

**“Independence is not a Panacea”:  
An Evaluation of Election Administration  
in the United Kingdom**

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# **Independence is not a Panacea: An Evaluation of Election Administration in the United Kingdom**

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## **I – Introduction**

This paper is about a political process that has drawn unparalleled attention over the last century. While more thought must certainly go into the link between democracy and elections (Katz, 1997), until now, the electoral process itself has been viewed most often as the primary vehicle for launching and periodically reasserting the place of democracy in any country. The focus on elections has grown over many years now, yet it has become particularly acute since the 1970s when what Samuel Huntington describes as the “third wave of democracy” took its course (1993: 3-30). In the subsequent three decades, an unprecedented number of countries turned away from authoritarianism toward democracy. This activity has led to an expansion in the number of studies that aim to provide insight into the influences upon elections.

Over the years, the field has seen a certain amount of specialization, with some scholars looking specifically at voting behaviour, for example (see Curtice, 2002; Franklin and Wlezien, 2002). Others have chosen to study instead the influences of electoral systems upon electoral outcomes (Duverger, 1950; Rae, 1971; Grofman and Lijphart, 1986; Lijphart, 1994; Katz, 1997; Cox, 1997). This paper pursues a different path, seeking insight into a component of electoral practice that has not, until quite recently, been recognised as important in this context. While this sub-field of study is in its relative infancy (Elklit and Reynolds, 2000: 1), a theoretical foundation has been laid by practitioners and scholars who have quietly considered the different approaches to election administration, describing the influence that election administration has on electoral processes. This interest has grown alongside an increase in funding for this activity. Large sums of money have been spent on administering elections, ensuring the topic’s relevance among public policymakers and academics alike. In Canada, for example, the cost per voter has been estimated in recent years to be at US\$9.00 (Elections Canada, 2005: 4,10). In the United States and the United Kingdom, this value has been estimated at US\$1.00 and US\$0.80 respectively (Lopez-Pintor, 2000: 73). While spending varies widely between countries, the fact remains that hundreds of millions of dollars are spent annually on electoral processes around the globe. Even with these developments, however, a continued focus on this topic was perhaps not guaranteed until the November 2000 United States federal election in the State of Florida (Florida Governor’s, 2001: 9). In between the media’s minute-by-minute coverage of recounting efforts, protests, legislative and legal bantering, and judicial decision making, perhaps only one thing became clear: The academy was not well equipped to provide answers regarding the influences of election administration upon elections. The event heralded the need for deeper investigation on the topic.

While this paper will not interpret the events of a specific election, it will evaluate the fundamentals of what is assumed to be known globally about election administration. Initially, it will consider the evolution of analyses on election administration, outlining the models most often used in describing this activity and reproducing a framework for

analyses by which a majority of election scholars and practitioners are judging whether a country's matrix of institutions responsible for election administration will offer better-run electoral events. With this, the paper will delve deeper into a basic assumption that arises in this general literature—that institutions independent of government best facilitate the quality of electoral processes. An interesting finding arises when considering the country cases used in arriving at this conclusion; this is that the assertion put forward has been based mostly on research conducted in developing democracies and has primarily excluded established democracies from the cases considered. With this in mind, the United Kingdom—as one of the better known established democracies—is selected as a case for consideration of how its election administration has evolved in light of the predominant analytical framework.

Noting, according to that analytical framework, that the United Kingdom has neither had nor has it reshaped its institutions for election administration in a manner consistent with that recommended in the general literature, the paper will then analyse this case study through a different lens, querying whether pure independence has always been an important characteristic of improving election administration in the United Kingdom and evaluating the potential cost of establishing an institutional arrangement with greater independence in this context. Ultimately, the goal is not to redefine the study of election administration within the few pages allotted to this study. It is, however, to carefully consider whether specific shortcomings in the manner by which a key assumption within the field has been established raise enough questions to warrant further study.

## **II – Framework for Analysis**

The aim within this section is to describe the framework for analysis by which an institutional arrangement's effectiveness in administering the component parts of an electoral event has come to be judged. In doing so, it draws on some of the analyses offered by scholars and practitioners over the years. Indeed, such efforts have been found frequently, yet the resulting frameworks have not always been consistent. Writing in the 1950s, WJM Mackenzie's conception of election administration structure differed from later considerations. In that era, elections were viewed as a periodic process "that comes in waves, bringing sudden crises of enormously heavy work." The mechanisms for managing this enormous task were limited to what he viewed as feasible in his context. He describes three institutions that, either solely or in a shared capacity, could be assigned responsibility for organizing and implementing an election, including the elected assembly, the civil service, and the judiciary. At the time, the idea of a continuously staffed electoral "service" or "commission" seemed untenable given the periodic nature of the electoral process (1964: 100).

During the "third wave of democracy" that took place during the 1970s through the 1990s, democratic politics was established as part of an "irresistible global tide" extending from Southern Europe, through Latin America, on to Asia, and across the former Soviet bloc (Huntington, 1993: 21, 25). With this trend, there has been significant growth in first-time multi-party elections being held. In the decade following the 1989 fall of the Berlin Wall alone, at least 50 multi-party elections were conducted for the first time (ACE Project, 1999: 9). This electoral activity has offered a multitude of examples that have forced an expansion of the initial conception of institutional arrangements for election administration.

Mackenzie's early scheme has been elaborated, with an increasing number of models being identified in more recent literature (Dundas, 1993; Klein, 1995; Choe, 1997; Harris, 1998; Pastor, 1999b; Lopez-Pintor, 2000; Elklit and Reynolds, 2000; Elklit and Reynolds, 2001). Initially, a dichotomy emerges in which institutional arrangements are pegged as either governmental or non-governmental. As Keith Klein describes, election

administration is conducted in the former within a ministry of the government, most often within a department that focuses on home or interior affairs. In the latter, responsibility for planning, organizing, and implementing an electoral event is given to a body that stands outside governmental structures, operating with “some level of autonomy from other executive structures of the government” (1992: 2).

These structural models have remained constant in subsequent analyses while the literature has experimented with adding models in between. Over time, a basic three-model approach has become generally accepted among practitioners and academics alike. Peter Harris demonstrates the approach, retaining the pure governmental and non-governmental as the ideal models, and offering only one other category in between in which a supervisory or judicial body oversees the election-related work of a government ministry. Some flexibility is allowed within the non-governmental model with Harris suggesting that in this instance this body could be revised to include a balance of members from political parties to ensure “the various interests are represented on the commission and that each party can exercise some form of oversight concerning the operation of the commission” (1998: 314). The basic framework has been thoroughly reinforced in the general body of literature with the release of a UNDP study authored by Rafael Lopez-Pintor under the title *Electoral Management Bodies as Institutions of Governance*, widely viewed as an agenda setting document (2000: 4).

In making sense of this evolution, it is also important to understand the manner by which these models are being compared. Traditionally, practitioners and scholars have been hesitant to place them along an evaluative scale. In the same way that nationalities such as “South African,” “Canadian,” and “Russian” might be assigned without preference, analysts have, until quite recently, avoided expressing a preference for one model of election administration over another. An evaluation of speeches, articles and publications related to election administration uncovers a theme suggesting, at least initially, that this approach remains well intact. Comments from the user’s guide to the *Administration and Cost of Elections CD-ROM*, an encyclopaedia viewed globally as a principal reference work for election administrators, are illustrative: “Election management is about establishing the most appropriate set of structures and procedures for a particular set of circumstances. There are many models to follow in managing the election process, and the ultimate choice largely depends on the historical and cultural background of the country concerned, its level of sophistication, its financial and political situation, and the education of its people” (ACE Project, 1999: 34).<sup>2</sup> Yet when it surfaces, this declaration, one that is not unique to the ACE Project, appears to be more about public diplomacy and deflecting criticism that certain norms and values are being asserted than truly offering a buffet of election administration models from which countries can genuinely select. Indeed, a dichotomy between rhetoric and practice has arisen.

Keith Klein’s words during a 1995 workshop in South Africa, a gathering held to evaluate that country’s election management structures, are illustrative. He offered a voice in the debate over whether authority for election administration should remain in the Home Affairs Ministry or be assigned to an independent electoral commission. One of his early comments is not unlike that which is found in the ACE Project material: “I believe it possible, in principle, for both a government ministry and an independent electoral commission to carry out elections in a democratic fashion” (1995: 3). The proof is in the remarks that follow, however, as his recommendations are consistent with what is generally “recommended” when electoral experts and theorists are asked for an opinion. During the address, Klein asserts that the primary requirements of good election administration can be described in three words: impartiality, independence, and

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<sup>2</sup> See also Klein (1995: 1).

competence.<sup>3</sup> “These requirements of good election administration,” he goes on to say, “in fact and appearance, strongly point, I believe, a country such as South Africa toward entrusting its election organizing responsibilities to an independent electoral commission rather than to a government department within a ministry” (5).

Over time, these paradoxical assertions have been diminishing. Electoral implementers have become increasingly straightforward in their calls for independence, arguing that more autonomous electoral structures will lead to better electoral outcomes because they facilitate election administration that, in essence, stands outside the political processes of a country. The Commonwealth Chief Electoral Officers offer just one example, stating that “the status, powers and independence of the election administration and administrators, and the impartiality and transparency with which they act and are seen to be allowed to act, are fundamental to the integrity of an election” (Commonwealth Secretariat, 1997: 6)

The same trend has been observed in the more theoretical literature in recent years as well. Elklit and Reynolds describe the transition clearly when they declare that independence has become a “normative good” and note a “world-wide trend of moving away from elections solely administered by governmental departments to elections run by relatively independent and autonomous bodies” (2001: 3).<sup>4</sup> Lopez-Pintor’s 2000 publication is perhaps the most aggressive in asserting the importance of independence. He provides historical background to suggest that government-based election administration is, quite simply, antiquated. He notes that “in earlier times, both in Europe and in the colonies that became independent during the 1960s, running elections was considered a public service operation best carried out by the state administration.” But he argues that the spread of prosperity after World War II and the development of the welfare state has “allowed for an unprecedented strengthening of civil service machinery in all branches of national governments....” He believes that all this has called into the question the ability of the government to fulfil the role of “referee” during a competitive election (52-53). Lopez-Pintor also provides insight into the view generally held on the effectiveness of election management conducted by the civil service when it is overseen by a supervisory body. “A close look at the specific supervisory functions of each type of institution (some regulatory, surveillance and adjudication capacity) gives rise to the question of whether purely supervisory bodies are as effective in their monitoring role as full-fledged commissions” (61).

This analysis has determined, then, not only that independence has become viewed widely by scholars and practitioners as the principal driver behind improving the quality of election administration, but that specific models of administration have come to be seen as more or less independent. With this in mind, a formal ordinal scale that encapsulates much of the current range of election administration models based on varying levels of independence from the government is described here (based on a model articulated in Harris, 1998: 313-314).

Election administration institutions that conduct their work within the confines of government, operating within the civil service, are placed at the lowest end of this scale under Model #1. The recipe for this kind of institution shall be considered in terms of fiscal and administrative arrangements. Staff given the task of organising and implementing electoral events are allotted their funds from the government’s purse through traditional government mechanisms. When the government announces its annual budget, the department responsible for elections provides a line item for these activities. During the spending process, staff remain accountable to the government for its spending. In turn, the government justifies these expenditures before the people. Administratively, a similar prescription is found. Election administrators are selected through the same

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<sup>3</sup> Similar ideas found in ACE Project (1999: 32-33).

<sup>4</sup> See also Choe (1997: 103ff); Choe and Darnolf (1999: 3).

government mechanisms through which all civil service members are appointed and, thus, are accountable to elected officials who must defend their actions before the people. It is assumed that the civil service acts in tandem with the government's wishes.

In the middle of this scale is Model #2 in which the assembly and implementation of electoral events rests—administratively and fiscally—in the hands of government departments in the same manner it had in the first model. One institutional arrangement differs, however. A “supervisory” body, sometimes judicial, is appointed to conduct work ranging from monitoring to making recommendations regarding the work of the government departments responsible for election administration. The institutional structure of this supervisory body differs from government departments. Its budget is approved through mechanisms outside the government coffers, established either by the body itself or through a committee inclusive of all political players. Administratively, it is generally self-regulated, but may receive guidance from an all-party committee.

Election administration institutions with the highest level of independence are placed at the highest end of the scale under Model #3. Institutions that fall within this model have authority to operate fully outside the mechanisms of government, often receiving their mandate through the Constitution or via an agreement between all the political parties involved. In the ideal model, they are both fiscally and administratively self-regulated. Their budget is set based on what they feel is required to complete their tasks. In turn, institutions following this model do not need to justify their spending before the government. Ordinarily, some sort of public justification process is found, however, normally on an annual basis. Administratively, appointees to institutions following this model are assigned based on their “distance” from the political process. This might be gauged by the number of years they have not been a member of any political party or involved in the campaign of any political candidate. Once appointed, these individuals are also not accountable to the government for the decisions and actions.

Fundamentally, the ordinal scale here is based on the extent of independence that a structure allows the agency responsible for administering the electoral process from the government of the country. The concern expressed by most practitioners and theorists, as Choe reminds us, is that “if there is any room for the incumbent government to exert arbitrary influence on the structure of the body, the intrinsic jurisdiction may be severely confined, since electoral bodies are to some degree subject to the government's will” (1997, 103). Thus, the models vary on the extent to which the electoral body is exposed to such pressures.

### **III – “Independence” in United Kingdom's Election Administration**

In recent years, analyses of election administration have focused principally on cases classified as “developing democracies.” A survey of this literature leads quickly to the conclusion that few researchers have seriously considered the influence of election administration in countries that have a longer tradition of organising and conducting elections. Elklit and Reynolds, for example, only allude to the need for greater research in this category in their important article on the topic (2001: 9). While Rafael Lopez-Pintor's United Nations-funded report is introduced as globally-focused, it places overwhelming attention on the institutional arrangements of countries going through their first and second election cycle (2000: 3). While research on developing democracies has contributed significantly to advances in the study of elections, we need to consider whether an imbalance in the case studies used has led to certain assumptions that cannot be globally applied. In overlooking cases classified as established democracies, the danger remains that subsequent analyses will be built upon theories based on research that has not been inclusive of data from all countries. This paper marks a beginning in overcoming this problem by expanding the cases in this literature to include established

democracies, using the United Kingdom as an initial example. In doing so, a first step, to be pursued in this section of the paper, will involve offering a window on the evolution of the matrix of election administration institutions in this country from the mid- to late-nineteenth century through the present day in light of the evaluative scale outlined in the section above. Indeed, what place has independence had historically within the institutional matrix in this country?

The extent to which electoral processes are woven into the fabric of British society is quite astounding, dating back to the thirteenth century (There Shall Be No Disturbance, 1275: 80).<sup>5</sup> The analysis here, however, begins with Westminster's passing of a series of legislative Acts now credited with significantly shaping the management of electoral events for more than the century to follow. Over a fifteen year period, three Parliamentary Acts were enacted to address the shortcomings of the former system of conducting elections: the Election Petitions and Corrupt Practices Act of 1868; the Ballot Act of 1872; and the Corrupt and Illegal Practices Act of 1883.

This series of Acts produced a relatively coherent regulatory framework that contrasts with the piecemeal measures that had been in place before this time (Rawlings, 1988: 136), establishing a new role for judges in laying the foundation for rules to guide electoral cycles between 1879 and 1911 (Butler, 1999: 173) and maintaining the long tradition of county-level official's involvement in administering elections (Holdsworth, 1911, vol 1, 65-87).<sup>6</sup> Overall, the legislation offered a certain formalization to the arrangement necessitated by heightened administrative expectations. The Ballot Act of 1872 and the Corrupt and Illegal Practices Act of 1883 both offered a clearer picture of what was expected during the electoral campaign and on voting day. The process involved much more than constructing the hustings, with an unprecedented level of advanced planning now being required (Asquith, 1888).

For more than a century, the basic structure established at that time saw only small changes (Leonard, 2001: 206), with legislative consolidations in Representation of the People Acts occurring in 1948, 1949 and in 1983 (Hansard Society [Chataway], 1991: 8). Two evolving influences on the institutional arrangement should not be overlooked during this period, however. The first is a series of Speakers' Conferences held in the context of Parliament. The Conferences were assembled at various times over the last century with an all-party committee of Members of Parliament meeting under the "august and neutral chairmanship" of the Speaker in order to achieve consensus and make changes to electoral rules outside the theatre of party politics. David Butler argues that, despite having access to this milieu, participants involved in this discussion proved ineffective at the end of the day (1978: 13).

A second influence is the national government. With the limitations placed on the powers of the House of Lords since 1911,<sup>7</sup> the majority party in the House of Commons has legal authority to change the electoral system according to its own interests, and has been known to do so for partisan reasons (Pinto-Duschinsky, 1992: 2).<sup>8</sup> The place of national-level government agencies on electoral processes should also be considered. The

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<sup>5</sup> More than one hundred statutes, statutory instruments, and legal cases are found on the books related to election administration, with legislation referring to "free elections" being identified as early as 1275 as part of events initiated by the Parliament of Edward I.

<sup>6</sup> In Northern Ireland, a Chief Electoral Officer has acted as the returning officer for all constituencies, while a deputy has been appointed to organise the electoral process at the local level (COI Reference Service, 1987: 9-10; Institute of Contemporary British History, 1994: 15); Hansard Society Commission on Election Campaigns [The Chataway Commission], 1991: 58). The model for election administration followed in Northern Ireland stands as an outlier in United Kingdom. Given the constraints of this paper, this paradox, often found in this province, cannot be adequately addressed here.

<sup>7</sup> See Parliament Act (1911)

<sup>8</sup> See also Local Government Act (1985) and Jenkins (1995: 165).

Representation of the People Act of 1918 was a contributing factor to a division of the Home Office<sup>9</sup> gaining, over time, a formal role as the general caretaker for electoral processes in the United Kingdom, with specific responsibilities related to the electoral roll (Representation of the People Act, 1983: s 52(2)). Michael Pinto-Duschinsky makes clear that the national-level government and its bureaucratic agencies should be viewed only as a ‘minority shareholder’ in the operation of the electoral process. He asserts that “governments have often hesitated to pursue naked party interest concerning electoral laws and rules and have attempted to secure the acquiescence of the main opposition party at least.” Pinto-Duschinsky lists a variety of ways by which the government and its institutions ability to manoeuvre was limited during this period (1992: 2, 3).

With this synopsis, we can offer placement of at least the United Kingdom’s traditional election administration matrix among the predominant models offered in the general literature. Where does it fit in light of the evaluative scale based on *independence*? Having looked at the role of the Speakers’ Conferences, the national government, national government agencies, and county-level government in organising elections, it is evident that election administration in this early period was completed entirely within government-run entities. Much of the administration was conducted by county-level governments, with national government and its bureaucracy gaining an increased role in shaping policy and conducting election administration through the years. While central government involvement in election administration remained limited during this period, the change that occurred was fostered by developments within centrally-controlled institutions, through a ‘give-and-take’ during Speaker’s Conferences, with the government of the day ultimately making decisions regarding minor changes that have occurred over a period of more than one hundred years. Given the models currently offered in the general literature of election administration, the evidence would suggest that the United Kingdom’s institutional arrangement falls within the range of Model #1.<sup>10</sup>

This initial placement has changed in recent years, however, with questions and concerns relating to the financing of political campaigns lying at the heart of the transformation.<sup>11</sup> When combined with other election-related concerns including the electoral system, referendums, election broadcasting, and boundary delimitation—to name just a few—this issue led many in the UK to the conclusion that an independent electoral commission was the principal solution.<sup>12</sup> In many ways, the Neil Commission was a culmination of much of the discussion that went on in this period regarding election administration in the United Kingdom. Consisting of over 250 pages of text along with more than 600 pages of evidence, it argued for the establishment of an independent electoral commission. A call to pursue full administrative (1998: 149) and fiscal (150) independence from government is found through twelve recommendations.

According to Neill, these two characteristics are fundamental to establishing an institutional arrangement with greater independence in election administration. The composition was to include a self-regulated Electoral Commission with limited ties to the Civil Service, thus having the characteristics of Model #3. While the actual administration of elections should remain a county responsibility under the auspices of the Acting Returning Officer, Neill stated that this officer “could act under the general supervision of the Election Commission” (Recommendation 80). The report articulated

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<sup>9</sup> Akin to the Department of Justice or Department of the Interior in other countries.

<sup>10</sup> In instances where government agencies at different levels (ie: local, national) are involved in administering elections, the literature ultimately slots these ‘outlier’ cases into a more general category of ‘government run’. (Lopez-Pintor, 2000: 25).

<sup>11</sup> See Hansard Society [Barnett] (1981); Hansard Society [Dell] (1985); Linton (1994); Committee on Standards [Neill] (1998); Hansard Society [Chataway] (1991).

<sup>12</sup> As example, see Constitution Unit’s comments on integral place of independence; Constitution Unit (1997b: 5).

that “bringing acting returning officers under the aegis of the Election Commission would enhance [the Commission’s] authority...[H]aving such an oversight responsibility would also have the advantage of making the Commission better able to fulfil its general monitoring role” (153).

In July 1999, the Government released a response to the Neill Commission’s recommendations, accepting much of what it had recommended, including “the establishment of an independent Electoral Commission” (Secretary of State, 1999: para 1.8). Following debate, the Political Parties, Elections and Referendums Act 2000 set out a framework for the Electoral Commission. Among the parts, it was to take on the role of registrar of political parties, of monitoring campaign donations and compliance with the rules, of reporting on the conduct of elections and referendums, and of acting as the general reference point for advice on the conduct of elections (para 22ff). In some ways, the legislation enhanced the Electoral Commission’s responsibilities beyond Neill, assigning it responsibility for both a public education and boundary delimitation function (para 13, 16). In one fundamental way, however, it reduced its mandate and, ultimately, its authority. The law does not dictate, as Neill (1998: para 11.23) recommended, that acting returning officers report directly to the Electoral Commission. In fact, it limits the Electoral Commission’s activities to providing “advice and assistance” to electoral players, including registration officers and returning officers, on matters in which it has competence (Political Parties, Elections, and Referendums Act, 2000: para 10(1-3)).

Thus, while pursuing a more independent path than ever before, the country chose to resist travelling to the higher level of independence that Neill had proposed. The United Kingdom’s approach to election administration does not fit into Model #3 on the scale provided. With local authorities being “advised” and “assisted” by the Electoral Commission, the institutional arrangement has characteristics closer to Model #2 outlined on the independence-focused evaluative scale outlined above. Administratively, a separate bureaucracy was not assembled to conduct election administration under the direction of the Electoral Commission. This legislation does not allow the Electoral Commission to appoint local electoral officers. The responsibility remains in the hands of local authorities along with that of conducting elections within the mechanisms of the local bureaucracy. At the same time, though, the Electoral Commission has become an omnipresent player in elections. The legislation dictates that the Commission must be consulted on any proposed changes to electoral legislation. It dictates that this body must offer recommendations on whether election-related powers are being exercised properly, provide input on changes to electoral procedures, and offer advise and assistance along the way (sec 7, 8, 9, 10). In seeking to place this new institutional arrangement among the models on our scale in order to determine its level of independence, the Electoral Commission appears to have many of the administrative characteristics of what the general literature refers to as an independent-of-government “supervisory body.” First, while it does not have the judicial power that is sometimes found in this context (sec 154), it has been allotted a meaningful bully pulpit through which it can make clear its preferences. Indicative of this is the wide distribution of *Electoral Commission Circulars* among electoral players around the country.<sup>13</sup> Each trumpets what is required in legislation and provides the Electoral Commission’s view on election-related issues that arise. Second, an individual appointed to the Electoral Commission must not have been a member of a registered political party for the last ten years or have been an officer or employee of a party. Within this time period, a member must also not have held elective office or made a donation to a political party (Political Parties, Elections, and Referendums Act, 2000: sec 3(4)).<sup>14</sup>

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<sup>13</sup> More than thirty have been distributed since 2001.

<sup>14</sup> The same standards are applicable to Electoral Commission staff. See United Kingdom Electoral Commission (2002a).

In terms of budget, the current legislation does not provide for a wholesale change in the manner by which basic election administration is funded. The place of central government in funding the local authorities will not be altered anytime soon. Westminster will continue to maintain a dominant role in shaping the funding mechanisms in the counties (Institute of Contemporary British History, 1994: 10-12). The mechanisms for county-level reimbursements from the central government for election administration expenses also remain in place, although the Electoral Commission is currently undertaking a fundamental review of the fees and charges process. The expectation is that the Electoral Commission will eventually take over the audit function currently conducted by central government (Buttler, 2002). The Electoral Commission itself, however, is funded through what many would view as an arm's-length process. The aim has been to provide mechanisms for funding and financial accountability "intended to balance the need to ensure the Commission's financial independence from the government of the day with appropriate safeguards for ensuring proper financial control"<sup>15</sup> Its budget is not provided through government mechanisms but is instead approved on an annual basis through the Speaker's Committee<sup>16</sup> that David Butler describes as being "designed to achieve consensus, to take decisions about the rules of the game outside party politics (1978, 13)."<sup>17</sup>

#### **IV – Institutional Balancing in the United Kingdom**

The previous section has identified how it is that the constellation of the United Kingdom's institutions involved election administration have evolved in relation to the evaluative scale used by most analysts who study the quality of this activity across countries. That scale is based on an understanding that better results can be achieved by fashioning an arrangement in which the institutions involved are more independent of government. This core assumption might lead readers to assume that the UK has moved in the correct direction by injecting greater independence into its system of election administration through the Political Parties, Elections and Referendums Act 2000. Although, it could also be argued that the country missed a tremendous opportunity in deciding to pursue an institutional arrangement that maintains a type of "supervisory" role for the Electoral Commission rather than shaping one with the full independence that had actually been proposed under the Neill Commission. In the general literature of election administration, Rafael Lopez-Pintor's argument perhaps best applies to the case of the United Kingdom. He sees greater independence as benefiting the quality of electoral processes. Yet, he also provides specific guidance to readers regarding the advantage of implementing a fully-independent system of election administration over one in which a "supervisory body" oversees the work of institutions that are not deemed as independent from government (2000: 61).

In pursuing the United Kingdom as a case study, however, we must consider whether other variables—beyond the institutional independence of the Electoral Commission among the many institutions involved in administering the parts of an electoral event—may influence the quality of election administration in this country. Indeed, it is by examining this case through a different lens that doubts arise as to whether there has been an over-emphasis on independence in election administration, as it has

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<sup>15</sup> See Political Parties, Elections, and Referendums Act (2000: Explanatory Notes 1(39)).

<sup>16</sup> Established under Political Parties, Elections, and Referendums Act (2000: section 2); Described in more detail in same Act (sch 2).

<sup>17</sup> The Committee's make-up has changed recently, but the ratio of government to non-government members will remain the same, including: The Speaker, four Labour, three Conservative, and one Liberal Democrat.

been defined in recent years in this literature. Is the pursuit of a more independent model for election administration always the best approach?

The investigation conducted above into the evolution of the matrix of election administration institutions from 1868 onward has afforded a richer understanding of the manner by which this country has traditionally addressed challenges that could have undermined the administration of elections as a whole. From the mid-nineteenth century, a definite trend can be observed, a trend that appears to move in the opposite direction as that argued for in the general literature with regard to independence. Instead of giving authority and responsibility to fewer institutions, as would be the ideal described in the evaluative scale outlined in Section II, the United Kingdom has normally instituted a denser institutional arrangement for election administration whenever pressures on the system of voting have become too great.

Evidence of this is found at three different stages over the course of the last century and a half. The first came with the passing of the three pieces of legislation identified in Section III: the Election Petitions and Corrupt Practices Act 1868, the Ballot Act 1872, and the Corrupt and Illegal Practices Act 1883. H.G. Nicholas' *Beaucamp's Career*, a story based on the general election of 1868, offers particular insight into the circumstances that voters and candidates faced before this legislation took hold: "We were badly beaten at Southampton but I think it will be proved that bribery was done there" (1956: 197).<sup>18</sup> A remarkable transition followed the passing of this series of new legislation, however (Lowell, 1908: 237; O'Leary, 1962: 231; Rawlings, 1988: 136-137). Evidence of the fraud and corruption that had been the trademark of the earlier hustings system diminished markedly following the implementation of this legislation. The Election Petitions and Corrupt Practices Act of 1868 transferred disputes regarding electoral practice out of the hands of Parliament and under the jurisdiction of the High Court (Butler, 1978: 20). The Court was assigned the task of judging election petitions brought forward following an electoral process, with the court being assigned the task of imprisoning or fining wayward candidates. Further, the Speaker of the House of Commons was also directed to follow the Courts decision on whether to disallow these candidates from participation in Parliament (Corrupt and Illegal Practices Prevention Act, 1883: sec 4-6, 40-44, 56). The 1872 Ballot Act formalised and increased the involvement of county-level bureaucrats in administering elections, given the new steps in planning, organising and implementing involved with secret balloting. In an earlier period, these officials could not necessarily have been trusted to complete the electoral process in an honest manner. In the fifteenth century, local sheriffs were known to submit the name of an individual on the writ who actually may not have won the election (Holdworth, 1922: vol 2, 448). Things had changed by the late nineteenth and early twentieth century, however; the civil service was working under a different paradigm. Nevil Johnson asserts that the "civil service became, in the broadest sense of the term, a regulatory and balancing instrument" during that period. "Even in the administration of local authorities where there was much more concern than in central government with direct service provision, the regulatory role was strong: it was generally a matter of acting within tightly defined legal and financial conditions" (1985: 416).

A second stage demonstrates a similar increased diversity, with even more institutions becoming involved in managing elections when the pressure on the system intensified. Less precisely defined than the first, this stage emerged as electioneering became more complex over the course of the twentieth century. The number of petitions challenging electoral results dropped and did not rise again following the first stage identified above (Rawlings, 1988: 136). Yet, a variety of lower-level election matters placed increasing

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<sup>18</sup> Many of the plays recorded in this volume, but particularly *Beaucamp's Career*, offering an interesting account of corruption in the period preceding this legislation.

pressure on the system for voting, including a lowering of the voting age and the introduction of the secret ballot.

At the same time, however, three general developments contributed to the growing complexity of election administration. First, the process by which campaigns were administered became increasingly elaborate from the 1950s onward. An accelerated pace of campaigning is attributed to a variety of innovations, including nationwide advertising, television, telephone banks, direct mail, e-mail, and opinion polling, along with centralized campaign methods and national spin doctors (Butler, 1999: 175). Second, the funds available to campaigners increased significantly during this period (Hansard Society [Chataway], 1991: 35-48; Pinto-Duschinsky, 1989). The previous section has already noted that campaign finance became a central issue in the latter part of this period. Finally, while the national electoral system had not changed from the traditional first-past-the-post method, the system used in electing officials to other levels of government has, including those in London, Scotland, and Wales, with variations of proportional representation being introduced (Butler, 1998: 11).

So, how did the United Kingdom respond to these pressures? As an institution, the Speaker's Conference was one mechanism used initially to address issues of contention that arose among all parties involved in the electoral process, with conferences being assembled periodically from 1917 onward. It has already been noted above that David Butler suggests that these Conferences were less-than successful through the period (as example, see Butler, 1978: 14). Still, it should not be assumed that this institution was without effect. The Speakers' Conferences provided an avenue by which participants from all parties could provide input regarding the manner in which elections were conducted. They offered a forum for discussing some of the most contested election-related issues of the day in a context that stood outside the tradition and highly-charged political milieu of Parliament (13). For the time, the process was innovative.

The place of government in administering elections was reinforced and further enhanced during this period as well. The tradition of the civil service described by Johnson above remained well entrenched. The fundamentals of the civil service's *modus operandi* during this stage are perhaps best described by Robert Armstrong who notes that public officials are "servants of the Crown," "non-political," and "disciplined." He articulates that, for all practical purposes, the Crown is represented by the government of the day, so public officials are bound to serve it "of whatever political complexion." He states, however, that "special cases [arise] in which certain functions are conferred by law upon particular members or groups of members of the public service" and that officials must complete their duties "subject to conventions" (Armstrong, 1989: 140-141; also Treasury and Civil Service Committee, 1989).

The role of the civil service in the context of elections grew beyond pure convention as well; its place was increasingly clarified and codified with the passing of new legislation (House of Commons Disqualification Acts 1957, 1975). Before 1957, there had been confusion over who was and was not allowed to compete for seats in the House of Commons. The 1957 and 1975 House of Commons Disqualification Acts clearly excluded most of the civil service from running for office, reinforcing the dividing line between public officials and politicians during electoral processes (sch 1). At the same time, the diversity of civil service institutions involved in administering elections was also increasing during this second stage. While central government agencies have never taken on the more substantial role of administration held by local-government officials, the Home Office was assigned a formal role of general authority for electoral processes under the Representation of the People Act 1918 (Representation of the People Act, 1983: s 52(2)). Other government institutions have also been assigned responsibility for completing small but important research and administration functions that contribute to the electoral process. For example, the Office of National Statistics (ONS) collected data

and offered analysis regarding the electoral register during this period and the central government's Improvement and Development Agency (I&DeA) has overseen the Local Authorities Secure Electoral Register Project (Minister for Local Government, 2002: 5; Wood, 2002). In each instance, the involvement of these officials offered yet another check upon the system as a whole.

Finally, the United Kingdom's lower courts were harnessed to fulfil a role in the electoral process during this period. While the number of petitions questioning the validity of electoral events had been reduced, David Butler finds that much more procedural and legal manoeuvring took place at a lower level during this stage than ever before (1998: 8),<sup>19</sup> the result being that the lower courts became involved in making decisions on these rules.

A third and final stage during this period has come with the establishment of the Electoral Commission in 2000. With a growing number of institutions playing a small role in administering electoral processes over the course of the twentieth century, complaints began to arise during the 1980s and 1990s regarding the effectiveness and efficiency of the system in place. Much of the focus was on the continued growth in complexity found in electoral campaigns and processes that the institutions described in the second stage had been assigned to balance. The 1991 Chataway Commission, for example, emphasised the need for modernisation in the system of administering elections. "The nature of elections has changed radically over the last century and the structure designed for a different era needs regular review if it is not to become obsolete." It quotes one of the submissions to the Commission, noting, "[E]lectoral law should be reformed so that it takes full account of the realities of modern electioneering" (Hansard Society [Chataway], 1991: 10-11). Similar concerns were articulated again in the 1998 Neil Commission report. In its summary recommendations, for example, the Commission argued "that the political scene and technological innovations in the media are changing so fast that it is vital to our democracy that there is a body, outside government, which can advise and comment on how the rules should develop to meet the changed circumstances" (Committee on Standards [Neill], 1998, 3).

These concerns ultimately led to calls for an Electoral Commission to be established. The Chataway Commission argued for an Electoral Commission with five primary functions. The characteristics it describes are those of an institution that places pressure on other institutions involved in the process rather taking control of it. The Electoral Commission's responsibility, for example, would be to "provide continuity and ensure that good practice was followed everywhere and that the most important responsibilities of Electoral Registration Officers and Returning Officers were adequately regulated" (Hansard Society [Chataway], 1991: 69). Further, it would become a permanent expert body on electoral issues, "acting as an advisory body on all aspects of the electoral process, and possibly having powers to adjudicate in areas where these seemed to be needed" (70). The Neill Commission's proposal for revisions is even more telling. As noted in Section III, its ultimate call was to alter the institutional arrangement so that full-independence could be found within a newly-established Electoral Commission. At the same time, however, the adjectives it uses to describe the role of the institution it advances lead to a different picture of the relationships involved. The Electoral Commission's place should be one of "monitoring and recommending," says Neill. It should have an "executive" and "investigative" role. The Electoral Commission would have "largely informal, advisory" responsibilities. And, regarding the actual management of the electoral process, it should have "narrowly administrative" responsibilities (Committee on Standards [Neill], 1998: 147-149).

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<sup>19</sup> In one instance, an independent candidate changed his name to Edward Heath in order to confuse voters. He ran against Edward Heath, leader of the Conservative Party.

After two decades of debate, the shape of the Electoral Commission assembled via the Political Parties, Elections, and Referendums Act 2000 is that of an institution that facilitates the work of the institutions involved in running electoral processes in this country. While the Act maintains the diversity of institutions involved in implementing elections, it describes an Electoral Commission very similar to that found in the Neill Commission.<sup>20</sup> The Electoral Commission is to act as a caretaker for the system as a whole. In its role and with the powers allotted to it, this body must “coordinate,” “register,” “report,” “review,” “advise,” and “promote” what it determines to be best practices in election administration (United Kingdom Electoral Commission, 2001).

At each stage during this period in the United Kingdom, then, a growing network of institutions involved in administering elections has been identified. Most interesting about these developments, however, is the fact that the trend in each of the three stages identified runs opposite to what the general literature has argued leads to more successful electoral outcomes. With each stage in which the system’s equilibrium was brought back into balance, an increasing number of institutions have become involved in the process. The system provides insight into the benefits of spreading the responsibility for administering elections out among a variety of institutions that, in turn, balance against one another and verify that the system is being implemented according to the standards that have been agreed to through constitutional and legislative mechanisms. The United Kingdom has demonstrated an historic allegiance to a system that differs from that which has been argued for more widely in the election administration community. An approach that narrows responsibilities for managing elections to just one institution has been rejected over more than the last century.

In considering this country’s legacy of election administration, it was perhaps Neil McIntosh, a Commissioner with the Electoral Commission, who best described the result of this administrative evolution. In a recent discussion regarding the constellation of institutions involved, he stated that “it is not really about independence...but *interdependence*.” The Electoral Commission “operates on the basis of being a monitoring organisation and an advising organisation.... It does not have control over how elections are run. It works on advising on best practice, and advising on legislation and other issues” (McIntosh, 2002). Ultimately, the government in the United Kingdom does not maintain a monopoly over power with regard to administering elections. At the same time, however, the country has not overcompensated by assigning a similar monopoly to a single independent agency. While the former circumstance has been declared in the general literature of election administration as potentially dangerous, the latter one could lead to similar perils in the longer term. The institutional arrangement for election administration that the United Kingdom has pursued appears to genuinely address and overcome this problem.

## **V – The Cost of Greater Independence**

The institutional arrangement that has evolved since 1868 has proven effective for conducting elections in the United Kingdom, avoiding the election-related controversies and mismanagement found elsewhere. The words of the Chataway Commission perhaps best capture how the British have viewed their approach to administering elections in more recent years:

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<sup>20</sup> See especially sec 5-13. Also, refer to discussion on p 7ff in Chapter 3.

...Westminster is rarely rocked by allegations of corruption—and when it is, they involve individuals, not whole parties; the rampant bribery of voters up to the mid-Victorian period...has long been a thing of the past.... Taken as a whole, the rules of the electoral process have served us well (Hansard Society [Chataway], 1991: 9).<sup>21</sup>

Institutional balancing has played an integral part in the evolution of these rules and, thus, in this system's success over the years. Section IV of the paper offered insight into how this kind of balancing has been an omnipresent solution since 1868, with a division of labour in election administration having arisen in more recent years inside this balancing effort. The Electoral Commission has assumed the task of advising, suggesting, and monitoring regarding electoral processes while operational elements remain the responsibility of government institutions that have traditionally conducted election administration. Given this understanding, some consideration will be given in this last substantive section to whether the continuation of this approach to election administration, as laid out in the Political Parties, Elections, and Referendums Act 2000, should be preferred over the fully-independent model to election administration that the Neill Commission argued for and that the general literature in election administration views as superior.

It is argued here that the accountability that accompanies the United Kingdom's dense network of election administration institutions involved in researching, planning, organising, conducting, and monitoring electoral events—each institution unable to proceed without negotiating and coordinating with another—has led to an avoidance of problems that could undermine democracy in this case. At one level, all these institutions of election administration are accountable to Parliament itself. They are watched by the parties in Parliament and, specifically, the Speaker's Committee for the manner by which they conduct their responsibilities related to elections. Still, this oversight is relatively minimal. David Butler and Michael Pinto-Duschinsky have both attested to the “hands-off” approach generally followed by Parliament, Speakers' Committees, and the Home Office. The Electoral Commission is examined formally only annually by the Comptroller and Auditor General for its “economy, efficiency or effectiveness,” with an emphasis on whether the Commission have “used their resources” in discharging their functions and also provides a report to both Houses of Parliament (Political Parties, Elections, and Referendums Act, 2000: sec 16, 20).

The increasing number of institutions involved in the electoral process over the years has provided a second level of accountability, however. The three stages of institutional balancing outlined in the last section offer an understanding that these institutions have not only helped balance against illegal and underhanded activity initiated by political players in the electoral process, but are found inside an institutional web that has forced each to check on and cooperate with one another in order to run electoral processes successfully. Of particular interest here is that while the general literature acknowledges the distinction between election administration completed at different levels of government—central or local—it does not account for the difference in a meaningful way. In instances where multiple government agencies at different levels of government are involved in administering elections, the literature has ultimately slotted these ‘outliers’ into a more general category without distinction (Lopez-Pintor, 2000: 25). This oversight proves significant as *government* rather than the *diversity of government institutions involved* becomes the focal point. Through this simplification, the literature overlooks the true potential that a diversity of institutions brings in terms of balancing and accountability.

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<sup>21</sup> See also Butler (1978: 13).

The refined matrix of election administration institutions that has resulted from the Political Parties, Elections and Referendum Act 2000 provides a third level of accountability in the United Kingdom. This institutional arrangement is one in which the operational components of the administration of elections is to remain principally outside the hands of the Electoral Commission. Section IV demonstrated the division of labour that has been struck in this context, with the Electoral Commission monitoring, providing advice, and making suggestions on the work of other election administration institutions while the functional process remains in the hands of most of the institutions within government that have traditionally managed the process.<sup>22</sup>

This kind of institutional balancing, particularly one in which a separation of monitoring from administrative function is observed, has become part of the country's public administration culture in recent years. Over the last two decades, the United Kingdom has seen unprecedented growth in the establishment of regulatory bodies that do not get involved in the operation of government, but act as "watch dogs" or offer "oversight of bureaucracies...operating arm's-length from the direct line of command..." (Hood, 1999: 28-33; Hood, 2000: 283-286; Power, 1997: 144; Constitution Unit, 1997a: 1).

## **VI – Conclusion**

At the outset of this paper, in Section II, it was determined that *independence* has, over the years, become widely viewed among both scholars and practitioners as the primary influencing factor behind improving the quality of election administration. A formal ordinal scale was offered, along which analysts have come to place a range of models for election administration according to their varying levels of independence from government.

Following this, in Section III, we began a process of addressing an oversight with regard to the cases that have traditionally been considered in establishing this foundational assumption regarding independence. In reviewing the literature on the topic, it became evident that this assumption has been based, overwhelmingly, on research conducted in developing—not established—democracies. The section's task was relatively embryonic, this being to consider a better known established democracy, the United Kingdom, in light of the literature's independence assumption. The section determined where it is that the UK's matrix of election administration institutions fits among the models along the evaluative scale established in Section II, finding that while the Electoral Commission was established in 2000, the country's institutional matrix should not be placed into the category of full independence.

It was in Section IV that the United Kingdom's matrix for election administration was placed under a different lens for examination, with the following question being posed: Is the pursuit of a more independent model for election administration always the best approach? In UK's case, from the mid-nineteenth century onward, a trend was uncovered that moves in the opposite direction than that argued for in the general literature with regard to independence. Instead of providing authority and responsibility to fewer—indeed, the single, independent agency described as the ideal—this country has normally instituted a denser institutional arrangement for election administration whenever the pressures on the system warranted it. As Electoral Commissioner Neil McIntosh stated, the heritage of election administration in the UK is best described as one focused on *interdependence*, not independence. Improvements to the administration of elections have been based on offering greater, not fewer, "checks and balances" in the system.

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<sup>22</sup> This separation has remained constant even in rare instances where the Electoral Commission has been given authority to oversee a functional component of elections. See Boundary Committee for England (2002); United Kingdom Electoral Commission (2002b: 1).

With this insight, Section V found that the cost of moving away from the current constellation of election administration institutions established in the United Kingdom in 2000 and toward a fully-independent matrix of institutions would be profound. The creation of a “super” Electoral Commission, one that not only maintains its role of monitoring the electoral process, but also takes on the functional tasks involved in conducting electoral processes, would lead to a disruption of the institutional balance and, thus, the rich accountability that has been integral to the United Kingdom’s success over the years.

This analysis ends perhaps having brought to light more questions than answers regarding a seemingly accepted assertion on which much of the theory and practice in election administration rests today. First, what do the findings in this paper have to say about the general literature’s assumption that it is better to pursue greater independence in any institutional arrangement? It could be that the United Kingdom represents a category of countries that demonstrate this global theory is not really global. While research that has focused primarily on developing democracies has certainly contributed to advances in the study of both elections and election administration, it might also have led to a theory regarding the importance of independence for election administration which, quite simply, does not hold up among established democracies. Indeed, it may be that independence is not the panacea that some protagonists have suggested. The United Kingdom as a case study has provided reason for continued research in this vein among other established democracies.

A second consideration is whether or not the general literature has been relying on the wrong variable in order to reach its conclusions. A question posed by the first and second century Roman satirical poet Juvenal proves particularly insightful for this study: “*Sed quis custodiet ipsos custodes?*” (Juvenal, 1979: 113-115) “Who will keep the keepers?” seems just as apt to be asked in today’s context of politics, public administration, the private sector, and ecclesiastical offices. The question still has not been adequately answered, and election administration is no outlier in this regard. As was determined in Section II, the general literature in election administration expresses concern that a monopoly over the administration of electoral processes would be given to a government in power. This analysis has described a successful scenario in which no institutions—government or independent—have a complete monopoly over election administration. Through this, the danger that comes with narrowing authority into a single institution guided by a few individuals would be avoided.

While some insight has been gained about the currently accepted assumptions in the general literature that have been derived based on the intensive review of developing democracies that have emerged in the post-Cold War era, this study does not offer a definitive conclusion. The aim has been limited principally to querying the validity of a current assumption in place in the general literature. Still, the paper has found enough contradictory evidence to justify pursuing these questions further in the context of other established democracies. Given what this study has suggested, could it be that the United Kingdom is merely an outlier in this category with regard to its approach to election administration? How have other established democracies dealt with challenges faced within their matrix of institutions responsible for election administration? One shortcoming evident in the general literature is a clear lack of empirical evidence to back up their claims. Admittedly, the complexities of pursuing such a genuinely data-focused study are immense. This said, however, a larger, empirically-based investigation, one that expands the number of cases among established democracies, must necessarily be undertaken in order to gain better answers to the question considered in this paper. Indeed, a research agenda is now in place for a subsequent and more comprehensive study.

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