Article 1

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We may be able to enjoy Europe more outside of the European Union

LOUIS DE BERNIÈRES | Friday 31 January 2020 13:39 | 1 comment

It is important to remember that when we leave the EU , we will not be taking a step into the dark. We were not members for thousands of years and only became so within living memory. We always were and always will be politically and militarily involved in Europe, just as we always were and always will be an integral part of the profound and rich enterprise that is our shared culture.

Has being in the EU made us less European? My parents loved Maurice Chevalier. My mother was somewhat in love with Sacha Distel. I was in love with Françoise Hardy and all my friends could whistle the tune to Never On Sunday. Fifty years later, I am not aware of a European artist who is as prominent in today's British popular culture.

Europe stopped being our cultural home and evolved into a ramshackle political and economic project that became, for many of us, a continuous irritation. Europe, a word that used to be so rich in historical connotations, extended its meaning so far that we forgot what it originally meant. I suspect that ardent Remainers did not really notice this slippage and persuaded themselves that loving France or Greece or Bulgaria also entailed having to declare fealty to the political structure of which they are a part.

In June 1975, I voted to confirm our membership of the Common Market. In 2016, I voted to leave the EU. These are not the same thing. We were not originally voting to hand over sovereignty, we were voting for a free-trade zone, so it is not surprising that the generation that voted us in is the same as the one that voted us out.

What can we say to console Remainers? Yes, there were excellent reasons for staying, for trying to change it from the inside. Nobody thinks you were unreasonable. If anything, it was you who insulted Leavers by declaring them uneducated, insular and stupid. A great deal depends upon what Boris Johnson achieves in terms of an agreement and the extent to which capitals such as Dublin see our exit as an opportunity. I have no doubt Paris is gleeful. I suspect that within a couple of years nobody will be noticing any practical difference. Predictions of economic disaster will turn out to have been hysteria.

My advice to Remainers is to take a look at what the EU has amounted to. It has been stagnant since the 2008 crash; it is impossible to manage radically different economies which have the same currency. Without the euro, the EU would have worked.

The EU has crushed and humiliated Greece for the crime of being allowed into the Eurozone before it was fit to join. It has oppressed Ireland by demanding that its government pay back to German banks debts incurred by private Irish citizens. It has never addressed the democratic deficit brought about by its top officials being unaccountable to electorates. It has never addressed such absurdities as shuttling its offices back and forth between Brussels and Strasbourg.

I do not wish to say to Remainers, "You lost. Now live with it." I say to them that Europe is not the EU. It is physically and culturally impossible for us to leave Europe. The boulevards of Paris will not disappear, there will be no cable towing us away from the mainland, Beethoven will still play on our sound systems. We will be in charge of ourselves again, that's all, making our own mess rather than living by somebody else's rules.

"There were excellent reasons for staying but my advice for Remainers is to look at what the EU has amounted to

Article 2

The Guardian

This prorogation crisis shows why the UK needs a written constitution

Jemma Neville

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‘The UK constitution is a fluid interpretation of codes, conventions and case law.’ SNP MP Joanna Cherry with supporters outside the Court of Session in Edinburgh. The case is due to be heard on Tuesday. Photograph: Jane Barlow/PA

Who would have thought that a niche constitutional verb would be the word of the moment? We’ve known this mess was coming for months, but it doesn’t make it any less galling as the word prorogue dominates the debate.

So are the prime minister’s actions unconstitutional? I think so – and there is a case at the Scottish court of session due to be heard on Tuesday to determine that question. But the fact is we can’t know for certain because the UK constitution is a fluid interpretation of codes, conventions and case law. Despite having influenced many constitutions around the world, we are one of only a handful of countries without such a written document of our own. The European Communities Act 1972 and the Human Rights Act 1998 come close in terms of placing limits on executive power, but both are under immediate threat from the current occupants of No 10.

Constitutions of any kind are statements of expression and intent, typically borne out of moments of crisis and revolution. Britain’s comes from 1641, the last time that a leader joked about wanting to be “world king” and attempted to shut down parliament when MPs blocked his way with the Triennial Act. A few decades later, the English and Scottish parliaments united in 1707 after “a parcel of rogues” in Edinburgh effectively sold Scotland to settle their own bad debts incurred trying to colonise elsewhere in the world. The recurrent narrative, both now and historically, is one of constitutional change being done to or for the people, not with us.

Today, the UK constitution is still a piecemeal collection of conventions and common law open to misuse and abuse. The current crisis demands that we put this right and agree a written constitution that clarifies beyond doubt the separation of legislative,

judicial and executive powers and the role, if any, of the monarchy. This would be hugely preferable to the current situation, which requires expensive judicial reviews to decipher the blurring of legal and political power.

However a written constitution won't be a panacea. It will need to be a living document with the flexibility to be interpreted as the world changes. Recent debates on gun control in the US and the right to self-determination in Catalonia demonstrate that constitutions can also be barriers to change if they do not allow for contemporary amendments.

There is much to learn from the ways in which other countries have gone about the process. In Iceland, following economic collapse in 2008, the crowdsourcing of a written constitution began with people sitting down to talk about the basic values they shared with their neighbours. By and large, the Icelandic drafting was not done by constitutional law experts – members of the public were selected by ballot and included a farmer, a truck driver, a pastor, a film-maker, a student and the director of an art museum. Conversations took place in town halls, on social media and even in knitting circles. The resulting Icelandic Constitutional Council opted to give legal personality to nature itself. This in turn was based on the Ecuadorian concept of *Pachamama* (world mother).

Ecuador was the first country to recognise the rights of nature in its constitution. Rather than treating nature as property under the law, the constitutional articles acknowledge that nature in all its life forms has "the right to exist, persist, maintain and regenerate its vital cycles. The environment can be named as a legal party with standing in the justiciability of rights." If this all sounds a bit too "Earth mother" for the British public, it's worth noting that entities such as companies have long held legal personality.

It is tempting to dwell on the domestic political drama, but as the Amazon burns, we don't have time to waste arguing about 17th-century codes and conventions. We need to get our house in order. That begins with a hopeful and declaratory vow to one another – a sort of post-Brexit truce or social contract – in the form of a new constitution.

Such a constitution might begin with a preamble setting out shared values such as equality, diversity and even kindness. This would capture the public imagination and affirm a collective endeavour to look out for one another and the natural world. In this way, it would be a 21st-century take on the pursuit of happiness found in the US Declaration of Independence. And rather than the Latin favoured by lawyers, the language of the articles within our new constitution must be clear and relatable to the people it protects. This is where the aspirations of the preamble would be incorporated into rights directly enforceable in the courts.

The drafting process itself could prove a useful tool for pulling the country back together. The conversations it prompts will be as important as the text itself. If fully inclusive and participatory at a local level, by means of the citizen assemblies or mini publics that function well in Ireland, it can provide an opportunity to revive a sense of common purpose that has been sadly missing since the Brexit vote. And it will help to renew our credibility on the international stage. It will be about plurality of voices not the populist, dangerous notion of the "will of the people".

Brexit laid bare deep social divisions that have long existed. Now is the moment for the UK to ask itself some soul-searching questions about the kind of country, or countries, it wants to be. To be fully constituted means to stand together. Standing together, neighbour by neighbour, street by street, at this critical juncture, we are ready to do things differently. Agreeing a rights-based constitution is a good starting point. If not now, then when?

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• This article was amended on 5 September 2019. An earlier version said that entities such as companies and trusts held legal personality, when it should have simply said companies

Article 3

Lords reform is back on the agenda: what are the options?

Posted on February 23, 2020 by The Constitution Unit

The Guardian

Since the 2019 general election, proposals for Lords reform have abounded – emerging from both government briefings, and proposals floated during Labour's leadership contest. Meg Russell, a well-established expert on Lords reform, reviews the wide variety of options floated, their past history, and their likelihood of success – before the topic may get referred to the government's proposed Constitution, Democracy and Human Rights Commission.

Reform of the House of Lords is a perennial in British politics. Elections come and go, political parties often make promises to reform the Lords, and generally political obstacles of various kinds – or simply just other political priorities – get in the way. Significant reforms included the Parliament Acts 1911 and 1949 (which altered the chamber's powers), the Life Peerages Act 1958 (which began moving it away from being an overwhelmingly hereditary chamber), and the House of Lords Act 1999 (which greatly accelerated that process, removing most remaining hereditary peers). Since this last reform there have been numerous proposals, through government white papers, parliamentary committee reports and even a Royal Commission (which reported in 2000), but little actual reform. The last major government bill on Lords reform — abandoned in 2012 — was under the Conservative-Liberal Democrat coalition. Its sponsor, Deputy Prime Minister Nick Clegg, no doubt came to agree with renowned constitutional historian Lord (Peter) Hennessy, who has dubbed Lords reform the 'Bermuda Triangle of British politics'.

This article reviews the various suggestions recently made, commenting on their originality (or otherwise) in the debate, the challenges that they pose, and their possible chances of success in the months ahead.

A 'chamber of the nations and regions'

The first idea to emerge after the election came from the government side, in the shape of a 'second chamber of the nations and regions'. This, it was suggested, might help 'cement the union'. Similar suggestions have been commonplace in recent years (for a full review see here), dating back at least to the report of the Royal Commission. Labour embarked upon Lords reform at the same time as

devolution, and it was natural to try and link the two. This was also rational based on international experience – many second chambers around the world (particularly but not exclusively in federal states) are structured using sub-national units. There are various models for this representation: second chamber members may be directly elected (e.g. Australia, US), indirectly elected by members of subnational legislatures (e.g. Austria, India), appointed centrally (Canada), or drawn from subnational governments (Germany). Labour was firmly committed to this model under Ed Miliband: the 2015 manifesto promised 'an elected Senate of the Nations and Regions', but little detail was provided. More recently this idea has been floated by the Constitutional Reform Group chaired by former Conservative Leader of the Lords, Lord Salisbury. Its main model for a territorial chambers suggests that this should be majority elected, minority appointed. Broadly similar arrangements were set out in the Clegg bill, and supported by the Gordon Brown government. Some version of this model is almost certainly the destination for any large-scale reform, but the devil is in the detail (e.g. size, distribution of seats, length of terms, inclusion of indirectly elected or appointed members). One obstacle to genuine territorial links is the lack of devolved structures throughout much of England. Another is that such a plan will not win the backing of nationalists (e.g. the SNP), who favour a looser rather than tighter arrangement at the centre of the UK. Such nationalist pressures have undermined reform in other countries such as Canada and Spain.

Moving the House of Lords to the north of England

Unlike the previous well-rehearsed proposal, this suggestion is completely new. The most widely-discussed idea is to move the chamber to York, though other locations such as Birmingham have been suggested. Like the previous proposal, the objective here is a kind of territorial rebalancing, and linking other parts of the UK more closely into parliamentary arrangements. However, while some have welcomed the proposal locally, and government insiders have got as far as scoping out a possible site, other locals have derided the idea as 'symbolic and superficial', and it has been dismissed in the Lords itself. Leaving aside the short-term upheaval of a move, it is a fundamental consideration that among the 79 bicameral parliaments around the world, all but one base both chambers in the same city – and the single exception (Côte d'Ivoire) created its second chamber less than two years ago. And there are good reasons for this pattern. First, if ministers and government officials are to be held accountable to both chambers (e.g. answering questions and piloting bills, as happens on a daily basis in the Lords), geographical proximity is important. Second, a great deal of informal politics is done in the corridors at Westminster. If MPs and peers were separated, conflict between the two chambers would likely become much more frequent. Such concerns have led significant doubts to be expressed about this plan by figures as prominent as former Conservative leader (and Yorkshireman) Lord (William) Hague. Before it can be taken wholly seriously, a great deal more thinking would need to be done.

Abolishing the Lords

This proposal has also rarely been aired in recent years, but resurfaced during the Labour leadership election, in a suggestion from Rebecca Long Bailey. In one respect this was perhaps an unsurprising idea from a left-winger: in the previous heyday of the Labour left the party briefly favoured abolishing the Lords – the proposal appeared in the 1983 manifesto, but was dropped by 1987. When the House of Commons voted in 2003 on a series of options for Lords reform, abolition was included (as a last-minute amendment), and defeated by 390 votes to 172. Notably just two

Conservatives supported the proposal. The primary argument against abolition (again aside from straightforward upheaval), is that the UK is a large and diverse country – features which tend to be associated with bicameral parliaments. In addition, the Lords performs many important scrutiny functions which would somehow have to be compensated by changes in the Commons if Westminster became unicameral.

An elected House of Lords

Notably, Long Bailey seemed to quickly change her position to suggest replacement of the Lords with an elected chamber, rather than all-out abolition. This is a more mainstream proposal, which has been frequently made in recent years – though most suggestions have also included a minority of appointed members (in order to retain experts and political independents). Since virtually all suggestions for election have proposed using national and (in England) regional boundaries, this proposal merges with the one above for a chamber of the nations and regions – though not all of those favouring election strongly emphasise the devolution angle. Those most committed to linking the second chamber to the devolved bodies often prefer some element of indirect election, though that is complex to implement in the UK system (for reasons given above).

Introduction of a retirement age

Alongside the initial 'nations and regions' briefing, some Conservative sources suggested that a more incremental reform might be more achievable – in the shape of introducing a compulsory retirement age for peers. This has also been frequently discussed in recent years, partly on its own merits (bringing peers into line with, for example, senior figures in the judiciary and the church), and partly as a means to reduce the ballooning size of the chamber. The median age in the Lords is around 70 (meaning that half of members are younger than that, and half are older), and several groups have proposed a retirement age of 80. One important difficulty with a fixed age, as pointed out by the Lord Speaker's Committee on the Size of the House, and previously on this blog, is that age is not distributed evenly between party groups in the Lords. At present, Labour peers and Crossbenchers are the oldest, so would be hit disproportionately by a retirement age. This could, of course, be compensated if necessary through new appointments.

Regulation of prime ministerial appointments

Another difficulty with a retirement age is that it alone will not solve the chamber's growing size: the primary problem is that successive prime ministers (though, notably, not Theresa May) have made unsustainably high numbers of appointments. The idea of limiting executive patronage regarding the Lords is the oldest one in the book: as early as 1719 a bill was introduced proposing limits on the number of new peers that could be created – but this was never passed. In January, the Lord Speaker (former Conservative Cabinet minister Norman Fowler) proposed a moratorium on new appointments until the size of the Lords is sorted out, fearing that numerous new appointments may be coming. He had previously established the aforementioned committee, chaired by Lord Burns, which made detailed proposals to bring the size of the chamber down to 600 members – including clear limits on appointment numbers. These central proposals were later endorsed by the House of Commons Public Administration and Constitutional Affairs Committee (I should declare an interest here, as specialist adviser to both of these committees). The Constitution Unit has researched this

matter, and published a report calling for a moratorium as early as 2011. The research indicated that without control on appointments the size of the chamber could reach 2000 or more. There is widespread support in the Lords for action on this matter, and it seems increasingly urgent – but requires the Prime Minister to surrender patronage power.

More democratic means of choosing nominees within political parties

Finally, concerns about specific individuals rumoured for imminent appointment spurred a suggestion from Labour deputy leadership candidate Angela Rayner that the party should democratise its internal system for choosing nominees for the Lords. Currently the main parties leave choice over appointments entirely to their leaders, though the Green Party has used internal elections, and the Liberal Democrats have in the past included some member involvement. Clearly, in the absence of formal change to the appointments process, parties remain free to reform their own internal processes as they see fit – though under current arrangements the Prime Minister remains in control of how many nominations are made, when, and how these are divided between the parties.

In conclusion, there have long been various proposals on the table for Lords reform. Some matters now under discussion have a long history, while others are more unexpected (and consequently, less well thought-through). Historically, the pattern has always been that large-scale changes to the Lords have proved difficult to achieve, but more incremental ones occasionally succeed. Even those changes which in retrospect fundamentally changed the chamber (such as introduction of life peerages in 1958, or removal of most hereditary peers in 1999), were seen at the time as small and inadequate. This is an important lesson for would-be Lords reformers, including possibly members of the government's new Commission. In planning Lords reforms there is much useful evidence from around the world to draw on, but it is also important to learn from our own history – and not let ambition get in the way of achievable reform.

About the author

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