

Report of the Independent Commission on the Voting System: Volume 2

Submissions from academics

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Voting Reform and the Constitution

A Memorandum for the Independent Commission on the Voting System

by

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Summary

The strengths of the first-past-the-post system include simplicity, decisiveness, stable government, and the linking of MPs to constituencies (paras. 1.2 - 1.5). Its principal defects are its unfairness, and the predominance accorded to choosing a government over representativeness (paras. 1.6 - 1.11). All the main PR alternatives would deliver broad proportionality and an extension of voter choice; maintaining the MP / constituency link limits the choice of PR methods (paras. 1.12 - 1.13). Recommending a PR system that upholds stable government will be much harder (paras. 1.14 - 1.16). I argue that the Commission should recommend the alternative vote as keeping advantages of the present voting system while achieving some others (paras. 1.17 - 1.22).

If the Commission recommends a form of PR that will result routinely in hung Parliaments it will be of great importance that the "rules" about government formation in such Parliaments be reconsidered (paras. 2.1 - 2.2). Voters should know under what rules governments would be formed in such Parliaments (paras. 2.3 - 2.6). I urge the Commission to consider this question itself or to recommend that another body should do so (paras. 2.7 - 2.10). My own suggestions for such procedures are summarized in the Annex.

I am the author of two works which are relevant to this inquiry: *Constitutional Practice* (Oxford: Clarendon Press, 2nd ed., 1994), especially chapter 3, and *Constitutional Reform* (Oxford: Clarendon Press, 1991), especially chapter 6.

Part 1

Which system should the Commission recommend?

The strengths of first-past-the-post

1.1 It has become fashionable, if not actually obligatory, for those reflecting on the British constitution to damn the first-past-the-post (FPTP) electoral system out of hand. It is sometimes identified as a root cause of much that has gone wrong in the United Kingdom, and which, in constitutional matters, has produced unrepresentative Members of Parliament and the growth of party power to the detriment of the individual. Anyone who writes of the merits of FPTP risks being portrayed in a Bateman-type cartoon with the description "The person who spoke well of the British voting system". But it is well to be clear about its merits, especially if any of them are shared by an alternative system that could be recommended at the referendum.

1.2 ***Simplicity*** The British voting system is simple. Voters are entirely familiar with the easy task of marking one cross against one name on a ballot paper, and then later that day or the next learning the name of the victorious candidate who secured more votes in the constituency than any other person. There is no question of election officials distributing and redistributing votes according to any mathematical (and possibly complicated) formula. The party which gets a majority of Commons seats wins the election. It would be hard to devise a more straightforward method of election involving a secret ballot in 659 constituencies, each having as many candidates who wished to stand. By contrast, must the alternative system

which the Commission recommends be as complicated as most PR systems?

1.3 *Decisiveness* The FPTP system is also decisive. After a general election British voters expect to know the name of the next Prime Minister quickly, and if there is to be a change of government, they expect to see television pictures of furniture vans outside Number 10 on the day after the election as a physical sign of the transfer of power which they have brought about. No question arises - at least, not usually - of politicians conducting negotiations to make practical political sense of what the electors have decreed through the ballot boxes. Can decisiveness be an element in any more proportional system?

1.4 *Stable government* The decisiveness of the FPTP system produces stable government. As a direct result of their ballots, voters produce a parliamentary majority for one party, which then forms the government. There is no post-election fudging of the voters' decision. Save for the February 1974 result, every general election since that of 1931 has produced a parliamentary majority for one party. Given the cohesion of party, such a government is normally assured of being able to conduct its business until the Prime Minister decides to submit himself or herself to the electorate. This helps all those who wish to plan their affairs on the assumption that there will be no change of government, and perhaps even no dramatic change of policy, for the following four or five years.

1.5 *Linking of MPs to their constituencies* A last attribute of FPTP is the rooting of each MP in his or her local soil. Few people suggest that Members should cease to represent a defined geographical area. Not even the most zealous champions of PR want the perfect proportionality which is secured in the national list system as operated, for example, in the

Netherlands. Dutch legislators represent everyone and no one and everywhere and nowhere.

Defects in first-past-the-post

1.6 Of course, FPTP has drawbacks. The two main ones are that it results in unfairness, and that it affords supremacy to decisiveness over representativeness.

1.7 ***Unfairness*** The one-word indictment of the FPTP voting system is unfairness. It is unfair to smaller parties, unfair to electors who do not vote for the winning candidate, and even unfair to the Conservative and Labour Parties.

1.8 FPTP is ideally suited to a society which is predominantly and accurately represented in its legislature by only two parties, one in and the other out of government. But it is notorious that the United Kingdom is not such a society. Smaller parties achieve substantial political support, as evidenced through the numbers of votes cast for them, but (at least before May Day 1997) they have secured derisory numbers of MPs. So, for example, in the February 1974 general election the Liberals received over six million votes, but only fourteen Members: the Conservative and Labour Parties each polled just under twice that total, but secured respectively 297 and 301 seats. It is notorious that the greatest unfairness to the smaller parties occurred at the 1983 general election, at which the Liberal / SDP Alliance secured over 25% of the electorate's vote - almost eight million crosses - but only four per cent. (twenty-three) of the seats in the House of Commons. Labour, on the other hand, with some 27% of the vote was rewarded with 32% (209) of the seats, while the Conservatives won the election with only 42% of the vote but 61% (397) of the seats. At the 1997 general

election Labour secured 44% of the votes cast but 63% of the seats; the Conservatives received only 31% of the popular vote and 25% of the seats; the Liberal Democrats obtained 17% of the national vote but only 7% of the seats. A scheme which is capable of producing such results does violence to the concept of fair play as the British understand it.

1.9 Unfairness is wrought, too, on those voters who do not vote for winning candidates. This is not a small, disaffected minority that cannot take its defeat: it is usually a *majority* of those who vote at general elections. While those in this losing majority have the satisfaction of exercising their right to vote, the practical reward for doing so is practically non-existent. Voters who do not support the winning candidate in the 450 or so Commons seats which are safe for one party might just as well stay at home, for all that happens to their votes is that they are recorded in national election statistics. In those seats, the constituency party chooses - democratically or otherwise - the person who is later ritually affirmed as the local Member at the general election. A voting system which permits millions of voters to ask themselves whether it is worth bothering to vote is subversive of democracy.

1.10 Those who reap largesse from this electoral system do not deserve much sympathy when it discriminates against them. But in fact FPTP does operate unfairly against the Conservative and Labour Parties in parts of the United Kingdom, and the phenomenon of the safe seat is, again, the cause. So, for instance, the Labour Party's parliamentary representation has been virtually eliminated in south west England; at the last election the Conservatives' limited representation in Scotland and Wales was reduced to no representation at all. The two main parties in those parts of the country must be as disillusioned as are (say) the Liberal Democrats in many places throughout the United Kingdom.

1.11 *Supremacy of decisiveness over representativeness* Inextricably linked in the present voting system with unfairness is the supremacy of decisiveness over representativeness. FPTP can be relied on to produce a government from one of the two principal parties. But in doing so any aim of gathering a House of Commons which is broadly representative of the electorate has faded. This would possibly not be as important as it is if the elective function of FPTP worked on the basis of a majority of voters conferring a parliamentary majority on the winning party. Patently, however, it does not do so. Mr Tony Blair's landslide parliamentary majority of 179 seats was achieved with only 44% of the votes cast. Mrs Thatcher's 144-seat majority in 1983, and her 102-seat majority in 1987, were achieved even though on both occasions some 57% of votes were cast for other parties. Almost 60% of voting citizens voted *against* the Conservative government. This is by no means a recent phenomenon. No winning party has been supported by half or more of those going to the polls since the general election of 1935.

The Commission's terms of reference and PR

1.12 The Commission's terms of reference direct it to observe the requirements for (i) broad proportionality, (ii) the need for stable government, (iii) an extension of voter choice, and (iv) the maintenance of a link between MPs and geographical constituencies. All the main PR systems would deliver (i) and (iii). It is, of course, over (ii) stable government and (iv) maintaining MPs' links with geographical constituencies that the greatest difficulties lie.

1.13 *MPs and constituencies* Taking the constituency point first, the Commission will

probably agree that the *national list system* must be ruled out. The creation of a single national constituency would mean the end of any link between MPs and geographical constituencies. Other systems, however, pass this test. Although the *regional list method* would dispense with constituencies as currently existing in this country, it has been suggested that MPs could be allocated to smaller geographical units after they had been returned as members for a given region. The *single transferable vote* method would require the creation of very large constituencies, perhaps with 300,000 electors in each. This would maintain "a link between MPs and geographical constituencies" - although, of course, the constituencies would be quite unlike the current ones. Again, though, there could be a post hoc allocation of individual MPs in each large constituency to smaller geographical units. The *additional member system* is the only PR method that retains the single-member constituency. No doubt partly for that reason it is to be used to elect the Scottish Parliament and the Welsh Assembly. By giving each elector two votes, one for a candidate, the other for the party, the twin ideals are achieved of single-member constituencies and a more proportional result.

1.14 *Stable government: hung Parliaments* It is the need for an alternative to FPTP to produce stable government that is more perplexing. Any PR system is likely to produce hung Parliaments. If a method of full-blown PR were introduced for elections to the House of Commons, there might as a result be a lurch too far in the direction of the representative function of elections and away from the function of electing a government.

1.15 It is notorious that the prospect of hung Parliaments gives some force to the view which is put occasionally that PR is undemocratic. In systems that deny an overall majority to any one party - as any PR method is likely to do - that elective function is removed from

the voters and is given in large part to the smaller parties in the legislature. The German experience of 1982 is often cited: the switch by the Free Democrats from one partner to another, so putting in place a different coalition government without any reference to the voters, is held up as the kind of politics that PR delivers. So, too, in the United Kingdom smaller parties, such as but not only the Liberal Democrats, would have a power under a PR régime to choose governments after elections and to alter governments between elections, a government-making and government-breaking authority which would be disproportional to the votes which had been accorded them at the general election. Voters would be denied what is perhaps the main advantage of the present voting method, the selection of a government. In effect, voters would have to delegate that task to elected politicians. This is a serious constitutional objection to PR, and in my view would amount to too heavy a tilt of the electoral scales in favour of the representative function and away from the voters' government-choosing function. One unbalanced set of scales would be replaced by another unbalanced set, whereas the quality which needs to be aimed at is equilibrium, albeit that it is unlikely to be achieved perfectly.

1.16 PR is not always subversive of stable government. For instance, relatively stable government has been achieved in Ireland and in Germany, although of course by having coalition governments in office. Even the phenomenon of revolving-door governments in Italy under its former PR system rather concealed the fact that one party has dominated the administration since 1948. Moreover, a proliferation of parties in the legislature does not follow inevitably: while it has happened in the Netherlands, Israel, and Italy, the number of parties in the Irish and German legislatures actually went down after the introduction of their current electoral systems.

Moving political and public opinion

1.17 The current attitude of the Conservative Party is one of complete opposition to voting reform. The Government's collective position is that the Independent Commission should do its work and that the result should be put to a referendum. Obviously, Labour's triumph at the polls last May will have entrenched the opponents of PR within the Labour Party. Of the main political parties only the Liberal Democrats are committed to a shift to PR (although, of course, they fully support the present exercise). Persuading Conservatives and many Labour people to support a system of PR at the referendum plainly will not be easy. There may be a natural majority against PR. Is it asking too much of such opinion to expect it to take a leap in the dark at the referendum in favour of full-blown PR? Is there not a middle way? I believe that there is: and that it is the alternative vote. I hope that it (or a variant of it) will be recommended by the Commission.

The alternative vote

1.18 The alternative vote (AV), which is used, for example, for elections to the Australian House of Representatives, has actually received the approval in principle of the House of Commons (in 1918 and in 1931) for its own elections.

1.19 It will be recalled that the aim of AV is to elect representatives by absolute majorities in single-member constituencies. Voters are asked to say which candidate they would support if their first choice did not receive an absolute majority. To do so, they number the

candidates on the ballot paper in order of preference. A candidate who gets 50% or more of the first preference votes is elected. If none does so, the candidates with the least votes are eliminated in turn, and their second preference votes are redistributed, until one candidate does have an absolute majority.

1.20 AV is **relatively simple**, an attribute not shared by most full-blown PR systems in which redistributions - sometimes of great complexity - are required. AV is often **decisive**, in that it usually produces one-party, and therefore **stable governments**. Majority governments under AV are worthy of that name: their legitimacy would be unquestionable, because it would be based on both a majority of seats in the House of Commons *and* Members having the support of an absolute majority of voters in their constituencies. AV is **fair**, certainly fairer than FPTP: votes are not wasted; smaller parties are not discriminated against: it embraces a **wider voter choice** than is possible under FPTP.

1.21 Opponents of AV say that it is not a proportional system. They argue that AV tilts the balance too far in favour of the government-choosing function and against the representative function of a voting system. AV certainly does little to bring about national proportionality between votes cast and seats obtained. But broad proportionality could be said to be achieved in each constituency: the victorious candidate has the support of a majority of voters; each elector's vote counts. Perhaps it can be said that that satisfies the Commission's requirement of "broad proportionality".

1.22 It is possible that AV might prove to be an attractive alternative to FPTP. Simple, decisive, producer of stable parliamentary politics, provider of governmental legitimacy, and

fairer than the present method - these are the qualities of the alternative vote system which, in my view, deserve very close consideration.

Part 2

The constitutional consequences of voting reform

What if the Commission recommends full-blown PR?

2.1 The Commission may reject AV (or any similar system or systems) as the alternative to FPTP, and recommend a full-blown PR system. The electorate may choose that PR system; it may be adopted by Parliament. The constitutional consequence of that would be the frequent return of hung Parliaments. Before voting for such a change in the voting system, however, the inquiring citizen will want to know what is to be done to try to achieve some stability in what could be the volatile situation in a Parliament of minorities. That citizen can fairly ask what rules are in place to produce a government after an inconclusive general election, or, if there are currently no such rules, what is to be done to produce them.

2.2 Given that, under FPTP, there have only been five hung Parliaments this century (in 1910 (twice), 1923, 1929, and February 1974), it has been possible (to put it crudely) for those involved in resolving such crises to muddle through as each relatively-infrequent occasion has demanded. But under a different voting system hung Parliaments could be the norm. I hope very much that the Commission will take this centrally-important point and

express a view on it.

What are the "rules" about hung Parliaments?

2.3 The election of a hung Parliament presents a broad range of possible procedures and resulting government structures: there are precedents this century which provide a dazzling array of choice. A Prime Minister, having failed to secure a majority at a general election which results in a hung Parliament, might resign immediately (as did Baldwin in 1929), or stay in office to negotiate a coalition (as did Heath in 1974), or wait to meet Parliament to have his or her fate decided on the loyal address in reply to the Queen's Speech (Baldwin in 1923). The Sovereign might take some part in the resolution of the crisis (as George V, through his Private Secretary, did in 1923-1924), or none (as in February 1974). There could be a protracted succession (six weeks in 1923-1924), or a swift one (four days in February / March 1974). The government which emerged could vary from a minority administration enjoying no support from other parties (such as those of MacDonald in 1924 and Wilson in 1974), to a minority government with negotiated aid from others (like the Lib.-Lab. pact 1977-1978), to a coalition. And behind all that can be another uncertainty: if the new government were to be defeated on an early vote of confidence, would it be entitled to a dissolution of Parliament?

2.4 It seems from all this that there are no "rules" about government formation from a hung Parliament. The only "rule" in such circumstances is a major constitutional convention which is universally recognized by constitutional commentators. It is, however, open-ended and unhelpful, namely, that in choosing a Prime Minister the Queen should commission that

person who appears best able to command the support of a stable majority in the House of Commons, or, failing such a person, that politician who seems able to form a government with a reasonable prospect of maintaining an administration in office. But that does not take us very far. How could the Queen identify that person who *might* command a Commons majority of minority parties, and how would she resolve the possible and conflicting claim of the leader of the largest minority party to form a minority government?

2.5 Moreover, the precedents mentioned in paragraph 2.3 must be approached with caution, because they were political accommodations arrived at as the result both of the political realities of their day and of the personal relationships between the party leaders. Such relationships have varied and will vary greatly from time to time, making inter-party co-operation more, or less, likely. Accordingly, those precedents should not be considered as being rule-constitutive.

2.6 Many other settled constitutional and political practices would have to be re-assessed and changed if PR were introduced. Party manifestos would become no more than invitations to treat, formally published to the voters but in fact issued to the other parties for negotiation after the electoral verdict had been given. Party discipline in the Commons would become much more lax: governments would have to inform and persuade Members in more than one party, rather than just relying on the Whips to deliver votes. The doctrine of ministerial responsibility would have to be modified to accommodate any coalition government. None of this represents an insuperable bar to PR, but they are matters which would require very careful examination, ideally before any change was put into effect.

How might the Commission approach this point?

2.7 In considering whether new "rules" were needed for hung Parliaments the Commission might:

- (a) take the view that the point is outside its terms of reference, or
- (b) recommend that the point be examined by another body, or
- (c) suggest that the current method of muddling through would be sufficient, or
- (d) itself make recommendations.

2.8 The difficulty with options (a) and (c) is that they would result in voters being asked to vote for a pig in a poke. They would be invited to support a new system the consequences of which - at least as far as government-formation was concerned - would be uncertain. Voters who otherwise might be attracted to PR might decide, in the absence of some guidance on how governments would be formed, to vote instead for the status quo. Options (b) or (d) would be sensible ones for the Commission to adopt, provided that the question of timing was also addressed: any new rules should be available before the referendum was held. I urge the Commission to take one of those two courses of action.

2.9 It is possible to formulate simple conventions about government formation in a hung Parliament: the difficulty, however, would be in obtaining a political consensus on them. So, for instance, it might be said that (i) the leader of the largest party in a hung Parliament should be able to have the first try at forming a government, whether minority or coalition; (ii) that if he or she failed, then the leader of second-largest party should try next; and conventions could be drafted about subsequent requests for dissolutions in such a hung

Parliament. But as I have said the problem with such a project would be the difficulty of achieving all-party agreement on the details. Accordingly, it may be that a more limited conventional framework should be aimed at.

2.10 I do not want to burden the Commission with detailed analysis at this stage. There is a significant amount of academic work that has been done already on this issue. I merely summarize my suggested solution in the Annex to this memorandum.

ANNEX

A possible framework for hung Parliaments

A The Sovereign possesses powers which might have to be exercised when no ministerial advice was available. One area of national life in which that might happen is after the return of a hung Parliament. What I wish to suggest is that, because the British constitution is based on parliamentary democracy, the need for the use of royal discretion in constitutional affairs ought to be kept to an irreducible minimum. To do that new procedures would have to be worked out so as to ensure that political decisions were arrived at by politicians, who would take responsibility for them. Such a process would mean that in a future political crisis there would be no room for criticism that a non-elected head of state had imposed a particular solution on the elected House. It should also enhance the Queen's perceived impartiality as between the political parties, which would be especially important if no compromise could be arrived at by politicians on their own. A guiding light of political decisions, politically arrived at might largely remove the need for royal power to be exercised on the Queen's personal initiative in the appointment of a new Prime Minister in a hung Parliament.

B Caution is needed before suggesting that new rules should be worked out in advance to prescribe both how a government should be formed in a hung Parliament and the circumstances in which a dissolution of that Parliament should be permitted. It *might* be possible to produce such rules, but the seemingly intransigent positions of the party leaders make the prospect of success unpromising. Up to now the leaders of the Conservative and Labour Parties have declined to discuss hung Parliament issues, but if cornered they have

insisted that in a hung Parliament the leader of the largest single party would be entitled to form a minority government. By contrast, the view of the Liberal (and later the Liberal Democrat) leader - who might hold the balance of power - has tended to be that only a coalition government (or at the least a formal inter-party pact) would do in a hung Parliament. In such unpropitious circumstances, the laying down of new conventional rules by agreement between the political parties might prove impossible.

C If that were, indeed, the case I suggest that an initiative from Buckingham Palace might be the best way forward. Procedures would be needed which would place the primary responsibility on politicians in a hung Parliament to devise a government, and to keep the Queen's contribution (which might be highly controversial) as near as possible to zero. As a consequence, politicians would have to take responsibility for government-making and election-timing in a hung Parliament. This would be the guiding light of political decisions, politically arrived at.

D In order that such a guiding light should burn brightly after the election of a hung Parliament, it would be important that no precipitate action be taken from Buckingham Palace. The Prime Minister might wish to inform the Queen of the political situation, as Mr Edward Heath did in 1974 after losing his parliamentary majority at the first general election of that year. But I suggest that the Queen should take no part in the resolution of the political crisis. Such a royal disinclination would mean that the political parties would be forced to decide what to make of the electorate's ambiguous judgement. In 1923, 1929, and 1974 the party leaders did, indeed, resolve the succession crises themselves. In each case, a minority government was formed. It may be that that pattern would be repeated, or it may

be that the parliamentary arithmetic, the personal relationships of the party leaders (or any two of them), the wishes of the parliamentary parties, and of the parties in the country all came together to cause a coalition to be formed. It should be agreeable to the party leaders to keep their destinies in their own hands, and an intimation from Buckingham Palace that no royal intervention should be expected should come as music to their ears. Such a procedure could be communicated to the parties at any time, but preferably when a hung Parliament was only a theoretical possibility.

E But political agreement might prove impossible to attain in a hung Parliament. The Liberal Democrats might insist on their coalition solution. A Labour-Liberal Democrat coalition might, for instance, be considered by those two parties to be preferable to a minority Conservative government. Even if a coalition were to be agreed, however, between Labour and the Liberal Democrats, the Conservatives, if they were the largest single party, might still insist on their right to form a minority government. And behind both of those possibilities would lurk the prospect of a prime ministerial request for another dissolution of Parliament.

F Suppose that a government lost its majority at a general election, but was the largest single party in the new Parliament. The Prime Minister might insist on his right to continue as head of a minority government. The main opposition party and another, smaller party might state publicly that they wished to form a majority coalition. Agreement between all three parties as to what should happen might prove impossible. Here again I believe that it should be made clear from Buckingham Palace that before any royal action were to be taken to put a coalition into office, proof would have to be made public that a coalition government

would be viable. There would have to be a copper-bottomed agreement between the prospective coalition partners, including the name of the proposed Prime Minister, disposition of Cabinet offices, an agreed Queen's Speech, and a guarantee that the coalition would not seek a dissolution within a stated minimum time. That agreement would have to be published. These political negotiations would take place where such matters belong, at Westminster, not at Buckingham Palace. If such an agreement were not forthcoming, the Queen should do nothing to obstruct the continuance of the minority administration in office.

G It could be argued that, in the spirit of my suggested royal reticence, the Queen should not intervene in such a case even to the extent suggested. Rather, it might be argued that the minority Prime Minister and his rivals for power should resolve the issue by meeting Parliament. If that happened, and if the minority government survived a vote of confidence, that would be that. But how nearer to a solution to the succession crisis would we be if that government were defeated? The precise nature of any alternative government, and hence its parliamentary viability, would remain unclear. Further, this suggestion that the whole problem be deferred until after the State Opening of Parliament would substitute a second constitutional problem for the first. Few things would be more natural than for the minority Prime Minister to dare the opposition parties to defeat him on the Queen's Speech, just as, for example, Mr Wilson did in 1974. If they did dare to do so (as they did not even try to do in 1974), the Prime Minister would then presumably ask for an immediate dissolution. An inchoate coalition would, however, be claiming power in the wings to take over without a further general election. Would ministerial advice to dissolve be accepted - or would a person who might have the ability to secure a majority in the existing Parliament be appointed Prime Minister?

H There is no doubt that a request for a dissolution can be refused in appropriate circumstances. The rub lies in the words "in appropriate circumstances". There are three propositions which I think should be considered for formulation as constitutional conventions - indeed, the first two may already enjoy that status.

(i) If a government continues in office after an inconclusive election obtained by its Prime Minister, and is defeated on its Queen's Speech, any request for a second dissolution by that Prime Minister should be rejected. No such request, in effect for a recount, has ever been made: the precedents all require that the Prime Minister resign (as Baldwin did in 1924).

(ii) If a new government is formed in a hung Parliament which is subsequently defeated, a request for an election from its Prime Minister - his or her first such - should be granted. The 1974 precedent is in point. Mr Heath had asked for the February election, and lost it. Mr Wilson's request (some months later) for a dissolution was his first, and was granted. The request will be the more apt the longer was the delay in seeking the election, for the government will have been seen to have done its best in an awkward parliamentary situation.

(iii) If a Prime Minister in a hung Parliament were to ask for an election, even for his or her first time, in order to forestall another majority grouping from supplanting his administration, then refusal would be right if that grouping actually existed. Such a royal stance would require one of two conflicting constitutional principles to be preferred, one

being that the Queen must accept ministerial advice (here, to dissolve), the other being that a person with a parliamentary majority behind him or her is entitled to be Prime Minister (here, the head of the proposed coalition). In favour of the Queen giving preference to the second principle would be the Prime Minister's improper motive in trying to thwart his rivals, and the existence of a viable alternative government in the existing House of Commons which could be installed without the need for another election.

I Inherent in *(iii)* is the question of the presence of a viable alternative administration. One reason for the discredited "automatic theory" of dissolution - that a dissolution must be granted to every Prime Minister in all circumstances - was that its application would avoid any allegation of royal bias. Such an allegation could otherwise be made if the Queen (like Lord Byng as Governor-General of Canada in 1926) were to refuse in the mistaken belief that another government could be formed, and could carry on without an election, when in the event that proved incorrect and the new government had to be granted the very thing which had been denied its predecessor. As with the primary decision of whether a minority or a coalition government should be formed immediately after the return of a hung Parliament, so here the politicians who were anxious to form a new government from the existing House should be obliged to make public an agreed package concerning the majority government in waiting. Nothing less than that should do if the Queen were to be expected to reject ministerial advice and bring about a new government. Once again, such a process would enable the head of state to give effect to the unambiguous wishes of Members of Parliament: once again, the proposed guiding light of political decisions, politically arrived at, would shine out. It would, of course, be less controversial, and possibly much less embarrassing, for the Queen to accede to a request to dissolve rather than for her to allow an alternative

government to take over.

J I have outlined a possible framework of new conventions and procedures which would underpin parliamentary democracy by removing decisions from the head of state and placing primary responsibility for them with politicians. Royal power in the United Kingdom is (or should be) the handmaiden of parliamentary democracy, not its master. If understandings along the lines of those outlined here were to find support, the supremacy of the political authority in the British constitution (whether the House of Commons, or the electorate) would be made clear beyond doubt. In highly-charged political circumstances the Queen's personal discretion would be made subject by and large to the resolution of political questions by politicians. Only if the political process were to fail would the head of state, as final arbiter of the constitution, have to act on her personal responsibility.