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Constitutionalising English Local Government?

An Overview of the Debate and Directions of Travel

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Executive Summary

Government discourse increasingly accentuates devolution and local autonomy, using constitutional language. This paper aims to take the debate forward by examining the prospects for constitutional entrenchment of English local government within the existing uncodified constitutional framework. Encompassing both strategic and principal authorities within the term “local government”, it assesses what entrenchment could mean, what obstacles stand in its way, and how constitutional weight could accumulate over time.

Context and Problem

The English Devolution White Paper of December 2024 expressed an intention to enhance the constitutional position of English local government, yet left unanswered what this means and how it might be accomplished under parliamentary sovereignty. The backdrop is a financial crisis: spending power was an estimated 13.5% lower in real terms in 2024/25 than in 2010/11, and 22.2% lower adjusted for population growth, while the 2025 Local Government Information Unit survey of council leaders and senior officers found 35% of councils thought a Section 114 notice likely within five years. 6% anticipated it occurring within the following financial year. Financial dependency on central grants is the primary mechanism through which central dominance reconstitutes itself, a “devo-centralist” trap that has persisted across governments of every political persuasion. Alongside this, the scope of local government has been substantially reduced over decades through the shrinkage of functions and the creation of educational and care systems operating outside local democratic control.

Constitutional Framework and Precedents

A codified constitution is not on the UK political agenda, so any entrenchment would be situated within the limits of parliamentary sovereignty. Within the current constitution, conventions and ordinary legislation alike can easily be overridden by simple parliamentary majority. England’s geo-constitutional deficit compounds the challenge: the relative weakness of civic traditions and territorial identity reflects a deeper Anglocentric constitutionalism in which England does not experience its own subordination as subordination. Nevertheless, potential space exists between parliamentary sovereignty and a fully codified constitution. Young identifies four levels of protection, ranging from implied-repeal protection for constitutional statutes to manner and form requirements with supermajority or referendum locks. These measures do not guarantee immunity from reversal, but they could contribute to raising the political and economic costs of re-centralisation.

The Devolution and Community Empowerment Act

The English Devolution and Community Empowerment Act 2026 received Royal Assent on 29 April 2026, moving English devolution towards a general statutory framework and codifying areas of competence for strategic authorities. Assessed against Young's spectrum, however, it is no more than ordinary primary legislation, repealable by simple majority. It carries no interpretive obligation and no supermajority or referendum lock, and makes no mention of constitutionality. Henry VIII powers allow ministers to rewrite much of the devolution framework through secondary legislation, undermining rather than enhancing the constitutional position of local government. Financial dependency and top-down accountability remain outside the scope of the Act. This means that devolution has not so far enhanced the constitutional position of local government, in either the case of sub-regional strategic authorities or principal local authorities.

Pathways to Constitutional Entrenchment under Parliamentary Sovereignty: Policy Insights

Coalition building around explicitly constitutional objectives is essential, while financial and functional restoration are also preconditions of constitutional entrenchment. Consistent intergovernmental assertiveness by strategic and local authority leaders must follow, since constitutional entrenchment relies on the political practice from which conventions grow, and the new partnership bodies will acquire constitutional potential only if placed on a statutory footing with defined powers and duties. Subsidiarity principles, roles and functions of local government could be established through a national convention and embedded in constitutional statutes incorporating the European Charter of Local Self-Government and Young's four grades of legal protection. Should Britain once again move closer to the EU, there is potential for external leverage through realignment and treaty negotiation. None of these measures substitute for the democratic legitimacy that a publicly engaging process could nurture, alongside geo-constitutional capacity-building and the accumulation of institutional weight. Politics and economics are just as important as legal form.

Conclusion

The aspiration to constitutionalise English local government proceeds from a very low base in difficult political and economic conditions. It is not advanced by the 2026 Act, which in certain legal respects undermines it. There are no measures short of codification that could guarantee repeal immunity. However, it might be possible to raise the political and economic costs sufficiently to deter future reversal. The central argument in this paper is that this latter constitutional space is worth trying to carve out for those who wish to strengthen English local government.

I. Introduction

The English devolution debate is bound up with tantalising references to constitutional entrenchment. In forewords to the English Devolution White Paper, Angela Rayner and Jim McMahon promised ‘constitutional autonomy and partnership’ for local government, with devolution to be embedded as a ‘default’ into the UK constitution (HM Government 2024: 5-6). A new settlement is promised for local and strategic authorities, “with constitutional autonomy built in” (2024: 72). The government does not elaborate on what it means by “constitutional autonomy”, but in using such terminology it creates a space through which to press the issue. At the same time, despite portentous constitutional vocabulary, the English Devolution and Community Empowerment Act (2026) contains no constitutional provisions. The current paper proceeds from the view that it is therefore timely to revisit the constitutional basis for English local government and prospects for strengthening it.

The British constitution is often described as unwritten, yet it is extensively written in statutes, case law, prerogative instruments and conventions elaborated across centuries. It is not coded in documentary form, standing above ordinary legislation and enabling courts to strike down statutes deemed inconsistent with it. Given that a codified constitution is not currently on the political agenda, the obstacles and avenues for constitutional entrenchment are framed by the Westminster Model or British Political Tradition: in principle, any element of the uncodified constitution can be overturned by act of parliament. Understanding how constitutional arrangements could evolve within such constraints is therefore a precondition for further progress (Sargeant et al., 2023).

The term “English local government” is used as short-hand to encompass the evolving landscape of principal local authorities, strategic authorities and parishes. Because most attention falls on the role of strategic authorities, it is emphasised that the constitutional debate must encompass all of England’s local governments.

At a legal minimum, uncodified constitutional entrenchment implies formal recognition of local government as a distinct sphere of democratic authority, clear delineation of competences between central and local tiers, procedural constraints on unilateral central override, a defined and predictable financial framework, and institutionalised intergovernmental dialogue in which local and regional representatives participate as co-equals. Short of codification, any advance in constitutional entrenchment rests on the combination of approaches pursued and on raising the political and economic costs of reversal to such an extent that no future government would choose to incur them.

The paper proceeds in several steps. Section II considers what is to be protected. Section III explores the continuing dominance of Westminster in central-local relations. Sections IV and V explain the existing constitutional platform, and constitutional change over time. Section VI draws on Young (2023a) to explore what protections are possible under parliamentary sovereignty. Section VII turns to civil society and culture, exploring the importance of the local geo-constitution in reinforcing the legitimacy of local governments. Section VIII applies the

preceding analysis to the 2026 English Devolution and Community Empowerment Act and Section IX explores possible pathways towards constitutional entrenchment.

II. The Object of Protection

Constitutional entrenchment rests on what tangibly is to be protected. Strong protection for a hollow entity would be futile. Local authority spending power was an estimated 13.5% lower in real terms in 2024/25 than in 2010/11, and 22.2% lower when adjusted for population growth (Hoddinott and Dellar, 2025). It is not unreasonable to describe the situation as a financial crisis (Arrieta and Davies, 2025). The 2025 LGIU survey (2025) of leaders, deputy leaders and senior officers found that 35% of councils considered it likely they would issue a Section 114 notice within five years (anticipating an inability to balance the budget in line with the Local Government Finance Act 1988), 6% within the following financial year. Where commissioners are sent in to deal with financial crisis, the reality of central-local relations is starkly revealed: local democratic accountability is to a significant extent suspended and central oversight substituted.

The financial crisis is, in significant part, a social care crisis. Adult social care consumes an increasing share of local authority budgets, driven by an ageing population and the long-term failure to reform care funding sustainably. Children's social care presents similar pressures, exemplified by the SEND crisis. So too do homelessness duties and the costs of temporary accommodation. These are statutory demand-driven functions, absorbing resources previously invested in civic functions that gave local government a broader democratic character.

Beyond finance, the scope of local government has been significantly reduced since the 1980s. The academy system has eroded democratic control over education. Integrated care systems have created a landscape of appointed bodies operating across local authority boundaries with substantial resources and significant place-shaping consequences, outside any local democratic framework. Mayoral development corporations exercise planning and regeneration powers. The growth of such bodies, and the accompanying attenuation of elected oversight, is a long-running feature of the English state (Skelcher, 1998). The resulting financial and functional deficit was documented long before the most recent reorganisations (National Audit Office, 2018).

The result is that local government, notwithstanding powers of general competence and the rise of strategic authorities, is in many respects a shadow of what it was. Debate about constitutional protection therefore rests on prior understandings of what local governments are for, what they should do, and how functions and aspirations can be funded.

III. The Persistence of the Westminster Model in Central-Local Relations

The weakness of local government today reflects enduring features of central-local relations. The power-dependence model (Rhodes, 1999) demonstrates that central and local government are mutually dependent, each controlling resources the other needs. However, the asymmetry of financial and legal resources consistently reconstitutes central dominance. The model anticipates that devolution will always be systematically undermined unless resource asymmetry is addressed. Morphet and Denham (2024) analysed the trailblazer combined authority deals and found that new responsibilities operating under centrally mandated frameworks did not meaningfully alter the centre-local power balance. Davies (2025) characterised the condition as “devo-centralism”: devolved functions are invariably coupled with conditionalities, statutory obligations and control mechanisms. The New Labour comparison is instructive: devolutionary rhetoric sustained across thirteen years did not prevent an intensification of central control. Flinders (2005) documented this not only as a political failure but as the expression of structural pressures that any government encounters as it becomes more institutionalised.

Morphet and Denham (2024) highlight the national departmental accounting officer function as the key organisational mechanism through which central dominance is locked in. To acquire substance and depth, any constitutional settlement would have to curtail top-down accountability. Newman and Kenny (2023) identify the same structural pathology at the level of constitutional architecture, proposing the creation of an Office for England modelled on the territorial offices for Scotland, Wales and Northern Ireland. Without such a body, Whitehall will continue to relate to local institutions as principal to agent.

The cultural dimension also matters and tends to be underweighted. Denham and Morphet (2025) capture this through the concept of Anglocentric constitutionalism: a constitutional culture in which the subordination of local to national authority appears as structural inevitability rather than arising from political choices. One practical expression is found in what Copus, Roberts and Wall (2017) termed ‘municipal Stockholm syndrome’: the tendency of councillors, even those committed to devolution, to seek central validation rather than assert local democratic mandates. If constitutional rights are not robustly asserted by protected institutions, they are highly unlikely to gain political traction.

IV. The Current Constitutional Platform

The constitutionalisation debate does not begin entirely at ground zero. English local government already has a thin proto-constitutional platform: ultra vires protection through the courts (which cuts both ways); a general power of competence under the Localism Act 2011 and embryonic conventions around consultation. Constitutionalisation without codification is therefore a project for securing and building on an existing, if precarious, platform.

The South Cambridgeshire four-day week dispute provides one plausible illustration of how this platform can be used in practice, as well as its vulnerability. In 2023, South Cambridgeshire District Council began an experiment, where staff worked 80% of their contracted hours for 100% of their pay, on the condition that they completed 100% of their work. Following successful trial results the arrangement was made permanent. However, it faced fierce opposition from the then government.

The council's legal authority to undertake such an experiment rests on the general power of competence: a local authority can do anything an individual can do unless specifically prohibited. The Sunak government attempted to block the arrangement. Its failure to do so was highlighted by the ultra vires character of its own Best Value Notices (DLUHC 2023a; DLUHC 2024), which appeared to fall outwith the Secretary of State's statutory powers under the Local Government Act 1999. These powers require a finding of failure before intervention. When statutory authority proved insufficient, government sought to apply financial pressure (DLUHC 2023b). The incoming Labour government withdrew the threat, and in November 2024 wrote to the council acknowledging that 'local authorities are independent employers who are rightly responsible for the management and organisation of their own workforces' (MHCLG 2024).

This episode shows that legal protections against central overreach are real, sufficient to allow a council with political resolve to hold its position until political conditions changed. However, they could easily be removed. Shadow Secretary of State, James Cleverly, has threatened that a future Conservative government would legislate to ban the four day week (Thomas, 2026). The challenge for those seeking to build constitutional entrenchment is to deter this centralising impulse: to make legal protection more robust, more predictable and less contingent on the political weather, while raising the political and economic costs of reversal.

V. How the Uncodified Constitution Changes: The Sewel Template

Any assessment of constitutional protection for local government must begin with evidence of how the British constitution has evolved in the recent past. The development of the Sewel Convention since 1998 is instructive both in showing how constitutional weight can accumulate in a system without formal codification (Allen, Byrne and Paun, 2024) and in revealing its limits in the face of a centralising Westminster government.

The convention started with a ministerial statement in July 1998, when Lord Sewel told the House of Lords that the government 'would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament' (Bowers, 2005). Successive governments duly sought legislative consent motions from Holyrood before legislating in devolved areas. Memoranda of understanding and bilateral concordats gave the convention further content. The Scotland Act 2016 went further, giving the convention statutory expression and declaring both the Scottish Parliament and Scottish Government permanent, abolishable only by referendum. The Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* [2017] confirmed Sewel as a genuine constitutional rule and treated it as part of the constitutional landscape that Parliament could not be assumed to override without express words.

However, as Keating (2026) observes, the Miller ruling simultaneously determined that the Sewel Convention had no binding capacity to constrain the UK government. It was violated several times during Brexit, notably the United Kingdom Single Market Act 2020. The current Labour government, whilst improving the atmosphere of intergovernmental relations, appears committed to a sovereigntist approach. Promises to reinforce the Sewel Convention have been dropped. Keating (2026) notes that the unitary sovereign state understanding of the British constitution has consistently prevailed in the courts and in government practice. Any account of the prospects for entrenchment must begin from this sobering assessment.

This account clarifies conventions as a constitutional mechanism: their force is by no means absolute, but proportional to the perceived costs of violation. As Sewel shows, they carry little force when the benefits of violation are considered to outweigh costs, as in the case of Brexit. For English local government, the lessons are that convention-based protection alone is insufficient, and that moving up Young's spectrum towards statutory and procedural entrenchment is necessary.

VI. Young's Spectrum of Constitutional Protections

The Sewel template represents one point on a spectrum of plausible constitutional protections. Young (2023a) maps the wider range of legal entrenchment mechanisms available within the existing constitutional settlement, showing that space exists between bare parliamentary sovereignty and full constitutional entrenchment.

Young identifies four levels of legal protection. At level 1 sits the implied repeal protection established in *Thoburn v Sunderland City Council* [2002]: constitutional statutes can only be displaced by express language, not by subsequent legislation that is merely inconsistent with them. The second level, modelled on section 3 of the Human Rights Act 1998, requires courts to interpret all future legislation compatibly with constitutional principles, making declarations of incompatibility where compatible readings cannot be achieved. The third level employs the formula of the European Communities Act 1972, requiring courts to disapply inconsistent legislation. This mechanism rested on EU enforcement structures that no longer exist and cannot be realistically replicated without new and durable treaties and agreements with the EU. Incorporating the European Charter of Local Self-Government into UK law would also be valuable, particularly in ensuring that statutory mandates were fully funded under Article 9 (Council of Europe, 1985). However, this mechanism would not replicate EU oversight. Moreover, the Council of Europe has repeatedly found that the UK fails to fulfil Charter obligations.

The fourth level is the manner and form requirement: a provision that amendments to the constitutional framework can only be achieved by a supermajority or referendum. Young's concept of double entrenchment creates the highest political and procedural hurdle available short of formal codification. This occurs when a law provides both that it can only be changed through a defined high-bar procedure, and that the entrenchment rule itself can only be changed by the same procedure.

Young's work, read alongside Sewel, shows what is required for constitutional entrenchment: primary legislation treated by the courts as having constitutional character; conventions with political force built through consistent practice; a statutory referendum lock on abolition and accumulated costs on reversal. She also insists on a further precondition: any entrenchment mechanism ultimately rests on legitimacy: embedded practice, public engagement and assent.

VII. The Geo-Constitutional Deficit

Wills's (2019) concept of the geo-constitution provides a useful analytical frame for thinking about legitimacy. Wills argues that the constitutional character of institutions is shaped by the territorial inheritance, civic culture and democratic expectations within which they are embedded. English local government does not, in the main, possess the kind of geo-constitutional depth that Scotland's devolution settlement, and to a less extent Wales's, commands. This is not simply about the unevenness and relative weakness of city-regional identities; it also concerns the historic character of English local institutions. Local government in England has long been understood by central government primarily as a vehicle for delivering national government policies, rather than as a form of democratic self-expression (Davies, 2025).

Local government reorganisation risks aggravating the geo-constitutional deficit. The engineering of large unitary authorities and sub-regional strategic authorities threatens to dissolve civic roots and local accountability through which geo-constitutional depth is built. Whether large institutions created from the top down can accumulate such depth is an open question. Andy Burnham's public confrontation with central government over Covid-19 restrictions in autumn 2020 demonstrated that a directly elected mayor with popular legitimacy and the willingness to deploy it can acquire political weight that council leaders operating within the traditional principal-agent relationship rarely achieve. Though Burnham was ultimately unsuccessful in his challenge, it cemented his status and reputation in Greater Manchester. Whether the mayoral and strategic authority system contributes over time to a geo-constitutional deepening of city-regions therefore remains to be seen.

Wills's (2020) research in Cornwall shows the risks attendant on reorganisation: town and parish councils responded to austerity through institutional switching and asset transfer, illustrating that geo-constitutional inheritance at lower tiers can support resilience that centrally manufactured strategic authorities risk hollowing out and will struggle to replicate. Any credible reform agenda must account for the risk it poses to geo-constitutional embeddedness and plausible vehicles for reconstituting it.

VIII. The English Devolution and Community Empowerment Act

The English Devolution and Community Empowerment Act received Royal Assent on 29 April 2026. It moves English devolution from ad hoc bilateral deals towards a devolution-by-default model structured around three defined tiers: Foundation, Mayoral, and Established Mayoral strategic authorities. The Act codifies areas of competence in which strategic authorities have recognised powers. Established strategic authority mayors gain a general power of competence and a power to convene local partners, supported by a statutory duty on partners to respond. A right for mayors to request further powers is created, with the government under a statutory obligation to respond.

However, a major limitation is the Act's retention of broad "Henry VIII powers" permitting ministers to reallocate functions and amend future Acts of Parliament through secondary legislation (House of Lords Delegated Powers and Regulatory Reform Committee 2025; House of Lords Constitution Committee 2026). The Bill's passage was contested: under sustained pressure in the Lords the government relinquished the power to direct the establishment of a strategic authority and the power to impose a mayor on an area without local consent. It further undertook not to enforce the expansion of any strategic authority for four years after Royal Assent. Moreover, the Secretary of State may not designate an existing council as a strategic authority without its consent. The government's reserve powers were nonetheless narrowed rather than abolished, and the centre retains strong directional levers.

Sargeant et al. (2023) argue that constitutional acts cannot fall within the scope of delegated powers that allow ministers to amend primary legislation. A statute that establishes a devolutionary framework while reserving to ministers the power to rewrite it remains, in this respect, constitutionally self-defeating.

The Act's most fundamental limitation is that it makes no constitutional provisions. It is ordinary legislation, repealable by simple parliamentary majority, with no interpretive obligation, no supermajority or referendum lock, and no provision that local authorities can only be abolished with popular consent. In short, it does not reach even the first level of Young's constitutional protection ladder. The specific protection it does confer, that Established Mayoral status cannot be removed by secondary legislation, constrains ministers but not parliament. The devo-centralist contradiction remains unresolved. Table 1 contrasts provisions within the Act with constitutional benchmarks.

Constitutionalising English Local Government?

Table 1: The English Devolution and Community Empowerment Act and Constitutional Benchmarks

Constitutional feature	Constitutional statutes	English Devolution and Community Empowerment Act
Protection from implied repeal (Young Level 1)	<i>Thoburn v Sunderland City Council</i> [2002]: constitutional statutes require express language to override. Scotland Act 1998 treated as fundamental in <i>Miller</i> [2017].	Ordinary statute repealable by simple majority without express requirement.
Interpretive obligation (Young Level 2)	Human Rights Act 1998, s.3: courts must read legislation compatibly with Convention rights so far as possible. Declarations of incompatibility available under s.4.	No interpretive obligation. No equivalent duty on courts to read future legislation compatibly with the devolution framework. No declaration mechanism.
Disapplication of inconsistent legislation (Young Level 3)	European Communities Act 1972: domestic courts empowered to disapply legislation inconsistent with EU law, underpinned by Commission enforcement and CJEU authority.	No disapplication mechanism. Courts cannot disapply future Acts inconsistent with the Act. No external enforcement body analogous to EU institutions.
Referendum or supermajority lock (Young Level 4)	Scotland Act 2016, s.63A: Scottish Parliament and Government declared permanent; can only be abolished by referendum. Double entrenchment model discussed by Young.	No referendum lock. No supermajority requirement for amendment or abolition.
Restriction on Henry VIII powers	<i>Sargeant et al.</i> (2023) recommend that constitutional acts should not be within the scope of delegated powers enabling ministers to amend primary legislation.	Ministers prohibited from creating strategic authorities or reallocating functions without local council consent. However, Broad Henry VIII powers retained.
Statutory architecture and protection against executive removal	Scotland Act 1998 and 2016 together create a permanent devolved legislature with defined competences and a statutory consent convention (Sewel). Greater London Authority Act 1999 established a defined elected tier.	Three-tier statutory architecture established in law, with a specific protection that Established Mayoral status cannot be removed by secondary legislation. Parliament, retains the capacity to remove or alter Strategic Authorities by ordinary primary legislation.
Fiscal guarantees	European Charter of Local Self-Government, Art. 9: financial resources must be commensurate with responsibilities. Barnett formula	Integrated settlements are an administrative arrangement for top-tier mayors, not provided for in the Act. No significant revenue-raising powers, no independent rules-based equalisation,

Constitutional feature	Constitutional statutes	English Devolution and Community Empowerment Act
	provides a rule-based, if imperfect, framework for devolved settlements.	and no incorporation of Art. 9 of the European Charter.

IX. Pathways to Constitutional Entrenchment: Policy Insights

The paragraphs below address substantive preconditions and institutional requirements of a workable settlement, within the parameters of the existing uncodified system, linked to the levels of statutory protection through which it might be secured.

Engaging the Objections

The consensus that England is over-centralised does not mean that scepticism towards enhancing local government can simply be ignored. Despite the government’s ostensible commitment, any realistic route map must take heed of objections to constitutional entrenchment and the case often made for maintaining a strong centre. The case against constitutional entrenchment is intimately bound up with the unresolved question of who should do what, where and when.

Low local electoral turnout is perhaps the most significant objection: the democratic claim to constitutional autonomy is harder to sustain when turnout in local elections regularly falls below 35%, although it is arguable that meaningful devolution and higher political stakes could generate higher engagement. Recent work on the role of appointed boards in United States local government is a reminder that unchecked localism can entrench elite domination and class, gender and racial inequality (Holman, 2025), but these features can also be mitigated through democratic design, public mobilisation and financial equalisation. A constitutional settlement linked to enhancing participatory democracy could help address the turnout problem.

The national macroeconomic management imperative also sets limits to financial devolution. However, a rules-based equalisation system and expanded local revenue-raising capacities are compatible with national fiscal management, as Scotland’s framework demonstrates. Accountability tensions arising when entitlements are defined nationally but locally administered require careful design rather than being used to block further progress.

Coalition Building

Constitutional change is a whole-systems problem, not merely a matter of legal codification. It requires a political coalition capable of sustaining pressure across electoral cycles. For example, professional associations of local government (the LGA, LGIU and NLGN) have consistently advocated for stronger statutory protections. The academic and think-tank community has produced detailed legislative proposals, exemplified by the Denham-Lidington

draft Bill (2024). Mayors and strategic authority leaders with popular mandates, like Burnham, constitute the highest-profile political constituency. Cross-party parliamentary groupings suggest that the project can have broad appeal in Westminster, despite the centralising instinct. Business and civic associations in city-regions represent a potential non-partisan constituency with a material interest in the constitutional anchoring of strategic authorities. The challenge, which is very substantial indeed, is to translate these interests into a coherent and durable programme capable of influencing governments of different political colourings.

Exploiting Background Pressures

External pressures present possible avenues for reinforcing UK subnational governance, operating as strategic levers alongside domestic legislative reform.

The Regulatory and Legal Vector: a potential UK-EU regulatory reset offers one indirect pathway to supporting local autonomy. While a sovereign Parliament can repeal any domestic treaty-implementing statute at will, sustained re-alignment with EU frameworks could reintroduce continental legal principles to domestic courts. Historically, these frameworks favoured the principle of subsidiarity, granting regional tiers leeway in applying standards. Over time, interpreting domestic regulations through this lens could systematically normalise local authority protections within the judiciary. However, the appetite for a full reset re-alignment remains unclear and, as commented earlier the UK continues to violate the European Charter of Local Self-Government.

The Macroeconomic Vector: structural economic demands could in theory act as a countervailing force favouring regional autonomy, to some degree independent of shifting political majorities. Global infrastructure investors, alongside the long-term growth frameworks advocated by the IMF and OECD, tend to favour predictable and capable local partners. Such material interests could be mobilised in support of constitutional safeguards. Framing them as a condition for attracting investment raises the theoretical economic cost of recentralisation. However, as previously recognised, economic pressures and ostensibly rational “growth” calculations would not automatically shield devolution from a determinedly revanchist central government.

The Political Vector: In recent elections, pro-independence parties have either sustained or increased their influence in the devolved administrations, especially in Wales, where Plaid Cymru displaced Labour for the first time in May 2026. Any renewed clamour for independence, or in the case of Northern Ireland for Irish re-unification, could increase support for iterative or semi-formal federalisation, short of a codified constitution. Albeit a proposal that has never generated much support in Westminster, a constitutional convention on local governance could also provide a step forwards (see further below).

Restoring Financial Viability and Functions

Despite the Fair Funding Review, much of local government is still in a perilous financial position. Constitutional weight accumulates around institutions that are working well enough

to be worth protecting. Reinforcing strategic authorities and restoring principal local authorities to financial viability, including fiscal devolution, must be integral to any constitutional project. Funding must follow function (LGIU, 2025). Denham and Lidington (2024) recommend the transfer of existing departmental accounting officer responsibilities to local chief executives, with a new statutory audit body and system of public accounts committees. Such a system would itself require the kind of protection envisaged by Young (2023a). Without financial and functional restoration, entrenchment would risk providing a constitutional frame for an empty vessel.

Building Intergovernmentalism

The new partnership bodies created by the current reform programme, the Mayoral Council, the Leaders' Council and the Council of Nations and Regions, are early-stage institutions whose character and authority have yet to be established. Their constitutional potential depends on how they develop. If they become genuine forums for intergovernmental co-decision making, in which local and regional representatives hold the centre to account, they could generate over time the practice from which conventions develop. If they become vehicles for ministerial communication and management, they will reproduce the principal-agent relationship.

The government's failure to legislate powers and duties for partnership bodies, as recommended by the Brown Commission (Labour Party, 2022), suggests that this elevated role is not currently on the agenda. The most immediate opportunity is therefore practitioner-led: mayors and combined authority leaders using their profiles and electoral mandates actively, publishing records of disagreement with central government when competences are disputed, and co-ordinating to present unified positions on financial and constitutional questions. The South Cambridgeshire episode showed that quiet, persistent assertion of legal rights can yield results. Scaled across local government and applied consistently, assertiveness could begin to shift expectations about what intergovernmental relations in England look like.

The Whole of Local Government

The devolution debate has so far been conducted largely in the register of the mayoral strategic authority. Constitutional vulnerability is, however, a feature of the whole structure, while conditions for geo-constitutional resilience differ significantly across tiers, functions and regions. The current reorganisation programme proposes to abolish district councils in favour of enlarged unitary authorities. This approach both highlights the vulnerability of local government to central government whim and poses significant questions about political and democratic identities and accountabilities. As discussed earlier, the geo-constitutional inheritance of lower-tier institutions can generate resilience under duress that larger, centrally manufactured strategic authorities could struggle to replicate. At the same time, the sense of powerfulness that Lyons (2007) identified as the missing cultural ingredient in English local government must be cultivated differently in a Greater Manchester mayoral region, a Cornish parish and a reorganised unitary authority. To avoid protecting one layer at the expense of

another, it must be cultivated across the whole structure. This agenda requires formal clarification of the role and remit of both central and local governments.

Codifying Subsidiarity

Subsidiarity principles are often cited as a basis for building constitutional entrenchment (Denham and Morphet, 2025). Any constitutional framework must engage with the substantive specification of which decisions belong at which level and on what grounds the centre can legitimately override local choices. Davies (2025) echoes longstanding calls for a national convention, hosted in partnership by central and local government, to consider three principles. First, the sphere of exclusive local competence must be determined: the matters on which local authorities can act without central approval. Second, the grounds for national override must be clear, transparent and judicially enforceable rather than a matter for ministerial discretion. Defined criteria could include a demonstrable cross-boundary externality, a threat to a nationally guaranteed minimum standard, or a finding of systemic financial failure. Each override would carry a right of response and burden of justification. Third, the mechanism for resolving competence disputes must be specified in advance.

Statutory Expression

Each of the measures requiring parliamentary action could be introduced through ordinary legislation. Constitutional protection, however, requires the addition of entrenchment mechanisms from Young's spectrum. A declaratory statute incorporating the principles of the European Charter of Local Self-Government into domestic law would give courts a basis for treating future local government legislation as warranting the constitutional statute treatment established in *Thoburn v Sunderland City Council* [2002]: protection from implied repeal and requiring express language to override. Sargeant et al. (2023) propose a category of constitutional acts, protected from implied repeal and subject to mandatory pre-legislative scrutiny by a new Parliamentary Committee on the Constitution. A future English Governance Act along these lines would achieve Young's first level of entrenchment.

Given the history of majority governments reorganising local government at will, and the fate of Sewel, Level 1 alone is insufficient. The Fixed-term Parliaments Act's two-thirds threshold was repealed by ordinary legislation in 2022, illustrating the limits of any uncodified protection. A more substantive model at Young's second level would require statutory delineation of competences, a rules-based equalisation formula replacing discretionary allocations, structured intergovernmental forums with defined powers and duties, and an explicit interpretive obligation requiring courts to read future legislation compatibly with the settlement as far as possible. Parliament would remain sovereign, but the political cost of unilateral central override would increase.

Level 3 would only be applicable with the restoration of EU oversight. The case for a manner and form requirement at Young's fourth level is compelling. A provision requiring that any amendment to the competence framework or financial architecture of local government be approved by a two-thirds majority of the House of Commons, or by a referendum of the

affected population, could raise the political cost of future reorganisation. If doubly entrenched, the protection could be more durable than either convention or ordinary constitutional statute.

Young recognises that none of this would deter a strong, determinedly sovereigntist government, and notes that the direction of travel is towards ever-stronger executive control (2023b). Nevertheless, the combination of legal entrenchment at the level of manner and form, supplemented by a Parliamentary Committee on the Constitution and an interpretive obligation modelled on section 3 of the Human Rights Act, represents the strongest available entrenchment architecture within the existing constitutional settlement. The premise of the paper is that although there are major political hurdles, campaigning around this constitutional space could be a fruitful avenue for those seeking to strengthen local government.

Civil Society and Democratic Culture

No account of iterative constitutional entrenchment is complete without addressing whether local government, and the communities it serves, understand themselves as having constitutional rights. Constitutional protection and democratic culture are mutually constitutive: each depends on and reinforces the other. Community wealth-building strategies, documented in the Preston model (Guinan and O'Neill, 2020) and other examples of new municipalist practice, illustrate one plausible path forward: tangible policies demonstrating the impact of local democratic agency on local economic development can build constituencies for defending it. Such developments are potentially geo-constitutionally generative in the sense Wills (2020) identifies, creating soil in which protection can take root and raising the political and economic costs of reversal.

The pathways in Table 2 are interdependent and capable of being pursued both in parallel and in sequence. The groundwork measures are prerequisites for constitutional protection. The overall logic is cumulative and path-dependent. The theory is that each step raises the political and economic costs of reversal, making the next step more achievable. No single measure is sufficient alone, and none should be treated as a substitute for the others.

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Table 2: Building Constitutional Entrenchment

Pathway	Principal actors	Preconditions	Feasibility	Young's level
Engaging the Objections	Devolution community of interest	Showing how protection can address objections such as low turnout.	Depends on willingness of central government to engage.	Groundwork
Coalition Building	Devolution community of interest	Willingness to work across political boundaries.	Demonstrated by Denham and Lidington.	Groundwork
Exploiting Background Pressures	UK government; Council of Europe; IMF, OECD, EU	UK-EU reset and dynamic alignment; Council of Europe compliance mechanism; international economic pressure.	Unclear. Potentially significant if treaty-level EU re-alignment occurs.	Groundwork / Levels 2-3
Restoring Financial Viability and Functions	HM Treasury; MHCLG; Parliament	Political will to reform social care funding and equalisation.	Incremental funding reform underway, with the possibility of some fiscal devolution.	Groundwork
Building intergovernmentalism: statutory forums with defined powers	Parliament; strategic authority mayors; local authority leaders	Established practice of intergovernmental assertion; political pressure. The whole of local government.	Not currently on the agenda.	Groundwork / Level 1-2

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Pathway	Principal actors	Preconditions	Feasibility	Young's level
Protecting the whole of local government	Parliament; strategic authority mayors; local authority leaders; lower-tier and parish institutions	Formal clarification of the role and remit of central and local government across all tiers.	Not currently on the agenda; cuts against the reorganisation programme.	Levels 1-4
Codified Subsidiarity with Defined Override Criteria and Dispute Mechanism	Parliament; partnership bodies; judiciary	Statutory intergovernmental forums.	Not currently on the agenda.	Level 2
Statutory expression: incorporation of European Charter of Local Self-Government	Parliament; Parliamentary Committee on Constitution	Political will; Act of Parliament.	Not currently on the agenda.	Level 1
Statutory expression: English Governance Act (constitutional statute)	Parliament; Parliamentary Committee on Constitution	Political will; deliberative convention; Act of Parliament.	Not currently on the agenda.	Level 1
Statutory expression: manner and form / double entrenchment	Parliament; civil society; electorate	Financial viability; geo-constitutional legitimacy; popular engagement; Act of Parliament.	Not currently on the agenda.	Level 4
Civil society and democratic culture: community wealth-building and geo-constitutional accumulation	Local governments; civil society organisations	Local democratic will; geo-constitutional capacity.	Local government reorganisation is a threat. Central government can enable, e.g. through neighbourhood structures.	Groundwork

X. Conclusion

Interest in the constitutional position of local government is stimulated by the government's stated commitment to a re-wiring of local government's constitutional status, pursuant to "constitutional autonomy". Yet, the current approach to devolution does not live up to this grand ambition. Keating (2026) is right that, notwithstanding Young's four grades of protection (2023a), any legislation can ultimately be overridden by a parliamentary majority with the political will to do so. The argument, however, is that there is a significant difference between measures that would guarantee immunity from reversal, and measures that could raise the political and economic costs sufficiently to deter governments from incurring them. The paper proposes that those wishing to strengthen English local governance could fruitfully aim to cultivate the latter space.

If the pathways set out above have an order of priority, it runs roughly as follows, with a preference for parallel development and recognition of mutual interdependence. Financial and functional restoration is a condition of entrenchment, because constitutional protection of financially impoverished institutions protects a dependency relationship, not an autonomous one. Consistent intergovernmental assertiveness by mayors and combined authority leaders must follow, since statutory entrenchment cannot precede the political practices from which conventions grow. A deliberative foundation, mapping competences and specifying the grounds for national override, is a precondition for making statutory protection stick. External pressures could be exploited as leverage points in the context of continuing political and economic turbulence. Higher levels of Young's legislative protection could then embed the sequence with positive feedback loops.

Despite the devolutionary zeitgeist, it is clear that accumulating constitutional protections requires a break with existing governmental thinking and a novel degree of geo-constitutional assertiveness at scale. To this end, mayors and local authority leaders with popular mandates could help generate the intergovernmental practices from which conventions develop, provided they are willing to assert democratic authority and stand up to ministers. Parliamentary actors can pursue cross-party consensus, as figures like Denham and Lidington exemplify. Civil society organisations can work to rebuild the deliberative and geo-constitutional legitimacy that no formal procedure can summon on its own.

Short of formal codification, the final protection for local government is not legal or procedural but political: a sufficient weight of public commitment and institutional sedimentation to make violation of rights politically and economically intolerable. In an era of democratic backsliding and rising executive dominance, this is a formidable challenge (Young, 2023b). Yet it is one worth taking seriously. Devolution is more likely to endure and flourish if the government's own constitutional language is taken up, used as leverage and translated into explicit tactics and strategies.

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References

- Allen, B., Byrne, B. and Paun, A. (2024) The Sewel Convention in Practice: Five Case Studies from the 2019–24 Parliament. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2024-11/Sewel-convention-in-practice.pdf>
- Arrieta, T. and Davies, J. S. (2025) 'Crisis Management in English Local Government: The Limits of Resilience', *Policy & Politics*, 53(3): 594–612. Available at: <https://doi.org/10.1332/03055736Y2024D000000029>
- Bowers, P. (2005) The Sewel Convention. Standard Note: SN/PC/2084, Parliament and Constitution Centre. Available at: <https://researchbriefings.files.parliament.uk/documents/SN02084/SN02084.pdf>
- Copus, C., Roberts, M. and Wall, R. (2017) *Local Government in England: Centralisation, Autonomy and Control*. London: Palgrave Macmillan. Available at: <https://link.springer.com/book/10.1057/978-1-137-26418-3>
- Council of Europe (1985) European Charter of Local Self-Government. ETS No.122. Strasbourg: Council of Europe. Available at: <https://rm.coe.int/european-charter-of-local-self-government-eng/1680a87cc3>
- Davies, J. S. (2025) Central-Local Relations under Labour (2024–): Emerging Themes and Issues in English Devolution. Birmingham: City-REDI, University of Birmingham. Available at: https://pure-oai.bham.ac.uk/ws/portalfiles/portal/256168205/Central-Local_Relations_under_Labour_-_Think_Piece_-_Jan_2025.pdf
- Denham, J. and Lidington, D. (2024) *The Local Governance of England: The Draft Local Government (England) Bill*. London: Constitution Reform Group. Available at: <https://eprints.soton.ac.uk/507737/1/The-Local-Governance-of-England-FINAL.pdf>
- Denham, J. and Morphet, J. (2025) 'Centralised by design: Anglocentric constitutionalism, accountability and the failure of English devolution', *The Political Quarterly*, 96(1), pp. 189–198. Available at: <https://doi.org/10.1111/1467-923X.13470>
- DLUHC (2023a) Best Value Notice: South Cambridgeshire District Council, 3 November 2023. London: Department for Levelling Up, Housing and Communities. Available at: <https://www.gov.uk/government/publications/south-cambridgeshire-district-council-best-value-notice>
- DLUHC (2023b) Local Government Finance Settlement 2024/25: Technical Consultation, December 2023. London: Department for Levelling Up, Housing and Communities. Available at: <https://www.gov.uk/government/consultations/consultation-provisional-local-government-finance-settlement-2024-to-2025>
- DLUHC (2024) Best Value Notice: South Cambridgeshire District Council (Second Notice), 8 May 2024. London: Department for Levelling Up, Housing and Communities. Available at: https://assets.publishing.service.gov.uk/media/663b3f651834d96a0aa6d211/SCDC_Best_Value_Notice.pdf
- Flinders, M. (2005) 'Majoritarian democracy in Britain: New Labour and the constitution', *West European Politics*, 28(1), pp. 61–93. Available at: <https://doi.org/10.1080/0140238042000297099>

Constitutionalising English Local Government?

- Guinan, J. and O'Neill, M. (2020) *The Case for Community Wealth Building*. Cambridge: Polity Press. Available at: https://www.politybooks.com/bookdetail?book_slug=the-case-for-community-wealth-building--9781509539024
- HM Government (2024) *English Devolution White Paper*. London: HMSO. Available at: <https://www.gov.uk/government/publications/english-devolution-white-paper-power-and-partnership-foundations-for-growth>
- HM Government (2026) *English Devolution and Community Empowerment Act 2026 (c. 23)*. London: The Stationery Office. Royal Assent 29 April 2026. Available at: <https://www.legislation.gov.uk/ukpga/2026/23/enacted>
- Hoddinott, S. and Dellar, A. (2025) *Performance Tracker 2025: Local Government*. Institute for Government, 15 October. Available at: https://www.instituteforgovernment.org.uk/sites/default/files/2025-10/Public-services-performance-tracker-2025-local-government_1.pdf
- Holman, M. R. (2025) *The Hidden Face of Local Power: Appointed Boards and the Limits of Democracy*. Philadelphia: Temple University Press. Available at: <https://tupress.temple.edu/books/the-hidden-face-of-local-power>
- House of Lords Constitution Committee (2026) *English Devolution and Community Empowerment Bill*. 16th Report of Session 2024–26, HL Paper 245. Available at: <https://publications.parliament.uk/pa/ld5901/ldselect/ldconst/245/245.pdf>
- House of Lords Delegated Powers and Regulatory Reform Committee (2025) *English Devolution and Community Empowerment Bill*. 45th Report of Session 2024–25, HL Paper 248. Available at: <https://publications.parliament.uk/pa/ld5901/ldselect/lddelreg/248/24802.htm>
- Keating, M. (2026) 'The Unfinished Constitution', Centre on Constitutional Change Blog, 9 April. Available at: <https://www.centreonconstitutionalchange.ac.uk/blog/2026/unfinished-constitution>
- R (Jackson) v Attorney General [2005] UKHL 56. Available at: <https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd051013/jack.pdf>
- Labour Party. (2022) *A New Britain: Renewing Our Democracy and Rebuilding Our Economy*. Available at <https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf>
- Local Government Act 1999 (c.27). Available at: <https://www.legislation.gov.uk/ukpga/1999/27/contents>
- Local Government Information Unit (LGIU) (2025) *2025 State of Local Government Finance in England*. Available at: <https://lgiu.org/wp-content/uploads/2025/03/2025-State-of-Local-Government-Finance-in-England.pdf>
- Localism Act 2011 (c.20). Available at: <https://www.legislation.gov.uk/ukpga/2011/20/contents>
- Lyons, M. (2007) *Place-Shaping: A Shared Ambition for the Future of Local Government*. London: The Stationery Office. Available at: <https://www.gov.uk/government/publications/place-shaping-a-shared-ambition-for-the-future-of-local-government-final-report>
- MHCLG (2024) Letter from Max Soule, Deputy Director, Local Government Stewardship and Intervention, to Liz Watts, Chief Executive, South Cambridgeshire District Council, 8 November 2024. Available at: <https://www.scamb.gov.uk/media/3ienchoh/8-november-2024-letter-from-mhclg-to-scdc.pdf>

Constitutionalising English Local Government?

- Morphet, J. and Denham, J. (2024) 'Trailblazer devolution deals: The next oxymoron in the policy litany of sub-national governance in England?', *Local Economy*, 38(8), pp. 755–772. Available at: <https://doi.org/10.1177/02690942241270570>
- National Audit Office (2018) *Financial Sustainability of Local Authorities 2018*. HC 834. Available at: <https://www.nao.org.uk/reports/financial-sustainability-of-local-authorities-2018/>
- Newman, J. and Kenny, M. (2023) *Devolving English Government*. London: Institute for Government and Bennett Institute for Public Policy. Available at: <https://www.instituteforgovernment.org.uk/publication/devolving-english-government>
- R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5. Available at: <https://www.supremecourt.uk/cases/uksc-2016-0196>
- Rhodes, R. A. W. (1999) *Control and Power in Central-Local Government Relations*, 2nd edn. Aldershot: Ashgate.
- Sargeant, J., Coulter, S., Pannell, J., McKee, R. and Hynes, M. (2023) *Review of the UK Constitution: Final Report*. London: Institute for Government and Bennett Institute for Public Policy. Available at: <https://www.instituteforgovernment.org.uk/publication/final-report-review-uk-constitution>
- Scotland Act 1998 (c.46). Available at: <https://www.legislation.gov.uk/ukpga/1998/46/contents>
- Scotland Act 2016 (c.11). Available at: <https://www.legislation.gov.uk/ukpga/2016/11/contents>
- Skelcher, C. (1998) *The Appointed State: Quasi-Governmental Organisations and Democracy*. Buckingham: Open University Press.
- Thoburn v Sunderland City Council [2002] EWHC 195 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2002/195.html>
- Thomas, C. (2026) Tories vow to ban four-day working weeks in the public sector. *The Independent*. 8th April. Available at <https://www.independent.co.uk/bulletin/news/four-day-week-ban-tories-b2953563.html>
- United Kingdom Internal Market Act 2020 (c.27). Available at: <https://www.legislation.gov.uk/ukpga/2020/27/contents>
- Wills, J. (2019) 'The geo-constitution: Understanding the intersection of geography and political institutions', *Progress in Human Geography*, 43(3), pp. 416–435. Available at: <https://doi.org/10.1177/0309132518768406>
- Wills, J. (2020) 'The geo-constitution and responses to austerity: Institutional switching in Cornwall', *Transactions of the Institute of British Geographers*, 45(4), pp. 817–832. Available at: <https://doi.org/10.1111/tran.12387>
- Young, A. L. (2023a) *Constitutional Entrenchment and Parliamentary Sovereignty*. London: Institute for Government and Bennett Institute for Public Policy. Available at: <https://www.instituteforgovernment.org.uk/publication/constitutional-entrenchment-parliamentary-sovereignty>
- Young, A. L. (2023b) *Unchecked Power? How Recent Constitutional Reforms Are Threatening UK Democracy*. Bristol: Bristol University Press. Available at: <https://bristoluniversitypress.co.uk/trade/unchecked-power>



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