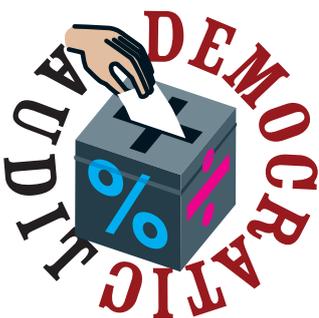


Cleansing the Augean stables:

The parties and the constitution

Andrew Blick and Stuart Weir



Summary

THE UK POLITICAL SYSTEM has undergone substantial reform since 1997. We can expect further reform, whoever holds office after the 2010 General Election. Partly prompted by the fallout from the MPs' expenses scandal, proposals for constitutional change form a critical part of the three main parties' manifestos. While there are predictably, and appropriately, many areas of disagreement between the parties, there are also some areas of consensus. Just as importantly, however, there are also critical issues which all three parties overlook.

In this Democratic Audit election briefing, we show that:

- The New Labour constitutional reform programme has brought far-reaching change in areas such as devolution, freedom of information, human rights, the judiciary, and the House of Lords – although in many areas these reforms are best described as 'unfinished'.
- Moreover, this programme has failed to deliver increased public confidence in the political system; if anything there is evidence of declining faith in the political system, particularly since the expenses scandal.

- A range of key democratic issues remain to be addressed, including – party funding and financial probity; the effectiveness of Parliament; the fairness of the electoral system; the role of direct and participatory democracy; the weakness of local government and the future of the devolution agenda; and the connection between social and political inequality.

- The key areas of disagreement between the parties relate to whether to introduce a written constitution; possible reform of the electoral system; human rights and privacy; the idea of fiscal decentralisation; and the approach to Europe.

- There is some consensus among the parties on issues such as: providing voters with the power to recall MPs in particular





circumstances; a wholly or partly elected House of Lords; the holding of more referendums; and the need for reform of the European Union.

- Key issues largely overlooked by all three parties include mechanisms for deliberative democracy and the need for measures to address the connections between social and political inequality.
- In the main, all three parties recognise the need to address the unfinished business of our changing constitution. However, the disagreements between the parties, and their failure fully to acknowledge certain key issues, suggest that a process which reached beyond conventional party and electoral politics will be required to establish a democratic settlement which offers genuine scope to reinvigorate popular engagement with the political process.

Introduction

BRITAIN'S POLITICAL SYSTEM STILL requires urgent and holistic reform after more than a dozen years of piecemeal, though often significant, constitutional change. The election campaign has highlighted the unrepresentative nature of elections to the House of Commons more clearly than ever before. But there are other major unresolved areas for constitutional and legal reform, among them: executive dominance over the legislature; the unelected second chamber; the highly centralised state and its surveillance and data base powers; anti-terrorism laws and practice; the weakness of local democracy; the asymmetrical devolution settlement; the absence of a written constitution.

These areas of concern are important not only in their own right, but also for the ability of the political system in the United Kingdom to represent the public more effectively and to restore public confidence and engagement.

We analyse the manifestos of the three main parties to establish what common ground, if any, there is between them on the main constitutional issues, especially should there be a need for collaboration between them after 6 May. This is a complex exercise as the manifestos are generally imprecise and leave much unsaid; two parties often agree while the other does not; it is not always the same two parties who agree; and it is far from clear what their priorities are.

- But what do the manifestos tell us? That the parties agree and disagree. We found:
- Broad consensus on introducing recall proceedings for MPs found guilty of wrongdoing; the need for a wholly or mainly elected second chamber; more national referendums;

- Different approaches to the UK's place in the EU. While no party openly advocates withdrawal, none make a positive case for our membership, though there is agreement on reforms, including of the Common Agricultural Policy;
- Broad support for devolution, but differences over the 'English question' and how to respond to the Calman Commission recommendations for devolution in Scotland;
- Disagreements over the need for a written constitution; electoral reform; Identity cards and privacy; counter terrorism measures; fiscal decentralisation or centralisation.

We also found that that the parties fail to engage with serious issues, such as class inequalities in the degree of political engagement; direct public engagement in politics beyond petitions and referendums; and the difficulties of sustaining cabinet government

Constitutional Reform 1997-2010

The Labour Party 1997 General Election manifesto asserted that, 'There is unquestionably a national crisis of confidence in our political system, to which Labour will respond in a measured and sensible way'. A weighty series of reforms followed:

- Devolution to Scotland, Wales, Northern Ireland and London; The Human Rights Act 1998, incorporating the European Convention on Human Rights into domestic law;
- The Freedom of Information Act 2000, giving the public the right to apply for access to official information;
- Reform of judicial appointments and the creation of the Independent Supreme Court;
- The exclusion of most hereditary peers from the House of Lords;



● Restructuring the machinery of government, particularly at the No.10/Cabinet Office/Treasury core, in pursuit of such objectives as 'delivery'; and ongoing civil service reform.

But, by 2007, when Gordon Brown became Prime Minister, evidence that turnout was falling, as shown in figure 1, and remained low by international standards, as shown in table 1, suggested that the reform programme had not delivered enhanced confidence in

the political system.

Partly in response, Brown launched the *Governance of Britain* package of limited reforms in July 2007 and the other parties produced their own proposals. There was fitful progress on Brown's package until the expenses crisis of spring 2009 revived the interest of the parties in constitutional reform. But public confidence in the political system continued to fall, as figures 2 and 3 demonstrate.

Unfinished Business

WHAT THEN CAN WE expect from whatever government is returned after 6 May? In this section we consider issues that the government has only partly addressed, ignored or failed to recognise, or where it has not done what it said it would; and we consider the positions of the three main parties on these issues. The key areas are:

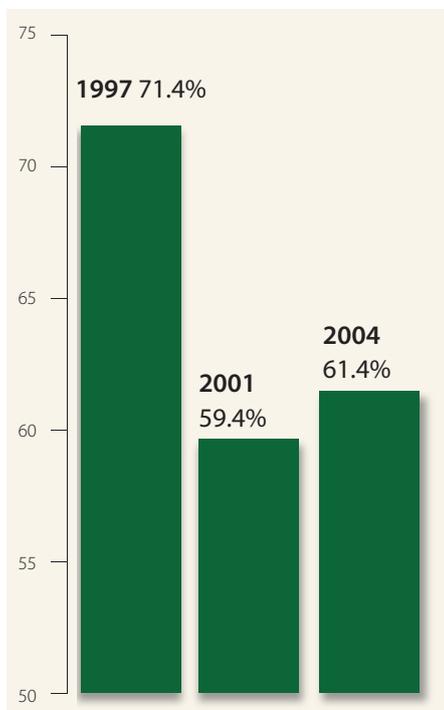
1. Disagreement over a holistic and codified constitutional settlement

The United Kingdom is almost unique internationally in not having a codified constitution. Codifying how we are governed would not in itself solve our constitutional problems, but it could ensure that they were addressed in holistic, and not piecemeal, fashion; and that the interconnectedness of the issues was recognised. Political crises from Westlands and the introduction of the poll tax to the decision to wage war against Iraq and a whole variety of bungled decisions and 'policy disasters' have starkly revealed the deficiencies of our informal governing arrangements, and most notably the absence of mechanisms of political, let alone public, accountability. The royal prerogative powers at the disposal of the executive explicitly rule out any immediate accountability to Parliament.

The UK needs precise rules for reform in the short term and governance in the long term. Moreover, the current system lacks legitimacy because there is no single document that sets out the rules for how we are governed and how they can be changed which has been subject to democratic approval.

There is however a significant degree of historical and cultural resistance to the idea of a codified

Figure 1: Turnout at UK General Elections, 1997-2005



Source: House of Commons Research Paper, 'Election Statistics: UK 1918-1997'

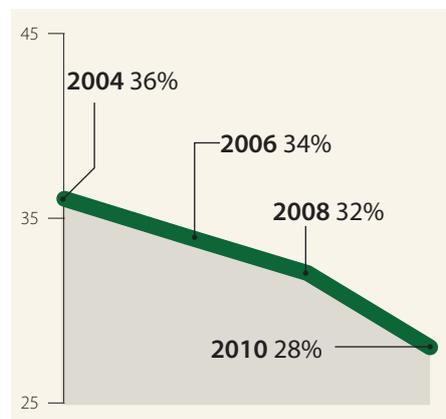
Table 1: Turnout at most recent national elections in selected western European states

| State | Turnout at most recent national election (%)* |
|-----------------------------------|---|
| Belgium (compulsory voting) | 96 |
| Italy (heavy inducements to vote) | 81 |
| Germany | 79 |
| Spain | 69 |
| France | 60 |
| United Kingdom | 59 |

* Data compiled 2004

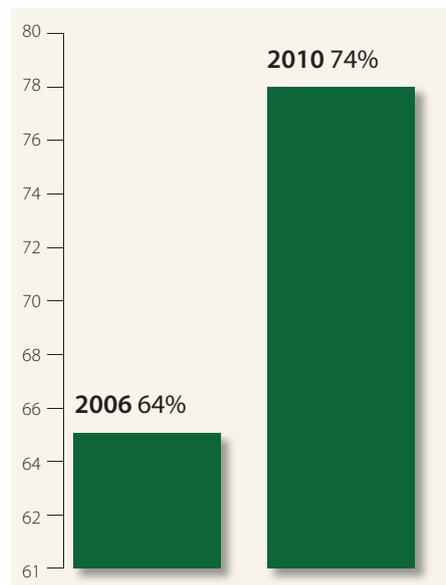
Source: International IDEA, 'Europe Expands, Turnout Falls', 2004.

Figure 2: Proportion of people who think the present system of governing 'works well'



Source: Hansard Society Audit of Political Engagement 7

Figure 3: Proportion of people saying system of government 'could be improved quite a lot/a great deal' (%)



Source: JRR State of the Nation polls 2006 and 2010



constitution. The tendency towards piecemeal change is given a spurious dignity by the view that 'organic change' is a significant part of the 'British way of doing things'. For example, the Conservative General Election manifesto in 1997 expressed this view with a commitment that has not changed under David Cameron:

'Alone in Europe, the history of the United Kingdom has been one of stability and security; We owe much of that to the strength and stability of our constitution – the institutions, laws and traditions that bind us together as a nation...To preserve that stability in future...we need to continue a process of evolution, not revolution.'

It is a view and commitment that is widely shared in governing circles. Even after Gordon Brown announced in the House of Commons in June 2007 that he favoured a written constitution, the Ministry of Justice review of the prerogative powers that give governments (and officials) unaccountable discretionary power of action four months later concluded that they should not be placed in full on a statutory basis (i.e., approved by and made accountable to Parliament), arguing that, 'Our constitution has developed organically over many centuries and change should not be proposed for change's sake'.

Apart from such cultural and political resistance, it is generally agreed that creating and agreeing a constitutional settlement would be a huge undertaking, and even reform of the prerogative alone would be a time-consuming exercise. The Cabinet Office is currently engaged in defining what it sees as being the key features of the existing constitution, but this project has been largely closed to the public.

Comparing the manifestos

Labour would set up an all-party Commission to 'chart a course to a written constitution'. The Liberal Democrats would 'give people the power to determine' a written constitution in a citizens' convention, subject to final approval in a referendum. The Conservatives are opposed.

2. Party funding and financial probity

Reform of party political funding is a crucial and entirely unresolved issue where the divergent interests of the two main parties have made mutual agreement impossible and the unpopularity of proposals for explicit state funding among the general public has ruled it out as an option. There is a host of desirable and non-desirable aims for the parties, but the critical issue for the quality of public life and fair elections is the huge disparity between the funds available to the parties, given most prominence recently by support provided by Lord Ashcroft for Conservative campaigning in marginal constituencies. Problems with financial probity in public life, as exposed most vividly by the parliamentary expenses crisis, remain to be finally settled. The debate around the constitution triggered by the crisis tended to focus on the scrutiny of the use of public money and the probity of parliamentarians.

Comparing the manifestos

The Liberal Democrats would 'Get big money out of politics by capping donations at £10,000 and limiting spending throughout the electoral cycle'. The Conservatives 'will seek an agreement on a comprehensive package of reform that will encourage individual donations and include an across the-board cap on donations'. Labour argue that funding of the parties 'must be reformed if

the public is to regain trust in politics' and would go back to the Hayden Phillips proposals of 2008, emphasising the importance of 'cross-party agreement and widespread public support.'

The Liberal Democrats would 'Require all MPs, Lords and parliamentary candidates to be resident, ordinarily resident and domiciled in Britain for tax.' The Conservatives propose a new Act to stop MPs abusing parliamentary privilege 'to evade justice.' They emphasise transparency and the idea of publishing details of senior salaries and expenses for central and local government. The three parties agree on recall mechanisms for MPs guilty of wrongdoing.

3. Reforming Parliament

The balance of power between the executive and Parliament remains damagingly unequal. On the first issue, electoral reform could produce a more representative, or 'balanced', House of Commons, which could no longer be dominated by a single party on a minority of votes cast. Meanwhile, progress on reform of royal prerogative powers has been partial: Parliament has obtained a limited role in the oversight of treaty-making, the promised resolution giving Parliament a say on going to war has yet to materialise, and the present government last year ruled out any further reduction in the scope of the prerogative.

The House of Lords is still wholly unelected. The parties agree that the second chamber should be mainly or wholly elected, but do not agree on the electoral system to be used or the timetable for reform.

There are proposals on the table from the report, *Rebuilding the House*, in November 2009 by the Select Committee on the Reform of the House of Commons, to give the Commons greater influence over its



agenda and the choice of members and chairs of select committees and to improve its engagement with the public. The Commons voted to implement the recommendations on control of the agenda and select committees this year, but only the proposals for select committees were incorporated into the Standing Orders before dissolution in April. A significant issue of concern – that none of the parties addresses – is the growing weight of secondary legislation, often on matters of great significance, that Parliament already cannot scrutinise effectively.

Comparing the manifestos:

Labour will remove hereditary peers from the House of Lords and go on to create a fully elected second chamber. The Liberal Democrats are also committed to a fully elected second chamber, with far fewer members than the current House of Lords. The Conservatives 'will work to build a consensus for a mainly-elected second chamber to replace the House of Lords'.

The Liberal Democrats promise to 'strengthen' the House of Commons to improve accountability, to increase parliamentary scrutiny of the budget and of government appointments and to give the House control over its agenda so that all bills leaving the Commons have been fully debated.

Conservative proposals to 'restore the balance between the government and Parliament' include a Backbench Business Committee to give the House of Commons more control over its agenda (the *Rebuilding the House* proposal that was not incorporated into Standing Orders); more free votes; making the royal prerogative subject to greater parliamentary involvement; giving select committees the power to hold confirmation hearings for major public appointments, including

the heads of quangos, and possibly the power 'to prevent increases in quango budgets.'

Labour and the Liberal Democrats propose fixed term parliaments (which would remove an incumbent Prime Minister's ability to dissolve Parliament when it best suits him or her). The Conservatives disagree and have recently proposed that a change of Prime Minister during the course of a Parliament should trigger a General Election within six months.

The Liberal Democrats propose a reduction in the number of MPs in their manifesto, a proposal that the Conservatives have previously advocated on cost grounds, though it isn't in their manifesto. However, the Conservatives do pledge to introduce the linked proposal to 'ensure every vote will have equal value' by equalising the size of constituency electorates (a change that would be to their electoral advantage). The Labour manifesto has responded by rejecting the idea of reducing the size of the House of Commons as a cost-saving measure as 'an excuse to gerrymander constituency boundaries' and proposes a non-partisan Parliamentary Boundaries Review to examine the rules for constructing parliamentary constituencies.

4. Reforming parliamentary elections

The results of first-past-the-post (FPTP) elections to Westminster have never been properly representative, but the system has become more evidently unfair and increasingly arbitrary with the decline of the previous two-party dominance as the public adopt a more pluralist approach to voting. FPTP artificially maintains the anachronistic two-party system; tends to entrench single-party rule in the Commons; and thus builds a blockade against full electoral

reform and other constitutional and parliamentary reforms.

The 1997 Labour manifesto committed the party to a referendum on voting reform, but Tony Blair reneged upon this undertaking. Gordon Brown has pledged to hold a referendum giving the public a choice between FPTP and the Alternative Vote (AV) if Labour is returned this May, thus denying people the opportunity to switch to proportional representation, a choice which opinion polls show has been a constant preference for decades. AV is a majoritarian system that is disproportionate, and can be more disproportionate even than FPTP.

Comparing the manifestos

Labour will hold a referendum on introducing AV for elections to the House of Commons' and will consult on an Open List PR system for elections to the second chamber. The Liberal Democrats support 'a fair, more proportional voting system for MPs', preferably the STV system now in use in Ireland, for Assembly and European elections in Northern Ireland, and local elections in Scotland. Their leader, Nick Clegg, has become increasingly critical of FPTP and its effects as polls show the Liberal Democrats holding onto a large increase in their national vote. If there is a 'balanced' Parliament after 6 May, he will clearly make a referendum on proportional voting the key condition for working with one of the other parties. Meanwhile, the Conservatives support FPTP 'because it gives voters the chance to kick out a government they are fed up with' – and because it guarantees them the continuing and unequal prospect of singly party political power.

The Lib Dems would lower the minimum voting age to 16, as would Labour, though more equivocally. The Conservatives



will 'swiftly implement individual voter registration, giving everyone the right to cast their vote in person and making it easier for UK citizens living overseas to vote.' Labour states it has already legislated for individual registration and will now act further, if need be, 'to end the unacceptable situation where three million eligible voters cannot vote because they are not registered to do so.' Both the Conservatives and the Liberal Democrats have called for the government to respond within six months to reports from the Electoral Commission; and for the use of photo ID at polling booths

5. Integrating public engagement and deliberation in representative democracy

There is a general desire for more participative democracy in the UK, but there exist barriers to making it effective. First, already advantaged groups in society make more use of opportunities for engagement than poorer groups, making extensive use of their resources and networks. Secondly, research has shown that officials dealing with marginal groups tend to discount their ability to contribute, even where it is considerable. One way round these problems is to make use of mechanisms to channel people's views in representative settings. In July 2008 the Ministry of Justice published a *National framework for greater citizen engagement*, setting out the official view of various mechanisms, including citizens' juries, citizens' summits and referendums, and the use that could be made of them.

This leaves still more problems. Representative institutions, in particular Parliament, have tended to prove impervious to potentially valuable innovations in the use of public engagement mechanisms. The parliamentary petitions process remains ineffective, and ideas such as online pre-

legislative scrutiny have not fully been embraced. Referendums are blunt instruments because they have to ask comparatively simple questions; they require extensive public deliberation in advance if they are truly to reflect informed public opinion; they are open to manipulation by government and vested interests, and they rely on defective electoral rolls that fail to represent poorer citizens in particular. There is also the question of cost with all such mechanisms.

Comparing the manifestos

Referendums and petitions figure frequently in the three parties' proposals to open up politics, despite the shortcomings of such mechanisms. They each have proposals for national referendums of some kind, Labour promising to 'let the British people decide on whether to make Parliament more democratic and accountable' – a glorious sounding opportunity that is in fact confined to its proposals for an elected second chamber and the FPTP v AV choice for parliamentary elections which will be put to referendums on the same day, by October 2011. The Conservatives and Liberal Democrats have various proposals for referendums related to UK participation in the EU. The Conservatives propose that 'any petition that secures 100,000 signatures will be eligible for formal debate in Parliament', while the petition 'with the most signatures' will enable members of the public to table a bill in Parliament. They would also introduce 'a new Public Reading Stage for Bills to give the public an opportunity to comment on proposed legislation online.' Labour, too, would give people 'a new right to petition the House of Commons to trigger debates on issues of significant public concern.'

At local level the Conservatives

favour increased use of local referendums and Labour would give citizens a right 'to trigger action'; and to referendums on elected mayors in major cities.

6. Weak local government and local level political involvement.

While all the parties are committed to decentralising power to local authorities, the House of Commons Justice Committee has spelled out the harsh reality of central dictatorship in its July 2009 report *Constitutional Reform and Renewal*:

'In comparison with many other democracies, local government in England remains relatively weak in relation to central government both in its ability to exercise authority and in its funding systems, and central government is free to make major changes to the pattern and structure of local authorities without constitutional restraint. This raises the question of whether the powers and structures of local government would or should be recognised in a written constitution, with a specified process for any changes to be made in them.'

The dominance of central government funding to local authorities – stark in comparison to other democracies (see table 2 below) – is reflected in the power that government departments and regional government offices exert over the minutiae of local government policies and actions. Local authorities have lost considerable areas of action in housing, education and economic policy to quangos, at local, sub-regional and national level. They are now reduced in effect to the status of administrative outposts of central government. Spending cuts after 6 May are likely to further limit their ability to provide effective social and other services to local people. The absence of genuine opportunities to make



policies relevant to local needs and aspirations has made local elections increasingly irrelevant for local electorates and removes the incentive for able people to pursue public service careers as council members (except possibly those who are seeking a political career at national level). Innovations such as the introduction of directly elected mayors, which enjoy cross-party support, appear to have no positive impact on turnout

Table 2: Central grants as percentage of total local government revenues by selected countries

| Country | Central grants as percentage of local government revenue |
|--------------------------|--|
| Australia | 40 |
| France | 30 |
| Germany | 46 |
| Japan | 32 |
| Sweden | 19 |
| United Kingdom | 73 |
| United States of America | 40 |

Source: Local Government Grant Distribution: An International Comparative Study, Pricewaterhouse Coopers, 2004.

Comparing the manifestos

All three parties refer to the need to localise power. But they differ profoundly over funding. The Liberal Democrats support ‘the radical decentralisation of taxation and spending powers to local people’. By contrast, Labour and the Conservatives play it tough. Labour boasts that through capping powers and efficiencies, they have brought about the ‘the lowest Council Tax rises on record’ this year and promise to cap ‘excessive rises’. The Conservatives plan to freeze council tax for two years and to make increases in council tax above a centrally determined level subject to local referendums.

The Liberal Democrats and Conservatives both promise to implement the Sustainable Communities Act (Amendment) Bill to give local communities the right to propose actions in

their area that would improve sustainability. The Conservatives make a point of giving local people ‘greater information on, and control over, what is being spent by each government agency in their area’. They would also give councils a general power of competence to give them explicit authority to act to improve their neighbourhoods; scrap Labour’s central targets; and drop Labour’s uncompleted plans ‘to impose unwieldy and expensive unitary [i.e., larger] councils’. Labour pledges to cut back ‘ring-fenced budgets’, central targets and indicators; to give local residents petitioning powers to demand action, alongside enhanced scrutiny powers for councillors; and to extend neighbourhood agreements for citizens to set out ‘the standards of services they expect locally.’ How either party squares such initiatives with the harsh spending regimes that they also promise is not made clear.

The Liberal Democrats want electoral reform at local as well as national level and propose elected police authorities and health boards. The Conservatives envisage ‘a directly-elected individual’ who will set policing priorities for local communities, police budgets and policing strategy, ‘with the police retaining their operational independence.’ Arguing that ‘a single municipal leader can inject dynamism and ambition into their communities’, they ‘will give the citizens in each of England’s twelve largest cities the chance of having an elected mayor.’ Labour describe how they are giving major city regions more powers; and say that when new city-region authorities are created, residents will have the opportunity to trigger a referendum for directly-elected mayors ‘with London style powers.’

7. Human rights, the erosion of due legal process and the handling of data

Ironically since the introduction of the Human Rights Act the government has enacted a series of anti-terrorism laws that severely restrict civil and political rights which the judiciary has only partially amended. The Act is unpopular with the Conservatives and major Labour ministers because judges have used it to protect foreign nationals suspected of terrorist activity from deportation to countries which might torture or kill them and to regulate their detention. Partly in response there exists a degree of consensus about the idea of introducing a Bill of Rights for the UK, but considerable differences about its form and content.

Human rights law balances rights and responsibilities, but Labour and the Conservatives are committed to making people’s responsibilities far more explicit. Labour has become less hostile to ideas of economic and social rights, and various largely statutory or administrative mechanisms have been discussed lately, but remain basically as opposed to entrenching such rights as the Conservatives. Both parties are against the Northern Ireland Human Rights Commission’s recommendation for such rights in a Northern Ireland Bill of Rights. The Liberal Democrats meanwhile have shown more interest in extending the concept of human rights to take in environmental rights than economic and social rights.

The Liberal Democrats support a Bill of Rights that is constitutionally entrenched and allows judges to strike down primary legislation. The other two parties take a more traditional position in defence of parliamentary sovereignty overriding the judiciary; and in his immediate response to the



expenses scandal, David Cameron described the need for ‘a massive, sweeping, radical redistribution of power...from judges to the people’ rather than a stronger judiciary. Another unresolved issue is the dual status of the Attorney General who acts as both a party political minister in Cabinet and chief legal adviser to the government.

Comparing the manifestos

The Liberal Democrats unveil extensive plans to ‘protect and restore your freedoms’. There is a portmanteau ‘Freedom Bill’ to end a variety of abuses; reform of the libel laws to protect freedom of speech; scrapping ID cards and ‘the intrusive ContactPoint database which is intended to hold the details of every child in England’; abolition of control orders for terrorist suspects; and the use of intercept evidence in open court and post-charge questioning to ‘Make it easier to prosecute and convict terrorists’..

The Conservatives have similar plans to the Liberal Democrats in the area of privacy. They would cut back the database state (abolishing ID cards, the National Identity Register, Contactpoint) and take other measures to protect privacy against for example the use of anti-terrorism surveillance powers by local authorities to spy on people’s trivial misdemeanours. They propose ‘proper Parliamentary scrutiny’ of any new powers of data-sharing and would give people, wherever possible, control over their personal data. They would review and reform the libel laws and propose to replace the Human Rights Act ‘with a UK Bill of Rights.’ The latter proposal has created concern amongst human rights advocates since it seems to be intended partly as a means of removing some protections, as well as extending others. Labour are reticent on such issues, saying that they ‘will not repeal or resile from’

the Human Rights Act, and will also reform the libel laws.

8. Social and economic inequality and the unequal distribution of power.

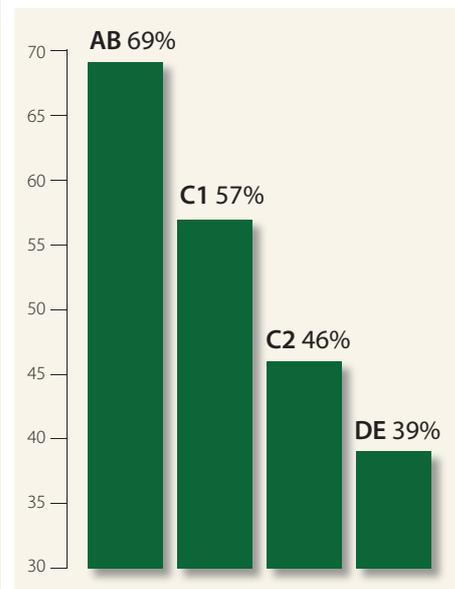
The distribution of power reflects patterns of social inequality, as the Hansard Society *Audit of Political Engagement* 6 of 2009 noted that:

‘Social class has more of an impact on political engagement levels than any other factor. On every single measure in this year’s Audit, people classified as social grades AB are more politically engaged than DEs, frequently by a margin of around 15 to 20 percentage points. Correspondingly, university graduates are significantly more engaged than those with fewer or no qualifications, and readers of quality newspapers more so than readers of the popular press. All three factors are strongly intercorrelated.’

Figure 4 demonstrates the clear connection between social class and political engagement; while table 3 shows that there are other social divisions impacting on the likelihood of involvement in political processes, in this instance, ethnicity.

Quite apart from the significance of characteristics such as social class and ethnicity in determining access to political power, a variety of other groups – commercial and business interests, financial institutions, large and small industry, professional associations, etc – have access and wield influence through various means, including channels of communication with government departments, lobbying and so on. While some consultation by and with government is necessary to ensure that public policies will work effectively, the process is largely

Figure 4: Likelihood of voting, by social class



Source: Hansard Society *Audit of Political Engagement* 7

Table 3: Likelihood of voting, by broad category of ethnicity

| Ethnic group | Likelihood of voting in general election (%) |
|--------------|--|
| White | 55 |
| BME | 38 |

Source: Hansard Society *Audit of Political Engagement* 7

out-of-sight and makes a nonsense of aspirations to political equality.

Comparing the manifestos

The parties have few proposals that directly address these issues. Labour have some policies to introduce limited economic and social rights, such as ‘legally binding guarantees’ for NHS patients and has plans for ‘digital inclusion’ with free internet access in UK Online centres and public libraries. The Conservatives ‘will introduce a £1 million fund to help people with disabilities who want to become MPs, councillors or other elected officials’. The three parties support measures to reform the lobbying system, the Conservatives emphasising measures to prevent ex-ministers from exploiting their contacts, Labour showing more interest in the conduct of MPs generally.



9. Devolution and the future of the Union

Devolution has always been asymmetrical and is becoming increasingly so. In its final report of 2009, the influential Calman Commission report on Scotland's experience of devolution proposed extensive changes to Scotland's devolution settlement, including significant fiscal decentralisation, much of which the government agreed to in its November 2009 white paper, *Scotland's Future in the United Kingdom*. Earlier in the same month, the All-Wales Convention report advocated further devolution to Wales, subject to another referendum.

But England, apart from London, has been left behind. There is no English equivalent to the Scottish Parliament, or the assemblies in Wales and Northern Ireland, while in the UK Parliament all MPs have a vote on English laws and policies. This imbalance is a source of resentment within England, but is not easily resolved. There is little enthusiasm for the English regions as political units while proposals for an English Parliament provoke fears that it would create instability. Labour's regional select committees fail to plug the gap and lack democratic legitimacy while the idea of 'English votes for English laws', which the Conservatives are dallying with, would have to overcome serious practical difficulties. Meanwhile, the Scottish National Party continues to advocate independence from Scotland and the break-up of the Union.

Comparing the manifestos

The Calman Commission recommendations are backed by both the Liberal Democrats and Labour, and less fully by the Conservatives who are not keen on Calman's proposals for greater devolution of fiscal responsibility.

The Liberal Democrats would give the National Assembly of Wales 'primary legislative powers' and extend the areas in which it can operate; replace the Barnett formula for the redistribution of funds within the UK with a needs-based formula; and 'Address the status of England within a federal Britain'. They would also scrap the inter-departmental Government Offices for the Regions and regional ministers. In Wales, Labour would 'work with' the Assembly government on a referendum to enhance its powers to make laws for Wales; and would ensure that Wales is not disproportionately disadvantaged by the application of the central government funding formula. The Conservatives 'will not stand in the way of the referendum on further legislative powers requested by the Welsh Assembly'. The Conservatives state that they 'will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries.'

10. The UK's place in Europe

The question of the UK's place in the European Union (EU) is a sensitive one for the three parties, but it seems clear that they are all committed to continued membership. The debate around this issue is flawed. Labour and the Liberal Democrats value UK membership but fear that if they appear too keen they could provoke a backlash in the media that the Conservatives would exploit. The Conservatives also fear a backlash that could strengthen UKIP's electoral position: Conservative rhetoric is hostile towards the EU and tends to point towards withdrawal, but this is a conclusion from which the party leadership has drawn back.

A perennial problem with the EU

is the lack of a 'demos' – that is, of a single political community that recognises itself as such. Trans-European political parties are in their earliest stages of development. Voters split between different countries are not faced with a clear set of European political options at elections to the European Parliament, the results of which do not lead to clear outcomes for the direction of the EU.

This problem confuses the EU's difficulty in overcoming the 'democratic deficit', the absence of a clear focus of accountability for decisions made at the European level. There are two responses to the problem. One is to give the European Parliament greater power, building on existing increases in its powers in recent years. Another response, which might be pursued in tandem with the first, would be to involve national parliaments in EU negotiations, as they are being conducted by ministers. In the case of the Westminster Parliament, such a response would have to involve departmental select committees more closely; and of course would require a Parliament with greater autonomy than is currently the case.

Comparing the manifestos

The Conservative pledge to amend the 1972 European Communities Act to make any future treaty changes transferring areas of power or competences subject to a referendum – a 'referendum lock' – which would also make entry into the Euro impossible without a referendum. A United Kingdom Sovereignty Bill would 'make it clear that ultimate authority stays with the UK Parliament'; and various measures would restrict the use of so-called 'ratchet clauses' in the Treaty of Lisbon that could allow EU powers to expand in the future without a new treaty. Further, a Conservative government would seek to repatriate powers from the



EU 'on the Charter of Fundamental Rights, on criminal justice, and on social and employment legislation'.

Labour reject 'any attempt to renegotiate or unravel social rights for the British people'. Both they and the Liberal Democrats want fundamental reform of the EU budget and Common Agricultural Policy; and promise not to join the Euro without a referendum. In addition, the Lib Dems remain committed 'to an in/out referendum the next time a British government signs up for fundamental change in the relationship between the UK and the EU'.

11. Cabinet government and the civil service

Since 1997, the Cabinet Office, traditionally charged with supporting cabinet as a whole, has increasingly been commandeered by the Prime Minister. While all parties claim to be committed to collective cabinet decision-making, it is harder for cabinet to function effectively if deprived of a major portion of the institutional support it previously possessed. There has also been a long-term decline in the frequency of full cabinet meetings (they have fallen by half since the 1950s); and while this not the only measure of effective collective government, it is also the case that their content has diminished and much business is now conducted by the Prime Minister through ad-hoc groups of ministers and advisers.

More than 150 years after it was first recommended in the Northcote-Trevelyan report, the civil service and its values have been enshrined for the first time in an Act of Parliament. But it should not be imagined that this legislation will resolve the tensions caused by the use of special advisers, whose party political nature sits uneasily with Whitehall's canon of impartiality, but whose continued use in future seems assured.

Comparing the manifestos

The Conservatives have the most to say about the civil service. Their manifesto states that they will make 'senior management accountable to more rigorous departmental boards for their performance. We will make it easier to reward the best civil servants and remove the least effective.' They will also 'put a limit on the number of special advisers and protect the impartiality of the civil service.'

Labour and the Liberal Democrats propose fixed-term parliaments to remove the power to dissolve Parliament from the Prime Minister. The Conservatives propose that 'un-elected' prime ministers should face a general election within six months. This proposal, if applied historically, would have affected a substantial number of premiers, including David Lloyd George and Winston Churchill during the first and second world wars.

Conclusion

It is clear that all the parties accept there is a need to address the unfinished business of our changing constitution. As the tables comparing their stances in the appendix show, while there is some consensus between them there is also disagreement, while many key issues are overlooked altogether. As such, while we should welcome attempts by the parties to engage with constitutional issues, the fundamental importance of the constitutional settlement to the entire political process highlights that these are not matters which can be decided by party politics alone. The various agreements and conflicts between the parties – and the lacunae in their programmes – require a broader debate than can be provided by coalition talks, parliamentary debate, or select committee hearings. The process must ultimately be a more open and deliberative one, and reform proposals should be subject to some form of popular endorsement. A general election alone cannot determine how we are governed.



Appendix: Consensus and Conflict

The following tables, based largely on the parties' election manifestos, set out what are the main areas of consensus and conflict between them, and which could be significant in any negotiations which might take place after the general election.

Labour and Liberal Democrats

| <i>Consensus</i> | <i>Conflict</i> |
|---|---|
| A written constitution | Labour want the disproportionate AV electoral system for the Commons (but a proportionate system for the Lords); Liberal Democrats favour the proportionate STV system at national and local levels |
| Fixed term parliaments | |
| A wholly elected House of Lords | |
| Recall for MPs guilty of wrong-doing | The Liberal Democrats wish to introduce Freedom Bill and various other measures to protect rights including privacy; and abandon Labour's Identity Card policy |
| Moving away from the first-past the post electoral system (but see conflict column) | |
| The principle of votes at 16 | |
| Reform of the libel laws | The Liberal Democrats wish to scale back some counter-terrorist measures introduced by Labour, including control orders |
| More regulation for the lobbying industry | |
| Implementing the Calman Commission recommendations for greater autonomy for Scotland; and extension of devolution for Wales | Labour advocate council tax capping; the Liberal Democrats support fiscal decentralisation |
| Both are broadly pro-European while seeking reform of the EU Common | The Liberal Democrats want to scrap the Government Offices of the Regions and regional ministers established by Labour |
| Agricultural Policy and budget | The Liberal Democrats want a referendum on continued EU membership at the time of the next major EU treaty |
| Possible membership of euro, but subject to a referendum | |

Conservatives and Liberal Democrats

| <i>Consensus</i> | <i>Conflict</i> |
|---|--|
| Recall for MPs guilty of wrong-doing | A written constitution |
| A reduction in the number of MPs | The Conservatives back the first-past-the-post electoral system; the Liberal Democrats favour the proportionate STV system |
| Ensure the House of Commons has more control over its own agenda | |
| A wholly or mainly elected House of Lords | Votes at 16 |
| Agreement over the need for protection against intrusion into privacy, including scrapping ID cards | The Liberal Democrats support fiscal decentralisation at local level and for Scotland |
| More regulation for the lobbying industry | There may be disagreement over the substance of a Bill of Rights – in particular whether it should be used to dilute or build upon certain rights |
| Reform of the libel laws | The Conservative proposal for voting on 'English' laws in the UK Parliament |
| Some agreement over direct local electoral accountability for the police | |
| Reform of the EU Common Agricultural Policy | The Liberal Democrats want to settle issue of membership through an –in/out' referendum; the Conservatives wish extensions of the remit of the EU to be subject to referenda |

Labour and Conservatives

| <i>Consensus</i> | <i>Conflict</i> |
|--|---|
| Recall for MPs found guilty of wrong-doing | A written constitution |
| A wholly or mainly elected House of Lords | The equalisation of the size of constituencies as proposed by the Conservatives |
| Opposed to proportional representation in election to the House of Commons | The Conservatives want to keep the first-past-the-post electoral system, Labour does not |
| Reform of the parliamentary petitioning system | |
| Reform of the libel laws | Votes at 16 |
| Reduction in targets for local authorities | The Conservatives want to scrap the Identity Card project and introduce other privacy protection measures |
| No fiscal decentralisation for local authorities | |
| Directly-elected mayors for cities/city-regions | Labour wants to keep the Human Rights Act; the Conservatives want to replace it |
| Both broadly supportive of devolution | Labour is clearer about wanting to implement fiscal decentralisation for Scotland than the Conservatives |
| Reform of the EU Common Agricultural Policy | The Conservative proposal for voting on 'English' laws in the UK Parliament |
| | The Conservatives wish to 'repatriate' policy areas from the EU, including economic and social protections, a move explicitly opposed by Labour |



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Labour, Conservatives and Liberal Democrats

| <i>Consensus</i> | <i>Disagreement</i> |
|---|--|
| A wholly or mainly elected House of Lords | A written constitution |
| A reduction in the number of parliamentarians | The number of MPs |
| Recall for MPs found guilty of wrong-doing | The electoral system |
| The use of more national referenda | Fiscal decentralisation for local authorities and Scotland |
| Reform of the libel laws | ID cards and personal privacy |
| All largely silent on connection between social class and political empowerment | The Human Rights Act |
| Support more regulation for lobbying | Counter terrorist measures |
| All are broadly supportive of devolution | The response to asymmetrical devolution in the UK |
| Reform of EU Common Agricultural Policy | The approach to Europe |



About the authors

DR. ANDREW BLICK is Senior Research Fellow, Democratic Audit. He is the author with George Jones of *Premiership: the development, nature and power of the office of the British Prime Minister* (Exeter: Imprint Academic, 2010).

PROFESSOR STUART WEIR is Associate Director of Democratic Audit, a research body attached to the Human Rights Centre, University of Essex. He is joint author of three democratic audits of the UK, including *Democracy under Blair* and of other Audit books and reports. He was one of the authors of the International IDEA Handbook on Democracy Assessment and has acted as a consultant on democracy and human rights in India, Macedonia, Malawi, Namibia, Nigeria, Palestine and Zimbabwe. He is a former journalist and as editor of the *New Statesman* he founded Charter 88, the movement for democratic reform, in 1988.

About Democratic Audit

DEMOCRATIC AUDIT is an independent research organisation that carries out research into the quality of democracy in the UK. The Audit's methodology for auditing and assessing democracy has won international acclaim. It is widely copied across the world, having been employed in at least 21 nations by governments, international bodies such as the UNDP and the Open Society Institute, universities and research institutes. Democratic Audit has published three major successive democratic audits of the UK, using the methodology, and many path-breaking reports on specific aspects of the UK's political life from a clearly defined democratic perspective.

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Democratic Audit

Eleanor Rathbone Building
Bedford Street South
Liverpool, L69 7ZA
0151 794 3012
www.democraticaudit.com