

As the current parliament progresses, the dissonance between constitutional norms and governing reality may prove too great to ignore

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By Democratic Audit UK

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*This May's General Election saw the end of the first full coalition in post-war British politics, between the Conservatives and the Liberal Democrats. The partnership brought together two parties with distinct constitutional philosophies, and entailed a trade-off between principle and pragmatism which saw the latter's electoral evisceration. **Felicity Matthews** looks both backwards over the last five years and forward to the next five, and argues that the coalition's period in government makes likely an ever-greater dissonance between constitutional norms and the reality of governing as a majority Conservative administration.*



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In the run-up to the 2015 general election constitutional affairs were centre-stage, the debate dominated by issues including Scotland's relationship with Westminster and Britain's place in Europe. Upon assuming office, the Conservative Government pledged a package of reforms that would simultaneously witness the repatriation of sovereignty and the dispersal of power across the Union. As the architecture of UK teeters on the precipice of fundamental upheaval, it is crucial to locate recent events within the broader context of constitutional reform; and my research provides the first in-depth analysis of the 2010-15 Coalition Government's record on the constitution, focusing on the gap between rhetoric and reform.

Constitutional reform assumed a pivotal role in the coalition negotiations of 2010; and it was only when the Conservatives made key concessions regarding electoral reform that the prospect of a Conservative-Liberal Democrat coalition emerged. Nonetheless, the burden of compromise fell heaviest on the Liberal Democrats; and within the *Programme for Government* coalition agreement a significant number of their flagship policies were

diluted (e.g. electoral reform), forestalled (e.g. House of Lords reform) or disregarded entirely (e.g. UK-wide federalism).

The constitutional reform pledges within in the *Programme for Government* map onto six key areas: parliamentary reform; electoral reform; Europe; decentralisation; transparency and freedom of information; and, a written constitution. A distinction can be made between those reforms intended to transform the core of Westminster government (i.e. parliamentary reform and electoral reform); and the wider relationships between the core and periphery of the British state (i.e. Europe and decentralisation). Progress was variable. Reforms relating on the balance of power within Westminster were generally been moderate and focused on matters of 'efficiency' rather than 'effectiveness'; and whilst electoral reform would have had fundamental consequences for the balance of power within the House, its rejection at referendum effectively insulated this key aspect of the 'mega-constitution'. A distinction can also be made between the moderate scope of the Coalition's planned reforms, and the fundamental scope of the reforms pledged as a knee-jerk response to the inadequately anticipated consequences of the Scottish independence referendum.

Several dynamics account for this record. The formation of the Coalition brought together two parties with distinct constitutional philosophies, and entailed a trade-off between principle and pragmatism. The traditional ethos of the Conservative Party has been to countenance incremental change to maintain existing institutions, whilst eschewing measures that would radically depart from accepted practices. In contrast, 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.

The willingness of the Liberal Democrats to compromise on some of their erstwhile 'red lines' therefore reflects the dilemmas faced by the Party in the transition from opposition to government. On the one hand, entering into Coalition with the Conservatives provided opportunity for the Party to put the language of compromise and power-sharing into practice. Yet, on the other hand, in the midst of economic crisis, the diversion of 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. The Liberal Democrats' reformist *tradition* was therefore confronted by the *dilemmas* of securing and maintaining executive power.

This dilemma draws attention to the normative appeal of the constitutional structures that sustain Westminster government. Whilst British constitution rests on the fundamental principle of parliamentary sovereignty, the elision with 'executive sovereignty' provides a legitimating discourse that promotes strong, responsible government; and that precludes attempts to recast the 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. There was also evidence that the norms of adversarial majoritarianism associated with Westminster politics imbued the behaviour of those within the Coalition, illustrated by the way that the Liberal Democrats withdrew support for boundary support in retaliation for the collapse of the House of Lords Reform Bill in 2012.

This 'logic of appropriateness' therefore continued to both describe the dispersal of power across the British state and prescribe the boundaries of appropriate reforms. It also inhibited meaningful debate regarding the tenability of the existing constitutional settlement. Nowhere was this more apparent than with regards the Scottish independence referendum and the subsequent commitment to devo-max. Whilst David Cameron's support can be interpreted 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.

Debates regarding the UK's constitutional settlement are set to remain prominent over the course of this parliament. In particular, the extension of devolution and its knock-on consequences are likely to predominate. Whilst the

Government has pledged to implement the Smith Commission and the St David's Day Agreement, in October they pushed through plans to grant English MPs a veto over English laws. Widely regarded as a nakedly partisan move, the introduction of 'EVEL' would equip the Conservatives with an inbuilt majority on all 'domestic' issues within Parliament.

Clearly, the prospect of an interminable Conservative majority is unacceptable to Labour who, until 1997, could only form majorities in the House because of their strength in Scotland. However, their dramatic collapse in Scotland has not only cut its seats 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 vagaries of the electoral system have once again challenged the legitimacy of one of the cornerstones of the UK's 'mega-constitution.' And, of course, there is still the great 'known unknown' lurking on the political horizon: the referendum on the UK's continued membership of the EU, set to be held by the end of 2017.

The scale of the manifold challenges and constitutional pressures that the Conservative Government will have to manage is apparent. And yet, my research suggests that the attractiveness of Westminster norms have thus far discouraged constitutional entrepreneurialism and limited the supply of 'supreme altruism' necessary to secure reform. Nonetheless, as this parliament progresses, the dissonance between constitutional norms and governing reality may prove too loud to ignore.

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Felicity Matthews is a Senior Lecturer in the Department of Politics at the University of Sheffield. Her research interests encompasses a number of areas, including: government, governance and state capacity; constitutional reform; political leadership; policy design, implementation and service delivery; crisis management; and, citizen expectations and engagement. Her academic profile can be found [here](#).

