

Democracy on Thin Ice

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2022-05-03T12:48:02

The notorious [Elections Act 2022](#) culminated in an appropriately dramatic fashion this past week. Following two [successful motions](#) in the House of Lords that sought to [tame](#) the most controversial provisions of the Act – the voter ID measure and subjecting the Electoral Commission to greater executive oversight – the House of Commons was forced to directly confront the [disputed and unpopular nature](#) of these measures. The ultimate result of the struggle was a few marginal [accommodations](#) by the Commons; the Lords, following [fierce last-minute dispute](#), [grudgingly acquiesced](#). Despite ongoing concerns and the Lords' efforts to intervene, the Act will go into effect largely as originally drafted.

The twists and turns of this dispute make for good political spectacle, but underlying it are unnerving indications regarding the integrity of democratic process in the UK. Contestation over the two controversial measures unfold, in both the Lords and the Commons, almost entirely along partisan lines. This itself raises the question of whether there is any underlying cross-party consensus regarding the terms of legitimate popular self-rule, or if the bedrock terms of democracy have been reduced to terrain of partisan power struggle. Paradoxically, the last staunch institution advocating for democratic integrity was the House of Lords, rather than a more directly accountable part of government. This reveals a constitutional order under significant strain and struggling through competing ideological mandates.

The House of Lords Efforts to Preserve Electoral Integrity

The House of Lords sought to soften the edges of the two most controversial provisions of the Act: the voter ID provision; and subjecting the previously independent Electoral Commission to executive oversight. The ID provision requires that voters present a photo identification when voting. It was advanced with the [ostensible aim](#) of combatting voter fraud, but has been widely assailed as lacking a firm justification (voter fraud is anomalously rare in the UK) and therefore unjustifiably [potentially suppressive](#) in a manner that would favour the Conservative constituency. In an April 6th motion, the House of Lords passed a motion to significantly reduce the suppressive effects of the provision by expanding the range of documents that would qualify to prove ID (including non-photo ID such as utility bills).

In a separate April 25th motion, the Lords acted even more decisively, voting to strike the Act's provisions that require the Electoral Commission to act in accordance with the government's strategic and policy priorities, and furthermore make the Commission accountable to the Secretary of State. This [unpopular](#) clause has been roundly condemned by [scholars](#), [activists](#), and the [members](#) of the Commission

itself. The [Electoral Commission](#) was established as an independent oversight body responsible for overseeing electoral rules and political financing in the UK, and for evaluating the fairness of elections. Its independence ensured that the processes that select leaders and representatives are themselves free from influence of those who likely have an interest in the nature and administration of those processes. Subjecting its operation to a partisan political actor creates significant concerns regarding self-dealing in the administration of elections, a practice (and appearance) which can seriously undermine the integrity of a self-governing democratic polity. The interests and principles of a party or coalition will favour its own supporters by any realistic description of [democratic competition](#), and to instruct an institution responsible for maintaining electoral neutrality to take these partial interests into account contradicts such neutrality itself. Given the [various accusations](#) of corruption that the Johnson government has already faced, such a change to the practices that maintain democratic structure in the first place would be particularly alarming.

The Fate of the Elections Act

The response to these robust instances of pushback by the Commons is telling. The Commons simply rejected the attempt to defang the ID provision, with Kemi Badenoch, Minister for Levelling Up Communities, [declaring](#) that a requirement of photo identification was essential to preserve the provision's anti-fraud aims. The Commons did make marginal compromises regarding the independence of the Commission by [modifying the Act](#) to create greater Parliamentary oversight of the Secretary of State in its supervision of the Commission. Rather than restore the independence of the Commission it has added another layer of accountability closer to directly elected representatives – a measure that, while aligned with democratic principles of accountability, does nothing to address the concerns that those in power will engage in self-dealing manipulation of electoral procedure. Given the reciprocal relationship between the legislature and executive under Westminster government, it is particularly carrion comfort to add an additional layer of Parliamentary accountability.

The Uncertain Future of UK Democracy

Time – and the fate of democracy in the UK – alone will tell how destructive these changes are. They could herald democratic backsliding and be the first instances of aggressive manipulation of electoral process by those who hold power; they could also be innocuous nibbling at the edges of a still-vibrant liberal democratic constitution. The denouement of the Act itself and the tense interactions between the Lords and Commons, however, indicates challenges facing the UK Constitution at this very moment.

The debate in the Lords itself revealed the ideological stakes apparent in the debate over the status of the Commission. A sharp-elbowed exchange between cross-bencher [Lord Evans](#) and Conservative [Lord True](#) seemed to reveal a hard-fought but ostensibly sincere debate over how best to monitor and regulate electoral process. Lord Evans evoked familiar concerns regarding the need for independence in

oversight of electoral procedure. Lord True's response not only sought to assuage, on practical terms, concerns that making the Commission accountable to the executive might lead to self-serving abuse, but invoked a substantive riposte: a direct line of accountability to the polity is a core democratic value, and should be given weight in design of procedures that influence democracy. The idea that the authority of representatives has normative priority over independent agents is familiar – as Alexander Bickel (*The Least Dangerous Branch*, New Haven: Yale University Press, 1962, at 19) states, “nothing can finally deprecate the central function that is assigned...to the electoral process; nor can it be denied that the policy-making power of representative institutions, born of the electoral process, is the distinguishing characteristic of the system.” Underlying Lord True's response is scepticism that the moral authority to govern, and to set terms of governance, should be far from the people. This offers a controversial if plausible counter to the idea that independence in oversight, and the associated risk of procedural self-dealing when this is lost, is the central legitimizing feature of electoral regulation.

That the debate in the House of Lords comprised a high-minded debate over democratic theory is undermined by the [partisan overdetermination](#) of the Lords' motion to strike the accountability provision. Conservatives voted 192-10 for the government; conversely every Labour Lord save one, every Liberal Democrat, and every cross-bencher voted against it. This almost equalled the degree of partisanship present in the [votes](#) over the Act in Commons. That the Lords – a non-accountable body – would divide along such fiercely partisan lines provides further indication that the Act at root an attempt to gain political power, and thus unnerving as an intervention in electoral procedure.

In principle, the Lords' motion to strike the accountability provision was not wholly futile, given the subsequent amendments in the Commons. But that the institution that intervened to protect the integrity of democratic process is non-elected and at best [tangentially democratically legitimate](#) is itself troubling. If protection of democracy has fallen to a non-accountable legislative entity, it implies a number of possibly troubling propositions. The most obvious is that democracy in the UK is so fragile that some entity outside the standard conduits of popular self-rule is needed to maintain basic structures of governance. Yet, more subtly, if such a proposition is true, it requires that this outside intervention is normatively valid. This, in turn, requires that the legitimate authority for arrangement of governance lie beyond the will of the constituent polity – a principle that undermines the principle that democracy is self-rule by free equals, preferring governance forged in elite philosophical knowledge. The Lords' intervention, beneficial or not, is difficult to reconcile with liberal democracy.

The Fragility of Self-Rule under the Unwritten Constitution

Synthesizing these concerns paints an alarming picture regarding the foundations of governance in the UK. Riddled by partisan self-dealing, one of the last bastions for checking aggrandizing conduct by the party in power is, in fact, an institution

that itself does not satisfy seminal norms of democratic legitimacy – and even its efforts will often do little to ameliorate partisanship or contain the ambitions of current powerholders. This, in turn, suggests a breakdown of the shared terms of required for legitimate popular self-rule that sustains a stabilizes a democracy.

Such possible threats to democracy may be especially concerning in a nation with an uncodified constitution. With no explicitly articulated framework to provide a bedrock starting point for constitutional expectations and democratic procedure, the UK may be particularly vulnerable to reworking of democratic practices by interested parties (vulnerability exemplified, according to their critics, by the controversial aspects of the Act). A written constitution certainly is no panacea or failproof backstop – it still must be interpreted, and the pliability so entailed may mean it is, at best, a signal of general socio-political commitments to the values of legitimate governance. But the absence of such a constitution removes one possible starting point for critiquing and assessing rapid changes to democratic procedure brought about by powerful partisan political actors.

These issues should inspire scholars of public law and related topics to carefully consider the unfolding of the Act that this post has sketched, and provide fertile grounds for future research. In its passage and explicit content, the Act provides fertile ground for examining democratic theory and the current circumstances of UK politics. Its impact, and what future changes to democratic process will follow (including future partisan assertions of what is necessary to maintain legitimate constituent self-rule) should be the subject of careful attention.

