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Article publié le 18 juin 2013.

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1 "Looking back over the past ten years or so, process has been a constant problem in constitutional reform" so Professor Robert Blackburn from King's College London pointed out while giving evidence before the Lords Constitution Committee in charge of scrutinizing the process of constitutional change (Fifteenth Report: 2011). The problem alluded to here is not so much linked to any particular government but is a more structural one linked to the very nature of the

British constitution as its inherent flexibility has enabled reformers to introduce major changes without having to think of their impact on existing constitutional arrangements. Its flexibility has often been praised but is not without any danger as it can lead to unnecessary changes introduced for the wrong reasons, that is to say not to improving the general constitutional framework and not for benefiting the people. So we may wonder how far constitutional changes should go without a codified constitution. What is at stake here is not so much the government's right to initiate constitutional change but the pressing need to hold it to account, especially to make sure that the whole process is both democratic and transparent as well as respectful of parliamentary scrutiny which does not appear to have been the case with the referendum on the voting system for the UK Parliament. Since New Labour headed by Tony Blair in the late 1990s introduced constitutional changes that were to have a long-lasting impact on Britain's constitutional arrangements such as the incorporation of the European Convention on Human Rights via the Human Rights Act 1998 providing a legislative source of basic rights across the United Kingdom, proposals for further significant change have been on the agenda, notably after the 2010 General Election that led to a hung parliament. Although constitutional change did not rank high among the 31 points listed by the Coalition Programme for Government following the May 2010 general election, some were to be given priority such as an overhaul of the voting system from first-past-the-post to Alternative Vote, a reduction of the House of Commons to 600 MPs, establishing fixed-term parliaments, and in the longer run turning the House of Lords into a wholly or mainly elected second chamber based on some form of proportional representation. As commentators of the Constitution Unit wrote in *The Monitor* (2011: N°49) their monthly newsletter, "the Conservatives certainly do not see themselves as constitutional reformers" yet their wish to set up new constituency boundaries and the opposition of the Liberal Democrats to the first-past-the-post system gave the two parties that now form the coalition the basis for a deal agreed during the five days of coalition negotiations in May 2010, without which the coalition itself might not have come into being. Besides, there was no sustained public demand for such constitutional change. Indeed, British voters had not sought a coalition government nor did they particularly want a reform of the UK parliamentary voting system. So it seems that

those constitutional change proposals were doomed to fail from the outset. It is not without echoing what Alan Renwick (2010: 72), a lecturer in Comparative Politics at the University of Reading, pointed out about electoral reform as a kind of warning "Voters might dissent if they perceive that electoral reform has been imposed against their wishes". So, the current analysis will focus first on the process and timing of the referendum on the voting system for the UK Parliament, then it will examine the official reasons that were put forward by the Coalition Government before finally discussing its outcome and the prospects for larger scale constitutional reform.

1. The pre-referendum context

- 2 A full understanding of the attempt to change the voting system for UK parliamentary elections would hardly be possible without some knowledge of the circumstances that surrounded the proposals regarding the way MPs are elected to the House of Commons. Reforming the voting system was on the political agenda whether it applied to the House of Commons or was envisaged for the House of Lords although political reform was not a priority in the Programme for Government of the new Coalition Government created principally to deal with the financial deficit. Yet, political reform was put forward with an alarmist tone and a sense of urgency. Indeed, the 24th issue in the Coalition Programme (2010: 26) reads: "The Government believes that our political system is broken. We urgently need fundamental political reform, including a referendum on electoral reform". Alan Renwick (2012: 38) defines elections as "among the fundamental institutions of representative democracy". His analysis shows that elections are a relatively rare opportunity to invite the people to think about the meaning of elections and beyond about democracy itself. Thus, reviving the electoral reform debate in Britain could have been an opportunity to discuss the kind of democracy British people as voters want. If those governing are accountable to voters and can be sanctioned by them now every five years James Forder (2011: 40), for his part, insists on the responsibility of voters as they will have to determine who governs. He underlines that: "democracy is seen as a system that permits the governed to select those who govern and elections as the process by which they are selected" - thus, it is important for voters to clearly understand how their voting system

works. So what is really at stake in the discussion about electoral reform and the proposals to introduce the Alternative Vote in the House of Commons is the impact of the voting system reform on the nature and quality of British democracy and how it might affect the Constitution itself. The terms of reference of the 2011 electoral reform proposal were contained in the political manifestos of the three main political parties in the run-up to the 2010 General Election.

1.1. The 2010 Political Manifestos

- 3 In 2010, the three main political parties, the Conservatives, the Labour Party and the Liberal Democrats fought a separate political campaign. Their main political priorities were summed up in their respective manifestos. As far as political reform was concerned, the Conservative manifesto promised to maintain the *status quo* – claiming their attachment to the first-past-the-post system (FPTP) – whereas the Liberal Democrat manifesto advocated a proportional voting system, preferably the single transferable vote (STV), while the Labour Party was the only party to promise a referendum on the Alternative Vote (AV). More precisely, the Conservative Manifesto – Invitation to join the Government of Britain – while it promoted change as an alternative to Gordon Brown’s policies – saw no need to alter the voting system maintaining: "We support the first-past-the-post system for Westminster elections because it gives voters the chance to kick out a government they are fed up with" (2010:67). The Liberal Democrat Manifesto as far as it was concerned to promote fairness, explicitly opted for a replacement of the FPTP system by a single transferable vote system, asserting "Liberal Democrats will change politics and abolish safe seats [that is to say the FPTP] by introducing a more proportional voting system for MPs. Our preferred Single Transferable Vote System gives people the choice between candidates as well as parties" (2010: 88) So the Liberal Democrat manifesto did not mention any referendum on AV but reiterated the party’s long-time commitment to PR, which is not the same. In fact, the only party that proposed a referendum on AV in its election manifesto was the Labour Party stating: "To ensure that every MP is supported by the majority of their constituents voting at each election, we will hold a referendum on introducing the AV for elections to the House of Commons" (2010: 9.3) Such a proposal was already part of the La-

bour's Constitutional and Governance Bill tabled in 2010, much of which was not passed due to the lack of time at the very end of the parliamentary session. However, members of the Labour Party were and still are profoundly divided on the issue. So these were the respective electoral commitments of each of the three major parties before the 2010 General Election. Yet, soon they would be challenged by the unexpected outcome of the election.

1.2. 12 May 2010: The Coalition Agreement: a new commitment on an AV referendum

- 4 In 1978, the electoral analyst David Butler (1978: 112) explained: "Single-party majority government is generally regarded as the essence of the Westminster model", however the 2010 General Election led to exceptional circumstances since no party managed to win a parliamentary majority, suggesting that the Westminster model was in danger. Whereas the most common outcome of a hung or balanced parliament i.e. when no single party has a majority is a minority government, the 2010 UK General Election led to something unfamiliar to British people, and unexpected: a coalition government. As it is explicitly stated in the foreword of the Coalition Programme for Government: "After the election [held on May 6th 2010] there was the option of minority government – but we [the Conservatives] were uninspired by it. Instead, there was the option of a coalition in the national interest – and we seized it" (2010:7). It is a fairly unexpected comment stemming from a party that has traditionally disliked the idea of coalition governments, yet it was to form Britain's first full coalition government since the Second World War. As Guy Lodge, Associate Director at the Institute for Public Policy (IPPR), observed shortly before the 2010 General Election: "No one seems to have noticed that a UK hung parliament could have profound implications for the way England is governed – and for the future of the UK itself" (2010:1). It was indeed a volatile election that in the end turned out to be anything but traditional and the voters themselves had not voted for a coalition. As James Forder (2011: 51) explained: "No such grouping was on the ballot paper. Nor did anyone vote for the policy programme implemented by the coalition". Yet, the coalition that

emerged from the 2010 UK General Election was seen by some political analysts as an illustration of the growing difficulty for FPTP in producing single-party governments. In the aftermath of the 2010 General Election the political negotiations between the Conservatives and the Liberal Democrats led to an agreement - later known as the Coalition Programme for Government - which provided for a referendum on electoral reform stating: "we will bring forward a referendum bill on electoral reform, which includes provision for the introduction of AV in the event of a positive result in the referendum, as well as for the creation of fewer and more equal-sized constituencies" (2010: 26). It could have been a step towards a renewal of British politics even if for the parties that formed the Coalition a referendum on the AV only became a commitment after the 2010 General Election. As Vernon Bogdanor (2011: 148) explained: "The proposal for a referendum on the alternative vote system was the product of a deal between the Conservatives and the Liberal Democrats, a deal without which the coalition would almost certainly not have been possible". The idea was that the Liberal Democrats would support the redrawing of constituency boundaries as well as fixed-term parliaments while the Conservatives for their part would back a national referendum on AV. So the latter was the result of a compromise which was to be famously described as "a miserable little compromise" by the leader of the Liberal Democrats, Nick Clegg seeing it as a poor substitute to proportional system. However, the latter holding the office of Deputy Prime Minister - with special responsibility for political and constitutional reform - made a statement announcing that the AV referendum would take place on 5^{May} 2011 and that the House of Commons would be reduced from 650 to 600 members. The referendum would be held on the same day as elections to the devolved legislatures in Scotland, Wales and Northern Ireland, as well as local elections in England - the purpose being as Vernon Bogdanor (2011 : 149) explained: "to prejudice voters in favour of change" and to encourage turn-out. The Parliamentary Voting System and Constituencies Bill was to provide the legislative framework for the referendum on AV and further constitutional change - which was all the more critical as the United Kingdom has only a fairly limited experience of holding referendums, at least at the national level. Indeed, the only national referendum that was held - before the AV referendum in 2011- was the 1975 referendum on whether the UK should continue its membership of the European Community.

2. The legislative framework: The 2011 Parliamentary Voting System and Constituencies Act (16 February)

- 5 The English electoral system and any attempt to reform the latter is not codified, whereas, in Ireland and most Western countries, the electoral system is constitutionally entrenched, and constitution amendment requires a majority in a referendum as well as the legislature. Thus, as Andrew Reeve and Alan Ware (1992 : 67) observed: "When, as in the British case, there is not a written constitution, a majority in the legislature can change the electoral system wherever it wishes to – though it is subject to political constraints". Yet, this has to be qualified today as the Political Parties, Elections and Referendums Act (PPERA) 2000 introduced a legal framework for changing the voting system. It set up an independent body, the Electoral Commission, which reports directly to the Westminster Parliament to regulate the use of referendums and supervise elections in the same way as the French Constitutional Council. Yet, as Jenny Watsow, the Chairman of the Electoral Commission, stated it only provides "a broad framework" adding that "individual referendums also require a specific Act to be passed by Parliament" (2011:12). It is a way of securing a democratic process and of providing practical information at the same time about the date of the referendum and the wording of the referendum question. This is indeed what the Coalition Government did by tabling in a bill entitled *The Parliamentary Voting System and Constituencies Bill* aiming at giving effect to their commitments contained in the Coalition Programme of Government. It included provision for the introduction of AV in the event of a positive result in a referendum to be held on 5th May 2011 as well as for the reduction of the House of Commons from 650 to 600 members. This Bill endured a long and fractious passage through the Lords, surrounded by claim and counter-claim of filibustering and guillotines – it spent 174 days in committee amid fears it would not become law in time for a May 5th referendum. Its first part is devoted to the voting system for parliamentary elections whereas its second part provides for the re-

duction of the number of MPs from 650 to 600 and aims at reducing inequalities of electors per seat – the idea is to equalize the size of parliamentary constituencies to 76 640 electors per constituency, plus or minus only 5%. It was to become the Parliamentary Voting System and Constituencies Act 2011 which received Royal Assent on 16th February. It well and truly reduced the House of Commons from 650 to 600 seats – the Boundary Commissions started work in March 2011. If its impact is likely to be fairly limited for Northern Ireland and Scotland, which would lose respectively 2 and 7 of their constituencies it might have a much more dramatic effect on Wales facing the loss of a quarter of its constituencies, England for its part might lose 31 constituencies. Yet, the consultation period is still not concluded – so the proposed constituencies are not the final ones. If there is no further obstacle, the final constituency boundaries should be submitted to the Westminster Parliament for approval in October 2013.

- 6 As for the first part of the Act, its implementation was subject to the positive result of the referendum and was thus much more unpredictable. British voters were apparently invited to answer a fairly straightforward question in a referendum to be held on 5th May 2011: "At present, the UK uses the first-past-the-post system to elect MPs to the House of Commons. Should the alternative vote system be used instead? " But as Tony Wright, a former Labour MP for Cannock Chase puts forward: "There is no perfect electoral system, and much depends on what we want an electoral system to do"(2010:3).There was no way for voters to make an informed choice if they were to be deprived of information and clarification on the part of politicians regarding the effects of both voting systems on the House of Commons but also in their own constituencies. Opponents to the Bill denounced the absence of any significant consultation, of any green paper, of the government's will to act quickly, but also of the lack of sustained public demand (2011: paragraph 34).So the government's motives, as well as its lack of thought of the impact of the reforms proposed on existing constitutional arrangements, were questioned. The main problem was in fact the uncertainty regarding the date of the referendum on AV and the short lapse of time between the passing of the 2011 Parliamentary Voting System and Constituencies Act that provided for it and polling day. Jenny Watsow pointed out: "There is no doubt that uncertainty up until three months before polling day, about whether the referendum would take place and when caused difficulties" (2011:1). Members of Parliament were deprived of sufficient time to properly scrutinize the changes proposed to the voting system and the late confirmation of the date of the referendum made it difficult to organize the whole campaign and

communicate adequate information to voters to help them make an informed choice – all the more as British people are not familiar with referendums, at least national ones. The twelve registered campaign groups as well as the two official leading ones – "Yes to Fairer Votes" and "No to AV" – were given very short notice to run their campaign and try to influence voters. British people were thus given a very short time to get familiar with fairly complex different voting systems because they are fairly technical as will be seen in the next paragraph.

3. Key features of the conduct of a parliamentary election under FPTP and under AV and their potential impact

- 7 Elections to the House of Commons are currently run under the first-past-the post system of voting characterized by plurality voting and territorial representation, which means that there is a strong geographical link between MPs and their constituents. Single-member constituencies are territorially defined. Under this system, voters place a cross in a box next to the candidate they wish to vote for – so it is a method of aggregating votes. Meg Russell, in *The Guardian*, on May 10th, 2010 described the impact of the first past the post system: "support in many seats is split between three or even four serious contender parties and many votes are wasted", that is to say they are not reallocated. In order to win, a candidate requires only a plurality of the votes – that is to achieve more votes than any of the other candidates. The candidate, with the greatest number of votes in the constituency on a first and only ballot, wins and is elected as the MP. As it is stated in the explanatory note to the Parliamentary Voting system and Constituencies Bill: "existing rules are based on the idea of a vote that can only benefit one candidate and the related notion of a single count"(2010:6). Andrew Reeve and Alan Ware (1992:67) wrote that: "In this system the candidate or party with the largest number of votes wins, even if the proportion of the total vote taken by the winning candidate is small". It usually produces stable single-party governments but under-represents minority views. Thus, a party which has a parliamentary majority based on considerably less than 50% of the popular vote can run the country. Moreover, FPTP is not favourable to parties with diffuse geographical support, like the Liberal Democrats, but also smaller parties such as the Greens or the far-right BNP. Under

the current system there tends to be a pro-Labour bias partly explained by the constituency size.

- 8 The alternative vote system – AV or absolute majority – for its part retains the idea of the single member constituency within a majoritarian voting system. As with FPTP, a single member is elected to represent a single geographic constituency. Under this system, a candidate must achieve more than 50% of the votes in the count in order to be elected. Voters rank candidates on the ballot paper in order of preference – thus AV is also called the preferential_vote system – using 1, 2, 3 etc... They may express a preference for as many, or as few, of the candidates on the ballot paper as they wish. This means that a voter may vote for one candidate only, if they so wish; it is an optional preferential system. If after the counting of voters' first preferences, any candidate has more than 50% of the votes he or she is declared the winner. But if no candidate has more than 50% of the votes counted, then there is a further round of counting. The candidate with fewest votes is eliminated, and each vote originally allocated to the eliminated candidate is reallocated to a remaining candidate according to the next preference expressed on each ballot paper – the second preferences of those who voted for him are redistributed. This process continues, redistributing third, fourth or lower preferences until one candidate has more than 50% of the votes left in the count, and is elected. The main objectives of AV are to avoid the anomaly by which a candidate can win a constituency on a minority of the vote, that is to say to ensure that every MP enjoys the support of a majority of his/her constituents. Extremists are unlikely to pick up enough lower-order preferences from other candidates to get over the 50% threshold. Yet, it can result in fairly significant first-preferences votes for minor parties. But it is not a proportional system even if its supporters hoped that it would pave the way for PR like Nick Clegg who described it as "a baby step towards PR". Besides, under AV it is still possible for MPs to be elected thanks to a minority of votes for voters who, unlike their Australian counterparts, would not be obliged to rank all candidates in order – which means that they could tick their favourite candidate as number one and stop there without ranking the other candidates. The main criticism that was made against AV is that it makes coalitions more likely and therefore paves the way for a new parliamentary system altering the West-

minster model of democracy. It makes it more difficult for governments to be thrown out of office. It is probably that fear that would contribute to the failure of the referendum on AV.

4. The official reasons for changing the UK parliamentary voting system

- 9 One might wonder if it was really necessary to change the British electoral system as there was no sustained public demand and ask what motives led politicians to want to change the way MPs are elected to the House of Commons. As we saw above, it seems that electoral reform was negotiated in haste as part of a bargain between the two parties that were to form the new coalition, or rather as a necessary requirement on the part of the Liberal Democrats to form a coalition with the Conservatives. As analysts of the Constitution Unit pointed out in their newsletter *The Monitor* (2010:2) published in June: "issues of political and constitutional reform were central to the creation of the new government coalition, with the Liberal Democrats' commitment to electoral reform being particularly key". While the Liberal Democrats wanted a shift to a new system, preferably PR, the Conservatives for their part wanted to maintain the *status quo* (FPTP). As members of the Constitution Unit wrote in *The Monitor* (June 2010:2): "The Liberal Democrats wanted PR for the House of Commons and a PR-elected Lords whereas the Conservatives wanted to retain first-past-the-post, and saw Lords reform as a lower priority". Unquestionably, politicians' motivations are complex, yet one might wonder whether the objective of the Liberal Democrats in changing the voting system, was above all, to make sure that they would be essential to almost any governing coalition, all the more as, before the 2010 United Kingdom General Election their capacity to hold governmental office was greatly questioned. In fact, those who advocated electoral reform did so for a variety of reasons.

4.1. To "mend a broken political system"

- 10 Bold constitutional reforms were put forward officially to "mend a broken political system" – as it is stated in the Coalition Agreement

Programme. The immediate circumstances that surrounded the referendum on the voting system were shaped by the memory of MPs' expenses scandal and by a growth of overall distrust of politicians and Parliament or a mood of anti-politics. This gave a different thrust to the campaign for AV. Thus, the proposal of a change in the voting system could be seen as a means of improving the accountability of individual politicians via a different voting system. So the Conservatives and the Liberal Democrats tried to justify electoral reform by the need to restore trust in the Westminster Parliament and British politics. In the same line, the current Speaker of the House of Commons, John Bercow, himself very well aware of the loss of credibility of Parliament advocated wider parliamentary reforms in *the Government Gazette* (July/August 2010: 6): "The task of effectively reforming the House of Commons is imperative for the sake of re-establishing public trust in the institution of Parliament".

4.2. To adapt the voting system to diverging voting patterns

- 11 Besides, a "broken system" could also be understood as an electoral system, the FPTP, no longer adapted to the main political trends in voting patterns in British General Election. Indeed, the period since the 1970s saw the declining support for the two main parties and the emergence of divergent voting patterns in different regions of the country. In the United Kingdom, the combined vote-share of the largest two parties has dropped substantially as the findings of the British Election Study of the Department of Government of the University of Essex showed (2010: 7). In 1951 almost 97% of those voting supported either the Labour Party or the Conservatives, whereas in 2010, only 65% did so. This has been intensified by the rise of the SNP and to a much lesser degree Plaid Cymru. Thus, the fragmentation of the vote has led to a significant rise in the number of MPs elected by a minority of votes. For instance, at the 2010 General Election, as many as 433 MPs out of 650 were elected by a minority of votes. Moreover, were the decline of votes for the two main parties to go on, it would be more difficult for them to win a single-party majority under FPTP. Vernon Bogdanor (2011: 148) described this evolution as a

"trend towards greater third party representation since 1997", thus likely to help the Liberal Democrats.

4.3. To complete "Labour's unfinished business"

- 12 Beyond the will to adapt the electoral system to a more fragmented political spectrum as well as to voters' increasingly divided loyalties, the new coalition government wanted to complete what had sometimes been described as "Labour's unfinished business" – that is Labour's previous attempts to reform the voting system. Indeed, in 1997 Tony Blair's Government was elected on a vast programme of political and constitutional reforms including a referendum on electoral reform. So constitutional reforms including reform of the voting system did not come out of the blue. As Lord Morgan, a member of the House of Lords constitution committee interviewed in *The Government Gazette* (July/August 2010:8) argued: "New Labour was the first Labour government to take constitutional reform seriously. There was reform of the House of Lords, devolution, the Human Rights Act, elected mayors and the Freedom of Information Act" adding that "Gordon Brown took an interest in constitutional reforms, though he didn't advance the agenda as much as he could". Indeed, it is under the Labour government of Tony Blair that devolution in its modern form was introduced giving Scotland, Wales, and Northern Ireland their own devolved governments and parliamentary assemblies. If England was left out of the devolution process, London gained a directly elected Mayor. For our subject matter, it is interesting to note that forms of proportional representation were introduced for elections to the European Parliament, the new devolved assemblies, the Greater London Assembly and the direct election of the London Mayor. Reforming the electoral system was just, and still is, one aspect of wider parliamentary reforms involving both Houses of Parliament. Moreover, in its Green paper entitled *The Governance of Britain* (July 2007:46), Gordon Brown's Labour Government planned to carry out a review process of the new voting systems that were introduced after 1997. Significantly, it started by emphasizing that "Britain has a variety of proportional and plural electoral systems in place" suggesting that the country had already moved away from a tradi-

tional political pattern, which means that the mould of the two-party system was already cracked. So adopting AV would just have been another new electoral system together with the Single Transferable Vote System, the Additional Member System, the Closed Party List System and the Supplementary vote System introduced. Yet, some experts of British institutions argue that the constitutional reforms of New Labour failed to develop a more participatory democracy and lacked an overall vision.

13 Finally, it would be too restrictive to think that changing the way MPs are elected stops at the Green carpet of the Palace of Westminster. It has also triggered a debate inside the Lords about the future composition of the second chamber. As Lord Tyler, Liberal Democrat, Spokesman on Constitutional Reform in the House of Lords, explained in the *Government Gazette* (July/August 2010:15): "Two parallel political battles are beginning: electoral reform in the House of Commons for a fairer electoral system and the best method for bringing democracy to the Lords". Thus, reform of the voting system inside one of the two Houses of the Westminster parliament was bound to affect the other chamber and the relations between the two.

14 All in all, it is difficult to identify which objective prevailed in the field of electoral reform, and it would certainly be too restrictive to say that politicians were only motivated by their own narrow partisan interests. Yet, what really matters – or should have mattered – are voters themselves. As Sir Harold Atcherley advocated in *The Government Gazette* (June 2010:101): "Politicians should wake up to the fact that parliamentary reform is not about what they want but what the electorate needs".

5. The outcome of the AV referendum and the prospects for larger scale constitutional change

15 Almost a year to the day since the current coalition was formed the attempt to change the electoral system was turned down by the British electorate. Beyond the defeat of the May referendum there is a

need to move on from the dichotomy that British voters were faced with, that is to say the over-simplistic opposition between FPTP and AV, and to sort out constitutional arrangements to make them more coherent as well as more effective.

- 16 What might have been an opportunity to change the voting system as well as a historic event, since the referendum on 5 May 2011 was the first national referendum in 36 years, ended up in a humiliating defeat. Indeed, British voters rejected the argument for AV by 67.90% against 32.10% but this major defeat was perceived in the press as a plebiscite against the Deputy Prime Minister. He had personally endorsed this electoral reform, and it was considered he had gone too far in his compromises within the coalition. It was in fact a real humiliation for him. Besides, the strategy of holding the AV referendum and local elections on the same day proved to be a bad one as parties concentrated on local elections; also Liberal Democrats registered a double defeat with the AV referendum and the loss of their local power basis which used to be the source of their strength. Holding the referendum the same day as elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and local government elections across Northern Ireland and in 279 local authorities in England proved indeed to be very counter-productive for the Liberal Democrats. In addition, as the report of the electoral commission that was published a few months after the referendum showed (2011: 32), holding the referendum the same day was not provided for by the Parliamentary Voting System and Constituencies Bill: "At the point at which the Bill was introduced in Parliament it included no provision that would allow the referendum poll to be combined with any other poll held on the same day". If Nick Clegg was blamed for the heavy defeat in the referendum on AV it was also the case to a lesser extent for Ed Miliband, the leader of the Labour Party, who did not succeed in getting Labour supporters to vote in favour of AV. Before the referendum, experts of The Constitution Unit in *The Monitor* (June 2010:2) warned that: "The success of the referendum depends to some extent on whether Labour politicians defend the policy". In fact, senior Labour Party political figures and the great majority of the Parliamentary Party were to back the No campaign thus helping to tilt the balance against AV.

- 17 Yet, the failure of the referendum was far from being a surprise and in fact had been anticipated for some time. As early as 2010, Tony Wright wrote in *The House Magazine* (June 2010:3): "It is unlikely that the Alternative Vote would emerge from this process as the preferred option. It was rejected by the Jenkins commission". What was unexpected, on the other hand, was the scale of the defeat as turnout proved to be higher than expected with 42% as unveiled by the report of the Electoral Commission on the May 2011 referendum (2011:32). What is interesting to note is that turnout was higher in Northern Ireland (55.8%) and Scotland (50.7%) than in Wales (41.7%) and England (41%). One cannot deny the fact that the referendum on AV did not stir anything like the same interest as the first nationwide EEC membership referendum in 1975 where turnout reached 64% and where 67% of voters backed EEC membership. Yet, the 2011 turnout for the referendum on AV shows that there was still a certain interest for electoral reform and, beyond, for politics among British voters. Besides, no proportional representation as such had been proposed as an alternative to the FPTP – in fact they had been ruled out in the Coalition Agreement by David Cameron. So, one might wonder whether voters would have backed a real proportional voting system if they had had the choice. On the other hand, the high proportion of the No vote can be interpreted as a choice for the *status quo* – the current FPTP voting system – as if the great majority of voters were not convinced of the need for changing the voting system for the UK Parliament.

Conclusion

- 18 Even though the referendum on AV – only the second UK-wide referendum in the history of the country – ended up with a majority of No votes, its failure does not put an end to the decline of the two-party system. There is still a need for a more pluralistic political culture to be reached via a deeper reform of the House of Commons itself and reform of the House of Lords – the next step on the political and constitutional reform agenda. The present scheme to reduce the number of seats in the House of Commons from 650 to 600 while trying to harmonize the size of constituencies with around 76 000 voters is making progress. A law to redraw constituency boundaries has already been passed although its opponents fear not only the merger

of many small seats, notably in Wales, but also the weakening of ties between MPs and voters with a greater difference between local boundaries and parliamentary seats, leading to constituencies with little sense of identity especially as pressure was put on Boundary Commissioners to act quickly.

- 19 The next Parliament is due to have a fixed term of five years, putting an end to the privilege enjoyed by the British Prime Minister of choosing the date – within five years – to call a general election. The Fixed-Term Parliament Act 2011 – another part of the package of proposed constitutional reforms of the Coalition Government – provides for fixed days for polling for parliamentary general elections, the next polling day being on Thursday 7th May 2015. But the more relevant proposal of reform relating to our current analysis is without any doubt the reform of the composition of the other House of Parliament, the House of Lords.
- 20 The verdict of British voters against change in the way MPs are elected could cast doubt on whether they are likely to back change in the way Lords are chosen, but voting reform in the Commons was an issue that had no voters' appeal. They were not convinced of the necessity of changing the voting system in the Lower House because they did not trust politicians' motives for imposing change on the Commons.
- 21 The AV referendum campaign and its disastrous outcome have reinforced voters' dissatisfaction with politics, and the coalition government now seems hesitant as well as divided over parliamentary reform. As a result its proposals appear contradictory and uncertain in their final direction and remain, on the whole, fairly obscure for ordinary citizens. AV for the Commons resulted from a visible decline of two-party politics and perceived unfairness – small parties having difficulties registering their votes. Although it was heavily rejected practical problems persist such as the impossibility for smaller parties to make a breakthrough – so there was substance in the AV proposal. However, major constitutional changes should not be the result of rushed deliberations in the days after a general election but rather of matured reflection. They should not be motivated by political partisan politics but by a will to strengthen British democracy for the benefit of the people.

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English

As the Lords Constitution Committee pointed out in its fifteenth report devoted to "the process of constitutional change" (6th July 2011) "The Constitution is the foundation upon which law and government are built. Yet, the United Kingdom has no agreed process for constitutional change. We do not accept that the government should be able to pick and choose which processes to apply when proposing significant constitutional change". This statement came as a reaction to the way the coalition government rushed the Parliamentary Voting System and Constituencies Bill through Parliament that was to serve as the legislative framework for the referendum on

the Alternative Vote, with no prior consultation or pre-legislative scrutiny. Members of the Constitution Committee did not so much challenge the government's right to initiate constitutional change but emphasize the pressing need to hold it to account and especially to make sure that the whole process is democratic and transparent as well as respectful of parliamentary scrutiny. Although constitutional change did not rank high among the 31 points listed by the Coalition Programme for Government following the May 2010 general election, some were to be given priority such as an overhaul of the voting system from first-past-the-post to Alternative Vote, a reduction of the number of MPs in the House of Commons to 600, establishing fixed-term parliaments and, in the longer run, turning the House of Lords into a wholly, or mainly, elected second chamber based on some form of proportional representation. The wish of the Conservatives to set up new constituency boundaries, and the opposition of the Liberal Democrats to the first-past-the-post system gave the two parties that now form the coalition the basis for a deal agreed during the five days of coalition negotiations in May 2010 without which the coalition itself might not have come into being. Besides, there was no sustained public demand for such constitutional change. Indeed, British voters had not sought a coalition government nor did they particularly want electoral or parliamentary reform. So it seems that those constitutional change proposals were doomed to fail from the outset as there was an absence of consensus within the government as well as a lack of consultation and no consideration of the wider impact of those changes on constitutional arrangements.

Français

" Aujourd'hui, le Royaume-Uni utilise le scrutin uninominal majoritaire à un tour, ce mode de scrutin doit-il être abandonné en faveur du vote alternatif ? " C'est la question que les électeurs britanniques eux-mêmes, par la voie d'un référendum national, étaient invités à trancher un an après la constitution d'un gouvernement de coalition - pour lequel ils n'avaient pas voté - à l'issue des élections législatives de mai 2010. Ils avaient ainsi à se prononcer sur un sujet dont beaucoup n'étaient convaincus ni de la priorité, ni du bien-fondé. Ce référendum devait se tenir le même jour que les élections locales en Angleterre et que le renouvellement des membres du Parlement écossais et de l'Assemblée galloise - cela afin de susciter une forte mobilisation de l'électorat.

La question était inscrite dans un projet de loi sur le mode de scrutin et les circonscriptions électorales - introduit à marche forcée au sein du Parlement de Westminster - consacré d'une part, au redécoupage des circonscriptions électorales en vue d'une réduction du nombre de députés à 600, de l'autre à la réforme du mode de scrutin utilisé pour élire les membres de la Chambre des Communes. Ce projet de loi - *The Parliamentary Voting System and Constituencies Bill* - s'inscrivait lui-même dans le prolongement de tractations politiques à l'issue des élections législatives de mai 2010 entre le Parti conservateur de David Cameron et les Libéraux-Démocrates de Nick Clegg, jugées indispensables à la formation d'un gouvernement de coa-

lition entre ces deux partis. En effet, les Conservateurs avaient fini par accepter l'abandon du suffrage uninominal majoritaire à un tour contre le redécoupage des circonscriptions électorales qui leur tenait particulièrement à cœur. Quant aux Libéraux - Démocrates, ils avaient fait de l'introduction d'un référendum sur le mode de scrutin la condition *sine qua non* à leur participation au gouvernement de coalition. Le remplacement du scrutin majoritaire par le vote alternatif visait notamment à assurer une meilleure représentation des partis minoritaires au Parlement de Westminster – et, au-delà, devait permettre aux Libéraux-Démocrates de conforter leur position sur l'échiquier politique. L'autre sujet de prédilection de Nick Clegg était le remplacement de la Chambre des Lords en l'état par un Sénat majoritairement élu. Les détracteurs du vote alternatif, dont de nombreux membres du Parti conservateur, redoutaient qu'un tel mode de scrutin ne favorise de nouveaux gouvernements de coalition – sonnait le glas du bipartisme et rendant plus difficile la sanction par les urnes du gouvernement en place. En définitive, la réforme du mode de scrutin imposée au Parlement en un processus législatif hâtif – puis à l'électorat – par un référendum précédé d'une campagne très confuse menée dans l'urgence et fondée sur des tractations entre partis politiques était vouée à l'échec dès le début. Pour autant, elle eut le mérite de mettre en lumière les défaillances du système actuel en matière de représentation des partis minoritaires et un bipartisme qui ne reflète plus la réalité politique ni les choix de l'électorat britannique.

Mots-clés

Découpage électoral, modes de scrutin, référendum, représentation proportionnelle, scrutin uninominal à un tour, vote alternatif, vote préférentiel

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