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Virus Governance in the United Kingdom

ROBERT THOMAS

The virus has posed many social and economic challenges: the immediate risks to health; high rates of unemployment; businesses losing jobs and closing down; and healthcare being subject to intense pressure. As an essay on contemporary constitutional history, this chapter considers the constitutional challenges of pandemocracy in the United Kingdom (UK), and, in particular, what I term ‘virus governance’, that is, the concentration of power in the executive to respond to the virus. I discuss and consider the constitutional problems raised by virus governance, in particular, executive law-making, limited parliamentary scrutiny, and the impact of the virus on the UK’s territorial constitution. Overall, I argue that the virus has further exposed the UK’s pre-existing multiple constitutional fault-lines. The UK’s ongoing slow-burn constitutional crisis is being accelerated and there is a heightened need to address its deep-seated underlying structural causes.

I. The Constitutional and Political Background

To start off, we have to recognise the particular constitutional setting of the UK’s famously uncodified constitution. A constitution that has developed and evolved incrementally over centuries is very different from one that has been deliberately constituted and codified at a particular point of time. Without a formal overarching architecture, the UK Constitution is simply what happens.¹ It is principally a set of political understandings and constitutional conventions between the different governing institutions.² To a large extent, these understandings are relatively stable, but are often a source of tension and contention. Constitutional change rarely results from first principles or pure constitutional logic, but is the product of governmental self-interest and political struggle.

¹ JAG Griffith, ‘The Political Constitution’ (1979) 42 *MLR* 1.

² For a detailed account, see M Elliott and R Thomas, *Public Law*, 4th edn (OUP, 2020).

In the overall constitutional framework, power and authority rests principally with UK central government. The government must, of course, be able to defend its policies and their administration in Parliament. Nonetheless, it is always the government that has the right of initiative, for instance, to raise taxes and make legislation. As regards the UK's evolving territorial governance, the unitary and London-centric nature of central government has accommodated a more quasi-federal structure through devolved governments and legislatures in Scotland, Wales, and Northern Ireland. However, centralising tendencies are difficult to suppress; tensions arise when sites of power beyond London disagree with the UK central state. England is one of the most centralised country in Europe.

When viewed from the outside, the formal constitutional veneer of UK governance may seem serene and robust. This unstructured constitution (sort of) works, albeit often inadequately, but the sense of constitutional decline and dissatisfaction has been gaining pace for decades.³ There was a period of constitutional modernisation during the New Labour Blair years of the late 1990s to the mid-2000s (the Human Rights Act 1998; devolution; and judicial reform).⁴ But constitutional dissatisfaction has grown. The immediate post-war generation of constitutional scholars lavished praise on the Constitution; none would do so today. There are deep sources of political tension and fragmentation, the decay of the state, social inequality, distrust of politicians, and dissatisfaction with party politics and the UK's governing arrangements. This is all evidenced by a long accumulation of difficult multi-dimensional problems: the great financial crisis; austerity; the divisive Brexit referendum 2016 and its fraught aftermath; and an increasingly unstable devolution settlement including increased support for Scottish independence. For good reason, the UK has increasingly been seen as a country in a particularly British type of turmoil.⁵

The virus must also be situated within the immediate and unique political context of the Brexiting UK. In July 2019, Boris Johnson became Prime Minister following Theresa May's resignation. May had faced insuperable difficulties in managing the political differences within the Conservative party over Brexit. Following the failed attempt to prorogue Parliament – held to be unconstitutional by the Supreme Court – Johnson then won the December 2019 general election on the basis that he would get Brexit done.⁶ Given that the UK governments govern through Parliament, the critical issue is size of their majorities in the House of

³ N Johnson, *The Search of the Constitution* (Pergamon Press, 1977); A King, *The British Constitution* (OUP, 2007). This is, of course, a wider phenomenon. See TG Daly, 'Democratic Decay: Conceptualising an Emerging Research Field' (2019) 11 *Hague Journal on the Rule of Law* 9.

⁴ M Gordon and A Tucker (eds), *The New Labour Constitution: Twenty Years on* (Hart Publishing, 2021).

⁵ For wide-ranging social and political reflections, see D Marquand, *Mammon's Kingdom: An Essay on Britain, Now* (Penguin, 2014); M Moran, *The End of British Politics?* (Palgrave Macmillan, 2017); W Davies, *This is Not Normal: The Collapse of Liberal Britain* (Verso, 2020); M Sobolewska and R Ford, *Brexitland: Identity, Diversity and the Reshaping of British Politics* (CUP, 2020).

⁶ *R (Miller) v Prime Minister; Cherry v Advocate General for Scotland* [2019] UKSC 41.

Commons. Johnson achieved a Commons majority of 80 Members of Parliament (MPs), the largest Conservative majority since 1987. He had unexpectedly won over many northern ‘red wall’ areas: traditional Labour constituencies in the north of England – pro-Brexit and socially conservative – that were attracted by promises of improved funding, ‘levelling-up’, and getting Brexit done.⁷ At the end of January 2020, the UK formally exited the EU and entered the transition period.

II. The Virus Arrives

By March 2020, the situation had changed unexpectedly beyond recognition. The virus had struck. The UK had entered lockdown. Furlough and job retention and support schemes had been introduced. In April 2020, Boris Johnson was himself hospitalised with the virus, but later recovered.⁸ The early assumption that the virus would disappear in the summer or, at the latest, by the end of the year seemed hopeful and itself soon faded away. Lockdown ended in late June, although various local restrictions were put in place. By November 2020, with the second wave in full flow, a second national lockdown was introduced. In January 2021, there was a third lockdown.

Overall, the Government had been ill-prepared and ill-equipped for the scale of the challenge posed by the virus.⁹ Before the first lockdown, large sporting events had been allowed to proceed despite the evident transmission risks. The UK was late in imposing a lockdown compared to other European countries. Even after the lockdown was announced, 95,000 people had been allowed entered the country without additional restrictions.¹⁰ The Government’s (now-former) senior adviser, Dominic Cummings, broke lockdown rules, but kept his job and this weakened public confidence.¹¹ Hospitals became overwhelmed. The National Health Service (NHS) transferred many elderly people with COVID-19 out of hospital back to care homes, despite clear warnings that this would increase transmission.¹²

There were also many policy ‘U-turns’, for instance, on people working from home, evictions, free school meals, masks in schools, and the NHS contact tracing app.¹³ At the traditional end of summer exam results, the Government made

⁷ ‘Levelling up’ refers to raising the standard of living in less affluent areas when compared with the more prosperous London and the south east of England.

⁸ ‘Coronavirus: Boris Johnson out of intensive care but remains in hospital’ *BBC News* (9 April 2020).

⁹ ‘Covid-19: did the UK government prepare for the wrong kind of pandemic?’ *The Guardian* (21 May 2020).

¹⁰ ‘95,000 have entered UK from abroad during coronavirus lockdown’ *The Guardian* (13 May 2020).

¹¹ ‘Dossier alleges Cummings may have perverted course of justice in account of lockdown trip’ *The Guardian* (30 October 2020).

¹² ‘More than half of England’s coronavirus-related deaths will be people from care homes’ *The Guardian* (7 June 2020).

¹³ ‘Boris Johnson’s coronavirus U-turns: A timeline of government indecision during the pandemic’ *The Independent* (26 August 2020).

a major mess of A-level results.¹⁴ Given social distancing, 18 year old students had not taken exams; their predicted grades were used instead, but the algorithm used to moderate results to avoid grade-inflation meant that many students had been significantly down-graded, thereby jeopardising their futures.¹⁵ The Prime Minister had – absurdly – blamed the fiasco on the ‘mutant algorithm’, but was in turn accused of shamefully trying to dodge blame for the exam chaos.¹⁶ It had indeed been the relevant minister that had insisted upon using the algorithm to avoid grade-inflation, but he then blamed everyone else for the resulting, and unnecessary, fiasco.

In terms of actually dealing with the virus, there were repeated problems and delays in the operation of the Government’s centralised NHS Test and Trace service.¹⁷ Given the preceding decade of austerity, public services entered the pandemic with low levels of resilience. The virus further disadvantaged people who were already ‘left behind’.¹⁸

Overall, the UK’s handling of the first year of the virus had been poor. Excess deaths have been amongst the highest in terms of international comparisons. Government blunders are nothing new.¹⁹ A global pandemic is hardly the ideal environment in which to make the best decisions. Nonetheless, there had been too many mistakes. Even at an early stage, it had become clear that a public inquiry would be needed to provide accountability and lesson learning after the event.²⁰

As regards the functioning of Parliament, at an early stage it had moved from in-person voting by MPs to remote voting. In June 2020, a return to in-person voting through a system by which MPs were forced to stand in a line more than a kilometre long to queue to vote – satirically dubbed the ‘Rees-Mogg Conga’ – was declared a farce even by loyal Conservative MPs.²¹ Parliament moved to operating on a hybrid basis with a mixture of (socially distanced) in-person and virtual participation.²² This enabled Parliament to continue its work. However, like all legislatures, Parliament is highly dependent upon informal interactions between its members.²³ With the virus, this has largely been lost and has arguably

¹⁴ A-Levels in England and Wales and Scottish Highers are mostly taken by 18 year olds and the results used to allocate university places.

¹⁵ House of Commons Education Committee, *Getting the Grades They’ve Earned – Covid-19: the Cancellation of Exams and ‘Calculated’ Grades* HC 617 (2019–21).

¹⁶ Boris Johnson blames exams chaos on “mutant algorithm” *The Independent* (26 August 2020).

¹⁷ ‘Coronavirus: Inside test-and-trace – how the “world beater” went wrong’ *BBC News* (20 November 2020).

¹⁸ House of Lords Public Services Committee, *A Critical Juncture for Public Services: Lessons From COVID-19* HL 167 (2019–21).

¹⁹ See generally A King and I Crewe, *The Blunders of Our Governments* (Oneworld, 2013).

²⁰ House of Commons Public Administration and Constitutional Affairs Committee, *A Public Inquiry into the Government’s Response to the Covid-19 Pandemic* HC 541 (2019–21).

²¹ ‘MPs join 90-minute-long queue to vote to end virtual voting’ *The Guardian* (2 June 2020). The idiosyncratic Jacob Rees-Mogg MP, Leader of the House of Commons, has sometimes been described by other MPs as ‘the Member of Parliament for the seventeenth century’.

²² Institute for Government, *The UK Parliament and Coronavirus*, www.instituteforgovernment.org.uk/explainers/uk-parliament-coronavirus.

²³ P Norton, ‘Power behind the Scenes: The Importance of Informal Space in Legislatures’ (2019) 72 *Parliamentary Affairs* 245.

weakened the ability of Parliament to scrutinise government.²⁴ There have also been problems with some MPs being prevented from contributing remotely to parliamentary debates thereby creating an unwelcome ‘hierarchy of MPs’ and suppressing the voice of those unable to attend in person, although the matter is under review.²⁵

III. The Johnson Government’s Constitutional Record

Turning to the Government’s wider constitutional record, during the same period, the Johnson Government had already quickly established a distinctly bad reputation for undermining constitutional norms and conventions. Such conventions are full of gaps and anomalies.²⁶ The inherent weakness of this style of governance are the lack of enforcement and the risk that governments may well be tempted to bend and exploit the uncertainties within conventions in order to pursue self-serving and politically motivated ends. However, conventions have long operated against the backdrop of the British governing tradition, a set of shared assumptions that government should exercise self-restraint and act in accordance with the spirit of the Constitution.

Over recent decades, the strength of this tradition has weakened as successive governments have pursued their self-serving political ends and none more so than Johnson’s populist and tumultuous government. ‘Constitutional hardball’ aptly describes Johnson’s approach toward undermining constitutional norms and standards of good governance.²⁷ Brexit had promised the restoration of sovereignty and Parliament taking back control, but the Government had sought to shut down Parliament. When the Supreme Court found this unconstitutional, one minister described the court’s ruling as a ‘constitutional coup’.²⁸

Other rule of law concerns have included Brexit-related legislation contravening the withdrawal agreement with the European Union, a governmental review of administrative law prompted, in large part, by the prorogation case, and Home Secretary Priti Patel’s populist rhetoric criticising ‘activist’ lawyers for challenging immigration decisions (despite the inconvenient fact that many such challenges succeed).²⁹ In other respects, the doctrine of ministerial responsibility has been

²⁴ P Norton, ‘Problems of a hybrid House’ *The Norton View Blog* (14 November 2020).

²⁵ ‘Covid-19: Rees-Mogg under fire over Covid Commons rules’ *BBC News* (17 November 2020).

²⁶ See generally M Foley, *The Silence of Constitutions* (Routledge, 1989).

²⁷ N Barber, ‘Playing Hardball with the Queen’ *Oxford Human Rights Hub* (31 August 2019). M Tushnet, ‘Constitutional Hardball’ (2004) 37 *John Marshall Law Review* 523.

²⁸ ‘Attorney General slaps down Jacob Rees-Mogg over claim Supreme Court launched “constitutional coup”’ *PoliticsHome* (16 November 2020).

²⁹ House of Lords Constitution Committee, *Internal Market Bill* HL 151 (2019–2021); ‘Brexit strategy risks UK “dictatorship”, says ex-president of supreme court’ *The Guardian* (7 October 2020); Independent Review of Administrative Law, www.gov.uk/government/groups/independent-review-of-administrative-law; ‘Top ministers urged Priti Patel to stop attacks on “activist lawyers”’ *The Guardian* (18 October 2020).

weakened by ministers in effect dismissing senior civil servants and evading responsibility for their personal misbehaviour.³⁰

All of this collectively illustrates the trends accelerating the UK's intractable slow-burn constitutional crisis. The Constitution's reliance upon conventions and understandings rests upon trust and self-restraint, but this equilibrium breaks down when government acts against convention for reasons of political self-interest. The resulting constitutional damage can be intense, but what is the solution? Real constitutional change can only be brought about by the government. Constitutional reformers dream of a constitutional commission and the holy grail of a codified constitution, but their proposals are often the 'poetry of the politically impotent' that lose their allure when power is gained.³¹ Such is the nature of the UK's ongoing constitutional paralysis.

How then would the Constitution handle the challenges posed by the virus? To consider this question, we must first identify the style of governance prompted by the virus.

IV. Virus Governance

'Virus governance' is a variant of 'crisis governance': the expansion of executive power in response to a sudden critical emergency, such as 9/11 and the financial crisis 2007–08.³² Each crisis differs. Nonetheless, common themes include the concentration of power in the central core executive, its extensive law-making power, and the adoption of a command and control structure through which the executive directs the machinery of government and the wider public sector more generally. All this happens with minimal Parliamentary and judicial scrutiny.

There are advantages to this style of governance. Governing from the centre enables fast and informed decision making by relying upon a small group of ministers and advisers. Getting things done quickly matters when there is a global pandemic killing hundreds of people a day. Yet, there are weaknesses. Having decisions taken by a small group of people induces 'group think' and mistakes. As time passes, it may become apparent that government, or its zealous agents, have exceeded their powers or that government, faced with the scale of the challenge and competing political pressures, has acted incompetently, or that Parliament

³⁰ R Brazier, 'Contempt for the Constitution?' *UK Constitutional Law Blog* (6 October 2020) (ministerial responsibility now means ministers must not resign for their mistakes, but they can throw civil servants under a bus to take the flak); M Gordon, 'Priti Patel, the Independent Adviser, and Ministerial Irresponsibility' *UK Constitutional Law Blog* (23 November 2020).

³¹ F Mount, *The British Constitution Now* (London, Heinemann, 1992) 2. On the unfortunate experience of the Liberal Democrats, a pro-constitutional reform party, as the junior party in the 2010–15 Coalition government, see M Loughlin and C Viney, 'The Coalition and the Constitution' in A Seldon and M Finn (eds), *The Coalition Effect 2010–2015* (OUP, 2015).

³² EA Posner and A Vermeule, 'Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008' (2009) 76 *University of Chicago Law Review* 1613.

becomes increasingly concerned at what is happening and demands more of a role to scrutinise the government. A top-down command and control structure may prove inadequate when local or regional knowledge is required. Virus governance has exemplified all of these problems.

V. Virus Law

Let us consider the interlocking issues of law-making and parliamentary scrutiny. By way of background, the UK Parliament is not, and never has been, a legislature in the sense of a body exclusively and specially constituted to make legislation. Almost all legislation originates from government and is then debated, amended, and enacted by Parliament. Normally, the legislative process is a leisurely affair stretching out over a period of some months. Fast-tracking legislation is generally frowned upon.³³ But, there was clearly a good rationale for fast-tracking the Coronavirus Act 2020, a 370-page statute which completed its passage through Parliament in seven days. Whereas most Acts are sponsored by a specific government department, this was very much a cross-government affair. Its purpose was to enable the Government to respond to the emergency and manage the pandemic across almost many areas of government and the wider public sector.

The Coronavirus Act 2020 was then followed by a large number of regulations – secondary legislation or statutory instruments which are normally subject to limited parliamentary scrutiny. The legal basis for the first lockdown, introduced in March 2020, was through secondary legislation, not the Coronavirus Act 2020.³⁴ The relevant regulations came into force on 26 March 2020, at 1pm and were laid before Parliament at 2.30pm the same day without substantive debate in Parliament. The shock of the crisis was considerable and there was an evident need for the Government to act. At this stage, the Government had strong support from across the mainstream political spectrum, but things soon started to unravel.

There then followed whole sets of detailed and complex regulations which were frequently amended. As of late 2020, the Government had laid 288 coronavirus-related statutory instruments before Parliament (see Figure 4.1).³⁵ There were differences between the strict letter of regulations and the associated guidance which generated confusion amongst both the public and public authorities. For instance, the requirement to wear masks on public transport was announced in a Downing Street press conference on 4 June, came into force 11 days later, but

³³ House of Lords Constitution Committee, *Fast-Track Legislation: Constitutional Implications and Safeguards* HL 116 (2008–09).

³⁴ Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 with separate regulations for Scotland, Wales, and Northern Ireland made under the Public Health (Control of Disease) Act 1984.

³⁵ For details, see the Hansard Society's Coronavirus Statutory Instruments Dashboard, www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard.

was not debated in the House of Commons until 6 July. Guidance was often more restrictive than the law, but, of course, guidance is not law, it is just guidance. The regulations were frequently amended and introduced without laying a draft before, and approved by a resolution of, each House of Parliament. By convention, regulations are, wherever possible, laid before Parliament at least 21 calendar days before they come into effect. However, of the 200 coronavirus-related regulations laid before Parliament which were subject to the negative procedure, 132 breached the 21-day rule.³⁶ Many regulations came into effect before being laid before Parliament. Matters were complicated by a system of tiered restrictions that were locally based. All of this was a recipe for public confusion. If senior police officers did not understand the regulations, then the public had no hope.³⁷

Figure 4.1 Number of coronavirus and non-coronavirus UK statutory instruments laid before Parliament in 2020

Source: Hansard Society's Coronavirus Statutory Instruments Dashboard, www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard.

Lawyers were soon raising criticisms of the regulations and guidance by questioning their legal basis, describing them as 'the most illiberal laws imposed in England since at least the second world war', and highlighting the lack of parliamentary scrutiny.³⁸ The recently retired President of the UK Supreme Court, Lady Hale, argued that Parliament had 'surrendered' its role over emergency laws restricting freedoms amid the pandemic.³⁹ This combined with criticism of the substance of regulations and their application by the police. The former Supreme Court Justice, Jonathan Sumption, was particularly vocal. Sumption argued that there was no moral or principled justification for these restrictions: 'A society in which the

³⁶ Ibid.

³⁷ 'Police chiefs admit even they don't understand Covid rules' *Metro* (22 October 2020).

³⁸ D Allen Green, 'The significant extension of the Coronavirus restriction on movement – and why it is concerning', *The Law and Policy Blog* (23 April 2020).

³⁹ 'Parliament surrendered role over Covid emergency laws, says Lady Hale' *The Guardian* (20 September 2020).

Government can confine most of the population without controversy is not one in which civilised people would want to live.⁴⁰ Sumption also criticised the police for their zealous enforcement, such as stopping people from exercising in the countryside; such behaviour risked plunging Britain into a ‘police state’.⁴¹

VI. Parliamentary Scrutiny

Even in normal times, the deeply-embedded constitutional assumption is that ‘the first business of government is to govern’; holding it to account being merely ‘a sophisticated afterthought compared to the primal need’ to govern.⁴² In this context, parliamentary ‘control’ of government assumes a distinctive meaning: it means ‘influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiation; and publicity, not secrecy’.⁴³ Over recent years, a new parliamentary assertiveness has emerged, with MPs more willing to challenge their own government.⁴⁴ But the virus firmly reinforced the primal need to govern. From the Government’s perspective, in the midst of the emergency and acting in crisis mode, parliamentary scrutiny of secondary legislation barely registered as an issue.

The initial scope for parliamentary scrutiny of virus governance was then very limited, not least because of the cross-party instinct to support the Government. There were numerous government broadcasts and ministerial statements, but little effective scrutiny. However, as the virus dragged on, there was a distinct change of mood, especially toward the autumn. Initial public tolerance and forgiveness toward the Government changed once repeated instances of its incompetence, mistakes, and policy reversals started to pile up. Political divisions within the Conservative party and opposition from other political parties became more pronounced.

Parliamentary scrutiny serves important purposes. The UK Parliament is not the type of legislature that can ‘issue commands, conceive long-term strategies or handle a fast-moving crisis’, but it is there to be ‘wooed, cajoled, consulted, and enthused’.⁴⁵ Its main task is ‘not to legislate or govern, but to secure discussion and ventilation of all matters’.⁴⁶ More specifically, parliamentary scrutiny helps

⁴⁰ EP Stringham, ‘Lord Sumption: The Lockdown Is Without Doubt the Greatest Interference with Personal Liberty in Our History’ *American Institute for Economic Research* (9 May 2020), www.aier.org/article/lord-sumption-the-lockdown-is-without-doubt-the-greatest-interference-with-personal-liberty-in-our-history/.

⁴¹ ‘Covid-19: ex-supreme court judge lambasts “disgraceful” policing’ *The Guardian* (30 March 2020).

⁴² B Crick, *The Reform of Parliament* (London, Weidenfeld, 1968) 1.

⁴³ *Ibid.*, 80.

⁴⁴ P Norton, ‘Parliament: A New Assertiveness?’ in J Jowell, D Oliver, and C O’Cinneide (eds), *The Changing Constitution*, 8th edn (OUP, 2015).

⁴⁵ Mount (n 31) 179.

⁴⁶ LS Amery, *Thoughts on the Constitution*, 2nd edn (OUP, 1958) 12.

to confer legitimacy upon policy changes made through emergency regulations, particularly when they curtail personal liberty. Scrutiny also enables MPs to raise problems that might arise in the practical operation of regulations and associated guidance. Through parliamentary scrutiny, government by consent is secured: the public can be reassured that their views are represented and government is being held to account.

As time passed, divisions of opinion over the virus come to the fore. On the one hand, scientists expressed the need for caution; on the other hand, there were public protests against the restrictions with fringe elements claiming it was all a governmental conspiratorial grab-power.⁴⁷ Parliament went into its usual recess over the summer. By the autumn, the predicted second wave was on its way. The need for Parliament to reassert itself had become increasingly evident, if only to prevent it from becoming entirely supine. The Speaker of the House of Commons, Lindsey Hoyle, criticised government ministers for making major announcements to the media and not Parliament; indeed, some journalists had tweeted the substance of announcements before they were even made by ministers.⁴⁸

VII. The Need for Parliamentary Scrutiny Reasserted

Then, in September 2020, two important developments occurred. First, the House of Commons Public Administration and Constitutional Affairs Committee expressed its concerns at both the scale of legislation and the inability of Parliament effectively to amend virus regulations.⁴⁹ It was very difficult even for experts to know what legislation was in effect. There was no means by which Parliament could amend regulations. The system of parliamentary scrutiny in relation to lockdown regulations was unsatisfactory. The Government's use of urgent procedures to introduce regulations had not always been properly justified by the circumstances. The Committee therefore recommended that the Government give higher priority to facilitating parliamentary scrutiny of such legislation.

⁴⁷ 'Survey uncovers widespread belief in "dangerous" Covid conspiracy theories: False claims that pandemic is a hoax or was started deliberately are attracting adherents around world' *The Guardian* (26 October 2020).

⁴⁸ *Hansard*, HC Vol 679, col 619 (7 September 2020, Mr Speaker): 'It is really not good enough for the Government to make decisions of this kind in a way that shows insufficient regard to the importance of major policy announcements being made first to this House and to Members of this House wherever possible. I have already sent a letter to the Secretary of State. I think the total disregard for this Chamber is not acceptable.' The Speaker is an MP who has been elected by other MPs. The Speaker chairs debates in the Commons and is the chief officer and highest authority of the House of Commons, and must remain politically impartial at all times. During Commons debates, the Speaker keeps order and calls MPs to speak.

⁴⁹ House of Commons Public Administration and Constitutional Affairs Committee, *Parliamentary Scrutiny of the Government's Handling of Covid-19* HC 377 (2019–21).

Secondly, Speaker Hoyle weighed in by criticising the Government's 'contempt' for Parliament:

The way in which the Government have exercised their powers to make secondary legislation during this crisis has been totally unsatisfactory. All too often, important statutory instruments have been published a matter of hours before they come into force, and some explanations why important measures have come into effect before they can be laid before this House have been unconvincing; this shows a total disregard for the House. The Government must make greater efforts to prepare measures more quickly, so that this House can debate and decide upon the most significant measures at the earliest possible point.⁵⁰

In addition, backbench Conservative MPs had become increasingly vocal in raising their concerns about the substance of restrictions and the impact on personal liberty and the economy.⁵¹

VIII. The Second Lockdown

By October 2020, with the predicted second wave imminent, the Labour opposition had sought to claim the political initiative by calling for a second lockdown to prevent cases and deaths from escalating again. This had been roundly rejected by Johnson, in typically over-the-top rhetorical style, as 'the height of absurdity'.⁵² Nonetheless, infection rates continued to rise. Two weeks later, the Prime Minister announced a second lockdown in England – precisely what he had recently dismissed. This time, a parliamentary debate and vote were essential.

The shock of the new, so evident back in March 2020, had now altogether diminished. Boredom and frustration had set in. There were significant concerns about a second lockdown from the Conservative backbench. A senior MP raised concerns about the UK drifting 'further into an authoritarian, coercive state'.⁵³ Conservative backbench MPs had been wrestling with the impossibly hard choice of protecting public health on the one hand and the economy and personal liberty on the other, and with considerable uncertainty about the consequences and little sense of future direction. There was also growing despair about Johnson's ability to steer the country through the crisis given his Government's incompetence. Government could no longer simply impose its authority on the people and Parliament; much more was required. What about the quality of the Government's

⁵⁰ *Hansard*, HC Vol 681, col 331 (30 September 2020, Mr Speaker).

⁵¹ Backbench Conservative MPs refers to those Members of Parliament in the House of Commons who are in the governing party, but are not members of the government. They are part of the government's Commons majority and usually support their government, but they can kick up a fuss when the need arises.

⁵² *Hansard*, HC Vol 682, col 1055 (21 October 2020, Boris Johnson MP, Prime Minister).

⁵³ *Hansard*, HC Vol 683, col 30 (2 November 2020, Charles Walker MP, vice-chair of the Conservative 1922 committee).

modelling of future cases and deaths? What of the impact and costs of a second lockdown?

As the former Prime Minister, Theresa May MP, noted, the figures of predicted deaths used to justify the lockdown appeared to have been ‘chosen to support the policy, rather than the policy being based on the figures. We need these proper analyses; we need to know the details behind these models; and we need to be able to assess the validity of the models.’⁵⁴ Without any explanation, the regulations had not been accompanied by a detailed impact assessment outlining their costs and benefits. There was, May noted, no data on the costs of the decisions being made in terms of their impact upon non-COVID health care and deaths and the costs in terms of domestic abuse, mental health, the economy, and jobs.

Other Conservative backbench MPs took a more direct pro-liberty constitutional approach. Charles Walker MP argued that the UK government was undermining the rule of law and personal liberty. Government had coerced the public into lockdown. Similarly, Graham Brady MP, the Chair of the influential Conservative backbench 1922 Committee, questioned whether the Government had the moral right to re-introduce a lockdown: ‘What troubles me most is that the Government are reaching too far into the private and family lives of our constituents. There is an arrogance – unintended, perhaps – in assuming that the Government have the right to do so.’⁵⁵ The lockdown was also viewed as ineffective: ‘If lockdowns and blizzards of arbitrary rules were a solution to the problem, we would have solved it months ago.’⁵⁶

Ultimately, the Government won the vote to impose new restrictions in England for 28 days, by a margin of 516 votes to 38, with backing from Labour. Nonetheless, Government whips had to resort to old-fashioned tactics of ‘persuading’ (ie, bullying) the new intake of ‘red wall’ MPs ‘like mad’ in order to win the vote.⁵⁷ Questions were also asked about long-term solutions, how to break out of repetitive cycles of lockdowns, and the need for the Government to analyse the effectiveness of restrictions.⁵⁸ As regards the many other regulations, more detailed scrutiny was provided by dedicated committees.⁵⁹

Parliamentary scrutiny extends far beyond secondary legislation. In addition to questions to ministers in the Commons chamber, there was also a need for focused scrutiny of the many aspects of the response to the virus through parliamentary committees. The principal parliamentary success story over recent decades has

⁵⁴ *Hansard*, HC Vol 683, col 342 (4 November 2020, Theresa May MP).

⁵⁵ *Hansard*, HC Vol 683, cols 354–355 (4 November 2020, Graham Brady MP, Chair of the Conservative 1922 Committee).

⁵⁶ *Hansard*, HC Vol 683, col 352 (4 November 2020, Philip Davies MP).

⁵⁷ ‘How a full-scale lockdown rebellion by Tory MPs was called off: Conservative whips “bullied new intake like mad” to get Covid restrictions through Parliament’ *The Guardian* (6 November 2020).

⁵⁸ House of Lords Secondary Legislation Scrutiny Committee, *34th Report of Session HL 172* (2019–21), [41].

⁵⁹ In particular by the House of Lords Secondary Legislation Scrutiny Committee; see: committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/115532/scrutiny-of-secondary-legislation-laid-to-tackle-coronavirus-pandemic/.

been the growing stature and authority of select committees.⁶⁰ Committee chairs and members used to be selected by the government, even though they scrutinise government. Then, following the 2009 MPs' expenses scandal – MPs were found to have overclaimed expenses for 'essential' items such as garden duck houses – committees were strengthened through appointed chairs.⁶¹

During the virus, select committees fulfilled their role as the forum for detailed scrutiny of government and pinning down ministers and officials. Appearing before a joint meeting of the House of Commons Health and Social Care Committee and the Science and Technology Committee in November 2020, the head of the NHS Test and Trace, Dido Harding, elicited disbelief from MPs when she told them that the service had been taken by surprise by the increased demand for testing in the autumn.⁶² This was despite the obvious risks of heightened transmission posed by children and students returning to schools and universities. A Labour MP, Graham Stringer, was shocked by Harding's inability to explain the failure or the amount of funding spent on local versus national test and trace efforts – the latter was crucial given that the principal issue about the test and trace service has been whether it was better organised locally rather than centrally.

What then of judicial scrutiny of the lockdown? A crowd-funded judicial review had been brought to challenge the lockdown regulations. Given the circumstances, the Court of Appeal was, unsurprisingly, reluctant to find the regulations to be unlawful or irrational. The regulations had been approved by Parliament, albeit some weeks after they were made. Government had to make difficult judgements about medical and scientific issues after taking expert advice. There were powerfully expressed conflicting views about the measures taken by the Government and how to strike the right balance personal liberty and protecting public health. Altogether, the lockdown had been a matter of political judgement for the Government, which is accountable to Parliament, and not suited to determination by the courts.⁶³

IX. Devolved Government and Virus Governance

We now turn to consider the impact of virus governance within the UK's developing territorial constitution, the constitutional and governing arrangements

⁶⁰ Institute for Government, *Select Committees Under Scrutiny: The Impact of Parliamentary Committee Inquiries on Government* (London, IfG, 2015).

⁶¹ A Kelso, 'Parliament on its Knees: MPs' Expenses and the Crisis of Transparency at Westminster' (2009) 80 *Political Quarterly* 32; House of Commons Reform Committee, *Rebuilding the House* HC 1117 (2009–10); M Russell, 'Never Allow a Crisis Go To Waste': The Wright Committee Reforms to Strengthen the House of Commons' (2011) 64 *Parliamentary Affairs* 612.

⁶² House of Commons Health and Social Care Committee and Science and Technology Committee, *Coronavirus: Lessons Learnt: Oral Evidence session* (10 November 2020); 'NHS test and trace: Dido Harding says scheme failed to predict demand' *The Guardian* (10 November 2020).

⁶³ *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605, [90].

concerning how political and administrative power is distributed and exercised throughout the UK. As a unitary state, the UK's governing tradition is one of centralisation and the concentration of power within the central state as reflected in constitutional doctrines such as the sovereignty of the Westminster Parliament. But there is something of a mismatch. The unitary tradition is distinctly English in origin and it has long assumed that the rest of UK would also be unitary in nature, but different approaches have existed and are needed in Scotland, Wales, and Northern Ireland.

In the late 1990s, the Labour Government had introduced devolution for the three smaller nations. This has produced a system of 'asymmetrical quasi-federalism': there are devolved governments and legislatures in Scotland, Wales, and Northern Ireland, but not in England.⁶⁴ Each scheme of devolution has expanded in response to political pressures. The overall general trend has been toward the greater devolution of power from the UK Government and the process is now *de facto* irreversible.

But this set up has become increasingly unstable especially given growing support for Scottish independence. Even pre-Brexit, the 'pervasive sense of territorial constitutional crisis, let alone of constitutional unsettlement' was evident.⁶⁵ Having narrowly lost the 'once in a generation' 2014 Scottish independence referendum ('indyref'), the fervently pro-independence Scottish Nationalist Party Government has persistently highlighted the material change of circumstances of the 2016 Brexit referendum (Scotland voted remain) as the basis for 'indyref2', a proposal consistently rejected by the Conservative Government.⁶⁶

Brexit has then increased the challenge of trying to hold together the UK's four nations. The repatriation of powers previously exercised at the EU level – not to the devolved governments – but to the UK Government has been seen as an unjustifiable power-grab by the Scottish and Welsh governments. In this context, Johnson's unguarded comment that devolution had been 'a disaster north of the border' (ie, in Scotland) only poured fuel on the bonfire.⁶⁷ Even a moderate pro-devolution pro-unionist might well see the biggest threat to the union as not being the Scottish independence movement, but Boris Johnson's behaviour as Prime Minister. The outlook for the future of the union between Scotland and the rest of the UK is now the bleakest it has been for centuries.

In previous crisis governance episodes, there had been no scope at all for devolved governments outside of London to act; both 9/11 and the financial crisis 2007–08 had concerned matters – terrorism and banking – within the reserved competence of the UK Government. The virus was different. Many of

⁶⁴ R Rawlings, 'A Coalition Government in Westminster' in Jowell, Oliver and O'Cinneide (n 44) 194.

⁶⁵ R Rawlings, 'Riders on the Storm: Wales, the Union, and Territorial Constitutional Crisis' (2015) 42 *Journal of Law and Society* 471.

⁶⁶ 'Indyref2: Scottish Secretary rejects new vote "for a generation"' *BBC News* (6 November 2020).

⁶⁷ 'Devolution "a disaster north of the border", says Boris Johnson' *The Guardian* (17 November 2020); 'Welsh government calls PM's devolution remarks "shocking"' *The Guardian* 17 November 2020.

the affected policy areas – health, education, social care – are devolved matters. Indeed, the virus has arguably marked the coming of age of devolution through noticeably different approaches between the UK and devolved governments.⁶⁸ The Scottish and Welsh publics have had greater confidence in their own First Ministers than the UK Prime Minister. The Scottish Government took its own approach to virus restrictions and lockdowns. For centuries, England and Wales have been homogeneous, but with the virus, Wales went into lockdown separately from England and prevented English residents from crossing the porous border to Wales to prevent transmission.

As regards Northern Ireland, devolved government had been finally restored in January 2020 having collapsed in 2017. Northern Ireland was the first of the four UK administrations to roll out a contact tracing programme and app. The Northern Ireland executive had itself introduced many regulations and restrictions, but only toward the end of 2020 did the Northern Ireland Assembly start to debate them. Such scrutiny was undertaken without the supporting documents that had informed the Minister's recommendations and the Northern Ireland executive's decisions on whether to agree the regulations. Further, scrutiny was undertaken sometime after the regulations had come into effect, and, in some instances, after they had already been superseded.⁶⁹

While devolution allowed for a diversity of responses, effective virus governance also required coordination by the four governments, a feature often notably absent. The Welsh and Scottish First Ministers complained about a distinct lack of engagement from the Prime Minister and highlighted the 'vacancy' at the heart of the UK Government.⁷⁰ The Welsh Government only learnt of the second English lockdown from newspaper leaks.⁷¹ There was also a lack of clarity from the UK Government about the availability of furlough support in the context of different lockdowns within the four nations. Through the furlough scheme, the UK Government provided 80 per cent of a worker's wages, up to a maximum of £2,500 a month. When the second lockdown in England was introduced, furlough support was initially available to the devolved nations only for the duration of an English lockdown – not for the period of any lockdown they might unilaterally impose on a different timescale.⁷² The Scottish, Welsh, and Northern Ireland Governments argued this was unfair resulting in potentially different treatment as regards different lockdowns in their nations. UK ministers clarified that furlough support would be available to Scotland, Wales, and Northern Ireland if they went into a future lockdown separately from England.⁷³ The hesitancy stemmed from

⁶⁸ G Campbell, 'Covid: How the coronavirus pandemic is redefining Scottish politics' *BBC News* (22 September 2020).

⁶⁹ *Hansard*, Northern Ireland Assembly (No 5) Vol 132, 15 (9 November 2020).

⁷⁰ 'Welsh and Scottish leaders: Johnson hasn't talked to us for months' *The Guardian* (18 September 2020).

⁷¹ 'Police may be asked to stop England residents escaping to Wales to avoid lockdown' *The Guardian* (2 November 2020).

⁷² 'Welsh and Scottish leaders hit out at "unfair" furlough extension' *The Guardian* (1 November 2020).

⁷³ P Sim, 'Covid in Scotland: What's the furlough scheme row all about?' *BBC News* (3 November 2020).

governmental fiscal caution – otherwise known as HM Treasury – about giving away control over public spending in such uncertain circumstances.⁷⁴

These two episodes played directly into long-standing concerns from the devolved nations about the lack of collaboration from the UK Government and the perception that they are not treated as equals, but only as an after-thought after important policy decisions had already been taken. Over 20 years after the introduction of devolution – and even taking account of the virus – the basic centralising thought processes of UK government had still not fully adjusted to the reality of UK quasi-federalist governance. There is still no ‘UK Council of Ministers for the Nations and Regions’ to coordinate UK and devolved governance.

Overall, divergent responses to the virus enabled each part of the UK to respond to its local circumstances while effective UK-wide co-ordination and intergovernmental discussion was lacking.⁷⁵ There was a joint statement issued by the four government on the virus.⁷⁶ However, the lack of regular communication between the four governments is likely to have contributed to the degree of mistrust between the Scottish and UK Governments and to have weakened the ability to ensure a coordinated and evidence-based response to the virus.⁷⁷ As the House of Commons Scottish Affairs Committee put it, ‘The Covid-19 pandemic has laid bare the weaknesses built into the UK systems of governance. ... The four-nations approach that was in place at the beginning of the pandemic needs to be resurrected with regular meetings set up between all four UK nations.’⁷⁸

X. England: The Non-devolved Nation

The UK’s largest nation – and 85 per cent of its population – does not have its own devolution scheme. In constitutional terms, England barely even exists. It is more ‘a state of mind’ than a ‘consciously organised political institution.’⁷⁹ England has no distinctive governing institutions of its own; it only acquires them by default when the three other countries opt out of UK policies.⁸⁰ The question of English devolution has arisen only because devolution has happened elsewhere first.

⁷⁴ By instinct and long-established custom, HM Treasury, the UK government’s finance and economics department, is a power-hoarding department and, by a long way, the most powerful government department.

⁷⁵ J Sargeant, *Co-ordination and Divergence: Devolution and Coronavirus* (IfG, 2020).

⁷⁶ *A Joint Statement on Coronavirus (COVID-19) from the UK Government, the Northern Ireland Executive, the Scottish Government, and the Welsh Government* (25 September 2020), www.gov.uk/government/publications/joint-statement-on-covid-19/joint-statement-on-coronavirus-covid-19.

⁷⁷ House of Commons Scottish Affairs Committee, *Coronavirus and Scotland* HC 895 (2019–21).

⁷⁸ *ibid.*, [66]–[67].

⁷⁹ R Rose, *Understanding the United Kingdom* (Longman, 1982) 29.

⁸⁰ *ibid.*, 31. For instance, the Department for Education and the Department of Health and Social Care are, in formal terms, UK government departments, but in substance English government departments because these functions are devolved in Wales, Scotland, and Northern Ireland.

Establishing an English executive and legislature separate from those of the UK has long been rejected because of the high degree of overlap and the likely ruinous consequences of institutional conflict.⁸¹ At the same time, the over-centralised model of the UK state has often been highlighted as a distinct source of policy blunders as the London-centric central government has often imposed a 'one-size fits all' approach when diversity and regional nuance have been required. The hoarding of power and money at the centre has often worked to the detriment of English regions, especially those with 'left behind' populations. Indeed, over-centralisation is arguably 'the root cause of regional inequality' in England.⁸²

Given England's size, a more regional form of government has been the preferred model. This has been developing ad hoc and piecemeal through 'combined local authorities' led by elected mayors.⁸³ A combined authority is a group of two or more local authorities that collaborate and take collective decisions on matters that affect the whole area. A number of devolution deals have been agreed with central government on a case-by-case basis.⁸⁴ To state the obvious: there is no coherent overall scheme of English regional governance. Repeated calls for devolving more powers to the English regions and accelerating the role of combined authorities have been made, but central government has typically been unwilling to devolve more power and money.⁸⁵ Current English governance arrangements remain opaque and deeply confusing thereby illustrating a distinct lack of constitutional vision.

What then of virus governance within England? English councils and city regional mayors were not part of the initial response to the virus. Central government ministers and advisers simply assumed that they could deliver effective responses from London, an assumption that has often been undermined by practical reality. The Government established a centralised test and trace system through the NHS that relied significantly on outsourcing to private contractors, such as Serco. This system was heavily criticised for their poor performance in delivering an effective test and trace system.⁸⁶

The alternative would have been to work with local councils and combined authorities to institute a regionally and locally-based system in which front-line providers had much better knowledge of local conditions. Throughout the virus, it had been argued that decentralised capacity, combined with a constructive

⁸¹ R Hazell, *The English Question* (Manchester University Press, 2006); J Mitchell, *Devolution in the UK* (Manchester University Press, 2009) chs 5 and 9.

⁸² Dr Arianna Giovannini of De Montfort University quoted in 'Covid-19: Will the pandemic shift the power balance in England for good?' *BBC News* (6 November 2020).

⁸³ Cities and Local Government Devolution Act 2016.

⁸⁴ See Local Government Association, www.local.gov.uk/topics/devolution.

⁸⁵ M Heseltine, *Empowering English Cities* (2019); L Raikes and A Giovannini, *The Devolution Parliament* 20 November 2019, www.ippr.org/public/index.php/blog/the-devolution-parliament; UK2070 Commission, *Make No Little Plans: Acting at Scale for a Fairer and Stronger Future* (2020), uk2070.org.uk/wp-content/uploads/2020/02/UK2070-FINAL-REPORT.pdf.

⁸⁶ 'Serco profits surge thanks to Covid-19 test-and-trace contract' *The Guardian* (16 October 2020).

relationship at different levels of governance, was a more effective strategy to deal with the crisis than the habitual 'one size fits all' approach of central government.⁸⁷ The Labour party repeatedly called on the Government to allow local public health experts to run test and trace operations, rather than an outsourcing company. Critics questioned why central government was not involving England's 130 local directors of public health to enhance the trace and test system.⁸⁸ Local councils were given powers to restrict access to, or close, individual premises, prohibit certain events, and restrict access to, or close, public outdoor places (or types of outdoor public places), but were otherwise largely kept out of the loop.⁸⁹ Instead, the Government persisted with its poorly performing centralised test and trace system and private contractors.

XI. 'Northern Republic Now!'⁹⁰

After the lifting of the first lockdown, the Government had introduced a tiered system of local restrictions of increasing severity to respond to local outbreaks and increased transmission rates. With the weakened economy and furloughed employees needing support, a key issue was the amount of financial support when 'tier 3' restrictions were re-imposed ('tier 3' was then the strictest level of restrictions in England akin to a lockdown).

By October 2020, virus cases had increased significantly in northern England, an area already hit hard by a decade of austerity.⁹¹ The Government wanted to impose 'tier 3' local restrictions in Manchester, a city region of 2.8 million people. However, the Mayor of the Greater Manchester Combined Authority, Andy Burnham, a former Labour government minister, had strongly resisted this – not on public health grounds – but because of the inadequacy of the Government's economic support package. The Government's 'generous' offer was furlough support of 67 per cent of people's earnings as opposed to the 80 per cent provided during the first national lockdown. Burnham rejected this: without more support for people and businesses, the tighter restrictions would increase levels of poverty, homelessness, and hardship amongst the region's population. This led to a stand-off between Burnham and the UK Government ending in a spectacular and

⁸⁷ J Gaskell and J Stoker, 'Centralised or multi-level: which governance systems are having a "good" pandemic?' *LSE Politics and Policy Blog* (16 April 2020); 'Steven Pleasant: Covid-19 response "better if done through localities"' *Local Government Chronicle* (28 April 2020).

⁸⁸ 'Covid-19 unmasks weaknesses of English public health agency' *Financial Times* (22 July 2020).

⁸⁹ Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020.

⁹⁰ "Northern Republic Now" defiant banner appears on one of Manchester's busiest roads amid tier 3 row' *Manchester Evening News* (17 October 2020).

⁹¹ Northern Health Science Alliance, *COVID 19 and the Northern Powerhouse: Tackling inequalities for UK health and productivity* (2020), www.thenhsa.co.uk/app/uploads/2020/11/NP-COVID-REPORT-101120-.pdf; 'Austerity left north of England more vulnerable to Covid, report says' *The Guardian* (11 November 2020).

acrimonious public falling out. Burnham argued that the Government had been willing to spend billions on a test and trace system that did not work, but refused to spend much smaller sums to support people on low incomes.

Ultimately, Burnham was compelled by circumstance to backdown and accept the Government's 'take it or leave it' offer, although he received considerable local political support and was lauded by some as the 'King of the north'.⁹² Tellingly, Burnham received some support from Sir Graham Brady, a local senior Conservative MP.⁹³ The restrictions had been seen as a top-down imposition that would result in the north of England being levelled-down rather than up. Two weeks later the Government introduced the second national lockdown with the 80 per cent furlough support, highlighting its lack of foresight and prompting claims that this confirmed the long-held governmental preference for London and the south east over the north.⁹⁴

In previous instances of central-local tensions, complaints made by local leaders have failed to gain any traction with the national media. Local councils are too provincial; ambitious politicians have long seen getting into Westminster and national politics as the only game in town. But the Manchester stand-off illustrated a growing confidence in the city region as a site of place-based governance and an implicit rejection of the UK central state.

What happens now remains to be seen. There are strong centralising tendencies in UK governance, especially when government is in crisis mode. But the virus had further revealed deep-seated structural weaknesses: the London-centric mindset of central government; the top-down imposition of policy without prior consultation of regional political leaders; the lack of structural representation at the UK level of the devolved governments and English regions. There is a strong perception of people's decreasing affective attachment to a remote UK central state and increasing regional commitment. The longer these issues remain unresolved, then the more pressure for change will accumulate.

XII. Conclusions

The virus has posed enormous challenges across the world in all aspects of life – personal, social, economic, political, and constitutional. All countries have experienced the strain of the enormity of these challenges and have struggled to deal with them, although some authoritarian states have used the virus as an

⁹²The use of *Games of Thrones* imagery in British politics has become more common. For another example, see 'Dominic Raab would not take the knee for Black Lives Matter as he thinks it's from Game of Thrones' *Metro* (18 June 2020).

⁹³'Manchester lockdown: Fury as Boris Johnson provides just £22m support as city faces punishing winter' *The Independent* (22 October 2020); 'Chaos and fury as Boris Johnson forces curbs on Greater Manchester' *The Guardian* (22 October 2020).

⁹⁴'Greater Manchester businesses "treated with disrespect", say owners' *BBC News* (3 November 2020).

opportunity to further extend governmental control over their own people and weaken democratic liberties. Any initial sense that the virus was only a temporary blip has now passed and it is impossible to know what the longer-term consequences may be. The political uncertainty will almost certainly likely to have constitutional repercussions. And this is against the backdrop of wider political and constitutional instability as evidenced by the development of ‘illiberal democracies’ in central and eastern Europe and Trump’s attempted constitutional coup in Washington on 6 January 2021.

As regards the UK, the virus has highlighted and magnified long-standing structural weaknesses in the UK’s constitution. It now seems that that fundamental constitutional reform is needed more than ever. In early 2021, the former Labour Prime Minister, Gordon Brown (2007–10), warned that the UK is at risk of becoming a failed state – only a radical constitutional revolution can stop the UK from unravelling due to nationalism and the alienation felt by people in poorer ‘left behind’ regions.⁹⁵ For things to stay the same, everything must now change. A number of constitutional reforms now need to be developed and adopted: a constitutional convention; a federal UK; regional citizen assemblies; less centralisation; devolving more power to the regions; and reforming Parliament and turning the House of Lords into a regionally representative chamber or senate; and a codified constitution. This is a very wide-ranging project. In the meantime, the virus will continue to affect life for some time – the financial consequences in terms of increased borrowing and future tax rises will have wide-ranging repercussions. Nonetheless, the task of restructuring the UK’s constitution is now long overdue.

⁹⁵ “Constitutional revolution” needed to rescue the union, warns Gordon Brown’ *The Guardian* (18 January 2020); G Brown, ‘How to save the United Kingdom’ *New Statesman* (18 November 2020); ‘UK at risk of becoming failed state, says Gordon Brown’ *The Guardian* (25 January 2021).