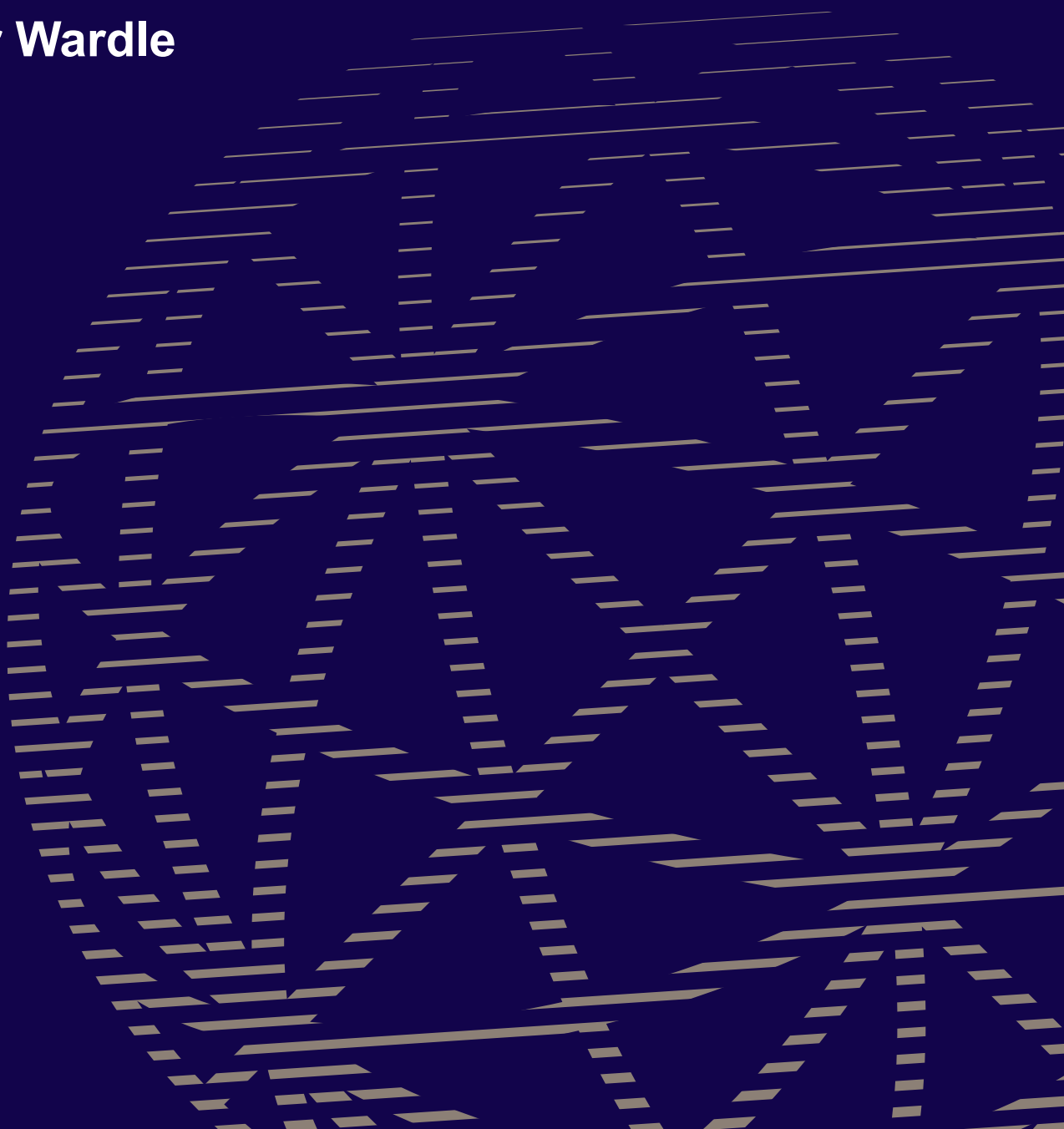
WESTMINSTER FOUNDATION FOR DEMOCRACY

THE WESTMINSTER FOUNDATION FOR DEMOCRACY AND THE UK'S ELECTIONS EXPERIENCE

Peter Wardle



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INTRODUCTION

1. The 1948 Universal Declaration of Human Rights[1] says:

   "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

2. Well-run elections - "genuine elections", in the words of the Universal Declaration - whose results are accepted by the people, are thus a key element in achieving the universal establishment of legitimate and effective, multi-party representative democracy.

3. The UK's vibrant modern democracy is widely acknowledged; people from many countries around the world want to know more about how it works and what lessons can be learned both from the successes, and the challenges, that the UK has experienced.

4. One aspect of that experience which is sometimes under-appreciated is the UK's long history of managing democratic elections.

5. Drawing on the author's experience as chief executive of the UK's Electoral Commission for over 10 years, this paper suggests some areas of the electoral landscape where the UK's experience is likely to be particularly valued and sought by those in other countries who are seeking to develop and improve their electoral processes.

OVERVIEW

6. Although the history of democracy in Britain is a long one, it is of course by no means perfect; the UK has lessons to share from our experience of getting things wrong, as well as getting them right. Until the Great Reform Act of 1832 the qualification to vote was limited and inconsistent across the country, and it took another 100 years before the franchise was universal. But during the 19th century, Britain took a series of steps that introduced many of the features now recognized as key to elections across the world - including a reliable electoral register, fairer constituency boundaries, the secret ballot, measures to combat bribery and the regulation of candidates' campaign spending.

7. Towards the end of the 20th century, the UK saw further significant changes. Instead of using just two electoral systems – First Past the Post and (at some Northern Ireland polls) the Single Transferable Vote – devolution has been accompanied by the introduction of a wide variety of voting systems. The UK now uses examples of many of the main voting systems recognized across the world, and is well-placed to discuss many of the pros and cons of the different approaches.

8. Partly in response to concerns about falling turnout[2], in the early years of this century the UK experimented with various alternative

[1] Art. 2.1.3

[2] From 1945 to 1997, turnout at UK general elections was never below 70%, but the 2001 election saw turnout fall to 59.4%, with a slow recovery since then to 66.1% in 2015. Other polls have seen extreme variations – from 84.6% in the 2014 referendum on Scottish independence to 15.1% in the first set of Police and Crime Commissioner elections. Turnout at parliamentary by-elections since 1997 has ranged from 18%-69%, averaging around 40%; turnout at stand-alone local government elections tends to be around 30%. Generally, the UK has not been immune to the turnout challenge facing many of the more established democracies.

methods of casting the vote – including forms of electronic voting. Although these experiments did not lead to widespread debate in this country, they attracted quite a lot of interest overseas, where questions about alternative voting methods continue to be discussed. The UK has continued to address turnout, however, and has developed a wealth of experience in relation to the challenges of voter education.

9. Perhaps the best-known newer aspect of our voting methods is the widespread use of postal voting[3] - and the need for better security around the postal voting process led to a recent major change in the UK's system of electoral registration, which included the introduction of online voter registration, which has made the UK one of the leading jurisdictions in this field.

10. Two other areas where the UK is recognized as one of the leading countries are its system of regulating political finance, which was significantly expanded in 2000; and its approach to the challenge of ensuring the independence and impartiality of its electoral commission, which is a common and recurring issue for many developing and transition countries.

11. Finally, there is great interest from other countries in how the UK has – so far – managed to keep the costs of campaigning in its elections relatively low by international standards. A key element of this is the system of free election broadcasts, but no commercial political advertising, on TV and radio, together with media coverage which generally acknowledges the range of parties, candidates and campaigners contesting a poll and offers them reasonable access to the airwaves to put across their arguments.

12. The rest of this report looks at some of these areas in more detail and offers recommendations for how WFD might look to incorporate the UK's experience and expertise in electoral processes in its wider work.

ELECTORAL SYSTEMS

13. In recent decades, the UK has used examples of the three main types of electoral system (plurality/majority; proportional representation; and mixed). Voters, political parties and election administrators in the UK have accumulated experience of how to express their wishes, how to campaign and how to explain and manage these different systems.

14. The choice of electoral system is often a key element in the emergence and development of democracies. **Appendix B** sets out the UK's electoral systems, and includes notes on the main advantages and disadvantages – in general, rather than UK-specific, terms - of these systems. For example:

- in societies with significant divisions along ethnic, religious or geographical lines, there is often serious interest in the merits of proportional representation systems because they can help to promote inclusiveness
- some systems are more likely than others to encourage the representation of women and minority groups
- some systems are more likely than others to encourage the growth of strong political parties
- different systems carry different levels of connection between representatives and the voters

[3] 20.5% of the votes counted at the 2015 General Election were postal ballots (6.2 million ballots). At the 2016 EU Referendum the figure was 21.7% (7.2 million ballots).

- some systems tend to promote 'whole-nation' and broader-based policy platforms, while others can favour the development and maintenance of 'party strongholds' and a less inclusive politics

15. There is no direct read-across from the UK to other jurisdictions. However, a deep understanding of how things operate in the UK coupled with awareness of the 'general' advantages and disadvantages of the systems and an understanding of the political and societal context in other countries, can make a real contribution to discussion and decision-taking in partner countries. Examples in recent decades of countries that have faced significant decisions about their electoral systems - which can be compared and contrasted with experience in the UK - include:

    - South Africa, whose decision to adopt a PR system in 1994 rather than to continue with First Past the Post led to a more inclusive and diverse legislature
    - Papua New Guinea, which has tried both the Alternative Vote (PR) system and First Past the Post
    - Kyrgyzstan, which has seen a series of quite major changes to its parliamentary election system and where the debate continues
    - Lesotho, where a debate continues now about the best form of electoral system

Recommendation

The UK's political, academic, and elections management expertise and experience can guide legislators and other stakeholders in countries where the electoral system is under debate, whether at the national or subnational level. It can serve as a blueprint on how to conduct a well-informed debate to reach conclusions based on good quality analysis.

POLITICAL FINANCE

16. Across the world, the question of money looms large in debates about how to ensure legitimate and effective democracy. Whatever electoral system is used, and however efficient the voting processes may be, if people believe that an election result can be or has been bought, then their commitment to the principles of electoral democracy is seriously undermined. An election skewed by money sows the seeds for ongoing corruption, poor governance and the strong possibility of future unrest. Many, including developing and transition countries and those seeking to help them on their journey, are therefore thinking about how best to deal with this issue. The issue of how to regulate money and spending at elections has become a topic of worldwide interest, and it is generally agreed that an effective regulation framework will include some combination of these elements:

    - limits on donations
    - limits on spending
    - transparency about donations and spending
    - effective supervision and investigation
    - sanctions for rule-breakers.

17. 130 years ago, concerns about the amounts being spent on election campaigns and the risk that the cost could deter good candidates from standing led to the UK introducing limits on how much a candidate could spend on their election campaign, together with a requirement to report what they had in fact spent. But it was in 2000, against a background of public concern that political parties' policies were subject to the influence of wealthy donors, and that there was almost no transparency about party funding, that the UK Parliament legislated for a whole new regime to govern political finance, including both ongoing party finance and campaign spending.

18. At the heart of the UK's political finance regime is transparency. Although the UK has so far decided against a limit on how much someone can donate to a party or candidate, all those involved at elections - parties, candidates and other campaigners - must declare who their money comes from. They must not accept donations from foreign sources. The UK has limits on how much parties, as well as candidates, can spend on election campaigns, and campaigners must provide detailed accounts of what they have spent at each election.

19. Many countries, including developed countries, have much less comprehensive rules governing campaign finance, or indeed no rules at all. The UK's regime is widely seen as one of the best attempts worldwide to introduce effective political finance controls, and there is a good deal of ongoing interest in the UK's framework of rules, the reasons why the UK chose the particular regime it has, and the ongoing debate in the UK about how the current framework has operated and how it might be improved in future. (For example, although the UK has consistently set its face against increasing public funding for political parties, there has been much thinking and discussion on this topic and UK expertise could well help to inform the debate on this issue in other countries.)

20. Equally importantly, the UK has much to offer in terms of how to make a political finance regime effective. A number of countries with impressive-looking legislation in this area have failed to implement it effectively. This is particularly noticeable among, for example, countries seeking to join the EU or other international bodies which look for evidence not just of new laws but of their effective enforcement. It is also an important dimension in many Eastern European countries where the question of effective regulation of political finance is increasingly regarded as inextricably linked with addressing concerns about corruption, the misuse of public resources and ineffective safeguards around the award of public contracts. Other countries may find it useful to study how political parties in the UK effectively adapted to the new political finance regime. For example, in the early days of the new rules, parties received some public funds to help them establish systems for compliance – the new regime represented a significant change for them, as it would for campaigners in other countries. Others may find it useful to see how the regulator, such as the Electoral Commission, learned to carry out its role, and how it identified and deployed the right resources and educating campaigners well in order to secure their understanding of and compliance with the rules. There is much interest from political finance regulators in other countries in these practical aspects of the UK's experience.

21. A particularly important lesson for the UK was that subjecting almost all breaches of the political finance rules to criminal sanctions had not been the right initial choice. It certainly underlined the seriousness with which Parliament wanted the new rules to be taken – but in practice it meant that, because of the high burden of proof and expensive legal procedures involved in bringing criminal cases, few rule-breakers in fact faced swift and effective sanctions. After some years, Parliament agreed with the Electoral Commission that a range of supplementary civil penalties should be introduced, allowing the Commission to impose fines and issue requirements to stop or change certain spending. Following the change, the Electoral Commission reported that compliance with the rules improved. The same analysis will not necessarily apply in other countries, with very different histories and, for example, a

much greater role for the state in the economy, which can lead to very real risks of political finance getting caught up in corruption and organised crime. But the UK's deep experience of analysing the issues and taking an evidence-led approach to developing effective policy and legislative responses can contribute a unique political-technical-economic perspective to the debate in other jurisdictions.

22. Another aspect that has proved of great interest to other countries is the UK Electoral Commission's development of an online facility for publishing the information that parties and campaigners are required to report (it also offers campaigners an online reporting route). The media, members of the public, researchers and others regularly use and quote from this database when discussing where parties get their funds from, and how they use them. The UK's online reporting system is admired internationally, and indeed has now been a model for some other countries' political finance regulators. The Indian Election Commission has 'exported' its voting machines to a number of other countries (Bhutan, Nepal and Namibia). Similarly, the UK Electoral Commission could offer its online reporting expertise to other countries. –

Recommendation

- Where the question of political finance emerges as part of the wider debate about good governance, anti-corruption, etc., the expertise of the UK Electoral Commission and political parties can help outline both the legislative and practical options for introducing or strengthening a system of political finance regulation. This may be of particular relevance in Eastern European countries, and especially where political finance is linked with wider issues of corruption and misuse of public resources.

REFERENDUMS

23. The use of referendums and plebiscites is of growing interest in many countries; Britain is no exception. Before the late 1990s referendums were rare in the UK. Since then, however, referendums have become more common. In the absence of a written constitution in the UK, the decision to hold a referendum has in each case been taken by the government of the day, subject to their ability to command support in Parliament – hindsight suggests that referendums have generally been held on what are perceived to be important 'constitutional' issues involving the scope of and limits on sovereignty.

24. In 1975, a UK-wide referendum was held to decide if the UK should remain a member of the then European Community. In 1979, referendums were held in Scotland and Wales on proposals for devolution - in both those cases a minimum threshold of support was set, but was not reached.

25. In 1997 there were further referendums in Scotland and Wales, which approved (narrowly in the case of Wales) new devolution proposals. In 1998 a referendum in London approved proposals for an elected mayor and assembly, and a Northern Ireland referendum supported the provisions of the Good Friday Agreement.

26. In 2000, Parliament enacted a set of rules for referendum campaigns and gave the UK's newly-established Electoral Commission the roles of providing the chief counting officer to manage national referendums, commenting on proposed referendum questions and designating the "lead campaigners" on each side of the referendum question. Subsequent UK referendums have been held under this framework:

- 2004: a referendum in the North-East of England rejected proposals for devolution
- 2011: a referendum in Wales approved proposals for the Welsh Assembly to have greater powers
- 2011: the first UK-wide referendum since 1975 rejected the option of replacing the "first past the post" system for electing MPs with the "alternative vote" system (the introduction of, and changes to, voting systems for other legislatures across the UK has, by contrast, not been subject to referendums but has been dealt with through legislation)
- 2014: a referendum in Scotland rejected proposals for Scotland to become an independent country
- 2016: a UK-wide referendum resulted in a vote for the UK to leave the European Union.

27. As a result, the UK now has considerable recent experience of questions around referendums and plebiscites, including:
    - whether and when a referendum is appropriate in a system of parliamentary democracy
    - the case for setting a minimum threshold of votes on major issues
    - how to frame a referendum question
    - how to ensure both sides of the argument have a proper voice during a referendum campaign
    - how to regulate campaign spending at a referendum
    - how to help voters understand what a referendum is and how to take part
    - how to resource and manage a single nationwide poll where all the votes are aggregated, rather than leading (as in most parliamentary elections) to the election of representatives in a series of sub-national polls.

28. Recent experience shows that the question of referendums and their role is by no means without controversy in the UK. There are no universally-accepted answers to questions such as when a referendum should or should not be used. But the fact that Britain has debated the issues at length, and has held referendums on some of the most significant issues of the day, means that Britain's parliamentarians, political parties and Electoral Commission are well-placed to help those in other countries address both the policy and practical issues that arise.

<u>Recommendation</u>

- UK politicians working in partnership with democracy support organisations could help stakeholders in developing democracies discuss the place of referendums or plebiscites in a parliamentary democracy, At the same time, UK election officials could provide guidance on the practical aspects involved in conducting a referendum. The very fact that the UK has recently held high-profile referendums has led to increased interest in various countries in their use – this is perhaps more noticeable in Commonwealth countries who share a similar Parliamentary and political system..

VOTER AND CIVIC EDUCATION

29. Particularly in developing and transition countries, there is widespread recognition of the need for voter and civic education – voters need to understand their rights and responsibilities, how to participate in the election process and how to cast valid ballots.

30. *Voter education,* or *voter information,* is understood as having a relatively limited focus on how to go about getting registered, and casting

a vote. It is common for election officials to carry out voter education, and often a country's electoral commission will have a duty to do so. In countries where there is no provision, or funding, for such activity there can be a serious detrimental effect on citizens' trust in the electoral system. In the UK, research suggests that voters look to an impartial, independent body such as the Electoral Commission to give them reliable information on the details of how to exercise their rights.

31. *Civic education,* on the other hand, is understood as aimed at increasing people's knowledge of principles and features associated with citizenship, government and the wider political system – this often includes the issue of encouraging citizens to take part in elections. In many countries, including the UK, the electoral commission is not keen to take responsibility for levels of turnout, citing research which indicates that voters' decision whether or not to turn up an vote depends primarily on factors such as interest in the election campaign, the attractiveness of the party platforms, and the perceived importance of the issues at stake at an election. Nevertheless, it is clearly wrong to try to draw an absolute line between the two concepts of voter and civic education. It is implicit in a message encouraging people to register to vote, for example, that they should go on to use their vote. Conversely, it is unfortunate if a campaign to enthuse citizens about their right to choose their government gives the wrong - or no - information about how to cast a valid ballot.

32. The UK's Electoral Commission was given a specific remit to promote public awareness of electoral and democratic systems, and has built up a great deal of experience in this area. It has focused at all times on those groups less likely to be registered, and to vote, including young people and those from certain minority ethnic groups. Although it has always run significant public awareness campaigns including TV, radio and print advertising, the focus of those campaigns has shifted over the years – initially tending to make the case for voting (civic education), but more recently (for the reasons mentioned above) focusing primarily on encouraging as many people as possible to register to vote, and on giving key information about upcoming polls and how to vote successfully (voter education).

33. Another common aspect through the years has been a recognition that there are limits to how effective a message from an official body like the Electoral Commission can be with citizens who are at some remove from the electoral process. The Commission has therefore regularly worked in partnership with others – including charities, faith groups, commercial organisations, the armed forces, and political parties - who are able and willing to deliver the Commission's key messages in their own style and to their own supporters and users. (An important example of this was in the campaign to explain the major change to voter registration that took place in 2014-15, when a wide variety of organisations were involved in passing on the message to voters that "your vote matters, don't lose it".) Recent years have seen a very significant increase in the use of social media in these campaigns.

34. Electoral commissions across the world face the question of how to ensure that their voter and civic education campaigns follow the principles of objectivity, impartiality and pluralism, and do not compromise the Commissions' reputation for neutrality, while remaining effective. Another question facing many countries is whether it is acceptable or advisable for a government to run voter and civic education campaigns, especially in the run-up to an election, because of the risk that they will be seen as encouraging voters to cast their ballots in the government's favour.

The UK has experience in these areas, as well as in the vital field of working with and advising those in the school system on how to pass on information to young voters while avoiding the risk of perceived political bias. This was a particular issue in the context of the Scottish Independence Referendum, when 16- and 17-year-olds were able to vote for the first time.

Recommendation

- In many developing and transition democracies, the local Electoral Commission struggles to fund, or to find the expertise, to develop effective civic and voter education campaigns. It is common for overseas aid agencies, like DfID and USAid, and international organisations likeIFES to offer additional funding for such activity, which is seen as relatively 'safe' because by definition such education must convey politically neutral messages. British organisations working on democracy support should consider partnership with FCO and DfID to offer joint assistance in countries while harnessing UK expertise, including from the UK Electoral Commission. Particular areas of UK expertise to highlight could include: researching and designing voter and civic education campaigns; how to ensure that campaigns do not undermine the neutrality of the electoral commission or other public bodies; and establishing and developing partnerships with other domestic organisations and institutions which ensure that voters will get reliable and timely information.

Photo credit: Flickr

VOTER REGISTRATION

35. An accurate, transparent and inclusive register of voters is fundamental to a successful democratic election – it allows eligible citizens to exercise their right to vote, and provides safeguards against attempts to manipulate the process, for example through multiple voting or personation. It fulfils various secondary functions such as providing a basis for calculating how many polling stations, staff, ballot boxes, or ballot papers will be needed to conduct the election. In some countries, candidates or parties must demonstrate a certain level of support among those listed on the voters' register to stand for election.

36. Building an accurate voters' register is, however, a significant challenge, and registration procedures need to be carefully designed and managed to guard against intentional or unintentional errors at every stage.

37. A country considering its voter registration procedures will want to address a range of questions. At the outset, there are important structural questions to be decided – for example, will the system be *active* (where the onus is on voters to ensure they are register, and the electoral authorities must mount intensive voter education campaigns to ensure that voters know what they must do) or *passive* (where the register is compiled using existing lists such as a population register, if one exists and is sufficiently reliable); and how will voters (and campaigners) be given the chance to check for and correct any errors on the register in good time before the election. Once the fundamentals of the approach are agreed, the electoral authorities must decide a range of operational questions on detailed procedures, such as how to deal with citizens who are nomadic or have no permanent address or how to include young people who will reach voting age just before election day, and must plan and implement what is usually a challenging logistical and practical operation.

38. The UK has had voters' lists since the first half of the 19th century, compiled under an *active* system because there is no register of citizens or population. Unusually by international standards, one element of that 19th century survived well into this century - until 2014, it was possible for one person living at an address to register – or exclude – everyone else at that address (although individual voters could also update their own details at any time during the year, by contacting the local registration officer). Not only was this approach out-of-date, but it also provided insufficient assurance about the identity of each individual voter, which carried with it a risk of electoral fraud, particularly as the use of postal voting became increasingly popular after 2000. That system of registration by *household* has now changed to a more modern and secure system of *individual* electoral registration – each citizen must confirm their own identity and eligibility to be on the voters' list.

39. As part of this historic change to individual voter registration, the UK introduced an online system for citizens to apply to be included on the voters' list. On the last day for registering before the UK's 2015 general election, almost 0.5 million people submitted online registration applications.

40. The Electoral Commission conducts extensive research into the quality of the UK's voters' lists. Its most recent estimates are that the voters' lists are around 86% complete – in other words, 14%, or 7.5 million, eligible voters are not

included on the voters' lists. Concerns about this number of people not currently on the voters' lists has led to some current discussion about the merits of introducing elements of a passive registration system in the UK – adding entries to the voters' list based on verified information about individuals from other official databases, to improve this situation.

41. The UK thus has recent and extensive experience of a major evaluation of its voter registration system, and of implementing a significant change to that system including the introduction of significant online services for the first time in the UK's electoral process.

Recommendation

- There is a good deal of experience and good practice around the world of how to build and maintain a robust voter register. But the UK's specific experience could be harnessed, particularly in countries in Africa where voter registration continues to be a major issue, in two key areas. First, UK's good practice in communicating with voters, especially through partnerships with wide sections of domestic civil society, could be very valuable, since in most countries voter registration is entirely a job for the authorities. Secondly, the UK has developed very efficient techniques for assessing the accuracy and completeness of voter registers. They are rarely 100% accurate or complete, but demonstrably high levels of reliability are vital to public and political confidence in the electoral process as a whole, and thus to the acceptance of election results.

ELECTIONS AND THE MEDIA

42. One of the best-known and most admired features of the UK's democracy is the approach of the media to reporting elections. For example, the UK's rules on broadcast coverage, and how they are implemented in practice, are of wide interest.

43. An effective democracy requires there to be equality of opportunity for those seeking election to present themselves, their policies and their arguments to the voters; and freedom for voters to reach an informed decision about who to elect, based on wide access to information about the campaigns.

44. The media in the UK generally takes seriously its responsibility to cover politicians' policies and opinions, and to provide an arena in which candidates can debate, and/or exercise the right of reply to statements or media reports that they consider to be inaccurate or offensive. The UK media also seeks to inform voters, through professional and accurate journalism, about the platforms and views of the different campaigners; the events of the electoral campaign; and the electoral process, including the vote count and election results. Newspapers, broadcasters and online sources offer voters a diverse range of views, and are free to criticize politicians for their platforms or their public record. The UK media enjoys editorial independence, and is generally regarded as able to resist pressure from government or private sources.

45. In many countries, the government of the day and the political parties or candidates have substantial power over some or all of the broadcast media, through ownership or other means of influence.

By contrast, in Britain, while the BBC and other broadcasting organisations are certainly subject to pressures exerted by the government and politicians generally, they have by and large succeeded in resisting those pressures and in maintaining their editorial independence and autonomy.

46. Another problem in many countries is a lack of press freedom or independence, and under-developed journalistic standards. The role of the UK's public broadcasters and of its media regulators is important in the context of election coverage – the deeply-embedded principle of balance in public broadcasting has had a strong influence even in print media, where although there is no requirement or expectation of neutrality, journalistic standards still tend to carry an awareness of the need for balance and, for example, allowing a right of reply.

47. An aspect of the UK system that attracts interest from other countries is how the various codes of practice – statutory and voluntary – govern how the media reports election campaigns, and put into practice concepts such as 'balance' and 'public interest'. For example, the broadcasting codes of practice for elections[4] include such provisions as:
- Due weight must be given to the coverage of major parties during the election period, and broadcasters must also consider giving appropriate coverage to other parties and to independent candidates with significant views and perspectives
- When a broadcaster airs a report or discussion about a particular constituency, it must offer the opportunity to take part to all candidates representing parties with significant previous electoral support, and also candidates for whom there is evidence of significant current support. This should include independent candidates, not just those representing political parties
- After the lists of candidates have been published, any report or discussion about a constituency must include a list of all the candidates standing for election in that constituency

48. At an operational level, there is interest in other countries in the techniques used by broadcasters in the UK to ensure they have upheld the requirements on impartiality, for example by:
- Keeping records of coverage, recording when each political party is mentioned
- Checking their plans for each day's coverage to ensure that there is an overall balance between parties
- Having careful procedures in place to ensure that they are not subject to pressure from one party or another. Parties will inevitably complain that they are not receiving their 'correct' amount of coverage, and broadcasters need to be able to demonstrate that they are following the requirements of their codes.

49. Perhaps the area of greatest interest about the UK approach is the long-standing ban on political advertising on television or radio (political advertisements are permitted in print media, and online). A 2004 review[5] of this position summarized the arguments as follows:

"The experience in the United States of hugely expensive and often simplistic and negative advertising would most likely work against the aim of a well-informed electorate, fairly informed of the range of policies being offered

[4] For example: OfCom http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/legacy/broadcast-code-september-2010/elections/
BBC http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2015_Election_Guidelines.pdf
[5] Department for Culture, Media & Sport, *Party political broadcasting: public consultation,* July 2004.

by the various parties standing for election. The Communications Act 2003 re-enacts the existing ban on paid political advertising – where political parties are prohibited from 'buying' advertising space from broadcasters. The ban has widespread and continuing support, and provides protection against the political process being skewed by those who are best able to fund advertising."

50. The ban has been considered from time to time in the context of human rights legislationon the grounds that it limits the right to free expression. In 2013 the European Court of Human Rights held, on a close majority (9 to 8) that the ban on political advertising did not amount to a disproportionate interference with the right to freedom of expression[6].
51. As a form of compensation for the ban on advertising, political parties have since the 1920s been provided with a certain number of free television and radio short (no more than 5 minutes) broadcast slots in which to broadcast their messages to voters in advance of both national and local elections. The number of slots per party is calculated according to the level of their previous electoral success, but also relates to the number of candidates it is standing at the current election; and the allocation also takes account of parties' representation in the constituent parts of the United Kingdom. This means that all the major political parties, and not just the richest ones, have an opportunity to state their views. The maximum number of broadcasts available to one party is usually five. Typically, the governing party and main opposition party are allocated the same number of election broadcasts. As well as the BBC, 4 other major television stations and 4 other radio stations are required to show these broadcasts and the main digital television channel (Sky) also shows them voluntarily.
52. The content of election broadcasts is primarily the responsibility of the parties, but both the parties and the broadcasters must ensure that they do not break the general law – for example, prohibitions on libel, contempt of court, obscenity, incitement to racial or religious hatred, or to violence. Parties are required to indemnify the broadcaster in respect of any legal action resulting from the content of an election broadcast.

<u>Recommendation</u>

- Despite the wide interest in the UK's system of free broadcast slots for political parties, most commentators would agree that it is the product of very particular historical and political developments, and is unlikely to be a candidate for exporting to other countries.

- However, journalists, media organisations, media regulators and politicians in other countries may find the UK's experience very useful. They may want to explore the particular issues involved in reporting elections – including the roles and limits of media regulation, the principles of independence and impartiality, the special role of state and national media, the importance of journalistic standards, and techniques for ensuring and demonstrating balance. Organisations working in democracy support could potentially partner with BBC Media Action (the BBC's international development charity) and OfCom.

[6] *Animal Defenders International v United Kingdom* (Application no 48876/08), *Times Law Report* 25 April 2013.

ELECTORAL COMMISSION

53. There is growing emphasis in international electoral thinking[7] on the importance of ensuring that elections are organised by an independent, impartial, permanent body that is fully transparent in its operations and decision-making and has the necessary resources to carry out its tasks. A recent example comes from the Commonwealth, which set out key characteristics of an election management body in a recent publication[8]:

- Constitutionally mandated to organise regular, fair, credible and inclusive elections
- Independent and impartial – which means not being under external direction or control, or subject to undue influence; including, and most crucially, on the part of the government, but also of financial (local or foreign) and other interests
- Ideally, permanent, to be present throughout the electoral cycle
- With effective influence over all aspects of the electoral process
- Competently and efficiently managed, composed of people who have the confidence of society; members must be protected by and subject only to the constitution and the law, removable only for cause, and not depending on their performance in the EMB for their future career advancement
- With its role and authority defined and protected in the constitution; its specific competencies, powers and functions enacted in legislation; and with one of its powers being a power to make policy

54. In establishing its Electoral Commission, the UK has developed a model which offers many lessons in this area to other countries.

55. Although the long-standing UK tradition that elections are organised by a senior local government officer (the acting returning officer) in each geographical area remains a key feature of the British approach, the Electoral Commission has a range of key roles which supplement these local structures:

- administering and enforcing the extensive regulations on party and campaign finance introduced in 2000
- managing the conduct of referendums, where instead of a series of local results, all votes are aggregated to give a nationwide result
- reporting on major elections, recommending improvements to the electoral system and reporting to Parliament its views on proposed changes to electoral law
- conducting and publishing extensive research into the UK electoral system including the experience of both voters and campaigners
- ensuring consistent standards of electoral administration across the UK, through providing guidance and training for local staff and assessing the performance of local returning officers against national standards
- taking the lead national role on voter education.

[7] For example, Venice Commission Code of Good Practice in Electoral Matters, 2002: "Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results."
[8] Election Management: A Compendium of Commonwealth Good Practice, http://www.keepeek.com/Digital-Asset-Management/oecd/commonwealth/governance/election-management_9781848599413-en#.WGt7JrGcb65

56. The Electoral Commission maintains offices in Edinburgh, Cardiff and Belfast as well as its UK office in London, recognising the importance and continuing evolution of the devolution settlement in the UK.

57. Given this range of responsibilities, the principles of independence, impartiality, permanence, transparency and resourcing apply to the UK Electoral Commission as they do to its counterparts around the world. To meet these principles, the UK Parliament, following the recommendations of the UK's Committee on Standards in Public Life that called for the Electoral Commission's establishment, produced a model that was new at the time in UK public administration.

58. Breaking with the tradition that public bodies – even those operating "at arm's length" – should be accountable to Parliament through a Government minister, Parliament instead made the Electoral Commission directly accountable to Parliament and independent of the Government and all political parties.

59. Budgetary independence from the Government is an important principle for an electoral commission. In the UK, the framework for setting the Electoral Commission's budget follows the mechanism for setting the budget for the UK's National Audit Office, which is a Parliamentary not a Government body.

60. Parliament established the "Speaker's Committee" - a committee chaired by the Speaker of the House of Commons, which includes some members of the Government but a majority of back-bench MPs. The Speaker's Committee examines the Electoral Commission's proposed budget and seeks the views, but not the approval, of the Treasury. Approval of the budget lies with the Speaker's Committee and, following the conventions observed in relation to the National Audit Office, there is no Government interference in the process. Parliament votes the funds for the Electoral Commission's budget via a Parliamentary Estimate that is separate from the Estimates which fund Government spending. The Commission's use of its funds is audited by the National Audit Office, which reports its findings to the Speaker's Committee.

61. Another main function of the Speaker's Committee is to oversee the process for putting forward candidates to serve as Electoral Commissioners. Initially there were 6 Electoral Commissioners, all of whom were required to be independent people who had not been involved in any substantial way in party politics for at least the previous 10 years. (The UK chose not to follow the route to "independence" favoured in some countries, notably the United States in its Federal Election Commission, where a Commission made up of equal numbers from each of the main parties is supposed to ensure neutrality but in fact has often led to inactivity.) Thus, the UK's initial choice was for a fully independent Electoral Commission, prioritising the importance of ensuring that those overseeing elections would not be perceived as too close to those they were regulating. While preferable to the entirely political model followed in the United States, where an uneasy party balance tends to act as a check on either innovation or intervention, and it is difficult to demonstrate that the Commission acts with the interests of voters (rather than political stakeholders) as its main priority, the entirely independent model initially adopted in the UK was not without its critics (see below).

62. The UK's Electoral Commissioners were appointed in line with the principles of fairness,

openness and appointment on merit, laid down by the UK's Commissioner for Public Appointments; but the leaders of the main political parties are asked to confirm that they are content with the appointments of Electoral Commissioners (no party leader has so far sought to object to an appointment). Electoral Commissioners serve for one or two terms of between three and five years, and enjoy significant security of tenure during those terms of office. (There is an argument in favour of a single, longer term of office which would remove any risk that a Commissioner might, in fulfilling his or her duties, be perceived to be concerned at any stage about their re-appointment).

63. In 2010, following a review of the Electoral Commission and amendments to legislation, 4 additional Electoral Commissioners were appointed to join the 6 independent members. The 4 additional Commissioners were selected from nominations put forward by the political parties – one from each of the three largest parties in the House of Commons, and one to represent other parties. The purpose of this change was to ensure that the Electoral Commissioners included people with what the Committee on Standards in Public Life[9] called "direct contemporary experience of politics and political parties". This was a response to criticism that the 'fully independent' model led to a Commission that failed to understand the realities of politics and political campaigning; and since the change, public criticism of the UK Commission on these grounds has been less evident.

64. The UK thus has experience of 2 models of electoral commission which are quite common internationally – one wholly independent, one a "hybrid" model of independent and politically-affiliated members. The choice of which model to adopt in other countries will depend to a large extent on the perceived priorities, although the 'hybrid' model carries a risk of the Commission being seen as too closely linked (at least in part) with the political elite. The UK's experience offers some pointers – for example, in the detailed composition of the Commission, with a majority of 'independent' Commissioners, and the Chair required to meet the criteria for 'independent' rather than 'political' Commissioners – for how to minimise this risk. Those involved with the two models are able to share with those in other countries important insights into ensuring the independence, impartiality and political awareness of an electoral commission in both scenarios.

Recommendation

- UK politicians, political parties and election managers to help analyse the role, remit and composition of a successful Electoral Commission, including how the UK model can help to ensure the Commission's independence from government and other interests, how the Commission's funding should be managed, and how Parliament can hold the Commission to account without risking the charge of party political interference in the Commission's work. Several countries would benefit from this advice, including in Africa where, for example, there has been recent or current controversy about the appointment and/or role of Electoral Commissioners in Ghana, Kenya and Gambia, and Eastern Europe,where there is concern thatthe Electoral Commission is too close to the government and therefore is not trusted to carry out its role impartially).

[9] Committee on Standards in Public Life, 11th Report, "Review of the Electoral Commission" https://www.gov.uk/government/publications/review-of-the-electoral-commission-eleventh-report-of-the-committee-on-standards-in-public-life

ELECTORAL COMMISSION: RESEARCH AND GUIDANCE

65. Over its lifetime, the UK Electoral Commission has conducted a programme of research[10] into various aspects of elections and elections management, including:

- public attitudes
- voter engagement including particular groups (women and men, young people, BME, disabled)
- e-voting
- costs of running elections
- issues in the administration of electoral legislation

66. The Electoral Commission also produces detailed guidance[11] on how to manage almost every aspect of elections and referendums.

67. The Commission's research and guidance is publicly available on its website, and is regularly referenced by some overseas counterparts, generally in more developed countries whose electoral commissions are well-resourced. For those in developing and transition countries it would be useful to offer "sign-posting" to help them find material that will help them in considering their own questions of policy and practice.

Recommendation

- Harness the resources available from the UK Electoral Commission to support practical aspects of help to other countries on electoral management.

OVERALL

68. The UK's long experience of managing all aspects of the electoral process is an important part of its democratic inheritance. As the Westminster Foundation for Democracy considers how to develop its capacity-building around the world, this paper has suggested a range of areas where the UK's institutions – Parliament, political parties, the media and the Electoral Commission – can help other countries to build their democracy.

Recommendation

- Democracy support organisations should focus on building ongoing relationships with election mangers in the UK, including current and former staff of the Electoral Commission and senior Returning Officers across the country, who can work alongside politicians and political party officers from the UK political parties. Their objective should be to use their experience of how the UK has dealt with the various issues set out in this paper, to explain the lessons the UK has learned, and help those in developing and transition democracies to consider how similar issues in their countries might be approached.

Peter Wardle
January 2017

[10] http://www.electoralcommission.org.uk/our-work/our-research
[11] http://www.electoralcommission.org.uk/i-am-a/electoral-administrator

APPENDIX A

SUMMARY OF RECOMMENDATIONS

Electoral Systems

- UK based organisations working in democracy support should seek to deploy to deploy a mix of political, academic and elections management expertise and experience in developing and transition countries where the question of the electoral system (whether national or sub-national) is under debate, to help legislators and other stakeholders conduct a well-informed debate and reach conclusions based on good-quality analysis. This may be of particular relevance in the countries of Africa and Eastern Europe

Political finance

- Where the question of political finance emerges as part of the wider debate about good governance, anti-corruption, and so on, the experience and expertise of the UK, its Electoral Commission and its political parties should be deployed to help outline both the legislative and practical options for introducing or strengthening a system of political finance regulation. This may be of particular relevance in Eastern European countries, and especially where the focus is intense because of a concern about how political finance is linked with wider issues of corruption and misuse of public resources.

Referendums

- UK politicians could help discuss in other countries the place of referendums or plebiscites in a parliamentary democracy, while UK election officials could help examine and explain the practical aspects involved in conducting a referendum. The very fact that the UK has recently held high-profile referendums has led to increased interest in various countries in their use – this is perhaps more noticeable in Commonwealth countries who share a similar Parliamentary and political system,.

Voter and civic education

- In many developing and transition democracies, the local Electoral Commission struggles to fund, or to find the expertise, to develop effective civic and voter education campaigns. It is common for overseas aid agencies (eg DfID, USAid) and international organisations (eg IFES) to offer additional funding for such activity, which is seen as relatively 'safe' because by definition such education must convey politically neutral messages. Similarly, UK based organisations should consider partnership with FCO and DfiD in particular to offer joint assistance in countries where they have built a strong reputation to harness the UK expertise, including from the UK Electoral Commission, as part of a package funded by FCO/DfiD. Particular areas of UK expertise to highlight include: researching and designing voter and civic education campaigns; how to ensure that campaigns do not undermine the neutrality of the electoral commission or other public bodies; and establishing and developing partnerships with other domestic organisations and institutions which ensure that voters will get reliable and timely information.

Voter registration

- There is a good deal of experience, and good practice, around the world of how to build and maintain a robust voter register. But the UK's specific experience could be harnessed, particularly in countries in Africa where voter

registration continues to be a major issue, in two key areas: good practice in communicating with voters, especially through partnerships with wide sections of domestic civil society (a contrast with many countries' historical approach, which has been that voter registration is entirely a job for the authorities); and techniques for assessing the accuracy and completeness of voter registers (they are rarely 100% accurate or complete, but demonstrably high levels of reliability are vital to public and political confidence in the electoral process as a whole, and thus to the acceptance of election results).

Elections and the media

- Despite the wide interest in the UK's particular system of free broadcast slots for political parties, most commentators would agree that it is the product of very particular historical and political developments, and is unlikely to be a candidate for exporting to other countries.

- However, journalists, media organisations, media regulators and politicians in other countries may find the UK's experience very useful. They may want to explore the particular issues involved in reporting elections – including the roles and limits of – including the role and limits of media regulation, principles of independence and impartiality, the special role of state and national media, the importance of journalistic standards, and techniques for ensuring and demonstrating balance. Organisations working in democracy support could potentially partner with BBC Media Action (the BBC's international development charity) and OfCom. Countries from Ukraine to Ghana are currently discussing these issues.

Electoral Commission

- UK organisations working in democracy support could offer the experience of UK politicians, political parties and election managers to help analyse the role, remit and composition of a successful Electoral Commission, including in particular how the UK model can help to ensure the Commission's independence from government and other interests, how the Commission's funding should be managed, and how Parliament can hold the Commission to account without risking the charge of party political interference in the Commission's work. A number of countries would benefit from this advice, including in Africa (where, for example, there has been recent or current controversy about the appointment and/or role of Electoral Commissioners in Ghana, Kenya and Gambia) and Eastern Europe (where, in countries from Ukraine to Kyrgyzstan, a typical concern is that the Electoral Commission is too close to the government and therefore is not trusted to carry out its role impartially).

Electoral Commission: research and guidance

- Harness the resources available from the UK Electoral Commission to support practical aspects of help to other countries on electoral management.

Overall

- Democracy support organisations should focus on building ongoing relationships with election mangers in the UK, including current and former staff of the Electoral Commission and senior Returning Officers across the country, who can work alongside politicians and political party officers from the UK political parties. Their objective should be to use their experience of how the UK has dealt with the various issues set out in this paper, to explain the lessons the UK has learned, and help those in developing and transition democracies to consider how similar issues in their countries might be approached.

APPENDIX B

UK ELECTORAL SYSTEMS

System	UK usage	How?	Advantages	Disadvantages
First past the post (Plurality)	**650 MPs 21,000 Councillors** (England & Wales)	*Voter has 1 vote, candidate with the most votes is elected. Single-member constituencies.*	Clear and simple choice for voters, and easy to understand results Voters choose people, not just parties - clear link between constituents and their representatives, who can be judged on their personal track record (sometimes seen as particularly important in developing countries) Commonly single-party ('strong') governments – and a clear opposition Favours broadly-based political parties (which can be important in severely-divided societies); and tends to disadvantage extremist parties Allows room for popular independent candidates to win (which can be important where political parties are relatively weak)	Limits voters' range of choices – excludes smaller parties, who often get a much smaller % of seats than of votes Does little to encourage 'fair' representation of minorities and women (because parties - often male- and majority-dominated - tend to field candidates with the broadest possible appeal to voters) Supports the existence of party 'strongholds' rather than whole-nation politics – and can be insensitive to changes in public opinion as a whole Voters who support minority parties feel their vote is (always) 'wasted' Particularly dependent on 'fair' electoral boundaries
Closed list proportional representation (PR)	**70 MEPs** (England, Scotland & Wales)	*Voter has 1 vote, seats allocated to parties based on a quota system, candidates are listed in priority order and get elected if their party gets enough seats. Multi-member constituencies.*	PR generally Legislature likely to be more representative of society, and to include more minority parties – important in divided societies Tends to translate votes cast into seats won more 'fairly' – with few 'wasted' votes Encourages the development of political parties (since they must come together to put forward candidate lists) – and encourages whole-nation campaigning rather than a focus on 'strongholds' List PR particularly Parties can be encouraged to put together balanced, diverse lists with broad appeal to voters' interests (list PR is often cited as the system most likely to advance the cause of women candidates)	PR generally Tends to produce coalition ('weak') governments with consequent delays in policy-making and decision-taking Can fragment the party system, with a proliferation of small parties (that can be based on personality or ethnicity, or on extremist views) – small parties may gain disproportionate influence Not easy for voters to enforce accountability, by throwing out their representatives (some parties are 'always' in the government) A more complex system for both voters and election administrators List PR particularly Weak link between those elected and their constituents – especially true of closed list PR – voters have no say in determining who the representative of their party will be Unwelcome concentration of power ('patronage') in the hands of party bosses (who control the lists) Depends on the existence of political parties – not easy in societies where parties are embryonic or loose

Single transferable vote (PR)	**3 MEPs** **108 MLAs** **582 Councillors** (Northern Ireland) **1,223 Councillors** (Scotland)	*Voter marks 1,2,3 etc to rank candidates in order of preference, candidates who gain a certain number of 1st preference votes are elected and then their 'surplus' votes are transferred to the voters' 2nd preference candidates, and so on. Multi-member constituencies.*	<u>PR generally</u> As for Closed list PR above <u>STV particularly</u> Voters can choose both between parties and between candidates within parties (With relatively small multi-member districts) maintains a geographical link between voters and their representatives Voters have some influence over the composition of post-election coalitions	<u>PR generally</u> As for Closed list PR above <u>STV particularly</u> Voters need a reasonable level of literacy and numeracy to make their choices effectively STV counts are complex, and are often conducted at count centres rather than in polling stations (which can reduce the perceived integrity of the election) Can lead to fragmentation within parties because candidates are effectively competing against each other
Additional member system (Mixed)	**129 MSPs** (Scotland) **25 Assembly Members** (Wales) **25 Assembly Members** (London)	*2 ballot papers: one works on First Past the Post (candidate with the most votes wins); the other works on Closed List PR)1 vote for a party, seats allocated based on a quota)*	Ensures a link between representatives and constituents, while having the benefits of PR generally	The fact that the vote for local representatives is less important than the party vote in determining the overall allocation of seats is often not well understood Perceived as creating two 'classes' of legislators – one primarily responsible to their constituency and the other primarily responsible to their party
Supplementary Vote (Majority)	**Mayors** (England – includes London) **41 Police & Crime Cssrs** (England outside London; Wales)	*Voters can mark 2 candidates in order of preference; candidates with the fewest votes have their 2nd preference votes allocated to the remaining candidate until the winning candidate has over 50% of the total votes. Single-member constituencies.*	Tends to support broadly-based politics - candidates must appeal to diverse (but related) interests to win election, and voters who support minority parties can still influence the election through their 2nd preferences Greater perceived legitimacy of those elected	Voters need a reasonable level of literacy and numeracy to make their choices effectively Works better in single-member districts than in larger, multi-member districts