**32. Legislatures**

The legislature has been one of the central institutions in the UK’s constitutional history, a forum in which major political events occurred and decisions were taken. The legislature projects constitutional values: its practice is based on the significance of representation, accountability, transparency, deliberation, contestation, and collective action. Moreover, the UK Parliament is the focus of the fundamental norm around which the constitution is structured. It possesses legislative sovereignty, the constitutional authority to make law on any topic. The UK’s political constitution is therefore crucially a parliamentary constitution, organised around the doctrine of parliamentary sovereignty. The UK Parliament’s role, composition, and functions have changed significantly over time – as indeed have the number of legislatures within the UK. Yet in many ways the institution also provides a notable example of continuity in the constitution.

This chapter first identifies the basic functions of legislatures, and discusses how those functions have evolved in the UK’s history. It then explores three key themes: first, the development of parliamentary sovereignty; second, the democratisation of the UK Parliament; and third, the dispersal of power from the UK Parliament, in particular to other legislatures within the state. . While this is not suggested to be a simple (or comprehensive) chronological narrative, in broad terms we see the UK Parliament becoming sovereign in the 16th and 17th centuries, then becoming democratic in the 19th and 20th centuries, and in the 21st century the UK’s legislature remains central, but within a constellation of legislatures.

In exploring these themes, the focus of this chapter will be the UK Parliament, given its overarching constitutional authority over all institutions of government in the UK, not just other legislatures. But while the Parliament based in Westminster has been the predominant legislature during the history of the UK (and remains so), its composition and reach have not been constant: it has variously been the English Parliament, the Parliament of England and Wales, the British Parliament, the Imperial Parliament and the UK Parliament. Moreover, other legislatures have existed within the UK throughout its history, most notably in Scotland until the union founding Great Britain in 1700, in Ireland until the union founding the UK in 1800 and then again from 1919 until the independent Irish Free State was established in 1922, and in Northern Ireland from 1920 to 1972 when direct rule was re-imposed (subject to sporadic attempts to restore an assembly in 1973-74 and 1982-86).[[1]](#footnote-1) Despite the dominance of the English Crown since the conquest of Wales in the late 13th century, this territory was not routinely represented in English parliaments until the formal Acts of Union in 1536.[[2]](#footnote-2) The advent of the modern devolution system in 1998 has seen the (re-)emergence of legislatures in Scotland, Northern Ireland and Wales, and an important new dynamic emerging between them and the UK Parliament. .

1. *The Legislature’s Functions*

The legislature is a complex, multi-faceted institution. In essence, it is a political assembly which contributes to the governing of the state. Yet the precise contribution made to governing can vary, for a legislature has the potential to perform a range of connected functions in a political system. These functions have changed considerably over time – the Parliament of Simon de Montfort, identified as the first recognisable Parliament judged against modern standards,[[3]](#footnote-3) was very different to the UK Parliament, or the devolved legislatures, in the present-day constitution. That a legislature performs multiple functions makes the development of these institutions over time especially interesting from a constitutional perspective. As Jennings suggests, ‘[t]here was not, and there has never been, conscious planning of the common law or of political institutions’.[[4]](#footnote-4) Yet we can identify a core set of functions performed by a legislature, even if they have developed at different points in the UK’s history. These core functions are: (i) representation; (ii) legislating; (iii) scrutiny; (iv) debating; (v) producing, sustaining, and holding a government to account; and (vi) legitimisation of the wider constitutional system. The process of development of these functions was not an inevitable or smooth evolution – rather, the various functions had disparate, historical roots.

The first of a legislature’s functions is representation. This has been clear since the very earliest Parliaments in England. The legislature provides a forum in which a range of interests can be represented to attempt to influence political decision-making. In the earliest manifestations of legislatures, we see the representation of the interests of the aristocracy to the monarch. Simon de Montfort’s Parliament between January and March 1265 is generally regarded as the first assembly which exhibited characteristics of a modern legislature. It followed attempts to impose limits on the power of King Henry III, to provide a means through which the consent of barons could be required for raising revenue through taxes. The principle that taxation required representation had emerged in Magna Carta in 1215, which leading barons created to impose constraints on King John.[[5]](#footnote-5) The de Montfort Parliament took this idea further, with wider representation and scope: it included representatives from cities, boroughs, knights from counties, and considered issues beyond taxation.[[6]](#footnote-6) In this way, the de Montfort Parliament could be viewed as a potential precursor to the House of Commons – it established representation of interests beyond the Anglo-Saxon Witan of the 11th century, or the King in Council, which were intended to advise the Crown and solidify royal power. Representation was further regularised in the ‘Model Parliament’ of Edward I, which was composed of two knights per county and two burgesses per town, driven by the need for representation to gain consent for taxation in support of war.[[7]](#footnote-7) The pattern of representation for the modern tripartite legislature combining Crown, Lords, and an increasingly independent Commons developed under Edward II, and even if the Commons were not then formally ‘members’ of Parliament, the basic existence of this framework seemed broadly established by the end of his reign in 1327.[[8]](#footnote-8) The representative function has been a central parliamentary function throughout the UK’s history. For Maddicott, Parliament in the Middle Ages had ‘long been’ a ‘national occasion unique in providing a political focus for the whole community’.[[9]](#footnote-9) And we can see a similar sentiment in Elton’s observation on the Tudor period: ‘Parliament, after all, was thought of as the image of the nation in common political action’.[[10]](#footnote-10)

The second function of the legislature is to enact legislation. Based on its representative character, Parliament was an assembly which was needed to endorse decisions taken by the Crown, thereby strengthening royal authority. The requirement that the Commons provided its assent to Bills, in addition to that of Crown and Lords, is commonly thought to have been established by 1414 under Henry V, when the Commons’ petitioned the King for full rights of assent to legislation. However, the King did not consistently seek the Commons’ positive assent throughout the 15th century, although would not enact law contrary to their substantive petitions.[[11]](#footnote-11) The reliance of the Crown on Parliament when legislating was most vividly demonstrated during the Reformation. This Parliament, sitting under Henry VIII from 1529 to 1536, enacted a range of legislation altering religious doctrine and practice in fundamental ways, and challenging the established power of the Catholic church. The authority of Parliament was essential to make such fundamental changes to the relationship between the state and the church. For, as Henry VIII would claim in 1543: "We be informed by our judges that we at no time stand so highly in our estate royal as in the time of parliament, wherein we as head and you as members are conjoined and knit together into one body politic".[[12]](#footnote-12) As Elton argued, following this parliamentary Reformation, the ‘basis of Tudor government’ was ‘[f]ull legislative supremacy vested in the image of the nation and politically active there’.[[13]](#footnote-13) This does not mean we should imagine all legislation from that point onwards was concerned with general matters of considerable public significance. Instead, private legislation dealing with highly specific issues was a key aspect of Parliament’s legislative business. For example, as Lemmings notes in a study of the massive increase in primary legislation enacted in the eighteenth century, ‘parliament was increasingly open to the influence of public opinion, but the overwhelming majority of its acts were initiated by local combinations of private propertied interests’.[[14]](#footnote-14)

The third function of a legislature is to scrutinize decisions made by those exercising governmental authority. Parliamentary scrutiny of the exercise of public power allows ministers to be challenged for specific decisions and the general governance of the state. This practice pre-dates the existence of the more recent constitutional idea that the government must sustain the confidence of the House of Commons to retain office. Even in the period when monarchs ruled with the support of their Councils, the legislature could be involved in challenging the decisions of those royal advisors, who remained responsible to the sovereign, rather than Parliament itself. For example, in the famous ‘named Parliaments’ of the 14th century,[[15]](#footnote-15) we see examples of the King’s counsellors and Ministers criticised to the point where they were removed from office. In the ‘Good Parliament’ of 1376, key advisors of Edward III were the subject of serious criticism for corruption and extortion, leading to the first impeachments, including of Lord Latimer, the King’s chamberlain.[[16]](#footnote-16) But this critical atmosphere was not sustained, and was followed by the ‘Bad Parliament’ of 1377 (so-named by more modern historians), in which a more pliant Speaker of the House of Commons was appointed in place of the imprisoned Sir Peter de la Mare, who had been a leading actor against the King’s ministers during the previous ‘Good Parliament’. Then, under Richard II, in the ‘Wonderful Parliament’ of 1386, the Commons again impeached key ministers, most notably the chancellor, Michael de la Pole, in a challenge to excessive royal spending on extravagant patronage and war with France.[[17]](#footnote-17) This Parliament also created a commission of peers to restrain royal power and manage the implementation of reform to financial governance, which Richard II was forced to accept but worked to circumvent. Division between the King and this group of influential barons, who became known as the ‘Lords Appellant’, culminated in extreme fashion in the ‘Merciless Parliament’ of 1388, when many royal advisors were accused of treason and executed.[[18]](#footnote-18)Scrutiny was therefore irregular, dictated by the wider political climate alongside factors such as the frequency and length of each parliamentary session.[[19]](#footnote-19) The ‘Good Parliament’, for example, lasted ten weeks, longer than any previous Parliament at that point,[[20]](#footnote-20) but this was far from the regular, institutionalised scrutiny and accountability expected from the nearly ever-present modern legislature. These challenges to royal authority could also be short-lived – following the ‘Merciless Parliament’, many of the Lords Appellant who confronted Richard II were exiled or killed as the King regained power.[[21]](#footnote-21)

The fourth function of a legislature is to provide a forum for debate. While related to representation, legislation and scrutiny, facilitating debate is a distinct function. As Elton argues, the ‘practical needs of cash and laws do not fully explain the attitude of Tudor governments to Parliament, at least not after 1529 when all possibility ceased of ruling without the meetings of the estates. Parliaments were wanted because there the great affairs of the nation could be considered, debated and advertised: Parliament was a part of the machinery of government available to active rulers’.[[22]](#footnote-22) The extent to which Parliament has provided a hostile environment for the monarch and their ministers has varied considerably from time to time. In relation to the Tudor period, for example, there is disagreement about the development of the idea of parliamentary opposition, with the traditional view that this emerged under Elizabeth I, with figures like Peter Wentworth famously speaking in Parliament in 1576 in favour of freedom of speech for members of the legislature, which he used criticise the Queen (resulting in his detention in the Tower of London).[[23]](#footnote-23) However, this is contested by revisionists, who argue that Parliament at the time was ‘not a political arena’[[24]](#footnote-24) – instead ‘co-operation’ with the Crown was the norm.[[25]](#footnote-25) Whether in a hostile manner or not, debate within a legislature allows issues to be explored and decisions to be analysed, which requires the representation of different political views and perspectives. This is reflected in the emergence of political parties in the late 17th century to early 18th century,[[26]](#footnote-26) representing alternative values and policy priorities within the legislature. While the various political parties in the ascendency have changed over time they have also become the primary means of organising parliamentary business, to the point where it is difficult to imagine how the legislature could function in practice in the absence of political parties to structure its activity.

The fifth function of a legislature is to produce, sustain and hold a government to account. The importance of the Cabinet as the decision-making body of the government was established in the early 18th century under George I, who did not speak English well and rarely attended Cabinet meetings. This left much greater political power to his appointed ministers and initiated a separation between Crown and Cabinet which would become the norm under future monarchs.[[27]](#footnote-27) Under George II, Sir Robert Walpole became the first modern Prime Minister (although that terminology would not become common until later). The close connection between the authority of the government and the confidence of Parliament in the Cabinet also emerged in this period, when the Regency Act 1705 made it possible for Members of Parliament to be appointed as ministers.[[28]](#footnote-28) The idea of parliamentary government therefore extended beyond the scrutiny of government in Parliament, to establish the principle of government within Parliament, with responsibility to the Commons. Walpole’s individual resignation in 1742 was prompted not by the monarch whom he served, but followed defeat on a vote in the Commons: it was ‘the first time that a Prime Minister had resigned solely on account of having lost the support of the Commons majority’.[[29]](#footnote-29) Subsequently, under the ministry of Lord North in 1782, the entire government would resign for the first time having lost the Commons’ confidence.[[30]](#footnote-30) These are the origins of the crucial idea which underpins the formation and termination of governments. A government must be drawn from and operate within the legislature to retain office, but an administration which no longer commands a majority in the Commons must be replaced.

The sixth function of the legislature is the legitimation of the wider political system. As Elton argues, Parliament was ‘the premier point of contact between rulers and ruled, between the Crown and the political nation, in the sixteenth century’ and ‘fulfilled its function as a stabilizing mechanism because it was usable and used to satisfy legitimate and potentially powerful aspirations’.[[31]](#footnote-31) Parliament provided a forum which connected those with authority and those subject to it. Even prior to the advent of democracy in the UK, when this connection was theoretical rather than actual, governing with and through a legislature offered a greater justification for the exercise of power than could be claimed by a hereditary monarch acting on their own judgement. That Parliament performed some legitimising function, does not mean that Parliament has been a benevolent institution throughout the history of the UK. Indeed, Parliament played a central role in enabling the worst atrocities of the British state, including slavery, colonialism, and other oppressions of Empire.[[32]](#footnote-32) However, we must recognise that Parliament played a significant role in legitimising the constitutional system in which these decisions were taken. Following the slow democratisation of the House of Commons between 1832 and 1928, the UK’s legislature gained a clearer claim to legitimacy, and is better positioned to perform its legitimating role (without this guaranteeing the legitimacy of every substantive decision it makes).

Other functions were exercised by the legislature at different points in the UK’s history, but have fallen away. The most important example is the idea of Parliament operating as a High Court receiving individual pleas for justice**.** This was far from a trivial function; Pollard argues it was key to the development of Parliament as an institution: ‘It was to a high court of law and justice that the taxing and representative factors of parliament were wedded; and it was this union that gave the English parliament its strength.’[[33]](#footnote-33) In the late fourteenth century, panels of peers were still set up to receive private petitions in Parliament, yet by this point it had become ‘an ancient but now relatively unimportant part of parliament’ because ‘petitions could be presented to the king, the council or the chancellor at any time’.[[34]](#footnote-34) Members of the House of Lords with legal expertise continued to act as a final court of appeal, and after a radical decline in cases in the sixteenth century, this work expanded again from the seventeenth century onwards. The professionalisation of the judicial element of the Lords was confirmed by the Appellate Jurisdiction Act 1876, which allowed the appointment of salaried judges as Law Lords. The Appellate Committee of the House of Lords continued to function as the highest court of appeal in the UK until 2009 when it was replaced by a Supreme Court, suggesting that the residual judicial role was a function which occurred within the legislature rather than a function of the legislature more generally.[[35]](#footnote-35) .

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1. *Parliamentary Sovereignty*

The first theme which illustrates the key position of the legislature in the UK’s constitutional history is parliamentary sovereignty. Parliamentary sovereignty is the foundational principle of the UK’s constitution. It is a legal principle that confers unlimited law-making power on ‘the Queen-in-Parliament’: the House of Commons and the House of Lords, acting with the assent of the monarch. In Dicey’s famous phrase, it means that Parliament has ‘the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament’.[[36]](#footnote-36)

Yet it is not simply a principle distributing legal power. Parliamentary sovereignty is also a legal doctrine with crucial constitutional implications. It shapes and structures the constitution, and the institutional relationships and interactions which occur within it. It acts as a ‘central organising principle’, establishing the hierarchy of constitutional sources in the UK, as well as structuring the interactions between the legislature and the other constitutional actors who exercise their power in a framework which is premised on Parliament’s sovereignty.[[37]](#footnote-37) And it functions as ‘constitutional focal point’, offering citizens and official actors a means by which to begin to access constitutional knowledge, while sending a signal about the potential normative basis of the constitutional order. This in turn creates space for necessary debate about the legitimacy of the system.[[38]](#footnote-38)

The ‘doctrine’ of parliamentary sovereignty does not derive its force from being formally enacted in any legal or constitutional instrument or document or by having been announced by courts. In other words, its authority does not derive from the legal system because it constitutes the legal system, creating the very criteria by which the validity of law can be established. For Jennings, parliamentary sovereignty was crucially a product of the 17th century clashes between supporters of the Crown and of the legislature. While Jennings was clear that parliamentary sovereignty was a legal rule, he argued that it ‘was not established by judicial decisions, however; it was settled by armed conflict and the Bill of Rights and the Act of Settlement. The judges did no more than acquiesce in a simple fact of political authority, though they have never been called upon precisely to say so’.[[39]](#footnote-39) The legal doctrine, said Jennings, illustrates ‘the conversion of history into law’.[[40]](#footnote-40) The pivotal events included the parliamentary trial and execution of Charles I in 1649; the subsequent failure of Cromwell’s Instrument of Government and the restoration of monarchy in the form of Charles II by the Convention Parliament in 1660; the replacement of James II with William and Mary in 1688; their subjection to the statutory constraints on royal prerogative power enacted by Parliament in the Bill of Rights 1689;[[41]](#footnote-41) and the definitive shift in the line of succession to the protestant House of Hannover made by Parliament through the Act of Settlement 1701.[[42]](#footnote-42) In the course of this 17th century ‘revolution’,[[43]](#footnote-43) we see on one level the reconciliation of monarchy with Parliament’s assertions of legislative power and, at another level, the use of that power to select and control the monarch. The constitutional doctrine of Parliamentary sovereignty emerges to capture and explain the power exercised by the legislature in response to political events.

This historical period remains crucial to our understanding of parliamentary sovereignty. The authority of parliamentary sovereignty has been most influentially demonstrated by Goldsworthy’s exhaustive study. Goldsworthy charts the evolution of parliamentary sovereignty from that held by medieval Kings.[[44]](#footnote-44) He shows that the Reformation Parliament in the 1530s was the point at which the legislature asserted its power over religious (or ‘spiritual’) matters, previously held by the Pope. When added to its already established power to make law on all other matters of concern within the nation (‘temporal’ matters), this marked the point at which the King in Parliament could be considered ‘in practice, fully sovereign’.[[45]](#footnote-45) Yet Goldsworthy shows that while the full legally unlimited scope of legislative sovereignty was widely recognised from this point, the identity of the institution which possessed it remained disputed: was the authority of the King in Parliament ‘that of the King alone, which he chose to exercise only in Parliament, or that of a composite institution, the “King-in-Parliament”?’.[[46]](#footnote-46) This was the question resolved in the 17th century, in the events of the Civil War and its aftermath, with abundant examples demonstrating that the authority of the Crown had been subordinated to the authority of the Crown-in-Parliament. This reorganisation of sovereignty produced (and perhaps to some extent masked) by institutional fusion became dominant: ‘even by the beginning of the nineteenth century, parliamentary sovereignty had become a rarely questioned assumption of British constitutional thought, an apparently necessary truth’.[[47]](#footnote-47) And over time, the Crown became a more and more peripheral element of this combination, to the point where ‘the Queen’s part in legislation is now formal only’, having not been refused since Queen Anne rejected the Scottish Militia Bill in 1708.[[48]](#footnote-48)

That there is no single constitutional source or statute which establishes a legal basis for Parliament’s legislative authority, and its unlimited sovereign character, this is not evidence of uncertainty about the existence of the doctrine. Indeed, in contrast, that parliamentary sovereignty is rooted in a complex mixture of the beliefs of key constitutional actors, the outcome of decisive political events at crucial historical moments, and enduring practice recognising the absence of any legal limitations on Parliament’s law-making, is all evidence of the strength of this doctrine. It is of such a fundamental nature that formal enactment of the doctrine is unnecessary. Nevertheless, as a legal doctrine with legal implications for the authority and the interpretation of statute law, the existence of parliamentary sovereignty has been unambiguously recognised in judicial precedents extending back at least 170 years.[[49]](#footnote-49)

The historic character of parliamentary sovereignty has been crucial in sustaining the authority of the doctrine in the courts. A classic example is *Pickin v British Railways Board*,[[50]](#footnote-50) decided in the House of Lords in 1974, which until recently was regarded as the leading precedent on parliamentary sovereignty. As in *Edinburgh & Dalkeith Railways* before it, the House of Lords rejected a challenge to the validity of a private Act of Parliament in stark language, relying on the judgment of Lord Campbell in 1842 among other 19th century precedents. For Lord Reid:

‘The idea that a court is entitled to disregard a provision in an Act of Parliament on any ground must seem strange and startling to anyone with any knowledge of the history and law of our constitution, but a detailed argument has been submitted to your Lordships and I must deal with it.’[[51]](#footnote-51)

Crucial here is the explicit connection made between history and law by Lord Reid in establishing the constitutional authority of parliamentary sovereignty. And this connection is used to reinforce the fundamental character of the doctrine, which is presented as long accepted and therefore (at this point) utterly unquestionable. Indeed, Lord Reid expressly identifies the 17th century conflicts as being the context in which ‘the supremacy of Parliament was finally demonstrated by the Revolution of 1688’, which had therefore rendered ‘obsolete’ any prior idea that an Act of Parliament could be unlawful if contrary to the law of God or nature.[[52]](#footnote-52) The longevity of parliamentary sovereignty therefore contributed directly to its contemporary authority because ‘so far as I am aware, no one since 1842 has doubted that it is a correct statement of the constitutional position’.[[53]](#footnote-53)

The historical approach taken by the courts to parliamentary sovereignty is a minimalist one – the doctrine is presented as a constitutional norm which has been long accepted and is, therefore, far beyond the authority of the judges to change or question. Yet this approach is now in decline and is in the process of being replaced by a judicial approach which may be considered maximalist and overtly normative. This has led the courts to adopt a contradictory modern attitude to parliamentary sovereignty. On one hand, some senior judges have expressed doubts about the continuing existence of parliamentary sovereignty. In the watershed case of *Jackson* in 2006, Lords Steyn, Hope and Lady Hale (albeit obiter, and only as a minority of the judges hearing the case in the House of Lords) explicitly questioned whether Parliament’s legislative power was now, or could become, limited by the common law.[[54]](#footnote-54) This judicial speculation about the potential for judicial limitation of legislative power has been controversial, and challenged by some judges,[[55]](#footnote-55) but it has also intensified and been reinforced in successive cases, including *Axa*,[[56]](#footnote-56) *Moohan*,[[57]](#footnote-57) *Public Law Project*,[[58]](#footnote-58) and *Privacy International*.[[59]](#footnote-59) On the other hand, however, the contemporary doubts which have been expressed by some judges – but not yet acted upon – sit very uneasily with a number of decisions relating to the process of Brexit, which placed the Supreme Court at the centre of a heated public debate about whether it had strayed into the political realm. In the cases of *Miller*,[[60]](#footnote-60) the *Reference on the Scottish Continuity Bill*,[[61]](#footnote-61) and *Cherry/Miller (No.2),*[[62]](#footnote-62) the Supreme Court explicitly reaffirmed the importance of parliamentary sovereignty, paradoxically relying on the doctrine to bolster the judges’ authority in contentious constitutional circumstances.

This is a remarkable shift in substance and approach from the minimalist historicism of *Pickin*. Whether the judges are hypothesising limits on parliamentary sovereignty or declaring its constitutional fundamentality, they are positioning themselves as active agents of constitutional principle, rather than the legal and institutional subordinates of the legislature. Whether the normative balance in any particular case tips for or against parliamentary sovereignty, the courts are explicitly conducting that normative balancing exercise. And in that sense, we see the common law is becoming disconnected from the history of parliamentary sovereignty and is being shaped instead by abstract – and often controversial – normative principles determined a priori by the judiciary.

The a-historical, normative approach now being taken by the courts to parliamentary sovereignty represents a significant change of attitude to legislative authority in the constitution which empowes the courts to become more active interpreters of parliamentary sovereignty. This may be the ultimate consequence of Dicey’s legalism, based on the view that constitutional law is autonomous and untethered from historical context, and can be made and re-made by the judiciary, who are self-empowered in the process.

1. *Democratisation*

The democratic character of Parliament is central to its institutional and constitutional legitimacy – it has developed in tandem with the evolution of Parliament as an institution, but not in a precise way. The representative character of Parliament was key in the 17th century English civil war in distinguishing rule by a legislature from that of a singular, hereditary monarch acting by divine right, and to Parliament’s forceful acquisition of legislative sovereignty. But Parliament was certainly not, at this point, a democratic institution in the modern sense. Consequently, we can see that changes in Parliament’s constitutional position, legal authority, and institutional functions are shaped by parallel, if uneven, shifts in our understanding of political ideas. While a pre-democratic Parliament could obtain sovereignty in the 16th and 17th centuries, the justification for that power could not be static, if the legislature was to sustain its claim to legitimate authority. Consequently, while the legal sovereignty held by the English, then British, then UK Parliament has endured as a relatively constant constitutional norm for in excess of 300 years, the nature and location of what Dicey described as ‘political sovereignty’ has changed considerably.[[63]](#footnote-63)

This is primarily due to the slow process of parliamentary democratisation, which has aligned Parliament’s legally unlimited legislative authority with democratic principle after the fact. While Dicey argued that political sovereignty was vested in the electorate, with those in the legislature exercising their legal sovereignty in accordance with the ‘will of the electors’, the electorate of Dicey’s era was not based on an equal franchise. Voting rights were only extended to women (over 30 years old, who satisfied a property qualification) for the first time by the Representation of the People Act 1918, enacted just four years before Dicey’s death in 1922. And it was not until six years later, under the Representation of the People (Equal Franchise) Act 1928, that men and women over the age of 21 could vote on equal terms, regardless of whether they occupied land or premises of a minimum value.

The democratisation of Parliament has also, in institutional terms, only been partial. A clear division exists between the two Houses, the Commons and the Lords, which is rooted in their historic origins. The House of Commons developed as a supplement to the House of Lords, allowing a broader representation of (wealthy, elite) interests than the chamber composed of aristocrats. In the late fourteenth century, the Lords, as the ‘original members’ of Parliament, remained ‘the most important’, and ‘it was their advice that counted most’.[[64]](#footnote-64) It was in the mid-fifteenth century that an equivalence between the two Houses can be clearly seen: ‘By the 1450s references to a lower and a higher House of Parliament were so casual as to show them to be commonplace; and Edward IV, who deliberately wooed non-aristocratic opinion, from the first treated the House of Commons as effectively comparable to the Lords in constitutional standing’.[[65]](#footnote-65)

The Commons’ modern primacy over the Lords – in terms of law-making, and as the source of confidence and supply for the government – is ultimately a consequence of its growing democratic composition, and the more authentic breadth of representation that provides. But in addition to providing a basis for rebalancing power between the two Houses of Parliament, it is also important to recognise that democratisation has contributed to the subordination of the Crown within the Crown-in-Parliament. The legislative role of the unelected hereditary monarch has also been eroded to a mere technicality as the House of Commons has become a genuine (if far from perfect) democratic entity. The royal assent is now a formality to signal the end of the legislative process, can be given by Lords Commissioners on behalf of the monarch,[[66]](#footnote-66) and, most importantly, by constitutional convention cannot be refused.

Following the English Civil War, the inadequacy of representation in Parliament was challenged by the Levellers, a group of democratic radicals in Cromwell’s New Model Army, who (among other things) called in the Putney Debates in 1647 for universal male suffrage.[[67]](#footnote-67) These calls for reform were resisted by Cromwell, and the link between representation and property rights remained strong throughout the 17th and 18th centuries. John Locke, for example, argued in 1690, that ‘there can be but one supreme power, which is the legislative’, yet this being ‘only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them’.[[68]](#footnote-68) Since ‘[t]he reason why men enter into society, is the preservation of their property’, legislative power could be challenged as illegitimate ‘whenever the legislators endeavour to take away, and destroy the property of the people’.[[69]](#footnote-69) Locke’s views were criticised by William Blackstone, who argued in his *Commentaries* in 1765 that ‘[s]o long therefore as the English constitution lasts… the power of parliament is absolute and without control’.[[70]](#footnote-70) For Blackstone, any ‘devolution of power, to the people at large, includes in it a dissolution of the whole form of government established by that people, reduces all the members to their original state of equality, and by annihilating the sovereign power repeals all positive laws whatsoever before enacted’.[[71]](#footnote-71) Even the most timid, and only loosely popular, restraints on the use of legislative power could, therefore, be claimed to be inconsistent with the entire constitutional system which, by reason of the partial and manipulable nature of the electoral process, in reality represented only wealthy property owning classes.

The ‘Great’ Reform Act 1832 was the beginning of the actual process of democratisation. Campaigning for parliamentary reform was strongly resisted by the political establishment during the age of the American and French revolutions at the end of the 18th century. Thomas Paine was successfully prosecuted (in his absence) for seditious libel following the publication of Part 2 of his republican pamphlet, the *Rights of Man*, in 1792[[72]](#footnote-72) and the enactment of a new Treasonable and Seditious Practices Act in 1795, which was concerned to prevent discussion of ‘the overthrow of the laws, government and happy constitution of these realms’.[[73]](#footnote-73) The Peterloo Massacre in Manchester in 1818, at which cavalry charged on a large crowd of protestors at a rally in support of parliamentary representation, killing 11 and injuring up to 500, provided a vivid example of establishment opposition to reform. In 1830, following revolutions in France and Belgium, legislation to emancipate wealthy Catholics in Ireland, and against a backdrop of famine and growing insurrection, the Tory government was replaced by a Whig administration led by Lord Grey. More radical calls for universal male suffrage and a secret ballot were disregarded, but the Reform Act 1832 was eventually enacted, in the face of substantial opposition in the House of Lords (and only following threats to create new peers to force through the legislation).

The 1832 Act abolished many rotten boroughs but retained a property qualification which limited the size of the (exclusively male) electorate dramatically: on Foot’s calculation, ‘[o]nly a fortieth of men over 21 (and no women at all) were entitled to vote’.[[74]](#footnote-74) During the course of the 19th century, two further Reform Acts were required – each decades apart – to further democratise elections in the UK. Much of the pressure for additional parliamentary reform was organised around the Chartist Movement, and focused on the six demands contained in ‘the People’s Charter’ published in 1838, including universal male suffrage, constituencies of equal size, annual parliaments, and secret ballots.[[75]](#footnote-75) Yet the Reform Act 1867 still based the franchise on a property qualification,[[76]](#footnote-76) as did the Reform Act 1884, which made the 1867 reforms – expanding the electorate in urban boroughs – universally applicable, extending them to rural constituencies. The Third Reform Act was preceded by the Ballot Act 1872, which introduced secret ballots in parliamentary elections, and the 1884 reforms were accompanied by a separate Redistribution Act 1885, to equalise the size of constituencies and therefore the weight of each vote. Yet, although the electorate had increased from around 350,000 in 1831 to some 8 million in 1885, Foot concludes that, ‘[f]or all the gains made in 1867 and 1884, at least two-thirds of the population – all the women and more than a third of the men – still had no votes’.[[77]](#footnote-77) Only in the twentieth century, from 1928 onwards, were members of the House of Commons able to truly claim the democratic legitimacy of having been elected to represent their constituency on a universal and equal franchise.[[78]](#footnote-78) And it was not until 1948 that plurality votes attaching to business premises and universities were abolished,[[79]](#footnote-79) and only in 1969 that voting was extended to adults from the age of 18.[[80]](#footnote-80)

The story of the House of Lords, in contrast, is one of a failure to democratise. The most far-reaching changes to its composition have been largely modern, occurring in the second half of the twentieth century, and arguably incomplete. The House of Lords Act 1999 was not intended to be a final settlement for the Lords, but the first stage of reform. Yet, currently it seems likely that this status quo will endure for some time, in the absence of clear ideas or strong motivation to replace it. Moreover, the reform which has occurred has made the Lords less aristocratic but no more democratic. The life peerages created in the Life Peerages Act 1958 gave the right to membership of the Lords by appointment, but with a title which cannot be inherited by the children of a life peer. Hereditary peers were almost all excluded from membership of the House of Lords by the 1999 Act, subject to the exception that 92 may remain, with ‘by-elections’ introduced among all previously eligible hereditary peers to select the 90 retaining their seats.

The House of Lords has historically consisted of a combination of the Lords Temporal and Lords Spiritual, the former being the hereditary aristocracy and the latter members of the church, who sit in the upper chamber by virtue of their religious office. The eligibility of bishops, archbishops and other clergy to sit in the Lords (as Lords of Parliament, rather than peers[[81]](#footnote-81)) stems from ‘ancient usage’.[[82]](#footnote-82) But the number of office holders, now exclusively from the Church of England, entitled to attend the Lords has been limited by statute to 26 since the Bishopric of Manchester Act 1847 – the Archbishops of Canterbury and York, and Bishops of London, Durham and Winchester,[[83]](#footnote-83) with the remaining positions filled in accordance with seniority (subject, until 2025, to a preference for female bishops). So, while the religious component of the House of Lords has been diminished, it has also remained relatively stable since the nineteenth century.

Alongside the hereditary and religious elements the House of Lords, the judicial element has also diminished, albeit much more recently. Under the Appellate Jurisdiction Act 1876, the monarch was empowered to appoint experienced judges or lawyers as Lords of Appeal in Ordinary, ‘for the purpose of aiding the House of Lords in the hearing and determination of appeals’.[[84]](#footnote-84) Although these judges did not receive a hereditary title, they could continue to sit in the Lords after their retirement from judicial work. With the creation of a Supreme Court in 2005 to replace the Appellate Committee of the House of Lords as the highest appeal court in the UK,[[85]](#footnote-85) no further Lords of Appeal in Ordinary have been appointed since 2009, although the remainder can sit in the Lords after retirement from the Supreme Court.[[86]](#footnote-86) New Supreme Court Justices use the courtesy title ‘Lord’ or ‘Lady’ by royal warrant, although it confers no eligibility to sit in the House of Lords.[[87]](#footnote-87)

The democratisation of the House of Commons and the resilience of the House of Lords to such reform have a number of important implications. Most significantly, the relationship between the two Houses of Parliament has been defined by their respective characters. The shifting balance of power between the elected Commons and the unelected Lords has been a key strand of the UK legislature’s constitutional history. The notion of the House of Lords as possessing a veto which allowed it to check or obstruct constitutional change came under growing pressure as the Commons became increasingly democratic and representative. The doctrine of the mandate was popularised by the third Marquess of Salisbury between 1868 and 1900. Salisbury, who was Prime Minister on three occasions during this period, argued that the Lords had a right to refer constitutionally controversial legislation proposed by the Commons back to the electorate, to ensure the government possessed a mandate for such change.[[88]](#footnote-88) However, this approach was inverted in the twentieth century, on the election of a majority Labour government in 1945. The Leader of the House of Lords, Viscount Addison, and the Leader of the Opposition in the Lords, the fifth Marquess of Salisbury, announced an understanding that the Conservative dominated upper chamber would not seek to obstruct manifesto legislation, on the basis that a pre-existing mandate for any such change could be inferred from the Labour government’s election victory. This ‘Salisbury-Addison’ convention is a clear manifestation of the wider subordination of the Lords to the elected Commons.

The primacy of the Commons and the constrained right of the Lords to veto the choices of the democratic chamber have also been reflected in law. The Parliament Act 1911 was enacted to reduce the House of Lords’ absolute veto over legislation to a delaying power of two years, over three successive sessions of Parliament in relation to any public Bill (excluding a Bill to extend the life of Parliament beyond five years, and with a delaying power of only one month in relation to a money Bill).[[89]](#footnote-89) This followed the budget crisis of 1909, when the Lords refused to approve a Finance Bill of the Liberal Chancellor David Lloyd George, including taxes on high incomes and capital gains from land, which had been passed in the Commons. Following general elections in January and December 1910 focused on the constraint of the upper chamber’s veto, and the threat of the King creating some 500 new peers, the House of Lords eventually assented to the Parliament Act, which curtailed its power.[[90]](#footnote-90)

A further constraint on the Lords’ legislative authority was imposed in 1949, without its consent, using the procedure established in Parliament Act 1911. The Parliament Act 1949 reduced the Lords’ delaying power over public Bills to one year, over two successive sessions, but was subject to a legal challenge over 50 years later, on the basis that it had been unlawful for the Commons to use the Parliament Acts process to expand its own power without the Lords’ consent. This argument was rejected in the Appellate Committee of the House of Lords in *R. (Jackson) v Attorney General*.[[91]](#footnote-91) For Lord Bingham, the historical context in which the 1911 Act was enacted was a significant factor: ‘The suggestion that Parliament intended the conditions laid down in section 2(1) to be incapable of amendment by use of the Act is in my opinion contradicted both by the language of the section and by the historical record’.[[92]](#footnote-92) Moreover, the longstanding acceptance by political actors of the validity of the 1949 Act over half a century was noted by Lord Bingham,[[93]](#footnote-93) and for Lord Hope, this fact was definitive ‘political reality’ which it was ‘not… open to a court of law to ignore’.[[94]](#footnote-94)

The long process of the democratisation of the Commons has led to its primacy within the legislature being recognised in constitutional convention and constitutional law. And the historical context in which the partial democratisation of the legislature occurred continues to shape the constitutional relationship between the Commons and the Lords today. Yet while the democratic character of the UK Parliament changed considerably during the nineteenth and twentieth centuries, this change has occurred essentially within an enduring institutional framework. We can see the UK Parliament as a source of relative institutional continuity, especially when compared to the other branches of the state: a government which has seen the dramatic expansion of welfare state and, more recently, extensive contracting out of the provision of public services to the private sector; the courts, which have gone from the fragmentation prior to the Judicature Act 1873 to a uniform system headed by an institutionally independent Supreme Court; and the Crown which has experienced the radical change from an active Head of State to a ceremonial figurehead with few remaining powers.

1. *Dispersal of Legislative Power*

The third theme illustrating the changing role of the legislature in the UK’s constitutional history is the distribution and dispersal of legislative power within the UK. But first, it is also important to note that a key strand of British constitutional history saw Parliament claim legislative power over territories beyond the UK, consolidating a colonising process driven by the Crown using the royal prerogative, and providing legal legitimation of the creation of the British Empire. An important aspect of decolonisation has been the dispersal of Parliament’s legislative power to legislative institutions in former colonies. This process of unravelling the Empire has been complex, and has taken various paths. Some colonies simply declared their independence from Britain during revolution, such as the United States of America in 1776. Some obtained independence after protests and resistance to British rule, such as India in 1947.[[95]](#footnote-95) Some became largely self-governing Dominions under the Colonial Laws Validity Act 1865, gaining effective independence while joining the Commonwealth following the Statute of Westminster 1931 (initially Canada, Australia, New Zealand, South Africa, Newfoundland and the Irish Free State).[[96]](#footnote-96) In a number of instances, the UK Parliament held a residual legislative responsibility in relation to the constitutions of former colonies which were long independent (such as Canada – a link only severed by the Canada Act 1982). There are continuing exceptions, in particular the UK’s fourteen Overseas Territories, which have their own constitutions and systems of government, but in relation to which the UK Parliament retains its unlimited legislative authority in principle.[[97]](#footnote-97) That such legislative power has now been largely dispersed does not in any way negate the initial illegitimate appropriations, or that the UK Parliament’s authority was a central instrument by which the legal architecture of Empire was constructed, as well as deconstructed.

Within the UK, we have already seen that a number of different legislatures existed in the four constituent nations at various points in the constitutional history of the state. In general, the development of the UK’s legislative institutions was based on the absorption of law-making powers and functions into the English, then British, and then UK Parliament following the Acts of Union with Scotland in 1707 and Ireland in 1800. Inversely, as the Republic of Ireland became independent from the UK (initially, from 1922 to 1937, as the Irish Free State), a new legislature, the Oireachtas, was established to reclaim powers and functions from the Westminster Parliament. This does not mean all differences in constitutional ideas about legislative authority have been eliminated across the four nations. The best example relates to conceptions of sovereignty, with a strong tradition of Scottish popular sovereignty which is presented as a distinct alternative to the ‘English’ doctrine of parliamentary sovereignty. Whether the acceptance of Scottish popular sovereignty amounts to a rejection of the legislative sovereignty of the UK Parliament is open to debate. According to Goldsworthy, those provisions of the Acts of Union that were expressed to be unalterable ‘had little noticeable impact on the English doctrine of parliamentary sovereignty, which eventually came to be accepted by Scottish lawyers as well’.[[98]](#footnote-98) Moreover, there is arguably no conceptual incompatibility between popular and parliamentary sovereignty, with the former an extra-constitutional democratic ideal which can be institutionalised in many ways, including through a doctrine of legislative sovereignty.[[99]](#footnote-99) And even if this conception of popular sovereignty were incompatible with parliamentary sovereignty, there are significant legal barriers to giving it tangible constitutional effect. For example, in *MacCormick v Lord Advocate* the Scottish Court of Session held that even if parliamentary sovereignty was ‘a distinctively English principle which has no counterpart in Scottish constitutional law’, there was no jurisdiction for the courts to enforce any constraints on the UK Parliament which might be identified in the Acts of Union.[[100]](#footnote-100)

If much of the UK’s constitutional history has seen the central Westminster Parliament operate as the dominant legislature – and the only legislature with primary law-making authority – this has changed in the twentieth century. After the intermittent existence of a legislature in Northern Ireland since 1920, and failed attempts in the 1970s to establish Parliaments in Scotland and Wales, a devolution settlement was established in 1998. Following approval at referendums held in 1997 in Scotland and Wales, and in Northern Ireland in 1998, the UK Parliament enacted legislation creating a Scottish Parliament,[[101]](#footnote-101) a National Assembly for Wales,[[102]](#footnote-102) and a Northern Ireland Assembly.[[103]](#footnote-103) These devolution settlements have diffused legislative power among legislatures in the UK. They are based on a relatively complex, asymmetrical and dynamic model[[104]](#footnote-104) – for example, while the Scottish Parliament and Northern Ireland Assembly were allocated primary legislative power in relation to all substantive matters other than those explicitly reserved (or excepted) to Westminster, the Welsh Assembly initially possessed only secondary legislative power, until a further referendum in 2011,[[105]](#footnote-105) and only in 2017 was the reserved powers model also extended to Wales.[[106]](#footnote-106)

There are still some differences in the topics which have been devolved to the legislatures in these three nations, especially in relation to taxation powers, which are most extensively devolved in Scotland. The scope of devolved power has also been expanded over time through successive legislative interventions by the UK Parliament.[[107]](#footnote-107) There are still disputes about what is or should be a devolved matter, most notably in relation to the power of the Scottish Parliament to hold a referendum on independence from the UK[[108]](#footnote-108) and, in the aftermath of the UK’s exit from the European Union, in relation to the distribution of legislative competence repatriated from the EU.[[109]](#footnote-109) Moreover, the devolution settlement has not operated without interruption, in particular in Northern Ireland, where the Assembly has been suspended on multiple occasions, including for three years between January 2017 and January 2020, when a political scandal led to the collapse of its power-sharing executive.[[110]](#footnote-110)

The modern devolution settlement therefore creates a new paradigm for legislative activity in the UK. The Scottish Parliament, the Northern Ireland Assembly, and the Welsh Parliament or Senedd Cymru (as renamed by its own legislation[[111]](#footnote-111)) have been created in recognition of the distinct histories of these nations within the UK. Yet their legislative authority is derived from positive law, which presents a clear contrast with the UK Parliament. Moreover, while primary legislative power has been devolved in a range of important substantive areas, including healthcare, education, transport, and the environment, this statutory settlement still exists subject to the sovereignty of the UK Parliament which, from a legal perspective, retains the power to redraw the boundaries of devolution, or intervene in devolved areas.[[112]](#footnote-112) And while there is a constitutional convention which indicates that the UK Parliament will not normally legislate on devolved matters without the consent of the relevant devolved legislature, the ‘Sewel convention’ has come under considerable strain during the Brexit process, to the point where the EU (Withdrawal) Act 2018 was imposed without the consent of the Scottish Parliament.[[113]](#footnote-113) The UK Supreme Court held, in the case of *Miller*, that the recognition of the Sewel convention in the Scotland Act 2016 and Wales Act 2017 did not mean that it had been converted into a legal rule which was enforceable in the courts.[[114]](#footnote-114)

Devolution has therefore been a dispersal of primary legislative power by the UK Parliament, but not a transfer of its legal sovereignty to the institutions in Scotland, Wales or Northern Ireland. It has established new sites of national law-making authority and democratic representation and, consequently, has created internal competition between legislatures within the UK. The devolved legislatures occupy a slightly ambiguous position – from a functional perspective they are in many ways politically equivalent to the UK Parliament, possess a clear (perhaps even arguably superior) democratic weight, and tangible constitutional influence. Yet while they possess primary legislative power, in legal terms their law-making authority is also subordinate and constrained. While this is in contrast with the break-up of the British Empire, which did eventually see 'sovereignty' transferred, often through the law,[[115]](#footnote-115) devolution has also only been partial in another sense. Some parts of the UK are devoid of that additional layer of representation: within England, after the rejection of a regional assembly at a referendum in the North East in 2004,[[116]](#footnote-116) only London has an elected assembly,[[117]](#footnote-117) but one which does not possess anything like the primary legislative power devolved to Scotland, Wales and Northern Ireland.

Devolution has been a momentous development in the modern history of legislatures in the UK, yet its trajectory remains somewhat uncertain. Despite recent declarations in legislation enacted by the UK Parliament, it cannot be guaranteed that the devolved legislatures will be a ‘permanent part of the United Kingdom’s constitutional arrangements’.[[118]](#footnote-118) Instead, the devolution of legislative power, combined with the UK government’s lack of respect, during the Brexit process, for the competences and expectations which are central to the devolved arrangements,[[119]](#footnote-119) could lead to the fragmentation of the UK. One independence referendum has already been held in Scotland since devolution was established in 1998, a second seems a likely prospect in the aftermath of Brexit, despite the fact it is being resisted by the UK government.[[120]](#footnote-120) A referendum on the reunification of Northern Ireland with the Republic of Ireland is also impossible to rule out in the future, given that a mechanism for this already exists in devolution legislation,[[121]](#footnote-121) and since the UK’s exit from the EU has established regulatory barriers between Northern Ireland and the rest of the UK.[[122]](#footnote-122) In that sense, even if the devolved legislatures have quickly become an embedded part of the UK’s constitutional architecture, the stability of that architecture cannot be taken for granted.

1. *Conclusion*

The legislature is a multidimensional institution which exercises a broad range of functions, reflecting its constitutional role as the central political forum of the nation. Its constitutional history is complex. Overall, we can see the historical development of the legislature in the UK first, in terms of increasing constitutional authority; secondly, its democratic legitimation; and, thirdly, the creation of other legislatures to which it has dispersed (some of) its law-making power. The risk in this narrative is it tempts us to believe there is a natural next step, which is the creation of a federal UK in a codified constitution. Yet this is not the inevitable end of the UK’s constitutional history, but a political choice which must be approached as such. Further change to the relationships between the UK’s legislatures may be ahead, but constitutional history suggests that reform will continue to occur within our enduring parliamentary framework.

1. The Government of Ireland Act 1920 sought to establish Parliaments for both ‘Northern’ Ireland and ‘Southern’ Ireland following the formation of an independent Dail Eireann in 1919. The Irish Free State Constitution Act 1922 provided British recognition to the Constitution passed by the Third Dail Eireann acting as an Irish constituent assembly in 1922. [↑](#footnote-ref-1)
2. T Glyn Watkin, *The Legal History of Wales* (University of Wales Press, 2nd ed, 2012) 112, 126-128. Act for Law and Justice to be Ministered in Wales in like Form as it is in this Realm of 1535/6; Act for Certain Ordinances in the King’s Dominion and Principality of Wales of 1542/3. [↑](#footnote-ref-2)
3. As claimed on the UK Parliament’s website: <https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/simondemontfort/> [↑](#footnote-ref-3)
4. See H Kumarasingham, ‘Sir Ivor Jennings’ “The Conversion of History into Law”’ (2016) 56 *American Journal of Legal History* 113-127, 124 (making available the text of a lecture given by Jennings in March 1960). [↑](#footnote-ref-4)
5. See E Jenks, ‘The Myth of Magna Carta’ (1904) 4 *Independent Review* 260. [↑](#footnote-ref-5)
6. See MW Labarge, ‘Simon de Monfort’s Parliament’ (1964) *Parliamentary Affairs* 13-19. [↑](#footnote-ref-6)
7. Stubbs, *Constitutional History*, 134; see generally HG Richardson and GO Sayles, *The English Parliament in the Middle Ages* (Hambledon Press, 1981) 31-32. [↑](#footnote-ref-7)
8. See J Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford, 2010). [↑](#footnote-ref-8)
9. Ibid, 305-306. [↑](#footnote-ref-9)
10. GR Elton, ‘Presidential Address: Tudor Government: The Points of Contact: I. Parliament’ (1974) 24 *Transactions of the Royal Historical Society* 183-200, 185. [↑](#footnote-ref-10)
11. See SB Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936) 161-164. [↑](#footnote-ref-11)
12. See GR Elton, *Studies in Tudor and Stuart Politics and Government, Paper and Reviews 1946-1972: Volume 2, Parliament/Political Thought* (CUP, 1974) 32. [↑](#footnote-ref-12)
13. Elton (n.13) 186. [↑](#footnote-ref-13)
14. D Lemming, *Law and Government in England During the Long Eighteenth Century: From Consent to Command* (Palgrave Macmillan, 2011) 171. [↑](#footnote-ref-14)
15. # See H Kleineke, ‘The Good, the Bad and the Wonderful: The dramatic Parliaments of the late 14th century (Part One)’, *The History of Parliament Blog* (18 June 2019): <https://thehistoryofparliament.wordpress.com/2019/06/18/the-good-the-bad-and-the-wonderful-the-dramatic-parliaments-of-the-late-14th-century-part-one/>

    [↑](#footnote-ref-15)
16. See TFT Plucknett, ‘The Origin of Impeachment’ (1942) *Transactions of the Royal Historical Society* 47-71; JG Bellamy, ‘Appeal and Impeachment in the Good Parliament’ (1966) 39 *Historical Reach* 35-46; G Holmes, *The Good Parliament* (OUP, 1975). [↑](#footnote-ref-16)
17. See JG Palmer, ‘The Parliament of 1385 and the Constitutional Crisis of 1386’ (1971) 46 *Speculum* 477-490. [↑](#footnote-ref-17)
18. See AK McHardy, *The Reign of Richard II: from Minority to Tyranny, 1377-97* (Manchester University Press, 2012) ch 3. [↑](#footnote-ref-18)
19. See AL Brown, ‘Parliament, c. 1377-1422’ in RG Davies and JH Denton (eds), *The English Parliament in the Middle Ages* (Manchester University Press, 1981) 112-3. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. See A Tuck, ‘The Cambridge Parliament 1388’ (1969) 84 *English Historical Review* 225-243. [↑](#footnote-ref-21)
22. Elton (n.12) 188. [↑](#footnote-ref-22)
23. See J Loach, *Parliament under the Tudors* (Clarendon, 1991) 105-108. [↑](#footnote-ref-23)
24. D Dean, ‘Revising the History of the Tudor Parliaments’ (1989) *The Historical Journal* 401, 402. [↑](#footnote-ref-24)
25. M Graves, *The Tudor Parliaments: Crown, Lords and Commons, 1485-1603* (Longman, 1985) ch.1. [↑](#footnote-ref-25)
26. WC Abbott, ‘The Origin of English Political Parties’ (1919) 24 *American Historical Review,* 578-602, 582. [↑](#footnote-ref-26)
27. See W F Wyndham Brown, 'The Evolution of the Cabinet System in England' (1910) 36 *Law Mag & Rev Quart Rev Juris* 49, 57. [↑](#footnote-ref-27)
28. P Langford, ‘Prime Ministers and Parliaments: The Long View, Walpole to Blair’ (2006) 25 *Parliamentary History* 382-394, 382-383. [↑](#footnote-ref-28)
29. Wyndham Brown (n.29) 59. [↑](#footnote-ref-29)
30. Ibid62*.* [↑](#footnote-ref-30)
31. Elton (n.12) 200. [↑](#footnote-ref-31)
32. See R Gott, *Britain’s Empire: Resistance, Repression and Revolt* (Verso, 2011). [↑](#footnote-ref-32)
33. AF Pollard, *The Evolution of Parliament* (2nd ed, 1926) 43. [↑](#footnote-ref-33)
34. See AL Brown, ‘Parliament, c. 1377-1422’ in RG Davies and JH Denton (eds), *The English Parliament in the Middle Ages* (Manchester University Press, 1981) 122. [↑](#footnote-ref-34)
35. Constitutional Reform Act 2005, s.40 & Schedule 9. [↑](#footnote-ref-35)
36. AV Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, 1915) 39-40. [↑](#footnote-ref-36)
37. M Gordon, *Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy* (Hart, 2015) ch 1. [↑](#footnote-ref-37)
38. *Ibid.* [↑](#footnote-ref-38)
39. Ibid 39. [↑](#footnote-ref-39)
40. Jennings (n.6). [↑](#footnote-ref-40)
41. Including limits on suspending or dispensing with laws, levying money, or establishing a standing army without parliamentary consent. [↑](#footnote-ref-41)
42. s.1. [↑](#footnote-ref-42)
43. See eg C Hill, *Intellectual Origins of the English Revolution* (Clarendon, 1965). [↑](#footnote-ref-43)
44. J Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (OUP, 1999) ch 2. [↑](#footnote-ref-44)
45. *Ibid* 230. [↑](#footnote-ref-45)
46. *Ibid* 53. [↑](#footnote-ref-46)
47. Ibid 233. [↑](#footnote-ref-47)
48. Jennings (n.49) 143. [↑](#footnote-ref-48)
49. See eg, *Edinburgh & Dalkeith Railways v Wauchope* (1842) 8 Cl. & F. 710. [↑](#footnote-ref-49)
50. [1974] AC 765. [↑](#footnote-ref-50)
51. Ibid 782. [↑](#footnote-ref-51)
52. Ibid 782. [↑](#footnote-ref-52)
53. Ibid 787. See also Lord Morris, 789-792; Lord Simon, 798. [↑](#footnote-ref-53)
54. [2006] UKHL 56, [102], [104], [159]. For critique see Gordon (n.41) ch.5. [↑](#footnote-ref-54)
55. Lord Bingham, ‘The Rule of Law and the Sovereignty of Parliament’, *King’s College London Commemoration Oration 2007* (31 October 2007) 22. [↑](#footnote-ref-55)
56. [2011] UKSC 46, [2012] 1 AC 868, [50]-[51]. [↑](#footnote-ref-56)
57. [2014] UKSC 67, [2015] AC 901, [35]. [↑](#footnote-ref-57)
58. [2016] UKSC 39, [2016] AC 1531, [20]. [↑](#footnote-ref-58)
59. [2019] UKSC 22, [144]. [↑](#footnote-ref-59)
60. [2017] UKSC 5, [2018] AC 61, [43]. [↑](#footnote-ref-60)
61. [2018] UKSC 64, [63], [64]. [↑](#footnote-ref-61)
62. [2019] UKSC 41, [40]. [↑](#footnote-ref-62)
63. Dicey (n.40) 71. [↑](#footnote-ref-63)
64. See AL Brown, ‘Parliament, c. 1377-1422’ in RG Davies and JH Denton (eds), *The English Parliament in the Middle Ages* (Manchester University Press, 1981) 131-2. [↑](#footnote-ref-64)
65. GR Elton, *Studies in Tudor and Stuart Politics and Government, Paper and Reviews 1946-1972: Volume 2, Parliament/Political Thought* (CUP, 1974) 25, citing Chrimes, *Constitutional Ideas*, 128-9. [↑](#footnote-ref-65)
66. Royal Assent by Commission Act 1541; replaced by Royal Assent Act 1967, s.1(a). [↑](#footnote-ref-66)
67. M Loughlin, ‘The Constitutional Thought of the Levellers’ (2007) 60 *Current Legal Problems* 1-39. [↑](#footnote-ref-67)
68. J Locke, *Second Treatise of Government* (CB Macpherson (ed), Hackett Publishing Company, 1980) para 149. [↑](#footnote-ref-68)
69. Ibid para 222. [↑](#footnote-ref-69)
70. W Blackstone, *Commentaries on the Laws of England* (Clarendon Press, Oxford, 1765) 157. [↑](#footnote-ref-70)
71. Ibid 157. [↑](#footnote-ref-71)
72. *The Trial of Thomas Paine* (C and G Kearsley Fleet Street, London, 1792), online at: <https://quod.lib.umich.edu/e/ecco/004809446.0001.000/1:1?rgn=div1;view=fulltext> [↑](#footnote-ref-72)
73. Renamed the Treason Act 1795 by the Short Titles Act 1896. [↑](#footnote-ref-73)
74. P Foot, *The Vote: How it was Won and How it was Undermined* (Bookmarks Publications, 2012) 91; see generally 45-88. [↑](#footnote-ref-74)
75. Ibid 92. See D Thompson, *The Chartists* (Temple Smith, 1984). [↑](#footnote-ref-75)
76. See R Saunders, ‘The Politics of Reform and the Making of the Second Reform Act, 1848-1867’ (2007) 50 *The Historical Journal* 571-591. [↑](#footnote-ref-76)
77. Foot (n.86) 170. [↑](#footnote-ref-77)
78. Representation of the People Act 1928. [↑](#footnote-ref-78)
79. Representation of the People Act 1948. [↑](#footnote-ref-79)
80. Representation of the People Act 1969. [↑](#footnote-ref-80)
81. House of Lords Standing Order No.6, (first recorded 1621). [↑](#footnote-ref-81)
82. A Harlow, N Doe and F Cranmer, ‘Bishops in the House of Lords: A Critical Analysis’ [2008] *Public Law* 490-509, 490. [↑](#footnote-ref-82)
83. Bishoprics Act 1878. [↑](#footnote-ref-83)
84. Appellate Jurisdiction Act 1876, s.6. [↑](#footnote-ref-84)
85. Constitutional Reform Act 2005, s.23. [↑](#footnote-ref-85)
86. Constitutional Reform Act 2005, s.137. [↑](#footnote-ref-86)
87. However, on becoming President of the UKSC in 2019, Lord Reed was appointed to a Life Peerage. [↑](#footnote-ref-87)
88. House of Lords Library Note, *The Salisbury Doctrine* (LLN 2006/006, 30 June 2006). [↑](#footnote-ref-88)
89. Parliament Act 1991, s.2(1); s.1(1). [↑](#footnote-ref-89)
90. See C Ballinger, *The House of Lords 1911-2011: A Century of Non-Reform* (Hart Publishing, 2012) ch.1. [↑](#footnote-ref-90)
91. [2005] UKHL 56; [2006] 1 AC 262. [↑](#footnote-ref-91)
92. Ibid [30]. See also Baroness Hale, [156]-[158]. [↑](#footnote-ref-92)
93. Ibid [36]. [↑](#footnote-ref-93)
94. Ibid [124]. [↑](#footnote-ref-94)
95. Indian Independence Act 1947. [↑](#footnote-ref-95)
96. The Colonial Laws Validity Act 1865 provided legislative autonomy for colonies, subject to the constraint that their laws could not contradict the legislation of the Westminster Parliament (s.2). The Statute of Westminster 1931 eliminated the power of the UK Parliament to legislate for ‘Dominions’ other than with express consent (s.4). [↑](#footnote-ref-96)
97. Foreign and Commonwealth Office, *The Overseas Territories: Security, Success and Sustainability* (Cm 8374, 2012) 14. The OTs are former colonies, and distinct from three internally self-governing dependencies of the Crown - Jersey, Guernsey and the Isle of Man - which were never colonies. [↑](#footnote-ref-97)
98. Goldsworthy (n.55) 232. [↑](#footnote-ref-98)
99. Gordon (n.41) 48-49. [↑](#footnote-ref-99)
100. *MacCormick v Lord Advocate* 1953 SC 396, 411. See also *Lord Gray’s Motion* [2002] 1 AC 124. [↑](#footnote-ref-100)
101. Scotland Act 1998. [↑](#footnote-ref-101)
102. Government of Wales Act 1998. [↑](#footnote-ref-102)
103. Northern Ireland Act 1998. [↑](#footnote-ref-103)
104. P Leyland, ‘The Multifaceted Constitutional Dynamics of UK Devolution’ (2011) 9 *ICON* 251. [↑](#footnote-ref-104)
105. Government of Wales Act 2006, ss.103-104. [↑](#footnote-ref-105)
106. Wales Act 2017. [↑](#footnote-ref-106)
107. See eg Scotland Act 2012; Scotland Act 2016; Corporation Tax (Northern Ireland) Act 2015. [↑](#footnote-ref-107)
108. A temporary power to hold an independence referendum in 2014 was granted to the Scottish Parliament by Order in Council following negotiations with the UK government; The Scotland Act 1998 (Modification of Schedule 5) Order 2013. [↑](#footnote-ref-108)
109. See eg *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill Reference* [2018] UKSC 64. [↑](#footnote-ref-109)
110. Direct rule by the UK government was not reimposed, but the Westminster Parliament was required to legislate to provide for the Northern Ireland civil service to exercise administrative functions, and to repeatedly extend the statutory window for a new executive to be formed: Northern Ireland (Executive Formation and Exercise of Functions) Act 2018; Northern Ireland (Executive Formation etc) Act 2019. [↑](#footnote-ref-110)
111. Senedd and Elections (Wales) Act 2020. [↑](#footnote-ref-111)
112. Scotland Act 1998 s 28(7); Northern Ireland Act 1998 s 5(6); Government of Wales Act 2006 s 107(5). [↑](#footnote-ref-112)
113. Consent was (eventually) obtained from the Welsh Assembly, and there was no Northern Ireland Assembly in operation at the time. [↑](#footnote-ref-113)
114. [2017] UKSC 5, [2018] AC 61, [136]-[151]. [↑](#footnote-ref-114)
115. See P Oliver, *The Constitution of Independence* (OUP, 2005). [↑](#footnote-ref-115)
116. Regional Assemblies (Preparations) Act 2003. [↑](#footnote-ref-116)
117. Greater London Authority Act 1999. [↑](#footnote-ref-117)
118. Scotland Act 2016, s.1; Wales Act 2017, s.1. [↑](#footnote-ref-118)
119. See House of Lords EU Select Committee, *Brexit: Devolution* (HL Paper 9, 19 July 2017). [↑](#footnote-ref-119)
120. See A McHarg and J Mitchell, ‘Brexit and Scotland’ (2017) 19 *British Journal of Politics and International Relations* 512-526. [↑](#footnote-ref-120)
121. Northern Ireland Act 1998, s.1. [↑](#footnote-ref-121)
122. See S de Mars, C Murray, A O’Donoghue and B Warwick, *Bordering Two Unions: Northern Ireland and Brexit* (Bristol, Policy Press, 2018). [↑](#footnote-ref-122)