

Parliamentary Studies Research Portfolio

What the European Union (Withdrawal) (No. 2) Act tells us about executive-legislative relations

This essay analyses the European Union (Withdrawal) (No. 2) Act through the lens of Anthony King's classic *Modes of Executive-Legislative Relations: Great Britain, France, and West Germany*. I argue that the Act's passage reaffirms the importance of the intra-party mode for the executive, while also showing the presence of the cross-party mode working in Britain. To start, I will briefly outline the Act and its passage. Then, I will use the Act to show how the intra-party mode remains the executive's most important relationship. Last, I will argue that contrary to King, the Act proves the capacity of the cross-party mode to operate in Britain.

The European Union (Withdrawal) (No. 2) Act – colloquially known as the “Benn Act” – stipulated several requirements on the executive concerning the process of the UK exiting the EU. Most importantly, it put a statutory obligation on the government to ask the EU for an extension of Article 50 if the House of Commons had not approved a withdrawal agreement by 19 October. The Act thus prevented the UK from leaving the EU without a deal as scheduled on 31 October. It originated as a private members' bill sponsored by the backbench Labour MP Hilary Benn. His bill arose in response to the impending prorogation of Parliament which many suspected (correctly as Johnson's Director of Legislative Affairs later admitted) to be a tactic employed by the government to block parliamentary resistance to a no-deal Brexit (Russell & James, 2023:263). One exceptional action prompted another as Speaker John Bercow accepted the tabling of a Standing Order No. 24 motion (an emergency debate) to allow MPs the opportunity to take control of the order paper. By suspending Standing Order No. 14, the motion gave precedence to Benn's private members' bill so it could pass through all its Commons stages in one day and be considered in the Lords straight after.

The motion passed with the assistance of twenty-one Conservative rebels who, consequently, all had the Conservative whip removed. The bill was introduced the following day and passed its third reading by 327 votes to 299 before moving to the Lords later that day (HC Deb 4th September 2019, cc286-290). After some speculation that the bill would be filibustered in the upper House, peers voted for a guillotine motion so that the bill would return to the lower House by the 6th of September. The bill received Royal Assent on 9 September just before Parliament was prorogued.

The passage of the Benn Act shows the importance of the intra-party mode for the executive (GBB → G). King observed that “as far as the Government is concerned, Government backbenchers are the most important Members in the House” (King, 1976:16). Provided a government has a working majority it can

stay almost unaffected by any opposition attacks. As MPs are usually elected under a party label, “their job is to deliver a majority on legislation in the House of Commons as ministers or loyal backbenchers” (Stuart, 2018:255). Yet, if a government loses the support of its backbenches, it can become difficult to control the passage of legislation. This is reaffirmed by the Benn Act as the government lost control of the legislative agenda due to a rebellion by twenty-one of its own backbenchers. While it is true that the government had a wafer-thin majority reliant on a confidence and supply agreement with the DUP, this only made it more important for the executive to maintain a good intra-party relationship. Although the Conservative rebels had the whip removed by the time of the introduction of the bill, they were the crucial catalyst for the bill to be introduced. Naturally, the removal of the whip only freed them to act as independents and they continued to tip the balance against the government at each stage of the bill’s passage. These rebels show that when backbenchers are hostile to government proposals, they can use their collective power to thwart government plans. This aligns with Cowley’s research which found that if an MP’s “ideology or beliefs differed from the leadership, they were more likely to rebel against the party line” (Cowley, 2002:105). Thus, the Benn Act reaffirms King's observation of the importance of the intra-party mode for the executive.

Contrary to King's observation, the Act also shows the presence of the cross-party mode in Britain’s executive-legislative relations. While King believed that the cross-party mode (GBB and OFB + OBB → G) could be “eliminated” from Britain’s executive-legislative relations, the Benn Act proves its capacity to operate (King, 1976:14). It is clear from the passage of the bill that many MPs from different parties contributed to its successful passage. For example, the Standing Order No. 24 motion - which enabled the bill to be debated - was tabled by Oliver Letwin, a Conservative MP. This motion was only passed with the help of the twenty-one Conservative rebels. The divisions at the end of each reading provide further evidence. The bill passed its second reading by 329 to 300 with the support of the Labour opposition plus MPs from seven other parties (HC Deb 4th September 2019, cc247-250). Crucially, these seven minor parties accounted for ninety-one votes which moved the balance of support against the government. While King contended that in Britain “the partisan role is more important than the parliamentary role” one can only deduce from the Benn Act that this is not always the case. While it may have been during the 1970s, with the increase in the number of minor parties and increasing prominence of select-committees “parliament has become more evidence-based, drawing it closer to the non-party and intra-party modes” (Russell & Cowley, 2018:7). Thanks to the influx of new publicity outlets “opposition frontbenchers now have significant ability to set the media agenda using the public platform of parliament” (Russell & Cowley, 2018:7). Thus, when compelling cases are put against the

government, their backbenchers may now be more likely to put their role as parliamentarians ahead of their party. As MPs are now more likely to question the decisions of the whips, the potential for the cross-party mode to operate has increased.

To conclude, the Act's passage reaffirms the importance of the intra-party mode for the executive, while also showing the presence of the cross-party mode working in Britain. Contrary to King's observation that the cross-party mode was only applicable to Germany, the Benn Act shows that the cross-party mode does operate in Britain. This is evident from the diverse support the Benn Act received from its initiation to its final reading. While the passage of the Benn Act was unusually expedited, this does not change the fact that the government lost a significant portion of support from its own backbenches who chose to work across party lines instead. The Act's unusual passage does not affect this conclusion but instead assists in showing the different modes more clearly.

How much influence did select committee scrutiny have on the Brexit process?

This essay will consider how select committees scrutinised Brexit during the 2017-2019 parliamentary session. My analysis will focus on three select committees to gauge the impact of select committee scrutiny on Britain's withdrawal from the EU. I will argue that scrutiny from select committees had a limited but not insignificant influence on the Brexit process. To start, I will briefly outline the committees and my method. Then, I will argue that select committees achieved a limited influence on the Brexit process by inducing the government into accepting small policy recommendations. To finish, I will argue that select committees indirectly influenced the Brexit process by increasing the exposure of certain issues.

My study will focus on three House of Commons select committees: the Exiting the EU Committee; the European Scrutiny Committee; and the International Trade Committee. I have chosen these committees because they had the three highest levels of Brexit-related activity (House of Commons Library, 2021). The European Scrutiny and International Trade Committees had an important role during Brexit scrutinising (respectively) EU policy and trade relations. The Exiting the EU Committee was established in 2016 to oversee the government's objectives, negotiations and path towards a withdrawal agreement. During the 2017-19 session, the Exiting the EU Committee published fourteen reports on Brexit, eight of which received a government response. In the same period, the European Scrutiny and International Trade committees each published two reports on Brexit, all four receiving a government response. Adopting a similar method to Benton and Russell's (2011) study, I have conducted a quantitative and

qualitative analysis of these reports. I have then used Benton and Russell’s coding scheme (2011: 101-02) to evaluate the government’s responses.

Select committee reports were able to achieve a limited influence on the Brexit process by inducing the government to accept small policy recommendations. The influence of any committee’s scrutiny is most direct when a government accepts and implements a recommendation for a policy change made in a committee report. Assessing the government’s responses to all three committees’ reports, it is evident that committee scrutiny had some success in gaining small policy concessions from the government. The Exiting the EU Committee got the government to fully or partially agree to 58% of their recommendations (see Table 1). Meanwhile the European Scrutiny and International Trade Committees got the government to fully or partially agree to 57% and 55% of their respective recommendations (see Tables 2 & 3). These findings are consistent with Lynch & Whitaker’s study which reported an overall acceptance rate of 58% on Brexit-related committee recommendations between 2017-19 (Lynch & Whitaker, 2019: 933). Yet, what is most revealing is not the acceptance rates, but the concentration of them. Across the three committees the most accepted recommendations required only small policy changes. This shows that while select committee scrutiny did have some direct influence on the government’s approach to Brexit, the influence was limited.

Table 1: Government acceptance of Exiting the EU Committee recommendations 2017-19

Policy Change Required	Fully accepted	Partially or implicitly accepted	Neither accepted nor rejected	Partially or implicitly rejected	Rejected outright	Total
Small	2	47	6	18	0	73
Medium	0	7	2	9	1	19
Large	0	0	0	7	0	7
Total	2	55	8	34	1	99

Source: Coded from government responses to Exiting the EU Committee recommendations 2017-19

Table 2: Government acceptance of International Trade Committee Brexit recommendations 2017-19

Policy Change Required	Fully accepted	Partially or implicitly accepted	Neither accepted nor rejected	Partially or implicitly rejected	Rejected outright	Total
Small	1	25	6	11	1	44
Medium	0	3	1	3	0	7
Large	0	0	0	2	0	2
Total	1	28	7	16	1	53

Source: Calculated from government responses to International Trade Committee’s Brexit recommendations 2017-19

Table 3: Government acceptance of European Scrutiny Committee Brexit recommendations 2017-19

Policy Change Required	Fully accepted	Partially or implicitly accepted	Neither accepted nor rejected	Partially or implicitly rejected	Rejected outright	Total
Small	0	14	3	6	2	25
Medium	1	2	1	1	0	5
Large	0	0	0	0	0	0
Total	1	16	4	7	2	30

Source: Calculated from government responses to European Scrutiny Committee Brexit recommendations 2017-19

While the direct influence of select committees was limited, this does not mean that select committee scrutiny of Brexit was insignificant. The limited impact of the committee reports is largely explained by the inherent limitations of select committee scrutiny. Select committees cannot compel the government to accept committee recommendations, nor do they have the powers of a court of law to require people to attend or provide information (Kelso, 2018: 165). As one clerk said, “select committees cannot force the government to follow recommendations so instead rely on soft power to achieve their goals” (clerk to author). Therefore, it is unsurprising that the government rejected most recommendations requiring large changes to policy. Examples included the Exiting the EU Committee’s recommendations for a unilateral guarantee on EU citizens’ rights and the ruling out of a no-deal Brexit (Lynch & Whitaker, 2019: 936). However, considering that the government is not obliged to accept committee recommendations, the overall rejection rates were relatively low. The government partially or fully rejected 35% of Exiting the EU recommendations, 32% of International Trade recommendations and 30% of European Scrutiny recommendations (tables 1, 2 & 3). This shows that while large committee recommendations were rejected, most recommendations for small changes were not. The cumulative effect of these smaller recommendations cannot be considered insignificant.

While recommendations in committee reports are the most direct form of committee scrutiny, an analysis of committee scrutiny would be incomplete without assessing the committees’ indirect influence on policy. One way select committees indirectly influenced Brexit was by increasing the exposure of certain issues. Select committees allow members to draw attention to particular issues and raise them up the departmental and ministerial agenda (Benton & Russell, 2013: 790). This was demonstrated across the three committees as support for regulatory alignment with the EU, and opposition to a no-deal Brexit became recurring themes in committee sessions (e.g. Exiting the EU Committee, 2018; European Scrutiny, 2018; International Trade, 2018). Members of select committees were able to increase the exposure of these concerns making it harder for the government to dismiss them.

The spotlight on ministers and officials at oral evidence sessions also produced both reactions and anticipated reactions to committee scrutiny. As Kelso writes, “criticisms from select committees can place the public spotlight on government ministers, civil servants, and other public figures, and force them to answer publicly for mistakes” (Kelso, 2018:165). One example of this was after Brexit secretary David Davis's appearance before the Exiting the EU Committee in October 2017. During the session Davis suggested that parliament may not vote on the Brexit deal before the UK left the EU, claiming that a vote would happen “as soon as possible thereafter” (Exiting EU Committee, 2018: Q119). This prompted an urgent question in the Commons resulting in David Davis apologising and saying that the government “expects and intends to let parliament have its say before Britain leaves” (Brexit Secretary Spokesman, October 2017). This example shows that select committees could also exert indirect influence by generating fear. As Jacob Rees-Mogg said “MPs have the ability to shame” and select committees provide a public forum for them to do so (Jacob Rees-Mogg to author). As a result, governments attempt to pre-empt embarrassing interactions with committees by anticipating committee’s reactions. Thus, select committees' scrutiny would have also had a negative influence on the government by discouraging them from perusing certain paths of action.

In conclusion, scrutiny from select committees had a limited but not insignificant influence on the Brexit process. While my findings show that select committee scrutiny was able to directly influence the Brexit process through committee reports, the accepted recommendations were limited to only small changes. However, the cumulative impact of these accepted changes on the Brexit process cannot be judged as insignificant. In addition to this, the indirect influence of actual and anticipated reactions to select committee scrutiny, must be factored in. While these are harder to quantify, they certainly would have played a role in stopping the government from perusing certain paths of action in relation to Brexit.

Does descriptive representation of the locality have a substantive benefit for constituents?

It is often assumed that MPs who were born and bred inside their constituencies represent their constituents better than MPs who were born outside their constituencies. Studies have consistently shown that voters prefer candidates with local roots to candidates from further afield (e.g. Campbell *et al*, 2019; Campbell & Cowley, 2014). However, it remains unclear whether MPs with local roots deliver more substantive representation for the areas they represent. In the limited confines of this essay, I will argue that there is no evidence to support this widely held belief. To start, I will briefly outline my method. Then, I will show that MPs with local roots do not promote their constituency interests more in

parliament. To finish, I will argue that there is little evidence to show that MPs with local roots engage more inside their constituencies.

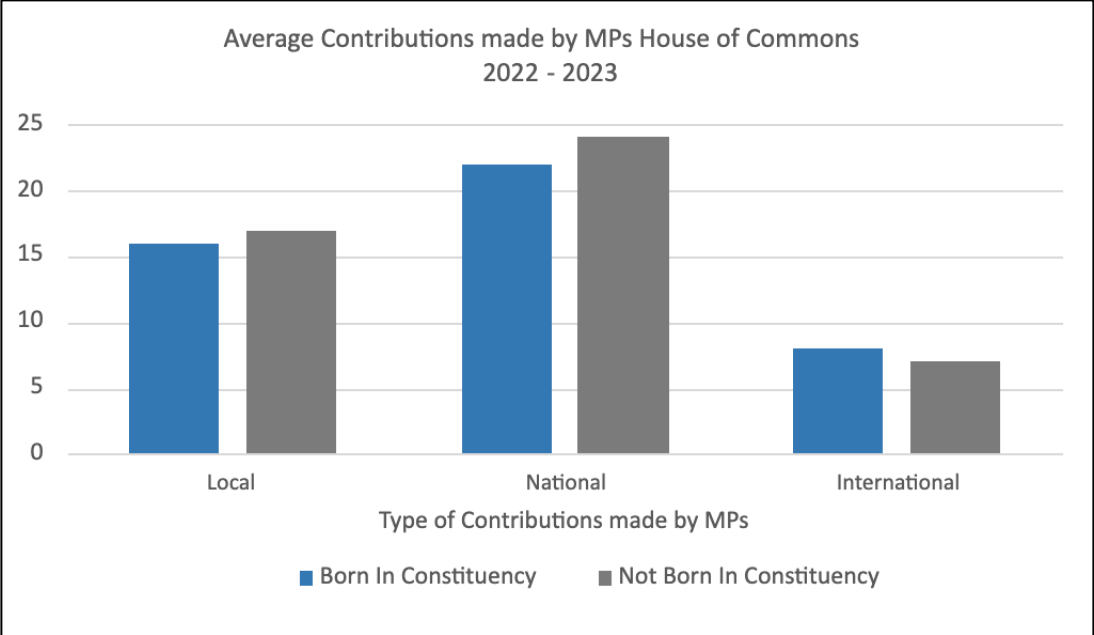
Hanna Pitkin's *The Concept of Representation* (1967) first proposed the ideas of descriptive and substantive representation. She defined descriptive representation as representatives standing for a group by virtue of their shared characteristics: "being something rather than doing something" (Pitkin, 1967: 61). This contrasts with substantive representation whereby representatives seek to further a group's interests or policy preferences (Pitkin, 1967: 212). Descriptive representation of the locality (DRL) means representation of a territory by someone originally from that territory (Cowley & Childs, 2011: 4). To find out whether DRL leads to a substantive benefit for constituents I created a sample of 20 MPs from the three largest parties in the House of Commons. Ten were born and raised no further than 20 km from their current constituencies' boundaries, and another ten were born and raised further afield. I then coded all their contributions (1,007) in the Commons during the 2022-23 session, categorising them in terms of three broad issue-areas: local, national and international. I then compared each group's average number of contributions in these categories to see whether there was a significant difference between the MPs with local roots and MPs without local roots in terms of the number and type of contributions they make.

My study did not find evidence that DRL led to an increased promotion of constituency interests in parliament. Part of the electoral appeal of local-rooted politicians is that they offer voters a low-cost cue for making inferences about the likelihood of their behavioural localism (Campbell et al, 2019: 938). Voters tend to think that an MP who was born and raised in their constituency will follow the interests of their constituents more diligently than an MP who was born and raised elsewhere. Some indication of the extent to which this is true can be gained by analysing how much time MPs dedicate to promoting their constituency interests in the Commons. While using the floor of the House is often kept in reserve there are moments such as PMQs which provide MPs with a good opportunity to publicise their constituency's interests. Contrary to popular belief, I found that MPs with local roots did not promote their constituencies' interests more than MPs without local roots (Table 1). During the 2022-23 session, MPs with local roots made an average of 16 contributions in the Commons promoting their constituencies, while MPs *without* local roots made an average of 17 contributions in the Commons promoting their constituencies. In all, national issues, rather than local or international, were the subject of most of their contributions.

To see if this marginal difference in engagement was true of other mechanisms in the Commons, I also analysed how many MPs tabled early day motions (EDMs) promoting constituency interests. Analysing

the EDMs tabled by my sample of 20 MPs between 2022-23, I found only a negligible difference between those with local roots and those without local roots. MPs with local roots submitted two more EDMs promoting constituency interests, yet this was well within the error of margin. Again, most of the EDMs tabled pertained to national and international issues, rather than constituency interests. It is unsurprising that both MPs with local roots and without local roots spent most of their time in the Commons on national issues as this merely shows that MPs have other duties outside of their roles as representatives to their constituents. At Westminster, MPs roles as representatives are always constrained by their roles as legislators. Often this means that constituency work and parliamentary work are counterposed and a split between legislative roles and representative roles occurs (Judge & Partos, 2018: 268). This always applies to MPs, regardless of whether they hailed from close or far from their constituency. Hence why Jacob Rees-Mogg concludes that “while being a local representative is helpful, it is not everything” (Jacob Rees-Mogg to author).

Table 1: Average Contributions made by MPs in the House of Commons 2022-23

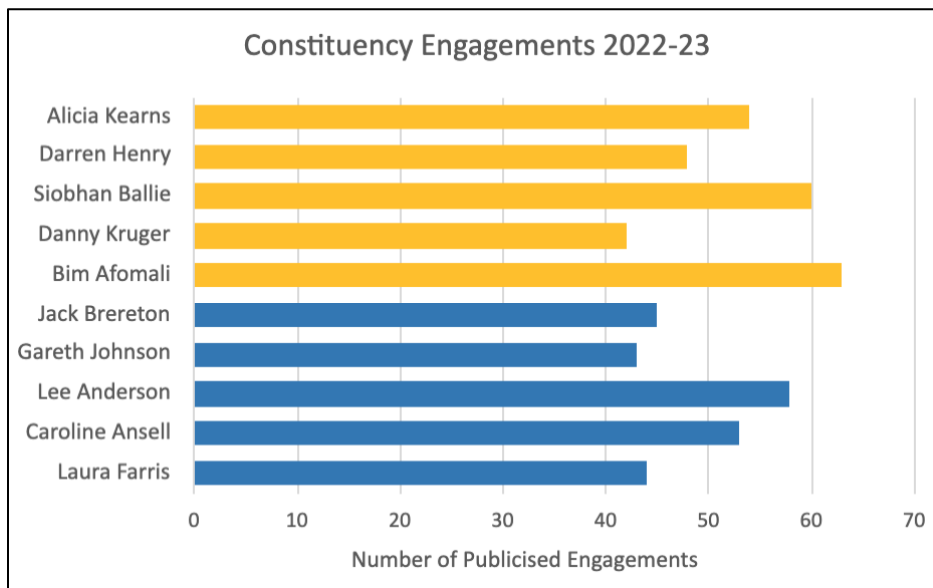


Source: Hansard using a sample of 20 MPs’ contributions between 2022-23

Outside of parliament, there is little evidence to support the belief that MPs with local roots engage more within their constituencies than MPs without local roots. While most of an MP’s time is spent in parliament, their constituency roles also remain important. Philip Norton identifies three roles that MPs fulfil inside their constituencies: safety valve, information provider and local dignitary (Norton, 2013: 220). While it is much harder to collect information on the first two roles, it is possible to get some indication of how often MPs fulfil their role as local dignitaries via their blogposts and social media. To

see if there was any relationship between an MP’s local roots and how often they fulfilled their role as a local dignitary, I looked at a sample of MPs’ websites, Twitter pages and Facebook pages for publicised engagements within their constituencies. Due to an inadequate amount of public information for the Labour MPs in my sample, I created a smaller sample of only Conservative MPs. Like my first sample, half of the MPs were born and raised inside the constituencies they represent, while the other half were born outside. Engagements were broadly defined along the lines of Philip Norton’s definition of a local dignitary as someone who is “seen in the constituency, attending civic and other events” (2013: 220). Typical examples included: visiting local schools/hospitals, opening new shops/restaurants, supporting local charity events. Again, my results indicate that there was little difference between the MPs who were born and raised in their constituencies and those born outside (Table 2). While this is by no means conclusive proof that local roots do not affect MPs engagements inside their constituencies, it does indicate that there is probably not a substantial difference in this area.

Table 2: Constituency Engagements 2022-23



■ Born in Constituency
 ■ Not Born in Constituency

Source: Collected from MP websites, Twitter pages and Facebook accounts.

In conclusion, there is no evidence to support the case that MPs with local roots deliver more substantive representation to the areas they represent.

While a wider sample of MPs is needed to conclusively prove this, my study does indicate some findings. It is evident from my research that MPs with local roots did not promote their constituencies’ interests any more than MPs without local roots. This is seen in the lack of difference between the types of contributions MPs made in the Commons. MPs were more likely to raise national issues than constituency issues, regardless of where they were born and raised. This is unsurprising as MPs roles as legislators in parliament always constrain their roles as representatives to their constituents. In addition

to this, it is also the case that there is little evidence to prove that MPs with local roots engage more inside their constituencies.

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