

WHAT IS DEMOCRATIC BACKSLIDING, AND IS THE UK AT RISK?

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Summary

- Democratic backsliding is recognised internationally as the process by which states become gradually less democratic over time. It tends to manifest through increasing concentration of power in the hands of the executive, and erosion of political and constitutional norms.
 - Various commentators, civil society institutions and experts are now expressing concerns about the risk of democratic backsliding in the UK.
 - The internationally recognised features of backsliding have been evident in the UK to some degree in recent years, suggesting that vigilance is needed.
 - MPs, as the ultimate guardians of the UK's constitutional order, have a particular responsibility to uphold democratic standards.
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Background

[Commentators](#), [civil society groups](#), [think tanks](#) and [academics](#) are increasingly warning about the health of UK democracy. Such warnings often draw on the concept of 'democratic backsliding'.

But what is democratic backsliding? And is there good reason to worry about a risk of it in the UK?

What is democratic backsliding?

Democratic backsliding is, in its simplest form, the process by which a state becomes gradually less democratic over time. [Scholars emphasise](#) that no cataclysmic state collapse or overthrow is required for backsliding to take place; instead, it is a gradual process, coming about through actions of democratically elected leaders.

Democratic backsliding has been observed internationally, and extensively catalogued by scholars including Stephan Haggard and Robert Kaufman ([Backsliding: Democratic Regress in the Contemporary World](#), 2021) and Steven Levitsky and Daniel Ziblatt ([How Democracies Die](#), 2019). Such accounts generally define backsliding as involving the reduction of checks and balances on the executive. This might include:

1. breakdown in the norms of political behaviour and standards;
2. disempowerment of the legislature, the courts, and independent regulators;
3. the reduction of civil liberties and press freedoms; and/or
4. harm to the integrity of the electoral system.

Backsliding has been identified in multiple countries, with frequently cited cases including Poland, Hungary and the United States. Poland's ruling Law and Justice Party has significantly [reduced judicial independence](#), and put [pressure on the independent media](#). In Hungary, Viktor Orbán has [repeatedly assumed](#) emergency powers allowing him effectively to bypass the legislature, [undermined press freedom](#), and – as in Poland – [curbed judicial independence](#). Donald Trump's [attempts to delegitimise the 2020 Presidential election](#), as well as longer-term [patterns of voter suppression](#), have shown how backsliding can affect even very well-established democracies.

How does backsliding come about?

Democratic backsliding is gradual, with successive reforms often building on one another. It may therefore not be recognised until the process is quite far advanced.

It may also take place inadvertently. One common route to backsliding is that the executive, trying to deliver its policy programme and frustrated by challenges coming from other constitutional actors – such as the legislature or the courts – reduces the powers available to those other institutions. The longer-term effect of these actions is to reduce the checks and balances in the constitution – and, ultimately, to centralise power. This more centralised power is then not only enjoyed by the current executive, but handed on to its successors.

Notably, backsliding can be facilitated by political polarisation. Polarisation encourages people to think in terms of 'us' and 'them', and – potentially, gradually – to view political opposition as illegitimate. This means it can result in increased tolerance for the weakening of constitutional checks and balances.

Is backsliding happening in the UK?

Taking the four facets of backsliding outlined above, what are some of the specific concerns being raised in the UK?

1. Breakdown in norms and conventions

- Many have noted evidence of a growing government willingness to disregard constitutional norms and conventions. Perhaps the most prominent current concerns relate to the government's apparent willingness to breach international law. The Northern Ireland Protocol Bill was recently strongly criticised at second reading by senior backbenchers including Theresa May, and such views are shared by many external experts (e.g. see [Bingham Centre for the Rule of Law](#) – and see the same organisation's [concerns](#) about the international law implications of the Bill of Rights Bill). These echo concerns about the Internal Market Bill in 2020, which led to the resignation of the then [head of the Government Legal Department](#), and criticism from several [former Prime Ministers and Conservative leaders](#), plus external expert bodies such as the [Institute for Government](#) and [Public Law Project](#). The United Nations refugee agency has [raised similar concerns](#) about the government's policy of 'offshoring' asylum seekers to Rwanda.
- Another prominent ongoing example is the allegation – currently under [investigation by the Privileges Committee](#) – that the Prime Minister has misled the House of Commons over partygate.
- Other concerns about the government's treatment of the Ministerial Code have led to the resignation of two former Independent Advisers on Ministerial Interests, [Sir Alex Allen](#) and [Lord \(Christopher\) Geidt](#), in November 2020 and June 2022 respectively.
- In 2020, the government, for the first time, appointed a peer [in defiance of the House of Lords Appointments Commission's recommendations](#) on propriety.
- The attempted lengthy prorogation of 2019 was [deemed unlawful](#) by the Supreme Court.

2. Disempowerment of the legislature, the courts and independent regulators

- Recent years have seen a trend toward expedited primary legislation and the heavy use of statutory instruments, with the effect of limiting parliament's opportunities to scrutinise government policy. General concerns have been expressed by parliament's [Secondary Legislation Scrutiny Committee and Delegated Powers and Regulatory Reform Committee](#) and by external experts such as the [Hansard Society](#). They were raised by the Commons [Public Administration and Constitutional Affairs Committee](#) and Lords [Constitution Committee](#) specifically with regard to handling of the Covid-19 pandemic, including the short notice and lack of oversight for wide-ranging statutory instruments. The [Hansard Society](#) has recently expressed similar concerns about the delegated powers contained in the Northern Ireland Protocol Bill.
- Even primary legislation has often been rushed – e.g. when the government provided [just one day](#) for the Commons stages of the high-profile bill to raise National Insurance thresholds.
- The government has set out specific plans to reduce the influence of the courts, including through the proposed replacement of the Human Rights Act with the Bill of Rights Bill. The [Law Society of England and Wales](#) has warned that the bill risks creating 'an acceptable class of human rights abuses in the United Kingdom'.
- The government has also been accused of reducing the independence of key regulators. Former Commissioner for Public Appointments Peter Riddell has [criticised it](#) both for openly promoting the candidacies of political allies to key public appointments, and for seeking to 'pack' appointment panels. The case of the Electoral Commission is considered below.

3. Attacks on civil liberties and press freedoms

- Restrictions on the right to protest have been strongly criticised by parliament's [Joint Committee on Human Rights](#) and by civil society organisations such as [Justice](#) and [Liberty](#). These include restrictions already introduced by the Police, Crime, Sentencing and Courts Act 2022 as well as new restrictions proposed in the Public Order Bill.
- Various figures, including a [former Conservative Secretary of State for Culture, Media and Sport](#) have criticised the planned privatisation of Channel 4, warning that it threatens the channel's public-service offerings. The government's language toward the BBC has also been criticised by figures including [David Dimbleby](#).
- The government [reportedly](#), and controversially, championed the candidacy of former *Daily Mail* editor Paul Dacre to be Chair of Ofcom. Dacre was judged unappointable by the selection panel and [did not reapply](#) when the competition was reopened.

4. Harm to election integrity

- The Elections Act 2022 allows ministers to make a 'strategy and policy statement' for the Electoral Commission. Key voices including the [Public Administration and Constitutional Affairs Committee](#) (PACAC) and the [Electoral Commission's Chair](#) – warned that this threatens to reduce the Commission's independence, which is fundamental to the integrity of elections.
- A coalition of 18 [civil society groups](#) including Liberty, Involve and the Electoral Reform Society have also raised concerns about the introduction of voter ID, which they fear may disproportionately affect particular social groups; [PACAC](#), though it did not take a position on the question of voter ID, called the government's supporting evidence for the reform 'insufficient'.

Not all constitutional change constitutes backsliding. There are legitimate debates to be had about where the balance of power should lie in the constitution. Some changes in recent decades – such as the development of the devolution settlements, establishment of new regulators, strengthening of

select committees, and passage of the Human Rights Act – have placed new limits on the central executive. Rolling back some of these changes could be seen as restoration of the traditional balance of power in the UK constitution.

But the traditional constitution also saw the executive constrained by various other factors, including an impartial civil service, independent media, respect for the rule of law, and obedience to constitutional conventions and unwritten rules. Those who are currently concerned about backsliding suggest that the government is undermining these traditional checks on its power.

What role can MPs play?

MPs play a key role in protecting constitutional standards in any democratic system. If a government is engaged in backsliding, it will struggle to achieve this without the support, or at least acquiescence, of parliament – and particularly of its own backbenchers.

This role for MPs is particularly vital under the UK's political constitution, which effectively makes MPs the ultimate democratic safeguard. No other group – such as the courts or the civil service – can step in and put right decisions that have been approved by parliament.

This makes it vital that MPs remain vigilant about the constitutional standards that need to be upheld, and of their own responsibility as guardians of the democratic system. This role sits above short-term and party-political considerations. It complements the accountability of those in power to voters, which, taking place only every 4–5 years, is insufficient on its own.

In fulfilling this function, the work of key parliamentary committees, and external expert groups as cited above, provides useful analysis and briefing. MPs should then be prepared to question, speak out about, and ultimately vote against, measures that they feel threaten constitutional propriety.

It is easy to be overconfident about the robustness of UK democracy, given its long and stable history. But the insidious nature of backsliding, and the example of countries like the US, show the dangers of complacency.

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