The representative legislature is a British-American innovation from the 17th and 18th centuries that proved a mighty engine of nationhood in our lands and beyond. It has become so thoroughly associated with legitimate government that even dictatorships such as China and Russia operate faux legislatures.

But modern times have been unkind to this great inheritance. Legislatures are being undermined by instant communications, missionary bureaucracies, politicized courts, the ideology of expertise, and the progressivist quest for a democracy of personal rights and group identities.

The legislature was fashioned in and for a world where transportation and communications were costly and burdensome. Governing required trekking to the national capital from near and far, where ambitious politicians learned of developments elsewhere in the realm, took the measure of far-flung allies and adversaries, strutted their stuff, conspired and dickered and socialized, and formed parties and coalitions. This intense personal intercourse was integral to representative lawmaking, where law is born of negotiation and compromise among the disparate, often conflicting interests and values of a nation’s citizens, regions, and associations.

But today’s representatives, thanks to our protean communications technologies, do most of their politicking remotely and continuously. The results have been fissiparous. In the virtual affinity network, deliberation is limited to one’s immediate legislative co-conspirators. Many legislative sessions, from policy committees to the whole assembly, have become scripted dramas for public consumption. Fraternizing with the enemy is not the political emollient it used to be.

Social media encourages performative politics, where members seek to be individuals with strong public profiles rather than participants in an opaque collective process. A few years ago, I attended a caucus of Republican senators to discuss tariff legislation. Each place was set with a bullet-point paper, which I assumed was competing legislative drafts and their pros and cons and sponsors. Instead, it was a ranking of Most Liked Republican Tweets of the Week; on the reverse was Most Obnoxious and Brazenly Dishonest Democrat Tweets of the Week (that’s a paraphrase).
At the same time, much contemporary policymaking has been absorbed by executive agencies and courts. The American executive state is an extreme case. In recent years, U.S. presidents have unilaterally issued momentous, highly controversial policies on immigration, energy, the environment, gun control, health care, racial preferences, sexual relations, and student loans. Virtually all of them would have required enactment by Congress in times past and would require enactment by Parliament in the UK today. And avoiding Congress is the whole point: Every presidential ukase was issued either in response to congressional inaction or opposition, or to excuse legislators of the president’s party from having to cast a difficult vote.

Here is an example of how this works. As a candidate for president, Joe Biden proposed that those who had taken out federal loans to pay for college should have a sizeable share of their loans forgiven. But that would take legislation, and the proposal had meagre support in Congress from either party. Then, last August, with mid-term elections looming, President Biden issued a debt-forgiveness program all on his own. It cost $430 billion—one of the largest single government expenditures in American history. The Supreme Court may strike it down, but the administration has contingency plans and it’s easy to find ways to not collect money. The action was cheered by progressives but has been deeply divisive. Those who decided to start a business rather than go to college, and borrowed money to buy a truck, have been made suckers, which is one reason Congress never would have done this. Law unhinged from representation is an important source of our angry polarization.

Bureaucratic law is not unknown in the UK. Agencies issue “devolved legislation.” Hundreds of independent quangos exercise public power. Backbench Conservatives call for greater parliamentary accountability, as in the recent report of the Regulatory Reform Group. Even cabinet ministers rail against practices of their own government. In Whitehall as everywhere, administration can outmaneuver legislative process and words on paper.

But it makes a big difference that the British prime minister and cabinet are part of and answerable to a representative legislature. They are obliged to contend with real, intense social conflicts that exist within their own governing party and in the Commons as a whole. The American president and cabinet, being detached from Congress, can stage their own politics, pretending those conflicts do not exist or are politically illegitimate.

The British system seems to be outperforming the American system in our tumultuous times. In the UK, immigration policy and energy controls are matters of debate and decision in the halls of Parliament; in the U.S., they are enacted by cunning bureaucracies that misrepresent what they are doing and outfox congressional oversight. Even devolved ministry policies appear to be more representative of public sentiments, at least on front-burner issues. The UK Department of Education is about to issue rules that generally ban schoolboys who feel they are girls from
competing in girls’ sports and using girls’ bathrooms and showers. The U.S. Department of Education has proposed rules to make trans-sports the norm—banning state and school bans such as the UK’s, and requiring case-by-case exemption procedures to protect girls’ competition in specific sports. If the U.S. rules were a legislative proposal, it would be dead on arrival.

I am not saying that legislatures always or usually get things right. Parliament’s green energy policies are almost as pernicious as those of U.S. regulators. British society, like American society, is suffering from deep troubles that government is doing little to address. Legislative majorities are often sentimental and rarely tough-minded, and can be swept along with passing fears and fancies.

But the alternatives are the executive and the judiciary operating outside their constitutional bounds. Investing them with political power is a project of political elites—those who are highly educated, verbally adept, sophisticated, and well-connected. They tend to favor “rationalism in politics” over the pragmatic compromises and downhome populism of the legislature. Most are progressives, but the demographic also includes conservative intellectuals and some politicians.

I share the view of William F. Buckley Jr., set forth a half-century ago, that it is better to be governed by the first 2,000 people in the Boston telephone directory than by the faculty of Harvard University. Since then, the Harvards (and Oxfords) have acquired substantial power in the “deep state,” including private institutions of science and culture, commerce and media. National conservatives are brilliantly at the barricades against that hegemony. At the same time, we should be intent on returning political power to the phone book. That means reviving and improving the institution that represents everybody, including those who do not read our essays.

Executive policy-making has an ideological basis—that of “expertise,” which holds that modern life demands government by expert administrators in place of amateur legislators. Expertise is an ideology because it insists axiomatically that many contemporary problems have technical answers—"settled science” where there is little or no legitimate disagreement. The Covid pandemic dealt a serious blow to this ideology. It became clear to anyone paying attention that there were profound disagreements among experts over how to assess and respond to the pandemic, that effective responses depended on many unscientific questions of social behavior and political values, and that the public-health authorities often suppressed valuable health information and stood in the way of effective tests, treatments, and vaccines.

We can’t blame everything on experts and bureaucrats, because the House of Commons voted several times for perverse lockdown and school-closure policies similar to those declared by executives and public-health authorities in the United States and almost everywhere else. The votes were not party line and twice attracted large bipartisan majorities, with Labour saving the
third vote when Tory defections reached 99. But Parliament was dealing with the insidious panic-mongering of the likes of the UK’s Neil Ferguson, Professor of Mathematical Biology, and Matthew Hancock, Secretary of State for Health and Social Care. Experts abroad such as Sweden’s Anders Tagnell and politicians such as Florida’s Ron DeSantis performed brilliantly in the same emergency.

What we need now are authoritative histories of the science, politics, and results of the pandemic’s management, aimed not at settling scores but preparing to do better next time. Global warming and monetary policy, similarly infected by haughty expertise, could use similar treatments. Good government integrates the specialized knowledge of experts and the generalized knowledge of politicians; that is better done by representative deliberation than by missionary bureaucracies.

The ideology of judicial policy-making is that of personal-rights proliferation and group-identity protectionism. Independent courts are of course essential to vindicating individual and associational rights. But we are now dealing with a competing conception of democracy itself.

Consider Israel, where the Supreme Court and Attorney General are effectively self-perpetuating and hold decisive powers over the elected government. The current government would like to give elected representatives a leading role in judicial selection, and the Knesset and executive agencies independence from judicial control. The rallying cry of opponents is that these proposals are “anti-democratic.” That seems absurd, or deliberate misdirection, but it is, I believe, sincere. To the opponents, democracy means that individuals possess numerous highly defined rights, established by courts and enforced and paid for by a compliant executive. Legislators just get in the way. This is a democracy of all against all, each armed with a variety of legal swords and shields—but it is illusory, because it depends on public goods and defense against foreign aggression which only representative government can supply.

Israel is an extreme case of tendencies that also exist in the UK and U.S. The European Court of Human Rights, operating through the British Human Rights Act, employs elastic notions of privacy and autonomy to poach on Parliament on issues central to national democracy, including immigration. In the United States, progressives are casting the Supreme Court as democratically illegitimate—precisely because it has been returning controversial issues such as abortion from judicial dispensation to representative legislation.

These debates would profit from a forthright acknowledgement of the necessity of both rights and representation and the creative tension between them. National conservatives are well suited to lead these debates. Conservatives have been arguing among ourselves for centuries about natural rights and positive law, liberty and authority, autonomy and virtue, the universal and the
particular. We are now reshaping them in response to today’s challenges of social disintegration and national decline. Our latest intellectual start-up is “common-good conservatism.”

I love the term “common good”—a rebuke to morally agnostic liberal pluralism, an assertion that individuals have joint and several interests in living in a good community. It is an up-to-date version of “the public interest,” which neoconservatives deployed in the riotous 1960s. Common-good exponents argue powerfully that public officials should be guided by considerations of goodness and fairness that most all of us recognize as guides to personal conduct. They have advanced devastating critiques of U.S. Supreme Court decisions that prohibit the government from enforcing elementary standards of public decency and supporting national honor and patriotism.

But the common gooders, being smart intellectuals, are sanguine about the capacity of judges and executives to settle moral controversies through abstract reasoning. Harvard’s Adrian Vermeule, a leading light of the movement, supported President Biden’s national Covid vaccination order, despite its weak statutory grounding which led to its rejection by the Supreme Court. His reasoning was that “there is no constitutional right to refuse vaccination” and “safeguarding public health is a core duty of governance.” But that is hardly sufficient for a national mandate that would have been enormously complex and invasive, in circumstances where most people were getting vaccinated for free anyway and some had good reason to abstain. If mandatory Covid vaccination was so obviously in the common good, many nations would have seen this and taken the step. Virtually none did. Several American states promoted vaccination but forbade private and local mandates.

On a momentous question such as this, the place to determine the common good is a house of commons—a commune of the nation as a whole and as it is. That is where one and all come face to face with what their nation really looks like rather than what they imagine it to be. It is where representatives learn of the variations in circumstance and perspective that law must take into account if it is to be fair and good. It is where they are obliged to come to terms with those they regard as deplorables so that the citizens they represent may live in peace. If you are pro-life and notice that many colleagues are pro-choice, you may want to shift the opening conversation from the first trimester to the third trimester. It is said that the law should be a teacher, but the best teachers are avid listeners, too.

Do legislatures accurately represent the citizenry? Every one is the product of traditions and compromises in electoral design and legislative procedure that should be open to discussion and improvement. The size of the House of Commons has been continually adjusted over time; today its members represents about 98,000 constituents on average. The House of Representatives has not been expanded since 1913 when the U.S. population was less than one-third what it is today;
members now represents more than 760,000 constituents on average (but U.S. state legislative districts other than California’s are in the House of Commons range). The ancient design of the Commons chamber, with MPs facing each other up close from undivided pews, should never, ever be converted to an auditorium with individual desks. On election rules, I am a first-past-the-post man but don’t mind trying out alternatives, which I am confident will provide additional empirical support for my position.

But issues such as these are beyond the immediate problem, which is that the legislature is being displaced by unrepresentative, disuniting forms of lawmaking. The changes are being propelled by the same forces of modern technology, culture, and ideology that are undermining other communal institutions—the family, the church, the school, the business firm. Reviving the legislature—by laying many more public questions before it for resolution, and encouraging its members to stick to their collective knitting—would put it in a better position to help with the great task of reviving the others.

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