

COALITION AND CONSTITUTION: A LABORATORY FOR CHANGE?

13TH JANUARY 2010

CONFERENCE REPORT

The Director of the Federal Trust, **Mr Brendan Donnelly**, opened the conference by introducing the work of the Federal Trust, a think tank which studies sub and supranational levels of governance structures.

The first speaker, **Mr Graham Allen**, Chair of the Select Committee for Political and Constitutional Reform and MP for Norwich, began by outlining the work of the committee that he chairs in the House of Commons. As an atypical Labour MP, who organised a cross party response in the run up to the Iraq war in 2003, Mr Allen expressed surprise at being elected Chair of the Select Committee for Political and Constitutional Reform, created by the new Liberal Democrat-Conservative coalition government. For the new government to set up his committee represents significant progress given the tensions that the constitutional debate sparks in British politics: former prime minister Gordon Brown had sought to avoid publicity when he set up a working group looking at British constitutional change. The idea of a written constitution is revolutionary in the UK (United Kingdom). However the term is not novel in other western European countries, where notions of a written constitution, democratically elected second chambers, proportional representation, separations of powers and pluralism are the norm.

A window of opportunity of a couple of years has opened up for the new Liberal Democrat-Conservative coalition government, to develop a written constitution, whilst the new executive is fresh in power, i.e. not corrupted by the tenure of office. Through his committee work, Mr Allen is currently involved

in the coalition government's democratisation agenda, which looks at promoting localism. Even if central-local government relations have changed over the years, these adjustments should still be written down for the sake of establishing a set of benchmarks.

Mr Allen noted that the new executive has made some substantial progress in the constitutional debate in a short period of time. First, the Liberal Democrats were central to setting up the Select Committee for Political and Constitutional Reform: the Conservatives conceded the democratic agenda to Deputy Prime Minister Nick Clegg as part of the coalition agreement. Second, thanks to previous work done by Mr Allen, Tony Wright and Christopher Mullen on the reform of the House of Commons Select Committees, the chairs and members of the Select Committees in the House of Commons are now elected for the first time by their own parties.

Mr Allen's current Select Committee work involves dealing with the Cabinet Manual –currently in consultation– and proposals for creating a Business Committee for backbenchers, which Mr Allen hopes could in the near future blossom into a House Business Committee: the influence of the executive in legislative business is still predominant, which, in Mr Allen's view, strengthens the urgency for Westminster to become more pluralist.

The new proposals for the alternative vote and the Fixed Term Parliaments Bill are a good step in the right direction. They take power away from the Prime Minister and help MPs fulfil their political programmes in their constituencies without the incertitude of an imminent dissolution of parliament.

In concluding remarks, Mr Allen

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reiterated the need for the British coalition government to use its window of opportunity to cause constitutional change. In the British context, Westminster politics requires the feel and smell of change at least as much as the specific substance of any particular change. He also referred to the positive intergenerational effects that setting up a written British constitution could bring.

The second speaker, **Professor Stanley Henig**, Senior Research Fellow at the Federal Trust, began by referring to the historical difficulties faced by many British governments when promoting constitutional change in the UK. Will the Liberal Democrat-Conservative coalition government be any different? Professor Henig was somewhat sceptical. New Labour had since 1997 supposedly sought a modernisation programme in constitutional matters—the terms of which remained unclear: what was the overarching philosophy, programme and endpoint of the modernisation agenda? Devolution became the mantra of New Labour's constitutional change agenda. However, New Labour viewed devolution as a process, rather than an event. This notion of a process is problematic given it is on going, with no clear endpoint.

New Labour's constitutional reforms in government were characterised by a pragmatic and gradual approach, which viewed constitutional issues as a function of the existing political system—to be dealt with at the politician's convenience. Success stories included the House of Lords reforms and setting up the Supreme Court. The House of Lords reform removed hereditary peers, even though this reform is not complete as a small minority of hereditary peers (themselves elected by hereditary peers) remain and disagreements over election procedures are still an issue. Equally, the relationship of legislature to the executive is still very unclear. Devolution was a relative success. However, it was an asymmetric process given variations in the levels of autonomy—or the degree of devolved power from Westminster—of the regional assemblies. For instance the Scottish assembly has more autonomy than the Welsh

or Northern Irish assemblies today.

A major failure of the New Labour government was not to bring the regional devolution process to England. This was largely due to political debates over the relationship and levels of autonomy between regional and local authorities in England. Specifically, the lines of debate centred on the issue of setting up an English Parliament—separate from Westminster—and determining the locality of regional boundaries. Nonetheless, the Greater London Authority and the London Mayor elections were a partial exception to this criticism.

In concluding remarks, Professor Henig remained disappointed by the slow pace of constitutional reform. Professor Henig disagreed with the notion that the British have no constitution: the sources of that constitution are, however, many and mysterious and codification is difficult. Constitutional issues should thus not be left to the executive, concluded Professor Henig. The development of the British constitution should instead be participatory (as in Scotland) to ensure transparency and accountability. Professor Henig concluded by reiterating the urgent need for the UK to develop a written constitution and set up a viable constitutional court: the Supreme Court should be entirely separate from the House of Lords.

The third speaker, **Professor Vernon Bogdanor**, visiting professor at Kings College London, began by outlining a brief history of British coalition governments. Citing former conservative Prime Minister Benjamin Disraeli's famous assertion that "England does not love coalitions", Professor Bogdanor noted that Britain has had its fair share of coalition governments. Prior to the current coalition government, Britain had had three peace time Liberal-Conservative coalitions: (1) a coalition between Conservative and Liberal Unionists in 1895, which coincided with the debates on setting up Home Rule for Ireland; (2) a coalition between 1916 and 1922 under Prime Minister Lloyd George, where Conservatives and one section of the Liberal party formed a governmental alliance; and (3) a Conservative

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and Liberal coalition under Prime Ministers Baldwin and Chamberlain from 1931-1940.

Professor Bogdanor noted that there has never been a Liberal-Labour coalition, even if Liberals have supported Labour minority governments from the outside—as for instance during the Labour governments in 1924, 1929-31 and the Liberal-Labour pact from 1977 until 1979.

Professor Bogdanor drew from history two contrasting lessons of significance for the new Liberal-Democrat-Conservative coalition. First, all Liberal-Conservative coalitions have ended up breaking away in government. Second, the current coalition government is the first government to form immediately after an election. Third, previous British coalition governments collapsed from the bottom (through grassroots movements in both Liberal and Conservative parties) and not from the top down—an observation missed by many commentators. History could repeat itself with the current coalition government. The proposed modification of constituency boundaries under the Parliamentary and Constituency Voting Bill implies a re-selection procedure for every constituency: at the next general election, Liberal-Democrats and Conservatives could choose candidates unsympathetic to a continued Liberal Democrat-Conservative coalition government.

Professor Bogdanor remarked that the British constitutional and devolution processes are still in flux. With fixed term parliaments and the possible introduction of the alternative voting system described by the government as the biggest shake up in British democracy since the Great Reform Act—hung parliaments may become a permanent feature of British politics. Given the Liberal Democrats are a second choice for most voters, the Liberal Democrats are set to assume the role of kingmaker. Third parties will however become increasingly important. At the last general election, third parties gained twenty-eight seats in total, representing twelve per cent of the vote.

However, hung parliaments present problems for participatory democracy.

Important political decisions will increasingly be taken behind closed doors. Hence parliament becomes less accountable to voters. In a two stage government formation process—whereby the electorate votes and then negotiations between the winning parties with the biggest share of the vote coalesce—the bargaining power of a party becomes crucial and party manifestos, as a guide to government action, are superseded by the importance of the coalition agreement. For instance, the Liberal Democrats have adopted policies diametrically opposite to their manifesto commitments on such issues as deficit reduction, tuition fees, and proportional representation. The Liberal Democrat-Conservative coalition agreement was hurriedly done, whilst manifestos, by contrast, are usually the product of long deliberations in party think tanks.

Transparency reforms are needed to resolve these issues of participatory governance: parties should signal to the electorate who they intend to coalesce with, on what terms and indicate second preferences,

In concluding remarks, Professor Bogdanor noted that the recurrence of hung parliaments may well discourage future governments from trying to dissolve Parliament in the hope of attaining an absolute majority for their party. Professor Bogdanor also expressed concern that the constitutional reforms undertaken to serve the Liberal Democrat-Conservative coalition government may come at the expense of democratic legitimacy. Hence the current government should also focus on reforms to promote direct democracy—such as encouraging local referendums on citizen initiatives and open primary elections—otherwise Benjamin Disraeli's aphorism could prove fatal to the current executive: “coalitions may triumph, but their triumphs will be brief.”

The final speaker, **Dr Andrew Blick**, researcher at the Federal Trust, discussed the Cabinet Manual and its significance and limitations as a first step towards a British constitution. The Cabinet Manual is designed to be a codification of the British constitutional

settlement—the closest document to a written constitution. It has been in parliamentary consultation since December 2010.

Dr Blick argued that the Cabinet Manual will not be a fully codified constitution—as understood by other western democracies: the manual will above all not be justiciable in a constitutional court. First, none of the contents will be subject to entrenchment—such as requiring referendums or parliamentary super majorities to be altered. Second, the process by which the manual has been drawn up is undemocratic: despite a three month parliamentary consultation period, decisions on whether to incorporate in the manual suggestions from the House of Commons Select Committee for Political and Constitutional Reform will be taken by the executive. This is problematic given any interpretation of a particular constitutional convention must be shared by all constitutional actors.

The Cabinet Manual covers a broad range of issues: sovereign elections and government formation, the executive, collective cabinet decision-making, ministers in parliament, ministers and the law, ministers in the civil service, relations with devolved administrations and local government, relations with the European Union and other international institutions, government finance and expenditure and finally official information.

Dr Blick asserted that there is no rationale for what is included and what is not included in the manual. The manual mentions that cabinet can hold its meetings in London and regionally around the country and it stipulates that departmental boards in Whitehall should be composed of fifty per cent participants from the private sector: the latter two issues would not be worthy of mention in a completely codified constitution. The Cabinet Manual does not deal with the recently introduced Departmental Business Plans and the establishment of the Office for Budget Responsibility is mentioned only briefly.

Crucial legal elements missing, or controversially discussed, in the Cabinet Manual include: the relationship between the

House of Commons and the House of Lords, the House of Lords ability to veto the House of Commons royal prerogative powers, statutory rights, mechanisms for oversight of intelligence and security agencies, the Civil Contingency Act and procedures for the formation of war cabinets during military emergencies.

For European and sub-UK matters, Dr Blick noted that there is no mention in the manual of statutory provisions for Northern Ireland to detach itself from the UK. The section on devolution excludes any mention of devolution to Greater London or the 2007 Central Local Concordat Act, which defines local-central government relations.

The Cabinet Manual does not refer to the crucial issue of whether the holding of a referendum on a decision can create a constitutional convention whereby if this decision is fundamentally reversed, popular consent through a further referendum is required. This issue could surface if there is a referendum held on repealing Scottish devolution or the 1975 European Communities Act.

Dr Blick concluded that given the above raised issues, there is an urgency for the executive to reconsider the process currently being undertaken to devise the Cabinet Manual. Dr Blick asserted that the government should make clear that the Cabinet Manual is the executive's interpretation of the British constitution: its interpretation does not embody the totality of the British constitutional settlement.

In concluding remarks, the chairman, **Brendan Donnelly**, Director of the Federal Trust, thanked the speakers for their stimulating presentations.

Christophe Singh
