

The Elections Bill 2021

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The Narrowing of Electoral Access

Electoral reform poses a bedrock challenge. There is no fixed answer to whether a measure improves electoral administration and enhances democratic legitimacy, or conversely is a vehicle for a domineering group or elite clique to entrench itself and oppress its opponents. Evaluating a reform requires sensitivity to circumstances, and which democratic norms must be prioritized.

Considered as a whole, the broad reforms in the UK Elections Bill 2021, currently in committee stage before the House of Commons, present as self-serving entrenchment by Conservatives. Two measures in particular support this assessment. A voter ID requirement would raise hurdles that could reduce turnout among vulnerable or marginalized groups; and the Electoral Commission would be placed under greater oversight of the partisan Speaker's Committee, hamstringing the Commission as a neutral monitor of elections. Other provisions lack such a clearly oppressive or self-serving character, but could raise similar concerns if abused in implementation.

Evaluating Provisions of the Elections Bill

Most dramatically, the Bill mandates that voters show photographic identification (such as a passport or driver's license) at polling places. This may appear a minor administrative onus on any individual voter. Yet evidence suggests that ID laws reduce turnout among groups such as racial minorities, and could likewise suppress turnout among the poor or younger voters – precisely groups that tend to support Labour. This onus could be more readily justified if there were evidence that voter fraud (personation) was a material problem in the UK. Yet there is no evidence of large-scale voter fraud, individual claims of fraud are rare, and convictions or police cautions from such claims are rarer yet. Even one of the commentators (ss. 27, 29) who advocated for identification as an anti-fraud measure observed that poll workers perceive denying voter access as a greater problem than fraud. Voter fraud may be difficult to detect, but given lack of evidence that it is a meaningful threat to UK democracy, and that voter identification imposes a burden that would likely fall more heavily on the constituency of their opponents, the voter ID law presents as an attempt by conservatives to tilt democratic procedure in their own favor.

A second especially noteworthy provision of the Bill effects a different type of political self-dealing. The Electoral Commission is an independent body that oversees elections and political financing in the UK. It plays a critical role in the regular operation of elections and the broader development of electoral integrity, insulated by its independence from claims of bias. The Bill would give the Secretary of State the power to assert priorities and

strategy for the Electoral Commission, and authorize the Speaker's Committee to enforce the Electoral Commission's conformity to this statement. The question of whether various aspects of electoral administration should be determined by independent entities or through politicized struggle is debated. However, neutrality of electoral administration, like rule of law and the independence of judges, contributes to the stability of democracy. In the absence of a crisis of accountability, politicizing a neutral body that supervises the delicate matter of electoral integrity is a suspect move.

The other various reforms included in the Bill do not have the same facially self-serving character. Some are non-controversial and commonsensical, such as prohibiting those actively involved in campaign advocacy from acting as intermediaries for the submission of postal votes, and increased access for those with disabilities to polls. Other address matters necessary following recent political changes, such as clarifying the voting status of EU citizens resident in the UK following Brexit. Some measures *might* become conduits for effecting self-interested or partisan goals or otherwise undermine popular democratic autonomy, dependent on enforcement. The Bill provides a new definition of undue influence over voters, and establishes a new sanction (prohibition of office-holding) for intimidating candidates. Given there are live concerns regarding, for example, harassment of candidates, such measures could offer welcome security for participants in elections. Yet sufficiently broadly construed (and abused), such measures can also be used to constrain discourse or speech, particularly since the intimidation offense includes conduct prohibited by the Public Order Act 1986. Likewise, the technical updates to the campaign finance regime in the Bill would offer greater regulatory cohesion. However, some have articulated concerns that these campaign finance measures could be weaponized to target opposition groups, particularly Labour strongholds such as unions. In light of the more clearly self-interested and partisan aspects of other elements of the Bill, concerns that such technical reforms, innocuous on paper, could be abused deserve some credence.

Integrity, Popular Autonomy, and Political Context

Each of the elements of the Elections Bill is prospectively defensible. Voter ID laws trade off privacy and ease of voting against security. How these values should be traded off is itself a viable matter of contention. The influential Pickles Report (whose expressed driving priority was anti-corruption) observed (as a criticism) that in some UK municipalities 'it is harder to take out a municipal library book than it is to vote in a polling station'. Yet whether this statement speaks to a flaw or a virtue of electoral administration depends on circumstances. If there were more imminent systemic concerns regarding voting fraud, adopting voter ID measures might be imminently defensible, even necessary, to maintain popular self-rule. Likewise, greater oversight of regulatory bodies is a potential form of democratic self-rule, and could be justified by evidence that an independent body is not acting responsibly. In context, and without adequate justification, these measures present as adjustments at the margins of democratic process to favor those in power. Even more foundationally, the normative validity of a given reform depends upon what practices best enable a free people to rule themselves. Integrity contains values of access, participation, and independent oversight, as well as security

and regulatory accountability. The aspects of integrity that support the Bill comes at a sacrifice of other values that, in both wider social context and the particulars of the passage of the Bill, makes their defense suspect.

The greatest difficulty posed by such suspect reforms is the lack of recourse once democratic procedure is shifted in a particular direction. There is no natural, incontrovertible reference baseline regarding if the electorate selects leaders fairly, and reworked electoral terms can quickly become established as a new default. While institutional actors such as the judiciary can police this procedure, the legitimate scope of their involvement can itself be contested. Furthermore, it is unclear on what basis provisions of the Elections Bill would be struck down without extensive judicial innovation. While the right to free elections is guaranteed under the Human Rights Act 1998, the protections afforded under the relevant provisions speak more clearly to absolute deprivation of a right to vote for specific groups (such as prisoners), rather than the comparatively marginal modifications of voting procedure at issue in the Elections Bill. Furthermore, early challenges to voter ID laws, while not speaking squarely to the legality of topics such as voter ID, suggest it would survive review.

The upshot is that a critical evaluation of the Election Bill 2021 suggests it is a self-serving piece of legislation by current Conservative officeholders. It should produce genuine anxiety regarding the sustainability and durability of democratic self-rule and the trustworthiness of the elected representatives who have one form of core authority to shape electoral procedure. If implemented, it is unclear what response, other than broad and forceful disapproval by the people themselves, will limit this type of practice.

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