

## **Evidence submission to the House of Commons Political and Constitutional Reform Committee from Brendan Donnelly, Director of the Federal Trust for Education and Research**

### **Summary**

- The Alternative Vote would be on balance an improvement on the present First Past the Post (FPTP) system for elections to the House of Commons, but a modest rather than radical shift.
- The equalisation of seat sizes, within a narrow band such as proposed, is in principle correct.
- While there may be a case for a reduction in the number of MPs at Westminster, the current presentation of the reasons for this change is unsatisfactory.
- The principle of fixed-term parliaments is to be supported, although the present intended length of five years is excessive, with four years seemingly a more appropriate term.
- The changes considered in this paper cannot fully be separated from each other and their broader political and constitutional context. They are to a significant extent the product of political imperatives driven by the respective interests of the two parties of government and the dynamics of coalition government.
- While the Coalition claim that their constitutional programme will cumulatively amount to a major dispersal of presently over-centralised power within the UK and a recasting of the political and constitutional settlement, more modest assessments might be appropriate.
- The present intended changes are merely the latest in a long – and accelerating – production-line of piecemeal constitutional modifications, which serves increasingly to highlight and aggravate some of the democratic and definitional difficulties which arise from the UK lacking a codified constitution.

### **Introduction**

1. The Federal Trust is a politically unattached think tank registered as a charity for the purposes of education and research. It is concerned with studying the interaction between different tiers of governance – local, regional, national, European and global – and how these different tiers can be held democratically accountable.
2. It is this latter concern with democratic issues that is the primary focus for the present submission. The proposals considered here have substantial implications for the functioning of UK democracy, the quality of which these reforms are presented as intended to improve.
3. The reforms under consideration in this submission are:
  - a shift – subject to a referendum – to the Alternative Vote (AV) system for elections to the House of Commons;
  - the equalisation of the number of voters in seats and a reduction in the number of MPs;  
and

- fixed-term parliaments.
4. The following paper assesses each proposal in its own right and – since their advocates see them as part of an overall structure of substantial constitutional and democratic reform – collectively, as components of a broader programme.

### **The Alternative Vote**

5. The Alternative Vote would be on balance an improvement on the present First Past the Post (FPTP) system for elections to the House of Commons, but a modest rather than radical shift.

### ***Advantages of AV over FPTP***

6. At the 2010 General Election, only a third of candidates returned to Parliament received more than half the votes cast in their constituency, the lowest such figure in the era of universal franchise.
7. Within the electoral and constitutional system of the UK, each MP is regarded as the representative of a particular constituency. Consequently if an MP has not received the backing of a majority of those who vote in their constituency, his or her representativeness is to that extent reduced.
8. Furthermore, the presence of a significant – and growing – number of MPs not elected on majority constituency votes within the House of Commons is detrimental to the democratic legitimacy of this institution as a whole.
9. Under AV, this problem would be to some extent addressed because all MPs would be elected with support *of some kind* from more than 50 per cent of those who voted.
10. AV enables those voters who wish to do so to express themselves in a more nuanced, sophisticated fashion; and provides – to those voters who want them – more options.
11. It should also be noted that AV can often produce results in which the seats allocated to parties relate a little more closely to the votes cast for them nationally (but subject to qualifications discussed below). It may help the third party to achieve a seat share that is closer to its vote share.
12. To some extent AV addresses the FPTP problem of ‘wasted’ votes - that is votes not cast for the winning candidate – through the counting of lower order preferences (until a candidate achieves more than 50 per cent of the total number of those voting).
13. AV would encourage parties publicly to enter into pacts and alliances *before* elections, rather than possibly reaching agreements after votes have been cast, as happened following the May 2010 General Election. This shift would be desirable from the perspective of democratic transparency.
14. All of these outcomes are desirable, and outweigh those reservations about AV which are recorded below.

### *Disadvantages of AV*

15. Proportional representation systems, in which there is a clear and closer relationship between votes cast for parties and seats won by parties, are generally more desirable than non-proportional systems. The major flaw with FPTP is that it is not proportional representation (PR); but nor is AV.
16. Advocates of PR might argue that AV, while not being proportional, is at least more likely than FPTP to produce a desirable feature of PR: a propensity for parliaments with no one party in overall control. But such a tendency is not inevitable. While the recent elections to the Australian House of Representatives, which use an AV-type system, did not yield a majority for any one party, this occurrence has been as rare in Australia under their voting system as it has in the UK under FPTP.
17. It is possible to question how far votes that are not first preferences contribute to the legitimacy of a winning candidate, particularly one who did not gain the most first preferences.
18. Under AV, there is a marked inequality in the treatment of those who do not give their first preference to the winner. Some are more likely to have their lower order preferences counted than others, according to how their higher preferences are cast.
19. Finally, claims that AV would eliminate tactical voting are erroneous. It is more accurate to say that it produces different forms of tactical voting, in particular involving the casting of second preferences.

### **Equalisation of seat sizes**

20. The equalisation of seat sizes, within a narrow band such as proposed, is in principle correct.
21. The current disparity of seat sizes, and the consequent variation in the potential value of votes across different constituencies, is unjustifiable. The need to correct this problem outweighs concerns about cutting the geographical and cultural ties that may bind voters to particular constituencies, though these reservations are not entirely unfounded.
22. However, this change will be executed in the context of an electoral system (either FPTP or AV) that produces disproportionate outcomes and leads to considerable numbers of 'wasted' votes.

### **Reduction in the number of MPs**

23. While there may be a case for a reduction in the number of MPs at Westminster, the current presentation of the reasons for this change is unsatisfactory.
24. The most coherent argument being offered by the government at present for this reduction seems to be one of financial parsimony.

25. Even assessing this justification on its own terms, there is room for doubt about how much money ultimately will be saved, since the workload of the remaining MPs will rise, leading for pressure to provide them with additional staff.
26. Any savings will be marginal relative to the overall operating costs of Parliament. The Deputy Prime Minister, Nick Clegg, has stated to the Commons that 'Having 59 fewer MPs saves £12 million a year on pay, pensions and allowances alone.' The projected total expenditure in the *House of Commons Corporate Business Plan 2010/11* for 2010-11 is £233.5 million (p.61).
27. Moreover, the implication that our parliamentary system should be run as cheaply as possible has anti-democratic connotations.
28. Any consideration of the appropriate number of MPs should be considered primarily in constitutional – not financial – terms.
29. There is no evidence that, in arriving at a figure of 600, adequate consideration was given to such issues as the role and workload of MPs.
30. The government has used international comparisons in supporting its case for a reduction, noting that the number of elected representatives in the UK Parliament appears in this context high.
31. However, a shift to 600 would not greatly alter the peculiarity of the UK in this regard.
32. Moreover, while the Commons could be seen as unusually large, there is a wide variation in sizes across equivalent institutions internationally, measured in absolute terms or representatives per head of the population. It is not clear that there is a particular formula which can be applied universally, and the Coalition is not proposing one.
33. Furthermore, while from an international perspective it may seem that the number of UK MPs is high, it should be noted that the UK is an exceptionally centralised, unitary state. Consequently, the burden of responsibility falling on the UK Parliament is unusually large, perhaps calling for a larger number of elected representatives than might be required elsewhere.
34. Finally, it should be observed that a reduction in the number of MPs will lead to an increase in the relative power of patronage of the government within the House of Commons, unless it is accompanied by a decrease in the number of ministers sitting in the Commons.

### **Fixed-term Parliaments**

35. The principle of fixed-term parliaments is to be supported.
36. The present arrangements for the requesting of dissolutions provide excessive power to the executive (and in particular the Prime Minister) in relation to Parliament; and provide an unfair advantage to incumbent parties of government over other parties.
37. The requirement for a super majority of two thirds of MPs to trigger early dissolutions is to be supported; as in principle is the mechanism to trigger dissolutions if, following the defeat

of a government on a confidence motion, a new government cannot be formed after a given period.

38. However, considered in international perspective, and in the context of the duration of parliaments in recent British history, five years seems an excessively long term.
39. Of the 17 parliaments in the UK between 1945 and 2010, only five ran for as long as or close to five years.
40. Members of the US House of Representatives are elected every two years, the President holds office for four years, and members of the US Senate serve for six year terms. In both Australia and New Zealand, the Parliaments have three-year terms. Members of the Swedish Riksdag serve for three year terms. The majority of European countries have four year terms. The French Assembly, which has a maximum term of five years, can be dissolved before its term by the President.
41. From such perspectives, four years would seem a more appropriate fixed term for Parliament.

#### **The political and constitutional context**

42. So far the present paper has considered this first set of constitutional reform proposals emanating from the government individually and on their own terms.
43. But they cannot fully be separated from each other and their broader political and constitutional context.

#### ***Political motivations for reform***

44. All of these changes are to a significant extent the product of political imperatives driven by the respective interests of the two parties of government and the dynamics of coalition government.
45. AV, if implemented, is likely to work to the electoral advantage of the Liberal Democrats.
46. Assessments of the likely impact of the equalisation and reduction in the size of seats suggest that the main relative beneficiaries will be the Conservatives.
47. A five year fixed-term Parliament suits the requirements of the leaderships of both Coalition parties.
48. There is no evidence that the possible options for reform have been considered from a perspective wider than the immediate concerns of the Coalition-forming process.
49. For instance, AV is far from being the only electoral system which might replace FPTP, and AV was wanted by neither Coalition party before the General Election.
50. Indeed, the main reason that a referendum on AV was placed on the agenda was because this policy was adopted – seemingly equally opportunistically, and with a similar lack of consultation or deliberation – by Gordon Brown, late on in the Labour term of office. A

decade previously, the same government had opted not to adopt the proposals of the Jenkins Commission for an AV system combined with an element of proportionality via a regional top-up, which would have been a preferable system to the one presently on offer.

51. The ‘deathbed conversion’ to AV undergone by Mr. Brown, perhaps with an eye on the possible need to collaborate with the Liberal Democrats if he were to retain office after the 2010 General Election, suggests that the present Coalition is not unique in approaching constitutional issues from a narrow self-interested perspective.
52. The party political requirements underpinning the measures considered in this paper have entailed their being implemented at a strikingly rapid pace.
53. Limited time has been allowed for the essential democratic processes of consultation and parliamentary scrutiny, as already noted by this Committee.
54. The timetable for implementing new parliamentary boundaries will not for instance be able to take into account changes that will arise from the shift to individual voter registration, which is scheduled to take place during the course of the present Parliament.
55. If the constitutional reform programme appears to be dominated by self-interested electoral considerations, the chances of achieving its claimed objective of greater levels of public confidence in the political process are reduced.
56. It is often held that referendums – such as that which will be held on AV – are flawed democratic devices because they may be used by the electorate not as a means of adjudicating on an important issue, but of passing general judgement on the government of the day. The way in which the current constitutional reform programme appears to be skewed towards electoral advantage for the participants in the Coalition could be seen as inviting those participating in the AV referendum to behave in this way.

### *Limitations of the programme*

57. While the Coalition claim that their constitutional programme will cumulatively amount to a major dispersal of presently over-centralised power within the UK and a recasting of the political and constitutional settlement, more modest assessments might be appropriate.
58. Once again, consideration of the AV policy helps illustrate this point.
59. If AV is adopted, a possible shift that could occur will be a movement from a political system that suits the interest of two main parties, currently the Conservatives and Labour, to one adjusted to serve three, with the Liberal Democrats, thanks to AV, being given higher levels of Commons representation and a greater chance of participating in government in future.
60. It is doubtful that the sharing of power would progress far beyond this point, since AV is unlikely to benefit parties below the third party that do not possess a strong regional concentration of support.
61. It is sometimes held by advocates of electoral reform who do not regard AV as the best new system to adopt – and may regard it as no better or possibly worse than FPTP – that it will

somehow act as a stepping stone to a proportional system such as the Additional Member System (AMS) or Single Transferable Vote (STV).

62. Yet the Conservative component of the Coalition on the other hand regards the AV referendum, whatever the result, as settling the issue of electoral reform, not opening it up.
63. The calculation seemingly made by the Conservatives, that a referendum will settle the issue of electoral reform for the foreseeable future, is the more plausible one.

### ***The un-codified UK constitution***

64. The opportunistic nature of the current set of reform proposals serves further to highlight issues associated with the un-codified UK constitution.
65. Because of the principle of ‘parliamentary sovereignty’, it is effectively possible for those who dominate the Commons to alter the UK constitutional settlement as a whole to serve their own purposes. To prevent parliamentary sovereignty from being abused in this way, a strong convention of self-moderation from parties of government has until recently been observable. If the current set of proposals are evidence that such a convention is absent or declining, then more formal mechanisms – such as could be provided by a codified constitution – may be required.
66. The present intended changes are merely the latest in a long – and accelerating – production-line of piecemeal constitutional modifications.
67. Never has a holistic view been taken of the UK constitution.
68. The establishment of a codified UK constitution would entail correcting this lacuna.
69. The requirement for a two thirds ‘super majority’ to trigger dissolutions could provide a useful precedent for the development of means for embedding such a settlement. However, under existing constitutional principles there is no means of preventing the legislation underpinning the provision requiring a ‘super majority’ being amended or repealed by simple majority votes.
70. Within an embedded, codified UK constitution, future alterations could not be enacted at will by the governing party or parties, but would be subject to a more demanding procedure, one which was, unlike present practice, internally consistent.
71. It might be asked why the adoption of AV requires public consent through a referendum, but fixed-term parliaments do not. Mr. Clegg seems to be of the opinion that the latter is a more important shift, at least from a constitutional perspective, than the former.
72. In the Commons on 5 July, he described fixed term parliaments as ‘a hugely significant constitutional innovation’. On the other hand he has argued to this Committee that:

*I am not sure I would characterise a shift from first past the post to the alternative vote...as one that affected the unwritten constitution as such...there is a certain modesty to the transition from first past the post to the alternative vote...and I wonder whether it is commensurate with the suggestion that it is a fundamental alteration of the constitution.*

73. This kind of uncertainty about whether or not the constitution is being changed – which is unsatisfactory from a democratic perspective – is a product of the lack of a codified constitution in the UK.

74. A final, major advantage of a codified constitution would be to allow for the possibility of full judicial review. The practice of applying Speaker's Certificates to preclude such challenges would no longer be possible under a codified constitution. This change would be a substantial contribution to transparency and the rule of law.

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*Please note that this evidence is offered by Brendan Donnelly in a personal capacity.*