

Who Governs?

Forming a coalition or a minority government in the event of a hung Parliament

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Executive Summary

- Who won the general election may not be clear: the party with the most seats or the most votes? Which party possesses political momentum or moral authority to govern?
- The incumbent 'caretaker' prime minister has first call on forming an administration. Only if the incumbent prime minister fails to put together a deal with one or more of the other parties, or, after having chosen to 'meet' Parliament, he loses a confidence motion, will the leader of the largest opposition party be invited to form a government.
- The politicians' decisions will be dependent upon a confluence of factors including: electoral arithmetic; constitutional conventions; the pressure of the 24-hour media cycle and blogosphere; the influence of the financial markets; and the perceived direction of public opinion.
- In seeking to put together an administration there are several options available: to govern from a minority position; to govern as a minority but on the basis of an informal agreement with one or more of the other parties; to establish a formal coalition with one or more of the other parties.
- There is no statutory time limit governing how long a party leader can take to put together an administration. However, the Queen's Speech debate is the key test when the administration must 'meet' Parliament and demonstrate that it commands the confidence of the House of Commons.
- The rules governing the electoral *purdah* period will be extended beyond the general election until such time as the caretaker status of the administration and prime minister is resolved (i.e. the administration has successfully 'met' Parliament).
- Uncertainty about the identity of the government will not affect the convening of the new Parliament, the date for which will have been set in the proclamation dissolving the previous Parliament for the general election.
- The government must command the confidence of the House of Commons. Our parliamentary system does not require a positive majority for the government and its programme, merely that no combination of parties can form a majority against it.
- In the event of tied parliamentary votes clear procedures exist to resolve the outcome through the Speaker's casting vote, with the exception of affirmative Statutory Instruments and Business of the House motions.
- The composition of select committees and public bill committees and the provision of enhanced support for opposition parties (e.g. increases to Short Money) may all be areas for inter-party negotiation.
- It is currently constitutionally unclear whether and if so, how, the House of Lords' Salisbury Convention - which dictates that peers will not obstruct

legislation linked to the manifesto commitments of the governing party – will operate in the event of a minority government.

- The monarch does not possess any reserve discretionary powers to act as a broker between the party leaders in difficult situations. Such situations are for the politicians alone to resolve. It is essential to the future of the monarchy that its detachment from the political process is maintained.
- Where an incumbent prime minister loses his overall majority, but where no other party has a majority, he may remain in office. If he is then defeated in a no confidence motion or an amendment to the Queen's Speech at the meeting of the new Parliament, no request for a dissolution can be made by him. The presumption is that the leader of the opposition (the next largest party) will be appointed prime minister.
- A hung Parliament need not be weak and unstable. It will require everyone to re-evaluate the concept of parliamentary stability, confidence and legislative success.
- A minority government encompassing and having consulted with a broad swathe of representative opinion within the House of Commons may provide a platform for the political leaders to take bolder decisions than might otherwise be the case as responsibility will be shared between them.
- Of the 10 largest fiscal consolidations in OECD member countries since 1970 seven have taken place under coalition or minority governments.
- A government can lose a number of votes during the course of a parliamentary session but that need not undermine the prospects for its fundamental long-term survival.
- The legislative output of hung Parliaments is comparable with that of majority administrations.
- Culturally the greatest changes in parliamentary practice would be delivered as a result of a period of minority government rather than coalition.
- A hung Parliament will require MPs to spend more time at Westminster than in recent Parliaments. This may have implications for the balance struck by MPs between their local constituency and national parliamentary responsibilities.
- The financial situation will likely trump all other considerations in any inter-party discussions that follow an uncertain election result. In respect of any constitutional or parliamentary reform agenda in those discussions, electoral reform for future Westminster elections will likely be the key area for inter-party negotiations. Here a deal would more likely be struck between Labour and the Liberal Democrats, though the preferred system would be the sticking point – Labour has a preference for the alternative vote (AV), the Liberal Democrats do not regard this as proportional and favour the single transferable vote (STV) system.

Introduction

The fundamental principle at the heart of our parliamentary system is that the government must command the confidence of the House of Commons. However, in the event of an unclear general election result who can best command that confidence may be uncertain.

A hung Parliament will create a political conundrum to be resolved by the politicians. The decision as to who can command the confidence required will emerge from a complex nexus of political calculations and electoral imperatives. The concept of who 'won' is not necessarily simple. Is it the party with the most seats or the most votes? Determining which party possesses the political momentum and 'moral authority' to govern will be dependent upon the particular circumstances of the election and the arithmetic outcome and will be influenced by a level of scrutiny and comment exerted through the pressure of the 24-hour media cycle, the influence of the financial markets, snap public opinion polls and the blogosphere in a way never previously experienced in British politics.

In addition to this confluence of political and electoral factors, constitutional conventions and precedents will also guide the politicians as they seek a resolution of the impasse. But the last time serious coalition negotiations were undertaken was in February 1974, a generation before instant media and at a time when party politics was more clearly defined as a choice between three sets of manifestos. These new factors may affect the way in which the constitutional conventions and precedents operate in the future and may make public acceptance of them harder to achieve, particularly in light of the general lack of knowledge among the public, politicians and media about what will actually happen in the event of a hung Parliament.

This disconnect between the public's understanding and expectation of what will happen and the constitutional and political realities means that a number of unhelpful myths persist. Any option other than majority government is viewed by many as inherently unstable, and it is assumed that some form of coalition will likely be formed or a second general election will swiftly follow. In so far as the consequences of an uncertain electoral outcome are discussed, the focus tends to fall on the implications for government. Yet it is Parliament that will be the 'theatre' in which the decisions of the political leaders play out.

This pamphlet therefore seeks to address the myths by explaining what will happen in the event of an uncertain general election result with a particular focus on the implications for Parliament. It sets out the process of government formation, what will happen when the new Parliament convenes, and what the constitutional position will be in respect of demands for a second general election. It explains the procedural issues that will come into play if no party has overall control in the House of Commons, all of which will fundamentally affect the way that the government of the day pursues its legislative programme. And it sets out what role parliamentary and constitutional reforms might have in the inter-party negotiations that will inevitably follow an unclear result. Finally, drawing on past history, the lessons to be learnt from the devolved legislatures, and international comparisons it explores what impact, if any, coalition and minority government might have on the culture of politics in the next Parliament.

1. The process of government formation

The incumbent prime minister gets first call on forming an administration

Following the dissolution of Parliament for a general election the incumbent prime minister continues in office throughout the election period on a caretaker basis. If a hung Parliament results, then the incumbent prime minister is under no constitutional obligation to resign if his party does not win a majority. He can continue in office with first call on the right to try to form an administration.

If the caretaker prime minister proves unable to form an administration (either he resigns, having failed to put together a deal with one or more of the other parties or, after having chosen to 'meet' Parliament, he loses a vote on the Queen's Speech) then the leader of the largest opposition party will be invited to form a government.

The 1974 experience

The last occasion when this situation arose was following the February 1974 general election when the Conservatives won 300,000 more votes but five fewer seats than Labour. As the incumbent prime minister, Edward Heath remained in Downing Street where, over four days, he exercised his constitutional right to try to form an administration by offering a coalition deal to the Liberals. However, the inter-party talks were undermined by differences on a number of key points: the allocation of ministerial posts; the identity of the prime minister; and above all the Liberal demand for proportional representation.

The situation was further complicated by the fact that even if a deal had been struck with the Liberals it would still have left Heath a few votes short of a majority and his efforts to secure the support of the Ulster Unionists by offering some of their members the Conservative whip also foundered. Heath could have tried to remain as prime minister had he wished to form a minority administration. The Liberals offered to support an agreed programme from outside the government but the cabinet believed this would be too unstable and would not command sufficient domestic and international confidence to tackle the economic challenges facing the country. Heath therefore declined the option and resigned. As leader of the next largest party, Labour's Harold Wilson was then automatically invited to form a government.¹

It has been suggested recently in some quarters of the media that an alternative leader might be invited to form an administration if (s)he is deemed better able to reach agreement with one of the other parties than the incumbent prime minister. This proposition has been dubbed the 'Miliband option'. However, there is no constitutional precedent for such an option. The Liberals indicated during their discussions with the Conservatives after the February 1974 general election that a price for their involvement in any agreement might be the replacement of Ted Heath with a more amenable leader such as Willie Whitelaw. The cabinet rejected this proposition and much the same response would prevail today. Although the prime minister of the day need not necessarily be his/her party's leader, for political and practical reasons an alternative leader option is not viable. Firstly, it would be regarded as a huge interference in the internal affairs of one party if

another party were able to dictate who its leader should be. Secondly, the choice of a party's leader is bound by internal constitutional processes involving the wider membership of each party. Were the party leader to change it would take time to achieve and legitimate, time that may not be available.

How long can be taken to form a government?

There are no statutory rules governing how long a party leader should be allowed to put together an administration.² The caretaker status of the government and prime minister continues, in effect extending the operation of the election *purdah*³ period: the administration is in place to advise the monarch, and can continue to make decisions as required, although, as with the *purdah* period, it will be under an obligation to consult the opposition and not to take politically controversial decisions if these can be deferred.⁴ (See the Endpiece for details of the cabinet secretary's recent proposal to clarify this caretaker convention in the new cabinet manual.)

Sufficient time may be needed to establish a clear deal with another party, in order to ensure that the agreement is durable and the strategy and priorities clearly laid out. If an inter-party agreement is struck it is also likely that at least one of the partners (i.e. the Liberal Democrats) may need to put the agreement to their membership or a party body for endorsement. If so, this will necessarily build in a delay before any deal can be finalised.

Some flexibility therefore exists for the party leaders to negotiate. In the devolved legislatures in Scotland and Wales, the First Minister must be chosen within 28 days of the election, a situation regarded in some quarters as an effective limit on the time available to the parties to form a government. On the one hand such a limit has the attraction of providing discipline and focus to the process of forming an administration. Indeed, in Scotland it has taken on average only 10 days to form a government after each election. However, a review by the Scottish executive found that constraints on the negotiating time available to the political parties had resulted in a lack of clear priorities and inconsistencies, resulting in problems in managing budgets and setting priorities under the Labour-Liberal Democrat partnership agreement prior to 2007.⁵ Dependent on the electoral arithmetic however, the 28-day deadline for the appointment of the First Minister need not always represent an inter-party negotiating deadline, as demonstrated in Wales after the 2007 elections. Here, Labour entered discussions with Plaid Cymru for a Red-Green Alliance that took two months to negotiate even though the legislature is only 60 strong and does not have full legislative powers. As leader of the largest party however, Labour's Rhodri Morgan was able to take the mantle of First Minister, and lead a minority government, whilst discussions with the nationalist party continued.

Influences on the timetable for forming an administration

The lack of a statutory deadline for government formation at Westminster could therefore be said to have both benefits and drawbacks. However, although the Westminster timetable has some flexibility, in reality the timing of the Queen's Speech coupled with external pressures – political and financial in particular – will

exert themselves and will make it difficult for inter-party discussions to be sustained over an extended period.

Through the constant news cycle, opinion polls and the blogosphere it will be possible for the party leaders to rapidly gauge the temperature and direction of public and media opinion all of which will influence their thinking as will prevailing views within their parliamentary and wider party ranks.

The response of the financial markets will also be critical, particularly given the nature of the economic challenges facing the country in 2010. The key economic theme of the election will be the size of the deficit and the scale and speed at which it will be reduced through public spending cuts and taxation increases. The markets are already anticipating what the Bank of England has described as a significant 'fiscal contraction'. If they determine that the parties are being obstructive and are engaged in unnecessary delaying tactics then the consequences could be serious: a run on sterling, a collapse in the share market, and a loss of the country's 'AAA' credit rating could all result. The political leaders will therefore need to be mindful of the economic situation, as Heath's government was in 1974, and determine the most judicious course of action in the post-election circumstances.

Equally, the political leaders and the country have a right to expect those operating in the money markets to behave in an equally judicious manner in the immediate hours and days after the election result is known. Any run on sterling or a collapse in the share market the day after the election would either be predatory and speculative or a product of willful ignorance about the workings of British democracy.

What will be needed to 'command' the confidence of the House of Commons?

In seeking to put together an administration the party leader concerned will have several options at his disposal, primarily:

- to govern from a minority position;
- to govern as a minority but on the basis of an informal agreement (such as a 'pact' or 'confidence and supply' agreement) with one or more of the other parties;
- to establish a formal coalition with one or more of the other parties.

In determining the preferred option, the key will be to establish a sustainable arrangement whereby the government can command the confidence of the House of Commons. But that objective is not the same as securing an outright majority. Our parliamentary system does not require a positive majority for the government and its programme – merely that no combination of parties can form a majority against it.

The 2010 general election will return 650 MPs (four more than in the present Parliament due to boundary changes). However, in practice 326 votes will not be needed by the government: the Speaker and three Deputy Speakers will not vote (except in the event of a tie requiring a casting vote); on past precedent, Sinn Fein

MPs are very unlikely to take their seats; and with potentially up to 100+ seats taken by the Liberal Democrats, nationalists, independents and minor parties the arithmetical requirements may be quite fluid. On the one hand this may make negotiations for a coalition or an informal inter-party agreement complex, but conversely it may also make it more difficult for the opposition to coalesce around any one vote to bring down the government.

Convening of the new Parliament

Uncertainty about the identity of the government will not affect the convening of the new Parliament, the date for which will be set in the proclamation dissolving the previous Parliament for the general election. In recent times Parliament has reconvened on the Wednesday following the election but previously it has been as long as 12 days after the election and the Commons Modernisation Committee has recommended that the transition period should revert to this longer period of time.

But whenever Parliament reconvenes the first task of new MPs will be to choose the Speaker – either re-selecting the incumbent from the previous Parliament or choosing a new one. Whereas in other legislatures the position of Speaker can become a bargaining counter where no party has overall control, at Westminster the existence of three Deputy Speakers means the position is more insulated from partisan bartering, because the convention is to have equal representation from government and opposition. Following the election of the Speaker, the oath will then be administered to each individual MP, a process requiring several days. Throughout this period, inter-party negotiations can be conducted as required.

The Queen's Speech

The first significant parliamentary deadline is the Queen's Speech debate that usually occurs in the second or third week after a general election but which could be pushed up to a month or so later. This is the key test when the administration must 'meet' Parliament and demonstrate that it commands the confidence of the House of Commons. But even the timing of the Queen's Speech need not necessarily be a formal deadline for the conclusion of inter-party talks. The legislative programme put forward in the Address need not be a comprehensive document but merely an outline legislative programme setting out only those areas where the administration believes it can command support. At the end of the Address, several key votes will be taken which will test the durability of the administration – a loss of any one of them would be tantamount to a loss of confidence and force the resignation of the government. The first few votes will be on amendments tabled by the opposition parties; the last will be the government's motion in favour of the Address. This last vote will represent the most difficult hurdle for any administration for it will be politically easier for the opposition parties to coalesce in opposition to the government's motion than it will be to vote in favour of (and thereby offer perceived support to) any particular opposition party's amendment. But if the Queen's Speech votes are survived then the government in whatever form will have won time for itself before the next major parliamentary test, the Finance Bill, has to be faced.

2. Parliamentary procedure: help or hindrance?

The Speaker's casting vote

A hung Parliament may mean a succession of closely fought votes on issue after issue. In the event of a tied vote, clear procedures exist to resolve the outcome through the Speaker's casting vote. The overall philosophy behind these procedures is to prevent the curtailment of debate. First the Speaker would, if possible, allow further debate; if no further discussion was possible then any decision would require a majority; and if a tie occurred on an amendment to a bill then the Speaker's casting vote must be used to leave the bill in its original, unamended form. In practice this procedure will help an administration as any new bill would be expected to get a second reading and any no confidence motion or opposition day motion would always be rejected in the event of a tie.

Statutory instruments and programming motions

However, the Speaker's casting vote cannot be used to approve an affirmative Statutory Instrument or a Business of the House motion. In a coalition these areas would likely be covered by the terms of the inter-party deal and collective responsibility. But the opposition may have scope to create real difficulties here for the administration. MPs may develop a hitherto unseen level of interest in the detail of delegated legislation if there is a chance of defeating the government.

In a hung Parliament the newly agreed proposal to establish a Business Committee for House and backbench business in the next Parliament, as recommended by the Wright Committee, may present a significant challenge as both the House of Commons and the House of Lords would be under no overall control.⁶ Managing two Houses in this position introduces new complexities to the despatch of parliamentary business and the process will therefore likely remain heavily reliant on the skills of the 'usual channels' even if a House Business Committee is newly established.⁷ On timetabling, the government would be helped by the House of Commons Standing Order which requires that (subject to exceptions) government business should have precedence at every sitting thus allowing it to retain control of the agenda of the House, though it may come under pressure to increase the amount of opposition day time allocated for debate. However, the prospect of a programming motion – which sets out the time the House will have to debate a bill at each stage – being lost would be a useful tool in the opposition's armoury to help extract concessions from the government.

Committee composition

The composition of select committees and public bill committees (PBCs) will also be an area for party discussion as membership is allocated in accordance with the party balance in the House of Commons. Membership of PBCs will be the greater priority as these have direct influence over legislation and in the event of a minority government parity between the main parties may well have to be accepted. As select committees are by nature less partisan, then party allocation may matter less than with PBCs. However, select committees have an increasingly high media profile and it is possible that their inquiry reports might challenge and potentially embarrass the administration on policy and governance issues more

regularly than might otherwise be the case were they to have an inbuilt government majority. Scope for negotiation will nonetheless be limited given the recent decision by MPs to elect the chairs and members of select committees, limit their size in future to just 11 members, and require them to be established within six weeks of the start of a new Parliament.⁸

The House of Lords

The upper house is currently a chamber where no one party or grouping exercises a majority. Even among the regular attenders in the House, the government cannot assume a majority and has to build alliances outside its own political party to get its business through the House. Likewise, the opposition must in general gain support from other groupings to inflict defeat. The business managers in the second chamber are used to coalition building – a skill which might come in useful for any minority government position in the House of Commons. In addition, the threat of defeat in the House of Lords has affected the formation of government policy. A government with a minority in both houses would, to an even greater extent, need to temper its legislative proposals with coalition building in mind in order to avoid defeats in either chamber.

One important area where there is a lack of constitutional clarity is in relation to the Salisbury Convention. The Convention dictates that peers will not obstruct legislation linked to the manifesto commitments of the governing party. How this Convention would apply in a minority government situation – where the administration's legislative programme may necessarily be different to its manifesto commitments because of the need to draw on the support of other parties – is not clear. This may pose problems unless resolved by the parties themselves by agreement or through the creation of new peers to create a majority for the administration.

Provisions for the opposition parties

An inter-party deal to support a minority administration, such as the pact struck between Labour and the Liberals in 1977-78, may lead to calls for changes to the provisions made for opposition parties in Parliament. In March 1977 the Liberals agreed, 'in pursuit of economic recovery' to ensure that the minority Labour government was not defeated on a confidence motion in exchange for which they would be consulted on policy. This consultation took place at three distinct levels: between individual ministers and their Liberal shadows in each area of departmental responsibility; when agreement could not be reached at this bilateral level the issues were referred to a Joint Consultative Committee (JCC); and when the JCC could not resolve a dispute the matter was referred direct to the Prime Minister James Callaghan and the Liberal leader, David Steel, to resolve.

In response, the Conservative Party demanded a readjustment in Liberal representation on Commons committees, the calling of Liberal MPs as government supporters rather than opposition spokesmen in the Commons chamber, and accountability at the Commons despatch box with regard to both the JCC and the Callaghan-Steel meetings. Despite this both the Prime Minister and the Lord President of the Council, Michael Foot, consistently refused to answer any questions relating to the negotiation and consultation process, invoking the 'no

ministerial responsibility' rule by claiming the talks with the Liberals were inter-party and non-governmental and therefore not subject to parliamentary scrutiny by the opposition.⁹ It is likely that many of these same issues may arise again should a similar deal be struck after the 2010 general election.

It is also possible that the financial assistance provided to the opposition parties in the House of Commons – known as Short Money – may become the subject of inter-party negotiations.¹⁰ A commitment to introduce Short Money was made by the minority Wilson government in the Queen's Speech of 12 March 1974 and subsequently implemented in 1975 after being delayed by the October 1974 general election. Provided to enable the opposition parties to more effectively fulfill their parliamentary functions, the eligibility criteria and the sum of money available has been refined several times over the years, and in 1999 the sum available to the leader of the opposition was significantly increased in recognition of the constitutional role and therefore the specific demands placed on the holder of the post. In the 2009-10 session £4.76 million was made available to the Conservative party and £1.75 million to the Liberal Democrats with the nationalist parties receiving a smaller proportionate share. In the context of a hung Parliament, in which the Liberal Democrats may hold the balance of power, there may be legitimate demands for greater support to be provided to their leader in light of his enhanced duties and constitutional role.

3. An early second general election?

A coalition or minority government may be deemed unstable in the medium to long term. Financial, economic or media pressures may persuade the prime minister that, as in 1966 and October 1974, an early election would provide a more decisive result. Here, constitutional conventions in play may require some reform.

The prime minister's search for a majority

If a coalition government can be formed providing an overall majority, or a legislative pact or supply agreement can be negotiated and constructed with the third party in the Commons (similar to the Lib-Lab pact in 1977-78), then the question can be postponed until strains or disagreement break up the inter-party cooperation, or an electorally favourable moment arises for the dominant governing party to go to the polls.

Power under a hung Parliament is better than no power at all, and a prime minister will not risk losing office altogether until he is persuaded by opinion polls he can improve on his party's level of parliamentary representation. Harold Wilson's minority Labour government was faced with this problem after the 28 February 1974 election, in which it had polled 301 seats to the outgoing Conservative government's 297 (Liberals 14, others 23). Labour's opinion poll ratings climbed a small but significant amount in response to greater popular confidence in Wilson's ability to deal with Britain's industrial relations, and he called a fresh election only eight months later for 10 October 1974, improving on his situation, securing 319 seats to the Conservative opposition's 277 (Liberals 13, others 26).

So too, in the previous decade, Wilson had called an early general election on 31 March 1966, only 17 months after the last election, simply to improve on his precarious overall majority of three seats. Being at the height of his popularity he could afford to do so, and he capitalised on this by winning 363 seats to the Conservatives' 253 (Liberals 12, others two). His predecessor as Labour prime minister, Clement Attlee, without the benefit of such reliable opinion polling, had timed things wrong when he called an early election for 25 October 1951, only 20 months after the last election when he had gained 315 seats to the Conservatives 298 (Liberals nine, others three). He was defeated, 295 Labour seats to the Conservatives 321 (Liberals six, others three), ushering in 13 years of Conservative rule. Throughout the 1992-97 Parliament, the Conservative premier John Major never had a window of opportunity to improve on his tenuous overall majority (originally 21 seats but rapidly diminished through by-election defeats, defections and the withdrawal of the whip from the Eurosceptics), consistently trailing Labour in the opinion polls.

Election timing and the constitution

It is a source of some surprise to many voters that the prime minister should be able to determine the date of a general election at a time of his own political and personal convenience. Yet equally surprising is the fact that the origin and source of this power to set an election date is not contained in a constitutional statute. Neither is there a modern law that provides for the existence of a Parliament and

sets out clear rules on how and when a general election should take place. Instead, the prime minister's power rests upon an unwritten common law principle since time immemorial that treats Parliament like an ancient royal council (the *curia regis*, as it once was) to be summoned into existence and dissolved by the monarch at will.

What remains, in advance of any reforms such as those discussed below, is simply the constitutional relationship between the prime minister and the monarch, circumscribed only by some poorly understood conventions guiding how each should act and respond to hung Parliament situations.

To state the law simply, a general election is called when the monarch exercises her royal prerogative power to dissolve parliament by way of a royal proclamation, simultaneously summoning another into existence. The procedures and administrative arrangements in the Representation of the People Act 1983 then control the conduct of the poll. Under the Parliament Act 1911 (amending earlier statutes that had prescribed first a three, then a seven year maximum duration) a Parliament may last for no longer than five years and will therefore automatically terminate if it exceeds the fifth anniversary of the date of its first meeting following a general election. In practice, the dissolution of Parliament under the royal prerogative and a general election are always held at some point within this five year timeframe.

In practice today, it is the prime minister alone who advises the monarch on matters of general election timing. The convention guiding the monarch's conduct in dissolution affairs is that she will follow the advice given to her by the prime minister, unless that advice is itself manifestly unconstitutional.

Thus a prime minister who has lost a general election (in the sense that another party has gained an overall majority in the Commons) cannot request another, and if he ever sought to do so the monarch must reject that advice.

In addition, the rule is that where an incumbent prime minister loses his overall majority at the election but where no other party has a majority, he may remain in office but if he is then defeated in a no confidence motion or on an amendment to the Queen's Speech at the meeting of a new Parliament, no request for a dissolution can be made by him. The presumption is, as occurred in 1923, that the leader of the opposition (the next largest party) will be appointed prime minister.¹¹

No confidence motions and the constitution

Matching the prime minister's tactical strategy on election timing will be the leader of the opposition's concern for timing a no confidence motion in the government.

The constitutional effect of a no confidence (or censure) resolution being passed in the House of Commons requires a prime minister either to tender the resignation of the government and allow the leader of the opposition to take office, or (unless it is at the meeting of the new Parliament, in circumstances described above) to ask the monarch for a dissolution and general election. This procedure available to the opposition is therefore fatal to the life of a government, yet because it usually triggers an immediate general election the opposition needs to be convinced

before tabling the motion that it has a good chance of defeating the governing party at the polls and not fare worse than at the prior election.

This was certainly the situation on 28 March 1979, the last occasion of a successful no confidence motion being passed (won by 301 votes to 300), having been tabled by Margaret Thatcher as opposition leader against the government of James Callaghan, Labour's then prime minister. Mr Callaghan immediately advised the Queen for a dissolution and election, which Mrs Thatcher then won by a large overall majority.

The case for reform

There is a case for codifying the conventions that apply to early second elections, for there is no doubt that considerable misunderstanding and confusion surrounds them.¹² However, codification can create problems of its own in terms of rigidity. What is of more importance is simply greater public understanding of what the rules are, especially among politicians and journalists. Recent press speculation about the personal role of the Queen in resolving questions such as who should be prime minister and when a second election could take place suggests that the constitutional conventions are not understood, and therefore perhaps not accepted.¹³ Some authorities speak of a reserve discretionary power of the monarch to act as a broker between the party leaders in difficult situations – which modern commentators consider an archaic proposition with no relevance for today. This analysis is particularly unhelpful in the event of a more politically interventionist personality succeeding to the throne, for it is essential to the future of the monarchy that its detachment from the political process is maintained.¹⁴

Furthermore, codification would detract from the emerging cross-party case for fixed intervals between general elections. The Liberal Democrats and numerous Commons backbenchers have publicly called for fixed four-year term Parliaments for many years.¹⁵ This was a Labour manifesto commitment at the 1992 general election, though subsequently dropped by the New Labour leadership. To relinquish power over the general election date requires a rare act of political self-sacrifice, as it represents a huge tactical advantage. The Conservative leader David Cameron has said, 'I believe it's time we looked seriously at fixed term Parliaments. Is it really right that one person should be able to set the date of the general election... to decide the whole timetable for political discourse?'¹⁶ More recently he asserted that, 'The arguments for fixed term Parliaments are strengthening'.¹⁷ Under this reform, provision would still need to be made for an early second election within each fixed four-year term, but instead of the mechanism being the individual decision of a prime minister under poorly understood conventions, it would become an written statutory procedure limited to the situation where no working government could be formed from the existing House of Commons.¹⁸

4. Changing the political culture

Weak and unstable government?

Those opposed to hung Parliaments in general argue that it will inherently result in weak and unstable government with ministers lacking the power and authority to deal with pressing economic, social and national security challenges. In contrast, its supporters argue that it will fundamentally alter the culture of politics in this country for the better, requiring a broader cross section of elected representatives to be included in the policy making process, providing greater transparency and restraining the authority of the executive whilst empowering the collective influence of Parliament.

Concern about the impact of an uncertain election outcome on the financial markets and the prospect of further damage to the UK's economic position is particularly prevalent this year. But because the UK is accustomed to majority government it does not necessarily follow that the alternative will necessarily be damaging. Scotland, Wales and Northern Ireland are already accustomed to forms of coalition and minority government in the devolved legislatures over the last decade and have demonstrated how such outcomes can be made to work. Both historical UK and comparative international experience also give reasons for confidence: in our hour of maximum danger the country was after all run by a coalition government between 1940-45; and of the 10 largest fiscal consolidations in OECD member countries since 1970 seven have taken place under coalition or minority governments.¹⁹ Indeed, there is a good case to be made that a minority government, encompassing and having consulted with a broad swath of representative opinion within the House of Commons, may provide a platform for the political leaders to take bolder decisions than might otherwise be the case not least because responsibility for those difficult decisions will be shared by more than one party and one political leader.

It is certainly true that minority government represents something of a 'hand to mouth existence' and its longevity is known only in retrospect.²⁰ However, the experience of the 1992-97 Parliament equally demonstrates that, in certain circumstances, even a majority government can be reduced to such an existence. John Major's government was re-elected in 1992 with a majority of 21 seats yet in practical terms, given the deep internal party divisions over Europe, for most of the Parliament he had to govern as if he had only a minority administration. Successive by-election defeats, the withdrawal of the whip from nine Eurosceptic rebels, and the defection of several MPs to Labour and the Liberal Democrats all conspired to erode the majority completely by the end of 1996. The lesson of this Parliament was that even a comfortable electoral majority need not be a bulwark against instability if there is an unhelpful confluence of events and divisive political forces.

A hung Parliament will require everyone to re-evaluate the concept of parliamentary stability, confidence and legislative success. A government can lose a number of votes during the course of a parliamentary session but that need not undermine the prospects for its fundamental long-term survival. Ultimately the votes that most count and that would threaten the longevity of an administration are on motions of confidence and supply (money). A failure to win other divisions

can be time consuming and a distraction but need not necessarily threaten the government providing it can win any confidence motion that follows. In July 1993, for example, the Conservative government lost a vote on the Maastricht Treaty social chapter but won the subsequent confidence motion by 110 votes. Similarly in 1978 the Labour government lost a motion on inflation strategy by two votes but won the subsequent confidence motion by 10 votes. And in the 1974 Parliament the Labour government lost 17 divisions in total but still survived. Similarly in Scotland in 2009 the SNP minority administration failed to secure its budget and had to renegotiate and make a number of concessions but it was not brought down.

Political decisiveness is linked to a government's capacity to legislate and here too the precedents demonstrate that a hung Parliament can still deliver. In 1974, for example, the number of bills that became statute compared very favourably with the legislative outputs of prior and subsequent sessions, given that it was a year of two general elections.²¹ There is no reason why a minority government cannot pursue a broad legislative programme though it may need to be more persuasive and consensual in its approach to policy making than would otherwise be the case if it was governing in its own right.

The greatest change: coalition or minority government?

Culturally, the greatest changes in parliamentary practice would be delivered as a result of a period of minority government rather than coalition. The latter requires adherence to collective responsibility and would therefore require cohesive party unity in order to work. The public already perceive, albeit wrongly, that MPs are lobby fodder, but a coalition government would make the prospect of backbench rebellions less likely, as party discipline would need to be firm. A coalition government would also probably reduce the influence of the House of Lords in the legislative process where at present no party has overall control and the government therefore has to negotiate for its legislative programme, with the Liberal Democrats often providing the swing vote. Although it is harder to exercise control over peers than MPs because there are no real sanctions that can be applied for defying the party whip, any coalition agreement, and therefore collective responsibility, would probably extend across both chambers.

In contrast, minority government might enhance the power of backbenchers because individual MPs and interest groups are better placed to secure concessions – as happened with the Rooker-Wise amendment to the 1977 Finance Bill which ensured increases for personal allowances in line with inflation, and in December 1994 when the government's proposal to increase VAT on domestic fuel was defeated after the Conservative Eurosceptics abstained or voted against the measure.

The new intake of MPs

Recent research indicates the growing willingness of MPs to rebel.²² However, in the next Parliament the impact on backbenchers may be difficult to predict given the influx of so many new members who lack knowledge of parliamentary procedure and how to utilise it. Many of the 2010 intake of MPs will be dependent on the whips and party managers for support and guidance which may in turn

inhibit their ability or willingness to exploit the fluidity of a minority government's status to extract policy and legislative concessions.

A hung Parliament will almost certainly force all MPs to spend more time at Westminster than might have been required of them in recent previous Parliaments and there may also be a move against 'family friendly hours'. The ongoing public debate about the balance between an MP's local and national focus will thus remain prominent, particularly given that so many of the new MPs will have campaigned on a promise to prioritise their constituency work and spend more time locally than at Westminster.

5. The place of constitutional and parliamentary reform in a 2010 inter-party agreement

The prospect of a hung Parliament has concentrated thought on 'shopping lists' for agreements between the parties.

Ultimately, economic matters are likely to dominate all discussions. But looking beyond this, in the aftermath of the MPs' expenses scandal all parties have made a virtue of being committed to far-reaching constitutional and parliamentary reform in order to clean up politics and help restore public trust and confidence in the parliamentary system. Only limited progress will have been made with this agenda by the time of the general election so it may have some weight in any inter-party negotiations subsequent to the general election, particularly given the Liberal Democrats' long-standing commitment to wide-ranging reform of the political and electoral system in order to establish a new style of politics.

Past history also demonstrates that constitutional reform tends to be high on the list of policy objectives discussed by the parties in a hung Parliament situation, not least because the composition of both Houses tends to be the subject of negotiation. There are precedents in both 1917-18 and in 1929-1930, but the most pertinent are the discussions that took place between Labour and the Liberal Democrats before the 1997 general election, when Labour could not be sure of a firm majority.

The Cook-Maclennan talks

There had been some initial contacts between Labour leader Tony Blair and the Liberal Democrat leader Paddy Ashdown as early as 1993 about the prospects of a coalition. In October 1996, the two parties went a step further, establishing a Joint Consultative Committee (JCC) to consider common elements in their constitutional reform programmes. Its terms of reference were: to consider whether there might be sufficient common ground to enable the parties to reach agreement on a legislative programme for constitutional reform; to consider the means by which such a programme might best be implemented; and to make recommendations.

The Committee was chaired by Robin Cook for Labour and Robert Maclennan for the Liberal Democrats. It published its agreement in March 1997, bringing together key elements of constitutional reform such as modernisation of the practices of the House of Commons, devolution, Freedom of Information (FoI), incorporation of the European Convention on Human Rights into UK law, and reform of the House of Lords.

The JCC also proposed an independent commission to consider a proportional alternative to the first-past-the-post electoral system, with the choice being put to the public in a referendum.²³ The report could have led the way for more intensive joint working on the constitution had Labour needed Liberal Democrat support in the Commons. In the event, the huge majority Labour won at the 1997 general election meant that the Liberal Democrats could be disregarded. The immediate commitments in the Cook-Maclennan report were achieved: in the first session legislation on devolution and human rights was brought forward, and in the following session FoI and Lords reform. Labour also moved swiftly to modernise

parliamentary procedure. Some issues remained outstanding, most importantly for the Liberal Democrats the holding of a referendum on electoral reform. Overall, however, the initiative was useful in establishing common ground before Labour took power. Had there been a need to build a coalition with the Liberal Democrats, the similarity of their constitutional programmes would have smoothed a broader agreed programme of government.

The Blair-Ashdown initiative had been initially intended to feed into some kind of coalition agreement and Tony Blair pressed on with plans to include Liberal Democrats within cabinet committee processes. However, this initiative was much less successful. In July 1997 a Joint Consultative Cabinet Committee was announced.²⁴ The Committee was served by the Cabinet Office, but the Liberal Democrat members (Paddy Ashdown, Alan Beith, Robert Maclennan, Lord Holme of Cheltenham and Menzies Campbell) were not bound by collective cabinet responsibility.²⁵

The Committee met in 1997 but its work appeared to peter out from 1998 onwards, particularly once the Independent Commission on the Voting System was announced in December 1997, to be chaired by Lord Jenkins. A joint statement by Blair and Ashdown proposing to widen its remit in December 1998 led to tensions within both parties; Charles Kennedy replaced Ashdown in June 1999 and ruled out an electoral pact in January 2001, suspending further involvement in the Cabinet Committee which was wound up formally in January 2002. It had met only twice since Kennedy had become leader. In the meantime, Labour did not follow through with the Cook-Maclennan commitment to hold a referendum on electoral reform in the 1997 Parliament. Inevitably this has left a residue of mistrust that may affect Liberal Democrat perceptions of the commitment by Labour to hold a referendum on the alternative vote (AV) in the next Parliament.

A new Cook-Maclennan?

The prospects for a similar initiative to Cook-Maclennan before the 2010 Parliament are slim. Now that many of the key elements of reform have been achieved the parties simply do not have the same common purpose with regard to constitutional reform as they did in 1997.

The Liberal Democrat leader Nick Clegg has said that under a hung Parliament he will enter into negotiations first with whichever of the two other main parties has 'the strongest mandate from the people'.²⁶ What is of course unclear is how he will interpret that 'strongest mandate' – will it be in terms of seats secured or votes won? It's likely of course that he will barter between the parties. But what would be the key areas of common ground?

Although the question of a written constitution continues to bubble under the surface, in reality it is not an immediate policy priority for any party and is nowhere near as prominent a matter of public debate as constitutional reform in the shape of devolution was in 1997. However, Gordon Brown has floated the idea of a written constitution and this has become more insistent recently, with talk of a Constitutional Reform Commission to map out the way. It is unclear how far this would interest the Liberal Democrats as a commitment, since there are few details

as to whether any form of entrenchment is contemplated. It is likely to be the least enticing part of any attempt to reach out to the Liberal Democrats.

As far as procedural reform of Parliament is concerned, scope for agreement here will largely depend on the progress that has been made with implementation of the recommendations of the Wright Committee on Commons Reform as agreed by the House on 22 February and 4 March 2010. To be in place for the start of the next Parliament the Standing Orders of the House of Commons will need to be amended and agreed before the general election is called. If any issues remain outstanding and have not been implemented then it is possible that these will become the subject of negotiation.

But it is reform of the composition of Parliament – both Commons and Lords – that may perhaps offer the best prospects for inter-party negotiation.

Proportional representation for the House of Commons

One area of likely inter-party negotiation is a referendum on electoral reform. Gordon Brown announced his interest in AV at the Labour Party conference in October 2009. The government subsequently committed to AV (rather than STV) by introducing amendments to the Constitutional Reform and Governance Bill that will provide for a referendum to be held by 31 October 2011. Widely interpreted as a pre-election overture to the Liberal Democrats, there nonetheless remains uncertainty as to whether the legislation will achieve royal assent before the election.²⁷ If not, it is unlikely to inspire Liberal Democrat trust.

If it is enacted then an important partisan advantage will have been secured as a new Conservative administration (majority or minority), averse to any move away from first-past-the-post, would have to repeal the legislation as soon as possible after taking power. Alternatively, a simpler route would be to ensure that the delegated legislation required to give effect to the referendum is not brought into force.

For the Liberal Democrats, the price of their support for a coalition or minority government with any party would likely be a commitment to a referendum offering a more proportional voting system than the majoritarian AV system.

Composition of the House of Lords

House of Lords reform is one area of constitutional ‘unfinished business’ from the Labour administrations of 1997-2010. The removal of most of the hereditary peers from the House of Lords in 1999 was to be followed by a ‘second stage’ of reform leading to a ‘more democratic and representative chamber’. However, no clear way forward towards an elected element has emerged. Instead, the Constitutional Reform and Governance Bill includes provisions to introduce resignation, suspension and expulsion from the second chamber, and to end by-elections for the remaining places for hereditary peers. A backbench amendment to the Bill to introduce ‘term-peerage’ appointments of 15 years did not receive the support of the Labour front bench.

Lords reform is likely to be problematic for a coalition agreement between political parties, as there are disagreements between and within the main parties on the most desirable way forward.

A Conservative deal with the Liberal Democrats can more or less be discounted. Firstly, the Conservative Party favours a first-past-the-post method of election, whereas the Liberal Democrats' strong preference is for proportional representation and the STV system. But more significantly, many Conservative peers are hostile to the idea of elections at all, and it has become clear that Lords reform is a low priority on David Cameron's reform agenda.²⁸

It is worth noting, however, that the Conservative Party might find that the House of Lords may require more urgent attention than they have admitted to date. The Conservative Party have no majority in the House of Lords and a Conservative government would need to appoint a number of peers to rebalance the party proportions. This would take some time and in the interim it is not clear whether the Salisbury Convention would apply. It has been reported that the Conservative Leader in the Lords, Lord Strathclyde, has consequently argued that the Conservatives should be as specific as possible about policy in their manifesto to have the best chance of the Lords maintaining the Salisbury Convention in such a circumstance.²⁹

The main opportunity for agreement therefore remains with a Labour-Liberal Democrat deal. However, while both are committed to an elected second chamber, what is unclear is how highly Lords reform may rank in a list of Liberal Democrat priorities for coalition support, alongside its far more pronounced constitutional policy objective of proportional representation for the House of Commons and other non-constitutional issues such as changes to the taxation system. So this opportunity for reform may depend upon the level of Labour's own determination to see its Lords reform programme carried through, as set out in its white paper *An elected second chamber*.³⁰

In other words, the Liberal Democrats will most likely support Labour's Lords reform bill, qualified perhaps by points of detail, but it will not necessarily be a price demanded by them as a condition for supporting Labour to remain in office in the event of a hung Parliament.

Endpiece

The constitutional framework and culture within which any minority or coalition government will operate in the near future is undergoing a period of transition at the moment. There is now a wide-ranging desire to consider reforms to our political system, especially ones promoting greater popular trust in how Parliament and government works. Providing greater public clarity and understanding of the rules, principles and processes that determine who governs Britain – the objective of this pamphlet – is an important pre-condition to this on-going review of our political and constitutional system.

To this end also, the prime minister has initiated two important developments. One has been his instruction to the cabinet secretary to draw up a chapter on elections and government formation in the new cabinet manual.³¹ This is still in draft form and was the subject of examination by the Commons Justice Committee on 24 February 2010, with the cabinet secretary Sir Gus O'Donnell appearing before the committee to answer questions.³² The content of the manual will reiterate in general form several of the principles and conventions described in greater detail in this pamphlet.³³ Insofar as the manual will be made publicly available, this will have a welcome educative effect, and go some way to increase knowledge among politicians, the media and the public about hung Parliament scenarios.

Interestingly, in preparing the manual, the cabinet secretary has been keen to develop one or two new conventions and firm up existing ideas on good governance. In particular, he wishes to formalise the 'caretaker convention', by extending an existing principle – that during an election campaign the government will not enter into significant policy, executive or commercial decisions – into the post-election period in circumstances where some doubt exists as to whether the government possesses the confidence of the House of Commons.³⁴

A much broader consideration for developing a written constitution would be the potential clarity when a hung Parliament occurs. It would represent an opportunity to construct a coherent set of principles connecting government and the governed, as well as government and Parliament, and Parliament and the people. Considerable advance thought about how to approach the drafting and preparation of such an important national document has been given to this in 10 Downing Street since 2007.³⁵ It is likely that some commitment on working towards a written constitution will appear in the forthcoming Labour election manifesto, as it has in Liberal Democrat manifestos at several past general elections. Some believe a written constitution may come to appeal to the Conservative Party in the longer term too, as a stabilising and consolidating measure in response to the major reforms and changes of the past two decades. If and when a public debate on a written constitution begins, the rules relating to government formation and dissolution of Parliament – embracing minority and coalition governments – will then require serious further re-examination.³⁶

Notes and references

¹ For an account of the post February 1974 general election process see, National Archives, PREM 16/231, Robert Armstrong note, 'Events leading to the resignation of Mr Heath's administration on 4 March 1974', 16 March 1974, available at www.margaretthatcher.org/document/E39D78DE7FBF4C7583FD8C8F7A029D42.pdf.

² In contrast to Heath's four day attempt to form a government in 1974, following the December 1923 general election Stanley Baldwin stayed in office for six weeks trying to form an administration before he 'met' Parliament to test his support only to lose a confidence motion. In general terms Heath's approach is the most likely to prevail, for a party leader would generally not want to test their support unless they were very certain of the outcome. There may be rare exceptions to this when they determine that their party might gain an advantage by doing so. This was the case when Baldwin went to the House of Commons, knowing he was likely to lose, because he wanted to demonstrate that the Liberal Party was putting Labour, a party with fewer seats than his Conservative Party into power – the strategy paid off as the Liberals lost seats at the 1924 general election which was won by the Conservatives. The case for extending

³ 'Purdah' is the period of time from when the general election is announced until after the election. It is also increasingly known as the 'pre-election period'. The preface of the Cabinet Office guidance issued to civil servants before the general election advises that 'decisions on matters of policy on which a new government might be expected to want the opportunity to take a different view from the present government should be postponed until after the election, provided that such postponement would not be detrimental to the national interest or wasteful of public money'. See www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/electguide.pdf.

⁴ The case for clarifying and setting out the principles of the 'caretaker' convention has been made recently in several reports, particularly, R. Hazell & A. Paun (Eds.) (2009), *Making minority government work: hung parliaments and the challenges for Westminster and Whitehall* (London: Institute for Government & The Constitution Unit), and P. Riddell & C. Haddon (2009), *Transitions: preparing for changes of government* (London: Institute for Government).

⁵ Budget Review Group (2006), *Choices for a Purpose: Review of Scottish Executive Budgets, Report of the Budget Review Group* (Edinburgh: The Scottish Government) cited in A. Brazier & S. Kalitowski (Eds.) (2008), *No overall control? The impact of a 'hung parliament' on British politics*, (London: Hansard Society), p.79.

⁶ See House of Commons Reform Committee (2008-09), *Rebuilding the House*, HC 1117. www.publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/1117.pdf.

⁷ The 'usual channels' is the broad term used to describe a series of meetings and discussions between the party managers (the Leader of the House, the Chief Whip and their opposition party equivalents) and parliamentary officials in both the House of Commons and the House of Lords to decide how business will be arranged in each House.

⁸ See House of Commons Reform Committee (2008-09), *Rebuilding the House*, HC 1117. www.publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/1117.pdf.

⁹ For an analysis of the Lib-Lab Pact see R. Fox (1999), *The Liberal Party 1970-1983: Its philosophy and political strategy*, (University of Leeds: PhD Thesis), chapter five.

¹⁰ Support for the opposition parties has already been partly addressed by the cabinet secretary when he made clear recently that the new cabinet manual will contain a provision to enable the cabinet office to support both the government and opposition parties in their discussions about forming a government. However, additional support within Parliament may still be sought and required. See House of Commons Justice Committee (2009-10), Uncorrected transcript of oral evidence to be published as HC396-i, *Inquiry into constitutional processes following a general election*, oral evidence, Q.87. www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/uc396-i/uc39602.htm.

¹¹ A comprehensive statement of the constitutional conventions governing the monarch's exercise of the legal power of dissolution of Parliament is given in R. Blackburn (2004), *Monarchy and the Personal Prerogatives*, *Public Law*, p.557. See also R. Blackburn (2009), *The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform*, *Public Law*, p.766.

¹² See, for example, the attempt at codifying some conventions on dissolution practice in New Zealand, where the Governor General exercises the legal power of dissolution in the name of the Crown. New Zealand Cabinet Office Manual 2008 (paragraphs 6.56-6.58) at www.cabinetmanual.cabinetoffice.govt.nz.

¹³ For example, see, D. Finkelstein, 'How to stop the Queen picking the next Prime Minister', *The Times*, 25 November 2009; M. Oaten, 'Letter to the editor: We must head off the possible constitutional crisis if the result of the next election is close', *The Times*, 27 November 2009. (In response see R. Blackburn, 'Letter to the editor: No constitutional crisis', *The Times*, 28 November 2009.)

¹⁴ See R. Blackburn (2006), *King and Country: Monarchy and the Future King Charles III* (London: Politico's).

¹⁵ Various Private Members Bills have been introduced on the subject, such as the Fixed Term Parliaments Bill (2001-02), HC Bill 134.

¹⁶ David Cameron's speech to the Carlton Club, 16 July 2006.

¹⁷ See D. Cameron, 'A new politics: electoral reform', *The Guardian*, 25 May 2009.

¹⁸ R. Blackburn (2009), *The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform*, Public Law, p.766. By way of example, for the fixed term arrangements operating in Scotland see the Scotland Act 1988, sections 2 and 3 at www.opsi.gov.uk/legislation/scotland/scotact.

¹⁹ The seven cases are: Belgium (x2), Denmark, Finland, Italy, Norway and Sweden.

²⁰ A. Brazier & S. Kalitowski (Eds.) (2008), *No overall control? The impact of a 'hung parliament' on British politics*, (London: Hansard Society), p.110.

²¹ In the calendar year 1974, 58 bills reached the statute book compared with 80, 69, 83 and 86 in the two previous and two succeeding years. See A. Brazier & S. Kalitowski (Eds.) (2008), *No overall control? The impact of a 'hung parliament' on British politics*, (London: Hansard Society), p.36.

²² See for example, P. Cowley (2005), *The rebels: how Blair mislaid his majority*, (London: Politico's) and www.revolts.co.uk.

²³ See *The Cook-Maclennan Agreement: The Report of the Joint Consultative Committee on Constitutional Reform*, 1997 at www.unlockdemocracy.org.uk/wp-content/uploads/2007/01/4-joint-consultative-committee-report.pdf. For an analysis of the agreement see R. Cook & R. Maclennan (2005), *Looking Back, Looking Forward: The Cook-Maclennan Agreement Eight Years On*, (London: The New Politics Network) at www.unlockdemocracy.org.uk/?p=512.

²⁴ HC Deb 23 July 1997, vol. 298, col. 947.

²⁵ The precedents for a cabinet committee not covered by Cabinet collective responsibility were cited by Tony Blair as being a 1931 ministerial group on disarmament and a 1935-37 ministerial group on defence research.

²⁶ Nick Clegg MP interviewed on The Andrew Marr Show, BBC1, 22 November 2009,

²⁷ For progress of the Constitutional Reform and Governance Bill see <http://services.parliament.uk/bills/2009-10/constitutionalreformandgovernance.html>

²⁸ David Cameron recently said that 'to be frank' House of Lords reform 'is not an urgent priority'. See 'Iain Dale in conversation with David Cameron', *Total Politics* magazine, February 2009.

²⁹ See A. Rawnsley, 'A parliament hung in both its houses is a real prospect', *The Observer*, 22 November 2009.

³⁰ Ministry of Justice (2008), *An elected second chamber: further reform of the House of Lords*, Cm 7438. www.justice.gov.uk/publications/docs/elected-second-chamber.pdf.

³¹ The Prime Minister recently announced that he has asked the Cabinet Secretary to begin work on consolidating 'the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document'. See 'Towards a new politics', speech to the IPPR, 2 February 2010, www.ippr.org.uk/uploadedFiles/events/gordon_brown_ippr_feb_10.pdf.

³² House of Commons Justice Committee (2009-10), Uncorrected transcript of oral evidence to be published as HC396-i, *Inquiry into constitutional processes following a general election*, oral evidence, Q.87. www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/uc396-i/uc39602.htm.

³³ For draft chapter, 'Elections and Government formations', in Cabinet Manual see www.cabinetoffice.gov.uk/media/343763/election-rules-chapter6-draft.pdf

³⁴ See clause 20 of draft chapter, 'Elections and Government formations', in the Cabinet Manual.

³⁵ Gordon Brown has publicly stated his support for a written constitution: see, HC Deb 10 June 2009, vol. 493, col. 798.

³⁶ It is very likely, for example, that the constitution would make legal provision for the office of prime minister and for the continuing life of parliament. See R. Blackburn (2009), *The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform*, Public Law, pp. 788-789.