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Inaction and Reaction – Coalition Government and Constitutional Reform in the United Kingdom

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Abstract
Constitutional reform in the United Kingdom is a story frequently framed around the narratives of missed opportunities, executive intransigence and institutional stickiness. Yet in times of flux and uncertainty, matters of the constitution can scale the political agenda at breakneck speed; and as the architecture of the UK teeters on the precipice of potentially fundamental upheaval, it is crucial to locate recent events within the broader history of constitutional reform in order to tease apart the dynamics of stasis and change. This article responds by offering the first complete in-depth analysis of the 2010-15 Coalition Government's record on the constitution, focusing on the gap between rhetoric and reform, and the way in which constitutional traditions have confounded the ability to effectively manage the tensions that exist within the UK's uneasy settlement. In doing so, the article sets out the institutional and ideational factors that have influenced attitudes towards constitutional reform, in particular focusing on the way in which dilemmas of office have confounded meaningful attempts to alter Britain's constitutional fabric. It argues that three critical factors together explain the Coalition's record on the constitution: the clash of constitutional philosophies within the Coalition; the dilemmas with which the Liberal Democrats were confronted in the transition from opposition to government; and, the extent to which the governing norms of constitution effectively neuter attempts to its reform. The findings of this article are therefore salient and significant, providing valuable lessons regarding the tenability of the UK's extant constitutional architecture and the capacity of the Conservative Government to successfully manage and vent the myriad of pressures upon it.

Key words: constitution; constitutional reform; coalition government; institutions; ideology

Matters of the constitution in the United Kingdom (UK) were once renowned for the sheer paucity of popular and political interest, earning the issue of constitutional reform the unfortunate label of 'a topic for anoraks' (Bogdanor, 2014). Yet in times of flux and uncertainty, matters of the constitution can scale the political agenda at breakneck speed. This has been readily apparent in recent months as the implications of the 'no' vote in the Scottish independence referendum unfolded and precipitated a range of constitutional conundrums regarding the asymmetry of the Union, which has led commentators to argue that 'the tangled British constitution is again on the verge of significant, unplanned change' (The Times, 2014). Indeed, constitutional affairs were centre-stage in the run-up to the 2015 general election, the debate being dominated by issues including Scotland's relationship with Westminster and Britain's place in Europe; and the newly elected Conservative Government has pledged a package of reforms that could simultaneously witness the repatriation of sovereignty and the dispersal of power across the Union. As the architecture of the UK teeters on the precipice of fundamental upheaval, it is therefore crucial to locate recent events within the broader history of constitutional reform in order to tease apart the dynamics of stasis and change. This article responds by offering the first complete in-depth analysis of the 2010-15 Coalition Government's record on the constitution, focusing on the gap between rhetoric and reform, and the way in which constitutional traditions have confounded the ability to effectively manage the tensions that exist within the UK's uneasy settlement.

A systematic analysis of the Coalition's constitutional reform agenda is both timely and important. Over recent years there has been mounting concern regarding the extent to which the British constitution remains fit-for-purpose, reflected in a burgeoning raft of parliamentary select committee, think tank and taskforce reports (e.g. Constitution Unit, 2010; HC 371, 2013); and, in the context of the 800th anniversary of the Magna Carta, critical questions are being asked regarding the necessity of a new constitutional settlement (e.g. HC 463, 2014). Such dilemmas have been fuelled by the fierce debates over Scotland's future in the Union, and with the SNP now sitting in the Commons as Britain's third party, its leader Nicola Sturgeon remains adamant that 'the overwhelming mandate… given to the SNP means that it cannot be "business

as usual" when it comes to Westminster's attitude towards Scotland' (The Telegraph, 2015). In identifying the main institutional and political factors that have hitherto driven constitutional reform, in particular under the recently-departed Coalition Government, this article offers valuable lessons regarding the tenability of the UK's extant constitutional architecture and the capacity of the Conservative Government to successfully manage and vent the myriad of pressures upon it.

To develop this analysis, the article proceeds as follows. The first section sets out the institutional and ideational factors that have shaped the history of the British constitution, in particular focusing on the way in which the dilemmas of office have resulted in lurching and ad hoc constitutional bricolage. Building on this, the second section then provides a detailed account of the programme of reform actively pursued by the Coalition between 2010-15, focusing on the raft of commitments within the *Programme for Government* coalition agreement, which together encompassed the gamut of the constitution's architecture. As highlighted below, the overwhelming majority of these commitments were diluted, stalled or even jettisoned outright. The third section then shifts from description to analysis, to explain why this seemingly ambitious agenda fell short in execution, despite the conditions for change ostensibly prevailing; and, at the same time, why many pre-existing tensions were insufficiently acknowledged and addressed. Overall, the article argues that three critical factors together explain the Coalition's record on the constitution: the clash of constitutional philosophies within the Coalition; the dilemmas with which the Liberal Democrats were confronted in the transition from opposition to government; and, the extent to which the governing norms of constitution effectively neuter attempts to its reform. The final section of the article therefore places these findings within the contours of a broader set of debates to consider the extent to which the current constitutional settlement will remain able to absorb the shocks and challenges it continues to face.

The context of constitutional reform in the United Kingdom

Constitutional reform in the UK is a story frequently framed around the narratives of missed opportunities, executive intransigence and institutional stickiness; and the British constitution has been characterised by its capacity for 'muddling through' (Hennessy, 1997). The evolutionary nature of the British constitution is one of its defining hallmarks, and it was with a degree of pride that Sidney Low declared in 1904 that whilst '[o]ther constitutions have been built… that of England [sic] has been allowed to grow' (Low 1904, p. 12). Reflecting on its 'process of adaptation covering a period of over a thousand years' (Harvey and Bather, 1964, p. 12), the British constitution has traditionally been perceived as a product of lived experience rather than abstract principles, 'changing from day to day for the constitution is no more and no less that what happens' (Griffith, 1979, p. 19). Moreover, its evolutionary character and lack of formal codification has been elevated to a 'virtue of collective experience and consensual expression', reflecting a normative belief that '[o]nly a mature and effectively functioning political community could operate and maintain such an ethereal set of rules' (Foley, 1999, p. 1).

The evolution of the constitution for much of the twentieth century thus followed a pattern of modest incrementalism; and whilst there were critical episodes of reform, such as the Reform Acts of 1918 and 1928 or Parliament Acts of 1911 and 1949, these remained relatively rare and the core tenets of the constitution were largely untouched. Such modest incrementalism reflected the general lack of political attention given to constitutional issues. Throughout the majority of the twentieth century successive governments avoided reforms that would undermine the constitutional foundations on which their governing legitimacy was based, an aversion which owed as much to political pragmatism as to ideological attachment. Simply put, the principles of strong and responsible government kept in check by a sovereign parliament, whose authority remained undivided and centralised within a union (if not unitary) state, not only fostered a romanticised ideal of a peculiarly British governing ethos, but in practical terms also provided the party of government with an unrivalled platform from which to implement its policy agenda.

This is not to say that differences did not exist between governments of different political hues, and it is clear that both Conservative and Labour governments avoided excessive constitutional tinkering for fundamentally different reasons. The Conservative approach to the constitution, for example, simultaneously reflected two complementary strands of conservative thought, underlining both its Hobbesian desire for a sovereign, indivisible, source of executive power; and its Burkean pragmatism which allowed for piecemeal constitutional change in order to preserve, rather than transform, existing institutions. In contrast, the aversion to the wider dispersal of executive power by the post-war Labour governments was a direct reflection of their social democratic faith in the capacity of a strong central state to address inequality and deliver societal transformation. These strands of constitutional thought have been examined in detail (e.g. Norton, 2005; Dorey, 2008), and what is readily apparent from these analyses is the way in which the constitutional framework was perceived to offer direct benefits to those operating within it, which simultaneously reinforced existing constitutional practices and further insulated them from sustained challenge.

The constitution therefore served its governments well. Even when out of power, the two main parties generally maintained their support for it, safe in the knowledge that the swift alternation of power that the constitution facilitated would be likely to return them to office once more. By the late twentieth century, however, the certainties of the two-party system of single party government appeared increasingly undependable; and, despite the changing nature of party competition and increased voter volatility, the Conservatives achieved four successive victories. During their years in the political wilderness, there emerged within certain parts of the Labour Party a sense that the constitution had failed; and, whilst its then leader Neil Kinnock may have dismissed constitutional reformers such as Charter 88 as little more than ‘whiners, whingers and wankers’ (quoted in Anderson and Mann, 1997, p. 67), later leaders were more vocal in their support for change. In 1993, then leader John Smith declared that he would ‘lead a Labour Government that will

introduce the most radical package of constitutional reform ever proposed by any major political party', including devolution, freedom of information and parliamentary reform.

Following his death in 1994, Smith's successor Tony Blair reiterated the Party's broad commitment to this package (although Blair's personal commitment was questionable). Moreover, the – at the time very real – prospect of a hung parliament at the next general election encouraged the party leadership to forge closer links with the Liberal Democrats; and constitutional reform was quickly identified as a key issue on which co-operation could be brokered. To this end, the two parties established in 1996 the Joint Consultative Committee on the Constitution with a remit to 'consider whether there might be sufficient common ground to enable the parties to reach agreement on a legislative programme for constitutional reform'; and the memoirs of then Liberal Democrat leader Paddy Ashdown also suggest that Blair had privately offered the party a deal on proportional representation in order to secure their support (Ashdown, 2000).

With a landslide majority of 179 there was, of course, no need for Labour to rely on the formal support of the Liberal Democrats. Nonetheless, in its first two years in office, Labour enacted a range of constitutional reforms in quick succession, including the granting of operational independence to the Bank of England in 1997, the incorporation of the European Convention of Human Rights in 1998, and devolution to Scotland and Wales in 1999. Such was the pace of initial activity that it was seen by some as heralding a new era of constitutional change, with one observer describing Blair as 'the most far-reaching, radical reformer of the formal edifice of the constitution since Oliver Cromwell' (Morison, 1998, p. 510). Yet, despite this initial burst of activity, progress quickly stalled. The Freedom of Information Act 2000, for example, was met with disappointment owing to its extensive list of caveats and exemptions. Reform to the House of Lords was left incomplete, as whilst the majority of its hereditary peers were abolished in 1999, Parliament failed to reach a consensus regarding the composition of a revised second chamber.

Finally, electoral reform was quietly sidelined, as the recommendations of the Independent Commission on the Voting System (the Jenkins Commission) were met in 1998 with appreciable coolness, with subsequent manifestos distancing the Party from its initial pledges.

Resultantly, Labour's constitutional 'agenda' was widely criticised as ad hoc and unprincipled. Lipsey, for example, described it as 'a ragbag of bits-and-pieces bearing little relationship to each other and with decidedly variable amounts of thought and merit attached to them' (Lipsey, 2011, p. 342); and Norton pithily summarised Blair's 'principled approach' to the constitution as being 'at once, to retain power at the centre, not to retain power at the centre, and to decide as one goes along' (Norton, 2007, p. 272). In particular, reflecting on the dichotomy between reforms to the centre and the devolved regions, Flinders identified a pattern of 'bi-constitutionality' that had emerged, with different modes of democracy uneasily co-existing across the British state (Flinders, 2009). As such, Labour's reforms were also criticised for the lack of forethought regarding their outcomes. Former Cabinet Secretary, Richard Wilson, attributed this to a peculiarly British tendency to simply ignore constitutional issues, somewhat presciently describing it as 'behav[ing] like a patient who submits to surgery under anaesthetic, but only considers whether he wants the operation some time later when he begins to feel the consequences' (Wilson, 2005, p. 281). Reflecting on these (unintended) consequences, several scholars predicted the 'twilight of Westminster' (Norris, 2001, p. 879) or the emergence of a 'democratic anomie' (Flinders, 2009, p. 32), whilst others asked 'what's wrong with the British constitution?' (McLean, 2009). Yet, despite such clarion warnings, the failure of the Labour government to deliver a coherent programme of reform should also be seen as unsurprising because, as Foley judiciously surmised, 'Labour was being asked to jettison its traditional ambivalence over the constitution at precisely the time when it was poised to become the chief beneficiary of the unreconstructed political constitutionalism of the British system' (Foley, 1999, p. 242).

The reluctance of the Labour government to deliver its promised programme was once again a clear reminder of the benefits brought by the constitution to those who hold executive power. Whilst the constitution may rest on the rhetoric of parliamentary sovereignty, in practice this has provided 'a constitutional cloak within which executives seek to maintain their political autonomy' (Judge, 1993, p. 193). The British constitution thus propagates 'strong, rather than responsive, government, and an elite, or leadership, democracy, rather than participatory democracy'; and, in turn, the 'British Political Tradition' remains 'a crucial factor in explaining how the British political system did, and does, operate, particularly when it comes to issues concerning constitutional reform' (Marsh and Hall, 2007, pp. 224-35). Flowing out of this, the constitution can be understood as a 'legitimating discourse…that portrays a political regime to be functioning as its power holders claim it to be functioning, and in doing so, provides support to those who exert power in the regimes' (Merelman, 2003, p. 9). There is, therefore, a degree of inevitability that constitutional reforms remain limited in scope, as governments must display 'supreme altruism' (Judge, 1993, p. 213) in instigating measures that would fundamentally alter the governing structures that sustain their predominance. Following on from this, there is also a degree of inevitability that in the transition from opposition to government, newly instituted executives lose their reformist zeal and experience a 'shift in the executive mentality from consensualism to majoritarianism' (Flinders, 2009, p. 256); and that, in turn, constitutional reform shifts from being an 'ancillary device' to a 'piece of superfluous exotica' (Foley, 1999, p. 244). As the remainder of this article will demonstrate, such forces were also key in explaining why the 2010-15 Coalition's constitutional reform agenda remained moderate in scope; and why, at the same time unplanned, ad hoc and, potentially fundamental changes, were countenanced at key critical junctures.

Coalition government and constitutional bargaining

The build-up to the 2010 general election was permeated by a palpable sense that the British system of government was under sustained and serious stress.

The global financial crisis and ensuing credit crunch, along with the outpouring of public opprobrium following the MPs' expenses scandal, created a febrile atmosphere and a 'huge gulf of distrust, disbelief and lack of interest that now separates the political class from everyone else' (Finklestein, 2010). Reflecting this, opinion polls revealed that around 73 percent of Britons thought that politics was broken, as 'the gap between high expectation and low reality has deepened the public's sense of betrayal' (The Times, 2010). In this pervading context of cynicism and distrust, it was unsurprising that the three main parties advocated the cleaning-up of politics through constitutional reform to revitalise democratic engagement. Accordingly, their respective manifestos contained a series of commitments to: 'make politics more accountable' (Conservatives, 2010, p. 65); deliver 'fair and local politics' (Liberal Democrats, 2010, p. 87); and, 'forge a new constitutional and political settlement' (Labour Party, 2010, p. 9:2).

In the wake of the inconclusive election result, it quickly became apparent that both Labour and the Conservatives were reluctant to countenance minority government, and without the roadmap of precedence, the two main parties simultaneously entered into frenetic negotiations with the Liberal Democrats to secure a workable majority. The post-election coalition negotiations were marked by the speed in which an agreement was brokered; and whilst these negotiations have brought extensive insider comment and scholarly analysis (e.g. Laws, 2010; Quinn et al, 2011; Adonis, 2013), it is important to highlight the pivotal role that constitutional reform assumed. Indeed, it was only on the afternoon of the fifth and final day of negotiations, when the Conservative negotiating team made key concessions regarding electoral reform, that the prospect of a Conservative-Liberal Democrat coalition emerged (evidence from David Laws MP and Oliver Letwin MP, HC 528, 2010, Qs. 45-60). Nonetheless, the burden of compromise fell heaviest on the Liberal Democrats; and, as the comparison between the two parties' manifestos and resultant *Programme for Government* coalition agreement in table 1 below demonstrates, a significant number of the Liberal Democrats' flagship policies were diluted (e.g. electoral reform), forestalled (e.g. House of Lords reform) or disregarded entirely (e.g. UK-wide federalism). Quite clearly, therefore, the

demands of coalition meant that the politics of pragmatism prevailed from the outset.

Table 1 about here

Summarised in table 2 below, the constitutional reform pledges set out in the *Programme for Government* broadly focused on six key areas: parliamentary reform; electoral reform; Europe; decentralisation; transparency and freedom of information; and, a written constitution. In turn, a distinction can be made between those reforms intended to transform the functioning of the core of Westminster government (i.e. parliamentary reform and electoral reform) and those that target the wider relationships between the core and periphery of the British state (i.e. Europe and decentralisation). The pledges within the *Programme for Government* were generally characterised by a degree of caution and absence of radical ambition. Indeed, drawing on the taxonomy of parliamentary reform developed by Flinders (2007), the vast majority of the proposals were at best *cosmetic* (procedural reforms that have little or no impact on the balance of power) or *moderate* (reforms that may alter the balance of power, but not the underpinning constitutional configuration) in scope; with few *fundamental* reforms (far-reaching reforms that starkly depart from previous constitutional arrangements) being advanced. Moreover, progress against this agenda was variable, with proposals affecting the peripheral architecture of the British state being met with less resistance than those that would alter relationships at the heart of government.

Table 2 about here

Reforms to re-balance the House

A significant number of the *Programme for Government's* pledges focused on the balance of power within the House. However, many of these proposals fell

short in their implementation. One of the first measures instigated by the Coalition was the creation of the Backbench Business Committee in July 2010, its role being to schedule subjects for debate during backbench business time (although the government still retains control for the scheduling of backbench business time itself). This reform was part of a package proposed by the Wright Committee, established under the previous Labour Government in 2009 to recommend a wider series of measures to shift the balance of power between the executive and the legislature towards the latter **(**HC 1117, 2009). Yet, the changes introduced by the Coalition represented only a partial fulfillment of its pledge to 'bring forward the proposals of the Wright Committee for the House of Commons in full' (HM Government, 2010, p. 27), as the concomitant commitment to create a House Business Committee with responsibility for assembling a draft agenda for all House business was ultimately sidelined (see HC 82-II, 2013, Q. 285). In September 2011, the *Fixed Term Parliament Act 2011* was passed, which curtails the prerogative power of the Prime Minister to dissolve parliament by setting the date for the next election, requiring a two-third extraordinary majority within the House to call for its early dissolution. Nonetheless, whilst the Act may have insulated the government from parliamentary dissent, an unintended consequence was the way in which forced an increasingly fractious coalition to continue rather than to dissolve.

Other proposals focused explicitly on reforming the lines of accountability between Parliament and the electorate, allowing voters to hold MPs to account more effectively through measures such all-postal primaries and the power of recall. The Coalition also promised reforms to 'open-up' the legislative process to the public through a public reading stage for certain bills and the debating of popular petitions. Whilst some of these pledges have been fulfilled, their effectiveness has been questioned. The e-petitions system, for example, has been criticised as 'straddling constitutional no-man's land: it is neither fully a parliamentary nor a government system', and for offering 'a very thin form of public engagement – predicated solely on quantity not quality – and is almost entirely one-directional' (Hansard Society, 2012, p. 9). Moreover, some reforms have stalled or have been quietly dropped altogether, such as all-

postal primaries, all references to which have since disappearing from the Cabinet Office's website.[1]

Other proposals have been met with outright resistance, resulting in abandonment and perverse consequences. The commitment to a wholly or partially elected House of Lords was justified in terms of democratic accountability, the Coalition's White Paper stating that '[i]n a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply' (Cm. 8077, 2011, p. 5). However, in July 2012 the House of Lords Reform Bill prompted the largest rebellion of this parliamentary session, which saw a staggering 91 Conservative MPs defy a three-line whip; and whilst the vote was passed with a majority of 338, the Bill foundered just weeks later due to a lack of Conservative support on both the front and backbenches. Moreover, despite the Coalition's insistence that the unreconstructed upper house 'lacks sufficient democratic authority' (Cm. 8077, 2011, p. 5), between 2010-15 a total of 187 life peerages have been created and the vast majority of these appointments were party political, with only 21 non-party political life peers joining the Lords since 2010. Such was the rate of appointment that the Coalition was criticised for 'mak[ing] a mockery of our campaign to clean up and reform British politics' (Lord Oakshott [Liberal Democrat peer] in *The Guardian*, 23 November 2012).

The failure to implement this reform also led to the jettisoning of another key pledge regarding the redrawing of constituency boundaries. In the *Programme for Government*, the Coalition announced its intention to equalise constituencies and cut the number of MPs from 650 to 600. By addressing some of the electoral anomalies which resulted from existing boundaries, it was anticipated that the Conservatives could accrue up to 20 additional seats. Yet, the collapse of Lords reform prompted the Liberal Democrats to withdraw their support for this unrelated commitment; and, in a scathing statement that pushed the boundaries of collective responsibility, the Deputy Prime Minister deplored the 'pick and choose' attitude of his Conservative colleagues towards political reform and their failure to 'honour'

the Coalition's 'contract'.[2] Resultantly, and in direct contravention of the coalition agreement, the Deputy Prime Minister led all 57 Liberal Democrat MPs through the 'no' lobby in January 2013 to delay the implementation of the boundary review until 2018 at the earliest.

Nonetheless, as table 2 illustrates, the only proposal within the *Programme for Government* which had the potential to fundamentally alter the balance of power within Westminster was that of electoral reform. The governing conventions of Westminster politics – elite leadership, executive sovereignty, responsible government – are both products of, and intimately bound up with, the simple majority electoral system. As such, electoral systems should be seen as 'a component of "mega-constitutional" politics that dictates and reflects the identity and fundamental principles of a polity' (Flinders, 2009, p. 41) and therefore attempts to transform the way in which a polity is elected will ultimately transform the way in which it is governed. Electoral reform was a Liberal Democrat 'red line' during the coalition negotiations, and the way in which the Conservatives ceded a referendum on the Alternative Vote runs counter to the conventional wisdom that upon gaining power, the two main parties 'back away from changes such as electoral reform which would work to their disadvantage' (Wilson, 1997, p. 72). However, when compared to Labour's offering, the pledge was minimal; the Conservatives promised no more than a whipped vote to pass the legislation required to hold a referendum, after which each party would be free to campaign as it pleased. Moreover, in agreeing to this compromise, the concession made by the Liberal Democrats was greater still, and moved decisively from their stated preference for the single transferrable vote system to 'give people the choice between candidates as well as parties' (Liberal Democrats, 2010, p. 88). The Government faced stiff resistance throughout the passage of the Parliamentary Voting System and Constituencies Bill, and despite the whipping of backbench MPs, the Bill suffered 26 rebellions, with a total of 53 MPs breaking ranks with the Government. Moreover, throughout the passage of the Bill and subsequent referendum campaign, the Prime Minister was unequivocal in his support for the status quo, castigating the Alternative Vote as 'obscure…unfair…expensive…[and] will make our politics less accountable'

(The Telegraph, 2011). On 5 May 2011 the electorate agreed, as 67.9 percent of voters (on a turnout of 42.2 percent) rejected the Alternative Vote, potentially neutering the issue of electoral reform for a generation and preserving this fundamental aspect of Britain's 'mega-constitution'.

Reforms to decentralise the state

As well as focusing on the form and function of Westminster politics, the *Programme for Government* also set out a series of commitments to the wider dispersal of power across the British state. The Coalition has revisited the issue of English regional government. In May 2012 referenda were held in England's largest cities on the issue of directly elected mayors, and in November 2012 voters throughout England and Wales were given an opportunity to elect a Police and Crime Commissioner (PCC). Popular support for additional tiers or new forms of English regional governance remains muted; out of the 11 cities holding referenda, only Bristol voted in favour of a directly elected mayor (with Doncaster voting for its continuance); and the turnout for the elections of PCCs plumbed such an extraordinary low (14.9 percent) that the Electoral Commission launched an immediate enquiry (Electoral Commission, 2013). Moreover, the future of the PCC system is far from assured. Incidents such as the resignation of Kent Youth PCC Paris Brown in April 2013 following criticisms of messages posted on Twitter, or the charges of cronyism faced by Northampton PCC Adam Simmonds, accused in November 2012 of staffing his office with friends, have done little to promote public faith in the system; and, reflecting on such evidence the Home Affairs Committee expressed its 'deep concern' that some PCCs were 'failing to meet their transparency requirements' (HC 757, 2014, p. 46). Indeed, the unwillingness of South Yorkshire PCC Shaun Wright to resign following allegations of involvement in the cover-up of child abuse in Rotherham has further undermined the probity of the system, with Deputy Prime Minister Nick Clegg calling for the system to be scrapped, despite his party's role in bringing them into existence.

Lack of popular support notwithstanding, the renewed interest in English regionalism is bound up with the Coalition's broader commitment to localism, reflected in its pledge to 'promote decentralisation and democratic engagement' and 'end the era of top-down government' (HM Government, 2010, p. 11). A key expression of this commitment is the *Local Government Act 2011*. However, this legislation rests on two competing dynamics - local authorities have been granted 'the legal capacity to do anything that an individual can do that is not specifically prohibited', and, at the same time, the Act also passes 'significant new rights direct to communities and individuals, making it easier for them to get things done and achieve their ambitions for the place where they live' (Department for Communities and Local Government, 2011). There is also evidence that – as with previous governments – ministers are finding it difficult to rein in their interventionist and centralising tendencies; the functioning of waste collection services in wintry weather, the salaries awarded to senior council officers, and the fate of a house in which Ringo Starr once lived are all matters on which ministers have offered opinion (HC 547, 2011). Finally, there is an added dimension that undermines the vaunted transferral of power; that is, the austerity agenda. Since 2010, local government budgets have been cut by 25.6%, with the 2013 Budget announcing further cuts of £2.9bn for 2014-15 (HC 1033, 2013). Yet councils and community groups have been asked to do increasingly more with increasingly less, and in this respect, it can be argued that the rhetoric of localism is being deployed as a shield, deflecting attention from the impact of cuts on service provision and performance.

The Coalition did not plan to reverse any of the Labour Government's policies regarding devolution to Scotland, Wales and Northern Ireland and many of its pledges continued along this established trajectory trajectory. In response to popular demand it established the Silk Commission to consider the extension of further powers to Wales, which culminated in the publication of the Wales Bill in 2013, which is currently at the Committee Stage in the House of Lords and has passed the *Scotland Act 2012*, which equipped the Scottish Parliament with additional income tax and borrowing powers. The Coalition has also sought to address some of the anomalies arising from devolution, and

to this end established the McKay Commission with a remit to consider the consequences of devolution for the House of Commons, which reported in March 2013. Yet, whilst the planned reforms within the *Programme for Government* have remained moderate in ambition and have done little to alter the existing constitutional settlement, recent months have witnessed a series of potentially fundamental challenges to the fabric of the Union emerge. On 5 May 2011 the Scottish National Party (SNP) were returned to the Scottish Parliament with a majority of seats (despite institutional structures being purposely calibrated to limit the prevalence of single party executives) and a manifesto commitment to legislate for a referendum on the issue of Scottish independence.

Whilst the Union remains a reserved matter under Schedule 5 of the *Scotland Act 1998*, section 30 of the Act allows for the holding of a lawful referendum, subject to the approval of Westminster and Holyrood. SNP pressure on the issue resulted in eight months of intense negotiation between the Scottish First Minister and British Prime Minister, and on 15 October 2012 Alex Salmond and David Cameron signed the Edinburgh Agreement, allowing for a referendum on the issue of Scottish independence to be held on 18 September 2014. In announcing the Agreement, the Prime Minister was clear in his support for the Union, and justified his decision to acquiesce to the SNP's demands in terms of allowing voters in Scotland the opportunity to express their settled will, stating that 'you can't haul the country of the United Kingdom against the will of its people. Scotland voted for a party that wanted to hold a referendum…[and] I believe in showing respect to people in Scotland' (Carrell and Watt, 2012).

The three main Westminster parties were clear from the outset in their opposition to independence, uniting under the umbrella of the 'Better Together' campaign, and for the majority of the campaign the likelihood of a 'no' vote appeared assured as successive opinion polls demonstrated a clear majority in favour of the Union. However, in the last few days of the campaign, the situation altered dramatically and unexpectedly. On 6 September 2014 a YouGov opinion poll put support for independence at 51

percent, which sent shockwaves through the 'Better Together' camp. Within 48 hours, former Prime Minister Gordon Brown was brought to the helm of the pro-Union campaign, and the pledge was made to deliver an extensive transfer of additional powers to Holyrood in the event of a 'no' vote. Moreover, this transfer of powers would be implemented at speed, with an initial command paper being published in October 2014, which would pave the way for draft legislation in January 2015 to be implemented immediately after the general election. Whilst the exact detail of 'devo-max' would be subject to consultation, the three main parties pledged their broad support for the fast-tracking of further devolution. On 18 September, Scotland went to the polls, turning out in record numbers to reject independence by a margin of 55 percent to 45 percent; and on 19 September, the Prime Minister established the Smith Commission to 'convene cross-party talks and facilitate an inclusive engagement process' to produce by 30 November 2014 'recommendations for further devolution of powers to the Scottish Parliament' (Smith Commission, 2014, p. 8).

In the months that followed, the Coalition was accused of backtracking over devolution, as facing a backbench rebellion around the issue of 'English votes for English laws', David Cameron appeared to render the extension of Scottish devolution as being contingent on English reform. Nonetheless, in November 2015 the Smith Commission published its recommendations, including: the transfer of a wide range of additional and significant legislative competencies; the freedom to set the rate of income tax; and, the establishment of the permanence of the Scottish Parliament in legislation (Smith Commission, 2014). Just weeks later, in January 2015, the Coalition published its response (Cm. 8990, 2015), and accepted these recommendations in full. The breakneck speed with which such fundamental reform was advanced prompted concerns regarding asymmetry and potential instability within the Union. The Political and Constitutional Affairs Select Committee, for example, were critical of the way in which the Smith Commission's recommendations were accepted with 'no examination of the overall consequences for the UK constitution of the implementation of the Smith Commission Agreement, and no process – apart from the consideration of legislation – for the UK

Parliament to assess the overall effect of the proposals on the Union' (HC 1022, 2015, p. 8). These concerns were echoed by the House of Lords Committee on the Constitution, which was 'astonished that the UK Government do not appear to have considered the wider implications for the United Kingdom' and, reflecting on the 'incremental and ad hoc development of devolution', argued that 'there has been no serious effort either to co-ordinate the devolution of power across the devolved territories or to link the cession of power to a reorganisation of the central organs of the state' (HL 145, 2015, p. 12).

In response to the so-called 'English Question', the Leader of the House of Commons, the Conservative MP William Hague, presented in December 2014 a range of options to curtail the involvement of Scottish MPs in matters affecting only England (and – on occasion – Wales) (Cm. 8969, 2014). Yet, the issue continued to cause ripples of consternation within the Conservative Party; and in February 2015, Hague pledged that under the Conservatives, MPs for English seats would be equipped with an effective veto on income tax and other issues that only affect England, which he argued would bring 'fairness and accountability to England without breaking up the unity and integrity of the UK Parliament'. Yet, whilst all of the plans detailed above would undoubtedly have a fundamental affect on the division of power within the UK, decisions regarding the future of the Union were postponed until the next Parliament, and at the point that Parliament was dissolved in March 2015, there had been few actual changes to settlement inherited in 2010.

Constitutional principles and the dilemmas of office

The Coalition's *Programme for Government* entailed a broad commitment to mend the 'broken' political system through 'fundamental political reform' (HM Government, 2010, p. 26), and yet the overall picture that has emerged is simultaneously one of continuance, divergence and uncertainty. Reforms relating to the balance of power within Westminster have generally been moderate and focused on matters of 'efficiency' rather than 'effectiveness' (see

Kelso, 2009, p. 4) and, whilst electoral reform would have had fundamental consequences for the balance of power within the House, its rejection in the referendum has effectively insulated this key aspect of the 'mega-constitution' from further interference. Yet, at the same time a distinction can be drawn between the moderate scope of the Coalition's planned reforms within the *Programme for Government* and the fundamental potential of reforms advanced in reaction to the inadequately anticipated consequences of the Scottish independence referendum. The remainder of this section therefore explores the dynamics that account for the Coalition's record on the constitution, focusing on: the clash of constitutional philosophies within the Coalition; the dilemmas with which the Liberal Democrats were confronted in the transition from opposition to government; and, the extent to which the governing norms of constitution effectively act as a self-preservation mechanism, arguably to its cost.

The formation of a Conservative-Liberal Democrat coalition in 2010 brought together two parties with distinct constitutional philosophies, and it is clear that for each party, the prospect of coalition entailed a trade-off between principle and pragmatism. The traditional ethos of the Conservative Party has been one of evolutionism, being prepared to countenance incremental change to maintain existing institutions, whilst eschewing measures that would radically depart from accepted practices. Such an approach was evident whilst in opposition, and despite David Cameron's commitment to a 'serious and thoughtful programme of Conservative institutional and constitutional reform' and his establishment of a Democracy Taskforce in 2006, the Party continued to shun reforms that would fundamentally alter the constitutional fabric of the British state. Indeed, in its 2010 manifesto, the Conservative Party was clear in its support for many of the core tenets of the constitution. In this respect, the demands of coalition-building presented the Party with an 'unenviable clash in which holding power entailed making sacrifices which in terms of principle may constitute a step too far' (Norton, 2012, p. 130). Yet at the same time, the decision of the Conservative leadership to enter into a formal coalition with the Liberal Democrats was a rational response to the political and economic circumstances surrounding the 2010 general election. Firstly, coalition politics offered David Cameron an opportunity to distinguish

his leadership of the Party in a manner that chimed with a pre-election focus on 'one-nation conservatism'. Secondly, a centre-based party like the Liberal Democrats was likely to absorb a great deal of electoral anger regarding the extent and pace of public service cutbacks, and coalition injected a degree of opacity at the centre of government about who was accountable for unpopular decisions. Finally, from an intra-party perspective, having a centre-left coalition partner provided Cameron with a valuable counterweight to the more radical demands of the right of his party.

In contrast, throughout their decades in opposition, the Liberal Democrats consciously positioned themselves as the main party political advocates of radical constitutional reform, with successive manifestos setting out their commitment to the fundamental re-balancing of power within the British state through proposals such as proportional representation, the legal safeguarding of human rights, reform to the House of Lords and UK-wide federalism. Such measures are consistent with the Party's liberal heritage and concomitant Lockean concern to place limits on executive power (see Cole, 2009 for a detailed overview). However, in pursuing constitutional reforms that would cut executive power into pieces, the Liberal Democrats also positioned themselves as the main party political advocates of consensual power-sharing and the Party therefore had 'a vested interest in showing the public that coalitions could work in practice' (Yong, 2012, p. 32). Flowing out of this, the willingness of the Liberal Democrats to readily compromise on, or even disregard, some of their erstwhile implacable commitments reflect the dilemmas faced by the Party in the transition from opposition to government, and it is clear that the hung parliament of 2010 presented the Liberal Democrats with something of an unenviable choice. One the one hand, it provided opportunity for the party to put the language of compromise and power-sharing into practice. In some respects, the 2010 general election was also a pertinent 'window of opportunity' for constitutional reform as the ongoing 'shocks' such as recession and political scandal served to fuel a sense of what Foley has described as 'systemtic dysfunction', that is, 'a serious decline in public confidence over the system's capacity for good government' (Foley, 1999, p. 34). Yet, on the other hand, in the midst of one of the worst

economic crises on record, the diversion of parliamentary time and political resources to arcane matters of the constitution would constitute a high-risk strategy for a party keen to demonstrate its credentials as a serious party of government. Such evidence underlines the way in which the Liberal Democrats' reformist *tradition* had been confronted by the *dilemmas* of securing and maintaining executive power (c.f. Bevir and Rhodes, 2003).

Once again, the distinction between the rhetoric of reform in opposition and its subsequent implementation in office is readily apparent; which draws attention to the normative appeal of the constitutional structures that sustain Westminster government. Whilst the British constitution rests on the fundamental principle of parliamentary sovereignty, successive governments have made a 'conscious slippage' (Judge, 1993, p. 193) 'parliamentary sovereignty' with 'executive sovereignty'. This elision in turn provides a legitimating discourse that promotes strong, responsible government and that precludes attempts to recast the governing structures that work to the advantage of those in office. Thus, despite the raft of pledges contained in the *Programme of Government*, the cornerstones of the constitution remained largely untouched, as reforms that would challenge or undermine its core tenets were diluted or marginalised. Indeed, in order to explain the rationale of reforms and their subsequent implementation, members of the Coalition drew on the rhetoric of traditional constitutional norms. For example, despite the fact that an introduction of an elected element within the upper chamber would introduce a series of democratically-legitimated veto players, the Coalition stressed that it sought to preserve the 'delicate balance which has evolved over the years' and proposed 'no change to the constitutional powers and privileges of the House once it is reformed, nor to the fundamental relationship with the House of Commons, which would remain the primary House of Parliament' (Cm. 8077, 2011, pp. 5, 11).

Similarly there is evidence that the norms of adversarial majoritarianism associated with Westminster politics imbued the behaviour of those within the Coalition. For example, despite their principled approach to matters of the

constitution in opposition, senior Liberal Democrats were willing to set aside their principles to gain political advantage or settle scores. The way in which the Deputy Prime Minister declared his willingness to 'push the pause button'[2] on boundary reform as a quid pro quo for the failure of Lords reform is illustrative of this, as is the way in which every one of his 57 MPs – including his four Cabinet colleagues – were subsequently willing to vote against it. The evidence presented in this article therefore reiterates the way in which the constitution 'represents a distinctive and substantive code of political life which not only organises and rationalises government, but restricts the exercise of power to agreed limits' (Foley, 1999, p. 13).

It is clear, therefore, that the 'logic of appropriateness' (March and Olsen, 2006) to which the constitutional settlement gives rise continued to both describe the dispersal of power across the British state and prescribe the boundaries of appropriate reforms; and, in effectively neutering pressures from within government for fundamental reform, it in turn served as mechanism of self-preservation. And yet, it can also be argued that this 'logic of appropriateness' served to inhibit a more profound debate regarding the tenability of the existing constitutional settlement in the light of constitutional tensions that burgeoned under previous Labour govermments. Nowhere was this more apparent than with regards the Scottish independence referendum and subsequent commitment to devo-max. Whilst David Cameron's support can be interpreted as an attempt to manage tensions and preserve the fabric of the Union, the hitherto complacency that had characterised the 'Better Together' campaign, and the hurried reaction to unfavourable polling, suggest a lack of forethought and a failure to adequately acknowledge the depth of the constitutional fissures created in 1998 when the journey of asymmetrical devolution was embarked upon. As Bogdanor argues '[h]aste is the great enemy of constitutional thinking, since issues tend to be interconnected' (Bogdanor, 2014), yet as one senior backbencher remarked, 'Cameron has ended up giving away the keys to the kingdom on the basis of one opinion poll' (quoted in Sylvester, 2014).

More broadly, the holding of referenda further entrenches the pattern of 'constitution-by-consent' that developed at the sub-national level under the Labour governments, effectively equipping the electorate with a powerful voice – or even veto-player capacity – in relation key constitutional decisions, which risks fuelling popular expectations regarding the role of government and the democratic rights of the electorate. Despite their advisory status, the use of referenda constitutes a high-risk political gamble, especially if a vote goes against the government's preferred position; and, as Ian McLean argues, 'you cannot at the same time believe wholeheartedly in parliamentary sovereignty and believe wholeheartedly in the referendum' (McLean, 2009, p. 191). Whilst decisive lack of popular support for electoral reform initially quelled such tensions, the closely-ran Scottish referendum clearly demonstrated these risks, and forced the Coalition to pursue constitutional reforms that it would otherwise not have countenanced. Indeed, with the Conservatives committed to a 'a straight in-out referendum on our membership of the European Union by the end of 2017' (Conservatives, 2015, p. 30), a series of potential flashpoints have emerge that could directly confront the authority of Westminster and the notion of 'government knows best' associated with the British Political Tradition. It is to these potentially critical junctures to which the concluding paragraphs will now turn.

Conclusion: future flashpoints and conditions for change

In terms of the spoils of office to which it gives rise, the British constitution has served its governments well. However, the simplicity of this statement belies its significance, as by serving its governments well, the British constitution has insulated itself from fundamental reform, its in-built capacity for self-preservation effectively neutering would-be constitutional radicals who make the transition from opposition to government. The case of the Coalition's constitutional reform agenda is therefore instructive. The two parties' vastly different experiences of office had further reinforced their fundamentally opposed approaches to the constitution, which owed as much to interest as to ideology. Nonetheless, as this article has demonstrated, the burden of compromise fell heaviest on the Liberal Democrats, prompting

criticism, particularly from within party ranks, for their failure to maximise their bargaining position. Yet at the same time, the hung parliament of 2010 afforded the Liberal Democrats with a critical opportunity to demonstrate their governing credentials and, in making the transition to a serious party of government, the principles incubated in opposition were neutered by the realities of executive office. Thus, as this article has shown, the commitment of the two main parties to the constitution was simultaneously principled and instrumental, as the handsome spoils of executive sovereignty to which the British constitution gives rise has equipped successive governments with an unrivalled platform from which to implement their electoral mandates. It is little wonder, therefore, that those in power have been loath to fetter their capacities to govern. Yet it is also little wonder that when on the cusp of opposition, governments have sought reforms that would curtail their successors; and it is also little wonder that those on the margins of power have advocated reforms that would cut executive power into pieces. When viewed from this perspective it was unsurprising that the Liberal Democrats, with polls pointing towards dramatic losses, reasserted their commitment to the single transferrable vote in Westminster elections, whilst stating that they would 'reduce the number of MPs but only as part of the introduction of a reformed, fair voting system' (Liberal Democrats, 2015, p. 132).

In the immediate aftermath of the general election of 2015, the UK's extant constitutional architecture is already under intense scrutiny, and set to remain prominent over the course of this parliament. In particular, the extension of devolution, and its wider implications, are likely to predominate. Whilst the Conservative have pledged to implement the Smith Commission and the St David's Day Agreement, they have also promised to 'end the manifest unfairness whereby Scotland is able to decide its own laws in devolved areas, only for Scottish MPs to be able to have the potentially decisive say on matters that affect only England and Wales' (Conservatives, 2015, p. 70). Moreover, on 15 May 2015 – just one week after being returned to Downing Street – the Prime Minister met with Scottish First Minister Nicola Sturgeon to discuss the future of Scotland; and whilst no commitment beyond the implementation of the Smith Commission was made, the Prime Minister promised to 'look at'

proposals for further Scottish devolution. In rational, office-seeking terms, the incentives for the Conservative Government to pursue this agenda are unclear. With only one MP in Scotland (and just 14.9% of the popular vote) the Conservative Government has little to gain by supporting further devolution, and the linking of this to the 'English question' risks stalemate in the House. Yet realising the goal of 'English votes on English laws' could provide the Conservatives with an inbuilt majority on all 'domestic' issues within Parliament, which would be further strengthened if boundary reforms – believed to be worth around twenty extra seats for the Party – are implemented in 2018. However, such rational considerations alone do not explain the Government's stance, and the approach of the Prime Minister in particular owes more to his 'one nation' conservatism and a commitment to 'govern[ing] as a party of one nation, one United Kingdom' (speech, 8 May 2015).

Clearly, the prospect of an interminable Conservative majority on English laws is unpalatable to Labour, who until 1997 were only able to form majorities in the House because of the presence of Scottish MPs. However, the dramatic collapse of Labour in Scotland following the election has not only cut its seats held in Scotland from 41 to just one, but has also split the opposition and thrust the SNP to the fore as the UK's third party. The splintering of the vote in Scotland in turn points to a further source of constitutional instability, as the changing nature of party competition and the idiosyncrasies of the first-past-the-post electoral system have once again challenged the legitimacy of one of the cornerstones of the UK's 'mega-constitution.' In the run-up to the 2015 election, the overwhelming majority of forecasts pointed towards another hung parliament, and a potential crisis of legitimacy as the Conservatives were predicted to win the popular vote, yet could be blocked from office by a 'losers alliance' of Labour and the SNP (see e.g. The Times, 2015). Whilst this crisis dissipated the moment the first exit poll was released, the 2015 general election resulted in a series of seemingly untenable anomalies, in particular the fact that – with 3.9m votes – UKIP became the third largest party in terms of votes cast, but that the vagaries of first-past-the-post meant that they were rewarded with only a solitary seat. The issue of

electoral reform has once again attracted public attention, with the impetus for change potentially coming from an unlikely vanguard of UKIP, the Greens and the Liberal Democrats.

Therefore, just a few weeks into this parliamentary session at the time of writing, the scale of the manifold challenges and constitutional pressures that the Conservative Government will have to manage and vent is readily apparent. And yet, the evidence presented in this article suggests that the attractiveness of Westminster norms, in particular executive dominance, have thus far discouraged constitutional entrepreneurialism and limited the supply of 'supreme altruism' necessary to secure reform. However, as this parliament progresses, the dissonance between constitutional norms and governing reality may prove too loud to ignore.

Notes:

1. https://www.gov.uk/government/policies/reforming-the-constitution-and-political-system, last accessed 23 January 2014.
2. http://www.bbc.co.uk/news/uk-politics-19149212, last accessed 3 February 2104.

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