

# Reforming the constitution: process matters

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**Andrew Blick** argues that policies impacting significantly on the UK constitution were [central to the programme](#) underpinning the formation of the Conservative/Liberal Democrat Coalition in May 2010. They include fixed-term parliaments; a reduction in the number of MPs combined with an equalisation in the population size of parliamentary constituencies; a referendum on AV; and a requirement for referendums on ‘transfers of powers’ from the UK to the European Union. Because of the centrality of these reforms to the coalition agreement reached between the two parties it was deemed politically necessary that they be implemented swiftly and altered as little as possible by outside influences or institutions.



Such an approach to changing the constitution is not democratically satisfactory. Moreover, there is a long term tendency in the UK, preceding the Coalition, for constitutional change to be executive-driven and introduced in a haphazard way. Sometimes wide, meaningful engagement is involved, as in the case of the recent extension of the powers of the Welsh Assembly. But often it is not, as when Tony Blair’s plan to abolish the office of Lord Chancellor, which would be coupled with the establishment of a UK Supreme Court, was first announced – with no prior consultation – by a press release.

In its new report, [‘The Process of Constitutional Change’](#), The House of Lords Constitution Committee has made a series of proposals that could improve the democratic quality of constitutional change in the UK.

The Committee states that:

*” We regard it as essential that, prior to the introduction of a bill which provides for significant constitutional change, the government:*

- consider the impact of the proposals upon the existing constitutional arrangements,*
- subject the proposals to detailed scrutiny in the Cabinet and its committees,*

- *consult widely,*
- *publish green and white papers, and*
- *subject the bill to pre-legislative scrutiny.*

*...We also stress the importance of not rushing parliamentary scrutiny of legislation once introduced into Parliament and of conducting comprehensive post-legislative scrutiny of significant constitutional legislation once passed.*

*We recommend that the minister responsible for a significant constitutional bill in each House set out the processes to which a bill has been subjected in a written ministerial statement.”*

If the government accepts these proposals in full and adheres to them, progress will have been made, although it will be too late for the bulk of the Coalition constitutional programme to have these principles applied to it.

But there remain limits to how far, within the existing, unwritten, form of the UK constitution, changes to it can be made consistent and inclusive of groups outside the executive.

The first issue – acknowledged by the Committee – is that there remains scope for disagreement about whether a particular change is constitutional or not, since the contents of the UK constitution are not defined in a specifically labelled constitutional text. Consequently, the executive will retain a degree of discretion as to whether it chooses to define a particular measure as constitutional, and therefore adhere to these practices.

Second, it will continue to be possible for the executive to drive most constitutional change through on a basis of simple majorities in the House of Commons. Stricter requirements, which are the norm under written constitutions internationally (such as legislative supermajorities or the holding of referendums) will not generally apply (though some – but not all – changes involve referendums).

But to seek changes in these two areas would require the introduction of a written UK constitution, defining precisely what the UK settlement was, and setting out an amendment procedure: a major development, beyond the immediate scope of this particular Committee inquiry, though one that would bring the UK into line with most other democracies.

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