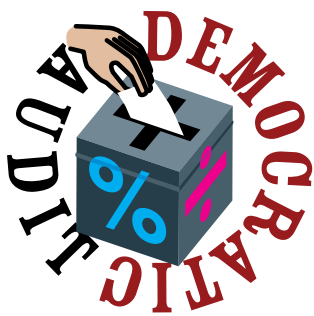


# Governing without majorities:

Coming to terms with balanced Parliaments in UK politics

Andrew Blick and Stuart Wilks-Heeg



## Summary

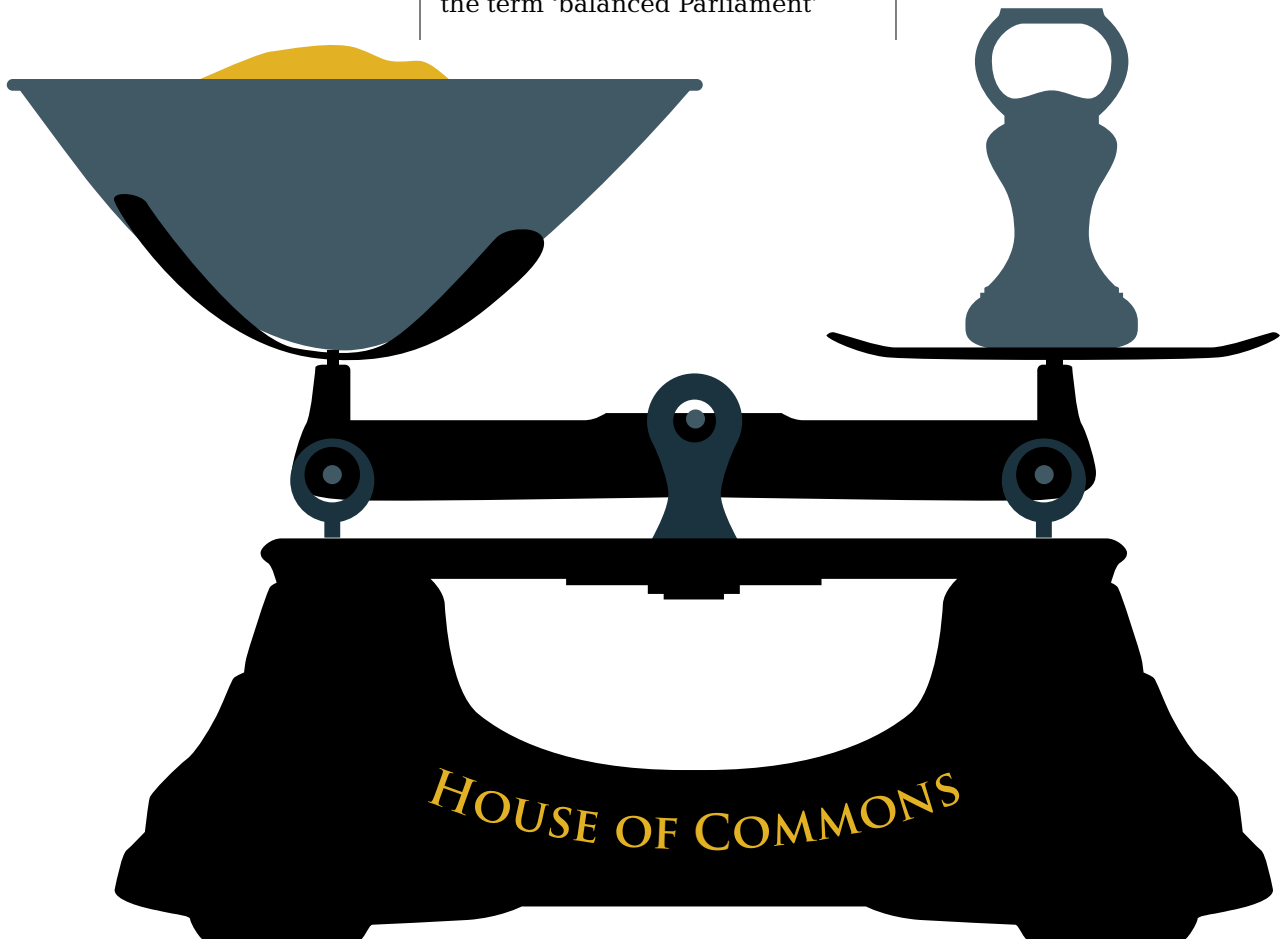
THE NEXT GENERAL ELECTION could well produce a House of Commons in which no single party enjoys an overall majority – a scenario now commonly described as a ‘hung Parliament’. While commonplace in British political history, an election which fails to produce a majority for a single political party could expose serious democratic deficiencies in both the UK’s electoral system and its broader constitutional arrangements.

In this Democratic Audit election briefing, we highlight that:

- Parliaments in which no single party had a majority of MPs, or out of which a coalition government was formed, were the norm in UK politics before 1945.
- The somewhat pejorative term, ‘hung Parliament’, was not introduced into British political debate until the 1970s; in an increasingly multi-party system, the term ‘balanced Parliament’

would be preferable.

- Recent electoral trends suggest that single-party majority governments will become less likely in the UK, even without reform of the electoral system.
- The Cabinet Office model for determining the appointment of a Prime Minister in a ‘hung Parliament’ is based on a questionable interpretation of precedent and is flawed.
- Recent discussion of the possibility and implications of a so-called ‘hung Parliament’ has failed to consider these issues from a specifically democratic standpoint.
- If the general election produces a ‘hung Parliament’, serious deficiencies in the UK’s constitutional arrangements may well produce a controversial appointment of the next Prime Minister and create a moment of constitutional crisis.





## Introduction

SINCE 1979, WE HAVE become accustomed to UK general elections producing single party governments with clear majorities in the House of Commons. Of the seven general elections which have taken place since 1979, six have produced government majorities of at least 40 and four have resulted in governments with majorities in excess of 100. Such 'decisive' outcomes have come to be seen as the historical norm for UK general elections and are often cited as evidence of the democratic effectiveness of the 'first-past-the-post' electoral system used to return Members of Parliament.

Given these assumptions, the prospect of the 2010 General Election failing to produce a clear majority for any single political party has prompted widespread concerns about the political, constitutional and even economic implications of a 'hung Parliament'. Questions have been raised about the strategies which might be adopted by the parties, as well as the constitutional procedures to be followed, in the event of a 'hung Parliament'. Meanwhile, there has also been much discussion about how the financial markets would react to an 'indecisive' election result, particularly in light of growing concerns about how a future UK government will manage the budget deficit.

These debates tend to focus on the prospect of a 'hung Parliament' as a problem, making the implicit assumption that minority and multi-party government is alien to UK political traditions. Nothing could be further from the truth. There is a strong tradition of minority and coalition government within the UK, both historically in the UK Parliament and, more recently, in devolved institutions and growing numbers of local councils. Indeed, the tendency for UK general

elections to produce single party governments with large majorities is only really observable in the modern age, when it has been far from guaranteed, and looks increasingly unlikely as a multi-party system develops in this country. Meanwhile, minority and coalition governments have become virtually inevitable under devolution in Scotland, Wales and Northern Ireland, and have emerged as an increasingly regular phenomenon in British local government. If we add to this the widespread experience of hung Parliaments and coalition governments internationally, which are very much the norm under more proportional electoral systems, there are strong grounds for questioning whether 'no overall control' is quite as undesirable as is generally held.<sup>1</sup>

The grounds for concern rest elsewhere. In particular, there is room to question on a variety of grounds current official constitutional understandings about the procedures to be followed where no single party has overall control in the Commons. In turn, the growing likelihood of 'hung Parliaments' is almost certain to raise serious questions about the democratic legitimacy of the outcomes produced by a non-proportional electoral system operating in concert with a set of constitutional conventions which privilege the incumbent party of government and Prime Minister.

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 1 For the possibility of strong minority or coalition government, see: R. Hazell and A. Poun (eds), *Making Minority Government Work: Hung Parliaments and the challenges for Westminster and Whitehall* (London: Institute for Government/Constitution Unit, 2009). For a defence of the 'strong government' idea, see: M. Oaten, *Coalition: The politics and personalities of coalition government from 1850* (Petersfield: Harriman House, 2007). For an international assessment of coalition governments, see: I. Budge and H. Keman, *Parties and Democracy: Coalition formation and government functioning in twenty states* (Oxford: Oxford University Press, 1990). See also: S. Leach and C. Game, *Hung Authorities, Elected Mayors and Cabinet Government* (York: Joseph Rowntree Foundation, 2000).

So profound are some of these concerns that we should ask whether the system as a whole is effective, even on the terms offered by those who support existing arrangements.

## Hung Parliaments and coalitions: not British?

MINORITY AND COALITION GOVERNMENTS have been surprisingly common in British political history. Before the emergence of more tightly organised parties during the course of the nineteenth century, the idea of a single, fairly rigid group numerically dominating the Commons was unknown. In this sense Parliament was always 'hung'. Even in the era of mass parties, so-called 'hung Parliaments' have been common, particularly in the late nineteenth and early twentieth century.

The frequency of Parliaments without single party majorities was such that the term 'hung Parliament' did not enter into common usage in the UK until the mid-1970s.<sup>2</sup> Searches of media databases reveal that the results of the February 1974 General Election were initially described in *The Times* and *The Guardian* as 'a balance of power position', 'a deadlock situation' or a 'stalemate general election'. The first use of 'hung Parliament' in the press appears to have been almost four months after the election, in an article in *The Guardian* by Simon Hoggart on 22 June 1974,<sup>3</sup> while the term first appears in Hansard a full four years after the February 1974 election, in a speech made by Kevin McNamara MP on 6 March 1978. Although, it was not until the mid-1980s that the term 'hung Parliament' was widely used in either the press or Parliament, its prevalence in current media

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 2 See A. Watkins, 'A hung Parliament is a red herring', *Independent on Sunday*, 14 March 2010.

3 S. Hoggart, 'Tories set sail for early poll', *The Guardian*, 22 June 1974.



coverage dwarfs its use during the period when Parliament was actually 'hung'. *The Guardian's* website records over 200 citations of 'hung Parliament' in its content for the first three months of 2010, while the same newspaper used the phrase just 21 times in the four years from 1974-1977.

The introduction of the phrase to British politics appears to have been based on an adaptation of the US expression 'hung jury', used to indicate a situation in which a lack of agreement among jurors requires them to be dismissed and a second trial with a new jury established. Hence, the House of Commons elected in February 1974 gradually came to be described as 'hung' by commentators as it became clear that, as the head of a minority Labour government, Harold Wilson was likely to dissolve Parliament once more and call a fresh General Election in the hope that a majority government would be returned.

This presumption in favour of single party majority governments was largely a product of the unique political circumstances of the post-war period, when general elections tended to produce a majority for one party or the other – even if some of these majorities were very small. Earlier periods had been characterised by quite different electoral outcomes. The historian G. R. Searle has remarked that 'during the sixty years between 1885 and 1945 *only ten* were occupied by party administrations commanding a Commons majority; for the rest of the time, the country was ruled either by coalitions or by minority governments.'<sup>4</sup> There have often been periods in which there was more than a straightforward two-party system in British politics. For instance, in the late nineteenth and early twentieth century the Liberal Unionists, who had split with the

Liberals over Home Rule, were in alliance with the Conservatives. Subsequently, during the early twentieth century there was a phase during which a three-party system existed as a result of the growth of the Labour Party and the decline of the Liberal Party. As is discussed below, the Labour/Conservative duopoly of the post-Second World War period has been declining for some time, possibly undermining assumptions of single party Commons majorities and governments in our time.

During the twentieth century, there were five general elections which produced no overall majority for any single party – in January 1910, December 1910, December 1923, May 1929 and February

1974. As table 1 shows, the minority governments which resulted from these elections were often short-lived, although a minority Liberal administration governed for 6 years after 1910, before entering into a war-time coalition in 1915. This tendency can partially be explained by the lack of fixed-term Parliaments in the UK (see below) – a peculiar arrangement when comparisons are drawn with other tiers of governance in the UK and internationally. The possibility of calling another immediate election and winning an outright majority, rather than working with the existing House of Commons, will always represent a temptation to a Prime Minister in such circumstances.

**Table 1: Twentieth century elections producing no overall majority**

<i>Date of election</i>	<i>Seats for majority</i>	<i>Election results (No. &amp; % seats)</i>	<i>Final outcome of the election</i>
<b>January 1910</b>	335	<b>Liberals:</b> 274 (40.9%) <b>Conservatives:</b> 272 (40.6%) <b>Labour:</b> 40 (6%) <b>Others:</b> 84 (12.5%)	As the incumbent, the Liberals continued in power as a minority government, supported in the Commons by Irish nationalists and Labour. Prime Minister Asquith requested a dissolution of Parliament in November 1910 on the issue of Lords reform.
<b>December 1910</b>	335	<b>Liberals:</b> 272 (40.6%) <b>Conservatives:</b> 271 (40.4%) <b>Labour:</b> 42 (6.3%) <b>Others:</b> 85 (12.7%)	By the narrowest of margins, the Liberals remained the largest party and continued in power, supported in the Commons by Irish Nationalists and Labour.
<b>December 1923</b>	308	<b>Conservatives:</b> 258 (41.9%) <b>Labour:</b> 191 (31.1%) <b>Liberals:</b> 158 (25.7%) <b>Others:</b> 8 (1.3%)	The most even three way split in Commons history. Baldwin, the Conservative incumbent, did not resign immediately, but was defeated on the King's speech early in 1924. Ramsay MacDonald, leader of the Labour Party, was asked to form a government without conditions and without any understanding with the Liberals.
<b>May 1929</b>	308	<b>Labour:</b> 287 (46.7%) <b>Conservatives:</b> 260 (42.3%) <b>Liberals:</b> 59 (9.6%) <b>Others:</b> 9 (1.4%)	Though Labour was 22 short of a Commons majority, Prime Minister Baldwin resigned immediately and MacDonald took office. Macdonald gradually began consulting with the Liberals under Lloyd George, resulting in proposals for electoral reforms. These reforms were not realised, despite the government offering to legislate for the Alternative Vote in 1930.
<b>February 1974</b>	318	<b>Labour:</b> 301 (47.4%) <b>Conservatives:</b> 297 (46.8%) <b>Liberals:</b> 14 (2.2%) <b>Others:</b> 23 (3.6%)	Labour won the largest number of seats, although the Conservatives secured a fractionally higher share of the votes cast (37.9% to Labour's 37.2%). The incumbent Conservative Prime Minister, Edward Heath, did not resign for three days and explored possible deals with the Liberals and Ulster Unionists. The Liberal leader, Jeremy Thorpe, rejected the offer of a coalition. Heath resigned, and Harold Wilson formed a Labour minority government.

<sup>4</sup> G. R. Searle, 'Country Before Party': *Coalition and the Idea of 'National Government' in Modern Britain* (Longman: London, 1995), p.7.



As table 2 outlines, there have also been three elections since 1900 which led to governments being formed with majorities of five MPs or fewer (1950, 1964 and October 1974), and two which produced majorities of less than 25 (1951 and 1992). Like minority administrations, governments formed on the basis of narrow majorities have often proved short-lived, with fresh elections being called in 1951 and 1966 by governments seeking stronger mandates. Narrow majorities have also been vulnerable to defeats in by-elections and the defection of MPs to other parties, with both Labour and Conservatives governments losing their majorities during the life of a post-war Parliament – in April 1976 and February 1997 respectively.

British political history since 1900 has also witnessed diverse types of formal and informal coalition arrangements. In 1906, an electoral pact between the Liberals and Labour gave the Labour Party a clear run in a number of constituencies, and helped secure working class support for Liberal candidates, resulting in a Liberal landslide. From 1906 to 1910 the Liberals received Irish Nationalist and Labour support in the Commons, which they did not need because they had a large majority, although from 1910 onwards the support of the Irish Nationalists in Parliament was crucial to the Liberal Party staying in power. As table 3 shows, formal coalition governments were established during both world wars, and also during the economic crisis of the 1930s.

If cooperation between parties has been less common since 1945, it has not been entirely absent. Abortive attempts to continue or form coalitions were made in 1945 and 1974; and machinery for cooperation between the governing Labour Party and the Liberals/

Table 2: Post-war elections producing small majorities

<i>General elections producing single-figure Commons majorities</i>	<i>Other general elections producing small majorities</i>	<i>Instances of governments losing overall Commons majority</i>
1950 (5)	1951 (17)	April 1976
1964 (4)	1992 (21)	February 1997
October 1974 (3)		

Table 3: Coalition governments, 1895-1945

<i>Period</i>	<i>Government</i>
1895-1905	Conservative/Liberal Unionist
1915-1922	Asquith and Lloyd George coalitions
1931-1940	National
1940-1945	Wartime coalition

Liberal Democrats was established both in 1977 and 1997.

While the effectiveness of previous UK minority governments has been mixed, at best, recent developments in local and devolved government suggest that such arrangements can be made to work in a UK context. The proportion of local councils in Great Britain under 'no overall control' has doubled from 15 per cent in 1979 to 30 per cent in 2009, and there are currently around 120 councils in which no single party enjoys a majority. That NOC councils have proven they can be effective is especially significant in light of the introduction of executive government arrangements by the Local Government Act 2000, under which the great majority of local authorities have adopted a Cabinet model more akin to central government. As Steve Leach notes 'the prophecies that executive government in hung authorities would prove unworkable have proved unfounded'.<sup>5</sup> The devolved tier of governance introduced by the New Labour governments to Scotland, Wales, Northern Ireland and London has also demonstrated that 'no overall control' can be effective. Each of the devolved assemblies uses some form of proportional representation that is likely to produce no single

party majority. Indeed in Northern Ireland, the Single Transferable Vote system was adopted specifically to facilitate power-sharing. There have been various coalitions in devolved government, and in Scotland since 2007, a minority Scottish National Party government. Assessments of the value of the balanced assemblies in the devolved territories have been positive.<sup>6</sup>

### Current trends

AS IN LOCAL GOVERNMENT, there is every reason to believe that hung Parliaments (and Parliamentary collaboration or government coalitions) will be more likely in future. Trends are somewhat difficult to predict, due to the vagaries of the first-past-the-post system, where votes cast do not translate directly into seats won.<sup>7</sup> However, it is clear that the post-war Labour/Conservative duopoly is in long-term decline. As figure 1 shows, in all seven elections from 1950 to 1970, each of the main parties received at least 40 per cent

<sup>6</sup> See A. Blick, *Devolution and Regional Administration: A federal UK in embryo?* (London: Federal Trust, 2009), especially pp.22-6.

<sup>7</sup> This possibility has led to a growing literature on the subject of hung Parliaments emerging in recent years, such as: *No overall control? The impact of a 'hung Parliament' on British politics*, (London: Hansard Society, 2008); and House of Commons Justice Committee, *Constitutional Processes Following a General Election*, HC396 (London: The Stationery Office, 29 March 2010), Fifth Report of Session 2009-10.

<sup>5</sup> S. Leach, *The Changing Role of Local Politics in Britain* (Bristol: Policy Press, 2006), p.163.



of total votes cast and, with the exception of 1964, the party which formed the government after the election won at least 45 per cent support. At no general election since 1970 have both parties cleared the 40 per cent hurdle and neither has reached 45 per cent in this period.

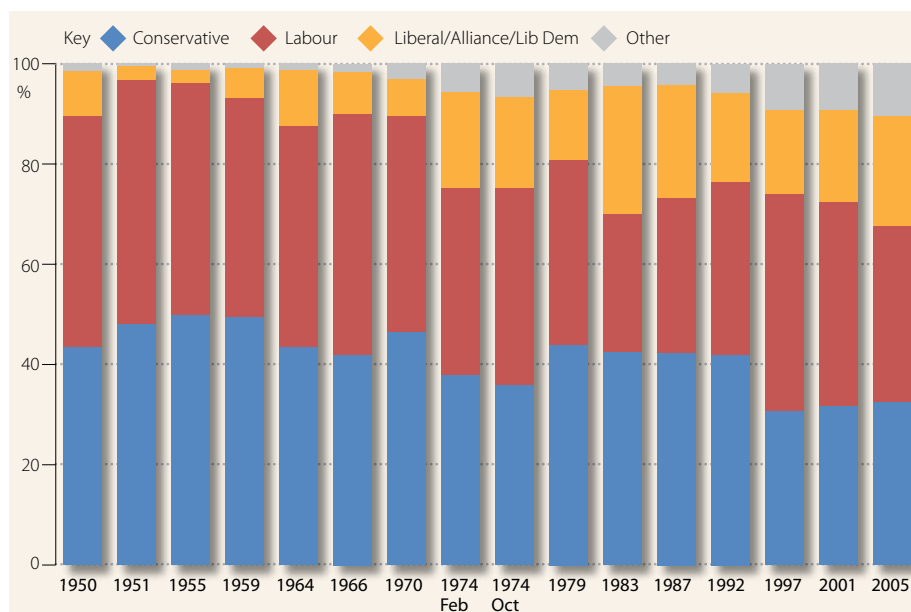
At the same time there has been rising Parliamentary representation for other parties. In 1950 MPs not representing Labour or the Conservatives won only 12 seats in Parliament, nine of which were Liberal. By 1959 this figure had fallen to seven, of which six were Liberal. As figure 2 shows, from the 1970s there was a sharp rise in smaller party representation at Westminster. At the February 1974 General Election, representation from outside the main two parties trebled at a stroke to 37 and it has more or less continued to rise ever since, reaching 93 after the 2005 election. As a result of by-elections and Labour and Conservative MPs resigning or losing the party whip, more than 100 MPs sat as representatives of parties other than Labour or the Conservatives, or as independents, in March 2010 (see table 4).

**Table 4: The State of the Parties in the House of Commons, 15 March 2010**

	No. seats	% seats
Labour	346	53.4
Conservative	193	29.8
Liberal Democrat	63	9.7
Scottish National Party	7	1.1
Plaid Cymru	3	0.5
Democratic Unionist	8	1.2
Ulster Unionist	1	0.2
Sinn Fein	5	0.8
Social Democratic And Labour Party	3	0.5
Respect	1	0.2
Independent	9	1.4
Independent Labour	1	0.2
Independent Conservative	1	0.2
Speaker and Deputies	4	0.6
Vacant seats	3	0.5

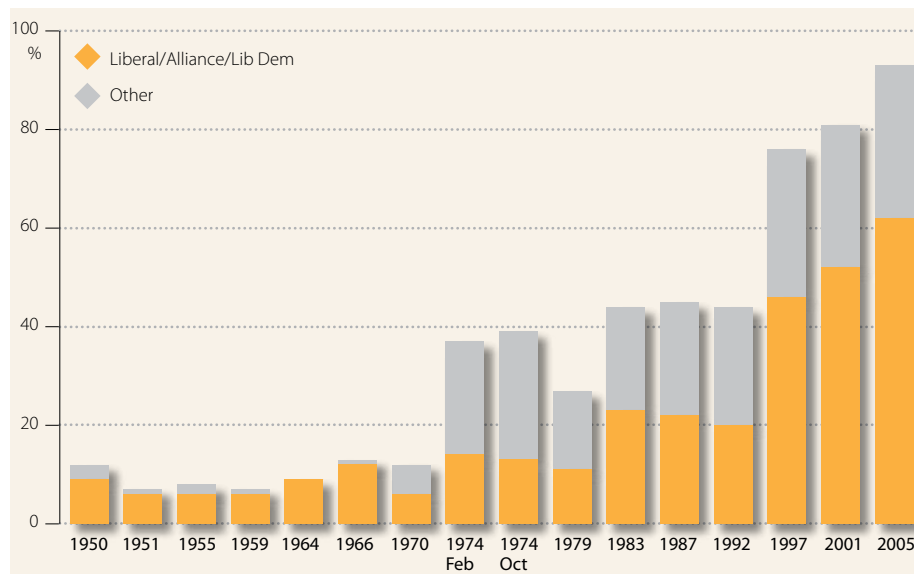
Source: UK Parliament, [http://www.Parliament.uk/mpslordsandoffices/mps\\_and\\_lords/stateparties.cfm](http://www.Parliament.uk/mpslordsandoffices/mps_and_lords/stateparties.cfm)

**Figure 1: Party share of the vote at UK General Elections, 1950-2005**



Source: C. Rallings and M. Thrasher (2009) *British Electoral Facts*, London: Total Politics, p.59.

**Figure 2: Number of MPs elected for parties other than Conservative or Labour, General Elections, 1950-2005**



Source: C. Rallings and M. Thrasher (2009) *British Electoral Facts*, London: Total Politics, p.59.

The combined impact of declining support for the two main parties and rising Parliamentary representation for smaller parties increases the likelihood – and arguably the democratic desirability – of the main parties becoming more reliant on smaller parties to form a government. That such a scenario has not yet come to pass reflects the particular dynamics of the party system since 1979, a key characteristic of which

has been that third party growth came initially at the expense of Labour and, subsequently, at the expense of the Conservatives. Since the 2005 General Election, however, the Liberal Democrats have demonstrated the capacity to take seats simultaneously from both main parties.

The democratic legitimacy of single-party governments has been increasingly undermined by this re-shaping of the party system.



General Elections since 1979 have returned single-party governments, often with large majorities, on a shrinking share of the vote. From 1945-1970, the average share of the vote obtained by the party forming a government was 47.5 per cent, and the average majority was 58 seats. From 1979-2005, the average share of the vote gained by winning parties fell to 41.4 per cent, yet the average majority secured almost doubled to 103. Labour's majorities since 1997, which have averaged 136 seats, have been won on the basis of a vote share which declined from 43.2 per cent in 1997 to 35.2 per cent in 2005. The democratic legitimacy of single-party governments in Britain today is even more questionable if we consider party votes as a share of the electorate. At the high-water mark of the two-party system, the Conservatives won the 1951 election with the support of 39.6 per cent of all eligible electors; when Labour took office after the 2005 election, the party's total vote amounted to just 22.2 per cent of the electorate.

## The forthcoming General Election

MUCH RECENT SPECULATION ABOUT whether the forthcoming General Election is likely to produce a hung Parliament arises from the widely held assumption that, while the Conservatives are likely to receive more votes than Labour, the electoral geography is heavily stacked against them.<sup>8</sup> With Labour support heavily concentrated in urban seats with smaller populations and lower turnouts, the electoral arithmetic favours the Labour Party to the extent that the Conservatives are estimated to require a 6-10 per cent national lead over Labour to secure a majority of one.

<sup>8</sup> P. Kellner, 'Dave's new best friends', *Prospect*, March 2010, pp. 33-36.

While Labour could in theory win outright with fewer votes than the Conservatives, much will depend on the results in the marginals in which the Conservatives have concentrated substantial campaigning resources in the run-up to the election. While this strategy appeared to yield significant results in 2005 (enabling the Conservatives to win an additional 33 seats despite increasing their share of the vote by a mere 0.6 per cent), one recent opinion poll has shown Labour and the Conservatives running neck-to-neck in key marginal seats.<sup>9</sup> Other factors which add to the unpredictability of the likely outcome include boundary changes since the 2005 General Election, which it is believed will tip the balance slightly back towards the Conservatives; the fact that several individual seats are likely to divert significantly from national trends as a result of the expenses crisis; and the possibility that anti-Conservative tactical voting may play less of a role than it has in elections since 1992. Another wild card is the role of smaller parties, both those which already have Parliamentary representation and those, such as the Greens, the BNP and UKIP, that currently do not, all of which could see their share of the vote increase.

Consequently, there are a great variety of scenarios which can be envisaged following the 2010 General Election, ranging from Conservative or Labour majority administrations to formal coalitions or minority governments supported by smaller parties. Among these scenarios, one realistic possibility is that of Labour continuing in office as a minority government, having secured less than one third of the votes, and supported by an alliance of the Scottish National Party and Plaid Cymru, who are likely to poll

<sup>9</sup> *The Times*, 'Labour and Tories neck and neck in marginals', 9 March 2010.

no more than a further two per cent of the UK electorate between them. The formation of such a minority Labour administration could prevent the Conservatives from entering into talks with other parties, even if the Conservatives secure the largest share of the votes and the greatest number, but not a majority, of seats.

This analysis again highlights negative features of the 'first-past-the-post' system, particularly in circumstances where a multi-party system is emerging. However, to understand how Labour could continue in office despite losing the election, it is also necessary to understand how the vagaries of the electoral system interact with the vicissitudes of the UK's constitutional arrangements.

## Constitutional implications of a Hung Parliament

THE DEMOCRATIC DEFICIENCIES OF the arrangements for handling the contingency of a hung Parliament were made apparent by the official statement released in February this year by the Cabinet Office.<sup>10</sup> The basic principles of the published guidance are that:

- ① The incumbent Government remains in office – regardless of whether another party has won more votes or seats, or both – until it becomes clear that it can no longer command the confidence of the House of Commons.
- ② If the incumbent Prime Minister and Government resign, 'the person who appears to be most likely to command the confidence of the House of Commons will be asked by the Monarch to form a government'. It is not stipulated that the leader of the largest opposition party will be asked, thus

<sup>10</sup> 'Elections and Government formation (DRAFT)', Cabinet Office, February 2010.



opening up the possibility that another figure within the governing party, such as the previous Leader of the House of Commons, could be approached.

③ There is an 'expectation' that the selection of the new Prime Minister will be made following 'discussions...between political parties' in which the 'Monarch would not expect to become involved'; though it would be necessary to ensure 'the Palace is informed of progress'.

④ While a Prime Minister can seek another General Election through requesting a dissolution, the 'Monarch is not bound to accept such a request, especially when such a request is made soon after a previous dissolution.' In such circumstances the Monarch 'would normally wish the parties to ascertain that there was no potential government that could command the confidence of the House of Commons before granting a dissolution'.

While this is the first time that clear and transparent guidelines for a 'hung Parliament' have been issued, there is by no means universal agreement about them among constitutional experts. In addition, there are a number of democratic difficulties raised by the guidance which are worthy of further consideration.

That this guidance is based on precedent is understandable, given the UK constitutional perspective, but it is flawed. The events of February 1974, when Edward Heath attempted to cling to power in the particular circumstances of having lost an election he called on the issue of 'who governs?', should arguably not provide the basis for the establishment of all-embracing principles. A broader consideration of history could well result in the same precedent being interpreted in different ways, or contradictory precedents being derived. For

instance, it might be argued that the immediate resignation of Stanley Baldwin in 1929 suggests that, regardless of incumbency, the leader of the party with the most seats should initially be invited to form a government following a General Election.<sup>11</sup> Alternatively, if we go further back into British political history, we can observe what appears to be a constantly shifting interpretation of precedent. As Lord Simon of Glaisdale noted in the House of Lords on 20 October 1994:

'During the 18th century and most of the 19th century, the Government resigned only after meeting Parliament and being refused a vote of supply, or its equivalent, a vote of censure. But at the end of the last century, both Gladstone and Disraeli, after some hesitation, resigned on defeat at the polls, and that was practised by every government up to 1923. But in that year there was a hung Parliament and the Prime Minister, Mr. Baldwin, waited to meet Parliament. That was the convenient course for a hung Parliament. Thereafter, the former Gladstone/Disraeli practice was resumed and has gone on ever since, although I do not doubt that if we had another hung Parliament, it might well be considered convenient for the government defeated at the polls to meet Parliament and to see what happens.'<sup>12</sup>

Just as significantly, not all experts agree with the Cabinet Office view of the key principles<sup>13</sup>. For instance, Professor Robert Blackburn has argued that, if the incumbent Prime Minister is forced to resign in circumstances

of a hung Parliament, then the next person who should be appointed Prime Minister should specifically be the leader of the largest opposition party, rather than anyone who is judged best able to command the confidence of the House of Commons. As he notes, this 'procedure for prime ministerial appointment was followed in each of the real hung Parliament situations arising from the general elections in 1923, 1929 and February 1974'.<sup>14</sup> The process by which the Cabinet Office arrived at its subjective interpretation of past events has not been transparent. In some instances, rather than being based on actual events and actions, the Cabinet Office seems to have drawn conclusions from statements by actors in earlier periods as to what *they* thought the rules were. And even if precedent did clearly point in a certain direction, it would not mean that direction was a desirable one.

Looking beyond issues of constitutional interpretation, there are more fundamental concerns about the democratic principles on which government formation following a hung Parliament are based. Parliament has never been consulted on what would be the appropriate means of managing a hung Parliament. Likewise, the electorate has never been involved in approving mechanisms for such a deadlock either, since there has never been a process in the UK of putting a written constitution to a popular vote. Drawing constitutional principles from precedents alone therefore fails to provide any obvious democratic legitimacy for the Cabinet Office's interpretation of 'the rules of the game'.

11 See: A. Watkins 'A hung Parliament is a red herring, op cit'.  
 12 Lords Hansard, 20 October 1994, volume 558, Column 956.  
 13 For a summary of the dispute see: L. Maer, *Hung Parliaments* (London: House of Commons Library, 2009), pp.13-16.

14 R. Blackburn, *King & Country: Monarchy and the future King Charles III* (London: Politico's, 2006) p.89. This point is reiterated in the recent publication, R. Blackburn, R. Fox, O. Gay and L. Maer, *Who Governs? Forming a coalition or a minority government in the event of a hung Parliament* (London: Hansard Society and Study of Parliament Group, 2010), pp.4-5.



The existing arrangements are democratically unsatisfactory in other senses too. As highlighted above, the advantages they offer the incumbent raise obvious issues. Reports suggest that there are contingency plans to provide Gordon Brown with an 18 day window in which to attempt to establish a workable Commons arrangement.<sup>15</sup> In a scenario in which the largest opposition party actually has more seats, it would inevitably appear that the arrangements are biased against them, both by the initiative that is handed to the incumbent, and the absence of a requirement automatically to invite its leader to form a government if the incumbent falls. Moreover, there is no clear role allotted to Parliament in determining who should be the Prime Minister, with preference given to elite-level discussions between parties. Parliament merely has the right to reject a Prime Minister once appointed, and even then not on a vote which is specifically held to approve or reject the appointment. The pressure not to exercise this right in circumstances such as a sterling crisis could be immense. Parliament could, in effect, be presented with a *fait accompli*. It might be argued that waiting for Parliament to elect a Prime Minister would produce a destabilising delay. But the requirement that a Prime Minister should command the confidence of the Commons, but is not appointed subject to a Commons vote being held in advance, could actually create instability. It might lead to a choice of premier the viability of which was not certain until he or she met the Commons; whereupon he or she might be ousted from office.

Finally, there are obvious

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 15 P. Wintour, 'Gordon Brown likely to stay as PM in hung Parliament', *The Guardian*, 30 March 2010.

democratic anomalies raised by the fact that the un-elected and un-accountable monarchy still has a role in the process, albeit of vague nature. The stipulation that the Monarch would not 'expect' to become involved in talks does not preclude such an outcome, since the Queen will be kept 'informed' of progress. The lack of a definite stipulation that, if a Prime Minister resigns, the leader of the largest opposition party should automatically be asked next to form a government, far from distancing the monarchy from party politics – as is the claimed intention – could seemingly draw her into them, since a decision has to be made about how to use the personal Royal Prerogative. Even more problematically, there is no clear guide as to the circumstances in which a Monarch could refuse a request for a Dissolution<sup>16</sup> (it is another peculiarity of the UK constitution that there is no fixed term for Parliaments, only a maximum of five years). Such a rebuff would amount in effect to the dismissal of a Prime Minister and could be seen once again as drawing the monarchy into party politics. Those advising the Monarch will probably be the private secretary to the Queen or King; the most senior official at No.10; and the Cabinet Secretary. As with the monarchy, it is not clear how they can be held democratically accountable for the advice they provide, which is offered in secret.

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 16 In governing circles it is believed that the most definitive statement of the position is an anonymous letter sent to *The Times* dating from the 1950s.

## Different mechanisms

OTHER COUNTRIES INTERNATIONALLY HAVE mechanisms for resolving national elections which produce no overall majority in a fashion more satisfactory from a democratic perspective. The Alternative Member System (AMS) used in elections to the German Bundestag, produces results which are broadly proportionate to votes cast, leading to chambers without a majority for one party. The 'Basic Law for the Federal Republic of Germany' of 1949 (Article 63) requires the Federal Chancellor, after being proposed by the Federal President, to be elected by the votes of a majority of the Bundestag, before being appointed by the Federal President. Voting is conducted by secret ballot. If the individual proposed by the President is not elected by an absolute majority, the Bundestag can attempt to elect its own candidate. If no candidate receives a majority vote within 14 days, the President has powers to appoint the candidate with a plurality of the votes, or dissolve the Bundestag. This system, unlike that for the UK, has the merit of requiring a Chancellor *specifically before* being appointed; and the President, who is indirectly elected, has some democratic legitimacy underpinning his or her role. The use of a secret ballot is a counterweight against the operation of elite-level deals.

It also is possible to find a more satisfactory model than that applying to deadlocks in the UK Parliament closer to home. The Scottish Parliament uses an electoral system similar to that employed for the Germany Bundestag, consequently making single-party majorities unlikely. The *Scotland Act 1998* (Clause 46) stipulates that 'the [Scottish] Parliament shall...nominate one of its members for appointment as





First Minister.' Here again, unlike in the Cabinet Office guidance, there is a clear role for the elected assembly and its right to determine who should form a government, *before* they are appointed.

In the cases of Germany and Scotland, decisions on who should be appointed are preceded by high-level negotiations between political parties which can be expected to determine the outcome of any vote. But the entire process is underpinned by the firmly established principle that a directly elected chamber has the ultimate power over decisions about who should be appointed as head of government, in advance of the appointment being made. These arrangements differ from those for the UK, where ultimate authority to make the appointment exists under the Royal Prerogative, exercised on a basis of advice from officials, with input from senior party figures. As noted above, a possible argument against the Commons electing premiers is that it will lead to a dangerous period of uncertainty after a General Election. Yet a method of this kind has proved viable in a country such as Germany – where the lack of an overall majority in the Bundestag is the norm, not the exception. Uncertainty is a feature – and strength – of democracy. The lead up to a General Election is often itself a long period of uncertainty lasting for a number of weeks. Its extension by a few days is surely not impossible. There would be equal uncertainty surrounding the appointment of a Prime Minister under existing arrangements, whose support in the Commons was unclear and had not yet been tested.<sup>17</sup>

## Conclusion

HUNG PARLIAMENTS AND COALITION governments have been commonplace in the UK in the past, and are likely to become so again. Single party governments with clear majorities are far from the norm in British political history. Their prevalence in the post-war period was very much associated with an era of two-party dominance which is receding.

However, the prospect of a hung Parliament at this General Election highlights numerous democratic problems with the current electoral system and constitutional arrangements. The international peculiarity of the UK electoral system and un-codified constitution will become increasingly hard to justify if elections continue to return Parliaments without single party majorities. There are other models on offer which could help resolve some of these issues, including within the UK itself. However, a hung Parliament which is managed through democratically unsatisfactory means, as exist at present, could lead to a severe undermining of the legitimacy of whatever government emerges, and of the constitutional order more broadly. It is not simply that the use and interpretation of precedents is questionable as a basis for determining constitutional procedure where no party secures an overall majority; it is also that these procedures have no grounding whatsoever in democratic principles.

While proportional representation would make hung Parliaments almost inevitable, it is equally important to note that history points to there being no guarantee that the 'first-past-the-post' electoral system will produce an overall majority for a single party. At the same time, moving towards a more proportional electoral system would reduce

uncertainty about the relationship between vote shares and seats won in the Commons. Moreover, hung Parliaments are in themselves nothing to be feared, particularly if they lead to a coalition that, in its composition, better represents the genuine spread of opinion within the electorate. The often advanced argument that a government which genuinely represents a majority of those who voted is somehow 'weak', while a government which received less than 40 percent of votes cast is 'strong', seems a disingenuous one – particularly from a democratic perspective. It is for these reasons that we suggest the term 'hung' Parliament – which has clearly negative connotations – should be replaced with another, such as 'balanced' Parliament.

<sup>17</sup> For a discussion of issues surrounding government handovers see: P. Riddell and C. Haddon, *Transitions: Preparing for Changes of Government* (London: Institute for Government, 2009), especially pp.29-30.



### 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).

**DR. STUART WILKS-HEEG** is Executive Director of Democratic Audit and Senior Lecturer in Social Policy at the University of Liverpool. He is the author of *Purity of Elections in the UK: Causes for Concern* (York: Joseph Rowntree Reform Trust, 2008).

Any queries about this briefing may be directed to Stuart Wilks-Heeg: [swilks@liv.ac.uk](mailto:swilks@liv.ac.uk)

### 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](http://www.democraticaudit.com)