


TAKING ON THE THREAT
TO PARLIAMENTARY
DEMOCRACY

MAY 2024

RADIX
BIG TENT



*"We live under an
elective dictatorship,
absolute in theory, if
hitherto thought
tolerable in practice."
Lord Hailsham, 1976*

Key Steps to Protect Parliamentary Democracy

- **Give the Electoral Commission total independence** with sole power to draft election regulations and rein in political spending during elections.
- **Remove the voter ID requirements** at polling stations to ensure the widest participation in voting and introduce automatic registration to maximise the franchise.
- **Hold Commons votes to approve the appointment of Prime Ministers**, Cabinet members and Government, with the incumbent PM and government routinely staying on as caretaker until the new one is confirmed.
- **Make all resolutions of Parliament binding on Government**, with Parliament setting its own sitting timetables and schedules.
- **Prohibit Henry VIII clauses (making law by 'public notice')** so that both Houses of Parliament have the right to insist that badly drafted regulations are withdrawn and Ministers think again.
- **Rationalise, codify and make Prerogative powers fit for the 21st Century**, with a binding principle that any PM wishing to use them for an early Dissolution or Prorogation must first secure a two-thirds majority in a Commons vote.
- **Enshrine the Seven Principles of Public Life in the Ministerial Code** and make explicit that those found to have breach the Code must go.
- **Reform and make elected second chamber** along the lines proposed in widely-backed 2012 House of Lords Reform Bill.

The Threat to Democracy

Democracy is threatened, claims Sunak. True, but not in the way he suggests. Protest marches and gatherings throughout the last two centuries have actually strengthened British democratic institutions. The current much more dangerous and insidious threat is the deliberate accretion of ever more power at the centre of the executive at the expense of our parliamentary representative system. Sunak is part of the problem, not evidently part of the solution.

As long ago as 1976, Lord Hailsham warned that British democracy was sliding into what he called 'elective dictatorship'. In the almost 50 years since his memorable BBC Dimbleby Lecture, things have got progressively worse. The 'strong' governments of Margaret Thatcher and Tony Blair quietly tightened the grip which government exercises over Parliament, to the detriment of democracy.

By the time the Conservative Party fell into Boris Johnson's hands following his 2019 seizure of power, the conditions were ripe for a further weakening of the tenets of Parliamentary democracy. In our recent book: *'Can Parliament take back control? – Britain's Elective Dictatorship in the Johnson aftermath'* we analyse the state of the mother of democracies and offer suggestions of how it could be restored to health. We include the full text of the Hailsham lecture.

Barely weeks into office, Johnson raised eyebrows through his unprecedented attempt to 'prorogue' Parliament (i.e. shut it down for an involuntary break) in order to stave off defeat on key Brexit votes. He refused to accept the findings of his own standards adviser about members of his cabinet bullying civil servants – leaving the Ministerial Code shattered. He was found by a lengthy Parliamentary investigation to have lied repeatedly to Parliament about Downing Street parties during the Covid lockdown. In under three years, Number Ten forced at least six very prominent civil servants out of office for ideological reasons: they were not deemed to be 'fellow-travellers'. He attempted government by 'order' on a scale which would have made even Henry VIII (its original practitioner) blush, and made lavish use of the Royal Prerogative – ancient powers which enable Prime Ministers to declare war, sign treaties, dissolve Parliament and choose election dates. We have also descended to the point where British politics is 'on sale to the highest bidder', whomever that may be. Our weakened democracy allowed all this to happen, and fundamental change is needed to safeguard and stabilise our body politic.

BRITISH POLITICS IS 'ON SALE TO THE HIGHEST BIDDER'

Up for Sale

Nowhere is the democratic malady more acute than in political finance. Effective journalism has always 'followed the money'. Since the 2019 election, rules on political funding have weakened the integrity of our democracy. The Government has unilaterally increased the limit on national party election campaign expenditure from around £20 million to almost £35 million. There was no cross-party consensus, no debate and no need for this. In 2019, no party came near to reaching the limit.

Meanwhile, rules on political donations from outside the UK have relaxed. Anyone who has ever been on a UK electoral register here, however long ago, can now both vote in elections and make political donations, with minimal authentication. A billionaire in a tax haven may well think this profitable – turning the traditional 'no taxation without representation' on its head. Some £14 million is believed to have come into British politics since 2015 through 'unincorporated associations' – escaping official publication and scrutiny, not least during the 2016 EU

referendum campaign. The Committee on Standards in Public Life (CSPL) identified this gaping loophole as 'a route for foreign money to influence UK elections', but Michael Gove refused to close it in July 2023.

On both sides of the Atlantic the political interference of 'dark money' has been largely overlooked by mainstream media – but its threatened scale and foreign origin in 2024 is a new threat entirely. Russian money is not invested for fun.

In a British political context, £35 million seems a fortune. In other settings, it is small change. Wealthy individuals around the globe indulge enthusiasm for English football's Premier League by buying our clubs for vast sums. They will spend £35 million in a single transaction, buying an extra player to provide cover at some key position, without even planning to pick him regularly unless another player suffers long-term injury. If these foreign billionaires have a hobby for politics rather than football, our democracy is up for sale very cheaply – they could buy up all our political parties for less than one top striker's transfer fee.

FOREIGN BILLIONAIRES COULD BUY UP ALL OUR POLITICAL PARTIES FOR LESS THAN ONE TOP STRIKER'S TRANSFER FEE

Buying Loyalty – to whom?

So, what will the Conservatives – or indeed any other party – do with this money? Here we must look at the 2022 Elections Act. This effectively reversed a Supreme Court Judgement relating to South Thanet constituency, which reaffirmed local responsibility for election expenditure on the local agent. After that Judgement found against the Conservatives, the Electoral Commission spelt out that campaign expenditure by national parties in a constituency must be accounted and declared as expenses by their candidate (within their limit) 'even if the items provided have not been authorised by the candidate, or the candidate's agent...'

In the Elections Act 2022, Ministers turned this on its head, saying that where the candidate and agent claim ignorance of the expenditure by their national party in supporting their campaign there could be reduced transparency and control over that money. Curiously – unless they too hope to benefit from this relaxation – the Labour Party seems to have accepted this.

So, in the 150 or so marginal seats which will decide the 2024 General Election, the parties can spend millions of pounds targeting voters with unsolicited mail shots, social media messaging and call-centre contacts, far outweighing constituency limits of under £20,000 for a candidate – and potentially meaning sums involved could be 20 or 30 times that figure.

Does all this matter? In Britain we do not have a presidential system. Instead, we elect individual MPs in constituencies, who in turn indicate in the House of Commons their collective 'confidence' in a ministerial team. That is Parliamentary democracy. It follows that the integrity of constituency election campaigns is vital for the whole of our democratic system.

There is another insidious impact. If a large proportion of MPs literally owe their electoral success to the massive investment in their campaigns from their party HQ, that gives the HQ vast power over them.

British democracy has been through an extended nervous breakdown in recent years and has yet to emerge from the other side, though it is to be hoped that the coming election might be the trigger for a gradual process of recovery. Parliament has twice 'gone missing in action' – failing entirely to protect the national interest during either the Brexit debates or the pandemic and its lockdowns.

Holding Government to account

So, how should an incoming government address this quagmire? The purpose of our book is to explore this one particular aspect of the constitutional rehabilitation which is now both sorely needed and increasingly viable. With a change of government looking ever more likely, attention is turning to political renewal.

Put simply, in a proudly proclaimed 'Parliamentary democracy' the executive is accountable to the legislature, and not the other way round. This under-explored aspect of political reform receives too little comment or study. This vital piece of the jigsaw needs steering onto the agenda now, to make it part of any post-election renewal. Our aim is to promote such discussion.

**IN A 'PARLIAMENTARY
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Another Way

We examine our subject in sequence: starting with the corrupting effect of flawed election legislation which denies a level playing field; moving on to media hysteria causing undue haste in

appointing new governments; the need for a sovereign Parliament to set its own agenda and timetable; and powers for strong committees with real teeth to force changes on government through Parliamentary resolutions.

On election law, we suggest consolidating two laws: the Representation of the People Act (RPA) 1983 and Political Parties, Elections and Referendums Act (PPERA) 2000 into one Act, simplified and updated, giving the Electoral Commission total independence with sole power to make election regulations. This should make all campaigning resources deployed in any seat count towards the spending limit in that seat, and we should remove the voter ID requirements at polling stations to ensure the widest participation in voting.

When Britain's government changes, amidst unseemly rush there is currently no requirement for Parliament's approval. We suggest a Commons vote to approve the appointment of a Prime Minister, Cabinet and government. Parliament should set its own post-election timetable for convening, appointing its Speaker and Select Committees, and promulgating its own standing orders. There should be Select Committee confirmatory hearings for cabinet posts, and only after all these preliminary steps – spanning perhaps a month or six weeks – should Parliament consider the new legislative programme in a King's Speech. The incumbent PM and government should routinely stay

on as caretaker until the new one is confirmed.

The Commons itself and not the government should allocate parliamentary time – a key lever in any democracy. Government should have a set proportion of parliamentary time (e.g. 50% or 66%) with Private Members' Bills and non-government business having more time – including bills, motions, committee reports and petitions. All resolutions of our sovereign Parliament should be binding on government. Parliament should set its own sitting hours, weeks, and schedule – and summon ministers accordingly, not meet at the convenience of Ministers.

Parliamentary committees should have greater powers: Select Committee findings, if endorsed by resolution of the Commons, should be binding on government. Chairs and members of Committees should be directly elected by secret ballot of MPs – not fixed by whips (party managers).

On secondary legislation, Parliament should prohibit Henry VIII clauses (making law by 'public notice'). Both Houses of Parliament must have the right to insist that badly drafted regulations are withdrawn and Ministers think again. The Ponsonby Rule should be restated, enabling Parliament to supervise all significant UK international obligations and treaties.

Royal Prerogative power, now exercised almost unchecked by the Prime Minister, should be rationalised, codified and made fit for the 21st Century, with a binding principle that a PM wishing to use Prerogative powers must first secure a two-thirds majority in a Commons vote – including for any early Dissolution or Prorogation. Government should secure Parliamentary approval when committing the Armed Services to significant military deployment, beforehand where practicable and swiftly thereafter where not. We must remove the anomaly of one political team leader (the PM) being effectively equipped with a 'whistle to end the match at a time of their choosing' (i.e. to pick the date for a General Election).

The Ministerial Code needs statutory underpinning, enshrining the Seven Principles of Public Life, with a Commissioner for Ministerial Standards having complete independence and powers to investigate Ministers' conduct, with clear penalties applicable to ministers and an explicit assumption that breach of the Code means they depart.

**ALL RESOLUTIONS OF
OUR SOVEREIGN
PARLIAMENT
SHOULD BE BINDING
ON GOVERNMENT**

Britain's impartial civil service has long been respected globally, but a review of its practical working involving all levels of the service is needed. Only the Cabinet Secretary and not political figures should be able to remove a Permanent Secretary from a department – and only on performance or disciplinary grounds, which can be tested in law. We must clarify that the role of politically-appointed Special Advisers (SpAds) is to advise ministers, with no power to instruct or direct civil servants.

Our democracy now desperately needs a reformed and elected second chamber. The widely-backed 2012 *House of Lords Reform Bill* is the obvious starting template for change and we should adopt its proposed largely or wholly elected second chamber of around 450 members, elected by proportional representation in multi-member regional (English) and national (Scotland, Wales and Northern Ireland) constituencies. If we elect 1/3 of the members every 4-5 years, MPs will always have a more powerful recent mandate, avoiding open conflict. Non-renewable 12 or 15-year terms would give a longer outlook, and more independence from parties.

Standards in public life have eroded in recent years and a good way to reverse this would be to enact the 2021 report *Upholding Standards in Public Life* from the Committee on Standards in Public Life (CSPL) and to appoint strong independent regulators. We should also enact the principles of its 2011

report *Political Party Finance*, with limits on donations, reduced expenditure limits and a modest increase in the existing level of state funding.

It is hard to estimate the public appetite for a stronger Parliament. They elect Parliament – they do not elect the government. But they did not much like it when Parliament cut up rough with government about Brexit, so perhaps they are psychologically ingrained with the idea that strong government must always get its way. By contrast, American and French electors often knowingly vote for 'cohabitation' with its creative tensions between legislature and executive.

The two independent statutory bodies, set up with strong all-party support, should have a more robust role to play. The CSPL was created in 1996 to address dwindling confidence in the ethical standards of Parliament, the Civil Service and public governance. Over the years its advice has consistently been well-argued, logical and democratically unchallenged. It has, however, been ignored and opposed by successive governments.



THE 2012 HOUSE OF
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**THERE SHOULD BE
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Meanwhile the Electoral Commission, set up with similar intentions in 2000, has also had limited government support. The Johnson Government, in particular, ignored its advice and even attempted to constrain its efforts to achieve greater fairness, by imposing a politically-dominated Committee to oversee it. The Commission's warning of potential bias in the ways new ID card requirements for voting were implemented was just one of several impartial recommendations that didn't suit Ministers.

Instead of creating those new barriers for potential electors (aimed largely at likely non-supporters), with elaborate photo ID requirements for in-person voting, there should be an energetic initiative to register the estimated 8 million eligible citizens who are currently missing their democratic rights. Automatic registration on allocation of NIC would be simple.

Conclusion

Commentators and politicians often decry critical political and constitutional issues as having no public salience: they are not 'doorstep issues' in an election year. Of course, they don't feature in immediate day-to-day concerns like the cost-of-living crisis, the strains in the NHS, energy costs or even climate change and the Brexit fallout.

However, looking ahead, an incoming government this year will not inherit the benign economic legacy Blair did from Major in 1997. It will be hugely challenging and, while a new regime may endeavour to reverse the worst effects on living standards and public services, the political tide could turn swiftly. The exaggerated distortion of our outdated First-Past-The-Post electoral system could threaten a swing to an ultra-right-wing opposition on a minority vote in 2029. If Labour should win the election but then ignore urgent political reforms, which even their grass-roots and trade unions now see as necessary, that new government might not only prove very temporary, but could go down in history as an unprecedented disaster.

That is an avoidable fate, so long as a new Government recognises that national renewal must include long-overdue political reform alongside their economic, social, environmental and international agendas.

About the authors:

Nick Harvey – was Lib Dem MP for North Devon (1992-2015) and Minister of State for Defence in the 2010 Coalition. He was spokesman for the House of Commons Commission, which runs and regulates the institution. He was one of four Lib Dems in the Cook-Maclennan talks before the 1997 election, which agreed with Labour a programme of constitutional reforms for the following Parliament. A former CEO of the Lib Dems he has over the last decade advised the Parliaments in developing democracies on – among other things – holding the executive to account. In July 2023 he became Chief Executive of the European Movement UK.

Paul Tyler – was Lib Dem MP for North Cornwall (1992-2005) and Bodmin in 1974, and a working peer (2005-2021). He has been Lib Dem Constitutional Reform spokesman in both the Commons and Lords and is a former Chief Whip in the Commons. He has led cross-party projects and publications grant-aided by the Joseph Rowntree Reform Trust, including Reforming the House of Lords (with Ken Clarke, Robin Cook, Tony Wright & George Young) 2005, Lords Reform – A Guide for MPs 2012 (before the House of Lords Reform Bill passed at second reading in the Commons), Funding Democracy 2013, and a Draft EU Referendum Bill 2019.

Comments on *Can Parliament Take Back Control? – Britain’s Elective Dictatorship in the Johnson aftermath* by Nick Harvey and Paul Tyler:

“This book should offer much food for thought for all those in a position to remedy the deficits in our democracy – both now and in the future.”

Dr Hannah White, Director, the Institute of Government

“We badly need serious thinking about feasible reforms that will strengthen our democracy. Drawing on their wealth of experience, Nick Harvey and Paul Tyler provide that in spades. No one will agree with everything they say, but it all deserves careful attention.”

Prof Alan Renwick, Constitution Unit, UCL

“Paul Tyler and Nick Harvey are assiduous and determined advocates of constitutional reform, and they are armed with many years of practical experience. They acknowledge that not everyone will agree with all their proposals – it would be strange if it were so. But what they put forward is shrewd and timely. It offers a much-needed constitutional cure. And it will be ignored at peril.”

Lord Lisvane, former Clerk to the House of Commons





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www.radixuk.org
hello@radixuk.org

14 Sandringham Street
York YO10 4BA

Registered educational charity
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