closes with an essay by Lord Macdonald (chapter 15), the former director of public prosecutions, on secrecy and justice. Lord Macdonald warns of the dire consequences for liberty and democracy if the state, in responding to the very real threat posed by terrorism, acquires powers that are not exposed to robust scrutiny. The Edward Snowden revelations show that the security services have amassed a range of snooping powers that successive governments failed to persuade parliament were justified or desirable. In response, Lord Macdonald calls for wider-ranging reforms to the intelligence and security committee so that it is capable of providing real democratic oversight.

## References

- Bartels L (2008) *Unequal democracy: the political economy of the new gilded age*, New York : Russell Sage Foundation
- Hacker J and Pierson P (2010) *Winner-take-all politics: how Washington made the rich richer-and turned its back on the middle class*, New York : Simon & Schuster
- IPPR (1991) *The Constitution of the United Kingdom*, London
- Runciman D (2013) 'The crisis of British democracy: Back to the '70s or stuck in the present?', *Juncture*, 20(3): 167–177. <http://www.ippr.org/juncture/171/11631/the-crisis-of-british-democracy-back-to-the-70s-or-stuck-in-the-present>
- Smith T (2011) 'James Cornford obituary', *Guardian*, 5 October 2011. <http://www.theguardian.com/politics/2011/oct/05/james-cornford-obituary>



# WHAT KIND OF DEMOCRACY SHOULD WE WANT?

STUART WHITE

## Introduction: what kind of democracy?

'Democracy' is one of those ideas that virtually everyone says they agree with. Disagreement is more likely to come when we start to unpack the term and ask: what *kind* of democracy ought we to want?

One answer to this question, popular among contemporary political theorists, is that we should want a deliberative democracy: a democracy in which laws and policies reflect the outcome of public reasoning about what is best for the citizenry's common good. I will explore this answer first of all, sympathetically.

The ideal of deliberative democracy has been strongly criticised, however, as putting an unfeasible or undesirable emphasis on achieving or seeking consensus among citizens. So I will next consider the alternative ideal of 'agonistic democracy' put forward by theorists such as Chantal Mouffe. Here, democracy is about bringing underlying conflicts of value fully into view and working through them rather than seeking to bury them in an oppressive consensus.

After this, I will go on to consider conceptions of what I term republican democracy. These include theories drawing on the idea of freedom as non-domination developed by Philip Pettit and Quentin Skinner, as well as John McCormick's recent account of 'Machiavellian democracy'. Republican conceptions of democracy perhaps offer one way to try to combine or balance the deliberative and agonistic conceptions.

Finally, I will conclude by drawing out some of the demands of democracy, incorporating insights from these various schools of thought – a democracy that is participatory, deliberative and contestatory and which includes robust institutional mechanisms to counter the risk of oligarchy which is always present in capitalist societies.

## Deliberative democracy?

A democratic political system must obviously satisfy certain basic conditions: laws and policies must be made by direct vote of the citizenry or by assemblies elected by the citizenry on the basis of free, fair and regular elections, against a background of expansive freedoms of expression and association (Dahl 1998: 83–86). According to what has been called the aggregative conception of democracy,

such institutions provide a fair way through which the people's varied preferences for law and policy are aggregated into a collective choice. Under this aggregative conception, we need not ask where the preferences themselves come from, how they are formed, or on what considerations they are based. In contrast, conceptions of deliberative democracy require that these preferences not only be aggregated fairly, but that they be shaped by 'deliberation': roughly speaking, by discussion and debate in which citizens assess proposals in a way that acknowledges their shared status as free and equal, and by reference to an associated conception of their common good (Cohen 2009a, Freeman 2000).<sup>1</sup>

To elaborate, the deliberative democrat highlights the idea of *publicity and reciprocity in justification*. As citizens we ought to give our fellow citizens reasons for the laws or policies we prefer, reasons that we can reasonably expect them to find acceptable. Our fellow citizens ought to do the same towards us. This ethic of publicity and reciprocity in justification – expressive of what Rainer Forst calls the 'right to justification' – can be seen as a fundamental expression of mutual respect between citizens (Forst 2012). When citizens accept this principle of reciprocity, they do not seek merely to impose their will through the state, treating their fellow citizens as subjects who can just be bossed around if the bare majority for a policy is there. The legitimacy of the democratic state is thought to rest on this practice of mutual respect. When we seek publicity and reciprocity in justification, moreover, we must take the free and equal status of our fellow citizens as fundamental to the reasons we offer and accept. We are also led to think in terms of what serves the shared interests, or common good, for ourselves and our fellow citizens, conceived of as free and equal.

As Samuel Freeman notes, the ideal of deliberative democracy can be seen in some respects as a development of Jean-Jacques Rousseau's model of democracy (Freeman 2000). In *The Social Contract*, Rousseau famously sets out to explore how it is possible for us as citizens to be subject to the laws of the state and yet 'remain as free as before', that is, obedient only to our own will (Rousseau 1994, Cohen 2010: 24–32). The legitimacy of the political order depends, in Rousseau's conception, on this alignment of the citizen's own, self-determined will with the state's commands.

For Rousseau, this requires regular citizen assemblies that vote directly on all proposals. Second, if citizens in general are going to be able to assent to a given law, the law must be based on considerations

---

<sup>1</sup> The contrast between aggregative and deliberative conceptions of democracy originates with Cohen. See, for example, Cohen 2009a. Other important statements of deliberative conceptions of democracy include: Benhabib 1996, Cohen 2009b, Dryzek 2000, Fishkin 1995, Gutmann and Thompson 1996, 2004, Habermas 1997 and Mansbridge 1980. See Freeman 2000 for a helpful overview.

that are also appropriately general and acceptable to all; that is, on considerations of the citizenry's common good. This, I think, is centrally what Rousseau means when he speaks of the sovereignty of the 'general will': laws must come *from* all citizens and be oriented *to the good* of all citizens (see Cohen *ibid*: 32–59).<sup>2</sup> Freedom and authority are then reconciled because citizens are able to will the laws they are required to obey.

Let's say a little more about the notion of the common good. For Rousseau, the idea seems to be that citizens share certain basic interests, interests that it is the job of a political association to protect. These interests include life and health, liberty, and 'property' or what we might term economic opportunity. Citizens also have an interest in dignity and civic standing: in having their worth affirmed by fellow citizens and by the institutions and rules under which they live and cooperate (Cohen *ibid*: 40–54).<sup>3</sup> To promote our common good, therefore, the laws we make must track these shared basic interests in life, liberty, economic opportunity and civic standing. In other words, the job of the citizenry, in its capacity as sovereign maker of the laws, is to define a schedule of rights that secure these shared basic interests (Cohen *ibid*: 82–83).

Contemporary deliberative democrats do not typically follow Rousseau in requiring that all laws be made directly by the citizenry. They accept that representative democratic institutions are consistent with respecting the citizenry's underlying status as sovereign.<sup>4</sup> However, their conceptions of democracy do overlap with that of Rousseau in some significant ways.

First, they typically share with Rousseau the idea that citizens bear fundamental responsibility for the nature of the laws and major policies of their state. We, as citizens, properly have the right to shape these things, through the political process and, as such, we must understand ourselves as responsible for them.

Second, deliberative democrats tend to share with Rousseau the idea that democracy is properly understood as a joint search for the citizenry's common good, understood centrally in terms of interests in things such as life, liberty, economic opportunity and civic standing. Deliberation is about the nature of this common good and how best to secure it.

---

<sup>2</sup> I draw on Cohen's discussion here, but only touch on some of the key ideas.

<sup>3</sup> Cohen points out how the liberty interest is not that well developed in Rousseau's theory. I would argue that it is understood by Rousseau centrally in terms of the 'neo-Roman' conception of freedom which I shall discuss below.

<sup>4</sup> Cohen (2010: 146–152) argues that Rousseau's case for direct democracy does not necessarily follow from Rousseau's underlying principles.

Third, some contemporary deliberative democrats share with Rousseau an ideal of consensus. This is easily seen as a goal or corollary of seeking to justify laws and policies on terms that are acceptable to all.<sup>5</sup>

One very influential political philosophy which has these Rousseauian elements is that of John Rawls (Cohen 2003, Freeman 2000). Rawls offers his theory of justice to us in our capacity as democratic citizens, for us to reflect on as we consider how to act on our responsibility for legislating the basic institutions of our society (Cohen *ibid*). The principles articulate a conception of our common good, one which acknowledges our status as free and equal. In much of Rawls's work there is also an assumption that citizens can achieve an 'overlapping consensus' on these principles. The underlying vision of a 'well-ordered' society is of one in which citizens view basic laws and institutions as mandated by a conception of the common good which they share and affirm, and, therefore, as an expression of their own will.

### Agonistic democracy?

So should we accept the deliberative model of democracy? Critics have raised a number of objections to the ideal related to its emphasis on deliberation, the common good and, not least, on agreement and consensus.

In approaching this criticism it is important first to stress that deliberative democracy describes a political *ideal*. It describes how state power should be authorised under conditions where citizens are able, as in Rousseau's society of *The Social Contract*, to cooperate as genuine equals. But our own society is shaped by many inequalities of power that take us far from this ideal. It is naive to expect the powerful to agree to just policies because they are presented with compelling arguments of a moral kind. As Joshua Cohen puts it: 'A sucker may be born every minute, but deliberative democracy is not a recommendation that we all join the club' (Cohen 2009c: 341). For this reason, deliberative democratic politics here and now cannot consist merely of an exhortation to deliberate and reach consensus. It must consider what kinds of non-deliberative tactics, such as strikes and consumer boycotts, are legitimate in the face of powerful interests (*ibid* 340–341, Fung 2005). It must also consider how underlying power inequalities can be rebalanced. Thus, some deliberative democrats have explored proposals for 'associative democracy' that seek to bring civil society groups and the state into partnership to counter the powerful, for example, to foster an encompassing trade unionism able to counter the power of business (Cohen and Rogers 1994).

---

5 Some deliberative democrats explicitly accept the inevitability of disagreement and view deliberation, in their preferred sense, as a fair way of coping with it. See especially Gutmann and Thompson 1996, 2004.

Nevertheless, the emphasis on consensus in the thought of many (though not all) deliberative democrats seems vulnerable to criticism even in the context of a society with greater equality in power. Going back to Rousseau for a moment, we might wonder whether citizens are all going to agree on the nature of their common good and what it requires. Rousseau claims that if there is disagreement in this situation, then the minority in a vote is mistaken (Rousseau 1994, book 4, chapter 2; Cohen 2010: 77–79). The implication is that they have reason to accept the majority’s judgment as the objectively correct one. But this breaks down if there is, as Chantal Mouffe suggests, an ‘ineradicable pluralism of value’ (Mouffe 2005: 102; see also Berlin 1969, Mouffe 1993). For example, imagine that the community is deliberating a law that affects two different components of the common good, such as liberty and economic opportunity. Contrasting proposals will give weight to the two values differently. Perhaps some weightings are simply wrong. But is there necessarily a single right way to balance them and, therefore, a uniquely correct policy? It seems likely that in many cases there will be no such thing. There will be a range of reasonable weightings and corresponding policies. Citizens will then likely support different proposals and we will not be able to say, necessarily, that a minority is simply mistaken when it is outvoted by a majority.

In Mouffe’s view, the ideal of deliberative democracy should be rejected in favour of *agonistic democracy*.<sup>6</sup> Democracy is precisely about how we live politically together with serious and ongoing disagreement. Indeed, if there is consensus, we should be suspicious. It means that an underlying conflict of values is being suppressed. Somewhere in the background, there is an operation of power by one group over another. It would be better, more democratic, to end the consensus, to let the underlying conflict emerge and explicitly play itself out. There will be winners and losers. But at least people will know where they stand. As Mouffe puts it: ‘far from jeopardizing democracy, agonistic confrontation is in fact its very condition of existence’ (Mouffe 2005: 103).

The key to the idea of agonistic democracy is, as Mouffe puts it, to convert mere antagonism into ‘agonism’. This is centrally to do with how one perceives the political opponent. The opponent – the ‘them’ – ‘is no longer perceived as an enemy to be destroyed, but as an “adversary”, that is, somebody whose ideas we combat but whose right to defend those ideas we do not put into question’ (Mouffe 2005: 102). In Mouffe’s view, a pluralist democracy does require a degree of consensus around core values, but ‘since those ethico-political principles can only exist through many different and conflicting interpretations, such a consensus is bound to be a “conflictual consensus”’ (Mouffe 2005: 103).

---

6 For an alternative agonistic approach, see Honig 1993. Young (1990) also has an important affinity with the agonistic perspective.

Mouffe continues:

‘Ideally such a confrontation should be staged around the diverse conceptions of citizenship which correspond to the different interpretations of the ethico-political principles: liberal-conservative, social-democratic, neo-liberal, radical-democratic, and so on. Each of them proposes its own interpretation of the ‘common good’, and tries to implement a different form of hegemony ... They provide the terrain in which passions can be mobilized around democratic objectives and antagonism transformed into agonism.’

Mouffe 2005: 103–104

Interestingly, as Cohen notes, Rawls himself seems to have accepted the unfeasibility of consensus (Cohen 2003: 129–131). In one of his later discussions, Rawls accepts that democratic society will not exhibit consensus on a specific conception of justice. Public debate will be structured around ‘a family of reasonable liberal conceptions of justice’ (Rawls 1993: xlix). As Cohen comments: ‘organized debate between competing parties on competing ideas of justice both expresses disagreements among citizens and enables them to fulfil their deliberative responsibilities by presenting reasonable alternatives. Such debate seems to be part of a well-functioning democracy and not a sign of democratic failing’ (Cohen 2003: 130). This is not to say that Rawls’s view converges with that of Mouffe.<sup>7</sup> But each of them does ultimately seem to be trying to acknowledge a place for both shared values and conflict as integral to democratic politics. They are struggling with the question of how we give both their due.

At any rate, I think this is the question that we should be struggling with.<sup>8</sup> As democratic citizens we should search for the laws and policies that advance our common good. We should give reasoned justifications for our proposals to others, which we reasonably think they can accept, and be willing to listen receptively to their arguments in turn. But even under conditions far more ideal than our own, less distorted by social inequalities, disagreement is inevitable. We need to embrace this fact of disagreement too. We need to retain the deliberative ethic while detaching it from the hope or expectation of consensus.

## Republican democracy?

With this point in mind, let us now turn to contemporary republican political theory. This has undergone a marked revival in recent years. The work of Philip Pettit and Quentin Skinner has been particularly influential (Pettit 1997, 2012; Skinner 1998). At the centre of their

---

7 Mouffe’s list of competing accounts of the common good stretches wider than Rawls’s criteria of a ‘reasonable’ liberal conception of justice.

8 For another, distinctive argument on the need to combine deliberative with agonist and realist perspectives, and on how to use political history to inform this, see Stears 2010: Introduction.

reconstruction of republicanism is a particular way of thinking about freedom. Skinner argues that in Roman law, the status of a free person is understood in contrast to that of a slave. What characterises the slave's position is that he or she lives subject to another's power to interfere in their actions at will. The slave is the subject of another's power of arbitrary interference. In the neo-Roman view then, freedom consists in the status of not being subject to another's power of arbitrary interference. The free person does not live under the shadow of a powerful party, able to intervene at the power-holder's discretion. Pettit refers to this as *freedom as non-domination*.

In Pettit's account of republicanism, freedom as non-domination becomes the key objective. The state's role is to use its coercive power to create social conditions in which, in our relations with one another, we are secure against domination. For example, it is part of the state's responsibility to craft laws around property, taxation and social policy to help ensure that citizens do not suffer the economic deprivation that might otherwise render them dependent on, and dominated by, the better off. At the same time, however, the republican will want to structure the state so that it, too, is unable to make us the subjects of an arbitrary will. In a recent interview, Skinner argues that the recent revelations about the wide scope of the state's power of surveillance of our digital communications point precisely to a power of arbitrary interference: such surveillance is not only a threat to privacy, he argues, but to liberty itself by virtue of the apparently wide degree of discretion state officials have to monitor citizens' communications (Skinner and Marshall 2013).

How, in very broad terms, can we help to ensure that the state's power of interference is appropriately constrained so that it is not a power of arbitrary interference?

Here we come back to the idea of the common good. A republic is a state 'that is forced to track the common interests of its citizens' (Pettit 1997: 290). In common with Rousseau, Pettit thinks that citizens share certain basic interests: common recognisable or avowable interests. A legitimate state is one that uses its coercive power to pursue these interests for citizens – and only to do this (Pettit 1997: 290–292).

What is crucial, however, is not just that the state does pursue the common good but that it 'is forced to track' this common good. It is when the state is *constrained* to track the citizenry's common interests that we can say its coercive power is non-arbitrary. The state cannot then do as it likes, act on its whim. It must act in accordance with its proper purpose. How is this constraint achieved?

Part of the answer is that the people must be able to use standard democratic devices such as elections to exert influence over lawmakers, thereby helping to ensure that their decisions track common interests

(Pettit 1997: 292–293; Pettit 2012). However, in Pettit's view, electoral accountability is only part of the answer. There is always the danger of a 'tyranny of the majority' in which a section of the community uses electoral power to lord it over a persecuted minority. To help prevent this, Pettit argues that democracy must be 'contestatory' (Pettit 1997: 293–297; Pettit 2012: 213–218, 225–229). It must provide institutional devices that help citizens to contest proposals and decisions, even those that might initially have strong majority support.

A good example of the sort of thing Pettit has in mind is provided by a recent case in the UK. In January 2012 the Coalition government's Welfare Reform Bill went for its second reading in the UK parliament's second chamber, the House of Lords. Although unelected, the Lords is understood to be parliament's 'revising chamber', examining bills passed in the Commons with care and making amendments. In this case, confronted with a controversial bill, and arguably responding in part to a very effective campaign by a group of welfare and disability rights activists (the Spartacus campaign),<sup>9</sup> the Lords voted through a number of significant amendments to the government's bill (Butler 2012, Marsh 2012). However, when the bill returned to the Commons, the government invoked the doctrine of 'financial privilege' to claim that it was entitled to ignore the Lords' amendments. There was some controversy as to whether this was an unusually broad use of the financial privilege doctrine (King 2012). But the key point is that, no matter how innovative this use of the doctrine was, the Commons was *able to ignore* the Lords. For campaigners, the Lords was perceived as a key point of contestation in the UK's democratic system: a point where they, as citizens, could bring arguments to bear, persuade lawmakers of their case, and so possibly limit a bill that they saw as insensitive to the interests of many disabled people. But it turned out that a victory at this point in the political process was hollow. The government, backed by a compliant majority in the House of Commons, forced through its bill without any pressure to respond to the arguments of the critics. The House of Lords turned out not to be a point of contestatory power within the UK polity.

A democracy is contestatory to the extent that citizens *do* have access to points in the political system that they can use to pressure policymakers into reconsidering their proposals or decisions. Bills of rights can be particularly important here in that they capture some of the citizenry's permanent common interests and so provide an important reference point for contesting government proposals and decisions in terms of the common good.

---

9 The Spartacus report, *Responsible Reform*, was compiled by a network of sick and disabled people on the Coalition government's proposed changes to Disability Living Allowance. It became known as the Spartacus report because campaigners used the slogan 'I am Spartacus' on Twitter and elsewhere to publicise it. See Hill 2013: 102–105. For the report itself, see <http://wearespartacus.org.uk/spartacus-report/>

Republican democracy is, then, as for the deliberative democrat, at its core a collective search for the citizenry's common good. We enter the forum, ideally, with the goal of advancing common interests and persuading fellow citizens of what might constitute the common good – and of learning with an open mind from them about what this could involve. But republican democracy is also, as for the agonist democrat, a matter of ongoing conflict. We enter the forum ready to persuade fellow citizens of a policy *opposed by* other citizens, and whose opposition we do not (and should not) expect simply to go away. Pettit draws attention to this aspect of his theory when he contrasts it with what he sees as the 'communitarian' theory of Rousseau (Pettit 2012: 11–18). Whereas Rousseau allegedly expects the citizen in the minority to accept and comply with the majority's decision, the republican view imagines a 'contestatory citizenry' always willing to continue to oppose decisions with which they disagree.<sup>10</sup>

Pettit's conception has been challenged from within the republican framework, however, by John McCormick (2011).<sup>11</sup> McCormick argues that Pettit is so concerned by the tyranny of the majority danger that he ends up advocating institutional checks and balances that render his imagined republic strongly 'aristocratic'. Against this, McCormick advances a democratic republicanism that he finds in the work of Machiavelli. Machiavelli's discussion of the Roman republic draws attention to various institutions that enabled the Roman people to check the authority of the Roman aristocracy. In McCormick's view, there is an important lesson here for us today. In the classical republican tradition, the republic is a 'mixed constitution', combining elements of democracy and aristocracy and/or oligarchy (and perhaps monarchy), and the mix reflects a particular balance of power between social classes. However, our contemporary conception of our political system as straightforwardly 'democratic', with authority resting on a sovereign people, conceived in a way that abstracts entirely from social differences, arguably obscures this question of the balance of class power. This becomes very worrying when officially democratic societies become subject to increasing political domination by corporate and economic elite interests. To counter the effective power of the economic elite, McCormick argues, there is a need to revive the Machiavellian idea, drawn from the example of the Roman republic, of political institutions that serve to articulate and press the claims specifically of those outside of the elite.

To this end, McCormick proposes that the US revive and update a key institution of the Roman republic: the tribunate. In a fundamental reform of the US constitution, a relatively small group of citizens (McCormick

---

10 I disagree with some of what Pettit says by way of contrast between the 'Italian-Atlantic' tradition of republicanism and Rousseau's political theory, but I think he is right on this point.

11 McCormick often speaks as a 'democrat' in contrast to a 'republican', but I think his work is readily understood as fitting into the republican tradition, albeit as a contribution that is critical of the 'aristocratic' elements in much republican thought.

suggests 51 people) is to be chosen at random each year to sit on this assembly. They will have power to call on outside expertise of their own choosing, to assist in their deliberations. The assembly will have complete control of its own agenda. It will not merely issue recommendations, but have some degree of independent political authority. Specifically, it will have the power to put at least one proposal per year to a popular referendum. It will also have the power to veto one law made by Congress, one executive order of the president, and one decision of the US Supreme Court per year; and the power to initiate impeachment proceedings against officeholders in any branch of government. Finally, in order to make it an institution that represents the people in contrast to the 'nobles', eligibility for the tribunate will be limited to those in the bottom 90 per cent of the wealth distribution (and, within this 90 per cent, to those who have no significant record of holding political office). In McCormick's view, an assembly of this kind can help ensure that popular preferences are better represented in the political process. Its mere existence, on these terms, will also promote a certain kind of class consciousness, he argues: an awareness that society is divided into a people and an elite, whose interests are not necessarily coincident (McCormick 2011: 170–188).

McCormick's arguments resonate in light of recent work in political science which points to the growth in recent decades of corporate and elite power in countries such as the US and the UK. In relation to the US, Jacob Hacker and Paul Pierson have argued that recent growth in economic inequality is best explained by a change in the representation of organised interests in the US polity, with the rise of corporate and economic elite influence as a key factor (Hacker and Pierson 2010). In a number of recent books, Colin Crouch has made a similar argument that also covers the UK (Crouch 2004, 2011, 2013). McCormick's proposal for a tribunate is intended to address this problem and is made in a spirit of inviting further discussion. This should consider recent democratic innovations in Latin American nations and elsewhere in the global South, such as participatory budgeting in Brazil, which arguably connect with the concern to find new institutions of popular power to complement the standard institutions of liberal democracy (Santos 2005, Fung 2011).

Pettit is right, I think, to stress the need for contestatory institutions and devices to reduce the danger of a tyranny of the majority. McCormick underscores the accompanying danger of a tyranny of the minority – in Occupy's slogan, the '1 per cent' – raising the question of whether we need to complement the institutions of conventional, electoral democracy with additional contestatory institutions – new tribunes perhaps – to contain it.

## Conclusion: the demands of democracy

The kind of democracy I think we should want is one that draws on insights from the deliberative, agonist and republican models. What does this emerging conception of democracy look like? What does it demand of us?

First, this is a *participatory* account of democracy. We should take from Rousseau and the deliberative model the idea of citizen responsibility for the laws and institutions we live under. This is a call to action. Now this can be said in a way that is patronising and exhortatory: ‘Come on citizens, pull your socks up, get out there and take some responsibility for your society.’ But people are unlikely to respond to such calls, quite reasonably, if they do not have real power. The moral call to participate implies a right to the structures under which participation is meaningful. So we need to ask what these structures are, and how far we currently have them.

Second, democracy in the sense outlined here is *deliberative*. Participation is partly about a degree of engagement with argument and debate, a debate focused centrally on a collective search for the citizenry’s common good. Very important here, as Dan Hind has argued, is the structure of the media through which citizens access and offer interpretations of their social world. Do our media structures allow for a range of interpretations or do they tend to reinforce particular ways of looking at the world (Hind 2010)? How can we make them better at facilitating deliberation?

The conception of democracy sketched here is, thirdly, *contestatory*, one in which citizens must have to hand a range of devices for contesting proposals and decisions, including those that are initially favoured by the majority. We must ask if the mechanisms of contestation in our polity are adequate. Campaigns like Spartacus have made effective use of social media, underscoring their importance to creating a more contestatory environment (Butler 2012, Marsh 2012). Ensuring an effective right to protest, including non-violent civil disobedient protest, is also crucial. One reason that the surveillance power of the US and UK states over electronic communications is alarming is that such power has the potential to be used to contain and chill dissent, fundamentally compromising the contestatory quality of political life.

Fourth, as McCormick reminds us, taking democracy seriously demands that we identify and *address the danger of oligarchy*. To a considerable extent, this links back to our general concerns with effective participation, deliberation and contestation. But it also raises the question of what other institutions and practices we need to ensure that corporate power is checked.<sup>12</sup>

---

<sup>12</sup> The conception of democracy sketched here has much in common with the ideal of ‘empowered democracy’ set out by Roberto Unger. Unger’s work is very suggestive for those interested in thinking about how to deepen the participatory, deliberative, contestatory and anti-oligarchical dimensions of contemporary democracy. See Unger 1987: 444–476. For a very helpful discussion in the UK context, see also Hind forthcoming.

The demands of democracy, in the sense outlined here, run wide and deep. They touch on many of the usual aspects of the debate in the UK around constitutional reform. However, they also have much wider implications. For example, they have implications for thinking about the nature of the media, including the role of social media. They touch on the rights of free speech and the need to maintain an effective right of protest. They implicate the surveillance practices of the state, and the need for robust protection of online privacy as a condition of liberty itself. They require us to address the place of corporate power in our politics.

Does the 'centre-left' understand the depth and breadth of these demands? Is it able and willing to take them up and to make them its own?

## References

- Benhabib S (1996) 'Toward a deliberative model of democratic legitimacy', in Benhabib S (ed) *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton: Princeton University Press
- Berlin I (1969) 'Two concepts of liberty', in Berlin I, *Four Essays on Liberty*, Oxford: Oxford University Press
- Butler P (2012) 'How the Spartacus welfare cuts campaign went viral', *Guardian*, 17 January 2012. <http://www.theguardian.com/society/2012/jan/17/disability-spartacus-welfare-cuts-campaign-viral?guccounter=1&guin=Article:in%20body%20link>
- Cohen J (2003) 'For a democratic society', in Freeman S (ed) *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press
- Cohen J (2009a) 'Procedure and substance in deliberative democracy', in Cohen J, *Philosophy, Politics, Democracy*, Cambridge, MA: Harvard University Press
- Cohen J (2009b) 'Deliberation and democratic legitimacy', in Cohen J, *Philosophy, Politics, Democracy*, Cambridge, MA: Harvard University Press
- Cohen J (2009c) 'Reflections on deliberative democracy', in Cohen J, *Philosophy, Politics, Democracy*, Cambridge, MA: Harvard University Press
- Cohen J (2010) *Rousseau: A Free Community of Equals*, Oxford: Oxford University Press
- Cohen J and Rogers J (1995) 'Secondary associations and democratic governance', in Cohen J, Rogers J and Wright EO (eds) *Associations and Democracy*, London: Verso
- Crouch C (2004) *Post-Democracy*, Cambridge: Polity
- Crouch C (2011) *The Strange Non-Death of Neo-Liberalism*, Cambridge: Polity
- Crouch C (2013) *Making Capitalism Fit for Society*, Cambridge: Polity
- Dahl R (1998) *On Democracy*, New Haven: Yale University Press
- Dryzek JS (2000) *Deliberative Democracy and Beyond*, Oxford: Oxford University Press
- Fishkin J (1995) *The Voice of the People*, New Haven: Yale University Press
- Forst R (2012) *The Right to Justification*, New York: Columbia University Press
- Freeman S (2000) 'Deliberative democracy: A sympathetic comment', *Philosophy and Public Affairs* 29: 371–418
- Fung A (2005) 'Deliberation before the revolution: Toward an ethics of deliberative democracy in an unjust world', *Political Theory* 33: 397–419
- Fung A (2011) 'Reinventing democracy in Latin America', *Perspectives on Politics* 9(4): 857–871
- Gutmann A and Thompson D (1996) *Democracy and Disagreement*, Cambridge, MA: Harvard University Press
- Gutmann A and Thompson D (2004) *Why Deliberative Democracy?* Princeton: Princeton University Press
- Habermas J (1997) 'Popular sovereignty as procedure', in Bohman J and Rehg W (eds) *Deliberative Democracy*, Cambridge, MA: MIT Press
- Hacker JS and Pierson P (2010) 'Winner-take-all politics: Public policy, political organization, and precipitous rise of top incomes in the United States', *Politics and Society* 38(2): 152–204

- Hill S (2013) *Digital Revolutions: Activism in the Internet Age*, Oxford: New Internationalist
- Hind D (2010) *The Return of the Public: Democracy, Power and the Case for Media Reform*, London: Verso
- Hind D (forthcoming) 'The Magic Kingdom'
- Honig B (1993) *Political Theory and the Displacement of Politics*, Ithaca: Cornell University Press
- King J (2012) 'Welfare reform and the financial privilege', UK Constitutional Law Group blog, 3 February 2012. <http://ukconstitutionallaw.org/2012/02/03/jeff-king-welfare-reform-and-the-financial-privilege/>
- Mansbridge J (1980) *Beyond Adversary Democracy*, Chicago: University of Chicago Press
- Mansbridge J, Bohman J, Chambers S, Estlund D, Follesdal A, Fung A, Lafont C, Manin B and Marti JL (2010) 'The place of self-interest and the role of power in deliberative democracy', *Journal of Political Philosophy* 18(1): 64–100
- Marsh S (2012) 'Disabled people have become a force to be reckoned with', *Guardian*, 29 May 2012. <http://www.guardian.co.uk/society/2012/may/29/disabled-people-political-force>
- McCormick J (2011) *Machiavellian Democracy*, Cambridge: Cambridge University Press
- Mouffe C (1993) *The Return of the Political*, London: Verso
- Mouffe C (2005) *The Democratic Paradox*, London: Verso
- Pettit P (1997) *Republicanism: A Theory of Freedom and Government*, Oxford: Oxford University Press
- Pettit P (2012) *On the People's Terms: A Republican Theory and Model of Democracy*, Cambridge: Cambridge University Press
- Rawls J (1996) *Political Liberalism*, New York: Columbia University Press
- Rawls J (1999) *A Theory of Justice*, Cambridge, MA: Harvard University Press
- Rousseau J-J (1994/1762) *The Social Contract*, Oxford: Oxford University Press
- Santos BS (ed) *Democratizing Democracy: Beyond the Liberal Democratic Canon*, London: Verso
- Skinner Q (1998) *Liberty before Liberalism*, Cambridge: Cambridge University Press
- Skinner Q and Marshall R (2013) 'Liberty, liberalism and surveillance: A historic overview', OurKingdom, 26 July 2013. <http://www.opendemocracy.net/ourkingdom/quentin-skinner-richard-marshall/liberty-liberalism-and-surveillance-historic-overview>
- Stears M (2010) *Demanding Democracy: American Radicals in Search of a New Politics*, Princeton: Princeton University Press
- Unger R M (1987) *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*, London: Verso
- Young IM (1990) *Justice and the Politics of Difference*, Princeton: Princeton University Press



# THE NEW LABOUR THAT WASN'T: THE LESSONS OF WHAT MIGHT HAVE BEEN

STUART WHITE AND MARTIN O'NEILL

Labour currently faces a period of challenging redefinition. New Labour is emphatically over and done. But as it recedes into the past, it is useful to consider what New Labour *might have been*. It is possible to speak of a 'New Labour that wasn't'. This was a philosophical perspective and political project which provided context for the rise of New Labour and which was critical in shaping it in several respects. Yet at the same time New Labour defined itself against this antithesis, and this is also important. What was this alternative, the road not taken? And what relevance does it have for Labour today?<sup>1</sup>

## The New Labour That Wasn't

What we might call the New Labour That Wasn't found expression in a number of important works from the mid-1980s to the mid-1990s. Perhaps the key early contribution was David Marquand's *The Unprincipled Society* (1988), followed by Paul Hirst's *After Thatcher* (1989) and *Associative Democracy* (1994). Will Hutton's *The State We're In* (1994) arguably pulled the ideas together in the way that had the biggest impact. Another important feature of the context was the rise, from 1988, of Charter 88 as a pressure group and wider political movement that argued the case for comprehensive constitutional, democratic reform.

The New Labour That Wasn't put forward a reform agenda that had three core elements: the stakeholder economy, a pluralist polity and a belief in the interconnectedness of political and economic reform.

### The stakeholder economy

Marquand, Hirst and Hutton all argued that the UK's economic problems have deep institutional roots. In *The State We're In*, Hutton argued that the UK's competitiveness in manufacturing had been undermined historically by the short-termism of the City of London, making for an excessively high cost of capital and consequent underinvestment in productive capacity. German capitalism, he argued, offers an alternative

---

<sup>1</sup> This is a revised and extended version of an article first published in *Fabian Review*, Spring 2013. The authors are grateful to the Fabian Review for permission to reprint material from this earlier article, and in particular to Natan Doron, Rob Tinker and Ed Wallis for their help in that article's development. The authors would also like to thank Anthony Barnett and Joe Guinan for discussions and communications which have greatly helped in writing this article.

model based on long-term, 'patient' industrial banking. It also illustrates the benefits of structures of firm governance that incorporate not only long-term investors but also labour as long-term partners – as 'stakeholders' – in enterprise management.

For Hirst, the UK's economic revival depended on manufacturing renewal in particular. At its heart would be small- and medium-sized firms adapted to 'flexible specialisation': the production of high-quality goods, tied to actual demand ('just-in-time-production'), targeted to the needs of varied customers, on the basis of a highly- and broadly-skilled workforce (Hirst 1994: 115). Institutionally, Hirst argued, this kind of production is supported by 'corporatist' arrangements that facilitate collaboration between labour and capital. Appropriate finance is also crucial. Focusing on examples such as the Emilia-Romagna and Veneto regions in Italy, and drawing on the work of Michael Piore and Charles Sabel in their important work on industrial strategy, *The Second Industrial Divide* (1986), Hirst argued for a strong regional dimension to strategies for economic growth. Labour's job – or the job of a progressive government – should be to help create regional infrastructures of industrial finance and corporatist negotiation in support of innovative small- and medium-sized firms engaging in flexible specialisation.

Hirst saw this strategy as promising a move beyond the blunt instrument of a centralised state engaging in Keynesian demand management. Instead, he argued that a progressive government should look to create a 'developmental state'. Such a state would be defined by the twin goals of orchestrating productive cooperation between the major social interests, at various levels, and instituting supply-side reforms, especially as regards investment and training, that could revolutionise the long-run productive potential of the economy, creating prosperity that could be broadly shared for the benefit of all (Hirst 1991: 247–250).

### **The pluralist polity**

The second key plank of the New Labour That Wasn't was the advocacy of a pluralist polity. Charter 88's platform, which formed the core of this agenda, demanded the creation of devolved assemblies in Scotland and Wales, a bill of rights for the UK, electoral reform for the House of Commons (specifically, proportional representation), an elected second chamber, and freedom of information, all tied together through a written constitution for the UK. Charter 88 began as an initiative of the *New Statesman*, under the editorship of Stuart Weir, and drew on the support of a wide range of left and liberal intellectuals. It was directed at the start and for a number of years by Anthony Barnett, who helped draft the initial statement of aims. Hutton, Hirst and Marquand all shared in the objectives of Charter 88. Hirst was chair of the Charter's executive committee and important in giving the organisation intellectual support and practical leadership (Runswick 2008: 52).

'Pluralism' here is a complex notion and we can only touch on some of its aspects. First, there was the pluralism involved in devolution to Scottish and Welsh assemblies. For some, such as Hirst, this was a stepping stone towards a fully federal UK with much stronger structures of regional government. Second, pluralism involved getting away from one-party majoritarian government towards a wider representation of parties in assemblies and more coalitional government. This was envisaged as applying both at the UK centre – through elections by proportional representation to the UK parliament – and at devolved national and regional levels. A robust UK bill of rights and freedom of information would provide individual citizens with a strong platform on which to base their own association and participation in these new, pluralist structures.

Pluralism implies diversity, of course, but it also comes, in the thinking of New Labour That Wasn't, with an idea of cohesion and the common good. Pluralism is the context for the shared negotiation of common goods, at firm, local, regional and national levels – what Marquand termed 'politics as mutual education' (Marquand 1988: 231–232). In this sense, pluralism could be seen as expressing a 'republican' recasting of politics, and was explicitly described as such by both Hutton and Marquand. Individual citizens should be able to argue their case in dialogue with others, both in the workplace and in the wider public sphere.

### **The interdependence of economic and political reform**

The third key element of the New Labour That Wasn't lies in the claim, or hypothesis, that economic and political reform are *strongly connected*. A stakeholder economy demands a pluralist polity. Stakeholder capitalism is itself a kind of pluralism. Power is shared across parties: industry and finance, labour and capital. However, so the argument went, it could be difficult to create the framework for this kind of pluralism to flourish when the state itself was so centralised and majoritarian. The latter would militate against the creation of 'a collaborative political culture' and the development of 'other forms of corporate consultation' (Hirst 1991: 262). As Hutton put it:

'The constitution of the state is vital not only for its capacity to express the common good but also as the exemplar of the relationship between the individual and the wider society. The extent to which the state embodies trust, participation and inclusion is the extent to which those values are diffused through society as a whole ... If creative companies orchestrate the voices of all stakeholders into a common enterprise, embodying such a conception in company law is impossible if the state is genetically programmed to view the business of governance as the exercise of sovereignty, and the duty of the governed to obey.'

Hutton 1994: 25

Hirst linked economic renewal to the development of a more federalist polity. Effective economic strategy requires collaboration between labour, capital and government, but Hirst was sceptical of the capacity of the central/centralised UK state to do this. Devolution and decentralisation would facilitate the development of such collaborations at a more appropriate level.

‘The creation of national self-government for Scotland and Wales, and the revitalisation of local government autonomy in England would both create pressures for the decentralisation and devolution of functions from Whitehall to the regions. Decentralisation would make possible the emergence of regional economic initiatives by public bodies and the construction of regional policies for economic renewal ... Regional regulation and intervention is the key to building successful industrial districts involving partnership between business, labour and local administration.’

Hirst 1991: 258, 261

## The contribution of James Cornford and IPPR

IPPR was established in 1988 as a thinktank for the left. In its early phase, under the leadership of James Cornford (from 1988 to 1994), IPPR was itself closely engaged with the intellectual and political agenda of the New Labour That Wasn't. One particularly noteworthy expression of this was IPPR's project to set out a blueprint for a full, written constitution for the UK (IPPR 1991). In an important article in *Parliamentary Affairs*, Cornford set out his thinking behind this ambitious project (Cornford 1991).

Although he supported the call for thoroughgoing constitutional reform, Cornford argued that once a government had started down this road then it would have to go the whole way or else end up with an unstable compromise. In particular, he argued that the constitutional question interacts with the national question and that there is really no stable reformist position in this matter short of accepting a fully federal UK. Devolution to Scotland, Wales and Northern Ireland, he argued, could not be combined feasibly in the long run with a UK state apparatus that otherwise was left intact. Stability required that devolution to Scotland, Wales and Northern Ireland must also be accompanied by a corresponding devolution to English regions, with the UK parliament then having a more limited set of powers, as is characteristic of a federal system.

To help think through this and other issues, Cornford convened a group of constitutional lawyers to draft a constitution for the UK embodying ‘the main elements of the reform consensus’ (Cornford 1991: 567). Together, they developed a draft written constitution for the UK that included seven key elements.

1. Removal of the residual prerogative powers of the monarch (such as the appointment of the prime minister).
2. Clear definition of the prerogative powers of the executive (for instance, in relation to declaration of war) and their subjection to parliamentary control.
3. Election of the prime minister by the House of Commons.
4. Election of both the Commons and the Lords by proportional representation, with the House of Commons retaining supremacy in relation to financial and general legislation.
5. Devolution of legislative powers to elected assemblies in Scotland, Wales, Northern Ireland and to 12 English regions. These assemblies were to have discretion to vary tax rates within bounds from the base level set by the UK parliament and would, in turn, have responsibility to create elected local authorities.
6. A bill of rights based on the European Convention on Human Rights and other international conventions to which the UK is a party.
7. Establishment of a UK Supreme Court.

This constitutional model was one of the most detailed presented at the time. Following the 1992 general election, Charter 88 partnered with IPPR to publicise and to try to build support for an initiative called the Great Reform Bill based on the proposal (Smith 1994: 135).

## The New Labour That Was

As suggested, the actual New Labour was partly inspired by these pluralist republican ideas. But it was also defined in some important ways by a strong rejection of them.

On the economy, New Labour briefly and somewhat superficially adopted the language of stakeholding (Blair 1996: 291–321). However, Hutton's relational idea of stakeholding gave way to a much more individualistic understanding of the term: a matter of individuals holding assets (skills, financial assets) which increase their options in the marketplace (Soskice 1997, Prabhakar 2003). This reflected a key strategic decision on Labour's part to accept the existing financial system and (to a large extent) the rules of corporate governance. The aim was not to try to convert British capitalism into something closer to the German model but to try to inflect the British model with a more egalitarian character by means of in-work tax credits, universal public services and a limited degree of 'asset-based welfare'.

While it took a much weaker line on reforming the economy, New Labour did of course adopt and deliver on a number of the pluralists' commitments on political reform. As Helena Kennedy has put it, 'that first term of Labour in office produced more far-reaching reforms than anything seen since the Great Reform Act of 1832' (Kennedy 2008: 43). In addition to devolution, there were gains in terms of freedom of

information and the Human Rights Act. Labour also tried unsuccessfully to establish new regional assemblies.

There were, however, also some major elements of the pluralists' agenda that Labour did not deliver on, and which arguably reflected a lack of commitment to do so. While most hereditary peers were removed from the House of Lords, Labour did not go further in reform of the second chamber. The Jenkins Commission on electoral reform reported in 1998 only to be politely but emphatically shelved.

This was surely no accident. Labour's attitude to Charter 88 was always marked by wariness, caution and, from some quarters, a degree of hostility (Barnett 2008: 31–34, Weir 2008: 9). Relations were perhaps closest during John Smith's leadership of Labour. Anthony Barnett cites Smith's 1993 Charter 88 lecture on sovereignty, which called for a new 'constitutional settlement', as a key moment, and it was under Smith that Labour in opposition adopted much of the political and constitutional reform agenda that New Labour later enacted (Barnett 2011). Under Tony Blair's leadership, however, the connections weakened over time. The kind of joined-up, thoroughgoing approach to constitutional change advocated by both Charter 88 and by James Cornford at IPPR gave way to a more 'pick-and-mix' approach.<sup>2</sup>

Landslide election victories in 1997 and 2001, of course, did not encourage Labour to embrace electoral reform and political pluralism. Nor, for that matter, did Labour's victory in 2005, when it achieved a solid House of Commons majority on the basis of a mere 35 per cent of the popular vote.

More fundamentally, the pluralist republicans saw political process not simply as a means to an end but as something valuable in itself. By contrast, New Labour adopted a decidedly more instrumentalist view, and adopted a more managerialist approach. As Barnett put it in 2000:

**'New Labour looked to modern business management to teach it how to deliver, Blair comparing himself to a chief executive. By setting targets, policing delivery, insisting on outcomes, advocating joined-up administration, ministers project themselves as a businesslike team. Theirs is not a pluralist vision of the state.'**

Barnett 2000: 87–88

Labour under Blair wanted to hold on to the concentrated power of the executive. Over time, and especially after the September 11 terrorist attacks in 2001, New Labour's managerialism evolved in what many liberals saw as a markedly authoritarian direction, towards the 'database state'.

---

2 James Cornford himself went into government in 1997 as an advisor to minister David Clark on freedom of information. Clark was sacked from the job after a year and Cornford left with him.

## One Nation Labour?

This brief narrative offers an interesting way of looking at the emerging perspective of One Nation Labour.

On the one hand, there are some clear similarities between One Nation Labour and the New Labour That Wasn't. This is particularly true with regard to the economy. First, there is the judgment that economic revival must involve industrial renewal. Second, there is an interest in exploring what lessons the German and Nordic economies might have for achieving industrial renewal. This convergence in thinking is evident, for example, in Ed Miliband's recent speech on regional banking (Miliband 2013). It is also reflected in Labour's interest in placing workers on firms' remuneration committees and in a stronger emphasis on apprenticeships and vocational training (Stone 2012). Although, just as Robert Heilbroner famously talked about the idea of a 'slightly imaginary Sweden', it seems as if Labour's current thinking is perhaps influenced by the example of a 'slightly imaginary Germany', more egalitarian and democratic than its real-world counterpart (Heilbroner 1991).

One Nation Labour seems to share Paul Hirst's analysis that successful industrial policy and a 'supply-side revolution from the left' (Wood 2012) cannot be achieved only by policy enacted from the centre. Successful industrial policy is about nations and regions creating their own financial and industrial frameworks within which individual firms can thrive (Hirst 1989, ch 6; also O'Neill and Williamson 2012). There is a link here also to some regional and city-based economic initiatives, such as the networked cooperatives in Cleveland, currently being developed in the US (Guinan 2012, 2013; Rogers 2013).

But what about the political pluralist dimension of the New Labour That Wasn't? Here, thusfar at least, the similarities are much less marked. The very language of 'One Nation' hints at a unity that sits uneasily with the dispersive and contestatory spirit of pluralism.

It is not clear that pluralist republicans today could or should simply go back to the demands of Charter 88 in the spirit of 'one more heaven'. The context has been radically changed by the reforms that Labour did deliver and by the emergence of issues, such as the growth of corporate power within the state and political process, which the Charter 88 agenda did not adequately address (Barnett 2011; see also Crouch in this volume). Nevertheless, there are perhaps two ways in which a contemporary left (or 'centre-left') politics could be usefully informed by the spirit of pluralism that we see in the New Labour That Wasn't.

First, Cornford looks to have been right on one key issue: devolution to Scotland, Wales and Northern Ireland in the context of a UK state framework that is otherwise largely unreformed is not a stable position. There is, first, the potential for Scottish independence, to

be tested in a referendum in 2014, and which some on the left see as a creative opportunity both for Scotland and for the other nations currently within the UK (Hassan 2011, McKay 2013). Even if the Scottish people do not choose independence, it seems likely that the devolution settlement will be reworked in the direction of increased autonomy (see Trench in this volume).

In addition, as Cornford anticipated, the current situation looks increasingly problematic from the standpoint of England (see Kenny in this volume). In recent articles, Niki Seth-Smith and Anthony Barnett respectively argue that the rise of Ukip needs to be understood as a distorted expression of a latent demand for English self-government (Seth-Smith 2013, Barnett 2013). Ukip's anti-EU and anti-immigration politics is noxious. But what it also reflects, in their view, is the way England has no independent political voice, and remains subordinated within the current UK state. Guy Lodge at IPPR has argued in similar terms. Research shows that Englishness is growing as a source of identity and that it is becoming politicised: 'it is exactly those voters who feel more strongly English who also believe that England is getting a raw deal from its membership of both the European Union and the current political settlement in the United Kingdom' (Lodge 2013; see also Wyn Jones et al 2013, Painter 2011, 2013).

Seth-Smith argues that the left needs to find a way to engage more effectively with this emergent political Englishness rather than ignore it. Options that have been proposed include new arrangements to separate voting in the UK parliament on laws specific to England, limiting voting rights to MPs for English constituencies, regional assemblies within England and an English parliament. Rather than taking up a specific demand, in the manner of Charter 88, Barnett proposes that Labour call for a citizens' convention which can consider the key constitutional issues, including, centrally, that of English self-government. Its recommendations can then be put to a referendum.

Second, if Labour is serious about radical economic change it needs to consider how it can build an alliance of social and political forces to support the necessary radicalism. Of course it will call on people to join and vote Labour. But it must recognise that many people whose support and energy it needs will belong to other parties or to none. In the constitutional reform process of the 1990s, Labour found a way to work with other parties and social forces, in the Scottish Constitutional Convention, for instance, or (so far as other parties are concerned) in the Cook–MacLennan agreement that formalised Labour and Liberal Democrat cooperation on constitutional reform in the UK parliament. Is there a lesson here for the politics of economic reform?

Positive economic change requires a broad movement and Labour cannot credibly claim simply to *be* this movement. Nor can it just demand that others follow. It must try to earn leadership through

argument in open debate with others – including trade unions, religious groups, community organising initiatives and anti-cuts campaigners, to name but a few. Labour should remember the value in the practice of ‘politics as mutual education’.

Finally, we come back to the question of how the political and economic reform agendas are related. Can political reform facilitate economic renewal? Hirst’s argument linking political federalism to economic renewal remains crucial here. The creation of a more inclusive economy involves ensuring that growth is shared equitably across nations and regions. To put it mildly, the historic structures of the UK state do not have a good track record of achieving growth on these terms. Further moves towards political federalism, in conjunction with complementary reforms to the financial sector along the lines of the stakeholder economy model, could be a crucial way to ensure that the British economy can achieve more equitable growth. This underscores the importance of the federalist challenge. The key question, about which many on the left and centre-left disagree, is what form this development of political federalism should take.<sup>3</sup>

It is encouraging to see that Labour is starting to grapple with the need for serious economic reform. The party is beginning to argue that our current predicament requires a radical rethink of industrial finance, corporate governance, taxation and financial regulation. But if there is a lesson to be learned from our look back at New Labour’s road not taken, it is that economic reform and political reform are closely intertwined. One Nation Labour is a project that is developing in what is now a very different country to the UK of the immediate post-Thatcher years, but many of its central ambitions concerning the more equitable distribution of economic power are closely allied with the now-eclipsed agenda of the New Labour That Wasn’t. As the party thinks hard about creating the political conditions for real economic reform, it should take what is best both from its own real history and from the counterfactual history of what New Labour might have been.

## References

- Barnett A (2000) ‘Corporate populism and partyless democracy’, *New Left Review*, (11)3: 80–89
- Barnett A (2008) ‘The rise and fate of Charter 88’, in Facey P, Rigby B and Runswick A (eds) *Unlocking Democracy: 20 Years of Charter 88*, London: Politico’s
- Barnett A (2011) ‘Goodbye Charter 88: A new epoch for democratic resistance has begun’, *OpenDemocracy*, 20 November 2011. <http://www.opendemocracy.net/ourkingdom/anthony-barnett/goodbye-charter-88-new-epoch-for-democratic-resistance-has-begun>
- Barnett A (2013) ‘Can Miliband speak for England?’, *New Statesman*, 24 September 2013. <http://www.newstatesman.com/2013/09/can-miliband-speak-england>
- Blair T (1996) *New Britain: My Vision of a Young Country*, London: Fourth Estate
- Cornford J (1991) ‘On writing a constitution’, *Parliamentary Affairs*, 44(4): 558–571

---

3 See Cox in this volume for a discussion about how power should be decentralised within England (which the authors do not necessarily agree with).

- Guinan J (2012) 'Social democracy in the age of austerity: The radical potential of democratising capital', *Renewal*, 20(4): 9–19
- Guinan J (2013) 'The rise of community wealth-building institutions', Policy Network, 1 October 2013. [http://www.policy-network.net/pno\\_detail.aspx?ID=4476&title=The-rise-of-community-wealth-building-institutions-](http://www.policy-network.net/pno_detail.aspx?ID=4476&title=The-rise-of-community-wealth-building-institutions-)
- Hassan G (2011) 'Anatomy of a Scottish revolution: The potential of postnationalist Scotland and the future of the United Kingdom', *Political Quarterly*, 82(3): 365–378
- Heilbroner R (1991) 'From Sweden to socialism', *Dissent*, Winter 1991
- Hirst P (1989) *After Thatcher*, London: Harper Collins
- Hirst P (1991) 'Labour and the constitutional crisis', in Andrews G (ed) *Citizenship*, London: Lawrence & Wishart
- Hirst P (1994) *Associative Democracy: New Forms of Economic and Social Governance*, Cambridge: Polity
- Hutton W (1994) *The State We're In*, London: Jonathan Cape
- IPPR (1991) *The Constitution of the United Kingdom*, London
- Kennedy H (2008) 'Power to the people', in Facey P, Rigby B and Runswick A (eds) *Unlocking Democracy: 20 Years of Charter 88*, London: Politico's
- Lodge G (2013) 'English patriotism is one of the overlooked reasons for UKIP's rise', *Spectator Coffee House* blog, 3 May 2013. <http://blogs.spectator.co.uk/coffeehouse/2013/05/english-patriotism-is-one-of-the-overlooked-reasons-for-ukips-rise>
- Marquand D (1988) *The Unprincipled Society: New Demands and Old Politics*, London: Jonathan Cape
- McKay J (2013) 'Vote Yes for the multitude: A non-nationalist argument for Scottish independence', OpenDemocracy OurKingdom blog, 27 September 2013. <http://www.opendemocracy.net/ourkingdom/jamie-mackay/vote-yes-for-multitude-non-nationalist-argument-for-scottish-independence>
- Miliband E (2013) speech to the British Chambers of Commerce, 14 March 2013. <http://www.labour.org.uk/ed-milibands-speech-to-british-chambers-of-commerce>
- O'Neill M and Williamson T (2012) 'Philosophical foundations for "good capitalism"?' *Renewal*, 20(1): 20–32
- Painter A (2011) 'To protect the union, England and the centre-left must start fighting now', OpenDemocracy OurKingdom blog, 12 May 2011. <http://www.opendemocracy.net/ourkingdom/anthony-painter/to-protect-union-england-and-centre-left-must-start-fighting-now>
- Painter A (2013) *Left Without a Future? Social Justice in Anxious Times*, London: IB Tauris
- Piore MJ and Sabel CF (1986) *The Second Industrial Divide: Possibilities for Prosperity*, New York: Basic Books
- Prabhakar R (2003) *Stakeholding and New Labour*, Basingstoke: Macmillan
- Rogers J (2013) 'Using state and local policies', *The Good Society*, 22(1): 91–109
- Runswick A (2008) 'Dissolution and reformation: From Charter 88 to Unlock Democracy', in Facey P, Rigby B and Runswick A (eds) *Unlocking Democracy: 20 Years of Charter 88*, London: Politico's
- Seth-Smith N (2013) 'Ukip and the rise of English nationalism', OpenDemocracy OurKingdom blog, 17 July 2013. <http://www.opendemocracy.net/ourkingdom/niki-seth-smith/ukip-and-rise-of-english-nationalism>
- Smith T (1994) 'Postmodern politics and the case for constitutional renewal', *Political Quarterly*, 65(2): 128–137
- Soskice D (1997) 'Stakeholding Yes; the German Model No', in Kelly G, Kelly D and Gamble A (eds) *Stakeholder Capitalism*, Basingstoke: Macmillan
- Stone J (2012) 'One Nation Labour looks more like West Germany than East', *New Statesman* blog, 7 October 2012. <http://www.newstatesman.com/blogs/politics/2012/10/one-nation-labour-looks-more-west-germany-east>
- Weir S (2008) 'Tilting at windmills: The early years of Charter 88', in Facey P, Rigby B and Runswick A (eds) *Unlocking Democracy: 20 Years of Charter 88*, London: Politico's
- Wood S (2012) 'Responsible capitalism is Labour's agenda', *Guardian*, 9 January 2012. <http://www.theguardian.com/commentisfree/2012/jan/09/responsible-capitalism-labour-david-meron>
- Wyn Jones R, Lodge G, Jeffrey C, Gottfried G, Scully R, Henderson A and Wincott D (2013) *England and its two unions*, London: IPPR. <http://www.ippr.org/publication/55/11003/england-and-its-two-unions-the-anatomy-of-a-nation-and-its-discontents>

# TACKLING THE POWER GAP: A NEW CONSTITUTIONAL REFORM AGENDA

STUART WILKS-HEEG

This essay attempts to respond to a paradox. Judged individually, the political and constitutional reforms introduced in the UK since the mid-1990s have met with some degree of success. Yet these reforms have failed to bolster public faith in the UK's democratic institutions and have instead coincided with a prevailing sense of democratic decline.

The essay begins by examining the impact of the reforms that Tony Blair described in opposition as 'the biggest programme of change to democracy ever proposed by a political party' (Blair 1994). I argue that New Labour's reform agenda failed in its objectives because it was incomplete and incoherent, but most importantly because it was irrelevant to addressing the 'power gap' which constitutes the UK's central democratic problem. Defining democracy in relation to its key principles of popular control over decision-making and political equality in the exercise of that control, I highlight how these principles are being undermined by the growing influence of corporate interests and wealthy individuals on the political process, and by widening social class differentials across all forms of political participation.

The essay concludes by sketching out the principles and critical elements of a political reform agenda capable of addressing these concerns. This agenda includes a renewed emphasis on reform of elements of the UK political system which have proved resilient to change but remain central to the growth of corporate influence, including the House of Lords, the funding of political parties and the role of lobbyists. It also advocates a wider set of measures that could help to reverse the growth of political inequality. The extent to which this reform programme would be successful in addressing the UK's 'democratic deficit' would, however, be dependent on wider changes in economic and social policy.

## Labour's reforms and their limitations

The first Blair government of 1997–2001 approached constitutional reform with urgency. In three parliamentary sessions, some 20 bills impacting on constitutional arrangements were passed, as Labour 'unleashed an almost frantic programme of constitutional reform' (Flinders 2010: 44). There can be no doubt that the UK constitution was fundamentally reshaped as a result. By the end of its first term in office,

Labour presided over a political system in which significant powers were now devolved to Scotland, Wales and Northern Ireland. The European Convention on Human Rights had been incorporated into UK law via the Human Rights Act 1998. Freedom of information had been legislated for, as had the disclosure of political parties' income sources. The great bulk of hereditary peers had been removed from the House of Lords, although the upper chamber remained unelected. Significant changes had also been made to subnational government in England, including establishment of the elected Greater London Authority and mayor of London as well as new governance arrangements for the English regions.

While the volume of constitutional legislation dropped off after this first term, the impacts of the 1997–2001 reforms are by now highly apparent. The principle of self-government has gained growing support among residents of Scotland, Wales and Northern Ireland (Jeffrey 2009). The Freedom of Information Act 2000 has rendered government more open and transparent (Hazell et al 2010), while donation disclosure requirements have achieved the same with respect to the funding of political parties (Wilks-Heeg and Crone 2010). Labour's 'first stage' Lords reforms have been shown to have 'strengthened the Lords against the government and, in doing so, strengthened parliament as a whole' (Russell 2010: 866).

Yet, if positive outcomes can be identified from most, if not all, of Labour's individual constitutional reforms, a variety of limitations are also apparent in each instance. Devolved government may be popular, but turnouts in devolved elections remain low, typically between 40 and 55 per cent (Wilks-Heeg et al 2012). There is little evidence that freedom of information has improved decision-making or fostered greater public understanding of, or trust in, government (Hazell et al 2010). Similarly, it is impossible to conclude that political party funding is any 'cleaner', or that party funding controversies have ceased, because of donation disclosure requirements (Wilks-Heeg and Crone 2010). Meanwhile, under the interim arrangements for the Lords, the number of peers has grown steadily, prompting a warning that further increases risk 'rendering the House of Lords completely unable to do its job' (Russell 2011: 3).

Consideration of the overall outcomes of Labour's constitutional reforms, rather than just individual measures, makes the shortcomings more obvious still. Labour's key reform objectives were to boost public trust in democratic institutions and increase popular participation in politics. The evidence points to failure on both counts. Since 2004, the Hansard Society's annual *Audit of Political Engagement* has consistently found that three-quarters of the public trust politicians either 'not very much' or 'not at all'. Biennial surveys conducted by the Committee on Standards in Public Life from 2004 to 2010 document a fall from 46 to 33 per cent in the proportion of UK citizens who regard conduct in public life as either 'very high' or 'high'. Despite significant annual

fluctuations throughout the EU, Eurobarometer surveys record UK levels of public trust in parliament, government and political parties as being consistently below the EU average. Turnouts in all types of elections in the UK have fallen to unprecedentedly low levels, now ranking among the lowest in Europe.

The gap between what Labour's constitutional reforms promised and what they achieved in practice is unsurprising. Declining participation – and faith – in the democratic process are evident across all established democracies, whatever their constitutional arrangements. But even if there is an inevitable sense of swimming against the tide, the question remains: why, despite far-reaching constitutional reform, do the UK's democratic 'outcomes' remain comparatively poor? As such, there appears to be something of a constitutional reform paradox. Reforms which individually have much to commend them and are, with one or two exceptions, accepted as being 'here to stay' have also been associated, collectively, with a widespread perception of democratic decline.

Three mutually reinforcing explanations can be advanced to explain the paradox. First, the process of reforming the UK political system remains incomplete, having stalled under Labour after 2001 and also under the Coalition government since 2010. Despite the volume of constitutional reform legislation passed between 1997 and 2001, significant items of business from Labour's 1997 manifesto remained unfinished at the end of Blair's first term – and most have remained unfinished ever since. Chief among these are electoral reform, English devolution and Lords reform. Despite a brief revitalisation of debates on constitutional reform in the years around the last general election, the 'to-do list' has continued to grow, notably with regard to local democracy in England, party funding reform and lobbying.

Second, the changes pursued by Labour and subsequently by the Coalition government have been incoherent and piecemeal, lacking an overarching vision or clearly articulated set of goals. Under Labour, constitutional change was tackled without any clear sense of strategy – Blair 'reformed the constitution without a map' (Flinders 2010: 86). During Labour's second term, Lord Falconer, as lord chancellor, argued that the government's reform agenda had three purposes: to enhance the credibility and effectiveness of public institutions; to strengthen democracy and public engagement; and to increase trust and accountability in public bodies (Falconer 2003). Not only was this essentially a retrospective attempt to present a coherent account of Labour's 1997–2001 reforms, it also offered little sense of what sort of democracy would emerge as a result.

This observation leads us to the third explanation: the lack of any guiding principles for how political power was to be restructured. This was the critical failing. In opposition, Blair had advocated 'a new politics

that puts the public back in control', adding that 'power to the people is not a slogan but a necessity if we are to reconnect politics with the majority' (Blair 1996). Despite such promises, New Labour's reforms were muddled with respect to issues of power. Power did shift in the UK political system but, as Vernon Bogdanor has noted, this redistribution occurred 'between elites, not between elites and the people' (Bogdanor 2009: 297). Power shifted downwards, from politicians at Westminster to politicians in the devolved institutions, and sideways, from the executive to peers and to judges (ibid). Further powers were transferred sideways from elected politicians to various independent bodies and constitutional watchdogs, such as the Electoral Commission and the Judicial Appointments Commission (Gay and Winetrobe 2010). UK governments are subject to much greater constitutional control as a result of these changes, but there is little evidence of citizens being empowered by them, as Bogdanor explains:

**'Constitutional reform has not redistributed power to the voter. It has not shifted power from the politicians to the people. That is the crucial weakness in the constitutional reform programme, as it has so far been implemented. That is the central reason why it has made so little impact on entrenched attitudes towards the political system.'**

Bogdanor 2009: 297

Constitutional reform has certainly reduced and tamed executive power, largely removing the scope for UK governments to act as what Lord Hailsham once described as 'elective dictatorship'. Yet, a fundamental power gap remains at the heart of British democracy. The essence of this gap is well captured by Stein Ringen in his comparative assessment of democracies:

**'Britain is a case study in a top-heavy democracy ... The distance from ruled to rulers is immense. The chain of command linking citizenry and decision-making ... is nearly non-existent.'**

Ringen 2007: 227

As I argue in the following section, despite Labour's efforts to reform the constitution so as to 'put the public back in control', the power gap has almost certainly grown.

## Understanding the power gap

Two core principles underpin modern understanding of democracy (Beetham 1994). The first is the notion that democracy is characterised by popular control over decision-making. The second is that of political equality, namely that all 'citizens ought to be treated as political equals when they participate in governing' (Dahl 1998: 62). While most readily understood, and realised, at the level of small self-governing

associations, these principles can nonetheless be retained as democracy is 'scaled-up', even to the level of the nation state. As David Beetham explains, in large-scale representative democracy popular control and political equality are realised through indirect, rather than direct, means:

'Popular control usually takes the form of control over decision-makers, rather than decision-making itself; and typically requires a complex set of institutions and practices to make the principle effective. Similarly, political equality, rather than being realised in an equal say in decision-making directly, is realised to the extent that there exists an equality of votes between electors, an equal right to stand for office, an equality of conditions for making one's voice heard and in treatment at the hands of the legislators, and so on.'

Beetham 1994: 28

In practice, powerful political forces militate against the full realisation of this ideal conception of democracy. Popular control is undermined where politics becomes dominated by a small elite, where decisions are taken by unelected bodies and individuals, and where powerful economic actors, such as large companies, yield substantial political power (Arblaster 1987). Similarly, while universal civil rights provide for formal political equality, wealthier and highly educated members of a society will possess particular sets of resources (such as money, connections and knowledge) that enable them to enjoy disproportionate political influence (Rowbottom 2010).

Nonetheless, the principles of popular control and political equality remain essential to the task of defining benchmarks against which we can assess actual democratic performance (Dahl 1998). Even if full popular control and complete political equality are unattainable in practice, it seems reasonable to assume democracies would want to work towards these goals. Conversely, if a political system were to show signs of weakening popular control and growing political inequality, we would expect this to be an issue of concern. So, what do we know about how the UK is performing against these criteria?

The principles of popular control and political equality directly inform the methodological framework used by Beetham and others to undertake a series of comprehensive audits of UK democracy (see Weir and Beetham 1999, Beetham et al 2002). The latest such audit (Wilks-Heeg et al 2012) highlights two worrying trends of particular relevance to the democratic principles mentioned above.

The first is the **growth in corporate power**. The political influence wielded by large business interests, by no means a new problem for democratic governance, is notoriously difficult to measure. Nonetheless, the audit underlines the extensive capacity of corporate interests to

shape political decisions in the UK, pointing to wide-ranging evidence of how corporate power infringes democratic principles.

For the purposes of this discussion, three key examples will suffice:

- There are extensive direct linkages between individual parliamentarians and large corporations. Mara Faccio (2006) found that just under half of the top 50 publicly traded firms in the UK had an MP or a peer as a director or major shareholder. This was the highest rate of all 47 countries studied; the next highest-ranked OECD country was Italy, with 16 per cent.
- There is obvious scope for corporations and wealthy individuals to buy political influence, for instance through donations to political parties, lobbying or corporate hospitality. This tendency is most readily demonstrated with respect to the funding of political parties, for the simple reason that large donations appear on public registers. The Conservative party is most reliant on donations from wealthy individuals and companies, and received some £43 million in donations from companies and individuals connected to the financial services industry between 2005 and 2011.
- Various ‘revolving doors’ connect business and government and facilitate the movement of individuals from senior government roles to senior business positions, and vice versa. Each year, some 400–800 former civil servants seek permission to take up outside appointments, while between 1998/99 and 2008/09 there was a rise in the proportion of cases where the Advisory Committee on Business Appointments (ACoBA) imposed conditions from just over 20 to around 40 per cent.

The second trend highlighted by the latest audit is that of **widening social class differentials** across all forms of political participation, resulting in a clear bias towards higher social groups. The foundations of political equality include a universal adult franchise based on the principle of ‘one person, one vote’, as well as full and universal freedoms of expression, assembly and association. However, while all citizens may be free to participate in the democratic process, the UK is characterised by a widening of both socioeconomic and political inequality. Not only has the distribution of income and wealth become significantly more unequal since the 1970s, but these contrasts are also replicated in political engagement.

Again, three main examples may be used to illustrate the general pattern:

- While overall turnout at the 2010 general election was 65 per cent, survey results reveal 76 per cent of those in social classes AB claim to have voted, compared to 57 per cent of those in classes DE.<sup>1</sup>

---

<sup>1</sup> In 1997, 79 per cent of ABs voted compared to 66 per cent of DEs.

- The Hansard Society's Audit of Political Engagement documents a stark class divide across all forms of political participation. Whereas 27 per cent of ABs had contacted an elected representative in the previous three years, only 9 per cent of DEs had done so. While 6 per cent of those in the highest social classes had made a donation or paid a membership fee to a political party, the figure among those in the lowest social grades was just 1 per cent (see Hansard Society 2009).
- Class differentials in who provides financial support to political parties are underlined by the growing reliance of political parties on wealthy donors. Analysis of the Electoral Commission's register of donations to political parties reveals that 164 individuals donated £50,000 or more to one of the three main political parties in 2010, up dramatically from just 28 in 2001. Of the 164 donations of at least £50,000 in 2010, 141 went to the Conservative party.

These concerns about how popular control and political equality are being undermined are reinforced by two key weaknesses in the contemporary architecture of British democracy. Following Wilks-Heeg et al (2012), these may be summarised, with some minor modification of terminology, as follows:

- **Lopsided centralism:** The asymmetric nature of devolution in the UK has not only created constitutional anomalies, notably 'the West Lothian question', it has also rendered parts of the UK more democratic than others. The persistence of England as a *de facto* centralised unitary state within a quasi-federal UK state is deeply problematic, given that it is home to 86 per cent of the UK population (see Kenny in this volume). While forms of power-sharing dominate under devolution, Westminster and Whitehall continue to operate in a largely *power-hoarding* fashion, if only with respect to England. The problem is not simply that contrasting, even contradictory, models of democracy operate within the UK but also that lopsided centralism restricts the extent of popular control over decision-making. A particular feature of Westminster's continued dominance is that it serves to facilitate corporate influence over decision-making by providing a single focal point for corporate-parliamentary connections, the 'revolving door' and lobbying.
- **The civil society/party politics disconnect:** The centrality of elections and political parties to representative democracy is self-evident, yet in the UK electoral participation and party membership are in long-term decline. The widening gap between civil society and party politics is further reinforced by the role that the electoral system plays in artificially preserving the dominance of the main two parties and, in conjunction with wider socio-demographic patterns, concentrating party campaigning on a limited number of marginal seats. Meanwhile, the growing reliance of political parties on 'big

donors' risks isolating them ever further from civil society. The fact that similar developments are discernible in almost all established democracies offers little comfort, not least because the evidence of growing corporate power and widening political inequality referred to above is especially stark for the UK.

## Towards a new constitutional reform agenda

What might a new constitutional reform agenda capable of tackling these problems look like? Given the observations made so far, it is evident that the power gap cannot be addressed by simply 'rebooting' the constitutional reform agenda that stalled under New Labour after 2001. A far more coherent set of measures is required, designed to enhance the power of citizens as equals in relation to concentrations of elite power. Certainly, several core elements of any new reform agenda are likely to have a familiar ring to them. It is difficult to see how political power can be restructured in the UK without electoral reform and some form of devolution in England. These are, after all, 'meta-level' constitutional questions which serve to define the model of democracy in a nation state (see Flinders 2010).

The crucial point for a new constitutional reform agenda is that such reforms must be guided by clearly defined democratic objectives and supported by a range of other measures if they are to be successful in moving the political system towards greater popular control and political equality. If these goals are to be achieved, I would argue that the UK needs a new wave of democratisation, guided by three key principles.

1. **Relinking civil society and politics:** While civil society in Britain remains vibrant and active, a growing proportion of citizens have become disconnected from the political process. There is an urgent need to rebuild relationships between civil society and political institutions – and this process includes, perhaps as its most crucial element, the reinvigoration of political parties. The tasks of reversing the dramatic drop in electoral turnout and engagement with party politics in predominantly working class areas and among young people should be of particular concern (see Birch in this volume).
2. **Rolling back corporate power:** While it is unlikely that the political influence of large corporations could be removed from liberal democracies, this reality does not invalidate the principle of seeking to curtail corporate power (see Crouch in this volume). There are a range of practical measures which could help to mitigate the influence of major corporations and wealthy individuals on public policy, but these will require moving beyond existing commitments to transparency or voluntary codes of practice.
3. **Segmenting power:** The process of shifting the UK political system from a power-hoarding to a power-sharing model of democracy has stalled. Bringing decision-making closer to the people and challenging the influence of interlocking elites will require political

power to be segmented and decentralised to a far greater degree. Our experiences of devolution also suggest that dividing and decentralising power would open up greater possibilities to rebuild relationships between politics and civil society, as required by our first principle.

This is a challenging agenda. Moreover, it is one which will be constrained by two significant factors. First, national-level efforts to limit corporate power will be restricted by the realities of global economic flows and, in some instances, would need to be underpinned by coordinated international action to be effective. Second, since forms of socioeconomic and political inequality tend to be mutually reinforcing, addressing the power gap will not be achieved through political and constitutional reform alone: tackling political inequality will ultimately require changes in economic and social policy also.

Despite these significant caveats, there are plenty of existing policy proposals which could be brought together to provide a constitutional reform programme with the potential to help close the power gap. The following 10 measures, in combination, would make important strides towards this goal.

- 1. Devolve political power in England, including greater tax-raising powers and a much stronger role for local government:** The debate about English devolution has become a prisoner of wider uncertainties about what it means 'to be English'. Making a case for English devolution based primarily on identity is a non-starter. Rather, the main rationale for English devolution is a democratic one: to break up the overly centralised English unitary state. There are two options: the creation of a single English parliament alongside substantial decentralisation of powers and functions to city-regions and subregions, or a revival of Labour's proposals for elected regional government, almost certainly based on a smaller number of regional units (four, rather than nine). Either way, the experience of devolution highlights the enormous scope for new sub-UK elected bodies to make genuine democratic advances and to build up in short order popular acceptance and support.
- 2. Substitute the existing first-past-the-post system for Westminster elections with almost any alternative system, and abolish election deposits:** The argument that the 2011 referendum 'settled' the debate about electoral reform is disingenuous. Long-term decline in electoral support for and identification with the two main parties underlines the role the first-past-the-post system plays in artificially preserving their dominance despite the steady growth (measured by votes, membership and donations) of smaller parties. Almost any type of electoral reform would increase the degree of party competition in UK general

elections. Even the most minimal change, the adoption of the supplementary vote, would promote greater and fairer party competition. Meanwhile, the abolition of election deposits would remove one significant barrier to entry faced by smaller parties and enable them to put forward far more candidates.

3. **Replace the House of Lords with an indirectly elected second chamber:** The House of Lords undermines the principles of popular control and political equality in multiple ways. That peers are appointed rather than elected is a source of concern with respect to both democratic principles and democratic outcomes. The process of political parties nominating individuals for peerages gives rise to regular accusations of ‘cash for honours’. Similarly, it is the number of life peers who are directors or shareholders in major corporations that is largely responsible for the alarmingly high rate of corporate–parliamentary connections in the UK. A more viable option than an elected second chamber may be an indirectly elected one, as in Germany, with members drawn from the primary subnational tiers of elected government – following devolution in England.
4. **Reform party political funding to promote democratic engagement and restrict the role of ‘big money’ in politics:** Proposals designed to cap the size of donations to political parties, while facilitating their campaigning and engagement roles, were proposed by both the Phillips review in 2007 and the Committee on Standards in Public Life inquiry in 2011. In combination with electoral reform, modest state funding that rewarded political parties per vote gained would incentivise parties to campaign actively outside key marginal seats. Similarly, matchfunding or tax relief for small donations, particularly in combination with a donation cap, would push parties to broaden the social base from which they are funded. If channelled to local parties or ringfenced for specific activities, such as youth engagement, these forms of funding could be targeted at aspects of democratic engagement where the challenge of re-engaging with civil society is greatest.
5. **Extend the principles of financial transparency to thinktanks and other organisations engaged in influencing political debate:** There are close links between many thinktanks and individual political parties, and it is evident that some of the largest donors to political parties also make substantial donations to thinktanks. Yet, as the Who Funds You? initiative has shown,<sup>2</sup> some thinktanks, notably those on the right of the political spectrum, are notoriously secretive about their funding sources. A simple reform option would be to adopt Who Funds You’s criteria of openness and transparency for thinktanks as the basis for a statutory register overseen by the Electoral Commission. A legal duty to provide

---

2 See <http://whofundyou.org/>

this information (total income, plus the names of people and organisations donating funds or services in kind worth £5,000 or more, with amounts given) would close off an important route by which wealthy individuals and corporate interests influence the policy positions of political parties ‘in secret’.

6. **Introduce a statutory register of lobbyists:** After initially proposing a register of lobbyists, which was widely criticised as too weak, the Coalition government then drafted rushed legislation, which has been condemned as a ‘gagging bill’. Another approach is needed. In line with the recommendations of the Alliance for Lobbying Transparency, a broadly defined register would apply to all organisations employing in-house lobbyists as well as the activities of lobbying agencies. It would also need to include full details of lobbying activities, to be publicly funded, and to be overseen by an independent body, such as the Electoral Commission.
7. **Fix the revolving door between government and large corporations:** Addressing growing concerns about the operation of the revolving door will require a far tougher system of regulation of the movement of senior personnel between government and the private sector than currently exists. The most obvious means is to implement Transparency International’s recommendation to replace ACoBA, an advisory body with no real powers, with a statutory body that has the capacity to make mandatory, enforceable rulings and the resources to monitor the outcomes of its judgments.
8. **Reform citizenship education:** There is widespread recognition that citizenship education in schools has done little to improve levels of political literacy among young people or increase their levels of political engagement: the UK has the lowest levels of political activity among those aged 15–24 in the EU15 (Sloam 2013). The recent decision to retain citizenship as part of the national curriculum opens up the possibility to act on the Citizenship Foundation’s call for teaching of the subject to be bolstered by granting it greater priority and investment.
9. **Harness the potential for e-petitioning to connect citizens and elected representatives:** No recent democratic innovation has proved more popular or more problematic than the HM Government e-petition system<sup>3</sup> and its link to the House of Commons Backbench Business Committee. Despite evident potential democratic benefits, e-petitions have raised unrealistic expectations about how parliament should respond, focusing public frustration on petitions that are not debated or that don’t result in legislative change. Reforming e-petitioning along the lines

---

3 See <http://epetitions.direct.gov.uk/>

of the Scottish parliament's system, where parliamentary staff discuss with initiators whether to route a petition to a parliamentary debate, select committee inquiry or an amendment to an existing bill, would provide a more effective interface between direct and representative democracy.

**10. Build a new UK parliament fit for a 21st-century democracy:**

The case for a modernised parliament has been made frequently over the years, most recently by Green MP Caroline Lucas, who has called for the introduction of electronic voting, the dropping of archaic practices and an overhaul of parliamentary language. Building a new UK parliament would facilitate such a modernisation of parliamentary practice, and would be less costly than the estimated £3 billion required to ensure the Palace of Westminster remains 'fit for purpose'. It would also act as a powerful symbol of democratic reform. In a newly decentralised UK polity, that symbolism would be all the more powerful if the new parliament were to be located outside of London.

## Conclusion

Reforms introduced since 1997 have not revived British democracy or settled key constitutional debates. While many of Labour's measures were intended to tackle public concerns about integrity in UK public life and increase political participation, low levels of public trust in political institutions persist and electoral turnout has declined. Meanwhile, Labour's reforms have generated significant constitutional tensions, particularly with respect to devolution and the relationship between the executive and the judiciary. Not only does the challenge of democratic renewal remain, it is also evident that the UK's current constitutional hybrid cannot be sustained. Reform of some kind is therefore inevitable. The reform agenda which prevails over the next decade may well determine what type of democracy the UK becomes.

Any realistic prospect of addressing the democratic shortcomings outlined in this essay will almost certainly depend on the formation of a centre-left government at Westminster. New Labour's piecemeal approach was inadequate and incoherent, but it was at least informed by an implicit understanding that the core executive needed to be tamed. Under the Conservative–Lib-Dem coalition, constitutional reform owes more to partisan policy-trading and points-scoring than it does to any concept of democratic renewal. Moreover, the growing influence of the Tory right has demonstrated that many in the party would like to reverse key Labour reforms: the Human Rights Act, which Conservatives would like to see replaced with a UK Bill of Rights, is a case in point.

However, it is evident that simply completing Labour's to-do list of 'unfinished business' is not enough to address the power gap. Instead, this essay has set out an ambitious set of reform principles and

proposals capable of moving the UK political system towards greater popular control and political equality. Nonetheless, this reform agenda is intended to be realistic rather than idealistic. Whether high-level political support for such a programme can be won without a stronger popular movement for reform is a moot point. Even if it can, the effectiveness of the measures proposed here will depend ultimately on the extent to which a future centre-left government is also prepared to challenge the underlying patterns of socioeconomic inequality and corporate power which have served to undermine British democracy.

## References

- Arblaster A (1987) *Democracy*, Buckingham: Open University Press
- Beetham D (1994) 'Key principles and indices for a democratic audit' in Beetham D (ed) *Defining and Measuring Democracy*, London: Sage
- Beetham D, Byrne I, Ngan P and Weir S (2002) *Democracy under Blair: A Democratic Audit of the United Kingdom*, London: Politico's
- Blair T (1994) speech to the Labour party conference, Blackpool, 4 October 1994
- Blair T (1996) 'Power to the people must be our aim', *Independent*, 7 February 1996
- Bogdanor V (2009) *The New British Constitution*, Oxford: Hart
- Dahl RA (1998) *On Democracy*, New Haven: Yale University Press
- Faccio M (2006) 'Politically connected firms', *American Economic Review*, 96(1): 369–386
- Falconer C (2003) 'Constitutional reform', speech at University College London, 8 December 2003
- Flinders M (2010) *Democratic Drift: Majoritarian Modification and Democratic Anomie in the United Kingdom*, Oxford: Oxford University Press
- Gay O and Winetrobe BK (2010) 'Watchdogs of the Constitution: the Biters Bit?' in Hazell R (ed) *Constitutional Futures Revisited: Britain's Constitution to 2020*, Basingstoke: Palgrave Macmillan
- Hansard Society (2009) *Audit of Political Engagement* 6, London
- Hazell R, Worthy B and Glover M (2010) *The Impact of the Freedom of Information Act on Central Government in the UK: Does FOI Work?* Basingstoke: Palgrave Macmillan
- Jeffrey C (2009) 'Devolution, public attitudes and social citizenship' in Greer SL (ed) *Devolution and Social Citizenship in the UK*, Bristol: Policy Press
- Ringin S (2007) *What Democracy Is For: On Freedom and Moral Government*, Princeton: Princeton University Press
- Rowbottom J (2010) *Democracy Distorted: Wealth, Influence and Democratic Politics*, Cambridge: Cambridge University Press
- Russell M (2010) 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism', *Political Studies*, 58: 866–885
- Russell M (2011) *House Full: Time to Get a Grip on Lords Appointments*, London: Constitution Unit
- Sloam J (2013) 'The 'Outraged Young': How Young Europeans are Reshaping the Political Landscape', *Political Insight*, 4(1): 4–7
- Weir S and Beetham D (1999) *Political Power and Democratic Control in Britain*, London: Routledge
- Wilks-Heeg S and Crone S (2010) *Funding Political Parties in Great Britain: A Pathway to Reform*, Liverpool: Democratic Audit
- Wilks-Heeg S, Blick A and Crone S (2012) *How Democratic is the UK? The 2012 Audit*, Liverpool: Democratic Audit



# DEALING WITH CORPORATE POLITICAL POWER

COLIN CROUCH

That vast corporate wealth presents a political problem is by no means a new observation. From the enormous wealth of the US oil barons of the early 20th century to the protected national champion firms of France that preceded the formation of the European single market, giant corporations have long kept themselves close to politicians and public officials. Going further back, the corruption and distortion implicit in such relationships inspired many of the ideas of Adam Smith and other advocates of the free market, which was supposed to sever the links between economic activity and political power. Is there any reason why the issue should occupy any particular place on the political agenda today? And if so, what should or can be done about it?

According to the dominant ideology of our times, the problem of relations between economic and political power should be less today than during most other periods. Neoliberal strategies, it will be claimed, have ensured that markets and free competition rule; governments intervene less in the affairs of firms, and therefore there are fewer opportunities for any distorted relations. In fact, little could be further from the truth. Under actually existing neoliberalism (as opposed to the theoretical), the doctrine of the free market has been contorted so that 'corporation' becomes almost a synonym for 'market', with some extraordinary political implications.

The economic theory of the market has no place for the idea of power. It is one of the defining conditions of a true market that there is such a large number of buyers and sellers that no single participant is large enough to affect a price by its own actions. Everyone is a price-taker; no one is a price-maker. It is the task of competition policy to ensure that this condition is not violated. If that can be successfully achieved then, by definition, there is no such thing as economic power.

Now, this assumption is not only fundamental to economics but also to political theory. Debates over the balance of power in constitutions and over the conditions of equality needed to safeguard democracy usually concentrate on formal political institutions and other organisations, such as parties and trade unions. The questions of power and how to limit and check it and make it behave in democratically acceptable ways are applied to these institutions, but firms are almost never considered. The only defence of this is the above argument that firms,

existing within and being subject to the rules of the market, cannot possess power. Furthermore, the argument would run, the conditions of market competition ensure that firms will have no resources to spare for playing at politics.

If markets are perfect then this contention holds. But many markets are far from perfect, and this has enabled the political deployment of corporate wealth to escape not only the constraints of constitutional rules but even the debates over those rules. I have discussed elsewhere (Crouch 2011) the different ways in which the markets of the contemporary neoliberal economy are imperfect, fundamentally weakening the barriers that prevent economic wealth from being converted into political power. The next section surveys the main issues.

### The problem in the modern neoliberal economy

First, in many markets it is not possible to have perfect competition, as the numbers of viable market participants are too small. This seems to be the case for aircraft production and armaments, most of the energy sector, large parts of information technology (from computer systems to internet search engines), mass-market foods and supermarket chains, mass-market banking and some other parts of the financial sector – and many others besides.

This does not mean that *no* competition takes place in these sectors, as several instances demonstrate (such as supermarkets). Nevertheless, dominant market participants are able to affect prices and shape conditions in the market. They have prominence in the market and are not price-takers. This gives them a public role and a capacity to engage in public life. Because of their market dominance, they are able to amass vast wealth, a proportion of which they can devote to lobbying governments or financing political parties and causes. For firms in true markets, political activity presents the familiar problem of collective action: their contribution to politics will be too small to make a difference, while they will gain from any successful political lobbying on behalf of their sector – in a true market, where participants are all anonymous, all gains have to be generally shared.

By contrast, large corporations in oligopolistic markets do not face a collective action problem: their own activities have a perceptible effect. Further, not being anonymous but being market movers, they can often target lobbying gains to their individual rather than sectoral advantage. Therefore, once one such firm becomes active, the others need to do so as well, or they will miss out. For firms in perfect markets, the logic of collective action is a disincentive to the political deployment of economic resources; for those in oligopolistic markets the incentives are exactly the other way round. The tacit assumption of political theory that corporations cannot possess power because they operate in a market is therefore false.

Second, it is essential for a properly functioning market economy that inefficient individual firms can leave it without disturbing the market overall – in a perfect market both entry and exit must be easy. If corporations are so large that their demise causes a shock to the market then that market is not a true one, and governments are likely to have to intervene to cope with a crisis. This is what occurred on a global scale in the 2008 financial crash. The fact that banks were deemed ‘too big to fail’ was both a demonstration that the market was highly imperfect (there was no easy exit) and produced the paradoxical consequence that some banks acquired political power by the very fact that they had been incompetent. They were able to hold governments and ultimately taxpayers to ransom.

Third, the neoliberal project has required an extensive programme of deregulation, which has itself involved a vast programme of lobbying by business interests to ensure that governments liberate them from the rules that they find oppressive. Ironically, the process of getting government out of the way of business has involved business getting very much in the way of government. The International Monetary Fund has reported on the role of business lobbying in the US deregulation process, seeing in it some responsibility for the financial crisis (IMF 2010).

Fourth, in pre-neoliberal times the problems of inadequate competition were usually tackled by governments providing services – such as household energy, water, telecommunications, postal and rail services – through public sector organisations. However, neoliberal ideology required the privatisation of these activities, which resulted in monopoly or oligopoly providers, as with some exceptions (certain elements of telecommunications services, for example) it has not been possible to create true markets. Regulatory systems were established to try to ensure that the pricing and other policies of contractors followed what might have been expected to happen had there been real competition. Constructing what might have been is a complex task, providing opportunities for debate and lobbying. Regulators need expertise to do this work, and the corporations are frequently the main source of that expertise. This enables them to become insiders to a process that is supposed to be regulating them, and these firms have a particular incentive to develop a capacity to befriend and lobby regulators and their political masters.

Another device to introduce some competition into monopoly service provision has been to grant contracts for a limited number of years, there being ‘real’ competition at the bidding stage at least, if not during the course of a contract’s term. The number of firms able to enter these competitions is usually limited, as the cost of putting together complicated tenders presents an entry barrier to small and medium-sized firms, but there can be some element of competition. However,

if contracts run for only a small number of years, contractors have little incentive to lay down infrastructure for the long term, and service quality becomes poor. On the other hand, if contract terms are long enough to provide that incentive (say, 20-year spans) then the element of competition is reduced to applying only in very small windows indeed.

Fifth, neoliberalism also requires the contracting out to private firms of many services where, for various reasons, governments rather than individual users are the customers. The customer in a market relationship is the person or institution that pays the bill, which is not necessarily the user. This applies, for example, to education, health, social care and police services. Similar points apply here as in the case of full privatisation, except that the incentives given to corporations to become political actors are intensified. Because governments themselves pay for these services, often for sound social policy reasons, the only market relationship is between a corporation's contract negotiation staff and some public officials; there is no day-to-day relationship with the ultimate consumer as takes place in the normal private sector. The commodity that is traded in the market is the contract to run the service, not the substantive service itself, which is delivered outside any market relationship. Firms therefore have a very strong incentive to put extensive resources into cultivating relationships with politicians and officials involved in the contracting process, and this necessarily makes them political actors.

It is notable that only a few firms are usually engaged in this contracting business, and these firms tend to spread their activities across a wide range of sectors. Firms originating in industries with very long histories of government contracting, such as road-building, security services and armaments, are particularly prominent. They can now be found running such diverse services as local government administrative support, schools and prisons. Their core business and expertise does not lie in the substantive areas in which they are active, but in the general task of winning contracts with government departments. This is a task that rewards political lobbying and close relations with officials and politicians. It is the kind of relationship that Adam Smith thought would be brought to an end by a free market economy.

Finally, an important hypothesis of neoliberalism has been that governments and truly public services are likely to become inefficient because they do not benefit from the constant pressure to innovate and reduce costs that market competition provides. This accounts in part for the insistence on privatisation and contracting out. It has a further implication, in that public officials are considered to benefit from maintaining close relations with private sector managers, including the temporary secondment of the latter into public service positions. Something of the private sector is expected to 'rub off' on to the public service in the process.

In this way, the barriers erected in an earlier, liberal age against close contacts between these two groups have been removed. Classic liberalism saw a need for both the state and the market economy to safeguard their own autonomy by keeping a distance from each other, and in many countries there have been elaborate codes governing how officials and private businesspeople can relate to each other, including prohibitions on politicians and officials subsequently joining firms with which they had worked when in office. By contrast, contemporary neoliberalism stresses the value of contacts rather than their risks. The rules governing relations have therefore been considerably relaxed, leading to 'revolving doors' between government departments and certain corporations. This provides firms with considerable opportunity, not just for traditional lobbying, but for having their seconded personnel operate from inside government itself.

## The problem in competition law

A consistent theme lies behind all these developments: the defining conditions of the market have been shifted so that they include virtually all activities by corporations, whether consistent with market rules or not. This shift originates in the sheer difficulty of maintaining true markets in many sectors.

Within competition law, this has been the subject of a major debate. Does economic competition denote a situation in which a large number of firms is present in the market, maintaining constant competitive pressure on each other and providing consumers with extensive choice? Or does it mean an economy in which competition has been able to work to its logical end, of weaker firms being destroyed by stronger ones, with a small number of survivors and reduced choice for consumers? The classic answer of US antitrust law and of the postwar German *ordoliberal* theorists, whose approach later influenced European Union competition law, had been the former. Trying to apply its principles became increasingly difficult in the US, however. There, so many sectors have been dominated by a very small number of giant corporations that antitrust law, originally seen as the guarantor of free-market capitalism, came to be stigmatised as 'communist' because it led to increasing government intervention to break up large firms.

A new school of law and economic thought, developed at the University of Chicago, taught that a truly competitive economy was one in which the winners took all (Bork 1993, Posner 2001), that the logical outcome of competition was the elimination of competition. By this view, therefore, there was nothing wrong with a market dominated by three or four firms; the economists' ideal of the market where all participants were price-takers and none price-makers was unrealistic. This marked a major step on the road to the false equation of actually existing neoliberalism: 'corporations' equals 'markets'.

One consequence of this development was that consumers' freedom of choice had to be dethroned from the principal role it had played in promulgating the free-market vision of the world. The new approach has never sought much public prominence for this particular aspect of its argument; the more general Chicago idea of a free economy without government intervention was popularised by Milton and Rose Friedman's television series and subsequent book *Free to Choose* (1980). But the serious intellectual arguments tell a different story. The issue is not, according to the leading exponents of the Chicago school, what consumers actually want to choose, but what gives them the biggest likelihood of having a choice at all (Bork 1993, Posner 2001). Logically, their scope for choice must be enlarged as wealth is increased in the economy as a whole. If there would be efficiency gains from a number of smaller firms being bought out by a larger one, then that would be the outcome that would maximise what they called consumer 'welfare', even if it led to reduced competition and left consumers with a reduced choice of particular goods. Therefore, it is which outcome would be most conducive to the maximisation of consumer *welfare*, not *choice* as such, that should be the concern of the law courts in deciding antitrust cases.

This raises many issues. Does the removal of decisions about consumer interests from consumers themselves into the hands of judges and corporate lawyers not challenge individual freedom as much as a 'nanny state'? Moreover, the Chicago school believed that as long as there were three or four firms in a market they would have to compete among themselves; they ridiculed arguments to the effect that when the number of firms becomes sufficiently small then firms could signal their intentions to each other and avoid genuinely competing altogether. For these and certain other reasons, the Chicago approach to antitrust never became completely dominant, even in US courts, let alone in European competition law (for full discussions see Amato 1997, Cucinotta et al 2002). It has, however, been a major influence in shaping how contemporary neoliberalism differs from neoclassical economics: the Chicago school has a relaxed attitude to corporate power, tolerance of very few competing firms in many sectors, and a tendency to equate the activity of corporations with the market itself.

It is beyond our scope here to pursue these issues within debates over economic efficiency as such. My themes are the *political* problems presented by unchallenged concentrations of corporate power. These cannot be resolved by debates over how many firms are needed to make a *market* competitive. Indeed, neoliberals do not defend a right for oligopolistic economic power to translate itself into political power. They usually just deny that it happens. The answer of the Chicago school itself was simple: the smaller the role that government plays in the economy, the less incentive corporations will

have to become politically involved (Bork 1993). So, this argument goes, the problem should be resolved by reducing government, not by reducing corporate power.

This is naive. As we have seen, several important incentives for firms to become politically active are created by the neoliberal project itself, as it requires the regulation of privatised services, continuing contracting out of relationships, and intensified relations between public officials and corporate managers. Particularly challenging for the Chicago thesis is the way in which firms that have become as dominant as their approach to competition tolerates can create systemic problems for the market economy at a level that governments cannot ignore. The banking crisis exemplified this problem, and also revealed how personnel from the leading banks were then able to play a major role, in both the US and the EU, in designing rescue packages and policy responses.

Extreme neoliberals have answers to these questions: replace regulation of monopolies by leaving it to consumers to get angry; solve the problem of contracting out by withdrawing public subsidies of individual use of health, education, care or policing services; remove the economic role of government altogether so that no corporations will be interested in lobbying it; let banks go bankrupt and cause a systemic crisis, because then everyone will learn to be more cautious in the future. We can debate the desirability and feasibility of these possibilities, but our present task is to deal with the existing world, in which few of these things happen.

There are several kinds of neoliberal. One distinction is between 'free-market true believers', who consider that society could be governed entirely by market principles – in which case the problem of corporate political power simply vanishes – and 'realist' neoliberals, who know that actually existing markets do create corporate political power, which they do not want to suppress but seek to harness for their own purposes. A perfect expression of the latter was the decision of the US Supreme Court that corporations possessed all the citizenship rights of individuals, and that therefore no limits could be imposed on how they deployed their wealth for political campaigns (United States Reports 2010). The US Congress has long been dominated by lobbyist money, but since that decision the situation has become considerably worse. Any issue that concerns corporate interests, from healthcare to banking regulation to pollution control, will be determined in Congress by the mobilisation of corporate funds. Of course, the US is an extreme case – the weakness of its party system and the existence of within-party primary elections for most representative posts make individual politicians heavily dependent on personal access to campaign funds. But the incentives given to corporations to become politically active do not depend primarily on the funding needs of individual members of legislatures. This is in no way an issue for Americans only to worry about.

The most important conclusion to be drawn from these arguments is that the exclusion of corporate power from consideration by constitutional theorists and other political scientists is based on an entirely false premise. It is not true that participation in a market economy removes firms from needing to be considered as wielders of political power. Unless there are perfect markets, only deliberate action can prevent the conversion of economic power into political power and vice versa. Wealth is a political resource, while political power can be used to win contracts and privileges. It is a self-reinforcing spiral, and is probably one (though by no means the only) factor in the extraordinary increase in inequality opening up between a very small number of the corporate rich and everyone else (OECD 2011). Paradoxically, the dominance of neoliberal ideas has intensified the problems this poses, because the form taken by that neoliberalism has been to reinforce the role of corporations rather than of markets.

### The problem in constitutional debate

James Cornford would by now have had enough of analysis and complaint, and would have wanted discussion of what can be *done* about the problem.

Thoughts turn immediately to legal rules that could restrict the political deployment of wealth. Experience teaches us that certain kinds of rules work, while others do not. Today we have a virtual laboratory for this, as we have seen the consequences of the removal of several previously effective rules. Following the Wall Street crash of 1929, the US Congress imposed strict regulation of banking activities under the 1933 Banking Act (usually known as the Glass-Steagall Act), which included limitations on the risks that banks could take with assets deposited with them. Following intense corporate lobbying, the Clinton administration repealed the act in 1999, which enabled investment bankers to access vast general bank assets in order to operate in secondary and derivatives markets. The following year, and following further lobbying, the Clinton administration passed the Commodity Futures Modernization Act, which removed all regulation from trading in financial derivatives. The financial crisis, which resulted in large part from investment banks having access to funds accumulated in general banks in order to operate in derivatives markets, occurred just eight years later. We can observe that certain kinds of behaviour had been effectively regulated until 1999 and 2000.

Let us take a further example. In the UK's regulated broadcasting environment, the satellite broadcaster Sky News, partly owned by Rupert Murdoch's media empire, provides a balanced, politically neutral news service. In the unregulated context of the US, Fox News, also mainly owned by Murdoch, is a propaganda organ of the right wing of the Republican party. However, Murdoch's UK newspapers are also vigorously partisan, as the neutrality requirement on broadcasters

does not extend to the press. Now, meticulous rules govern what candidates and their parties can spend on elections, and these rules are tightly enforced. But while candidates are vulnerable to prosecution for spending even a little too much on poster campaigns, the heavy pro-Tory bias of the national press continues to express itself right through election campaigns. Some media regulation can inhibit bias; but it can also be a case of 'shut the doors, they're coming in through the windows'.

In some of these cases, regulation (or re-regulation) can provide a satisfactory answer: the problem was not with the previous rules but with the lobbying process that led to their withdrawal. Any campaign for re-regulation has to get past the hurdle of the continuing existence of the lobby groups that achieved the initial deregulation. Similarly, in principle, a later US Supreme Court could reinterpret the ruling on political expenditure by corporations. Rules that made it easier for politicians, civil servants and corporate executives to keep cycling through each other's revolving doors could be reversed; there could again be severe limits on the roles that seconded corporate staff might play in public policymaking. Regulations and technical criteria that govern public contracts could be made stricter. Political funding could be more closely limited and monitored.

Achieving balanced debate in mass-distribution newspapers is more problematic. Oligopolistic concentrations of politicised economic power operate there as dramatically as anywhere, but remedying that in a manner consistent with press freedom is extremely difficult.

However, in the long run, many such rules will achieve very little by themselves without constant reinforcement: the rewards from corporate political activism are so great that firms will devote substantial resources and entrepreneurial acumen to finding ways around them. For example, it is illegal in the US for corporations or unions directly to fund candidates' election campaigns. But it happens, routinely and on a wide scale, as money can be channelled through indirect paths that are legal, though they reach the same destination.

Also, the playing field of rule-makers and potential rule-evaders is a very uneven one. Laws and regulations may well be established in moments of reforming zeal, perhaps after campaigns to which many people have devoted much time and energy. Once passed by parliaments, however, these regulations are handed over for administration by professional but not very highly motivated bureaucracies. Of course, individuals among regulators and watchdogs may pursue their task with commitment and determination, but this cannot be guaranteed. Also, they operate with resources that reflect the priority a current government accords their activities, which may not be high – especially when we are talking about regulations that might be inconvenient to the interests of some politicians and senior officials.

On the other side stand the regulated: corporations that have very strong and ongoing incentives to find their way around the rules and are capable of buying in the expertise to help them do this. These incentives do not flag or become routine; they are permanently 'live', their actors are always busy. It is not surprising that the only people caught out by rules are the 'small fish' who lack the resources and incentives to get ahead of the game.

Regulations designed to control financial malpractice or improper use of influence – the classes of offence which include many of the problems of corporate power – usually take a particular form. A dense web of rules is produced, alongside demands for elaborate form-filling and presentation of documents, all of which creates inconvenience and expense, is rarely used for any meaningful purpose, and generally proves inadequate to catch the real evaders. When abuses come to light, demands for a tightening of controls lead to ever more detailed rules, which become impenetrable to even the most dedicated regulators, incomprehensible to the general public, and intensely irritating to those having to fulfil the requirements. Eventually the regulations are seen to be absurd, there are demands for their removal, and the sector is once again without controls of any kind.

Any proposal for regulation, in this or any field, should be required to provide a convincing answer to the following questions:

- Given that, for the most part, these new rules will be implemented by passive bureaucracies, and given that anyone with a strong enough incentive is going to find a way round them, will they contribute materially or only symbolically to resolving the problem identified?
- If not, is there any point to them?
- Or how could they be framed so as to be proof against these defects?

One answer is to ensure that relevant information is placed in the hands not just of passive bureaucracies but also of the passionate campaigners who are still watching the issue and care deeply about it. This argues for information requirements being kept simple and made transparent and publicly available, something that the internet has made far easier to achieve.

Basic rules that define as improper various political uses of corporate power are valuable, in that they establish limits to what is acceptable from the perspectives of both the concern for efficient market competition and that for basic political equality. They also define offences that can be punished by fines or imprisonment. But reinforcing rules by way of increasingly arcane and tedious reporting requirements soon reaches the limit of 'added value'. Their main value is the encouragement they offer for a culture of disapproval of

the political use of extensive economic power, and for investigative journalism and research that discovers and lays bare abuses for consideration by that culture.

Encouraging an effective challenge to corporate power is not so easily achieved when the political class shares in its gains. Investigative journalism into corporate affairs is not so easy when newspapers themselves are largely owned by large corporations. However, if the public appetite is sufficiently great, the press and political class will respond in societies where both democracy and markets are strong. Politicians need votes, and the press needs to sell newspapers. After that, it is up to vigilant citizens, who ultimately should not surrender their responsibility for the quality of the living constitution that governs their society.

## References

- Amato G (1997) *Antitrust and the Bounds of Power*, Oxford: Hart
- Bork RH (1993) *The Antitrust Paradox: A Policy at War with Itself*, New York: Free Press
- Crouch C (2011) *The Strange Non-Death of Neoliberalism*, Cambridge: Polity
- Cucinotta A, Pardolesi R and Van Den Bergh R (eds) (2002) *Post-Chicago Developments in Antitrust Law*, Cheltenham: Elgar
- Friedman M and Friedman RD (1980) *Free to Choose*, New York: Harcourt
- IMF (2010) *A Fistful of Dollars: Lobbying and the Financial Crisis*, Washington DC
- OECD (2011) *Divided We Stand: Why Inequality Keeps Rising*, Paris
- Posner RA (2001) *Antitrust Law*, Chicago: University of Chicago Press
- United States Reports (2010) 'Citizens United v Federal Election Commission', 558, US 310



## DEMOCRATISING THE ECONOMY

MATHEW LAWRENCE

Culture, Raymond Williams argued, should be understood as a ‘whole way of life’, an experience rooted in the ordinary and the demotic, not one confined to formal and abstract symbols (Williams 1971). James Cornford envisaged something similar in a properly democratic, pluralist society; the rituals of party politics, and the contest and consent of the ballot box are the foundational ballast but on their own cannot sustain the richness of everyday democracy. For democracy to be a ‘whole way of life’ state institutions must be accountable to the political process but democratic relationships must also flourish in the market and wider society. People must have the time, space and capability to forge lives, associations and social relations marked by values central to democratic life: shared respect, security, status, purpose and voice (Stears 2011).

The limited nature of UK democracy is perhaps nowhere more clear than by its absence in the workplace. Too often the experience of work is one marked by domination, marginalisation and a lack of voice, with the workplace structured by managerial prerogative and disempowering hierarchy that runs counter to democratic ideals. Workplaces for many are the ‘rotten boroughs’ of today: narrowly ordered, with stark divisions in terms of influence, representation and reward. Therefore if democracy is to move beyond its gilded cage of narrow electoral proceduralism towards being a whole way of life it will require a programme of bold institutional innovation that radically disperses economic power and strengthens worker voice and agency within the firm.

Democratic life is Whitman-esque; it is large, it contains multitudes.<sup>1</sup> For it to be rich and deep, it must ensure all people, both as individuals and as members of wider society, have reasonable access to the means to participate and shape the decisions that affect their lives. That right to self-determination requires the application of two principles, one of equality, one of scope. First, it must be egalitarian in its treatment of people: all should have the capacity to participate in democratic life and not be constrained by wider material inequalities or unequal access to democratic institutions. Formal democratic rights without the capacity to realise them are substantively weakened. An obvious example raised elsewhere in this volume is the ability of elites to escape accountability or capture the political process and agenda through undemocratic means (see Crouch in this volume). Second, there is the question of the

---

1 Walt Whitman's *Leaves of Grass* (1892/2012) remains a vivid expression of the lived values of democratic existence.

range of decisions that are subject to democratic scrutiny and decision-making. A narrow democracy limits the range of actions and institutions that democratic control is exercised over. By contrast, a flourishing democratic settlement would encourage the scope of democratic decision-making to encompass wider matters of collective interest, not simply the formal political sphere but extending into the organisation of social or civic life.

Most obviously, a deep democracy should apply to private regimes of economic power the same principles that are applied to forms of political authority. Economic power provides the material capacity for individuals or organisations to pursue their own ends and to shape the lives of others in that pursuit, often without their consent. It should therefore be exercised transparently, must be publicly accountable and should be dispersed to avoid the emergence of damaging monopolies. Stark inequalities of power, and esteem and reward in the workplace, undermine this possibility. If work is a space governed by unjustifiable hierarchies, where influence is channelled upwards not spread outwards, everyday democratic life is necessarily circumscribed. This is particularly damaging to wider democratic participation because the distribution of economic power spills out, intertwining in and shaping wider social and political relations. As a consequence, if the spaces of our common life are to be organised by democratic values then people must meet in positions of equal standing, secure in their sense of agency and not dominated in any sphere of life by arbitrary or unjustifiable authority. The workplace is clearly not such a place. William Morris rightly argued 'no man is good enough to be another's master'. Yet in 2013, one-third of all employees were afraid in some regard at work (Gallie et al 2013), a majority felt they had little control over their working life, and nearly half the workforce felt under excessive pressure each day or at least twice a week (CIPD 2013). If the workplace is such a disempowering experience for so many – a space where we usually spend, after all, much more time than the ballot box – then we are failing to take seriously the claim of equal worth and rights that democratic citizenship should confer (ibid).

Constraints to democratic life in the workplace reflect wider tensions between democracy and capitalism. The unaccountable, unjustifiable concentrations of economic power endemic to contemporary financialised capitalist societies has increasingly subordinated political power to its interests. This trend was exemplified by the recent inability of European social democracies to shape their economies in a way that went against the demands of large capital owners during the financial crisis (Streeck 2011). That a crisis of capital was transformed into a crisis of the state and its legitimacy only adds to the capacity of finance to discombobulate democratic authority. The democratic nation state therefore currently appears incapable of asserting the primacy of its authority over transnational economic power, a trend exacerbated

by long-term structural trends of deunionisation, globalisation, financialisation and technological change. The presently dominant variety of ‘capitalism unleashed’ (Glyn 2007) – its restless commodification of social value; an unstable global financial system that serves itself, not productive ends; hierarchical labour markets that generate gross, incapacitating inequalities – therefore appears to be incompatible with a thoroughgoing democratic life.

The continued disciplining of labour in the UK in the aftermath of a crisis of capital is a powerful example of this tension between democracy and financialised capitalism. Whether in the rise of zero-hours contracts, the seeming definition of arbitrary economic power, the continued erosion of median wages or the fact that a fifth of workers earn less than the ‘living wage’, inhibiting their potential to live a flourishing life, the current organisation of our economy limits the potential for democracy as a form of social existence. The growing divide between ever-higher returns to capital and diminishing returns to labour further threatens to lock in a patrimonial form of economic, and hence eventually, political life. The richest fifth of households, for example, had an income in 2013 that was 14 times greater than the poorest fifth (ONS 2013a). This gap seems positively restrained compared to wealth inequality: the wealthiest 10 per cent own 100 times more than the bottom decile (Rowlingson 2012). Such disparities severely weaken the ability of people to engage in democratic life with roughly equal access to resources and influence and with the capability to pursue their conception of the good life.

Deepening democracy, therefore, in part depends on reconceiving our idea of labour alongside new strategies for its economic re-empowerment. A regimented, drone-like life that requires submitting to a disciplinary regime in exchange for minimal and diminishing financial security is deeply problematic in terms of wider democratic flourishing for all. Embedding democratic values in all forms of work, including care and other types of traditionally gendered – and under-rewarded – forms of labour, therefore requires institutions that can ensure work is a site of creativity, knowledge and the building of powerful relationships, an experience that gives people dignity and the power to resist domination.

That applies not only within the ‘hidden abode’ of production but to the empowerment of non-workers too, for example through consumer (rather than just worker) co-ops and, far more radically, through decommodification and the rolling back of financialisation from all aspects of our everyday lives. Given the UK economy already produces the equivalent of almost £100,000 per family of four, productive power could be used to shorten the working week if labour had a greater claim on productivity gains. Similarly, consumption (including increased future consumption) could be traded for greater free time, vital for a vibrant and participatory democratic culture.

Thus the economy would be more democratic but it would also be reduced in its reach and importance, to the benefit of democratic non-economic life. Nor is this contemporary utopianism: the question of abundance and its potentials for democratic life was central to Keynes' seminal text, *Economic Possibilities for our Grandchildren* (Keynes 1930).

The current democratic impasse in working life was, of course, not arrived at by chance. The production and reproduction of inequalities are grounded in the wider arrangement of social and economic relations. Power is deployed – economic, social, cultural and political – to cast as natural and permanent what is often an arbitrary hierarchical order. Legitimacy is thus lent to social and economic inequalities that militate against rich democratic relationships emerging, whether in the workplace or in wider society (Bourdieu 2005). The democratic challenge for the left when it comes to the political economy is therefore to insist on the essential malleability and unnaturalness of settled economic and political relations. In doing so, it opens space for revived economic institutions that disperse power, esteem and reward far more widely and equitably. Therefore, just as James Cornford helped begin to democratise the creaking constitutional edifice of the UK, the new democratic challenge for the left should be to democratise the institutional framework of the economy to give all people a substantive stake and say in their working lives. To do so, however, the centre-left must break the 'iron cage of market fundamentalism' (Gamble 2009). Institutional conservatism tempered by sporadic bouts of 'vulgar Keynesianism' (Lothian 2012) cannot achieve the radical dispersal of economic power required. Rather, it must pursue a kinetic, innovative statecraft that is not simply content with ameliorating the consequences of a political economy settled on accommodation with neoliberalism and instead focus on building new institutions of democratic wealth and influence in the economy.

For a start that means embracing institutions that can embed democratic relationships in working life. The UK is fourth from bottom among European countries for the formal capacity its labour market institutions give to employees to shape their working conditions and influence the strategic direction of their place of work (ETUI 2013).<sup>2</sup> a programme to build 'countervailing power' (Galbraith 1952) that strengthens the agency and voice of the average worker is therefore vital. Trade unions have a crucial role to play in this. Yet they are currently too weak and residualised to be the main agent for change; only 3 per cent of private sector workplaces have a majority of workers

---

2 The European Participation Index compiled by the European Trade Union Institute puts the UK second from bottom for workers' participation in the EU league. It looks at formal and informal ways of employees getting involved in corporate decision-making. See <http://www.worker-participation.eu/About-WP/European-Participation-Index-EPI>

who are unionised, a figure the movement must try and reverse if it is to act as a genuinely countervailing force.<sup>3</sup>

Thus alternative strategies are required. Building an economic democracy should start with ensuring there is employee representation at the board level and remuneration committees to better capture worker voice on strategic matters. Wider corporate governance reform is also long overdue; the narrow focus on shareholder primacy pursued by managerial prerogative unnecessarily excludes the legitimate interests of wider stakeholders and is clearly an inadequate framework for sustaining an economic democracy. Moreover, it perpetuates the damaging short-term outlook of the UK's business culture (Kay 2012). Alongside moves towards a more balanced stakeholder economy, 'everyday democracy' in the workplace should be supported by instituting a modernised equivalent of the continental work council system that give employees co-determining power over crucial aspects of their daily working life.

However, given the deep concentrations of private economic power in the UK and the potential for regimes of commercial power to capture public interest, simply democratising relations at work is not enough. An economic programme that democratises the means of production is also required to build an economy where all workers can better share in the proceeds of growth, and wealth can be built and held in common. What makes this agenda a double imperative is that it is a necessity driven by economic as much as democratic concerns. Undemocratic workplaces where power is vertically organised, employee voice limited and participation constrained are less competitive than inclusive, participatory alternative enterprises (Bryson 2008). This conclusion is reinforced again and again by international and UK-based evidence. Democratic participation at work matched by inclusive financial rewards support higher employee wellbeing, greater productivity and stronger company performance (Kruse et al 2010). With the economy currently at risk of settling into a low-productivity, low-pay, low-growth path – with the average worker's output falling to 16 per cent below the G7 average and investment rates the lowest since the 1950s (ONS 2013b) – the democratisation of the workplace and its rewards is an essential component of revitalising both democratic and economic life in the UK.

Democratically agreed profit sharing should be central to this new economic agenda. At present, it is weighted towards the financial services, management-led, and regressive in its outcomes. However, profit sharing that involves a process of collective dialogue and is equitable in outcome can recast the relationship between capital and labour. Currently, once set wages are paid, labour has little claim on the distribution of profits, regardless of how effectively it has contributed to a company's performance. Profit sharing signals

---

3 See the 2011 Workplace Employment Relations Study (Van Wanrooy et al 2013) for further details on workplace representation in the UK.

the intention to build an economy where collectively created value is rewarded through widely dispersed remuneration structures. As such its use is strongly associated with improved company performance and individual effort. In France, profit sharing is mandatory in firms with over 50 employees and distributes upwards of €5 billion euros to employees each year. If introducing tax advantages for democratic profit shares cannot achieve widespread coverage in the UK, the government should consider an equivalent of the French model to help recast how reward is distributed in the workplace.

Yet profit sharing is not enough. If we agree that in a democracy political power should be accountable, divided and serve the wider public interest, it seems strange to remain neutral on how economic power organises itself. Ownership and governance structures are vital to how responsibility, reward and voice are accorded within a firm (Davies 2009). A commitment to democratising economic relations therefore requires building up alternative forms of economic organisation that better empower workers. The cooperative and employee-owned sector is an obvious area to focus on. By their structure and governance codes, these are forms of enterprises that are geared towards operating democratically. Their potential to negate the alienating aspect of wage labour by making all workers co-owners is perhaps why Marx (1864) described 'associated labour plying its toil with a willing hand, a ready mind and a joyous heart'. That sentiment was echoed more recently by Roberto Unger who argued that 'deep freedom' is incompatible with the typical employment relationship under capitalism and that the economic goal of the left should be to make all workers either self-employed or co-owners (Unger 2013).

Relatively simple steps can move us towards that ambitious aim. For a start, government should ensure no type of enterprise is disadvantaged because of ownership structure. This is currently not the case in legislation or the tax code and should be addressed. Similarly, employees should be given a 'right to buy', particularly when a firm is likely to be sold or closed down. The scalability of the sector is also held back by a lack of access to capital. The UK should learn from the successful cooperative development funds in Spain, France and Italy that provide more patient forms of finance to support the development of alternative business models. Democratising the economy therefore requires rethinking legal and financial instruments so that they are better able to support firms that pursue the patient optimisation of value.

Democratising capital must therefore be central to the left's new political economy. Prior to the crisis, finance became increasingly divorced from investment in the productive economy. For example, between 1997 and 2007, UK banks lent £1.3 trillion to domestic firms, of which nearly 90 per cent went to financial companies or property deals (Weldon 2013).

Even today only 1.4 per cent of loans outstanding to UK-resident firms from banks is in the manufacturing sector, while 34 per cent remains with financial institutions (Wolf 2013). Financialisation – the extension of financial logic into all forms of life with a commensurate growth in the share of national income flowing to financial institutions – on this scale deeply unbalances the economy. Moreover, it forecloses future possibilities for societal reorganisation by imposing obligations on citizens, businesses and the state through escalating financial debt. During the 2000s, as it increasingly pursued growth through reckless speculation and predatory rent-seeking, the financial sector became ever more detached from notions of value, an escalation of the imaginary which finally ended in a bust that cost the economy over a trillion pounds.

Finance must therefore be reconnected to investment in the productive economy and made more accountable, transparent and participatory. There are a number of obvious steps towards a more democratically minded financial system. First, there remains an urgent need to dilute the current lending oligopoly and reduce systemic risk in the banking system. As a minimum, the recommendations of the Vickers report and the Banking Commission remain valid and should be implemented swiftly and in full. State-backed institutions able to address chronic underinvestment in infrastructure or SME funding – such as a UK investment bank or an equivalent of the US National Business Bank – can also support a financial system that serves the ‘real’ economy. However, to address the limitations of the current financial system will require bolder interventions. Finance is currently dominated by fractional reserve banking and debt-backed money, but steps such as participatory budgeting for social investment on a local scale or asserting some form of public control through common funds over private accumulation can better democratise investment. To this end, three possible new mechanisms worth exploring are a public sovereign wealth fund, a solidarity fund, and a wage-earner fund.

A democratically directed public sovereign wealth fund could link patient capital investment to innovative markets and long-term infrastructure, both areas that our short-termist capital markets are weak at supporting. Markets favour certainty; innovation thrives on long-term disruption. By investing to correct this market failure, a sovereign wealth fund can also help make capital serve social ends more effectively, for example through the creation of eco-towns to ease the housing squeeze. The Norwegian Government Pension Fund fills a similar role; from an initial seed of just \$300 million in 1996, it is now worth \$729.2 billion, with the fund holding 1 per cent of global equity markets. In the UK, a fund could be capitalised from either the Crown Estates – a manifestation of antiquated economic hierarchy worth £8.2 billion – or from some of the proceeds of the sale of the nationalised banks.

A solidarity fund is another way of providing democratic oversight and direction over finance. These are capital investment funds governed by a social logic, tasked with maximising social returns alongside making profit, rather than just short-term profit maximisation, while rooting capital in a place. For example, a fund in Quebec is worth \$9 billion and supports over 500,000 jobs in the region. Moreover, it is a fine example of the theory of obliquity, as it has returns that are far higher than the average investment fund (Kay 2011).

Finally, and perhaps most boldly, the idea of a wage-earner fund, where profits above a certain level are placed in a collective fund, gradually shifting ownership and control of capital towards employees, was central to the visionary Meidner plan in Sweden (Blackburn 2005). A modified version that can begin to constrain the power of private economic interests over the economy and disperse wealth would be worth considering, and would be a suitably ambitious goal for international cooperation.

A more pluralistic, democratic political economy as outlined above is an attempt to extend the scope for democratic action into wider life. However, institutional conservatism inhibits democratic participation, whether through the state or in the economy. Therefore democratising the economy is an agenda that also requires significant reform of the organisation and operation of state power to succeed. In this regard, Roberto Unger's (2013) concept of a 'high-energy democracy' is useful, where localities have the capacity to challenge and innovate how government operates and have the capacity for economic experimentation. In practice, this means people should have the ability to experiment with how life is organised where they live. This could involve cities or regions pursuing different economic strategies, experimenting with procurement rules to favour democratic enterprises, using new 'total cost' accounting standards to better recognise social value, or developing vehicles that embed capital in a way that supports a dense, sustainable local economy.<sup>4</sup> In sum, democratising the economy demands that the pace and reach of democratic life is also radically extended, within both civil society and the state.

This is an agenda for the left. The Coalition government has a clear economic strategy: retrench the state, extend the market, commodify the social, an approach exemplified by the firesale of Royal Mail. However, while possessing a coherence currently lacking in much of the economic thinking of the centre-left, this approach is likely to further exacerbate concentrations of economic power that work against a fully participative democratic polity. Moreover, those of the Conservative party remain blind to the dominating power of the market,

---

4 I am grateful to Joe Guinan for pointing out the scale and density of the experimental democratic underbrush of American life and its relevance to a renewed political economy of the European left. See, for example, Guinan 2013.

obsessed as they are by the ‘disempowering’ effects of the state. They lack both the intellectual and institutional mechanisms to pursue these democratic proposals. The Liberal Democrats have roots in aspects of this agenda; as Stuart White has shown, profit sharing was central to the Liberal party’s mid-20th century programme (White 2009). Yet the centre-left needs to recognise that the workplace is not a neutral space; deep power imbalances act upon people even in places where they meet in positions of notionally equal standing. Economic power must be actively dispersed to counteract this, something a dry liberalism cannot achieve.

The left, by contrast, can call on a rich (if too often ignored) tradition of decentralised economic empowerment and political association in their pursuit of a democratised economy. A good guide is GDH Cole’s compelling vision of guild socialism, which argued for more a pluralist, decentralised democratic economy, where a radical dispersal of economic power in the workplace set individuals free ‘from the twin evils of riches and poverty, mastership and subjection’ (Cole 1956). Although at the time Labour rejected Cole’s vision for a more statist approach, a growing recognition within the contemporary Labour party that in power they were ‘too hands-on with the state, too hands-off with the market’ suggests he is a thinker ripe for reappraisal. Similarly, in writers such as Tawney (1950) there are deep wells to draw on in arguing for democracy to be conceived of as a whole way of life that encompasses the economic sphere. The idea of the radical revival and extension of democratic life into the workplace has more recently been carried forward by people such as Marc Stears (2011). At a time when, as I’ve shown, people are feeling disempowered and unrewarded at work, this is a rich seam in Labour’s intellectual hinterland, worth mining today.

Democratising the economy is also a practical expression of the wider reconceptualisation of the issue of equality in egalitarian theory, moving away from a static focus on distribution towards a richer idea of equal economic power and individual agency (Anderson 1999). By distributing economic power downwards and asserting the ‘primacy of politics’ (Berman 2006) over powerful economic interests, it can help build a more equal society that stresses personal agency, democratic control and a richness of social relations, values that lie at the heart of the left’s vision (Pearce 2013).

Old ways of organising the economy – closed networks, oligopolistic markets, hierarchical firms – are being outcompeted by the power of open and peer-to-peer networks, the creativity of horizontally organised firms and the disruptive force of the internet.<sup>5</sup> If you want to imagine a democratised economy, contrast the deadening uniformity of the

---

5 A potential 3D printing revolution meanwhile threatens to genuinely – and quite literally – place the means of production in the hands of the worker, albeit not in the way traditionally anticipated.

corporate high street today with the competitive vitality, energy and sheer sense of life of a street market. It is this richness that democracy as a whole should seek to foster in our economic life.

Of course, in the meantime, there are significant vested interests that will resist the democratisation of the economy. However, as we began with Raymond Williams, so we shall end: 'to be truly radical is to make hope possible, rather than despair convincing' (Williams 1989: 118).

## References

- Anderson E (1999) 'What is the point of equality?' *Ethics*, 109: 287–337
- Berman S (2006) *The Primacy of Politics: Social Democracy and the Making of Europe's Twentieth Century*, Cambridge: Cambridge University Press
- Blackburn R (2005) 'Capital and Social Europe', *New Left Review*, 34, July–August 2005. <http://newleftreview.org/11/34/robin-blackburn-capital-and-social-europe>
- Bourdieu P (2005) *The Social Structures of the Economy*, Cambridge: Polity
- Bryson A and Freeman R (2008) *How Does Shared Capitalism Effect Economic Performance in the UK?* working paper 14325, Cambridge, MA: National Bureau of Economic Research. <http://www.nber.org/papers/w14235.pdf>
- Cole GDH (1956) *World Socialism Restated*, London: New Statesman
- Chartered Institute of Personnel and Development (2013) *Employee Outlook, winter 2012–2013*, London. [http://www.cipd.co.uk/binaries/6116%20EmpOutlook%20winter%202013%20\(WEB\).pdf](http://www.cipd.co.uk/binaries/6116%20EmpOutlook%20winter%202013%20(WEB).pdf)
- Davies W (2009) *Reinventing the Firm*, London: Demos. <http://www.demos.co.uk/publications/reinventing-the-firm>
- European Trade Union Institute (2013) 'European Participation Index'. <http://www.worker-participation.eu/About-WP/European-Participation-Index-EPI>
- Galbraith JK (1952) *American Capitalism: The Concept of Countervailing Power*, Boston: Houghton-Mifflin
- Gallie D, Felstead A, Green F and Inanc H (2013) *Fear at Work in Britain: First Findings from the Skills and Employment Survey 2012*, London: Centre for Learning and Life Chances in Knowledge Economies and Societies (Institute of Education)
- Gamble A (2009) *The Spectre at the Feast: Capitalist Crisis and the Politics of Recession*, Basingstoke: Palgrave Macmillan
- Glyn A (2007) *Capitalism Unleashed: Finance, Globalization and Welfare*, Oxford: Oxford University Press
- Guinan J (2012) 'Social democracy in the age of resistance: The radical potential of democratising capital', *Renewal*, 20(4). <http://renewal.org.uk/articles/the-radical-potential-of-democratising-capital/>
- Hutton W, Barker G, Carr R, Jay S, Marks P, Mayfield C, Melvin C, Michie J, Mullins P, Nyumbu O and Sunderland R (2012) *Plurality, Stewardship and Engagement: The Report of the Ownership Commission*, London: Mutuo
- Kay J (2011) *Obliquity: Why Our Goals Are Best Achieved Indirectly*, London: Profile Books
- Kay J (2012) *The Kay Review of UK Equity Markets and Long-Term Decision Making*, London: Department for Business, Innovation and Skills. [http://www.ecgi.org/conferences/eu-actionplan2013/documents/kay\\_review\\_final\\_report.pdf](http://www.ecgi.org/conferences/eu-actionplan2013/documents/kay_review_final_report.pdf)
- Keynes JM (1930) *Economic Possibilities for Our Grandchildren*, Econ 116A, Yale University. <http://www.econ.yale.edu/smith/econ116a/keynes1.pdf>
- Kruse DL, Freeman RB and Blasi JR (2010) *Shared Capitalism at Work: Employee Ownership, Profit and Gain Sharing, and Broad-Based Stock Options*, Cambridge, MA: National Bureau of Economic Research
- Lothian T and Unger R (2012) 'Stimulus, slump, superstition and recovery: Thinking and acting beyond vulgar Keynesianism', *Juncture*, 23 October 2012. <http://ippr.org/juncture/171/9818/stimulus-slump-superstition-and-recovery-thinking-and-acting-beyond-vulgar-keynesianism>
- Marx K (1864) 'Inaugural Address of the International Working Men's Association aka The First International', Marxists Internet Archive. [http://www.marxists.org/archive/marx/works/download/Marx\\_The\\_First\\_International.pdf](http://www.marxists.org/archive/marx/works/download/Marx_The_First_International.pdf)
- Office for National Statistics [ONS] (2013a) 'Fifty years of the effects of taxes and benefits on household income', 10 July 2013. <http://www.ons.gov.uk/ons/rel/household-income/the-effects-of-taxes-and-benefits-on-household-income/50-years-of-the-effects-of-taxes-and-benefits-analysis/sty-taxes-and-benefits-on-household-income.html>

- Office for National Statistics [ONS] (2013b) *Economic Review: The Shape of the Economic Recovery*, 2 October 2013. <http://www.ons.gov.uk/ons/rel/elmr/economic-review/october-2013/art-octoberer.html>
- Stears N (2013) 'What should social democrats believe?' *Juncture*, 20(2): 101–110. <http://ippr.org/juncture/171/11280/what-should-social-democrats-believe>
- Rowlingson K (2012) *Policy Commission on the Distribution of Wealth*, Birmingham: University of Birmingham
- Stears M (2011) *Everyday democracy: Taking centre-left politics beyond state and market*, London: IPPR. <http://www.ippr.org/publication/55/7993/everyday-democracy-taking-centre-left-politics-beyond-state-and-market>
- Streeck W (2011) 'The Crises of Democratic Capitalism', *New Left Review*, 71, September–October 2011. <http://newleftreview.org/ll/71/wolfgang-streeck-the-crises-of-democratic-capitalism>
- Tawney RH (1950) *Keeping Left*, London
- Unger R (2013) 'Deep freedom: Why the left should abandon equality', *Juncture*, 20(2): 93–100. <http://www.ippr.org/juncture/171/11414/deep-freedom-why-the-left-should-abandon-equality>
- Van Wanrooy B, Bewley H, Bryson A, Forth J, Freeth S, Stokes L and Wood S (2013) *The 2011 Workplace Employment Relations Study: First Findings*, London: Department for Business, Innovation and Skills. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210103/13-1010-WERS-first-findings-report-third-edition-may-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210103/13-1010-WERS-first-findings-report-third-edition-may-2013.pdf)
- Weldon D (2013) 'Beyond living with capitalism: The Labour Party, macroeconomics, and political economy since 1994', *Renewal*, 21(2/3). <http://www.renewal.org.uk/articles/beyond-living-with-capitalism-the-labour-party-macroeconomics-and-poli/>
- White S (2009) "'Revolutionary liberalism"? The philosophy and politics of ownership in the postwar Liberal party', *British Politics*, 4(2): 164–187
- Whitman W (1892/2012) *Leaves of Grass: The Complete Deathbed Edition*, Los Angeles: CreateSpace
- Williams R (1971) *Culture and Society, 1780–1950*, Harmondsworth: Penguin
- Williams R (1989) *Resources of Hope: Culture, Democracy, Socialism*, London: Verso
- Wolf M (2013) 'Bank of England's Mark Carney takes a bet on big finance', *Financial Times*, 29 October 2013. <http://www.ft.com/cms/s/0/08dea9d4-4002-11e3-8882-00144feabdc0.html#axzz2jPM4e84t>



# TOMORROW'S POLITICAL PARTIES

JESSICA ASATO

Russell Brand's paean to non-democratic political activism in the *New Statesman* captures public attitudes to politics perfectly. He writes: 'Like most people I am utterly disenchanted by politics. Like most people I regard politicians as frauds and liars and the current political system as nothing more than a bureaucratic means for furthering the augmentation and advantages of economic elites' (Brand 2013).

Whether his call for revolution is shared by most people is yet to be seen, but Brand's distaste for the system, and disbelief that voting can ever make a difference, will make heads nod at TVs across the country. For years we have written about the democratic deficit, the decline of political parties, and the disenchantment with conventional politics. We've gone through citizenship lessons, devolved assemblies, a referendum on electoral reform and back again in a quest to reverse the slow decline of our polity, but we have failed to stop the trend of disillusionment.

In this chapter I will set out some reasons why. Then I'll look at the state of our political parties and whether they will wither away, or whether they can be saved. I'll make arguments for political parties to aspire to become broad movements again, less focused on old-fashioned campaigning, and more on community organising. Tribalism must make way for alliances of interest, and command and control must give way to celebrating difference.

## 'Don't vote, it just encourages them'

Party political membership has been declining across all three major political parties (with some 'up-ticks') since the 1980s. Around 3.8 per cent of the electorate were members of political parties in 1983 but only 1 per cent were in 2010 (House of Commons Library 2012). Recent increases in the membership of both Conservative and Labour parties reflect new leaders pursuing new members in opposition, but the reality of compromise in government has seen both Coalition parties lose large chunks of membership.

This decline in membership is mirrored across political parties in most long-standing European democracies. As party voting allegiance breaks down, so does people's propensity to sign up to ideological flag bearers. Seyd and Whiteley (2004) suggest there are both 'supply-

side' and 'demand-led' reasons for the decrease in membership. The three supply-side explanations suggest that people are attracted by single issue groups; that they have less time to dedicate to formal party politics and that social and demographic change, such as women's employment, have drained away supporters. The end of the cold war, the growth of consumerism, geographic mobility and the decline of the working class have all contributed to the loosening of ties to a preferred political party.

In consequence, the UK no longer has a two party system. In 2010, the Labour and Conservative parties took 65.1 per cent of the vote share, compared with 96.8 per cent in 1951 (Lodge and Gottfried 2011). The growth of third parties, coupled with declining turnout in elections, means that increasing numbers of people are not voting for one of the main political parties. Meanwhile the number of marginal seats has halved since the 1950s, which means there is often no point in being a member of a political party if you live in a seat which is unlikely to ever go your way. Labour dominates seats in the north and urban areas, while the Conservatives sweep up many seats in the south and rural areas.

This has been further exacerbated by political parties targeting resources on marginal seats, because of our first-past-the-post voting system, to the exclusion of memberships in safe or unwinnable seats. Marginal seats get the VIP visits, the financing and the attention, while memberships in other areas are overlooked. To be a member in an unwinnable seat is a lonely business.

The main demand-led reason for this is that party leaders have less need now for mass memberships because they can rely instead on mass media to communicate key messages, rather than individuals in their communities. Moreover, parties find it easier to attract few but large big donations than many small ones. Even within political parties, activists are rather more sleepy than they used to be. In 1990, 55 per cent of members said they had been door-to-door canvassing in the last five years, but only 32 per cent had in 1999 (Seyd and Whiteley 2004).

To this brief list I would add a few other reasons. The first is that party members feel they have less power to influence policy, choose candidates and affect change than they did in the past. While some of this may simply be nostalgia (elites have always controlled political parties), reforms introduced by Labour such as the National Policy Forum process have led to a weakening of internal democracy, while initiatives from the Conservatives such as the A-list selection process prior to 2010 have infuriated local Conservative associations. It is ironic that many of the ideas pursued by political parties to try and open up their processes and attract new members have in fact mostly led to the alienation of the few members they have left.

Candidate selection is another area that local activists used to have more control over. The professionalisation of politics – a response to the glare of the media – has led to a centralisation of candidate selection. In both major political parties, the last minute ‘parachuting in’ of favoured sons and daughters has led to activist disenchantment and a sense (not dissimilar from the public’s attitude to politics) that the top brass will always get their way.

The next question is: should we care? After all, many old institutions from trade unions to churches have seen their memberships melt away over the last half century. The difference is that neither of these institutions run, or seek to run, our country. So yes, we should care, and these are the reasons why.

First, with fewer party members, political leaders lose legitimacy as they speak on behalf of, and are informed by, an ever-smaller part of society. As parties lose their mainstream members, only those who are careerists or odd-balls are left. This means that political leaders hear either what they want to hear from those who want to get on, or have to pander to fringe interests to keep their grip on power.

Second, the pool of people who go into politics is becoming less representative of people’s backgrounds (see Birch in this volume). This in turn has led to the growth of the so-called political class. When Labour and the Conservatives had a million members each, they had a wide base of people from which to choose candidates. In turn, those candidates were selected by a group much more representative of voters as a whole.

Now, selections are decided by a tiny number of members, and those who go on to parliament don’t reflect the wider population. For example, the proportion of MPs with manual work backgrounds has fallen from 15.8 per cent in 1979 to 4 per cent in 2010. Concurrently, the percentage of MPs who were previously politicians or political organisers has increased from 3.4 per cent in 1979 to 14.5 per cent in 2010. Local government has a different problem. Less than one in five councillors are under 50 years of age while almost four in 10 are aged over 61 years (Thrasher et al 2012). Given that the average age of a Conservative member is over 60, we shouldn’t be surprised (Economist 2013). Moreover, just 31 per cent of councillors are women, though this is higher than the House of Commons where only 23 per cent of MPs are women (House of Commons Library 2013).

Third, large memberships give political leaders an alternative to big money. Those with financial interests inevitably seek to influence those who might have power to limit or increase their income. While corruption on a large scale does not afflict British politics, political parties continue to solicit large donations from individuals, trade unions and corporations (see Crouch in this volume) to fund their election war

chests and staff party HQ. Whether these donations influence policy or not, there is a palpable sense that few people or organisations give large amounts of money through pure altruism. If parties have a larger chunk of income from members, it gives them more legitimacy and removes the sense that they are in the pocket of big business, the trade unions or run by wealthy individuals such as Lord Ashcroft or Lord Sainsbury (even if both have now stopped donating to the Conservative and Labour parties respectively).

Fourth, without strong political activism at a constituency level, politics has evolved into a media war predominantly pursued in Westminster, rather than on people's doorsteps. While there was never a golden era of MPs who spent their days pounding down driveways year-in-year-out, and some only visited their constituency once a year, much of the focus on politics today takes place in the gilded corridors of parliament. Active local parties used to hold regular meetings, often in a party-owned social club that played a part in the local community. Now those clubs have been sold off and parties struggle to have a meeting with their own members, let alone with the public. This has further deepened a sense of disconnection between people where they live and the powers that be.

Fifth, the decline in political membership has contributed to areas of the country becoming political deserts where one party dominates without opposition. For example, in 2011, in 24 local authorities, at least one in 10 councillors were elected unopposed (Electoral Reform Society 2011). Much of this can be ascribed to the first-past-the-post voting system which deters opposition parties from fielding candidates in areas where they don't believe they have a hope of winning. However, even where a political party might have a chance of overturning an election over time, the lack of manpower on the ground makes it unlikely.

The atomisation of individuals, which has led to a loss of social glue in communities as charted by Robert Putnam in *Bowling Alone*, applies equally to our political parties. Political participation is a choice 'other people make' rather than something that is seen as a duty upon all. People think politics is too complex or distant for them to engage with and prefer to ignore it or get angry with it. Therefore, our political system has become dominated by those who do engage with it: wealthy, older, white voters; large, often corporate, lobbyists; and professional politicians. By disengaging with politics, we have simply allowed the very things we say we dislike about politics to take precedence.

What about the increase in engagement in single-issue campaigns, or the growth in non-party political movements such as 38 Degrees? Couldn't we rely on these new movements to use their muscle to lobby political parties to do the right thing? To some extent, I think we will have to, but to do so entirely would be to abandon the concept of organising our democracy around core political beliefs, and I think this dangerous.

It is much harder to hold politicians to account if they are elected on the basis of single issues rather than a set of values. In the absence of daily referendums, we will have to continue to trust politicians to use their judgment, backed up by their stated guiding principles; not least because no decision can ever please everyone all of the time. That is the price of democracy.

## Can political parties survive?

One of the axiomatic trends at the moment is the rise of the independent celebrity politician. Take George Galloway, Nigel Farage, Boris Johnson or Alex Salmond. You don't have to like them to agree that they break the political mould and capture people's attention. What links them all is their ability to say what they think, free from the spin doctor's careful script, the party line and the professional politician's caution. For sure, many of them are clever strategists and their personas are carefully calibrated – take the fact, revealed by biographer Sonia Purnell, that Boris Johnson ruffles his hair on purpose before he goes on camera (Purnell 2012).

However, the public consistently cite the fact that all political parties, and politicians, are the same (Cowley 2012). No matter what we know about the rise of rebellions in parliament through the work of Philip Cowley, the public think politicians are sheep, led unthinkingly through the 'aye' and 'no' lobbies, given a script before they sit in a TV studio, and cowed by whips eager to destroy the glittering careers in ministerial office they all seek. This is a deeply unfair caricature which undermines the work of the vast majority of politicians who work all hours, represent their constituents in the most difficult of cases, and do the time-consuming leg-work of scrutinising legislation in rooms which never see the light of publicity.

But life isn't fair, and either we try to change the way politicians and political parties operate, or we must content ourselves with the slow but steady degradation of our democratic process. One way would be to open up democracy in political parties to the wider electorate through primaries. Primaries were first used in the UK after the elections expenses scandal in 2009. The Conservative party used all postal ballot primaries to select their candidates in Totnes and Gosport after the sitting MPs stepped down.

Prior to that, Boris Johnson was selected in 2007 using a primary open to anyone on the London electoral register who phoned a telephone hotline. He won 75 per cent of the 20,019 votes cast. The Labour party has now announced that it will introduce a primary selection process for its candidate for the London mayoral election in 2016, but this will require ratification at a special conference to change party rules in March 2014.

Research conducted by Will Straw for Progress found that the median number of Labour members voting in a parliamentary selection is around 40 (Straw 2010). In an average constituency of 75,000 people, this suggests a serious democratic deficit. Evidence for turnout in selections in other political parties is not available, but with smaller memberships, it is likely this number is even smaller. Allowing members of the public to participate in candidate selection could help in a number of ways.

First, it would help to create candidates who had a personal mandate. Take Sarah Wollaston, the MP selected in Totnes by a primary. She is widely regarded as someone who speaks her own mind without fear or favour and links it back to the fact she was selected by the public not her party. In an interview with the *Observer*, Wollaston said: 'I think the public dislike the cardboard cut-out, the lobby fodder, the sycophantic [planted] questions [in the Commons] ... they don't like it' (Helm 2013).

She has since claimed that David Cameron's plans to fund 200 open primaries for parliamentary seats has been shelved, precisely because they create an 'awkward squad' of candidates (Dominiczak 2013). Not all MPs selected through a primary would necessarily follow Wollaston's route, but as in US primary elections, candidates would likely feel a stronger connection to their locality than their party. In a study by Philip Cowley, 47 per cent of respondents said they wanted MPs with a more local connection (Cowley 2013).

Second, primary selections would enable members of the public to choose candidates who looked and sounded more like them. Fears that the public wouldn't select women, for example, have been proven unfounded in the US (see Dolan 2006). While this in itself wouldn't lead to a de-professionalisation of politics, which is as much to do with the nature of modern political communications and the pressures of being a politician, it would certainly help to counter the view that politicians are elitists picked by elites.

Most of the arguments against primaries are to do with the pernicious impact of political fundraising as experienced in America. There is nothing, however, to suggest that the UK couldn't avoid that situation. We already have spending caps and outlaw political advertising on TV. Ensuring that candidates in primaries also have a low spending cap and capping the size of donations ought to deal with this issue. Another argument suggests that political parties will game the primary system to ensure the weakest candidate is selected by getting supporters to engage in an opposition primary. First, this doesn't happen in practice in the US, but second, you could overcome this by only giving voters one choice of party on primary election days.

The Labour party, special conference aside, looks set to introduce a London primary for the selection of its mayoral candidate, although the date and many other details are yet to be determined. Already

announced is a change in voting participation age, so that 16- and 17-year-olds will be able to take part – a move that the French Socialist party introduced for their selection of presidential candidate in 2011. It is likely that in the absence of state funding for primaries, Labour will charge electors to vote in them – another lesson of the French primary. If this innovation is to become a broadly accepted democratic change, however, it would be preferable if there was cross-party agreement on the future of primary elections, rather than a mish-mash of reforms designed more to benefit political parties than to enhance democracy.

Aside from primaries, political parties need to develop into serious grassroots organisations, located in communities, focused not just on elections but building support for campaigns and local change. As Anthony Painter (2013) writes, political parties need to embrace ‘contact democracy ... where local needs are met, new voters are mobilised into mainstream democracy, hate and extremism is challenged, support for community life is extended, and social capital is developed within communities’. The Labour party has been experimenting with this through their community organising programme, spearheaded by Arnie Graf, the Director of the Industrial Areas Foundation in Chicago, who has 50 years’ experience of community campaigning.

The scheme, which is being rolled out across constituency Labour parties but targeted mostly in marginal seats, focuses on recruiting supporters for the Labour party through ‘actions’ – hyper-local campaigns which engage ordinary voters by enlisting their support for change. Successful initiatives have challenged legal loan sharks, created a new voluntary code for private sector tenants in Cardiff and helped put pressure on councils to introduce the living wage. Such actions move the focus away from politicians legislating to cure people’s ills from Westminster and instead ask the public to be part of the solution. Instead of ‘us and them’, it’s us *with* them. Importantly once local people have taken part in one action, they are asked to do another. It’s a continual process of engagement rather than a one-off. By working alongside people in the community, members of political parties are doing something practical at the same time as building relationships.

Whether this will in time change people’s perceptions of political parties, is up for debate. The lessons of Barack Obama’s campaign suggest that grassroots political movements can be created and be effective at mobilising disenfranchised voters. Presidential campaigns, however, are easy to get involved with. Political parties’ baggage of policy, procedures, internal democracy and history are higher barriers for most people to hurdle.

That’s why developments such as the Labour supporters’ network are important. The network was created through the ‘Refounding Labour’ review of its internal structure in 2011. Members of the public

can sign up as supporters of the Labour party without becoming a member or having to pay a membership fee. In return they get invited to party events, receive party literature and may be asked to help out with leaflets or door-knocking. Once again, this is a new scheme and its success is yet to be determined, but if political parties can lower the barriers to getting involved with what they do, more people might be inclined to give it a go.

The growth of digital communication also gives political parties a cost-effective way of engaging members and potential supporters in campaigns and party processes. NationBuilder was first used by the Liberal Democrats, and more recently has been adopted by the Labour party, to develop individualised voter records which don't just link their voting preference but also their campaigning preferences, as well as their digital profile on Twitter, Facebook or other social media platforms (see Pickard 2013). However, much digital activity to date analysed by the Hansard Society suggests that political parties are 'digital followers, not leaders'. Indeed, the report *Behind The Digital Campaign* cautions that 'the transformative power of the internet has been and ... continues to be, over-stated' (Williamson et al 2010). It is suggested that the public tend to engage online with single issues and with standalone personalities, hence the success of organisations such as 38 Degrees, which boasts 1.7 million members.

A major potential reversal of political party fortunes is currently being attempted by the Labour party in the wake of the Falkirk selection debacle. Ed Miliband announced reforms that, if successful, could see individual trade union members in unions affiliated to the party join as Labour party members themselves (see Eaton 2013). Even if only 10 per cent of union members signed up, the Labour party could swell its ranks by around 200,000 members, which would double its current size. This move would not only provide the party with new activists, it would reassert its historic link with workers and challenge the perception that the party was no more than a talking shop for the urban intelligentsia. Historically, it could provide a signal change from the decline of mainstream political parties.

Another reform that could help to change perceptions of political parties and spark a wave of small donations would be to reform tax rules. Currently you can leave a legacy to a political party without paying inheritance tax. A 'gift aid' for political parties would legitimise political giving and ensure that donating was seen as good for democracy rather than the other way round. Combined with caps, such as suggested by the Labour party on the size of donations, such a move could encourage parties to find an 'army' of ordinary donors, in the same way as charities. In the absence of any real moves towards state funding of political parties, finding ways to diversify the base of parties' incomes would relieve their reliance on big donations.

Finally, another important aspect of saving political parties is the need for them to embrace internal and external cultural change. Internally, political parties have become too dominated by top-down control and command-style policing of debate and dissent. Both Labour and Conservative parties suffer criticism from members that they are locked out of policymaking and that their voices aren't taken seriously by the leadership. To some extent this has always been the case – as in democracy, no one can agree with all policy decisions all of the time – but websites such as ConservativeHome and LabourList frequently document the frustration members have with their party's need for internal discipline.

While whipping in parliament and local government may be a necessary tool for effective governance and opposition, the same techniques shouldn't be necessary in the party at large. Modern political parties should embrace positive dissonance and welcome challenge from members. The media might initially attempt to portray this as division within political parties, but without having places for debate and difference in an organisation as complex as a political party, our discourse becomes clinical and designed to show unanimity in thinking, reducing political activists to automatons. Political parties should look to end the politics of 'stitch and fix', as Chuka Umunna called it in a recent interview with *Progress* magazine (Philpot and Harrison 2013).

As for changing the image of political parties externally, the public say they wish politicians would put party self-interest to one side and work together in the national interest. As pointed out earlier, political allegiance is disappearing. A YouGov poll in June 2012 found that 34 per cent of Labour voters in 2010 described themselves as 'not very strong' supporters, while the same applied to 60 per cent of Liberal Democrat voters and 34 per cent of Conservative voters. If political parties are to respond to this shift in public attitudes, they will have to become more pluralist and find ways of both working more effectively cross-party, as well as building alliances with civic organisations. Many of the long-term problems we face as a country such as climate change, the funding of long-term care, pensions, and transport infrastructure, are exacerbated by lack of political consensus between parties. We may not be able to end 'Punch and Judy' politics, but a grown-up recognition that politicians of all colours must work together to avoid crises in the future wouldn't go amiss.

## Conclusion

Reversing the decline in membership of political parties may not be possible, but it is clear that political parties need to continue if we believe MPs need a set of values and beliefs for which they are held to account. By embracing looser memberships, such as supporter networks, building relationships with people in their local communities on issues that matter to them, and enabling voters to take a stake in hitherto party

member-only processes, such as candidate selection, we may be able to build political parties with mass movements underpinning them.

'Structural' changes by political parties are unlikely to be the whole answer, however. Unless we raise the importance of democratic engagement more generally, people will always find something more interesting to do. As comedian Robert Webb wrote in a response to Russell Brand's *New Statesman* editorial:

'There's a lot that people interested in shaping their society can do in between elections – you describe yourself as an activist, among other things – but election day is when we really are the masters. We give them another chance or we tell them to get another job.'

Webb 2013

Political parties can find new ways to enthuse the public, but if no one cares one way or another, democracy will become a fringe enthusiasm.

## References

- Economist (2013) 'Grassroots trouble', Bagehot's Notebook, 25 May 2013. <http://www.economist.com/news/britain/21578419-tory-partys-problems-its-base-are-part-broader-generational-struggle-grassroots>
- Brand R (2013) 'We no longer have the luxury of tradition', *New Statesman*, 24 October 2013. <http://www.newstatesman.com/politics/2013/10/russell-brand-on-revolution>
- Cowley P (2002) *Revolts and Rebellions: Parliamentary Voting Under Blair*, Politico's
- Cowley P (2013) 'The public do want working class MPs – and more local ones too', Ballots & Bullets blog, 1 February 2013. <http://hottspolitics.org/2013/02/01/the-public-do-want-working-class-mps-and-more-local-ones-too/>
- Dolan K (2006) 'Women Candidates in American Politics: What We Know, What We Want to Know', conference paper presented to the Midwest Political Science Association, 20–23 April 2006. [http://rooneycenter.nd.edu/assets/11304/dolan\\_conference.pdf](http://rooneycenter.nd.edu/assets/11304/dolan_conference.pdf)
- Dominiczak P (2013) 'Plans for open primaries abandoned, Sarah Wollaston claims', Telegraph, 16 June 2013. <http://www.telegraph.co.uk/news/politics/conservative/10124003/Plans-for-open-primaries-abandoned-Sarah-Wollaston-claims.html>
- Eaton G (2013) 'Miliband announces Special Conference to approve Labour-trade union reforms', *New Statesman* Stagers blog, 22 July 2013. <http://www.newstatesman.com/politics/2013/07/miliband-announces-special-conference-approve-labour-trade-union-reforms>
- Electoral Reform Society (2011) *English Local Elections*, London. <http://www.electoral-reform.org.uk/downloadfile.php?PublicationFile=190>
- Helm T (2013) 'Sarah Wollaston: "I was elected to speak my mind. So why does Cameron keep ignoring me?"', *Observer*, 16 June 2013. <http://www.theguardian.com/politics/2013/jun/16/sarah-wollaston-speak-my-mind>
- House of Commons Library (2012) *Membership of UK political parties*, briefing note SN05125, London: TSO. <http://www.parliament.uk/briefing-papers/SN05125>
- House of Commons Library (2013) *Women in parliament and government*, briefing note SN01250, London: TSO. <http://www.parliament.uk/briefing-papers/SN01250>
- Lodge G and Gottfried G (2011) *Worst of Both Worlds: Why First Past the Post No Longer Works*, London: IPPR. <http://www.ippr.org/publication/55/1820/worst-of-both-worlds-why-first-past-the-post-no-longer-works>
- Painter A (2013) *Democratic Stress, the Populist Signal and Extremist Threats*, London: Policy Network. <http://www.policy-network.net/publications/4357/Democratic-Stress-the-Populist-Signal-and-Extremist-Threat>
- Philpot R and Harrison A (2013) "'Time to end stitch and fix'", *Progress*, 20 September 2013. <http://www.progressonline.org.uk/2013/09/20/time-to-end-stitch-and-fix/>

- Pickard J (2013) 'Westminster's tech revolution', *Financial Times*, Westminster blog, 26 September 2013. <http://blogs.ft.com/westminster/2013/09/how-political-parties-are-increasingly-harnessing-the-internet-to-election-campaigns/>
- Purnell S (2012) *Just Boris: A Tale of Blond Ambition – A Biography of Boris Johnson*, London: Aurum Press
- Seyd P and Whiteley P (2004) 'British party members: An overview', *Party Politics* 10(4): 355–366
- Straw W (2010) 'Primary lesson', Progress Online, 21 September 2010. <http://www.progressonline.org.uk/2010/09/21/primary-lesson/>
- Thrasher M, Borisyuk G, Shears M and Rallings C (2012) 'The nature of local representation: Councillor activity and the pressures of re-election', presentation to Elections, Public Opinion and Parties Annual Conference, University of Oxford, 7–9 September 2012. <http://www.elemisss.edu/courses/pol628/seydwhiteley04.pdf>
- Williamson A, Miller L and Fallen F (2010) *Behind the Digital Campaign: An Exploration of the Use, Impact and Regulation of Digital Campaigning*, London: Hansard Society. <http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/Behind-The-Digital-Campaign-2010.pdf>
- Webb R (2013) 'Dear Russell, choosing to vote is the most British kind of revolution there is', *New Statesman*, 30 October 2013. <http://www.newstatesman.com/2013/10/russell-brand-robert-webb-choosing-vote-most-british-kind-revolution-there>



# POPULISM, SOCIAL MEDIA AND DEMOCRATIC STRAIN

JAMIE BARTLETT

My thinktank, Demos, was founded in 1993 with the aim of reconnecting people to politics. In a 2005 paper *Everyday Democracy*, then-director Tom Bentley argued that the growing gap between political elites and daily experience would become a vicious circle, helping to erode our democratic culture, leading to a 'breakthrough and dominance of a far more basic and violent form of identity politics' (Bentley 2005: 17). By any measure, this concern is as pressing today as it was then.

## A tale of democratic decline

British democracy feels under strain. Not because people no longer believe in the principle or concept – research shows that young people remain very interested in politics – but because they do not like the way it is being conducted. A 2008 survey found that 68 per cent of British respondents were either 'not very' or 'not at all' satisfied with democracy overall, 81 per cent had no confidence in government, and 87 per cent either had 'not very much' confidence in political parties or 'none at all'.<sup>1</sup> In 2012, 82 per cent of UK citizens said they 'tend not to trust' political parties.<sup>2</sup> At times, the downward shift can be quite dramatic. Between 2008 and 2010, the percentage of people in England who think MPs are dedicated to working well for the public dropped from 46 per cent to 26 per cent (McGuinness 2012) – and this was before the expenses scandal.

Inevitably, this is reflected in dwindling participation, although the causal link is unproven, perhaps unprovable. Electoral turnout in the UK has been on a downward trend since 1950, when 84 per cent of the population turned out to vote, compared with 65 per cent at the last general election in 2010 and only 44 per cent of those aged 18–24.<sup>3</sup> The three most recent electoral turnouts have been the three lowest since the advent of universal suffrage (although there has been a slight increase since 2001).<sup>4</sup>

1 European Values Study 2008, Q63: 'Please look at this card and tell me, for each item listed (political parties, government), how much confidence you have in them, is it a great deal, quite a lot, not very much or none at all?'

2 Eurobarometer 2012: [http://ec.europa.eu/public\\_opinion/cf/showchart\\_column.cfm?keyID=2189&nationID=15.&startdate=2003.11&enddate=2012.05](http://ec.europa.eu/public_opinion/cf/showchart_column.cfm?keyID=2189&nationID=15.&startdate=2003.11&enddate=2012.05)

3 UK Political Info, 'General election turnout, 1945–2010': <http://www.ukpolitical.info/Turnout45.htm>

4 Ibid; Ipsos MORI, 'How Britain voted in 2010': <http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oltemId=2613>; Electoral Commission, 'Turnout at recent UK general elections': <http://www.electoralcommission.org.uk/faq/elections/turnout-general-elections>

This downward trend extends to other types of political activism as well. Various measures of political engagement, like the frequency of donating money or signing a petition, reached their lowest levels in a decade in 2012 (Hansard Society 2012). But the most arresting figure is surely the collapse in the membership of the main political parties. Labour now has about 193,000 members, the Conservatives between 130,000 and 170,000, and the Liberal Democrats 49,000 (McGuinness 2012). By contrast, in the early 1950s the combined membership of the Conservative and Labour parties was around 4 million. What's more, this decline is unlikely to be reversed, because younger people are not only less likely to be members of political parties (Sloam 2007), they also display a comparatively weaker commitment to these parties than older Britons (Clarke et al 2004).

According to Conservative MP and all-round parliamentary iconoclast Douglas Carswell, these sorts of statistics are 'pre-revolutionary'. If so – and I think he is correct – what form might the coming revolution take?

### First shots in a populist revolution

The growth of populist parties across the continent over the last decade signals the opening salvo. Populist parties are not easily categorised as left- or right-wing, but they pit the good, honest, ordinary voter against the out-of-touch, liberal, mainstream political elite. The populists claim to represent the former against the latter, an authentic and honest voice in a world of spin and self-interest. In that, they surf the wave of the widespread disillusionment I have described. Sometimes that takes the form of right-wing populists (sometimes called right-wing extremists): Marine Le Pen in France, Geert Wilders from the Netherlands or Pia 'Mama' Keirsgaard of the Danish People's party are examples. They are often highly critical of immigrants and, increasingly, Islam. But most claim to denounce racism, support generous social security benefits (although they often wish to reserve it for majority populations) and present themselves as defenders of liberal or Christian values.

Quite why it has tended to be the populist right that has emerged over the decade or so is not entirely clear. The failure of communist parties in eastern Europe may have contributed to a certain wariness from voters. More likely it is the large growth in recent years of the proportion of national populations born overseas, and a heightened threat from Islamist terrorism and extremism. Populist right-wing parties revisit these twin themes frequently, stressing the danger they pose to national culture and identity. Economics rarely figures, which is why the economic crisis may have lifted the populist left more than the right. Jean-Luc Mélenchon, a rabble-rousing Communist candidate, received 11 per cent of the first-round vote in last year's French presidential race, while in Greece Syriza might just beat the

New Democrats in the next election.<sup>5</sup> Beppe Grillo, from Italy, straddles both left and right. He is a popular comedian and blogger, and ran on a vehemently anti-establishment ticket, selecting his candidates online and refusing to give any interviews to the Italian media, communicating instead through his own blog. His political career really took off in 2009, when he held a 'Fuck-off day' directed at the ruling classes. Despite going against every PR rule, one in four Italians voted for his Five Star Movement earlier this year.

The supporters of left and right populist parties differ on specifics, of course. While those on the right tend to concern themselves with immigration, integration and identity, those on the left are more worried by economics and jobs (though it is important not to exaggerate this distinction). They are united, however, in their general dissatisfaction with the institutions of political life. In my research looking at the online supporters of populist parties and movements, these supporters consistently displayed significantly lower levels of trust in political parties, the justice system, parliament and the media than the typical citizen – whether they were from the left or right was immaterial (see Bartlett et al 2011).

## Broadcasting populism

On their own, disenchantment and disillusionment are rarely enough, but new forms of discommunication, particularly the networking, organising and mobilising potential of social media, are allowing disenchantment to materialise into real-world affect. The Oxford Internet Survey – an annual snapshot of our internet behaviour – shows a very definite shift toward online political activism. The percentage of people who have signed an online petition doubled to 14 per cent between 2007 and 2011, while those doing so offline has fallen. In 2011, for the first time, people were more likely to contact a politician or a political party online (eight per cent) than offline (seven per cent). In the same year, two new, exclusively online political activities appeared: nine per cent of people sent an electronic message supporting a political cause, and the same number commented on politics in social media.<sup>6</sup> If the survey was conducted again today, Facebook groups and Twitter campaigns would almost certainly feature more prominently (see Bartlett et al 2013).

Populist parties are keen on social media, and they are good at it. The medium fits the message: it is distributed, non-hierarchical and democratic. It is an alternative to the mainstream media, which many supporters of populist parties strongly distrust. It is not controlled by the elites. Instead, the content is generated by us – the honest,

---

5 A Public Issue poll, 17 May 2012, on behalf of Skai television and *Kathimerini* newspaper had 28% backing Syriza, 27.5% New Democrats (ND); Marc/Alpha poll, 15 May 2012: ND 21.6%, Syriza 20.7% (46.4% preferred the ND leader for prime minister, 37.8% the Syriza leader); VPRC poll, 26 April 2012, for a leftist radio show: Syriza 29.5%, ND 27%; Metron Analysis poll, 21 April, for newspaper *Eleftherotypia*'s Sunday edition: ND 27%, Syriza 26.2%.

6 Oxford Internet Institute, 'Oxford Internet Surveys': <http://oxis.oii.ox.ac.uk/>

hardworking, ordinary citizens, exactly the people who the populists are defending. The short acerbic nature of populist messages works well in this medium. Humour, outspokenness, pithy put-downs and catchy slogans: these are the DNA of cyber culture.

Grillo used social media to quite devastating effect. The most followed and 'liked' politician in Europe by a mile, he mocked Berlusconi as a 'psycho sex dwarf'. His messages went viral, and felt more authentic than any wooden press release. Of course, all the while, inside Grillo's Trojan horse were exhortations for his supporters to form local meet-up groups, discuss politics, get out and vote, and ask friends to do likewise – confounding pollsters in the process.

In the UK, the level of mistrust in political institutions is every bit as high as elsewhere in Europe. A combination of factors – principally our electoral system, a nosy, aggressive media, and a general dislike of demagogues – has sheltered us from the populist storm. But the roof might be about to come off. In 2011, George Galloway won the Bradford West byelection, capturing an eye-watering 36 per cent swing from Labour. Like Grillo, Galloway credited much of his success to Twitter, as a way to circumnavigate the stranglehold the main parties have on local and national media, and the might of their established local presence and organising force. Although not social media fanatics, Ukip managed around 25 per cent in this year's local council elections, and is expected to do even better in this year's election.

The extent to which a leap in support for populist parties and politicians presents a major threat to democracy is unclear. There is a natural check on the size of populist parties: their radicalism and popularity is usually inversely proportionate to their distance from power. As they become more successful they are held to greater scrutiny, and the subsequent fit of self-imposed seriousness makes them appear more like the parties they claim to oppose. When in power, as in the agreements with governing coalitions made by the Danish People's party or Geert Wilder's Freedom party, their popularity often drifts as impossible promises are not kept. Making policies is always a lot more difficult than opposing them.

What's more, 'populism' is malleable, elastic, at once a term of abuse as well as of pride. Certainly, it can be an important check on a political system that becomes too out-of-touch with those it is meant to represent, a sort of democratic nudge. Like it or not, there is some truth to the populist critique that we are governed by a mainly liberal elite drawn from the same narrow cast of actors. Since 1979 there has been a large decrease in the number of MPs who were formerly manual workers, from around 16 per cent of all MPs in 1979 to 4 per cent in 2010; over the same period the number of MPs with a political background grew from 3 per cent to 14 per cent (McGuinness 2010).

Concerns about the effect of immigration and segregated communities are in some instances perfectly legitimate, and cannot and should not be ignored in a liberal democracy worthy of the name. But there is far less to commend populism when it resorts to an overly simplistic form of politics that stirs up emotion and channels it unfairly against (usually foreign) scapegoats.

## Social media in a strong democracy

In a period when electoral turnout is so low – only half of the electorate voted in Galloway’s landslide win, and less than 25 per cent in Ukip’s recent breakthrough – ‘getting the vote out’ is ever more significant. Winning elections is increasingly about mobilising voters, and here social media could be a game-changer. Any party presenting a radical alternative to the status quo has a very large potential support base. Moreover, the cost of entry for newcomers is far lower: you don’t need the weighty machinery of an established party when Facebook groups and Twitter feeds can spread a message and mobilise voters for virtually no cost.

These changes will, I suspect, make coalition governments more frequent. This is perhaps not a bad thing in itself, although it may make consensus more difficult to achieve, including on the difficult, long-term and sometimes quite technocratic questions around social care, the NHS or pension reform. These trends may also tilt the incentives of individual parliamentarians. The 2010 intake are one of the most rebellious on record, and in part that may be down to the increased contact they can have with their constituents through these new channels. In the long run, these effects may combine to create a situation in which dissatisfaction with coalition government, counterintuitively, makes coalition government more likely still, as the main parties’ share of the vote diminishes further.

The parties themselves may need to change if they want to thrive. They will have to get used to a new type of membership – elastic, less loyal and conditional – which can be mobilised at election time. There are now, after all, significantly more unique Twitter followers for both the Conservatives (430,893) and Labour (316,237) than there are formal party members. It is still not clear exactly what it means to ‘follow’ or to ‘like’ a party or an individual. Quite how far this virtual membership is a reliable replacement for the current political party membership system – for raising funds, volunteering, campaigning or attending events – is not clear.

However, Twitter followers are loyal – most follow people from one party only, with a relatively low degree of overlap (Bartlett et al 2013). Moreover, online supporters of parties and movements are usually quite involved, voting for the parties they ‘like’ and being much more likely than average to demonstrate or strike (Bartlett et al 2011). Nevertheless,

getting used to the 'cloud' is not to be done at the expense of the street: there is still no substitute for face-to-face contact with voters (Issenberg 2012).

The future belongs to the party that can respond to concerns that people have in a way that makes sense to them, without tipping into unhealthy populism, and by using modern communications and technology to understand, connect, react and mobilise. There will be more 'shock' results in the years ahead. Whichever way you view it – and it is often a matter of perspective – this will jolt some life into a stuttering democracy, making the whole system more chaotic but hopefully also more dynamic, diverse, and open.

## References

- Bartlett J, Birdwell J and Littler M (2011) *The New Face of Digital Populism*, London: Demos. <http://www.demos.co.uk/publications/thenewfaceofdigitalpopulism>
- Bartlett J, Bennett S, Birnie R and Wibberley S (2013) *Virtually members: The Facebook and Twitter followers of UK political parties*, briefing paper, London: Demos. [http://www.demos.co.uk/files/Virtually\\_Members.pdf?1366125743](http://www.demos.co.uk/files/Virtually_Members.pdf?1366125743)
- Bentley T (2005) *Everyday Democracy*, London: Demos. <http://www.demos.co.uk/publications/everydaydemocracy>
- Clarke H, Sanders D, Stewart M and Whitely P (2004) *Political Choice in Britain*, Oxford: Oxford University Press
- Hansard Society (2012) *Audit of Political Engagement 9*, London. <http://hansardsociety.org.uk/files/folders/3344/download.aspx>
- Issenberg S (2012) *The Victory Lab: The Secret Science of Winning Campaigns*, New York: Crown Publishing Group
- McGuinness F (2010) Social background of MPs, House of Commons Library briefing paper SN/SG/1528. <http://www.parliament.uk/briefing-papers/SN01528/social-background-of-members-of-parliament>
- McGuinness F (2012) *Membership of UK political parties*, House of Commons Library briefing paper SN/SG/5125, London: House of Commons Library. <http://www.parliament.uk/briefing-papers/SN05125>
- Sloam J (2007) 'Rebooting Democracy: Youth Participation in Politics in the UK', *Parliamentary Affairs*, 60

# CITIZENS EXCLUDED

SARAH BIRCH

Political inclusion is the essence of democracy. Etymologically, the word ‘democracy’ comes from the Greek term for ‘rule by the people’. Although it is clearly not possible for all the people in a polity to make collective decisions all the time, the ideal of inclusiveness is what distinguishes democracy from autocracy. At the same time, the institutions which translate the democratic ideal of inclusiveness into political reality have always worked imperfectly. It is impossible for practical reasons for all citizens’ views to be reflected in any collective decision, and there are always people who are not interested in spending time formulating opinions on complex issues of public policy. These imperfections are a fact of political life. At the same time, democrats might reasonably expect that over time, our institutions would be improved through innovation, technological advance and increasing levels of citizen education. In fact, what we have witnessed in recent decades is a worrying *deterioration* of the ability of our political system to include all citizens in the decision-making process. This essay aims to consider several possible reasons for this deterioration and assess potential antidotes to it.<sup>1</sup>

The principal argument to be developed here is that subtle changes in the way politics is conducted have interacted with changes to the way citizens lead their lives to produce a widening gap between participants in politics and non-participants. This gap has undermined the quality of democratic decision-making and it has bred rising discontent with politicians. It will be further argued that if the growing problem with political exclusion is to be successfully addressed, bold reforms to our political system are required.

## Documenting and accounting for political exclusion

A cursory glance at headline turnout figures from elections in recent decades provides ample evidence of the decline in rates of political participation. Falling from an average of about 80 per cent in the 1950s, turnout at general elections this century has hovered about the 60 per cent mark. More worrying still are trends in the composition of the electorate. Recent decades have witnessed two dramatic developments: the opening of a participation age gap and a wealth gap. Although throughout modern electoral history there have been higher rates of electoral participation among the old than among the young,

---

<sup>1</sup> Preparation of this contribution was supported by grants from the ESRC (grant number RES-000-22-3459) and British Academy (grant number SG-52322).

the difference has grown from a gap of 18 percentage points between the 18–24 age group and the over-65 group in 1970 to a chasm of over 40 points between the same groups in 2005. The gap between turnout figures for the rich and the poor has also widened markedly over the course of recent decades, from seven percentage points between earners in the top income quartile and the bottom quartile in 1964 to 13 points between these groups in 2005.

A number of possible explanations have been advanced to account for these developments, from the attraction of alternative pastimes, the gradual move by political parties away from face-to-face campaign activities in the digital age, the professionalisation of the political elite and declining efficacy to changing moral attitudes towards electoral 'duty'.<sup>2</sup> A prominent study has found that among the young, low turnout is in part caused by alienation, as 'those charged with conducting politics on their behalf – the political parties and professional politicians – are perceived to be self-serving, unrepresentative and unresponsive to the demands of young people' (Henn et al 2005: 574). Trends in electoral participation are complex phenomena and undoubtedly have multiple causes, but there has been a striking link between falling turnout and declining confidence in politicians as a group. Scholarly studies have found that citizens who are less trusting of politicians and more likely to view them as unethical are also less likely to vote (Allen and Birch 2012). Recognition of this link obviously invites consideration of its cause: what is it about the contemporary political class that repels so many people? Why is it that increasing numbers of citizens feel politicians do not represent the interests of people like them? These questions can be addressed from the perspectives of voters as well as those of elites.

Research on this topic suggests that voters are put off mainly by two sets of factors: the way politicians use words and the way they use money, and politicians' discursive manipulations are seen as a greater problem than abuse of resources. When asked to rate how much of a problem various potential misdemeanours were in contemporary Britain, they were more likely to give negative assessments of politicians 'not giving straight answers to questions' and 'making promises they know they can't keep', than 'misusing official expenses and allowances' or 'accepting bribes' (see table 9.1). This suggests that while members of the UK public do get exercised about revelations of cash-for-questions or expenses fiddling, what really bothers them about politics is spin, weasel words and politicians not having the courage of their convictions. In other words, they don't like the way politicians talk to them and appear to take for granted their acquiescence to 'politics-as-usual'.<sup>3</sup>

---

2 See, for example, Clarke et al 2009, Henn et al 2005: 556–578, Norris 2011, Phelps 2004, Stoker 2006, Whiteley 2012.

3 This analysis is more fully developed in Allen and Birch 2012.

	April/May 2010
Not giving straight answers to questions	8.55
Making promises they know they can't keep	8.30
Misusing official expenses and allowances	8.08
Accepting bribes	6.19

**Table 9.1**  
 'How much of a problem is the following behaviour by elected politicians in Britain today?'

Source: British Co-operative Campaign Analysis, April/May 2010

Notes: The figures in this table are mean scores on the 0–10 scale. Recipients were asked to 'use the 0–10 scale, where 0 means it is not a problem at all and 10 means it is a very big problem'.

At the same time, the composition of the UK political elite has also changed in recent years, with a documented rise in the number who come to parliament from occupations related to politics (Gairney 2007, Cowley 2012, Riddell 1993). The proportion coming into politics from manual professions has declined commensurately in recent decades (Hector 2012). And although the proportion of women and ethnic minorities in parliament has increased somewhat during this period, these groups are still not well represented (Norris and Lovenduski 1995, Hirsch 2010). Our representative institutions are thus populated by sets of people who are rather different from those they represent. Whether they are, in consequence, less able to perform their representative role is moot; suffice it to say, it is not surprising that when ordinary people – especially young people – observe the political elite, they see a group of people with whom they believe they have little in common (Henn et al 2005).

There are undoubtedly many politicians who would dispute the perceptions citizens have of them. But regardless of the accuracy of popular understandings of political roles and behaviours, these understandings are undeniably closely connected with political exclusion in contemporary Britain. There are growing numbers of people who appear to feel that their interests are not adequately catered to by political elites and who therefore voluntarily withdraw from the political process. The question is: what is the most appropriate way to solve this problem?

## What can be done at grassroots level to address political exclusion?

There are many aspects of contemporary society and politics that are difficult if not impossible to change. It would not be possible – or even desirable – to roll back the digital age with all the opportunities it offers for entertainment, information, empowerment and education. Nor is it easy to alter fundamental values and attitudes. If efforts are to be made to address political exclusion, they will most likely involve reforms to political and social institutions designed to reframe the way people see politics, the incentives they have to engage with the political process, and their understanding of what they risk losing should they disengage.

Before exploring possible reforms that potentially might be effective in achieving these ends, it makes sense to pause to consider several

strategies that have been found to be less than successful. One such effort is the Citizenship Education programme that was rolled out in schools starting in 2002. The available evidence suggests that this programme, though ambitious, has had only a modest impact on the propensity of young people to vote and engage in other ways with the political system, as this element of the curriculum is not always delivered with sufficient intensity to make a difference (Keating et al 2010, Tonge et al 2012).

Another attempted reform that has had limited success is the raft of proposed changes to the way people vote launched in the early years of the century in the form of pilot projects overseen by the newly-formed Electoral Commission. These included voting in supermarkets and kiosks, voting at weekends and over two days, and all-postal ballots. There were even plans at one point to roll out voting via television or cashpoint machines. The idea behind these trials was that if voting were easier, more people would do it. Yet most of the analyses of these experiments concluded that they did little to increase overall levels of participation and that, if anything, they increased the gap between voters and non-voters by making those who usually voted more likely to cast a ballot, even in the face of inauspicious circumstances (Norris 2003).

A third wave of reforms that can be seen as relevant to political participation is the range of efforts that were made to 'clean up politics' in the wake of the series of scandals that came to light in the 1980s and early 1990s. The so-called Nolan reforms of 1995 were perhaps the most prominent of these changes. Though intended to improve the ethical conduct of MPs, there is little evidence that they achieved the ends for which they were designed (Allen 2010). Another attempt to address concerns about political conduct was the introduction of freedom of information legislation. Recent evidence suggests that while the FOI regime has increased the transparency of the political process, it has not led to a rise in public trust of politicians (Hazell et al 2010).

Devolution can also be seen as a project that had at its core a desire to reinvigorate politics and put it on a more democratic footing. These aims have been achieved to a great extent by the creation of devolved assemblies, which are generally highly regarded by the Scots, Welsh, Northern Irish and Londoners whom they serve. At the same time, turnout at elections for these bodies has, in all cases except Northern Ireland, been consistently lower than turnout at Westminster elections. Whatever the virtues of devolution, it does not appear to have solved the problem of flagging electoral participation. Although the devolution of greater power to local authorities could have the effect of reinvigorating civil society and reviving levels of local participation (Whiteley 2012, chapter 9), this has not to date formed part of the devolution project.

More recently, the direct election of mayors and police commissioners are initiatives designed, at least in part, to build accountability into subnational politics. Yet turnout at the 2012 police commissioner elections averaged a meagre 15 per cent, and the institution of directly elected mayors is increasingly being rejected in referendums on the subject. Moreover, there is a danger that the introduction of direct election to executive posts might engender the highly personalised and money-driven politics characteristic of US-style electoral systems where political parties are weak and the fundraising ability of individuals is a major factor in their electoral fortunes. Although political parties in the UK are much maligned, they are nevertheless a vehicle through which hardworking and talented individuals from modest backgrounds can achieve success in politics; whatever their faults, political parties are undoubtedly more meritocratic than personal electoral machines.

As the continuing decline of electoral participation and the growing demographic gap between voters and non-voters attests, none of the above initiatives has been sufficiently radical to alter the general trend. True, the decline in electoral participation might have been even steeper still had these reforms not been enacted, but it is not clear that any of them, either alone or in combination, has been sufficient to address the problem.

What, then, is to be done? What might work better than the strategies outlined above? There is evidence from a variety of sources that political inequality is intimately tied to social inequality, and that political engagement would be promoted by a reversal of the dramatic increase in economic inequality that Britain has witnessed in recent decades (Whiteley *ibid*, Horn 2011, Solt 2008). At the same time, this is a mammoth task that would be politically contentious. Despite the clear merits of policies designed to address inequality, they will be put to one side for the purposes of this analysis, which will focus on a range of more manageable and less politically fraught reforms that could be expected to have a short-term impact on political participation.

There are four possible reforms that, although not dramatic in and of themselves, might have the potential to address the recent rise in political exclusion.

1. The first is a **more robust citizenship education programme**. A longitudinal study of citizenship education conducted by Avril Keating and colleagues finds that this element of the school curriculum can have a positive impact on political engagement and participation, but only when delivered with a certain intensity. Specifically, the effect of citizenship education depends on dedicated teachers and discrete timetabling for at least 45 minutes per week, as well as set examinations. This suggests that consistently high levels of citizenship education including formal examinations would serve to enhance political engagement among young people significantly (Keating et al 2010).

2. The second possible reform is to **lower the voting age to 16**. There is evidence that if people vote in the first election for which they are eligible, they are more likely to vote in later years (Aldrich et al 2011, Dinas 2012, Franklin 2004). Lowering the voting age to the point where most people are still living at home and in education can also be expected to increase the chances that they will vote the first time they have the opportunity, as the institutions of the family and the school can be expected to be conducive to political participation. Recent evidence from countries such as Austria, Norway and Germany, which have introduced voting at 16 to varying degrees, bears out this hypothesis (Zeglovits and Aichholzer 2014, Council of Europe 2011). In the UK context, voting by 16-year-olds in school-based polling stations could provide young people with an opportunity to apply the concepts and ideas they have learned in their formal citizenship education. People aged 16 and 17 will be able to vote in the Scottish independence referendum of 2014, and this will provide a useful means of gauging the effectiveness of voting-age reduction.
3. The third idea is to **make taking part in the electoral process mandatory for first-time voters**. So-called 'compulsory voting' rubs against the grain of many traditionally libertarian British instincts. Though surveys over the course of the past decade have consistently shown that approximately a third of the population would support such a reform (Birch 2009: 144), it is difficult to envisage full-scale mandatory electoral participation receiving majority support. At the same time, there is a strong case to be made for the attractiveness of mandatory electoral participation for those new to the electorate. There are many aspects of contemporary life that are mandatory for young adults, such as education, jury service, and electoral registration. There are good reasons for believing that obliging young people to 'try' elections at least once would not be overly offensive to liberal sensibilities, and it could well have a dramatic impact on rates of electoral participation. Moreover, recent research has found that the idea of first-time compulsory voting is attractive to a substantial proportion of young people themselves – more, in fact, than the proportion who oppose the idea (Birch et al 2013).
4. The fourth proposal is a **more determined approach to enforcing what is effectively compulsory electoral registration in the UK**. In recent years, there has been a decline in rates of electoral registration (from 97.8 per cent in 1983 to 90.5 per cent in 2006) in tandem with falling turnout, and this drop has disproportionately affected young people. The Electoral Commission estimates that 56 per cent of 17–24-year-olds are not registered (Electoral Commission 2010). Under the new

system of individual voter registration, many people will be registered automatically on the basis of the information held by public sector bodies. It would also make sense for penalties for non-compliance to be enforced with greater frequency. Under the current regime, anyone failing to provide the electoral registration officer of a local authority with information requested can be fined up to £1,000, yet this penalty is imposed very sparingly in practice, and research by the Electoral Commission suggests that many people are not even aware that electoral registration is in fact mandatory. Following considerable debate on the subject, the Coalition government has decided to retain the compulsory element of electoral registration together with the penalty system, but the reforms fail to provide for more rigorous enforcement. Doing so (and publicising the fact) would help to arrest the fall in registration rates that threatens further to undermine opportunities for people to take part in electoral processes. At the same time, it would make sense to introduce new ways of checking registration details and registering to vote, including facilities located at libraries, post offices and other public places.

## The changing role of political elites and parties

In addition to reforms designed to change popular engagement with politics, it makes sense to consider strategies for changing the object of engagement: the political class itself and the political system. This approach is based on the premise that disengagement by the electorate may be as much a symptom of a deeper problem as a problem in its own right. If this is true, then it makes sense to ask what might be done to change the way politics works.

The most challenging aspect of British politics that needs addressing is perhaps political discourse, broadly conceived. As the evidence in table 9.1 suggests, large numbers of people are unhappy with the way politicians use words, and specifically with their failure to honour their commitments and to engage in straight talking. It is unlikely that any reform to our political institutions would be entirely successful in reducing spin and empty promises; such a change would in all probability need to come about by means of a voluntary alteration in political discourse consequent upon politicians recognising the nefarious effects of the status quo on political legitimacy. Though desirable, such a shift in behaviour is unlikely to happen in the foreseeable future in the absence of a major political crisis.

That said, the introduction of recall elections might go some way towards holding politicians to account for campaign promises: a recent survey has shown that 54 per cent of the British public favour such a move, even though it has not been seriously mooted by any of the main parties (Allen and Birch 2012). Given the collective nature of political responsibility in the UK, such a move would best increase

accountability if it took the form of ‘collective recall elections’ – in other words, a system by which a general election could be triggered by the demands of a certain proportion of the electorate. If this were not deemed feasible, then recall elections for individual MPs might be a reasonable alternative.

Other proposals, such as Peter Osborne’s (2005) suggestion that civil society should play a greater role in checking the veracity of the claims made by politicians and journalists, is laudable but undoubtedly somewhat fanciful, given the enormity of the task involved (Osborne 2005, chapter 11). Osborne’s proposal to give greater independence to civil servants in charge of producing and presenting information is more realistic, but it is unclear that reforms of this sort would be sufficient to reduce the manipulation of information that the public appears to find particularly objectionable.

There is, however, one reform that might help to address the professionalisation of politics by shaping how people rise up in political life. The relative roles of talent and wealth in determining the success of an aspiring politician is something that has long been the object of debate, but the role of money in politics has become more evident in the wake of the above-mentioned reforms that increased the transparency of campaign finance. There has for several years been broad agreement among the main parties that the system of party finance is ripe for reform, and that the fairest way forward is the introduction of public funding of parties, as happened in most western European democracies in the 1970s. Negotiations have foundered over the details of funding arrangements, but a well-designed public funding system could go a long way towards enhancing the perception of a ‘level playing field’ in politics.

It might also make sense, as part of any new public funding regime, to provide political parties with dedicated funds to identify, train and encourage people from groups that are traditionally under-represented in political life, including women, working class people, and ethnic minorities.

## Conclusion

Political exclusion is just one of many problems that afflict contemporary British politics, but it is a problem that is intimately tied to many aspects of political life. Although the challenges laid out in this chapter may seem daunting, there is reason to believe that several relatively modest but nevertheless decisive reforms to our social and political institutions could go a considerable way toward reviving declining levels of participation. If this challenge is to be addressed successfully, it will need to be taken on sooner rather than later. The longer participation falls, the less of a norm it will become, and the more difficult it will be to alter. Although there is currently a worrying trend toward opting out

of electoral participation among the young, a significant majority of the British public still believe in the duty to vote. Now is the time to lock in this view through a series of changes to our institutions.

## References

- Aldrich JH, Montgomery JM and Wood W (2011) 'Voting as a habit', *Political Behavior* 33: 535–563
- Allen N (2010) 'Keeping MPs honest?' *Public Integrity* 12(2): 105–23
- Allen N and Birch S (2012), *Ethics and Integrity in British Politics: How Citizens Judge Their Politicians' Conduct and Why it Matters*, Cambridge: Cambridge University Press
- Bergh J (2013) 'Does voting right affect the political maturity of 16- and 17-year-olds? Findings from the 2011 Norwegian voting-age trial', *Electoral Studies* 32: 90–100
- Birch S (2009) *Full Participation: A Comparative Study of Compulsory Voting*, Manchester: Manchester University Press
- Birch S, Gottfried G and Lodge G (2013) *Divided democracy: Political inequality in the UK and why it matters*, London: IPPR. <http://www.ippr.org/publication/55/11420/divided-democracy-political-inequality-in-the-uk-and-why-it-matters>
- Cairney P (2007) 'The professionalisation of MPs: Refining the "politics-facilitating" explanation', *Parliamentary Affairs* 60(2): 212–233
- Clarke HD, Sanders D, Stewart MC and Whiteley PF (2009), *Performance Politics and the British Voter*, Cambridge: Cambridge University Press
- Council of Europe (2011) 'Expansion of democracy by lowering the voting age to 16', report of the Parliamentary Assembly of the Council of Europe, document 12546, Strasbourg
- Cowley P (2012) 'Arise, novice leader! The continuing rise of the career politician in Britain', *Politics*, 32(1): 31–38
- Dinas E (2012) 'The formation of voting habits', *Journal of Elections, Public Opinion and Parties* 22(4): 431–456
- Electoral Commission (2010) *The Completeness and Accuracy of Electoral Registers in Great Britain*, London
- Franklin M (2004) *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies Since 1945*, Cambridge: Cambridge University Press
- Hazell R, Worthy B and Glover M (2010) *The Impact of the Freedom of Information Act on Central Government in the UK*, Basingstoke: Palgrave
- Hector G (2012) 'The decline of working-class MPs?' Huffington Post, 18 July 2012. [http://www.huffingtonpost.co.uk/gordon-hector/the-decline-of-working-class-mps\\_b\\_1682274.html?utm\\_hp\\_ref=uk-politics](http://www.huffingtonpost.co.uk/gordon-hector/the-decline-of-working-class-mps_b_1682274.html?utm_hp_ref=uk-politics)
- Henn M, Weinstein M and Forrest S (2005) 'Uninterested youth? Young people's attitudes towards party politics in Britain', *Political Studies* 53(3): 556–578
- Hirsch A (2010) 'UK election results: Number of minority ethnic MPs almost doubles', *Guardian*, 7 May 2010. <http://www.guardian.co.uk/politics/2010/may/07/black-minority-ethnic-mps-2010>
- Horn D (2011) Income Inequality and Voter Turnout: Evidence from European National Elections, Gini Discussion paper 16, Amsterdam: AIAS
- Keating A, Kerr D, Benton T, Mundy E and Lopes J (2010) *Citizenship Education in England 2001–2010: Young People's Practices and Prospects for the Future: The Eighth and Final Report from the Citizenship Education Longitudinal Study (CELS)*, research report DFE-RR059, London: Department for Education
- Norris P (2003) 'Will new technology boost turnout? Evaluating experiments in e-voting v. all-postal voting facilities in UK local elections', presented at the Annual Meeting of the American Political Science Association, Philadelphia, 27 August 2003
- Norris P (2011) *Democratic Deficit: Critical Citizens Revisited*, Cambridge: Cambridge University Press
- Norris P and Lovenduski J (1995) *Political Recruitment: Gender, Race and Class in the British Parliament*, Cambridge: Cambridge University Press
- Osborne P (2005) *The Rise of Political Lying*, London: Simon and Schuster
- Pattie C and Johnston R (2012) 'The Electoral Impact of the UK 2009 MPs' Expenses Scandal', *Political Studies* 60(4): 730–750
- Phelps E (2004) 'Young citizens and changing electoral turnout, 1964–2001', *Political Quarterly* 75(3): 238–248
- Riddell P (1993) *Honest Opportunism: The Rise of the Career Politician*, Hamish Hamilton

- Solt F (2008), 'Economic inequality and democratic political engagement', *American Journal of Political Science* 52(1): 48–60
- Stoker G (2006) *Why Politics Matters: Making Democracy Work*, Basingstoke: Palgrave Macmillan
- Tonge J, Mycock A and Jeffery B (2012) 'Does citizenship education make young people better-engaged citizens?' *Political Studies* 60: 578–602
- Whiteley PF (2012) *Political Participation in Britain: The Decline (and Revival) of the Civic Culture*, Palgrave Macmillan
- Zeglovits E and Aichholzer J (2014 forthcoming) 'Are people more inclined to vote at 16 than at 18? Evidence for the first-time voting boost among 16- to 25-year-olds in Austria', *Journal of Elections, Public Opinion and Parties*

# LAW, RIGHTS AND CONSTITUTIONAL POLITICS

MARK ELLIOTT

Labour's constitutional reform programme may have fallen short of the vision set out in 1991 in IPPR's written constitution, but its impact was nonetheless far-reaching. Its effects include the radical restructuring of the United Kingdom through devolution, the creation of a transparently independent court of final appeal in the Supreme Court, and the reconfiguration, via the Human Rights Act 1998 (HRA), of the relationship between the individual and the state. The fact that those reforms were implemented merely via acts of parliament mean that they lack the legal security which inclusion in a written constitution would provide. Yet, in real-world terms, backtracking on devolution or dismantling the Supreme Court would be unthinkable; those reforms will resonate for generations, irrespective of whether they come to be institutionalised in a written constitution.

In contrast, the HRA, which broke new ground in UK law by codifying the rights of the individual and equipping the courts with substantial powers to uphold such rights, finds itself in the eye of a political storm – one that threatens to engulf it. Although the Conservative party was unable, due to the constraining effect of coalition politics, to deliver on its 2010 manifesto promise to replace the HRA with a UK bill of rights (Conservative Party 2010: 79), the determination to do so has hardened over the course of this parliament. Even withdrawal from the European Convention on Human Rights (ECHR) – a nuclear option that seemed inconceivable until very recently – is now alluded to in an increasingly bold fashion.<sup>1</sup> Meanwhile, the Commission on a Bill of Rights has concluded that the depth of the HRA's unpopularity makes replacing it with a new bill of rights at some point in the future imperative (see CBR 2012).

It is timely, therefore, to consider the options open to policymakers in this contentious area. However, any such analysis must be rooted in an appreciation of how the human rights debate has unfolded over the last two decades or so, the nature of and reasons for the fault lines that characterise it today, and the reality of the domestic and international legal framework within which it is conducted. The purpose of this essay, then, is to map out future directions that the human rights debate might take by situating it within the political and legal contexts in which it has developed.

---

<sup>1</sup> See for example the speeches given by Theresa May MP and Chris Grayling MP at the Conservative party conference, September 2013.

## The story so far

Debate tends to centre upon what role, if any, the ECHR should occupy in national law.<sup>2</sup> (Indeed, the bill of rights contained in IPPR's 1991 draft constitution was itself heavily based upon the ECHR, rather than amounting to a wholly 'domestic' bill of rights<sup>3</sup>.) On the question of whether the ECHR should be incorporated in UK law, the left and right have occupied sometimes counterintuitive positions. Incorporation was never official Conservative policy, which is surprising, given the libertarian capacity of human rights instruments to prevent government from overreaching itself at the expense of individual freedoms. Less surprising is the opposition to incorporation exhibited at certain points by the Labour party, perhaps most notably under Neil Kinnock in the run-up to the 1992 general election. That opposition was animated, at least in part, by a concern that human rights legislation might equip a judiciary that was perceived to be small-c conservative in outlook to thwart progressive policies. However, as is well known, Labour's position shifted in the mid-1990s, and incorporation was firmly established as official policy well before the 1997 election.

In the white paper that preceded what became the HRA, the Blair government took pains to emphasise two features of the legislation which remain pertinent to the debate which is going on today (HM Government 1997). First, it underlined that the rights contained in the ECHR are not exotic constructs alien to British legal or political tradition. It was for that reason that the policy was described in terms of 'bringing rights home', the point being that many of the convention rights reflect, at least to some extent, values already embedded in the common law (ibid: para 1.14). Second, the white paper emphasised that the HRA would involve no fundamental shift in power from parliament to the courts because it would do nothing to disturb the principle of parliamentary sovereignty – a constitutional innovation for which the government, perhaps unsurprisingly, had no appetite and perceived no mandate (ibid: para 2.13).

In these ways, the case made for the HRA sought to anticipate the two principal criticisms that have plagued it since its inception: that judges have become too powerful and that British law has been made subservient to foreign norms. However, those criticisms – which, paradoxically, were later made stridently by some members of the Blair government itself – have proved to be remarkably durable. They have found a highly receptive audience among those sections of the political class and of the media that habitually portray the HRA as a 'rogues' charter' which elevates the rights of undeserving criminals and foreigners above the interests of hardworking, law-abiding citizens. As a result, the

---

<sup>2</sup> For a useful overview, see Fenwick 2002: ch 3.

<sup>3</sup> IPPR 1991: 34–45, 163–165. The IPPR's draft constitution also drew upon the International Covenant on Civil and Political Rights.

HRA has been consumed by a mythology which its critics have sustained with an enthusiasm verging on zealotry (see DCA 2006: ch 4).

Attacks upon the HRA have enjoyed particular purchase thanks to the shallowness of its foundations. The discussion about incorporating the ECHR – and so about the adoption of domestic human rights legislation – took place largely among legal and political elites. Little attempt was made to engage the public, and, as a result, a perception has arisen that the HRA is something that has been foisted upon the populace. A contrast may be drawn with devolution, which was introduced following widespread public debate culminating in referendums. It is unsurprising, then, that the act finds itself vulnerable to criticism when, in the first place, it lacks the deep roots – fashioned through public debate and consensus-building – that major constitutional developments sometimes enjoy, and which are often essential to their long-term resilience.

### Power shifts: politics and law, the UK and Europe

At the heart of criticism of the HRA are the twin arguments that it has transferred power from elected politicians to unaccountable judges, and from the UK to Europe. The former power shift – to the extent that it has occurred – is attributable to two main factors. First, the HRA requires all public authorities to act in a way that is compatible with the convention rights to which the act gives effect (see s6). This means that all central and local government bodies, among others, must ensure that their decisions, policies and practices are ECHR-compliant. Thus the HRA has extended the courts' powers of judicial review, enabling administrative measures to be challenged not only on long-established grounds, such as legality and procedural fairness, but by reference to a new set of more substantive, more demanding grounds, as set out in the convention. This, in turn, has required courts to undertake inquiries – for example, about whether an interference with a given right can be justified by reference to the importance of pursuing some conflicting public interest – that were previously considered to be beyond the judiciary's proper constitutional remit. And although this expansion of the judicial role has been sanctioned – indeed required – by parliament through its enactment of the HRA, the perception has arisen that courts are now somehow overstepping the mark.

Second, the HRA requires courts to interpret acts of parliament in line with convention rights whenever possible – and, when it is not, permits courts to issue a declaration to the effect that national law is out of line with the ECHR. In form, none of this offends the doctrine of parliamentary sovereignty: parliament remains capable of legislating contrary to convention rights (albeit that it must now make its intention to do so plain if ECHR-compliant interpretation is to be avoided), and courts remain unable to strike down or refuse to apply ECHR-incompatible legislation

(a declaration of incompatibility having no bearing upon the enforceability or domestic legal status of the impugned legislation).

The reality, however, is more subtle. Courts have shown themselves willing – at least in some cases – to adopt an expansive view of their interpretative powers, meaning that relatively few cases have resulted in a declaration of incompatibility and, hence, a choice for the political branches on whether to retain the ECHR-inconsistent law or to repeal or amend it.<sup>4</sup> Moreover, when courts have found it impossible to interpret legislation consistently with the ECHR and have instead issued declarations of incompatibility, this has almost invariably resulted in the relevant legislation being repealed or amended (see MoJ 2013: 43). Although a declaration creates no domestic *legal* obligation to remedy the incompatibility, it can often have a galvanising *political* effect. At the very least, the arguments of those calling for reform are likely to be reinforced, particularly if the declaration has the authority of the Supreme Court behind it. But even if a declaration lacks decisive political effect – there may, for instance, be strong opposition to the judicial view encapsulated in a declaration of incompatibility – it is still likely to provoke remedial action by legislators. This is so because failure to act upon a declaration by a domestic court will likely result in litigation in the European Court of Human Rights (ECtHR) – the judgments of which are, as noted below, binding upon the UK as a matter of international law.

The net result is that while the HRA makes no explicit challenge to the sovereignty of parliament, it nevertheless in practice effects a transfer of power from the political branches of government to the courts. In this way, it sits uncomfortably with the majoritarian conception of democracy with which the British system of government – in which single parties have tended to hold large majorities in a sovereign parliament legally capable of doing anything – has historically been aligned. The perception has thus arisen that unelected judges are using the HRA to thwart the wishes of elected institutions, and that such a situation is undemocratic. The facts that the judges' relevant powers were assigned to them in a democratic manner via parliamentary legislation, and that any challenge implied to democracy is merely to one particular conception thereof, are details which are often crowded out of public and media debate. Mud sticks, and the criticism that the HRA is undemocratic has proved to be highly resonant.

As well as effecting a (limited and not necessarily undemocratic) transfer of power to the courts, the HRA is also widely perceived to have caused a shift of power from domestic courts to the ECtHR. The position here is complex. At root, the introduction of the HRA has changed nothing. The

---

<sup>4</sup> Even if a court resolves the case interpretatively, it would, of course, be open as a matter of domestic law for parliament to amend the legislation to make clear that it is to bear an ECHR-incompatible meaning. However, for reasons explained below, there are powerful reasons why this is unlikely to happen in practice.

UK is obliged as a matter of international law – wholly independently of the presence or absence of domestic legislation such as the HRA – to secure the convention rights of those within its jurisdiction (CE 1953: art 1) and to abide by the judgments of the Strasbourg court (ibid: art 46(1)). However, the convention system has assumed a much higher profile in the UK under the HRA. This is because the HRA imposes upon domestic courts a requirement to apply the convention, and because in doing so UK courts are required to take account of ECtHR case law (see s2(1)). In fact, UK courts have often gone further than the HRA requires, treating themselves as generally bound not only to take into account but to follow the Strasbourg court’s interpretations of the convention.<sup>5</sup> As a result, a perception has emerged that particular rights – or particular interpretations of rights – are *imposed* upon the UK from the outside, and that there has been a commensurate loss of sovereignty. This issue is illustrated by the long-running saga concerning prisoners’ right to vote. The ECtHR’s preparedness<sup>6</sup> to read that right into a convention provision concerning the holding of elections has resulted (to this point) in an impasse between the UK and the court, so strong is political opposition to the implementation of the judgment. This, in turn, has fostered the notion that ‘foreign’ judges are improperly using the convention to micromanage the British legal system.

The controversial position in which the HRA finds itself today is, then, explicable in part by reference to the antagonistic mythology that has grown up around it. That mythology, however, does have roots in the reality of the challenges posed by the act to traditional tenets of British constitutionalism. It has operated both to infuse domestic public law with a European dimension, which invites opprobrium from a Eurosceptic perspective, and to effect a limited but real shift of power from politicians to judges, which, from a majoritarian perspective, is considered to be undemocratic. There is, of course, a positive response to these criticisms: it might, for instance, be argued that the Eurosceptic critique betrays an unduly parochial perspective that fails to recognise the universal nature of fundamental rights. And it might equally be argued that charges to the effect that the HRA is undemocratic reflect only a particular – and impoverished – conception of democracy. At the present time, however, such views are heard less frequently – or at least less loudly – than those which challenge the juridification and Europeanisation of human rights, and which call for control to be re-exerted by British (in preference to European) judges, and by politicians (in preference to any judges). It is against this background that the next phase of the human rights debate is likely to unfold.

---

5 See for example *R (Ullah) v Special Adjudicator* [2004] UKHL 26, [2004] 2 AC 323; cf *R (Osborn) v Parole Board* [2013] UKSC 61, [2013] 3 WLR 1020.

6 *Hirst v UK (No 2)* (2006) 42 EHRR 41

## The future of British rights

The arguments in favour of reform in this area are catholic in nature, and their specific content – to the extent that they have acquired any – is naturally informed by competing senses of what is felt to be wrong with the existing arrangements. For instance, the Commission on a Bill of Rights reached the curious conclusion – on largely impressionistic grounds which are contradicted by its own research findings (see CBR 2012: annex G) – that a principal problem with the HRA is its deep unpopularity (ibid: para 12.8). On the basis that the difficulty with the HRA is principally one of appearance rather than reality, the commission's proposal that the act be replaced with a bill of rights reduces the debate about reform to a largely cosmetic one.<sup>7</sup> Another line of thinking – albeit one that commands little popular attention – holds that the present arrangements do not go far enough, and that a catalogue of rights broader than those enshrined in the ECHR should be protected, or that existing rights should be offered forms of protection transcending those available under the HRA.

These views notwithstanding, the loudest voices call not for the retention (at least in substance) of the status quo or for the extension of judicial protection of rights, but for retrenchment – on the grounds that the balance of influence between the UK and Europe, or between elected politicians and judges, ought to be readjusted. The narrative holding that 'foreign' judges are interfering unduly in domestic matters has acquired particular resonance. There has, for instance, been severe criticism by senior Conservative politicians of the judgments of the ECtHR – epitomised by the prime minister's description of the prisoner voting judgment as making him feel 'physically ill' (HC 2010) – accompanied by increasingly explicit discussion of the possibility of UK withdrawal from the ECHR. Meanwhile, lord chancellor and justice secretary Chris Grayling has indicated that he wishes the UK Supreme Court to be 'supreme again', the contestable suggestion being that its role is presently – and inappropriately – eclipsed by that of the ECtHR (Forsyth 2013).

Framed in this way, the solution to the perceived problem must lie in the alteration or termination of the UK's relationship with the ECHR regime. The former possibility was explored by the UK government in 2012 at the Council of Europe's intergovernmental conference in Brighton. Early drafts of the Brighton declaration showed that the UK was pressing for a potentially radical reconfiguration of the relationship between states and the ECtHR, but the final version of the declaration is likely to have less far-reaching effects (see Elliott 2012). With the failure of this attempt to secure multilateral change, it becomes necessary to ask what scope – if any – there might be for unilateral recalibration of the relationship

---

7 If, however, one delves a little deeper into the commission's report, one finds that beneath a paper-thin consensus lay deep divisions. Some members favoured radical change, perhaps going as far as UK withdrawal from the ECHR. For detailed discussion of the report, see Elliott 2013.

between the UK and the court. The bottom line is that the UK is bound by its international law obligations under the convention; the tightness of the ECtHR's embrace is therefore a function of the nature of those obligations. As noted already, until recently, domestic courts appeared to assume – pursuant to the so-called 'mirror principle' – that they were obliged to follow the ECtHR's interpretation of the convention. There are, however, signs that UK courts are now more alive to the (limited) flexibility – under the 'margin of appreciation' doctrine – that inheres in the convention system, meaning that there may in the future be less slavish adherence to the Strasbourg jurisprudence.<sup>8</sup> However, whatever slack there might be in the relationship between domestic courts and their Strasbourg counterpart must be finite – inevitably, a point is reached at which the UK's binding obligations under the convention leave national courts with no option but to fall into line. It follows that for those who object profoundly to the influence of a European judicature, the option of UK withdrawal from the ECHR exerts a potentially ineluctable logic.

While it is noteworthy that withdrawal is now canvassed by senior members of the government with an unprecedented explicitness, actually taking such a drastic step remains unlikely on account of international and reputational considerations. What, then, might 'reform' look like if the UK is to remain a party to the ECHR? One option would simply be to repeal the HRA. This would not deprive individuals in the UK of convention rights in strictly legal terms: they would remain the beneficiaries of those rights as a matter of international law, but they would become less practically accessible. In particular, it is likely that litigants would more frequently have to traverse what the Blair government – setting out its case for the HRA in 1997 – called the 'long and hard ... road to Strasbourg' (HM Government 1997: para 1.17). For those lacking the wherewithal to undertake that journey, their ongoing possession of convention rights would ring hollow in the absence of accessible enforcement.

The other main option would be to replace the HRA with new human rights legislation. A 'UK bill of rights' might differ from the HRA in one or more of several ways. First, it might give effect in domestic law to only a subset of the convention rights, either by omitting some of the rights or by setting out rights in domestic law in terms narrower than those found in the convention. For example, the particular right which lies at the heart of the prisoner voting controversy might be excluded, or at least reformulated to make it clear that the right to vote (as a matter of domestic law) did not extend to prisoners.

Second, a UK bill of rights might eschew any relationship with the ECHR, instead elaborating a catalogue of 'British' rights without

---

<sup>8</sup> See for example Lord Reed's judgment in *R (Osborn) v Parole Board* [2013] (above, note 5).

reference to the convention. This might result in the inclusion of some rights with no analogue in the convention (such as the right to trial by jury). It might also result in certain convention rights having no analogue in the domestic statute, or being formulated in a very different way.

Third, a domestic bill of rights could, while retaining a relationship with the ECHR, instruct UK judges to interpret certain rights in ways that might turn out to be incompatible with the case law of the Strasbourg court. The current government, for instance, has taken particular exception to the way in which UK courts have applied the right to respect for private and family life (CE 1953: art 8) in immigration cases, especially those involving attempts to deport foreign criminals. It is now in the process of enshrining in domestic legislation instructions to the courts concerning the weight to be attached to the rights of such individuals, on the one hand, and the public interest in deportation, on the other.<sup>9</sup> Such ad hoc legislative intervention would be unnecessary were a domestic bill of rights to be adopted, since such legislation could in the first place address – in a different way from the ECHR – the balance to be struck between individuals’ rights and competing public interests.

Fourth, a UK bill of rights might give the courts different (including lesser) powers from those contained in the HRA. For instance, the strong HRA duty to interpret legislation compatibly with rights might be diluted, or the power to issue declarations of incompatibility removed. Conceived in this way, a bill of rights would represent an intermediate point between retention of the HRA as-is and simple repeal. Crucially, however, to the extent that such a bill of rights – an ‘HRA-lite’ – might stop short of enabling UK courts to protect convention rights, this would do nothing to detract from the binding effect of those rights in international law, or from the possibility of their enforcement before the Strasbourg court. As already noted, however, for some litigants that possibility would remain more hypothetical than real.

Policymakers’ room for manoeuvre would be far greater if the UK were to withdraw from the ECHR. It is a given that the HRA would be repealed if the UK were to withdraw from the convention, given that the act is a conduit through which convention rights secure effect in domestic law. Having cleared the decks by withdrawing from the convention and repealing the HRA, the question would then arise as to whether anything else, by way of a new bill of rights, should fill the void – and, if so, what form such legislation should take. Unconstrained by the ECHR, myriad possibilities would present themselves. For those whose objection to the present scheme relates exclusively to the perceived inappropriateness of the ECtHR’s role, there would be no inconsistency in supporting a strong domestic bill of rights. For example, two members

---

<sup>9</sup> See clause 14 of the Immigration Bill 2013–14.

of the Commission on a Bill of Rights who raised the possibility of withdrawal from the ECHR also contemplated the possibility of a bill of rights giving UK courts *stronger* powers than those they possess under the HRA, including the power to strike down acts of parliament (see Faulks and Fisher 2012: 182–191).

However, this eventuality – withdrawal coupled with a new, stronger domestic bill of rights – is unlikely, not least because much of the agenda for change is based on a combination of concerns related not only to matters European but also to the balance between judicial and legislative authority. This is because, as noted above, the act sits uncomfortably with the predominant democratic tradition in the UK, which holds that a parliamentary majority should equip politicians to pursue their agenda free from judicial ‘interference’. It follows that if the political will can be mustered to effect withdrawal from the ECHR then it is unlikely that there will be an appetite subsequently for a bill of rights that gives the courts greater powers than they enjoy at present. At most, legislation giving the courts similar or lesser powers would be likely in such circumstances.

In fact, it is possible to go further than this. In the absence of fundamental change – such as the insertion of a bill of rights into an entrenched constitution giving British judges US-style strike-down powers – a domestic bill of rights that was decoupled from the ECHR would be *inherently* weaker than the HRA. As noted above, part of the HRA’s potency derives from the fact that although remedies granted under it can be ignored or reversed by parliament thanks to its sovereignty,<sup>10</sup> the scope of parliament to respond in such a way to judgments given under the HRA is limited. This is because such judgments – which can be regarded as non-binding as a matter of domestic law – give effect to rights that *are* binding as a matter of international law. Shorn of the hard legal bite afforded to the HRA by its status as a conduit for binding international norms, a domestic bill of rights would be unlikely to exert the same degree of constraint upon the political branches.

## Beyond a bill of rights

By way of conclusion, it is worth introducing another layer of complexity – and one which is often overlooked. An assumption underlying the bill of rights debate is that it would be possible to create a blank canvas by withdrawing from the ECHR and repealing the HRA. However, that assumption is misplaced for at least two reasons.

First, even if the UK were to cease to be a party to the ECHR, it would retain other human rights obligations in international law, both via other

---

<sup>10</sup> That is to say, parliament is free as a matter of domestic law to ignore a declaration of incompatibility issued under section 4 of the HRA, and is also free as a matter of domestic law to amend legislation so as to undermine or reverse an ECHR-compatible interpretation rendered by a court under section 3.

human rights treaties – such as the International Covenant on Civil and Political Rights – and through EU law. Indeed, the rights set out in the ECHR constitute general principles of EU law,<sup>11</sup> and they – along with the rights contained in the EU's Charter of Fundamental Rights – would remain binding upon the UK when acting in relation to matters falling within the scope of EU law.

Second, independently of any domestic legislation or international treaties, human rights are embedded in the common law. Under the doctrine of common law constitutional rights – which by the late-1990s had acquired particular prominence – courts strive to interpret acts of parliament in a manner that is compatible with fundamental rights. The superficial modesty of the merely interpretative common law doctrine is misleading. It enables courts to give a rights-consistent meaning to legislation unless a contrary parliamentary intention is stated in very clear terms. This, in turn, facilitates the striking down of rights-inconsistent executive action, since (absent a clear legislative intention to depart from human rights norms) such action will lie beyond the authority conferred by parliament once the act is subjected to a rights-based interpretation. Just like the HRA, the common law does not (at least on an orthodox understanding) equip courts to strike down acts of parliament themselves, but that inhibition does not detract from the considerable scope for protecting rights interpretatively via the common law doctrine.

As we contemplate a future without the HRA – and perhaps even the ECHR – two particular aspects of common law protection of rights are worth reflecting on. First, it would be going much too far to suggest that enacting the HRA was pointless because it merely replicated a regime of rights protection already supplied by the common law. It is clear, for instance, that the HRA has emboldened the courts to afford protection to a broader range of rights than those upon which the common law traditionally focuses. However, although common law rights have been largely eclipsed by the HRA, they have not gone away. As the Supreme Court recently observed, the HRA ‘does not ... supersede the protection of human rights under the common law ... Human rights continue to be protected by our domestic law, interpreted and developed in accordance with the [HRA] when appropriate.’<sup>12</sup> It is also possible that if the HRA were to be repealed, it would transpire that common law rights had evolved under its influence, and that certain of the convention rights had been absorbed into the common law. It follows that the repeal-and-withdraw option would not necessarily produce changes as substantial as some of its advocates seem to anticipate.

Second, as well as the possibility that the *content* of the common law rights doctrine might be such as to blunt the significance of HRA

---

11 See article 6(3) of the Treaty on European Union.

12 See above note 8, *R (Osborn) v Parole Board* [2013]

repeal or ECHR withdrawal, a question arises in relation to its *status*. As noted above, the doctrine, understood in its orthodox form, readily accommodates the principle of parliamentary sovereignty: common law rights can be protected only to the extent that that is not ruled out by clear legislative provision. However, not everyone subscribes to an unvarnished notion of legislative supremacy according to which all values, however fundamental, are ultimately vulnerable to being overridden by parliamentary legislation.

For instance, in the *Jackson* case, Lord Hope said that ‘Parliamentary sovereignty is no longer, if it ever was, absolute.’<sup>13</sup> Lord Steyn, meanwhile, has said that while parliamentary sovereignty is still the ‘general principle of our constitution’, it is ‘a construct of the common law’ created – and potentially subject to revision – by the courts.<sup>14</sup>

These views are certainly not universally held by senior judges (see for example Neuberger 2011). Nor is it suggested that those judges who have professed something short of unalloyed allegiance to parliamentary sovereignty would act upon their doubts other than in truly exceptional circumstances. That, however, is not really the point. One of the virtues of the HRA is that it provides an institutional framework within which the legal and political branches of government may engage with one another in relation to human rights issues. Judicial supremacy is denied by the absence of a power to strike down, but the hegemony of the political branches is also qualified by the prominence accorded to individuals’ legal rights and courts’ assessments of their compatibility with existing legislation. As a result, constitutional crunch questions, such as whether the sovereignty of parliament enables it to remove basic rights, can be delicately circumvented, since the HRA affords the courts a constitutionally seemly way, in the form of a declaration of incompatibility, of condemning such legislation. In this way, an interpretative bill of rights, like the HRA, effects a form of reconciliation between the doctrine of parliamentary sovereignty and judicial protection of rights. It thereby helps to avoid the sort of head-on clash between judges and parliament that might otherwise eventuate if the latter were to enact legislation fundamentally at odds with basic rights.

It would be naive to suppose that the result of such a confrontation would straightforwardly hand victory to either side: the courts’ capitulating in the face of legislative evisceration of basic rights is at least as unlikely as parliament’s meekly accepting a judicial capacity to strike down ‘unconstitutional’ legislation. Instead – as Lord Woolf observed some years ago, in relation to a different but analogous matter – it is probable that such a constitutional crisis would demonstrate the insufficiency of the unwritten rules of the game, thereby serving to place

---

13 *R (Jackson) v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262, para 104

14 See above note 13, *R (Jackson) v Attorney-General* [2005], para 102

the adoption of a written constitution firmly on the agenda (Woolf 2004: 329). It follows that the removal of the HRA as a means of managing the relationship between different institutions of government might serve to illuminate the inadequacy of our existing constitutional architecture, thereby stimulating renewed interest in a codified constitution. The irony is that such a constitution might end up placing political power within a far more rigid straitjacket than the HRA does now. Critics of our present human rights arrangements would do well, therefore, to be careful what they wish for.

## References

- Commission on a Bill of Rights [CBR] (2012) *A Bill of Rights? The Choice Before Us*, London: Ministry of Justice. <http://www.justice.gov.uk/about/cbr>
- Conservative Party (2010) *An Invitation to Join the Government of Britain*, London. [http://media.conservatives.s3.amazonaws.com/manifesto/cpmanifesto2010\\_lowres.pdf](http://media.conservatives.s3.amazonaws.com/manifesto/cpmanifesto2010_lowres.pdf)
- Council of Europe [CE] (1953) *European Convention on Human Rights*, Strasbourg. [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)
- Department for Constitutional Affairs [DCA] (2006) *Review of the Implementation of the Human Rights Act*, London. [http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full\\_review.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf)
- Elliott M (2012) 'After Brighton: Between a Rock and a Hard Place', *Public Law*, 619
- Elliott M (2013) 'A Damp Squib in the Long Grass: The Report of the Commission on a Bill of Rights', *European Human Rights Law Review*, 137
- Faulks Lord E and Fisher J (2012) 'Unfinished Business' in Commission on a Bill of Human Rights, *A Bill of Rights? The Choice Before Us*, London: Ministry of Justice
- Fenwick H (2002) *Civil Liberties and Human Rights*, third edition, London: Cavendish
- Forsyth J (2013) 'Chris Grayling: "I want to see our Supreme Court supreme again"', *Spectator*, 28 September 2013. <http://www.spectator.co.uk/features/9033091/the-echr-is-unacceptable/>
- HM Government (1997) *Rights Brought Home: The Human Rights Bill*, CM 3782, London: TSO. <http://www.archive.official-documents.co.uk/document/hoffice/rights/rights.htm>
- House of Commons [HC] (2010) *House of Commons Hansard*, vol 517, col 921, 3 November 2010. <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101103/debtext/101103-0001.htm#10110358000945>
- IPPR (1991) *The Constitution of the United Kingdom*, London
- Ministry of Justice [MoJ] (2013) *Responding to Human Rights Judgments*, London. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252680/human-rights-judgments-2012-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252680/human-rights-judgments-2012-13.pdf)
- Neuberger Lord D (2011) 'Who's the Master Now', second Lord Alexander of Weedon Lecture, 6 April 2011. <http://www.judiciary.gov.uk/media/speeches/2011/whos-the-master-now>
- Woolf Lord H (2004) 'The Rule of Law and a Change in Constitution', *Cambridge Law Journal*, 317

# DEVOLUTION AND THE FUTURE OF THE UNION

ALAN TRENCH

One of James Cornford's signal contributions to constitutional reform in the UK was his involvement in the practical work of the Constitution Unit on devolution in the late 1990s. Cornford and Robert Hazell (its founding director) created the Constitution Unit in 1995. The groundwork for this lay in IPPR's *Constitution for the United Kingdom*, and its proposals for large-scale constitutional renewal (IPPR 1991). The Constitution Unit had a different inspiration – not so much to work out what might be done, as how to do it. Behind this lay a desire not to see Labour repeat its failures of the 1970s in trying to deliver devolution and other constitutional reforms and then seeing them get bogged down in the 'implementation' phase. Over 18 months or so of what must have been astoundingly hard work, Constitution Unit reports on Scotland and Wales, plus a welter of shorter working papers on narrower subjects, provided an incoming Labour government with detailed practical proposals and what would be needed to implement them.<sup>1</sup> That work helped the new government deliver – very quickly – on Labour's devolution commitments immediately after the 1997 election.

James Cornford recognised at an early stage that devolution was a reform half-done. Reportedly, he identified the pre-1997 union as based on three key concessions to Scotland: over-representation in the House of Commons, a generous share of public spending protected through the Barnett formula, and preferential treatment in government through a distinct secretary of state with a seat in cabinet. The first and third of those (though not the second) would also be true for Wales, of course. For Cornford, the logical corollary of granting self-government through devolution was an end to these concessions, which were intended to support a centralised system of government through Westminster. This was very much a view from the centre, of how the 'bargain' of the union needed to be remade as a consequence of devolved self-government.

That view was not widely shared in Scotland, where the idea of such major adjustments in the wake of devolution had little support. In government after 1999, Labour expended a good deal of effort to avoid altering the funding of the Scottish Executive, or losing the

---

1 In particular, Leicester 1996; Hazell 1996, 1997 (all available from <http://www.ucl.ac.uk/constitution-unit/publications>).

office of secretary of state for Scotland. A reduction in the number of Westminster MPs from Scottish constituencies to the same level as in England was foreshadowed in the Scotland Act 1998 itself, and duly took place with effect from the 2005 UK election. However, even subsequent changes made through the Government of Wales Act 2006 or Scotland Act 2012 have avoided touching either the territorial secretaries of state or the Barnett formula.

If there were problems with 1998's 'mark 1' devolution, these have increased since 2007 and devolution's second phase. Debates triggered first by the SNP's narrow electoral win in 2007, and then by its 2011 election victory and the looming 2014 referendum on Scottish independence, have put renewed emphasis on schemes for 'enhanced devolution' as the unionist response to independence. In this respect, the unionist parties are belatedly embracing a position that the Scottish people seem to have reached some years ago; wanting greater self-government within the union, rather than either independence, restored control from Westminster, or indeed the status quo.<sup>2</sup>

Although Scottish concerns have garnered most of the attention, a debate is well underway for Wales too. The UK Coalition government has set up the Silk Commission to look at the finances and powers of the Welsh government and national assembly, and in December 2013 published a draft Wales bill to implement many of the recommendations in the commission's part 1 report. Although Wales's financial position is quite different to Scotland's, public opinion there is remarkably similar to Scotland's in wanting to remain in the union but with more devolution, not less.<sup>3</sup> Where Northern Ireland fits into the picture is less clear, given the divided nature of Northern Ireland's society, but it too is changing, with over 20 per cent of respondents in the 2011 census identifying their nationality as 'Northern Irish' rather than British or Irish.

Maintaining the cohesion of the UK in the light of such varied and largely centrifugal forces has become far harder than it was a decade ago. If there is virtue in the unity of the UK, increasingly this has to be demonstrated to all its citizens, not merely asserted rhetorically or exercised through heavy-handed uses of power. Spain, in particular, demonstrates how ineffective such a strategy can be.

This chapter will look at how devolution can be extended and enhanced, so that it both increases devolved autonomy but also brings in a clear UK dimension that is more than an assemblage of functions the centre wishes to retain or that devolved governments feel unable to take on. It will then look at this reconstituted union from three different political standpoints: one broadly social democratic, one broadly liberal, one

---

2 For the latest public opinion evidence, see Curtice and Ormston 2012. For a discussion of how the framework of devolution has long been out of step with public attitudes, see Trench 2009.

3 This is shown partly in Welsh surveys using similar questions to those asked by the Scottish Social Attitudes survey. See also Henderson et al 2013.

broadly conservative. It will argue that much the same strategy actually would work to serve each party's interests and outlook very well, and offers the best hope for maintaining a *United Kingdom*.

This agenda is what we have been setting out as part of IPPR's Devo More project.<sup>4</sup> Lying behind it is the idea that more devolution is not just compatible with strengthening the union, but vital to doing so for the 21st century. A stronger form of devolution is clearly the 'settled will' of Scottish voters, and increasingly so in Wales too. In England, there is growing discontent about the preferential treatment of devolved parts of the UK: unfairly generous funding, and undue political interference with English policy decisions (see Kenny in this volume). Finding a way of reconciling these different concerns and avoiding the dysfunctional politics of blame which can characterise intergovernmental relations is key to making the union fit for purpose in a changing world.

Underpinning this essay is a vision of a different sort of devolved UK. Putting this into practice would involve some extensive adjustments to the present arrangements.

### What might enhanced devolution look like?

First, it would need a significant change to the division of powers. At present, the social security system and welfare benefits payments are reserved matters. Not only does the UK government fund and run the whole of the welfare system, but devolved governments are not permitted to provide benefits that might overlap with these matters. This no longer accords with clear public expectations in Scotland, and to a degree in Wales. Enhanced devolution needs to mean that devolved governments could provide cash benefits for welfare purposes as well as the UK, probably by some sort of 'topping-up' arrangement, paid for out of devolved resources. This way, devolved governments can make their own choices about both how active and how generous the state should be, and about how services are provided – whether to provide a cash benefit or direct services, for example.<sup>5</sup> However, the burden of paying for better services will fall on taxpayers who live in the devolved territory, not those who live elsewhere. This would create meaningful fiscal accountability as well as political responsibility, while also enabling the UK government to take the lead in assuring equal life chances to all UK citizens.

In practical terms, it would be hard if not impossible to devolve the big redistributive benefits – old age pensions, jobseekers' allowance, probably employment and support allowance and other disability benefits – so the UK government would still be by some distance the

---

4 See <http://www.ippr.org/research-project/44/10218/devo-more-extending-devolution-and-strengthening-the-union>

5 The Scottish policy of providing free long-term care for the elderly illustrates this. Because the policy involves local authorities providing services directly, claimants in Scotland lost their eligibility to the cash benefit of attendance allowance.

main player in social security. Housing benefit would, however, be a candidate for devolution, as it involves considerable overlaps with devolved functions.

Second, devolved governments need access to significant funding that flows directly to them to spend according to their democratic mandate, rather than relying on a centrally-determined proportionate block grant for most of their expenditure. Funding through the Barnett formula not only fails to relate spending to any meaningful conception of fairness or equity, but creates the further problem of implicitly tying devolved governments to the same model of public services that applies in England. When the demand is for significant differentiation in public services within the UK, the Barnett formula is no longer an appropriate mechanism to use. What is needed is more extensive (though by no means complete) fiscal devolution, accompanied by a grant that is clearly designed to distribute resources in an equitable way, so that devolved governments can provide a similar quality of services (but with self-determined levels of provision).

There has been considerable debate about what taxes should be devolved; personal income tax is the prime candidate, as are land taxes. Arguments have been advanced for devolving corporation tax, although in many ways corporation tax is the least plausible major tax to devolve, being highly volatile, complex and sometimes expensive to administer or comply with, and devolution might simply invite tax avoidance. The Devo More project suggests a different approach: a package comprising personal income tax, land taxes, an assigned portion of VAT and assignment of tobacco and alcohol duties (or devolution of these, if excise duties could be replaced by a consumption tax). This package would provide substantial resources flowing directly to devolved governments, amounting to over 60 per cent of devolved spending under current arrangements, and with about 50 per cent of taxes under full devolved control, in a way that avoids dangerous spillovers or dysfunctional fiscal incentives, and which is also relatively stable (see Trench 2013).

Putting a varied package of taxes under direct devolved control would both enhance devolved autonomy and help devolved governments to manage the risks associated with fiscal devolution. This approach could actually serve the interests of all three devolved governments, not just Scotland (as most schemes for fiscal devolution do). As long as this approach was accompanied by an equalisation grant, calculated to enable devolved governments to provide broadly comparable public services to those in England, this would put all four governments within the UK on the same footing when it came to deciding what services to provide and how; and so ensure that all UK citizens had access to similar levels of public service provision. The judgment about what services to provide would be first and foremost a political one for each

of the four governments, using a combination of their own taxes and redistributive transfers from the centre.

Third, there will need to be further adjustments to the scope of devolved functions, and the division of powers between devolved and UK governments. One obvious example is broadcasting in Scotland, where there is support for the idea of a distinctly ‘Scottish’ channel, funded from public funds and by advertising but not out of the licence fee. The investigation and control of serious crime might be another, where a more active range of powers at UK level might be useful. How devolved governments engage with European Union institutions is a third. These issues are perhaps less pressing than questions of finance and welfare, but will form part of a package to make devolved government work effectively for all parts of the UK.

Fourth, the UK government will need to take a more active and engaged approach to managing the union as a whole. This emphatically does not mean interfering in devolved matters; it does mean, however, taking a role in spotting and managing areas of difference, while also identifying areas of common interest.

This would mean accepting the logic of devolution: two governments each acting directly on the citizen, neither subordinate to the other in any practical way, with a clear and active role for the UK tier across the union. Whatever happened in relation to England, the UK government would be providing some services directly in Scotland, Wales and Northern Ireland – not just immigration, defence and foreign affairs but also the bulk of social security benefits – and it would still be collecting substantial amounts of tax in each jurisdiction. Through grant funding, it would also be ensuring that all devolved governments were able to provide a similar level of devolved services to those in England – a fundamental guarantee of fairness across the UK. This would mean the evolution of the UK into a rather asymmetric, quasi-federal system, in which emphasis could be put on *both* devolved autonomy and the value of the union.<sup>6</sup> In such a context, and unlike the situation now, it would be hard to attack the UK government when it claimed credit for what it did for devolved parts of the UK.

In such a modified system, the UK government would need to take an active and strategic approach to the management of the union. This would need to include taking an overview of the whole impact of UK government policy on Scotland, Wales and Northern Ireland, managing overlaps between ‘devolved’ policies where English policy on health or

---

<sup>6</sup> Politicians from across the political spectrum have called in recent months for a ‘federal UK’, with a heavy emphasis placed on changing UK-level institutions. This is a rather limited understanding of what federal systems entail, and means addressing the complex long-term questions of England’s place in the union at a time when it is far from clear what England wants. The risk of such an approach is that it postpones action where it can be taken and is needed, with a risk of undermining the legitimacy and authority of the union in those parts of the UK.

education affects devolved territories, and also where non-devolved/ reserved policies interact with devolved ones (such as vocational training and work-related skills as part of an active labour market policy). There would need to be more careful and strategic use of the levers available to the UK government, and a recognition that it could not always achieve what it wished by direct means – in many cases, devolved governments would have their hands on at least some of the policy levers required. But little of this is new; it has been inherent in the design of devolution since 1998.

Fifth, there would need to be greater awareness of the role of the UK government as a government for England itself. England is not simply a residuum of the UK but one of its component nations, and the public increasingly wants to see this recognised in government frameworks (see Wyn Jones et al 2012, 2013). Decentralisation along the lines of city-regions and city deals could be one aspect of this (see Cox in this volume). Recognition of the extent to which Whitehall makes policy for England – particularly in health, education and local government – is another. It is also important to ensure that MPs from English constituencies are given a more explicit role in approving legislation that affects England only.<sup>7</sup>

## The value of Devo More

The Devo More package may seem radical, at least to those concerned with the UK level. (It is much less so by Scottish standards.) However, it has three other major advantages. First, it is workable in practical terms, and indeed much of it could be put in place relatively quickly, building on existing arrangements or ones currently in preparation (like tax devolution under the Scotland Act 2012). Second, it brings devolved government closer to aspirations for it from voters in Scotland and Wales (and without undermining the interests of those in England). This means the package is not merely potentially popular, but implementation would contribute to ensuring the ongoing legitimacy of government across the UK. Third, looked at from different points of view, Devo More works in ways that suits each party's interests and outlook. Different aspects of the package achieve this, in different ways. In the best sense, this is a package that offers something to each of the major British political traditions and the parties that currently embody them.

Northern Ireland has had much less direct involvement in these discussions than Scotland or Wales. For the nationalist population in Northern Ireland, of course, there remains a lack of enthusiasm or support for the British state – even if there is support for the sort of welfare provision that comes with being part of the UK. For unionist

---

7 Conservative support for 'English votes on English laws' and Labour opposition to it would in both cases be more credible if the parties supported an electoral system that did not guarantee disproportionate numbers of Scottish Labour MPs and Conservative English ones, given their shares of the vote in each country.

voters, support for the union simply because it exists is still likely to transcend efforts to demonstrate the union's value in more tangible ways. Northern Ireland has long been regarded by politicians as a 'policy-free zone', because its politics have been dominated by the sectarian conflict and its aftermath. Any further devolution that enables Northern Ireland politicians to engage more fully in the policymaking process and to make choices between policy alternatives is likely to be beneficial. Devo More would increase the pressure on its politicians to take on greater responsibility for policy, a key element of 'normal' democratic politics and an important part of moving the peace process on from the avoidance of conflict to helping the two communities to live with each other.

Within the Devo More package, there is room for parties to make some adjustments to achieve what they wish to see. There are various combinations that are more or less conservative, liberal or social democratic. But I would argue that this package or something similar is the only way to construct a UK that is fit for the 21st century.

## A social democratic union

Devolution as delivered was principally a Labour project. While supported by a wide range of parties from the 1970s onwards, it was enacted by the 1997–2001 Labour government as one of its first and most successful policies in office. Devolution on the 1998 model was deeply shaped by Labour interests, particularly by devolving power over distributive welfare functions but not redistributive ones or the wider economy, and by funding them by what in substance was a redistributive grant from the centre.<sup>8</sup> The problem was that Labour in government assumed that the world would continue as it was, and that it would never lose an election anywhere (assumptions both proved wrong by 2008). The system it put in place (and then forgot about) relied on shared party interest and consensus, rather than an effective division of powers, to safeguard its social democratic vision of the union. While it celebrated the 'British' innovation of the national health service, it barely noticed that devolution had created four separate services, one for each part of the UK, with the name increasingly the main thing they had in common.<sup>9</sup> To the extent that the NHS was 'national', it was Scottish, Welsh or English, not UK-wide (see Keating 2007). The NHS now needs to operate on the basis of a different system that can embrace both risk-sharing and redistribution across the UK while, at the same time, ensuring that these can be related to 'fairness' to minimise accusations of undue subsidies that might come from richer parts of England.

---

8 A common defence of the Barnett formula arrangements by Labour ministers was that it enforced a rough form of territorial justice. Given the weak tax bases of Wales and Northern Ireland, it was clearly redistributive, even if it did not accord with estimates of Wales's relative needs. While the grant for Scotland exceeded relative needs, it ended up being redistributive, if only because of that generosity of funding.

9 Even the shared commitment to providing universal healthcare free at the point of use was first articulated by the devolved governments, without the UK joining in at that stage.

What would be particularly important from a social democratic point of view is emphasis on UK-wide shared social citizenship (see Greer 2009). A key feature of the post-1945 union, social citizenship was seriously undermined by Thatcherism in the 1980s and has never recovered politically from those blows, while arguments about the ‘distinctive nature of Scottish society’ were used to justify independence. What is true for Scotland is even more true for Wales and Northern Ireland; the welfare state is a major element of what membership of the union does for those parts of the UK.

A progressive social democratic approach would embrace this support for the welfare state, rather than seek to halt it. Labour could say that enhanced devolution not only provides an opportunity for governments to do things differently when they wish, but to do so within an overarching framework that assures fairness by having in place a system of financial redistribution. That redistribution would take place geographically, from richer parts of the country to poorer ones, but also over time – whether over people’s lifetimes, through mechanisms like tax credits and pensions, or as different parts of the UK become more or less prosperous. Redistribution in this sense is like an insurance policy, sharing hard-to-manage risks over a larger pool to make them more controllable, and treating that as a way of expressing mutual solidarity. An approach rooted in mutual solidarity takes one straight back to Labour’s 19th-century origins in institutions like trade unions and the cooperative movement, and fits with how devolution works in practice.

At the UK level, redistribution would be somewhat more limited than it might have been in the past – but much of the reason for this lies with what has already been done in devolving policy functions, rather than further fiscal or welfare devolution. Nothing in this approach to enhanced devolution would prevent a UK government from effecting redistribution if it wished, as it would still have wide fiscal powers in all parts of the UK as well as a range of policy levers. However, it would have to be more willing to broker or forge compromises when making social policy; it will no longer be able to act unilaterally just through passing legislation at Westminster but will need cooperation from devolved governments.<sup>10</sup> For a UK-wide Labour government, that should be comparatively easy to achieve, and would contribute to making the devolved UK work effectively.<sup>11</sup> On the positive side, pro-union social democrats would be able to emphasise an overall shared form of social citizenship as an aspect of what the ‘united’ in UK signifies. Moreover, this would involve a clear ongoing demonstration of the value of the union to citizens across the UK.

---

<sup>10</sup> Experience of the welfare state in federal systems shows the extent to which federalism slows change but does not inhibit the formation of welfare states (see Obinger et al 2005).

<sup>11</sup> For a discussion of how this might be done, see Trench 2010.

At the same time, there are more directly political aspects of enhancing devolution. Support for a broadly social democratic welfare state in Scotland is strong, across parties; the same is true for Wales, although there it has less of an immediate political charge. For Scotland to be able to remain a contented part of the UK it has to be able to preserve its social democratic character, whichever party forms the government there. This requires a policy that enables significant differentiation in domestic and social policy, even if the UK-wide government claims full credit for what it does in making that possible. Any policy that preserves Scotland within the union would help Labour in the practical sense of keeping a substantial number of Labour MPs at Westminster (even if their ability to vote on 'English' matters was limited), and of maximising the number of arenas in which Labour could win office. At the same time, this reconfiguration would help Labour in England by reducing resentment directed at what is seen as Scotland's 'special treatment'.

## A liberal union

Although delivering devolution may be a Labour achievement, it is also long-standing Liberal party policy, long predating the present Liberal Democrat party. In the 19th century, Liberals embraced 'home rule', and sought to understand how to make it work for the whole UK. In the 20th century, 'home rule' came to share ground with 'federalism', making for intellectually uneasy bedfellows.<sup>12</sup>

Given liberalism's roots, it is not hard to see why devolution appeals to it. Devolution is a way of respecting local choices. A scheme for enhanced devolution like the model outlined above offers two big advantages for liberals. It creates a way for meaningful, local choices, and enhanced responsibility, in a context that is 'fair', and puts all parts of the UK in a position to make meaningful policy choices. It also enables the various parts of the UK to act together for purposes where there is a shared interest. Such a scheme comes close to a practical application of the principle of subsidiarity, and probably closer to doing so (or being on the right side of public opinion) than the current position of the Scottish Liberal Democrats.<sup>13</sup>

Devolution also, in a more practical sense, maximises windows of political opportunity for the Liberal Democrats. The electoral systems of devolved government enable a strong possibility of participation

---

<sup>12</sup> The Steel Commission's 2006 report, *Moving to Federalism – a New Settlement for Scotland*, was the apogee of this. It described a maximal form of home rule, which it considered to define a federal relationship for Scotland and the rest of the UK, but the functions it ascribed to the UK level were identified largely on the basis of convenience rather than principle. Its maximalism also opened the door for the SNP to appropriate its prescriptions as their form of 'full devolution'. In truth, while the Liberal Democrats are strongly committed to preserving the union, they have struggled more than any other unionist party to explain why the union is so vital.

<sup>13</sup> The Scottish Liberal Democrats' Home Rule and Community Rule Commission report of October 2012, *Federalism: The Best Future for Scotland*, manages to combine a curious understanding of federalism with misconceived ideas about fiscal devolution, and a refusal to contemplate any form of welfare devolution despite support by Scottish public opinion.

in government in Scotland and Wales as well as at Westminster. At present, the combination of an assumed hierarchy of governments and the 'winner takes all' attitude of Westminster makes it hard for the party to maximise the opportunities their political position presents. Media and public debate fuel an expectation that parties in a government will agree with each other all the time. Pointing out that one government has one level of legislative power, and another government a different one, does not accord with present institutional structures or the way politics are analysed. Changes in those approaches may take some time, but will be easier to accomplish if the institutional structure clearly emphasises the importance of each government making its own choices according to the outcome of its own elections. A coalition with Labour in Wales, for example, has become very problematic given Welsh Labour's vocal opposition to the Conservative–Lib–Dem coalition at Westminster. Being able to claim credit for helping put such a system in place would not just help the Liberal Democrats' electoral prospects, but also create a climate in which it was normal and proper for parties to hold office with different coalition partners in different tiers of government at the same time. The Liberal Democrats would be the chief beneficiary from that.

## A conservative union

The union is a Tory accomplishment – first under Queen Anne in 1707, then under Pitt the Younger (with Ireland) in 1801. Both those unions had at their root two goals: assuring the security of the larger part of the state (England in 1707, Great Britain in 1801) from threats of foreign invasion or alliance, and creating a wider economic market for English or British finance and manufactures. Many modern-day conservatives, including the present Tory party leadership, still value the ongoing existence of the union. The practical reasons now have less to do with economics and trade, but they do relate to international affairs. For conservatives, one practical benefit of the union is that it continues to enable the UK and all its constituent parts to 'bat above its weight' on the global stage (see Cameron 2007). Beyond that, for many conservatives there is also a sentimental attachment to the union, and a belief that in some hard-to-define way it is essential to their idea of the country in which they live.

The result of this approach is that the key conservative approaches to the union relate to symbolic institutions – particularly the royal family, the union flag and the role of the armed forces. These symbols are certainly important, but they are unlikely to be sufficient – and they are not sufficiently shared or experienced by the bulk of the population on a day-to-day level that they can be relied on to carry the weight of preserving the state as conservatives know it. That needs some form of shared interest embodied in symbols, rather than reliance on the symbols themselves. Beyond that, in recent years there has tended to be an absence of practical consideration of devolution and territorial

constitution within the Conservative party.<sup>14</sup> There are many who may wish to remain part of the union without having the same attachment to these condensations. (They are positively counterproductive for many in the nationalist community in Northern Ireland, for example.)

For many conservatives, the union's role in assuring welfare across the UK is of limited interest or value. They are more tolerant of local and regional variation, not to say inequality, than the other political traditions. But they can see the value of 'fairness' when it comes to the public finances. Indeed, conservatives seem to have no problem with allocating resources according to relative need, so that the neediest get the most, so long as they are not supporting better-quality services than their own voters get when they allocate funding. This is an issue particularly in Scotland, where it cannot be justified on grounds of relative need. There is a tension between seeking to maintain a union and seeking to reduce social spending. What is being proposed here is a financial system that provides a 'fairer' level of resources for devolved governments, but limits any subsidy and requires additional devolved spending to be met from devolved taxes. Such a system would increase transparency and responsibility – since voters who want more spent on public services will be paying taxes to pay for them.

Moreover, by giving both financial resources and legal powers to devolved governments to increase public spending if they wished, devolved governments could combine higher levels of overall welfare provision with remaining part of the union. This would undermine the logic that says 'vote for independence to save the welfare state', and accords with what we know about what voters in both Scotland and Wales want. It would also enable centre-left governments in Scotland or Wales to govern without needing to take up nationalist positions. Doing this would secure two big wins for the Conservative party: it would preserve the union and limit resentment from English voters about special treatment for Scotland, Wales or Northern Ireland.

Substantial devolved fiscal responsibility has another attraction from a conservative point of view. It creates scope for arguments about reducing public spending to have real attraction, as reduced spending would make it possible to reduce devolved taxes. Without such fiscal responsibility, all conservatives could do if they were in government in the devolved administrations is propose to spend money differently. They could not propose a different approach to UK policy, with the benefits of reduced taxes to go with reduced spending. This would seriously inhibit conservative arguments at election time. Given that one of devolution's more curious practical effects has been to give the Conservative party an electoral platform in Scotland and Wales, through the devolved legislatures, this is a serious sacrifice.

---

<sup>14</sup> For example, there are scant references to Scotland or Wales in Bale 2010.

In Wales, this helped the Conservative party to ‘decontaminate’ itself and brought it close to power, nearly entering government in Wales through the ‘rainbow coalition’ in 2007. In Scotland, Tories provided key support for SNP budgets and other votes during the 2007–2011 minority government, and exacted a price in securing funding for their own priorities (which included more police, support for small business through the business rate, and a different approach to tackling drug addiction). There is no reason why the Conservative party in Scotland or Wales should not be as able to enter government as any other party if they can build on their electoral base and use their commitment to devolution to build on that ‘decontamination’.

There is a price for this. At the UK level, Conservatives would need to admit that they had no monopoly on ‘right’ policy, and would have to tolerate or even facilitate political differences with other governments when they were in power (wherever that might be). The party might get very uneasy about some of the policy choices made by devolved governments. The art of compromise, though, is the price of putting the union that they prize so highly on a viable footing.

### The value of a reinvigorated union

The union has reinvented itself on a number of occasions since 1707. It may have started as a way of removing diplomatic and security threats to England from Scotland, while helping Scotland deal with public and private bankruptcy following the failure of the Darien venture and given its exclusion from England’s trading empire. During the 19th century, the union incorporated Ireland, and eventually embraced religious toleration and mass male suffrage. During the 20th century, it adapted to the universal vote and saw the establishment of the welfare state, as well as Irish independence and a general retreat from Britain’s empire while playing a key part in the Cold War. During that time, wealth and economic activity across the UK has grown, but latterly has become increasingly unequally distributed, and the peoples of its various parts increasingly demand different policies from government and government to play different roles in their lives. The union now needs another major reinvention if it is to adapt itself for the 21st century, and one that means accepting the sort of differences and divergences inherent in the logic of devolution as well as moving away from its lack of assertiveness in recent decades. Reinvention of this sort will not be easy, and involves squaring a number of circles. They can be squared, but the range of options for doing so is limited. IPPR’s Devo More proposals, or something very like them, offer the best way to reconcile these competing and sometimes conflicting objectives.

While the room for manoeuvre may be limited, whichever party or parties are in power at Westminster when a UK government puts a system like this in place will still be able to make key decisions about how the devolved UK will work. The balance between UK-wide equity and

reliance on tax revenues generated by a government, in particular, is open for debate. The result of the 2015 UK election will therefore shape the ongoing future of the UK in profound ways. Pretending that the status quo can survive is not, however, an option.

## References

- Bale T (2010) *The Conservative Party: From Thatcher to Cameron*, Cambridge: Polity
- Cameron D (2007) 'Stronger Together', speech at Dynamic Earth, Edinburgh, 9 December 2007. <http://www.telegraph.co.uk/news/uknews/1572059/David-Camerons-Union-Speech-in-full.html>
- Curtice J and Ormston R (2012) 'Scottish independence: The state of the Union: public opinion and the Scottish question' in Park A, Clery E, Curtice J, Phillips M and Utting D (eds) *British Social Attitudes 29*, London: National Centre for Social Research
- Greer SL (ed) (2009) *Devolution and Citizenship Rights in the United Kingdom*, Bristol: Policy Press
- Hazell R (1996) *An Assembly for Wales, no 4*, London: Constitution Unit
- Hazell R (ed) (1997) *Delivering Constitutional Reform: The Collected Briefings, no 13*, London: Constitution Unit
- Henderson A, Jeffery C, Wincott D and Wyn Jones R (2013) 'Reflections on the 'Devolution Paradox': A Comparative Examination of Multilevel Citizenship', *Regional Studies*, 47(3): 303–322
- IPPR (1991) *The Constitution of the United Kingdom*, London
- Keating M (ed) (2007) *Scottish Social Democracy: Progressive Ideas for Public Policy*, Brussels: Peter Lang
- Leicester G (1996) *Scotland's Parliament: Fundamentals for a New Scotland Act, no 3*, London: Constitution Unit
- Obinger H, Leibfried S and Castles FG (eds) (2005) *Federalism and the Welfare State: New World and European Experiences*, Cambridge: Cambridge University Press
- Scottish Liberal Democrats' Home Rule and Community Rule Commission (2012) *Federalism: The Best Future for Scotland*, London: Scottish Liberal Democrats
- Steel Commission (2006) *Moving to Federalism – A New Federalism for Scotland*, Edinburgh: Scottish Liberal Democrats. <http://www.scotlibdems.org.uk/files/steelcommission.pdf>
- Trench A (2009) 'Devolution in Scotland and Wales: Muddled thinking and unintended results' in Facey P, Rigby B and Runswick A (eds) *Unlocking Democracy: 20 years of Charter 88*, London: Politico's
- Trench A (2010) 'Intergovernmental relations and social citizenship: Opportunities Labour missed' in Lodge G and Schmuecker K (eds) *Devolution in Practice 2010*, London: IPPR. <http://www.ippr.org/publication/55/1775/devolution-in-practice-2010>
- Trench A (2013) *Funding devo more: Fiscal options for strengthening the union*, London: IPPR. <http://www.ippr.org/publication/55/10210/funding-devo-more-fiscal-options-for-strengthening-the-union>
- Wyn Jones R, Lodge G, Henderson A and Wincott D (2012) *The dog that finally barked: England as an emerging political community*, London: IPPR. <http://www.ippr.org/publication/55/8542/the-dog-that-finally-barked-england-as-an-emerging-political-community>
- Wyn Jones R, Lodge G, Jeffrey C, Gottfried G, Scully R, Henderson A and Wincott D (2013) *England and its two unions: The anatomy of a nation and its discontents*, London: IPPR. <http://www.ippr.org/publication/55/11003/england-and-its-two-unions-the-anatomy-of-a-nation-and-its-discontents>



# THE ENGLISH QUESTION: IDENTITY, DIVERSITY AND NATIONHOOD IN ENGLAND

MICHAEL KENNY

The political fate of the Coalition government is tied with an umbilical cord to the fluctuating fortunes of the UK economy. But while the fallout from the government's austerity programme and the spluttering recovery are the main axes around which British politics turns, less attention has been paid to the other defining theme of the day. This is the national question – or, more accurately, the various interlocking national questions – which have, for the first time for a century, moved front-and-centre in British political life. There are good reasons to think that these are just as likely to affect the fortunes of all the political parties in the short and medium term.

The development of a more compelling, contemporary case for Britain's union requires not just a fine-grained understanding of Scottish sensibilities and arguments (Kidd 2012a, 2012b), but also makes imperative a proper consideration of the nature and implications of developing forms of English identity. A growing body of social science research points to a gradual reassertion of English nationhood in the current period, a trend that is more deeply rooted and politically significant than is generally appreciated. Several different, contending versions of what it means to be English are quietly and inexorably leaving their imprint upon the agendas and assumptions of politics at Westminster.

## National questions in British politics

For the most part, a considered and strategic approach to the issues and themes bound up with 'the nation' is notable by its absence from the British political scene. All of the main parties have obvious, short-term incentives for averting their eyes from these issues, or for playing them tactically, given their own internal differences on Europe and the union, and the difficulties they have in engaging with the public on such matters.

And yet each is likely to find an evasive or purely tactical stance increasingly difficult to sustain. In part, this is a result of the dramatic coincidence of loud questions about Britain's role in Europe, the referendum on Scottish independence and the attendant debate about the union, the likelihood of further devolutionary developments in Scotland

and Wales (even if Scottish independence does not come to pass) and the recent report issued by the independent McKay commission that proposed a watered-down version of ‘English votes for English laws’ as the basis for bipartisan agreement across the party divide. The chronological overlap and mutual impact of these issues makes the muddling-through, issue-by-issue approach increasingly implausible.

More generally, national questions are necessarily difficult for politicians who are schooled in the dominant narrative in the UK of centralised and functional, rather than territorial, governance. And yet the blood has been seeping away from the Westminster model for some time, primarily because long-established ideas about what was special and unique about Britain and its evolving system of parliamentary government began to lose their appeal as the last century drew to a close. This was apparent from the rise of nationalist sentiments outside England from the 1970s, but it also became palpable among the English during the early and mid-1990s.<sup>1</sup>

Now that the efficacy and legitimacy of this system of government and its national corollary – the United Kingdom, or ‘fifth nation’, as some commentators have called it – is being increasingly called into question, it is impossible for the political parties at Westminster to address such difficult issues using the codes and assumptions that have held sway since the late 18th century. Above all, the ingrained assumption that England is coterminous with British institutions and affiliations is at odds with wider patterns of national self-awareness among the English people. Engaging more positively with today’s national questions is therefore unavoidable if UK-wide politics, and the systems of governance upon which it rests, are to restore their faltering legitimacy. Our politicians need to start pointing towards the outlines of a new constitutional settlement founded upon a better balance between the demands of territorial justice and the imperative to coordinate more closely the UK-wide dimensions of citizenship and statehood.

And the three main parties appear either uncomfortable or uncertain as they grapple with these national questions. For the Conservative party, David Cameron’s deployment of familiar unionist arguments in the debate over Scottish independence sits awkwardly with the reality that the Tories look increasingly like the party that represents the most affluent parts of southern and central England. Many voters within their electoral core are increasingly impatient with the union and Scottish demands upon it (Wyn Jones et al 2012). As yet, the leading party in government has made no clear response to McKay’s proposals, which add one further potentially divisive issue to the Coalition’s governing agenda.

In Labour’s case, Ed Miliband’s ‘One Nation’ rhetoric is vulnerable to a pretty obvious rejoinder – ‘which nation?’ Perhaps best known as

---

1 On the emergence of English nationalism in the 1990s, see Kenny 2014 (forthcoming).

a Tory phrase, it is heard in Scotland, Wales and Northern Ireland as a decidedly English trope.<sup>2</sup> This illustrates a broader pattern: when politicians at Westminster assume they are addressing audiences across the UK, increasingly they are ever-more Anglocentric in the tone and substance of their words. And for the Labour party, engaging with contemporary English sensibilities raises another pressing question: how can its rediscovery of an authentic, radical lineage of progressive patriotism – as proposed by figures such as the chair of its policy review, Jon Cruddas – be reconciled with the widespread perception that the party clings to the established order because of its heavy reliance upon the votes of Scottish MPs? This may well explain the party's unwillingness to engage with the McKay Commission and the deafening silence with which it has treated its findings.

Electoral considerations also dictate that the party should engage more carefully and deeply with those parts of England where it performed so poorly in the general election of 2010. That result fuelled the notion that Labour speaks primarily for its former industrial heartlands, as well as the Welsh and Scots, and struggles to provide an 'offer' to, or point of identification for, those living in the new towns, the suburbs and the semi-rural hinterlands of large parts of southern and eastern England and the Midlands. If Labour does succeed in winning a majority in the general election of 2015 but lacks representatives in large swathes of southern, eastern and western England and the Midlands, it could well find itself facing a crisis of territorial legitimacy, at the mercy of a potent English-focused backlash. (Indeed, one advantage of coalition with the Liberal Democrats is that this might help offset Labour's position in England, as it has done in relation to the Tories' situation in Scotland.)

At present, the one political party that appears to be in tune with some strands of the new English zeitgeist is the UK Independence Party (Ukip) (despite the anachronistic name with which it is saddled). Recent polling suggests a strong correlation between sympathy for Ukip and identification with English, rather than British, national identity (Wyn Jones et al 2013). Yet, transforming its retro-British nationalist outlook into an English nationalism which might extend its appeal to working-class voters presents a challenge, as much as an opportunity, for Ukip, as is clear from its significant internal divisions on such questions as whether to support an English parliament (Lodge 2013). And, more fundamentally still, the extent to which Englishness signals the kind of pessimistic, insular and conservative outlook that Ukip promotes is often exaggerated. My own research suggests that most people who are increasingly inclined to identify as 'English' first and foremost are broadly liberal and/or conservative in disposition, and still feel a strong sense of affiliation for the union, even if many are increasingly sceptical about the EU (Kenny 2014, forthcoming).

---

<sup>2</sup> See Jackson 2012 for a contrasting view of the 'One Nation' meme.

## Narrow nationalism or English nationhood?

In the broadest terms, the main parties at Westminster still cling to the orthodoxies embedded in the Whig narrative of British government forged in the 18th and 19th centuries. But the forms of English identity which are starting to loom into view bring with them major challenges to the assumptions at the core of this national story, not least the supposed disinclination of the English to develop their own sense of national identity.<sup>3</sup>

This does not mean accepting the dramatic claim that we are living in a ‘moment’ of English nationalism. For while many commentators and campaigners have long been frustrated by the apparent unwillingness of the English to give up their attachment to the premodern institutions of the British state and embrace the principle of popular sovereignty, the current trajectory of English nationhood suggests that a different scenario is much more likely to play out. A wide range of social scientific research finds very little evidence of a collective English desire to reclaim national sovereignty from the British state (Curtice 2010). But there are signs that the idea of a new, more ‘delineated’ relationship between England and the UK is becoming increasingly attractive (Jeffery 2012).

This suggests, in policy terms, that the state should provide greater recognition of the distinctive forms of nationhood that the English are developing. It also implies that a more concerted effort to reform the centralised and top-down model of state-led governance – a model that is fraying the bonds between governors and the governed in England – is overdue. This system represents a major brake upon the prospect of renewing England’s cities as engines for economic growth and civic pride, as Lord Heseltine recently pointed out (Heseltine 2012).

Not that inertia is inevitable. Already there are signs that leading visions of Englishness are transforming the culture and agendas of British politics – albeit almost imperceptibly. Research has shown that the Scottish parliament and Welsh assembly have generated political cultures that are increasingly detached from developments elsewhere in the UK (Jeffery 2012), but the English equivalent of this trend – the shrinkage in the imagined community addressed by the London-based media – has gone largely unnoticed. England (or most usually London and the south east) serves as the taken-for-granted territory addressed by most media coverage of a political system that remains nominally UK-wide.

In constitutional terms, as soon as key areas of domestic legislation were devolved, the UK parliament began gradually to turn into a parliament for England. The result is that, as leading experts have put it: ‘As an unintended consequence of devolution ... an English polity has (re)emerged as an incubus [sic] at the heart of the UK state’ (Wyn Jones et al 2012).

---

3 For analyses of the abiding myth of the absence of English nationalism see Kumar 2003, Aughey 2008.

Most importantly of all, there are also numerous signs – for those who care to look – that Englishness has become the national identity of choice for many people in the last few years, and that its core concerns and dynamics are starting to imprint themselves on the Westminster political scene. Recent academic studies suggest that since 2007 an important shift in national self-understanding may have been gathering pace (Skey 2011, 2012; Mann 2011; Garner 2010; Fenton and Mann 2009). Its extent and underlying causes are hard to determine with confidence because of its embryonic character and the problems of methodology and measurement that accompany analysis of national identities. But it is striking that different accounts, using a variety of methodologies, report that respondents were similarly willing to voice a sharp sense of irritation, and occasional resentment, at the prevalence of ministers representing Scottish constituencies in the Labour governments of the day (Skey 2011).

While this may not be entirely surprising, given the nature of some of the media coverage during these years, elements of this research also suggest that such sentiments do not stem simply or only from the kind of base anti-Scottish prejudice that is stoked by parts of the media. Instead, these attitudes can be seen as reflecting a significant shift in ethical outlook that may have lasting implications. Social psychologist Susan Condor illustrates how the English, far from being indifferent or resentful about the idea of devolution for the non-English territories in the UK, have tended to see this as a reasonable means of ‘evening things up’ for the smaller, more vulnerable nations (Condor 2010). In the last few years, then, it appears that this intuitive, liberal sense of the need to provide equitable treatment to different national groups in the multinational union state has increasingly been applied to England itself.

The advent to the British premiership of an MP for a Scottish constituency known for his enthusiastic promotion of ‘Britishness’ may have catalysed a flintier and more resentful sense of Englishness in some quarters, perhaps accentuated by the economic storm that broke during 2007. Lurking beneath this trend, however, there is the glimmer of a truly challenging English question: will the English now tolerate a prime minister who does not represent an English seat?

At the same time, an assessment of the various dynamics that have informed the re-emergence of English identity since the early 1990s suggests that devolution has not been the sole or even primary factor to have altered existing patterns of national identification. It is important to appreciate the impact of a cocktail of deepening cultural anxiety, rising economic insecurity and growing disillusion with the political system – mixed up together, these factors have made the organic and resonant language and symbols of ‘Albion’ more appealing. Different strands of English identity emerged from an extended bout of national soul-searching in the early and mid-1990s (Kenny et al 2008), preceding

devolution and prompted instead by the realisation that the pillars upon which sat the familiar glories of 'Britannia' were crumbling away.

During the New Labour years, Englishness offered a language of inheritance and tradition that expressed a deep opposition to the metropolitan hubris and state-led managerialism with which those governments were often associated. These sentiments in turn created the conditions in which a populist, hard-edged nationalism was able to emerge among a minority of the English population. This version of 'the nation' revolves around the fantasy of a return to an ethnically pure England, without the complications and conflicts that modernity, urbanisation and cultural diversity have brought in their wake. Indeed, it may well be that this form of English identity has particular appeal to some who fall into the category of the 'squeezed middle', a group that is more commonly referenced in economic terms but which is also among the most politically fickle and culturally anxious in British society.

## Recognising the English

Despite this development, there is much more to English nationhood than feelings of resentment and fear. As the summer of 2012 demonstrated, many people across the UK are still responsive to the inclusive and progressive account of the Anglo-British story, of the kind Danny Boyle assembled during the opening ceremony of the Olympics. A similarly inclusive mood was generated by the attitude and diversity of the crowds who flocked to the Olympic and Paralympic Games as well, which were culturally significant in their own way.

While nationalists struggle to explain the enduring popularity of these pro-British sentiments, this patriotic effusion should be seen as one of the many different faces of contemporary English nationhood. Older ideas about Britain's greatness may no longer command the sentimental power they once did, but there are still occasions when many English people are happy to signal their continuing attachment to and latent affection for Britain and its representatives. But this does not mean that the long-term trend towards greater national self-awareness among the English ground to a halt last summer. The assumption that national identity is a zero-sum game, in which people choose between being English and being British, is wide of the mark, especially in a state where multiple identities are the norm, not the exception.

At the same time, if this slowly burgeoning sense of English nationhood remains unvoiced in mainstream politics then there is a greater chance that such sentiments will mutate into a harder-edged nationalism that frames the political system and the post-devolution constitution as alien impositions. The dearth of meaningful forms of cultural and institutional recognition for English identity means that sentiments that need to be aired and engaged are being bottled up. In this closeted environment even relatively trivial issues – such as being unable to

tick 'English' as your national identity on official forms – can take on disproportionate significance.

The absence of such opportunities is all the more important given that there is, in the strictest sense, no such thing as 'Englishness'. Rather, there are different, contending versions of what it means to be English. These converge upon a familiar set of national myths, stories and iconography, and diverge in terms of the political and cultural sensibilities they promote.

And so, along with harder-edged English nationalism, other rival ideas of Englishness have arisen. One contender is an ordinary, everyday kind of broadly conservative Englishness that is politically moderate, underpinned by the enduring myth that the spirit of England lies in its rural past, takes a broadly tolerant stance towards those from other cultural backgrounds, and holds to an intuitive sense of fairness. This broad seam of national sentiment, which spans the villages and towns of rural and suburban England, is also currently a seedbed for scepticism towards Europe.

This sense of Englishness is in competition with another strand – that associated with various attempts to promote a modern, liberal vision of a multicultural England. This resonates with younger people, professional groups and growing numbers of ethnic minority citizens (Bryant 2006). It is, as yet, the most inchoate of these English blocs, but it has considerable potential for further development. In combination, these three forms of national understanding – broadly, the nationalist-populist, the conservative-traditional and the liberal-modern – stake out the territory of Englishness.

Understanding the plural nature of the emerging English 'national-popular' (to use Gramsci's term) suggests a sceptical response to grandiose claims about the rise of English nationalism. While nationalism tends to develop through a symbolic process of negative self-definition against various external 'others', current forms of Englishness are less likely to be shaped by external cultural contrasts – although Euroscepticism has undoubtedly served as an external stimulus to English self-awareness – than by internal ones.

Longstanding rivalries between 'north' and 'south', for instance, figure in many accounts of the meaning, culture and landscapes of Englishness, so that the national 'us' is often defined against a 'them' who represent a very different kind of English sensibility and politics. In contemporary terms, hostility to the power and wealth of London and the south east is one of the most powerful dynamics within the English imagination.

Second, differences rooted in social class remain a distinguishing feature of Englishness, in contrast to other forms of European national

identity (Schöpflin 2000, Aughey 2012). This gives rise to expressions that conjure up the national spirit through archetypal representations of distinct social classes – a familiar motif of TV dramas like *Downton Abbey*, for instance. From this perspective, there is a continuing sense of order and hierarchy within English culture, with the two main political parties providing the political vehicles for divergent accounts of the national character.

More recently, a third axis of Englishness has emerged around the nationalist-populist contention that it is indigenous white people who constitute ‘the last tribe in England’, and who have been neglected by a state that is said to treat cultural minorities, immigrants and the non-English nations more favourably. Given the coexistence of, and tensions between, these rival ideas of Englishness, generic appeals to patriotism by politicians are likely to miss the mark. The politics of Englishness is now defined by the struggles in which these contending accounts are engaged. Political actors will gain most traction by framing their arguments in these diverse conservative and progressive traditions.

### The Anglicisation of UK politics

The Anglicisation of UK politics has not, for the most part, resulted in a highly political nationalism demanding the creation of English-only institutions. Instead, it has led to a more Anglocentric way of thinking and talking about politics, which has bubbled up into the political mainstream in the form of an increasingly English-focused view of political priorities and issues. Anglo-British politics is increasingly defined by the very different experiences of recession and public sector cuts in the south east and other parts of England, the growing resentment occasioned by rising inequality and the irresponsible behaviour of political and economic elites, and debates over who counts as a deserving member of the national community (with migrants and those dependent on welfare benefits often framed as undeserving outsiders). Each of these themes has been played out within, and stoked by, the rhetorical repertoire associated with a revitalised sense of English heritage and culture.

But, while politicians at Westminster are, usually unwittingly, reflecting an ever-more Anglicised set of priorities, it is wrong to think that this amounts to a coherent or strategic response to the various challenges posed by a growing sense of Englishness. There is, in the longer term, a real prize available to the political party that is able to harness the evolving sensibilities of the English and to address credibly the normative claim at their heart – that England merits greater recognition in both cultural and political terms.

As yet, debate about what might be done to acknowledge a rising sense of national consciousness among the English, and an incipient desire for a more delineated form of political community, remains chained

to the menu of constitutional options associated with ‘the English question’, understood in overly narrow constitutional terms. While some of these options – notably reform of the House of Commons in relation to legislation that impacts predominantly upon England only – remain important, there is now a need for rejuvenation and broadening of the policy repertoire in this area. Some of the ‘representative claims’ that the English are starting to make upon the state and public culture are cultural in kind, and should be treated more sympathetically and imaginatively by policymakers. This points towards such issues as a ‘national’ anthem used to accompany English sporting teams, more systematic naming of those institutions that serve England alone, and a more concerted push from the political parties to speak to and for England’s great cultural and geographical diversity.

In purely political terms, the challenge is to start thinking of ways of ensuring that the English feel that their own different voices are heard within the institutional structures of Westminster, and that the significant imbalances of power within the country are addressed through a meaningful and joined-up programme of internal devolution. The most likely model for this is the exact antithesis to the top-down regional blueprint from which Labour worked during its years of government. Messy devolution, from below, in which a medley of authorities operating at different scales (cities, city-regions, unitary authorities) – based upon what makes sense in different areas – present themselves to central government as viable, delegated centres of governance, and in turn receive greater powers, seems like the most promising way of building upon some of the better localist efforts of recent governments. Alongside such substantive solutions, there needs to be a much greater commitment among politicians to establishing a structured conversation with the English people about the different kinds of option that might be available for a counterbalancing devolution at the level of England, as well as beneath it. A royal commission on the governance of the largest territory within the UK would be a good place to start.

Opening up this conversation should be seen as integral to the project of defending and reconfiguring the union. In current circumstances, the greatest threat it faces is not from nationalists in Scotland (unless opinion swings dramatically behind the ‘Yes’ campaign in the run-up to the referendum). Rather, it is from those at the centre of the political system who cling to the assumption that the English will always ‘get’ the merits and quirks of the union and the lop-sided model of devolution that Labour introduced. Letting England breathe a little, bringing decision-making and governance closer to its cities and towns, and re-engaging its people with the case for the union – all offer a better and smarter way of reinventing the UK.

This point may now be slowly dawning at Westminster. Cameron has taken a small but important step in this direction by signalling his

support for the idea of an English national anthem to be played when representative teams are in action (Hennessy 2012). Labour, for all its talk of Englishness, has not been as bold. In some of his recent interventions, Nick Clegg shows some signs of waking up to the pertinence of his own party's federalist leanings.

In the end, the most effective response to increasingly prominent populist-nationalist sentiments is not to disengage from the terrain of 'the national-popular' in the name of universal liberal values, nor to try to recycle or appropriate the simplicities of nationalist-populist rhetoric on issues like immigration. The better, more enduring alternative is to work much harder and more imaginatively – in intellectual, cultural and policy terms – to express and ground alternative ideas of the English nation, and to connect these to a renewed case for union. This is the major challenge linking the various national questions of British politics. It is time that the parties stopped making excuses and addressed it.

## References

- Aughey A (2008) *The Politics of Englishness*, Manchester: Manchester University Press
- Aughey A (2012) 'Englishness as class; A re-examination', *Ethnicities*, 12(4): 394–408
- Bryant C (2006) *The Nations of Britain*, Oxford: Oxford University Press
- Condor S (2010) 'Devolution and National Identity: The Rules of English Dis/engagement', *Nations and Nationalism*, 16(3): 525–543
- Curtice J (2010) *Is an English Backlash Finally Emerging? Reactions to Devolution Ten years On*, London: IPPR. <http://www.ippr.org/publication/55/1753/is-an-english-backlash-emerging-reactions-to-devolution-ten-years-on>
- Fenton S and Mann R (2009) 'The personal contexts of national sentiments', *Journal of Ethnic and Migration Studies*, 35(4): 517–534
- Garner S (2010) 'The entitled nation: How people make themselves "white" in contemporary England', Sens Public website, 1 March 2010. <http://sens-public.org/spip.php?article729&lang=fr>
- Jackson B (2012) 'One Nation Labour and the revival of social patriotism', Juncture online, 20 December 2012. <http://www.ippr.org/juncture/171/10060/one-nation-labour-and-the-revival-of-social-patriotism>
- Jeffery C (2012) 'Dis-united kingdom?' *Juncture*, 19(1): 14–16. <http://onlinelibrary.wiley.com/doi/10.1111/j.1744-540X.2012.00676.x/abstract>
- Hennessy P (2012) 'David Cameron backs Jerusalem as English national anthem', *Daily Telegraph*, 14 July 2012. <http://www.telegraph.co.uk/news/politics/david-cameron/9400486/David-Cameron-backs-Jerusalem-as-English-national-anthem.html>
- Heseltine M (2012) *No Stone Unturned? In Pursuit of Growth*, London: Department for Business, Innovation and Skills
- Kenny M (2014, forthcoming) *The Politics of English Nationhood*, Oxford: Oxford University Press
- Kenny M, English R and Hayton R (2008) *Beyond the Constitution: Englishness in a Post-Devolved Britain*, London: IPPR. <http://www.ippr.org/publication/55/1625/beyond-the-constitution-englishness-in-a-post-devolved-britain>
- Kidd C (2012a) 'Unionism – A very Scottish idea', Juncture online, 16 May 2012. <http://www.ippr.org/juncture/171/9123/unionism--a-very-scottish-idea>
- Kidd C (2012b) 'The case for union', *Juncture*, 19(1): 5–13
- Kumar K (2003) *The Making of English National Identity*, Cambridge: Cambridge University Press
- Lodge G (2013) 'English patriotism is one of the overlooked reasons for Ukip's rise', Spectator blog, 3 May 2013. <http://blogs.spectator.co.uk/coffeehouse/2013/05/english-patriotism-is-one-of-the-overlooked-reasons-for-ukips-rise/>
- Mann R (2011) "'It just feels English rather than multicultural": Local interpretations of Englishness and non-Englishness', *Sociological Review*, 59(1) 109–128
- Schöpflin G (2000) *Nations, Identity, Power: The New Politics of Europe*, London: Hurst

- Skey M (2011) *National Belonging and Everyday Life*, Basingstoke: Macmillan
- Skey M (2012) "'Sod them I'm English": the changing status of the "majority" in post-devolution Britain', *Ethnicities*, 12(1): 106–25
- Wyn Jones R, Lodge G, Henderson A and Wincott D (2012) *The dog that finally barked: England as an emerging political community*, London: IPPR, <http://www.ippr.org/publication/55/8542/the-dog-that-finally-barked-england-as-an-emerging-political-community>
- Wyn Jones R, Lodge G, Jeffrey C, Gottfried G, Scully R, Henderson A and Wincott D (2013) *England and its two unions: The anatomy of a nation and its discontents*, London: IPPR, <http://www.ippr.org/publication/55/11003/england-and-its-two-unions-the-anatomy-of-a-nation-and-its-discontents>



# DECENTRALISATION AND LOCALISM IN ENGLAND

ED COX

The terms 'localism' and 'decentralisation' provoke wide-ranging reactions among political reformers. For some they speak of democracy, diversity and social reform; for others, they represent competition, inequality and parochialism. Some would place them in the 'too hard' basket; for others, they represent the ultimate political goal. In truth, decentralisation represents an approach to political reform which can be used for progressive or regressive purposes, it can be dynamic and multilayered or it can be conditional and constrained, it can encourage competition and it can engender cooperation. Neither localism nor decentralisation are ends in themselves. Rather, they are processes through which many political reformers seek social and economic transformation and democratic renewal, and they represent a political narrative which would appear to have growing salience.

This essay explores the recent history of decentralisation and argues that it may be an idea whose time has finally come. It considers what is wrong with centralism and why it seems so difficult to decentralise. It sets out what the basic foundations of a new approach to decentralisation might be, and concludes by suggesting a possible route map charting the way forward.

## A recent history of (de)centralisation

The Conservative governments of the 1980s and '90s applied a neoliberal approach to their statecraft. Reacting to the apparently 'loony left' councils, they largely mistrusted local government and so removed their powers and constrained their finances, most notably in abolishing the Greater London Council and metropolitan county councils. In their place, government sought to foster market competition and the role of business through the creation of a wide range of new agencies, such as urban development corporations, training and enterprise councils and NHS trusts, as well as processes such as compulsory competitive tendering (Mackinnon 2010).

In 1997, the New Labour government did little to reverse this. Its regime of public service agreements and top-down targets sucked accountability towards the centre, not least towards HM Treasury. This was exacerbated by a series of local government reforms, such

as 'Best Value' comprehensive performance assessments and local area agreements, which created a performance framework that left councils looking to central government for their legitimacy. Meanwhile, the formation of new institutions, such as local strategic partnerships, regeneration bodies and academy schools, relegated councils' role to little more than 'place-shaping'.

This is not to say that Labour did not decentralise. Considerable energy was given to devolution to Scotland, Wales and Northern Ireland and to the formation of an elected mayor and assembly in London. Elsewhere in England, however, plans for a redistribution of economic powers to nine regions came unstuck with the public rejection of the North East Regional Assembly in 2004. Regional development agencies were vested with significant sums of public money but lacked public support, and they were quickly swept away by the incoming Coalition government in 2010.

New Labour also did much to advance the debate about individual empowerment through concepts such as 'double devolution' and support for community engagement, participatory budgeting and community 'rights'. Despite admirable rhetoric, however, local authorities and communities themselves were ultimately 'largely passive recipients of central policy initiatives' (Laffin 2008) and decentralisation in England during the New Labour years was undermined by this desire for central management.

The Coalition government came to power promising 'localism, localism, localism', but with a clear agenda to pass power to citizens and shrink the local state. The Localism Bill 2011 enabled a series of community rights, referendums to veto council tax rises and for the election of local mayors, and to enhance neighbourhood planning and other housing incentives, but these measures have been accompanied by massive cuts to local government funding which have largely undermined their impact. At a wider level, city deals and the formation of local enterprise partnerships have been heralded by many as a positive move. Nevertheless, it is important to note that many of the powers and finances once vested in regional development agencies have now been repatriated to Whitehall, to the Department for Business, Innovation and Skills. In sum, Coalition localism has been considerably less radical than was at first promised.

As the 2015 general election approaches, two trends suggest that the drive for decentralisation is about to get stronger, forcing it up the political agenda. The first concerns developments in other parts of the UK. In the event of a 'no' vote in the independence referendum, Scotland is likely to see its parliament acquire significant additional powers (particularly in respect of taxation), while the national assembly in Wales has recently seen its powers beefed-up following the Silk

Commission process. New powers are also likely to flow to the London mayor following publication of the report of the London Finance Commission. These developments bring into sharp relief the contrast between the powers and freedoms afforded to the devolved nations and those exercised in England.

In this way, devolution has been occurring asymmetrically, with London, Scotland and the other devolved nations demonstrating the benefits of sub-national autonomy while the rest of England looks on with envy. This is unsustainable. Moreover, the noted rise in English identity has at its core a strong sense of discontent with the apparently complacent Westminster consensus (see Kenny in this volume). In this context, the parties can no longer continue to ignore the debate about how England should be governed, central to which will be the need to commit to a programme of meaningful decentralisation.

The second factor is the fiscal and economic context. Whoever wins the 2015 election will face severe pressures on public spending, which will have important implications for the role of government. Mindful of the mistake the Coalition government has made in cutting spending without a clear account of the role it wants government to perform, politicians making future spending decisions will need to explicitly link those decisions to a programme of reform. While it is hard to get excited about 'austerity localism', a joined-up approach to fostering growth and driving public service reform could provide the basis for a more radical decentralisation agenda than has been countenanced to date.

### What's wrong with centralism anyway?

Despite decentralisation having many champions over the past two decades, neither Whitehall nor the public has been particularly persuaded of its case. One of the main reasons for this is that proponents of localism have never properly laid out the case *against* central control. However, its weaknesses are becoming ever clearer. There is a growing body of evidence that economic development in England's big cities is being constrained by overcentralisation (Parkinson 2012, IPPR North and NEFC 2012). Table 13.1 (over) sets out the complexity of the current system.

We are starting to better understand the implications of this top-down system. In England, seven of the eight core cities have consistently performed below the national average in terms of per-capita GDP. Contrast this with Germany, for example: between 2000 and 2007 all eight of the largest cities outside Berlin outperformed the national average and all 14 second-tier cities had productivity growth rates greater than Berlin. These findings have been instrumental in the current British government's city deals programme, but they have not stopped the calls for government to devolve further and faster.

**Table 13.1**

How different Whitehall departments deliver economic development functions, the geography they use and whether local authorities are directly involved

Whitehall department	Function	Works through...	Geography	Councils involved?
Communities and Local Government	Housing	Homes and Communities Agency	Regional	No
	Planning	Local authority collaboration (or not, as the case may be)	Local	Yes
	Regeneration	European Regional Development Funding Local Management Committee	Regional	Yes
Business, Innovation and Skills	Economic development	LEPs	Sub-regional	Yes
	Skills	Skills Funding Agency	From national to frontline	No
	Universities	Individual HEIs	From national to frontline	No
	Supporting policy delivery	BIS Local	Regional*	Yes
Home Office	Police	Police authorities (soon to be abolished and elected police and crime commissioners introduced)	Sub-regional	Yes, until PCCs introduced
Transport	Transport	Independent transport authorities	Sub-regional	Yes
Health	NHS	Foundation trusts	Straight to frontline	No
Education	Education	Autonomy increasingly being given to schools direct	Local / straight to frontline	Increasingly no
Work and Pensions	Welfare-to-work (mainstream)	Jobcentre Plus	Local / sub-regional	No
	Welfare-to-work (long-standing claimants and those with complex needs)	Work Programme prime contractors	Regional	No

Perhaps one of the most compelling recent critiques is that of Lord Heseltine, who argues:

‘Over many decades, power and initiative have shifted under governments of all persuasions from provincial England to its capital city and its bureaucracies. Strong local leadership in our great cities created the industrial revolution and made us what we are. London did not dominate. [But] as the costs of social provision relied increasingly on central government, so a range of circulars, ringfenced grants, hypothecated funding and a new breed of quangos further eroded local discretion. Local government assumed the character of Whitehall’s branch offices. ... There are still few, if any, dialogues in Whitehall that start with the strengths and weaknesses of place or community. In this we are unlike any of our equivalent economies that build on local diverse strengths. We have created in London a functional monopoly. ... Government must now reverse the trend of the past century and unleash the dynamic potential of our local economies.’

Heseltine Review 2012

This is a position echoed by a growing number of policymakers and practitioners, not least the Core Cities group, which represents England’s eight biggest economic centres outside London, and most recently the London Finance Commission, which has argued for a wide range of fiscal powers to drive economic growth in the capital.

Not only has state centralisation inhibited the drivers of local economic growth, it has also hindered public service reform. It is debatable whether New Labour’s stringent performance management regime helped or hindered local public service improvement over the past decade, but it is widely accepted that most councils did make significant improvements during the decade to 2010. By the late 2000s, however, it became clear that such top-down measures had run their course: their perverse incentives, coupled with the swelling bureaucracy involved in inspection, meant they became deeply unpopular. Ultimately, they constrained the ability of councils to address local needs as effectively as they might, as top-down service design and the ringfencing of finances for particular purposes prevented local service providers from shaping the services to meet local needs (Nesta 2010). Overly centralised services have stifled innovation and caused precisely the kind of local inequalities that centralised standards are meant to eradicate.

It is also no longer accepted that centralisation is a precondition for a more equal society. Christian Lessmann’s comparative study of 56 countries between 1980 and 2009 shows that in the most developed nations, like the UK, higher levels of decentralisation lead to lower levels of regional inequality (Lessmann 2011). He concludes: ‘... the efficiency enhancing effects of decentralisation overcompensate negative redistributive consequences’ (ibid).

Other international evidence reinforces this point. Chris Huhne's study of OECD nations shows that those with the highest levels of local revenue-raising also had the lowest levels of inequality as measured by the Gini coefficient (Huhne 2007). Charlie Jeffery presents evidence to suggest that decentralisation can boost welfare standards and even promote a 'race to the top'. For instance, he shows that the regionalisation of France in the 1980s drew attention to the major disparities that had existed under the centralised system, which then acted as an engine for driving up standards (Jeffery 2011).

Finally, an overly centralised state is bad for democracy too. The concentration of political power in the capital cuts most voters adrift from what many feel are Westminster's remote and increasingly unresponsive political institutions. In England, there are few political spaces that matter outside of Westminster – the one obvious exception is in London, where a distinct political culture has been reborn through the creation of the mayor and assembly.

So centralism is bad for the economy, bad for efficiency, bad for equality and bad for democracy too. In which light, it may seem surprising that decentralisation has been so hard to achieve.

### Why is it so difficult for the centre to let go?

Since the 1980s, successive governments have come to power promising decentralisation. However, once in government the temptations of top-down control and the intransigence of Whitehall departments have weakened that commitment and impeded change. Sam Sims describes these mutually reinforcing factors as 'double-binds' (Sims 2013).

One of the biggest barriers to decentralisation lies in its apparent complexity. The proper geography of local decision-making is complex and 'multiscalar'. Different services have quite different catchment areas: compare primary with secondary schools, or local GP practices with hospitals. Other services have quite different economies of scale: compare bin collection with local library services, for example. Infrastructure also works in 'geographies' which don't necessarily correspond to existing local authority boundaries: airports, motorways and other transport investments typically require decision-making on a wider sub-national scale. Some policy interventions require a much more individualised approach than others: key aspects of health and social care are increasingly personalised, for instance, while overall commissioning frameworks act at a higher level.

Developing an appropriate 'scheme' or strategy to include such a wide range of actors – each with their own vested interests – is never going to be easy, not least when so many powers are held by ministers and government departments reluctant to let go of their

fiefdoms. The situation also opens itself up to perpetual tinkering, as opposed to systematic reform, and this does little other than to reinforce the sense that central government is in control.

A second barrier concerns central government's lack of confidence in the capabilities of local government. During the New Labour years, one of the driving forces of the central performance regime and top-down reorganisation of council structures was the perception that local councils could not be trusted with real power and responsibility to deliver public services (Lodge and Muir 2011). And there was an element of truth to this perception: following years of whittling away of council control in key public services areas, such as education, health and transport, it was inevitable that some competences had been hollowed out. Nonetheless, this now leaves local government in something of a catch-22 situation (Sims 2013). In order to gain new powers it would appear that local authorities and other partners have to 'earn' their autonomy by passing different departmental 'tests' or 'thresholds', thereby reinforcing the supplicant relationship they have had with central government.

The confidence problem has been exacerbated by a political and media culture in which government ministers are held personally accountable for local public service matters, such as the performance of individual schools or social services departments. This situation is made worse still by the low profile of local council leaders, which in part is the result of a diminishing local press – another double-bind.

Guy Lodge and Rick Muir argue that the perseverance of the (largely mythical) Marshallian account of social citizenship, and the idea that public services must be the same everywhere – funded as they are out of general taxation – acts as another roadblock to decentralisation. 'Postcode lotteries' are held up as a betrayal of the basic contract between citizen and state, and discourage public support for localism, which by definition would see greater variation in service provision from place to place. The left, in particular, remains wedded to the Marshallian model of welfare, and the belief that a strong central state is a necessary precondition for equality.

Decentralisation also suffers from low political salience with the general public: while localism might fascinate policy experts, it has singularly failed to capture the public imagination. Like the local government competence/confidence issue noted above, this has become self-reinforcing: the fewer powers that are bestowed on local councils and their partners, the less reason the public has to take any interest. However, as the successful establishment of the London mayoralty has proved, this is a process that can be reversed.

## The five foundations of real localism

In spite of the many impediments facing any process of decentralisation, the main elements of a coherent programme of decentralisation have been set out by numerous policymakers, each with their own take on the prescriptions and possibilities at any given point in time.<sup>1</sup> This section attempts to identify five of the basic building blocks of a coherent approach and to address some of the double-binds that impede progress.

### 1. Efficiency and effectiveness

Any attempt to overcome the apparent complexity of a multiscale approach to decentralisation requires an account of which decisions belong at which spatial scale. If economic growth is going to be properly married with public service reform in an efficient and effective manner there needs to be a well-understood framework for devolving different powers to different levels.

The principle of subsidiarity holds that government power should reside at the lowest feasible level, and is perhaps most famously articulated in the tenth amendment to the United States constitution. In order to enact this principle, England needs a much clearer articulation of the geographical level at which decision-making should reside across the full range of government departments and public policy interventions. Some of these will necessarily and rightly remain the preserve of national government, but there must be a clear rationale for this being the case. The majority of public services and investments require a much greater degree of sub-national, local and neighbourhood decision-making, and in each case the grounds on which that assessment has been made – in terms of which is the effective and efficient level at which responsibility ought to reside – need to be articulated.

### 2. Democracy and accountability

Alongside this ‘framework’ there needs to be a coherent institutional ‘architecture’ within which decisions are made and services are commissioned and delivered. Such an architecture needs to unlock the double-bind described above, whereby ministers hold on to power fearing that they will be held personally responsible for local failures and in the process diminish local capacity and accountability, in turn making local decision-makers seem even less trustworthy. This institutional architecture also needs to be democratic and transparent, ideally through the direct election of representatives at each level of the framework. Given that the general public is largely against the idea of adding layers of bureaucracy or increasing the number of politicians, it is fortunate that the building blocks for multilevel democratic institutions are broadly in place.

---

<sup>1</sup> See for example Jones and Stewart 1983, Lyons 2007, Cox 2010 and LFC 2013.

At the neighbourhood level, governance already takes a variety of forms, such as parish, town and community councils, and there is much to be said for bolstering its role, not least in an urban context. The neighbourhood planning process, redesigned by the Coalition government, provides a basis for very local decision-making and an expansion of its remit around local social and economic issues and public service improvements (Cox et al 2013).

Local authorities will continue to provide an arena for local democracy and ‘place-shaping’, albeit that some important issues will be addressed in two-tier areas and that some services which largely fall outside of their direct control, such as health, police and schools, require wider coordination. Here there is also some scope for local electoral reforms to boost the profile and representativeness of local councillors (ibid).

But perhaps the most interesting developments are those taking place at the sub-national level, following the replacement of nine regional structures with 39 local enterprise partnerships (LEPs) loosely aligned around functional economic areas. In some of these areas, most notably in the city-regions, combined authorities are now emerging as local authorities work together to draw down economic development powers in partnership with their LEPs. This increases the potential for ‘metro mayors’, more like the London mayor, and also the idea of more democratic city-regional assemblies.

Questions remain as to whether and how LEPs might seek to collaborate around issues of wider strategic significance.

### **3. Finance and funding**

One of the principal ways in which central government controls local authorities and other public agencies is through ringfenced grants. Recognising the inefficiency of this process, New Labour moved to allocating the key revenue support grant to local authorities over a three-year period. The Coalition government has gone further by ‘un-ringfencing’ many other local government grants and developing a scheme to decentralise a small proportion of business rates. However, this has been done at the same time as overall funding to local authorities has been substantially reduced.

There are two other fundamental problems. First, those grants that have been un-ringfenced constitute only a tiny proportion of total public spending at the local level. Schools, skills, health, police and welfare budgets, for example, remain centrally directed to local delivery agencies with little horizontal or mutual accountability. Second, these measures do very little to alter the current balance of funding between central and local government. In England, less than 25 per cent of revenue is collected locally (Mrinska 2008). This is a very small proportion compared to some other western countries. In Sweden, for example, over 70 per cent of local spending is funded by local taxation. Even

in France, which is often thought of as a highly centralised country, approximately 50 per cent of revenue is from local taxation (Lyons 2007).

Even within a more transparent framework for efficiency and effectiveness, the imbalance of public funding raises serious concerns about local government's ability to make the most of the powers and functions that might become available to it. Without a corresponding level of fiscal flexibility, the autonomy of local government will always be constrained, it will remain vulnerable to the cuts and diktats of central government, and any sense of direct responsibility will be weak.

Fiscal autonomy is not easily achieved on account of the toxicity of local tax issues. The 1980s poll tax led to rioting in the streets and subsequently council tax has also proved to be highly unpopular, despite the fact that it makes up such a small proportion of the overall tax burden. Successive governments have therefore withheld local discretion over council tax rate-setting and (re-)valuation and have interfered in council tax-setting by capping regimes and offering councils financial incentives to keep rates low.

Fiscal decentralisation will therefore involve a number of elements. As a very simple first step, the idea of a 'single pot' for economic development (Heseltine Review 2012, IPPR North and NEFC 2012) should be properly implemented, with all 'economic affairs' and skills spending included. Government should then make it easier for local authorities to use a wider range of financial instruments. Tax increment financing (TIF) is an important first step, but local authorities need more freedom to raise municipal bonds and other special-purpose funding vehicles; they should be encouraged to pool and leverage pensions funds; and there should be a more permissive regime for local government borrowing.

Beyond this, however, if the balance of spending is going to be significantly altered then local government needs much greater power over taxation and revenue-raising. Government should relinquish the notion of a centrally imposed cap or freeze on council tax and allow local authorities to raise local taxation as they see fit. The recent report of the London Finance Commission advocated the decentralisation of key property taxes – such as council tax, business rates and stamp duty land tax, including responsibility for revaluation, banding and rate-setting – as well as provisions to allow London to raise new local taxes, such as tourist taxes, and set fees and charges for discretionary services. It also holds up the possibility of the assignment of a proportion of income tax (LFC 2013).

The risk involved with this kind of fiscal devolution is the immediate impact it could have on areas with weaker tax bases, who consequently 'lose out' relative to the current settlement. As a result, the need for some form of redistributive grant to those areas needing additional

support will remain. Given the opacity of the current revenue support grant, this should be replaced with a much more transparent alternative, with a five-year or even 10-year allocation, possibly allowing for a taper over time to further incentivise local authorities and their partners to drive economic growth and public service efficiency and reform.

Ultimately, however, fiscal decentralisation will require political vision and imagination at both national and sub-national levels. A bold government would set a target for at least 50 per cent of local funding to be raised locally through a mix of property and income taxes and then trust local politicians and their voters to be the arbiters of reasonable local tax rises.

#### **4. Social justice**

Despite concerns on the part of politicians and the public that decentralisation can lead to inequalities and ‘postcode lotteries’, there is, as already noted, evidence that more decentralised developed nations tend to be more equal and efficient. However, this is not to disregard though the importance of certain safeguards. The redistributive grant proposed above to mitigate the adverse impacts of fiscal decentralisation needs to be matched by a means of ensuring people can access a basic level of key services. Various governments have experimented with the idea of rights, entitlements and charters, minimum service standards and floor targets. These have all had their strengths and weaknesses and been targeted in different ways and around different services. Three major flaws in such schemes can be identified:

- they are too detailed and prescriptive
- they are too numerous
- by focusing on ‘minimum standards’ they tend to lower aspiration rather than raise it.

To avoid these problems it is suggested that central government creates a broad framework of ‘national entitlements’ which are described in the form of measurable outcomes (such as life expectancy, educational qualifications, satisfaction with place and so on) rather than service standards. Government should then leave local decision-makers to design and deliver services which can be tailored to achieve these outcomes.

#### **5. Real autonomy**

It is a fundamental problem with the British debate on decentralisation that it is broadly assumed that central government is the best, if not the only, guarantor of social justice, as enacted through a redistributive tax regime and the provision of uniform public services. Very few people see local government as anything more than one among a number of relatively benign tools in the central government toolbox let alone as an institution with autonomous legitimacy that might be equipped to protect its citizens from the injustices exacted upon it by the sometimes malign intents of the central state.

In this context, Paul Hildreth helpfully articulates three types of localism which might characterise different approaches to local autonomy. ‘Conditional localism’ exists where central government provides powers to local authorities in order to achieve particular nationally determined outcomes or service standards. It is often accompanied by a notion of earned autonomy, whereby more powers are decentralised as local authorities demonstrate their competence and capacity to deliver. ‘Community localism’ emphasises the role of citizens and communities in driving public service reform and often bypasses local government, as in the case of free schools and other ‘community rights’. One could argue that the current system involves a combination of conditional and community localism (Hildreth 2011).

The third type of localism is described as ‘representative localism’ and refers to the decentralisation of powers to independent, locally elected authorities whose powers are rooted in legally agreed principles. In many respects this is the most autonomous form of decentralisation and is much closer to the kind of central–local relations that exist in most other developed nations.

In order to achieve this, the legitimacy of English local governance must be constitutionally protected in a similar way to that of the UK’s devolved nations. Such a settlement could enshrine a number of the elements described above: the framework for efficiency and effectiveness, the sub-national institutional architecture, clear and transparent fiscal arrangements, and some basic national entitlements. Such a foundation for local governance would be much more difficult for central government to ignore or erode and its development might provide a significant opportunity for wider public debate about such fundamental issues.

## How do we get there?

With the general election drawing closer, new plans for decentralisation are slowly beginning to emerge. As the Scottish referendum approaches and the so-called English question is asked again and again, it is likely that there will be increasing focus on these issues. But history tells us that without a clear implementation plan, what is promised before the general election is unlikely to be fulfilled afterwards. To this end, it is worth considering the kind of ‘route map’ that might need to be followed if any of the possibilities outlined above are likely to come to fruition.

Learning from past failures in this arena, Sam Sims makes a powerful case for a carefully designed strategy for decentralisation (Sims 2013). He dismisses the more incremental ‘earned’ approaches of the Coalition government as well as the ‘English deal’ loosely articulated by shadow local government secretary Hilary Benn as not addressing some of the fundamental challenges and double-binds.

Instead, Sims calls for 'big-bang city deals' (Sims 2013):

- a one-shot, universal offer, to all city-regions, specified in party manifestos of extensive control of the big five policy areas: policing, strategic planning, transport, skills and housing
- significant additional funding and financial freedoms (for example through major revenue retention deals, or tax increment financing arrangements) in return for establishing a full combined authority with a directly elected leader, requiring the support of a majority of the constituent council leaders to pass measures
- all subject to local referendums.

Three issues arise from this proposal.

First, there is much to be said for a 'big-bang' approach, not least in overcoming political intransigence and public apathy. Devolution to the three nations came on the back of a clear manifesto commitment swiftly followed through with parliamentary legislation within 18 months of New Labour taking office. This model could be applied again in relation to many of the powers set out by Sims above. However, looking beyond these powers to the decentralisation of other public services and to the decentralisation of taxation, there clearly needs to be a longer-term plan. It is highly unlikely that any political party will enter the next election with a pledge to make significant changes to council tax, let alone attempt revaluation, but as with Scotland, Wales and London, the devolution of these wider fiscal powers might well come after city-regional institutions have had time to bed down and garner public support. This may also be true for a wider constitutional settlement: while parliamentary legislation may be required for big-bang city deals, this can only pave the way for a more substantive settlement for sub-national autonomy. Whether or not it starts with a big bang, decentralisation needs to be seen as a process rather than a one-off event (Mackinnon 2012).

Second, big-bang city deals assume an asymmetrical approach to decentralisation. There is a strong case for this, both in terms of the importance of England's core cities in driving economic growth and their institutional capacity to make the most of new powers and finances. Attempts to decentralise across the board inevitably get weakened to a lowest common denominator level, which is a key reason why English localism has been so limited to date. However, devolving to cities without any plan for the other 30 or more LEP areas that will look on with some envy is a recipe for failure. Any incoming government must set out both a 'scheme' for what would perhaps be a more limited set of devolved powers and finances and a timetable by which they can be handed over. There might also need to be criteria drawn up by which these bodies might later take on the powers promised to the core cities.

Finally, the notion of a big-bang city deal begs questions as to the nature of 'deal making'. The intention behind Sims' proposal avoids the

protracted deliberations that have beset the first and second ‘waves’ of the present city deals process by setting out a package of ‘take it or leave it’ proposals. However, the whole process rests upon the support of a public referendum. There is a greater chance that the package suggested might gain favour both from city leaders and from the wider public because it is clear in this case which actual powers that will be decentralised as a result. But there is a significant risk that vocal ‘no’ campaigns will result, particularly around the proposal that there should be a directly elected leader (aka, a ‘metro mayor’).

As we have seen in the past, the public are very wary of any sub-national institutional change and the social identification around England’s core cities – however strong – is quite unlike that of the devolved nations. To this extent, it may be preferable not to hold a referendum on such measures and instead to rely on the parliamentary system as we do for the vast majority of matters. Alternatively, there could be provision made for a post-hoc referendum – after say three or five years – once a city-region has had the chance to consider the advantages and disadvantages of the new system.

## Conclusion

There will always be whys and wherefores about the decentralisation of political powers. Every ‘localist’ scheme will of course run risks, as responsibilities change from one party to another. While those on the left fear that change will bring growing geographical inequalities and those on the right fear municipal socialism, the weight of evidence shows that the status quo in England is contriving to create the worst of both worlds: postcode lotteries at the local level and a centralised economy at the national level that is more akin to that of Romania or Bulgaria than Germany or the United States.

Sadly, however, it is less likely to be evidence that induces Westminster to let go. With the Scottish referendum likely to raise awkward questions about the governance of England and the 2015 spending review likely to define a generation, it is much more likely that raw politics will be the decisive factor in sparking the decentralist revolution.

## References

- Bunt L and Harris M (2010) *Mass Localism*, London: Nesta. <http://www.nesta.org.uk/publications/mass-localism>
- Cox E (2010) *The Five Foundations of Real Localism*, Newcastle upon Tyne: IPPR North. <http://www.ippr.org/publications/55/1811/five-foundations-of-real-localism>
- Cox E with Harrison M, Davies B and Turley A (2013) *Love thy neighbourhood: People and place in social reform*, Newcastle upon Tyne: IPPR North. <http://www.ippr.org/publication/55/11478/love-thy-neighbourhood-people-and-place-in-social-reform>
- Heseltine Review (2012) *No Stone Unturned in Pursuit of Growth*, London: Department for Business, Innovation and Skills. <http://www.bis.gov.uk/assets/biscore/corporate/docs/n/12-1213-no-stone-untuned-in-pursuit-of-growth.pdf>

- Hildreth P (2011) 'What is localism, and what implications do different models have for managing the local economy?' *Local Economy* 26: 702–714. <http://lec.sagepub.com/content/26/8/702.abstract>
- Huhne C (2007) 'The Case for Localism – The Liberal Narrative' in Brack D, Grayson RS and Howarth D (eds) *Reinventing the State – Social Liberalism for the 21st Century*, London: Politico's
- IPPR North and Northern Economic Futures Commission [NEFC] (2012) *Northern prosperity is national prosperity: A strategy for revitalising the UK economy*, Newcastle upon Tyne: IPPR North. <http://www.ippr.org/publication/55/9949/northern-prosperity-is-national-prosperity-a-strategy-for-revitalising-the-uk-economy>
- Jeffery C (2011) 'Wales, the Referendum and the Multi-Level State', St David's Day lecture 2011, The Wales Governance Centre, Cardiff University, 8 March 2011
- Jones G and Stewart J (1983) *Case for Local Government*, London: Allen & Unwin
- Laffin M (2008) 'Local government modernisation in England: A critical review of the LGMA evaluation studies', *Local Government Studies*, 34: 109–125. <http://dro.dur.ac.uk/5567/>
- Lessmann C (2011) *Regional Inequality and Decentralization – An Empirical Analysis*, CESIFO working paper no 3568, Munich: CESifo. [http://www.cesifo-group.de/ifoHome/publications/working-papers/CESifoWP/CESifoWPdetails?wp\\_id=16541519](http://www.cesifo-group.de/ifoHome/publications/working-papers/CESifoWP/CESifoWPdetails?wp_id=16541519)
- Lodge G and Muir R (2011) 'Localism under New Labour', *Political Quarterly*, 81: S96–S107. <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-923X.2010.02223.x/abstract>
- London Finance Commission [LFC] (2013) *Raising the Capital: The Report of the London Finance Commission*, London. <http://www.london.gov.uk/sites/default/files/Raising%20the%20capital.pdf>
- Lyons M (2007) *Place-shaping: A shared ambition for the future of local government*, London: TSO. <http://www.official-documents.gov.uk/document/other/9780119898552/9780119898552.pdf>
- Mackinnon D, Featherstone D, Cumbers A and Strauss K (2010) *Rethinking Local-Central Relations: Progressive Localism, Decentralisation and Place*, Glasgow: School of Geographical and Earth Sciences, University of Glasgow. <http://speri.dept.shef.ac.uk/wp-content/uploads/2012/07/Danny-MacKinnon-David-Featherstone-Andrew-Cumbers-Kendra-Strauss-Rethinking-Local-Central-Relations-Progressive-localism-decentralisation-and-place.pdf>
- Mirnska O (2008) *Decentralisation in England: How far does the Sub-National Review take things forward?* London: IPPR. <http://www.ippr.org/publication/55/1645/decentralisation-in-england-how-far-does-the-sub-national-review-take-things-forward>
- Parkinson M, Meegan R, Karecha J, Evans R, Jones G, Tosics I, Gertheis A, Tönko A, Hegedüs J, Illés I, Sotarauda M, Ruokolainen O, Lefèvre C and Hall P (2012) *Second Tier Cities in Europe: In An Age of Austerity Why Invest Beyond the Capitals?* Liverpool: ESPON & European Institute of Urban Affairs and Liverpool John Moores University. <http://www.ljmu.ac.uk/EIUA/second-tier-cities/index.htm>
- Sims S (2013) 'A strategy for sustainable decentralisation', unpublished paper, London: Institute for Government



# DEALING WITH EUROPE'S OTHER DEFICIT

VIVIEN SCHMIDT

Given the scale of the economic maelstrom the eurozone finds itself in, debates on the future of the European Union have inevitably focused on the case for economic integration.<sup>1</sup> They have centred on whether to turn the European Central Bank (ECB) into a lender of last resort; to mutualise debt through euro-bonds; to create a banking union and individual deposit insurance; to increase the firepower of the loan guarantee mechanisms through a European Monetary Fund – and so on. Many experts are now convinced that the eurozone crisis can only be solved if most, if not all, such mechanisms are put in place (see Veron 2012).<sup>2</sup>

But it follows that if these steps were taken then there would be profound democratic as well as economic implications. In recognition of this fact, the German chancellor Angela Merkel has led the calls for an accompanying 'deeper political union'.

What, though, would this mean in practice? For Merkel, little more than an increased number of 'fiscal compacts' agreed at the intergovernmental level by the European Council, it would seem – and with Germany, because of its economic power, predominating. Not much real democracy there. Alternatives would include increasing the legislative initiative and oversight of the European Parliament, or the capacities and autonomy of the commission. Yet for these reforms to really amount to deeper political union they would have to stem from much greater citizen input than the EU currently allows or enjoys – without it, the reforms would lack essential democratic legitimacy.

## Democratising institutions

Achieving greater citizen input is easier said than done, of course – particularly given the much-discussed absence of an authentic European *demos* and the obvious fact that there is no visible citizen demand for great democratic involvement in the EU. But even so, reform is needed. As things stand, in eurozone policymaking the European Council decides, the European Parliament is sidelined, and the European Commission – some planned enhancements to its

---

1 This essay was originally published in issue 19(2) of *Juncture*, IPPR's quarterly journal for rethinking the centre-left (see Schmidt 2012).

2 See also Bruegel's website for proposals on all such mechanisms, going back to an EMF (2009) and up to a banking union (2012): <http://www.bruegel.org/>

powers notwithstanding – has become little more than a secretariat. The advance of the council has unbalanced the EU's 'democratic' settlement, in which successive treaties have sought to maintain equilibrium among all three institutions.

Many welcome this, including former French president Nicolas Sarkozy.<sup>3</sup> Proponents argue that decisions resulting from member state leaders' negotiations in the council possess the highest form of democratic legitimacy because the leaders indirectly represent their national electorates. The answer to the EU's democratic conundrum must therefore come from a further strengthening of the intergovernmentalism that is embodied in the council.

But this would only be a plausible line of argument if there was a parity of power among the 27 leaders – and this is clearly not the case. Particularly at this time of economic crisis, the greatest bargaining power resides with the strongest economies. So Germany, above all, has a huge (and obviously undemocratic) advantage over weaker states in the closed-door negotiating sessions of the council. We can see this clearly in action as the crisis has unfolded. Who most favours the 'ordoliberal' policies (read 'neoliberal plus rules') which dominate the eurozone via 'two packs', 'six packs', and 'fiscal compacts'? Who is most wedded to the so-called 'culture of stability' even as the eurozone has slid into recession and worse? It is Germany, of course, wielding its disproportionate power in the intergovernmental decision-making process.<sup>4</sup>

Moreover, in crisis mode, the council's intergovernmental rule generally precludes the participation of the EU's only directly elected body, the European Parliament, and thereby silences debates that might serve to amend or legitimise the policies negotiated behind closed doors. The parliament had no input into council decisions on the European Financial Stability Facility, agreed through multiple bilateral agreements, the European Stability Mechanism, which demanded a treaty amendment, or the treaty on the 'fiscal compact', the ratification of which is still continuing. In the one case in which the European Parliament did play a major role, with the 'six pack' of legislative measures to reinforce fiscal discipline with fines and sanctions, the climate of emergency ensured that the matter was not subject to serious amendment or debate.

And it is not just the parliament but also the European Commission which is shut out. From the democratic viewpoint, this might not seem to be a major concern, as the commission is unelected. But it means the commission's administrative capacity and expertise is not effectively used and its power of 'economic governance' is all but illusory. Instead,

---

3 Toulon speech, December 2011

4 On ordoliberalism, see Dullien and Guérot 2012

the council's crisis decisions have straitjacketed the commission into the task of imposing one-size-fits-all numerical targets and automatic rules for the eurozone. The commission has had no scope to tailor policies to the different problems confronting member states' differing political economies – precisely the role that might have been helpful in managing the deepening economic crisis.

### Take one: electing the council president

One superficially attractive idea mooted by some to address the lack of EU democratic legitimacy is the election of the council president via universal suffrage across Europe. It has been argued that this would confer greater legitimacy on the council while apparently bringing the EU closer to the people (see Marquand 2011). Yet given the absence of a 'mature' European electorate, there is a danger that the election would amount to little more than a popular plebiscite – won not by the best-qualified candidate, but by the one with the greatest name recognition.

Moreover, it would be no easy task to draw up the precise scope and role of a democratically elected president. Given the unknown variables in play, they could either find themselves with too little power or too much. If the job remained as it is currently constituted, for example – that is to say, little more than an organiser of meetings and broker of compromise among the EU-27 leaders – then an elected president with any sort of respectable mandate would quickly balk at the impotence, not to mention the indignity, of the role. On the other hand, it is hard to imagine state leaders of the stature of Merkel and François Hollande sitting back and allowing important decisions to be made by a council president with minimal political heft and a mandate based on a derisory electoral turnout.

### Take two: electing the commission president

By contrast, the election of the commission president via European parliamentary elections might work to the advantage of all institutions – and in the interests of European democracy more generally. In the scenario envisaged by some,<sup>5</sup> each main European party grouping would choose their candidates for commission president, who would then campaign across the member states on that party group's platform at the same time as European voters elect their national MEPs.

Further democratisation would result if European parliamentary candidates heading national party lists and topping the polls were elected not just as MEPs but also as their nations' EU commissioners. This would have the added value of encouraging top national politicians to run for the European Parliament – they would know that if they beat their party rivals then they would serve as commissioners, rather in the way that leading UK parliamentary candidates know that if

---

5 It was originally proposed by EU conservative party leaders for the 2009 elections and taken up more recently also by social democratic party leaders.

their party wins a Westminster election they will be not just MPs but also ministers. The commission president could then apportion the commission portfolios in line with the proportion of votes each party has won. In combination, these reforms would significantly enhance the legitimacy of the commission – and would crucially provide a path to strengthening EU democracy *without* relying on yet more and more intergovernmentalism.

This arrangement would help to rebalance the EU system by giving both the parliament and the commission greater democratic legitimacy, while at the same time making the commission more accountable to the European Parliament. Most importantly, however, the election process would create a mechanism for, in effect, a change of political leadership at the EU level.

This would, of course, be a fairly radical reform. As things stand, the only way in which European voters' desire for political change can impact on EU policymaking is through a shifting aggregate of national elections as reflected in the political hue of the member state leaders in the council.

With greater representative legitimacy, the commission would be able to legitimately exercise more flexibility when implementing council policies, tailoring them more closely to the differing economic growth models of the member states. And that flexibility would go beyond the kind of technocratic autonomy it still wields to some extent today, since it would be more directly linked to the European Parliament and its campaign promises. Thus, were the parliamentary elections to result in a progressive majority then that outcome would be reflected in the make-up of the commission. The commission, in turn, would then have the political legitimacy to reorient EU policies in ways that conform to its electoral mandate, much as an elected national government does with existing laws and policies.<sup>6</sup>

Some might argue that such democratic reform would result in paralysis in EU decision-making. But I submit that there is no greater risk of paralysis than there has always been. For all its faults, the EU has been able to move forward, albeit torturously, because of its culture of cooperation and consensus. The politicisation I propose would simply bring out into the open the politics that has always been there, and in so doing ensure that EU policies are debated in the manner of most EU parliamentary democracies with proportional representation and legitimised on political, not just technocratic, grounds. The EU would work like those political systems, in particular ones with 'grand coalitions', in which accommodation and compromise are the *modus vivendi*.

---

<sup>6</sup> Note that a politicised commission need not undermine the apolitical nature of the commission's civil service, from the directors-general on down. This is just as it is in the UK and elsewhere, when a new government comes in: the heads of the ministries are political but the civil service that serves them remains apolitical and technocratic.

## Europe as a region state

These proposals aside, to really address the question about how best to democratise the EU we need a much clearer sense of what type of organisation the EU is – and the sort of organisation it will become as it evolves under crisis conditions.

If the EU's institutions are to become more democratic, there are three main ways in which it could work: as a full-scale 'federal super-state', as a 'hard core' with a 'fuzzy periphery', or as a loose 'à la carte' agglomeration of states opting in and out at will. But the EU being the EU, there is nothing approaching agreement among the member states as to which would be preferable.

A federal super-state is the British nightmare, but a German *sine qua non*. The French have at times been drawn to the 'hard core versus the periphery' model,<sup>7</sup> but this is another non-starter for the British, as it is for the central and eastern Europeans, who see this as – by definition – confining them to the periphery. Finally, a loose 'à la carte' EU would assuage some eurosceptics while dismaying europhiles, who fear that the centrifugal forces already unleashed via opt-outs and special arrangements would ultimately destroy any possibility of deeper European integration.

However, there is an alternative way to think about the EU that gets beyond these differences in organisation. It also sidesteps the 'widening versus deepening' debate that has long pitted those who prefer to think about the EU as an ever-expanding economic community against those who think of it as a soon-to-be-delimited political community. This alternative involves viewing the EU as a 'region-state' (see Schmidt 2004, 2006). That is to say, the EU should be seen as both a regional union of nation states (in which its nation state members have over the years become 'member states') and, at the same time, as a political entity in its own right – one which has gained significant, if limited, state-like qualities.

It is a Europe of many policy communities – or 'clubs', as David Miliband has termed them<sup>8</sup> – with overlapping memberships, in which different policy communities have different rules and different degrees of integration for their members. We see this today in the differing memberships of, for example, the eurozone (which includes only 17 of the full EU's 27 members, with opt-outs for the UK and Denmark plus required opt-ins for the central and eastern European countries); the 'Schengen' border area (from which the UK and Ireland have opted out but which includes non-EU members Iceland, Norway and Switzerland); and the European Defence and Security Policy (from which Denmark has an opt-out, and of which every member decides whether

---

7 The same goes for 'two-speed Europe' – see Piris 2011

8 Speech at Harvard's Center for European Studies, 3 April 2012

to opt in or out for particular missions). The chances for even greater differentiation are increased by the principle of 'enhanced cooperation' set out in the Lisbon Treaty.

The European single market can be viewed as the 'community of communities' or 'club of clubs' to which all member states belong. But if there is to be greater convergence to make the market more workable then ways will have to be found to overcome different nation states' deeply held commitments to very different kinds of welfare system, especially in relation to labour market rules and social services. So even with the single market it may be that new 'cooperation zones', with variable memberships, could be the answer, whether to enhance labour mobility or to 'Europeanise' public service provision.

With all this variable geography, some might argue that the region-state idea is 'Europe à la carte' by another name. But this criticism fails to recognise that a significant core of members are part of *all* the overlapping communities, while the pattern, nature and extent of opt-ins and opt-outs by certain members are not such as to render meaningless the notion of 'signing up' for 'membership' of the EU as a whole. Members remain members; the club is recognisably and indivisibly an entity in itself, and to a certain extent (to borrow a sporting phrase) 'no player is bigger than the team'. Differentiated Europe, in other words, is not centrifugal Europe. Indeed, on the contrary, thought of as a region-state, the EU will continue to exert a powerful attraction, with countries as diverse as Iceland and Turkey seeking membership.

### Supermajorities, opt-outs and the demise of the veto

If membership is to continue to grow, however, then further reform of unanimity rules will be needed. Ironically, given the UK's attachment to the veto, David Cameron's refusal to sign up to the 'fiscal compact' in December 2011 may have hastened the process. His action led to an agreement outside the treaties by 25 of the 27 EU members, and it may very well have inadvertently put an end once and for all to the notion that one or two member states can force the EU to delay, dilute or abandon initiatives that the overwhelming majority of members feel are compelling. What emerged then and is most likely to be repeated – even if it is not formalised by treaty change – is that 'supermajorities' made up of around 80 per cent or more of members (currently 22 out of 27 EU member states) plus opt-outs will suffice to advance further EU integration. The veto will no longer be the insurmountable roadblock it has been in the past.

Notably, this way of conducting business does not amount to extending qualified majority voting across all EU decision-making because – as sovereignty is at issue – decisions of this sort cannot be imposed on any dissenting member states. Rather, any member state would be given the option to withdraw from the discussions and opt out of the supermajority-supported initiative.

One issue that arises from this model of a regional state with differentiated community membership is the question of leadership. In the council, the dominant Franco-German duo is likely to be replaced by shifting leadership groups, 'ménages à trois', or even clusters of four or more member states, depending upon the policy area. On defence, for example, the UK and France along with, say, Poland might work together; on the environment, a group of Scandinavian countries might take the lead; while in developing the eurozone, the ménages à trois initiating new policy ideas could be France and Germany joined by Italy. In such a system, electing a council president would be a non-starter, unless this position were to be a figurehead only, symbolic of the EU's region-state – a kind of modern-day Holy Roman emperor tasked with painting grand but vague visions of Europe's future direction. By contrast, a president of the commission who emerged as head of the majority in European Parliament elections, with elected commissioners from each of the member states, would be able to preside over the EU's many different communities in their multiple varieties, providing some modest left or right political orientation to policy, while fulfilling the purposes agreed by the member states in the 'community' councils and ensuring they were compatible with the politics of the majority coalition in the European Parliament.

### European citizenry as *demos*

After all this, we are still left with an old problem: the lack of a single European *demos*. But this drops away if we acknowledge, as we should do, that there is really no project underway to turn the EU into the sort of political entity that requires such a *demos*. That is to say, the EU is not going to become a state that demands singular loyalty, still less that the citizens of its member states should submerge their national identity in a higher European identity. Rather, we should be thinking in terms of the 'peoples' of the EU (see Risse 2010) or the *demos* – a 'demoicracy' (Nicolaidis 2012).

And, as Jürgen Habermas has argued, identity depends not just on a citizen's sense of belonging to a community but also on their active political citizenship, which itself entails not just participating in politics – such as through the process of voting – but also deliberating about what political institutions are and should be doing (see Habermas 1996). So it would be that in the EU region-state, voting in first-order European Parliament elections for the commission president and commissioners would of itself be one aspect of an identity-building process. The other would be making the EU part of national discourse, debate, deliberation and – yes – contestation, but in a positive way. This is no easy task, of course, because it amounts near enough to turning the world on its head.

## Conclusion

So how does the EU increase its democratic legitimacy? Legitimacy is best considered in terms of three mechanisms: 'output' legitimacy depends upon policies that work, 'input' legitimacy on extensive citizen participation and effective communication between citizens and the political elite, and 'throughput' legitimacy on governance processes, carried out with efficacy, which are open, accessible and transparent (see Schmidt 2013).

The question for the EU, then, is not only whether it can get the economics right – thereby ensuring more 'output' legitimacy – but also whether it can get the politics right, through greater 'input' legitimacy – that is, through new democratic avenues of citizen participation and better communication by political elites. It also needs to generate greater 'throughput' legitimacy via governance processes that are more balanced – meaning less intergovernmental and technocratic – such as using European parliamentary elections to designate a commission president.

Envisioning the EU as a region-state made up of a wide range of overlapping policy communities helps to give political elites and citizens alike a better sense of the EU's true nature, while at the same time allaying fears that the EU is either a federal state juggernaut or on the verge of collapse. But while this may help to protect against citizens' concerns about the loss of national identity and a lack of legitimacy, it does of itself not make the positive case for the EU. To do this, EU elites would need to galvanise European citizens as they engage in political debates about EU policy for the future. To give meaning to such debates, as well as to guard against politicisation working to the advantage of the political extremes, however, elites need to create new narratives about the EU's past, present and future that articulate a new vision of Europe with a new political economic paradigm capable of resolving the eurozone crisis. The big question for European progressives is this: will they be up to the challenge?

## References

- Dullien S and Guérot U (2012) *The Long Shadow of Ordoliberalism*, European Council on Foreign Relations policy brief ECFR 49, February 2012. <http://www.social-europe.eu/2012/07/the-long-shadow-of-ordoliberalism/>
- Habermas J (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MA: MIT Press
- Marquand D (2011) *The End of the West: The Once and Future Europe*, Princeton: Princeton University Press
- Nicolaidis K (2012) 'The Idea of European Democracy' in Dickson J and Eleftheriadis P (eds) *Philosophical Foundations of EU Law*, Oxford: Oxford University Press
- Piris JC (2011) *The Future of Europe: Towards a Two-Speed EU?* Cambridge: Cambridge University Press
- Risse T (2010) *A Community of Europeans? Transnational Identities and Public Spheres*, Ithaca: Cornell University Press

- Schmidt V (2004) 'The European Union: Democratic Legitimacy in a Regional State?' *Journal of Common Market Studies*, 42(4): 975–999
- Schmidt V (2006) *Democracy in Europe*, Oxford: Oxford University Press
- Schmidt V (2012) 'Dealing with Europe's other deficit', *Juncture*, 19(2): 102–108
- Schmidt V (2013) 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"', *Political Studies*, 61(1): 2–22
- Veron N (2012) 'Challenges to the EU's Fourfold Union', testimony to Subcommittee on European Affairs of Senate Foreign Relations Committee, hearing on 'The Future of the Eurozone: Outlook and Lessons', 1 August 2012. <http://www.foreign.senate.gov/hearings/the-future-of-the-eurozone-outlook-and-lessons>



# DEMOCRATISING SECRECY: OVERSEEING SECURITY AND INTELLIGENCE

LORD KENNETH MACDONALD

In this chapter, I consider the question of secrecy in justice. In particular, I want to examine how an excess of secrecy might imperil our ability to develop mature oversight of our security and intelligence agencies, beyond the somewhat feeble mechanisms that exist at present.<sup>1</sup>

We need to start by examining how it was that the discovery of apparent UK complicity in American excesses during the war on terror led to a ministerial response which, far from celebrating the court processes that uncovered this misbehaviour, instead demanded even greater secrecy in those tribunals that had so cogently dissected the issues. It is illuminating, perhaps, that the instinct for greater secrecy appears stronger than any wish to take potential miscreants in hand.

All of this occurs in a context where recent revelations in the *Guardian*, the *New York Times* and other newspapers have suggested that some agencies may have expanded their capabilities and practices far beyond anything understood in the US Congress or UK parliament, let alone by the public. Again, rather than confronting the suggestion of a hidden growth in capacity on the part of GCHQ (Government Communications Headquarters), some politicians and commentators have called for the *Guardian* to be prosecuted for reporting it.

But I begin with the case of Binyam Mohamed.

## Closed proceedings: state secrecy and judicial independence

Binyam Mohamed was a UK resident who was picked up by American forces in northwest Pakistan in the early years of the war on terror. He was transported, probably illegally, to various so-called dark sites around the world, usually to jurisdictions where torture and prisoner abuse were routine, indeed institutionalised. Doubtless these places were chosen by his captors, the Americans, for that very reason. In these dark prisons, his genitals were mutilated, he was held in stress positions for days on end, and he was threatened and psychologically abused.

---

<sup>1</sup> This essay is an edited extract from 'Secrecy in justice: Can it ever be fair', the 37th Annual FA Mann Lecture for the British Institute of International and Comparative Law, delivered by Lord Macdonald, 27 November 2013.

During this sorry period, British security services, while denying they knew of his mistreatment, visited him and appear even to have supplied the Americans with questions to put to him during what were undoubtedly abusive interrogations. Eventually, the Americans transported Mohamed to the detention centre at Guantanamo Bay and locked him up there without trial. After some years, with no evidence whatsoever against him, they sent him back to the UK.

On his return, Mohamed brought legal proceedings against the UK government to seek some redress for his mistreatment and for what his lawyers claimed was UK complicity in that mistreatment. It was during the course of this case that the UK government and the security services tried to prevent the details of the abuse he had suffered from becoming known. They said that to reveal what had happened to Binyam Mohamed at the hands of the Americans would threaten British national security.

The problem for the UK government in mounting this argument was that the material it was seeking to protect had apparently already been revealed to Judge Kessler in US federal court proceedings. Its further dissemination in an English court could do no conceivable further damage to US or to UK security, and so the UK court of appeal disagreed with the government.

What had happened was from any perspective a little shameful, but the law and the courts had proved themselves properly independent of the executive and the security establishment. They had shown themselves capable of great courage in a case of real sensitivity. The lord chief justice and his fellow judges were much praised.

But not, it has to be said, everywhere. The reaction to this sequence of events from the security services and the government was quite different indeed. Following intense lobbying, very strongly supported by the Office for Security and Counter Terrorism in the Home Office, the government came up with a green paper. This made a revolutionary proposal: in future national security cases, a minister should be permitted, in effect, to direct a court to go into closed session, excluding claimant, press and public, to hear secret evidence which the claimant would never see and yet which he, the judge, might then take into account in deciding the case.

There followed a classic period of parliamentary horse-trading. The test that parliament eventually settled upon was that the judge would go into closed session if the fair and effective administration of justice in the particular case required it. This was obviously an important advance on the initial proposal. Nonetheless, improvements aside, we have, as a direct result of the Binyam Mohamed case, in which open court processes revealed apparent security service complicity in serious misconduct, introduced closed procedures into our regular civil justice system.

There is, of course, a much broader context for all these developments than a single case in the English high court. This new century has seen a surge in the need for pre-emptive, international security action. And this has been accompanied by a relentless demand for intelligence gathering. Intelligence has become the holy grail. No country, it seems, is immune from terrorism or organised crime. And the threat of terrorism, in particular, comes from scattered and diffuse groups whose religious motivation appears to render them impervious to any conventional human reluctance to face personal demise. This makes the protagonists particularly dangerous.

Does the alarming nature of these threats really mean that certain traditional rights, as Mr Blair famously proclaimed in 2005, 'belong to another age'? In fact, I think the most dramatic manifestation of this unsettling feeling was not the welter of anti-terror laws brought in during the latter stages of the Blair government after the London bombings of 7/7, although some of these were radical enough. Rather, it has been the important, non-legislative developments that have taken place entirely, it would seem, in secret – and decidedly away from parliamentary gaze.

Now, it is axiomatic that security operations and intelligence gathering should escape public attention. However, revelations about GCHQ's Project Tempora – an intelligence-gathering initiative unprecedented in scope and ambition – point, perhaps, to an excessive and therefore damaging devotion to secrecy that appears to trump the right, even of parliament, to have a basic say in our security arrangements. The apparent manner of its conception and the government's response to its being revealed is each troubling for the light it casts on questions of oversight and democratic accountability.

## Out of sight: surveillance and security by the backdoor

One of the grander projects of the Blair era was the proposed creation of a gigantic database, holding all electronic communications metadata, that would then be available for inspection by the security agencies, the police and others. At the time, Conservatives and Liberal Democrats in opposition expressed horror on the basis that such a data bank, even if it included only metadata, would be deeply intrusive not just into the questionable privacy of suspected criminals but into the entirely legitimate privacy of *all other citizens* too. It seemed to suggest surveillance on a very different scale.

However, the Labour government lost the election and the proposals were shelved. Now, fast forward to the publication of the Data Communications Bill (DCB) in 2013. This bill, brought forward by the Coalition government, proposed an obligation on all communications providers to keep metadata for a prescribed period, during which it

would be accessible by the security agencies, the police and others. These proposals were also shelved, after a very rough ride before the all-party public bill committee and the intervention of the deputy prime minister Nick Clegg.

But it was only after the revelations made by Edward Snowden starting in June that year that we discovered something that very few people knew at the time – very few members of the national security council, very few members of the cabinet and *none* of the DCB public bill committee. They never knew that, even as the debates raged on, GCHQ had *already* developed the capacity to scoop up everything – all the metadata, all the conversations, all the web browsing, everything passing through those undersea cables that carry the internet around the world – and the capacity to store it for examination. And that they were doing it – routinely. They were sucking up all this material and keeping it for a period, and they were mining it. Most of what the government had argued for, and had been forced by public and parliamentary debate to retreat from, was already being done by the security agencies.

We are witnessing the creation of a very broad surveillance scheme by the backdoor – as successive governments have failed to persuade parliament that such schemes are justified or desirable – and a simultaneous growth in capacity and ambition on the part of GCHQ in the complete absence of debate, still less legislation.

Deeply unconvincing attempts have since been made to suggest that Project Tempora, in all its scope and majesty, is implicitly authorised by an obscure clause in section 8 of the Regulation of Investigatory Powers Act (RIPA), which was enacted in 2000, when the internet was in its infancy. This is a desperate argument intending to address a crucial criticism: that this massive development in intelligence capacity and practice has been wholly unconsidered by parliament. In short, this situation seems to be the antithesis of the rule of law.

Of course, it is perfectly possible that an informed parliamentary debate would conclude that Tempora is a desirable programme, even necessary. However, this train of events highlights the importance of close scrutiny of those types of government behaviour that occur under the cloak of national security. No doubt that's why the senior judiciary has tended to make plain in recent years its attachment to open justice, particularly in cases where the government's own conduct is in question.

It is important that we remain vigilant of any incremental creep towards the kind of authoritarianism we have traditionally sought to distinguish ourselves from. One key safeguard in this is the maintenance of control over security action, both at home and abroad. It seems to me that the fear of terrorism has made it all too

easy for us to lose sight of the imperative for good governance of our security agencies – and can too easily lead to worrying accumulations of state power.

The point about Tempora is that it seems to show that accountability to a minister is emphatically not the same as democratic accountability. One assumes that the foreign secretary, as the minister responsible for GCHQ, must have known about Tempora. But if Chris Huhne is to be believed, the cabinet and national security council did not. They were never told. And I think the former secretary of state must be believed because no one has denied it.

## Early intervention: the new world of terrorism and technology

President Eisenhower once described the activities of the CIA as ‘a distasteful but vital necessity’. This may have been a little unkind – but there is a major democratic responsibility to put limits on just how distasteful security activities are permitted to be. This may be better understood in the US, where in the light of the Snowden revelations both the president and vice president, along with very senior members of Congress (including James Sensenbrenner, the author of the Patriot Act), have all called for a debate about and reform of oversight mechanisms.

But of course, the task of establishing effective democratic accountability for the security services is not at all straightforward. Political developments across the world have shifted the approach to security from a state-centred view to a concern about more individual threats. Terrorists, once state-funded, have become their own paymasters, and this has led to an unmistakable increase in the connections between common crime and terrorist activity.

In this sense, anti-terrorism has become a classic securitising force, and legislative and operational measures to counteract terrorism have inevitably drawn in a wider and wider range of behaviours. In particular, anti-terrorism legislation has developed very significantly and become much broader. Since there is no point in trying to arrest a suicide bomber after the act, the purpose of some of this legislation has been to empower police and prosecutors to intervene earlier and earlier in the gestation of a conspiracy. This makes sense, but it also means that the law relies on concepts, tools and mechanisms that are more and more intrusive. And this, in turn, makes it inevitable that increasing numbers of citizens will be subject to the attentions of security agencies. Indeed, since 1998, the surveillance of communications by the security agencies has more than trebled.

It seems to me that, in the context of these increases in security activity, a number of important issues arise.

- First, it is clear that the quality of sensitive information and intelligence sources needs to be more carefully considered. The propensity to stretch the reliability or the veracity of information for political purposes was addressed in the inquiries into the war in Iraq.
- Second, there are obviously significant human rights implications to intelligence gathering methods. Cases like that of Binyam Mohamed raise profound questions about the workings of intelligence agencies and have plainly highlighted problems with current mechanisms for their oversight.
- Third, technological advances are now so rapid that they may easily outrun the capacity of existing legislation to govern the uses to which they are put. This may well suit the agencies in question, since it relieves them of the burden of regulation and oversight that up-to-date, fit-for-purpose legislation might otherwise threaten. But it certainly should not suit parliament: the law needs to be the master of technology, not the other way around.
- Fourth, there are unique challenges here. Parliamentary oversight of intelligence comes up against obstacles that are not usually present in the process of democratic scrutiny in other policy areas. And these difficulties do not simply relate to secrecy constraints but also to the somewhat surprisingly limited interest in intelligence oversight on the part of the majority of parliamentarians.

Against this background, then, I shall consider how our present mechanisms of democratic accountability might be improved to meet these challenges.

### Managing accountability: a history of poor oversight

The key feature of democratic control, of course, is some form of parliamentary oversight. This is capable of amounting to independent scrutiny – if it works. And it is worth remembering that transparent and accountable processes protect the security services too, enhancing their independence. But there is no point in creating the *illusion* of oversight with none of the benefits. Any committee that cannot undertake effective and impartial scrutiny might easily end up becoming complicit in misconduct. Arguably, that is precisely what happened in this country.

Democratic oversight has to focus on two key areas: it should make the intelligence agencies more accountable, and it must regulate the covert relationship between the agencies and the executive to prevent abuse. In the UK, oversight is provided through the statutory intelligence and security committee (ISC). While changes have been made to the processes of the ISC by the Justice and Security Act 2013 (J&S), some longstanding issues remain.

Traditionally, the ISC was not a parliamentary committee as such but, in an oft-quoted phrase, ‘a committee of parliamentarians’. It is not clear what the intention of this distinction could have been if it was not

the exercise of some form of extra-parliamentary control of this body by the executive. And while the ISC shared some of the characteristics of a select committee it was very far from ever being one. Select committees are appointed by the Houses of Parliament and report back to them. They sit in parliament with control over their own agenda, within the terms of their mandate. They can call witnesses, produce reports and are supported by independent, parliamentary staff. Select committees are intended, in part, to redress the balance between parliament and the executive. Their impartiality is seen as absolutely vital to their function.

In comparison, pre-J&S, the ISC was appointed by and reported to the prime minister. It met in the Cabinet Office and was staffed by Cabinet Office officials rather than by parliamentary clerks. It comprised nine parliamentarians drawn from both the Commons and the Lords. The prime minister determined when the publication of a report should take place, which obviously allowed for the impact of a report to be dampened by delaying release (indeed, members of the ISC often complained about unnecessary delays in the release of their findings, so there are good grounds to suspect that this is exactly what happened).

The access that the committee had to the security agencies was governed to a great degree by the trust between the committee members and the agency in question. This was obviously insufficient in a scrutineer, with the result that committee chairs tended to be trusted former ministers with security experience from the Home Office, the Foreign Office or Ministry of Defence. In other words, the committee was led by politicians who, as ministers, had enjoyed responsibility for the very agencies over which the ISC was supposed to provide oversight. This looked very cosy.

There were a number of criticisms that were made of the ISC in its pre-J&S incarnation. Most seriously it was said that it 'sees itself more as part of the Whitehall machine for the management of the security intelligence community rather than its overseer'.

Another academic noted that in the ISC's work 'major issues are sometimes identified ... but they are rarely addressed or explored in any depth'. For example, in its report on intelligence about Iraqi weapons of mass destruction (WMD), the ISC was critical of the government's presentation of the intelligence but failed to recommend how such intelligence should be placed in the public domain in future. In another case, although the ISC conducted a number of reviews into extraordinary rendition, it is clear that it was not at all well equipped to obtain the right answers. According to a leading NGO, 'it is embarrassing that the ISC's report was riddled with errors, and shameful that intelligence personnel were happy to play along with those errors until the high court forced them to admit the truth'.

Lastly, the old ISC could actually be seen as an obstacle to accountability, in the sense that it prevented potentially more effective scrutiny by other committees. It certainly resisted cooperation with them: successive secretaries of state refused to allow other select committees, such as the foreign affairs committee, to have access to the intelligence agencies, on the grounds that parliamentary scrutiny was conducted by the ISC. The frustration caused by this increased as intelligence work encroached more clearly on the domain of other committees, and some select committees emphasised that this denial of access prevented them from doing their job. The joint committee on human rights said, in 2006, 'there is an increasingly urgent need to devise new mechanisms of independent accountability and oversight of both the security and intelligence agencies and the government's claims based on intelligence information'.

The Justice and Security Act passed last year handed marginally more power to the ISC, but did little to correct executive control over it. For example, each committee member is now appointed by parliament but must first be nominated for membership by the prime minister. The ISC now has the power to call for evidence or information from ministers and agencies; however, the means and manner in which information can be provided to the ISC must be outlined through a memorandum of understanding with the prime minister. In the light of the Snowden revelations, it seems that reforms in the J&S Act did not go far enough. Moreover, we also need to consider the extent to which RIPA can be said to remain an adequate mechanism for regulating surveillance activities.

## Democratising secrecy: proposals for reform

In this context, I believe further reforms should include the following:

1. The ISC should become a full joint parliamentary select committee. This was hinted at by Gordon Brown's *Governance of Britain* green paper but not followed through. The J&S Act has done half the job, but now we need to complete it.
2. It should be appointed by and be responsible to both Houses of Parliament.
3. It should have stronger powers to obtain evidence. These should include the power to obtain information, by summons, from outside parties, lay experts, ministers and civil servants, as well as from security chiefs.
4. It should have an independent secretariat and independent legal advice, and it should have access to all information. Select committee procedures already allow the exclusion of material whose publication might be harmful, and the disclosure of secret material is a serious criminal offence.
5. Its chair should be a member of the opposition and should not be someone who has previously held responsibility for any of the security agencies.

6. Finally, we need to increase the level of institutional expertise to ensure that human rights are put at the heart of policy and strategies in this area, at a level that is more than rhetorical. And we need to consider how such a committee could develop a wider role in educating parliament as a whole, and consequently the public, about the nature of intelligence gathering and its products.

The last point is an important one. The first chapter of the Butler review of intelligence concerning Iraqi WMD explains in some detail what is meant by the term 'intelligence', acknowledging that while 'a great deal of such information may be accurate ... much is at best uninformed whilst some is positively intended to mislead'. For this reason, the oversight body should take on an educative role. Reform of oversight, after all, is not just a matter of academic debate: it could be said that the ISC's failure to educate parliament or the public about the nature of intelligence contributed to the failure of parliament effectively to scrutinise the government's case for war in Iraq. It was not merely the case that parliamentarians were not in full possession of the facts about the threat posed by Iraqi WMD but also that, when presented with the evidence, many of them did not have the necessary understanding to scrutinise it in any meaningful way.

In a recent issue of the *London Review of Books*, Sir Stephen Sedley identified a situation by which in many democracies 'the security apparatus is able to exert a measure of power over the other limbs of state that approaches autonomy'. In this sense, it can procure legislation, it dominates decision-making within its sphere of influence, and it even seeks to lock its antagonists out of judicial processes. It seems to me that in this troubling situation, and in the absence of any serious or rigorous public scrutiny of its work, the very last thing we should add to this potent brew is a still stronger dose of protective secrecy for security agencies and their activities.





**James Cornford was responsible for some of the most pioneering and influential work on constitutional and democratic reform in the UK in recent times.**

As founding director of IPPR, he was the driving force behind *The Constitution of the United Kingdom* published in 1991, which provided the blueprint for much of the constitutional change enacted by the New Labour governments.

To celebrate James' life and his contribution to constitutional reform, IPPR, with support from the Nuffield Foundation, is publishing a collection of essays in his honour. Together, they set out a democratic reform agenda for Britain in the 21st century.

Edited by Guy Lodge and Glenn Gottfried at IPPR, contributing authors include:

- Stuart White, Oxford University
- Martin O'Neill, University of York
- Stuart Wilks-Heeg, University of Liverpool
- Colin Crouch, University of Warwick
- Mathew Lawrence, IPPR
- Jessica Asato, Fabian Society and Electoral Reform Society
- Jamie Bartlett, Demos
- Sarah Birch, University of Glasgow
- Mark Elliott, Cambridge University
- Alan Trench, University of Ulster
- Michael Kenny, Queen Mary, University of London
- Ed Cox, IPPR North
- Vivien Schmidt, Boston University
- Lord Kenneth Macdonald, former director of public prosecutions