

The coalition government is introducing major constitutional changes but does not have a coherent overall constitutional strategy. The results will not provide a stable basis either for British liberties, democracy or its constitution

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Many commentators concerned about civil liberties severely criticised policies under the last Labour government that encroached on key constitutional protections, such as introducing ID cards and vast surveillance databases. The new coalition government is rolling back these adverse measures, and has embarked on far reaching constitutional reforms, chief of which is the referendum on the Alternative Vote next May. While these reforms are important, [Anthony Barnett](#) argues that they will represent little real change. The UK will remain an ambivalent polity, with no clear constitutional settlement, and with any advances made capable of being easily reversed.



The coalition is engaged in making a number of constitutional changes that may have far-reaching consequences for the British state. In the past, new governments generally trod carefully in altering the way the UK is governed. This approach changed with the first New Labour government of 1997-2001, which drove through very rapidly a set of major reforms that (before it got to power) experts had said would take a decade or more to implement. At the same time the Blair government refused to offer any overall synthesis of how they might be connected – any constitutional strategy.

Now the Conservative-Liberal Democrat coalition has also declared decisive change to be its special calling card on constitutional matters. Like Labour, the coalition is acting fast to push through an ambitious set of changes. It does not seek 'renewal'. Perhaps its catchwords are 'reversal', 'replacement' plus 'strategic reforms'. Will this emerge as a coherent strategy? Or will it too combine disaggregated changes alongside an attempt to rein in their impact?

Reversal

The first big change the coalition will be responsible for is in one sense negative and yet also wholly positive. The ID card [has already been scrapped](#). The government will follow up by passing a Freedom Bill that will catalogue and roll back many of the attacks on personal liberty and the 'database state' that new Labour introduced. (Not all of them, though: the intrusive and arbitrary [Digital Economy Act](#) looks set to remain in place, as does the NHS 'spine' database and potentially the revival of the Interception Modernisation Programme.) One positive function of what is rightly being dubbed 'The Great Repeal Bill' will be to reveal what had become a coherent programme under Labour, but was never broadcast as such.

This welcome reversal of Labour's policy is relatively principled because it emerges from a convergence of concerns between the two governing coalition parties. To what extent does it have the strength of a strategy? There are three worries.

First, the government's approach is pragmatic, and not grounded in a shared philosophy, such as human rights, citizenship or the need for a basic law. Tradition will be appealed to, but these days this is a weak imprimatur. Without a constitutional framework, liberties will be restored but for how long?

Second, the people with the passion, audacity and sacrifice who set the Freedom Bill in motion are being sidelined, in particular David Davis MP who walked out of the Commons in 2008 when it was suborned into passing the Bill permitting 42 days detention without charge (later defeated in the Lords). One consequence of his campaign was the emergence of the [Convention on Modern Liberty](#). Held in February 2009 (I was its co-director) the Convention saw Tories and Liberal Democrats sharing public platforms in the run-up to the election, as the draft of the Liberal Democrat Freedom Bill was published by Chris Huhne to coincide with the gathering. Nonetheless, the actual Freedom Bill is being separated from both the Liberal Democrat minister (Huhne is Secretary of the State for the Environment) and the Tory (Davis is exiled to the back-benches) who most personify its values – and personification is the closest we get to entrenchment in Britain.

Third, while the coalition's reversal of Labour's erosion of liberty can be defended in traditional terms, the character of individual influence and voice is being transformed by digitalisation and the micro-chip. We need a positive concept of 'modern liberty' that builds on the positives of this huge change while defending us from the dangers, whether exercised by corporate or state power.

Replacement

Among the constitutional measures the coalition government is planning are:

1. the (possible) replacement of the current 'first past the post' (FPTP) voting system by Alternative Vote (AV);
2. the replacement of the current 650 constituencies by 600 of broadly equal population;
3. the replacement of a mostly appointed House of Lords by an eventually elected Senate.

In my view, the three replacements are changes to the existing order that alter the way it is administered rather than the way it works or is experienced. They are not strategic reforms, and they seem to be designed to change as little as possible.

1. Neither of the Coalition partners wanted the Alternative Vote referendum. It was arrived at as the lowest common denominator to secure an agreement. AV remains a majoritarian system with single member constituencies and it does not address the clearly improper outcomes of the UK's current system (see below). It will do something to reduce the number of safe seats and to ensure that more people's votes are counted in a way that might make a difference. That's excellent, in my personal view, but that's all.

This will be the first time the British people will be asked to decide a precise question about how we are governed domestically in a rule-based process. This referendum brings us closer to referendums becoming a constitutional principle, and it does so under the Conservatives, who hitherto have been their main opponent. The political class may do as much as it can to ensure that people are cynical about the AV referendum and even vote to retain their servility by legitimising the winner-takes-all electoral system that legalises political robbery. I have shown how there are [four possible outcomes](#) of the referendum. The point to emphasise here is that it is the fact that AV can be decided by a popular mandate that makes the referendum a potential precedent for direct democracy. This would indeed be a strategic reform undermining a principle of parliament sovereignty.

2. The constituency basis for the voting system clearly has to be changed because it currently favours the Labour party by around 4 to 6 per cent, a staggering fact that permitted Labour to govern with a large parliamentary majority after the 2005 election, despite having secured only 35 per cent of the vote (giving the UK perhaps the least democratic electoral system in Europe). Had the coalition demanded an accurate translation of votes into seats it would have had to embrace proportionality. Instead, it hopes to diminish the bias by cutting the number of MPs and imposing uniform constituency size, thus especially diminishing representation from Wales and Scotland, which favours Labour. However, this change will oblige the government to impose an arithmetical redrawing of constituencies that may obliterate historic boundaries and ignore geography such as islands, rivers and city limits. By disregarding the local, particular and organic, it is blatantly unconservative.

3. While the Commons was allowed to debate these two replacements (but not benefit from pre-legislative scrutiny of them), a cabal of party leaders is formulating a plan to replace the House of Lords – one-half of our parliament. A 'strategic approach' would have been to define in a unified way the role and functions of *both* houses and propose how they should each be elected. Instead, it seems that the committee will seek to retain the Lords as a subordinate legislative chamber, retaining its present role and powers. (I oppose this approach, see [The Athenian Option](#), chapter 2). At the same time they will seek to replace its members over as lengthy a period of time as they can manage while keeping a straight face. In the long run this could be a big change, but for the foreseeable future (that is, 15 to 20 years) the Lords will remain predominantly selected.

Moving beyond treading water

Thus the Coalition seems set to reproduce its form of Labour's constitutional *interruptus* (a high degree of activity that does not culminate in the conception of a new order). In his speech to his party conference David Cameron proposed his 'Big Society' as creating a new overall relationship between citizen, society and the state. But this has no clear legislative form: a vision for the country perhaps but for one whose traditional constitution is holed below the waterline more is needed.

Can the coalition partners share the same approach on the constitution? The Liberal Democrats are debating how 'distinctive' they should be. (Olly Greender's recent [conference report](#) captures their concern). The difference between Clegg and Cameron over AV stems from a clash of party principles. For the Prime Minister the referendum is a final concession and he will call for a 'No' vote. For Clegg even a 'Yes' must be only the beginning of a wider reform to keep his party on board. The long-term constitutional strategy of the Conservative party is to keep things as much as they were, while bending and updating as usual. It is part of the *raison d'être* of the Liberal Democrats as a party to replace what Clegg denounced in 2009 as a 'rotten system'.

Can this difference offer an opportunity for the Labour Party? If its leaders, MPs and members can bring themselves to understand what they got wrong after 1997, they might create the basis for a principled alliance with the Liberal Democrats on a programme of democratic reform. This would be especially helpful as Labour is unlikely to be able to govern on its own. They would need the Liberal Democrats to survive as a strong independent party after the election. Surely in their hearts and as they prepare for the next election, the Tories will not want this. Crushing the Liberal Democrats as a third force able to prevent an outright Tory majority may well be the real strategy motivating the Conservatives.

A longer version of this article is available as a working paper. Please [click here](#) to download, 'The Coalition's constitutional strategy – is there one?'

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