

M O N I T O R

Issue 13

The Constitution Unit Bulletin

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The State and the Nations

In December the Constitution Unit launches its latest book, *The State and the Nations: the First Year of Devolution in the UK*. The book brings together the first fruits of the Unit's £1m 5-year research programme on The Nations and Regions: the Dynamics of Devolution, which is funded by the Leverhulme Trust. The book will be launched at the Unit's first *State of the Union* Lecture at Westminster on 11 December. The lecture, which was to have been given by Donald Dewar, will now be given by Robert Hazell.

'I had sent Donald the proofs of our book, and I was really looking forward to his response', Robert Hazell said. 'We have dedicated the book to his memory. I must now give a lecture which is worthy of him'. The lecture will highlight two of the key findings in the book: the instability of the devolution settlement, and the search for answers to the English Question. The first half of the book contains expert accounts of the first year of devolution in Scotland, Wales, Northern Ireland and the English regions, written by the Unit's research partners in each country: Graham Leicester in Scotland, John Osmond in Wales, Rick Wilford and Robin Wilson in Northern Ireland, and John

Tomaney in Newcastle.

'Seen from Whitehall, the mood is one of quiet assurance', Robert Hazell added. 'But look at the individual country chapters in the book, and a different picture emerges. Here devolution can at best be described as having got off to a slow and rather shaky start'. The opening chapters record in detail the savagery of the press attacks on the new Scottish Parliament; the instability of the devolution settlement in Wales; the fragility of the power-sharing executive in Northern Ireland; and the growing interest in regional government in England.

The second half of the book records how central government is being reshaped, with two pioneering chapters on the impact of devolution on Westminster and Whitehall. Westminster is making a series of sideways steps towards becoming a quasi-federal Parliament; and in the House of Commons structures and procedures are emerging which could make Westminster a proxy for an English Parliament, in ways Robert Hazell will develop in his lecture. Whitehall has seen more rapid changes, and the Whitehall chapter gives a full account of the intergovernmental machinery put in place to handle relations with

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the new devolved administrations. It gives details of all the

Concordats and Cabinet Office Devolution Guidance Notes, and the first meetings of the Joint Ministerial Committee on

Happy New Year to all our readers!



The Unit has recently redesigned its website: take a fresh look!

You can find further details of up-coming events and publications on the back page, and on the flyer enclosed.

www.ucl.ac.uk/constitution-unit/

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Devolution and the British-Irish
Council. (cont. p.2)

State and the Union cont from p.1

The closing chapters cover changing public attitudes to devolution and the Union, and the new governance arrangements in London. Like the rest of the book, they contain a mine of useful and up-to-date information. The aim is to provide a complete contemporary record, with all the relevant facts and figures: in all the book contains over 70 charts and tables. As a volume of record the book should provide an essential up-to-date guide for practitioners, and for students and teachers. The Unit plans to produce a similar book each year for the next five years, to provide a comprehensive account of devolution as it unfolds, and to explain how devolution reshapes the British state and its component nations.

- To order the book *The State and the Nations: The First Year of Devolution in the UK*, complete the flyer enclosed with this mailing.
- To attend the lecture please complete the events flyer enclosed.
- To order the text of the lecture, please complete the publications order form.

Devolution

Wales

The National Assembly was put on a completely new footing in October with the announcement of a coalition government between Labour and the Liberal Democrats. At a stroke the Assembly executive was provided with an assured majority and a programme for government, two attributes that had eluded it during the first year of devolution. This transformation came with a price tag, however: two seats in the cabinet for the Liberal Democrats with their leader Michael German becoming Deputy First Minister in charge of Economic Development, while his colleague Jenny Randerson became Minister for Culture, an entirely new portfolio.

These ministerial titles - previously cabinet members were known as Secretaries - signalled more substantive constitutional developments on a broad front. The 25-page Partnership Agreement that took nearly two months to negotiate contains a raft of policies across the range of the Assembly's responsibilities. Headline commitments are free school milk for all children under seven, a freezing of prescription charges, and legislation to allow

pensioners to travel free on local bus services from 2002. However, of longer term import so far as the devolution settlement is concerned is a commitment to create an independent commission to examine the Assembly's powers and electoral arrangements. This will be established during the current term but will not report until after the next Assembly election in May 2003.

More immediately the Agreement commits to securing 'the independence of the Office of the Presiding Officer and the civil servants that work there.' This undertaking puts in place a defining characteristic of a parliamentary body, and thereby a de facto move away from the Assembly's de jure constitutional status as a corporate body, laid down in the 1998 Government of Wales Act. The change was expressly recognised by the Assembly in October when it approved (by 50 votes with none opposing) a new Standing Order No 28 establishing a House Committee to advise the Presiding Officer and to determine a separate £22.3 million budget for his Office. The Plaid Cymru leader Ieuan Wyn Jones greeted the change as 'an historical step forward' expressing the hope that it would be 'a way of persuading the government in London that the days of the body corporate are over.'

Importing coalition politics into Wales proved a shock to the system. Most Labour AMs were unaware of the development until the day before the announcement. It prompted the first resignation of a cabinet minister, Tom Middlehurst, who had been responsible for post-16 education, who objected to Liberal Democrats entering the cabinet. It also led to a revolt by some Labour local government leaders, appalled at the Partnership Agreement's commitment to entertain the prospect of proportional representation for local government elections.

Northern Ireland

It has been the best, but also the worst, of times in Northern Ireland.

The four-party executive finally agreed in October what it would substantively do after 30 months of high (or, perhaps, low) political manoeuvring between the ethno-nationalist protagonists. Here, at last, was a draft programme for government with a confidence-building message of 'making a difference'. One with some 'joined-up' sophistication and the

capacity thus to cement the partisan ministerial fiefdoms. Here, also, was a draft budget, for the first time reflecting regional priorities. Meanwhile, there was patient work in the Assembly (if criticism of its lack of transparency) and the Civic Forum met.

But a poll showed confidence in the agreement falling; sharply amongst Catholics to rock-bottom amongst Protestants. And the institutions of the agreement - their interdependence meaning shocks destabilise the whole baroque architecture - came under increasing strain.

The failure of the policing commission to generate a consensual report led to a Police Bill both unionists and nationalists opposed. Ethnic hurt, mobilised in the Protestant community over the loss of the Royal Ulster Constabulary name, struck a body-blow to David Trimble as Ulster Unionist Party leader and First Minister, as the Democratic Unionists (already undermining the executive by their absence) won a hitherto safe UUP seat. But republicans presented the Bill as a cave-in before British 'securocrats' and thus a reason (or, perhaps, excuse) for not engaging with the decommissioning commission, although they did allow a second arms inspection.

That, in turn, prompted an embattled Mr Trimble to harden his defences against his internal challenger, Jeffrey Donaldson, insisting not only that policing reform should be halted but also that he would not allow Sinn Féin ministers to attend the North/South Ministerial Council. Mr Trimble survived, narrowly, once more but his deputy, Séamus Mallon, was prompted to display solidarity with his Sinn Féin colleagues.

All this took place against a backdrop of rising paramilitary violence, with nine deaths in the quarter caused by three 'cease-fire' organisations - one represented in government and another in the Assembly. An extraordinary attempt was made by the US administration to stop a programme about IRA gun-running in the States. And the British government appeared to reach a limit on non-reciprocated 'demilitarisation' measures.

A review of the whole agreement began openly to be discussed. It is a prospect no one can countenance with equanimity.

Scotland

Much has changed in Scotland. We have a new leader of the opposition and a new First Minister. Many had called for a fresh start at the end of a disappointing first year for the new political system, but none had imagined this.

John Swinney took over from Alex Salmond as leader of the SNP in September. Salmond stepped down after ten years in the post - his future role still looks uncertain. Swinney has quietly sought to support the gradualist forces in his party - concentrating on becoming an effective opposition in Holyrood and overhauling internal policy and co-ordination machinery for that purpose.

Labour's change of leadership was more dramatic and shocking following the sudden death of Donald Dewar on 11 October. With a parliamentary requirement to fill the First Minister vacancy within 28 days, Labour could not run a formal leadership election in time and instead had to settle for an interim election involving just the parliamentary party and the executive, with a formal election to be held later in December.

The interim election took place on 21 October, three days after Dewar's funeral. The result was never in doubt. Henry McLeish, the 'natural successor' defeated Jack McConnell - the only person willing to stand against the consensus and who cleverly portrayed himself as the alternative to 'London's choice'. In the event the margin was worryingly slim for McLeish, 44-36, and left him looking considerably weaker as a result.

McLeish was duly elected by the Parliament as First Minister on 26 October and lost no time in announcing a reshuffle three days later. He moved McConnell, a former teacher, to education - seen as a poison chalice by many given the scandal that engulfed the executive over the summer when the Scottish Qualifications Authority failed to provide accurate exam results for many candidates. There were a number of other cabinet and ministerial changes, including the creation of an additional cabinet place. All of the changes make perfect sense from the point of view of a man shaken by the narrowness of his victory and trying to build support across the party, but they move against the growing feeling before Dewar's death that Scotland needs fewer Ministers not more.

McLeish's first moves in office have been less sure-footed. His first appointment was Peter McMahon, political editor of the Daily Mirror, to act as spin doctor and a flurry of announcements followed designed to reassure the public that Henry would be in touch with their concerns. He has promised a policy review to weed out initiatives without popular support - spun to the media as a 'dump the crap' programme - and is committed to involving backbench MSPs (most of whom voted for McConnell) more closely in policy development. The first hints from the policy review process have been promises for (yet another) 'bonfire of the quangos' and a second look at the UK government decision on funding of long term care. All of which has led to a heightened sense of confusion and uncertainty - not unlike the feeling eighteen months ago when devolution first began.

English Regions

Over recent months signs have emerged that English regional government - the constitutional reform that dare not speak its name - may be about to come out of the closet. It is no secret that Labour's (always limited) enthusiasm for English regional government fell in the aftermath of the narrow Welsh referendum vote and the London debacle. While there is still a strong strand of scepticism inside highest echelons of the government, there are signs that the regional question is moving slowly back up the political agenda.

Major developments in recent months have included the provision of new resources and 'increased flexibility' for Regional Development Agencies as an outcome of 'Spending Review 2000' and reiterated in the Pre-budget Statement. Hitherto, RDA chiefs had complained that multiple lines of funding and accountability were hindering their ability to meet declared objectives of economic regeneration. RDAs will see their combined budgets rise by £500 million per year by 2003/4. Also, from the next financial year, the government will combine the resources from three departments (DETR, DTI, DfEE) into a 'single pot'. As yet, it remains unclear what 'increased flexibility' will amount to in practice.

A further significant development has been the publication of an 'Action Plan' by the newly created Regional Co-ordination Unit. This unit was established in the aftermath of the report by the Cabinet Office's Performance and Innovation

Unit, which looked at ways of improving the delivering of central government programmes in the regions. Like RDAs, Government Offices for the Regions (GOs) will also have access to a single budget comprising contributions from the three lead departments. In addition, staff from other departments (e.g. MAFF) will be located within GOs in order to facilitate more 'joined up government'. It is clear though that the RCU will exercise tight central control over the activities of GOs.

Regional Chambers are likely to get new planning powers as a result of the publication, in October, of 'Planning Policy Guidance 11: Regional Planning Guidance'. PPG11 gives a bigger role to regional interests in the preparation of regional planning guidance. It is likely that in most regions Chambers (or 'Assemblies', as most now style themselves) will undertake this task. Notwithstanding this new responsibility, the Secretary of State will continue to be the final authority in regional planning matters.

More broadly, there appears to be a growing preparedness on the part of ministers to raise the regional question. The Industry Secretary Stephen Byers made a speech in November, which was a tacit acceptance of the existence of the North/South divide, which the Prime Minister controversially appeared to disavow a year earlier. Also in November, the Trade Minister Dick Caborn, a noted regional government enthusiast, was forthright in his call on the government to bring forward concrete proposals on the regional question. Little is settled though and the regions watch the preparation of Labour's forthcoming manifesto with interest.

The Centre

The election of a Scot to the position of the Speaker of the House of Commons has added renewed energy to the debate over the influence of MPs representing Scottish constituencies at Westminster. William Hague continues to press the case for English votes on English laws. Speaking at Magdalen College Oxford, on the 13 November, he promised that one of the first actions of a newly elected Conservative government would be to prevent Scottish MPs from voting on matters relating to England and Wales or England alone.

The second meeting of the British-Irish Council scheduled for 31 October, was cancelled following the death of Donald Dewar.

The Judicial Committee of the Privy Council has heard its first cases arising under the Scotland Act. The case of *Montgomery and Coulter v Her Majesty's Advocate*, heard in July, sought to clarify at what point in proceedings 'devolution issues' may be raised. Judgement has been withheld pending the outcome of related legal proceedings in Scotland. In early November, the case of *Brown v Stott* was heard on appeal from the High Court of Justiciary in Edinburgh. The case involves the legality of statements obtained under s.172 of the Road Traffic Act 1988 and questions the compatibility of such statements with the right to silence and freedom not to incriminate oneself under Article 6(1) of the European Convention on Human Rights. Judgement is expected before Christmas.

Parliamentary Reform

House of Commons Speaker

Following the retirement of Betty Boothroyd, Michael Martin MP was elected Speaker from amongst 12 candidates on 23 October. The archaic procedure, in which only one name can be voted on at a time, was widely criticised, and has been referred to the Procedure Committee. The Committee has twice reported on the election of Speaker, in 1972 (HC 111) and 1997 (HC 397). It will now be able to consider the practice in the Scottish Parliament and Welsh Assembly, which elect their Presiding Officers by secret ballot.

Strengthening Parliament

The Commons approved two major changes on 7 November, to introduce timetabling for all legislation, and to defer late night divisions to another day. Timetabling was proposed in the 1992 report of the Jopling Committee, and in the first report of the Modernisation Committee (July 1997). The government failed to follow through on the all-party support for time-tabling in 1997 by changing Standing Orders. It has done so now against opposition from the Conservatives and some of its own backbenchers, who see it as unduly favouring the executive. After second reading of every Bill a programme motion will be debated setting out the timetable for the Bill, and the opposition can indicate which parts of the Bill most deserve

scrutiny. This will bring into the open discussions that have taken place between the usual channels.

On 9 November, the Commons debated the report of the Liaison Committee (consisting of the 33 Select Committee chairmen) on redressing the balance between Select Committees and the executive. Margaret Beckett MP, Leader of the House, set out the government's reservations about allowing membership of Select Committees to be determined by senior backbenchers rather than by the party whips, arguing that it would concentrate too much power in too few hands. She also denied the House the opportunity to vote on the recommendations in the Liaison Committee report, although the Prime Minister had promised a free vote during questions on 13 July. An Early Day Motion supporting the report has been signed by over 250 MPs (mostly Labour), including 30 Select Committee chairmen (EDM 1135).

Because of the 12 Bills still before Parliament in the spillover (see June 2000 *Monitor*), the Queen's Speech opening the next session will not be until 6 December.

The Hansard Society is organising an on-line consultation on the scrutiny role of Parliament from 13 November to mid-December (see <http://www.democracyforum.org.uk/>).

House of Lords Reform

A new committee has been established to discuss options for long-term House of Lords reform, chaired by Foreign Secretary Robin Cook. It is a subcommittee of the Joint Consultative Committee between Labour and the Liberal Democrats, and includes Lib Dem constitutional spokesman Robert Maclennan. The two parties, however, appear a long way apart in their views on the composition of the chamber. Labour's conference in September rejected a proposal that elected members should make up a majority of upper house members, preferring an open-ended commitment where those elected are 'not less than that ... outlined in the Royal Commission's report'. The Lib Dems want a wholly-elected House. There has been no progress yet on establishment of the parliamentary Joint Committee on reform, formally promised in July, and the new committee seems set to become an alternative forum for agreement.

Meanwhile, piecemeal reforms have continued. The new Appointments Commission took the unprecedented step of advertising for new peers, and launched a website inviting members of the public to nominate themselves (see p.12). By the deadline of 17 November over 2,500 applications had been received. The Commission will recommend crossbench appointees only, with 8-10 appointments expected in the early months of 2001. It became evident that not all crossbench nominations will pass through the Commission, when the government announced the appointment of Betty Boothroyd to the Lords in October.

Several issues have arisen relating to the part-time and unpaid nature of the House, which has come under strain as a result of this year's heavy legislative burden. Following agreement of procedural changes in the Commons, the government suggested changes to sitting hours in the upper house. However, these were rejected by the Lords Procedure Committee in November, with concerns expressed that more daytime sittings would create difficulties for peers with paid outside interests. Meanwhile the Neill Committee reported on 16 November on 'Standards of Conduct in the House of Lords', recommending that the Lords move from a voluntary register of interests to a mandatory register of (both financial and non-financial) interests. In a separate move, the issue of peers' allowances (alongside MPs' salaries and allowances) has been referred to the Senior Salaries Review Body. They have not however been invited to comment on the possibility of salaries for peers.

The 'transitional' House of Lords has continued to flex its muscles and show signs of a new confidence. In September peers again blocked the Criminal Justice (Mode of Trial) Bill. The government conceded the Bill, which would be difficult to reintroduce under the Parliament Acts due to its late introduction in the House of Commons. The Parliament Acts will however be invoked over the Sexual Offences Bill (which equalises the age of consent for homosexual and heterosexual sex, as required by the European Court of Human Rights, and was first introduced last year). This caused controversy as government decided to force the Bill through without allowing the Commons to debate new Lords amendments. Debate over procedure was boosted when on 8 November Lord Donaldson, former Master of the Rolls, introduced the

Parliament Acts (Amendment) Bill. This would clarify the circumstances in which the 1949 Act may be invoked. It would prevent the use of the Act over any Bill seeking to amend the House of Lords' powers (a change proposed by the Royal Commission) or composition. The Bill has no chance of becoming law.

On 21 November peers blocked the Disqualifications Bill (which would allow members of the Irish Dáil to sit at Westminster) and government looked set to drop the Bill. A week before the session closed difficulties remained possible over a series of other Bills.

Elections and parties

Electoral and Party Regulation

The Political Parties, Elections and Referendum Bill reached committee stage in the Lords in October. Among the concerns raised by peers were the educational role allotted to the Electoral Commission, the subsuming of the various boundary commissions by the Commission and the allocation of spending limits for parties at referendums. The Home Office Minister, Lord Bassam, indicated that the government hoped to have the financial regulations for parties and interest groups in place by early February. Prior to the Bill's enactment, consultations will take place with other party leaders on appointments to the Electoral Commission. The consultations will also extend to setting spending limits for parties. Although the Bill provides for spending limits - £20m per party - these are set over a full year. Given the likelihood of an election in spring 2001, the limits need to be set at a proportion of the full year's total. What this proportion should be will be the main issue for cross-party consultation.

Electoral Reform

The next stage of the electoral reform agenda centres on the local tier. In Scotland, the debate over the introduction of PR for local council elections rumbles on. The Ministerial Working Group, that is following up the report of the independent Kerley Committee, has raised the possibility that the next local elections, scheduled for 2002, should be held alongside the Parliament elections a year later. This would give additional time for the introduction of an STV voting system. The potential delay in the introduction of a new voting system tested the Liberal Democrats' commitment to the coalition,

although they supported their Labour partner during a recent debate in the Scottish Parliament. In Wales, one outcome of the new Labour-Liberal Democrat coalition is a commitment to review local government electoral systems and the electoral system for the Assembly itself. Meanwhile, it has been reported that Labour and the Liberal Democrats are drawing up plans to shift English local councils to a PR electoral system.

Women's Representation

The government have indicated that they are considering changing electoral law to allow parties to use 'positive action' measures to increase the number of women in elected office. This follows publication of the Unit's report *Women's Representation in UK Politics: What can be done within the law?*, suggesting that such changes were possible. When asked in parliament for her response to the report, Margaret Jay said the matter had been referred to the Home Office 'to see whether legislation can be introduced' (Lords Hansard, 2 October). A new electoral law could bring Britain into line with many other EU countries, where candidate selection is considered a constitutional, rather than an employment, matter.

Local Government

Analysis of the local election pilots used in May has shown that only all-postal ballots had a consistently significant effect on turnout. The analysis, by Colin Rallings and Michael Thrasher of Plymouth University, shows that 'mixed' experiments - where traditional forms of voting were combined with postal voting, weekend voting or mobile polling booths - had no consistent effect. The full report is available from the Local Government Association (see <http://www.lga.gov.uk/lga/publications/electi-onsummary.pdf>).

The DETR has published regulations covering the new constitutional arrangements for local councils. These include guidance on consultations with local citizens and the form of any referendum on directly elected mayors. Local councils have been given until June 2001 to propose new constitutional arrangements, and to have these in place by June 2002. The executive retains the right to impose a referendum on any council failing to consult the public.

Human Rights

Human Rights Act

The Human Rights Act came into force on 2 October. Civil matters have figured more prominently than expected with eight plaintiffs seeking 'declarations of incompatibility' under the Act, in its first seven weeks, compared to none in the criminal field. Two of the criminal cases being fast tracked by government lawyers for appeal in early December concern the hearing of bail applications in Magistrates' courts and the confiscation of the assets of drug traffickers.

In late September, the government published its 'Points for Prosecutors' covering some 21 Convention issues that might arise in the courts (see websites p.12). Further lines covering issues raised since October (e.g. bail applications) are being circulated internally. In October, a new ad hoc group was established in the Cabinet Office to consider the policy implications of significant decisions taken in human rights cases.

Joint Parliamentary Committee

Continuing disagreements between Labour and the Liberal Democrats over the committee's composition and chairmanship have further delayed its formation, notwithstanding a government pledge to have it in place by the time the Human Rights Act came into force.

EU Charter of Fundamental Rights

The UK government continues to maintain that the proposed EU Charter of Fundamental Rights should be no more than a compilation of existing rights accepted within the European Union in a non-legally binding text. Nonetheless, while it appears that the Charter will only be proclaimed as a political declaration and not incorporated into the Treaty of Nice, its simple existence is expected to exert some influence on future judgements of the European Court of Justice. Further moves by the European Commission to try to have the Charter incorporated as a Chapter or Protocol in the Treaty of European Union are anticipated.

The Courts

Judicial Appointments

The Lord Chancellor, Lord Irvine of Lairg, has invited applications for the new post of

Commissioner for Judicial Appointments (*The Times*, 25 October 2000). The part-time, £70,000 per annum, post will involve leading the proposed Judicial Appointments Commission in the audit of the judicial appointments process, the production of annual reports on the process for the Lord Chancellor, and the investigation of complaints. Interestingly, bearing in mind recent debate over the dual mandate of the Lord Chancellor as cabinet minister and judge, the advertisement stipulates that candidates should 'in the interests of independence...not have current or recent involvement with the legal profession, the Lord Chancellor's Department or the judiciary, nor should they have a track record of political activity (other than the membership of a political party).' The appointment of a Commissioner for Judicial Appointments is no doubt a step towards greater openness in the current and 'notoriously opaque' (*Financial Times*, 25 October 2000) process but falls well short of the totally independent Judicial Appointments Commission as proposed by bodies such as the Law Society.

Sentencing

The Lord Chief Justice, Lord Woolf, has announced that the minimum sentence to be served by Jon Venables and Robert Thompson, convicted in 1993 of the murder of James Bulger, should be eight years (the period initially set by the trial judge in November 1993). The announcement came on the 26 October following a judgment of the European Court of Human Rights in December 1999 that the tariff should be set by a member of the judiciary and not, as had been previous practice in the UK, by a member of the executive. The ruling brings to an end six years of legal disputes since the then Home Secretary, Michael Howard, raised the tariff set by the former Lord Chief Justice, Lord Taylor of Gosforth, to a fifteen year minimum term. The ruling by Lord Woolf also stipulated that the process of accessing parole could begin immediately. It is possible therefore that the two young men could be released early next year.

Top Courts

On 24 October, the Senior Law Lord, Lord Bingham, delivered the Millennium Speech at Gray's Inn. The address was titled 'The Highest Court in the Land' and outlined the pressures facing the Appellate Committee of the House of Lords and the Judicial Committee of the Privy

Council - contrasting these pressures with historical examples of successful and failed attempts to reform the UK's top courts. Lord Bingham's speech dealt with both practical and jurisdictional issues and posed a number of pertinent questions for those contemplating the future role of the Law Lords.

Freedom of Information

Freedom of Information Bill

The FOI Bill looked set for a difficult passage through the Lords, where the government has no majority, and the balance of power is held by the crossbenchers and Liberal Democrats. But the Liberal Democrat peers negotiated four modest concessions from the government and then supported the Bill. The amendments were tabled by Liberal Democrat lawyers Lords Goodhart and Lester, and reverse the burden of proof in the Bill's complicated provisions about the public interest. Following criticism from Tory peers for selling out, Robert Maclennan MP conceded that there had been a failure of communication, but said that the Liberal Democrats in the Commons were still negotiating to strengthen the Bill.

The most complex provisions in the Bill govern access to personal files. The Data Protection Commissioner has produced a useful flow chart to explain these provisions (see websites p.12).

Implementation of the Act will be in five waves, starting in April 2002 (at the earliest) with central government and those public bodies already subject to the Code of Practice on Access to Government Information. Local government will come next; then police, the health service and education; then all other public bodies; and then the remainder. The last four waves will probably be implemented at six monthly intervals.

Europe

A European Constitution

The question whether Europe needs a constitution continues to vex the minds of politicians and commentators alike. Tony Blair added his own contribution to the debate when he spoke at the Warsaw Stock Exchange on 6 October. The speech responded to ideas that had been voiced in earlier speeches over the summer. Blair rebuffed the German foreign minister Joschka Fischer's visions of Europe as a federal

superstate and the French president Jacques Chirac's desire of a stronger Franco-German axis. Instead, Blair argued that the EU should be an economic and political 'superpower, but not a superstate'.

On the constitution, there are two models that have been put forward. One favours a formal, written constitution that is legally binding; the other goes for a more flexible model based on individual treaties, laws and cases. Blair called for a political Statement of Principles setting out the prerogatives of the EU and those of the Member States rather than a legally binding constitution. He also envisaged the creation of a second chamber to review the EU's agenda against the agreed principles, similar to Fischer's EU Senate. At its core, the debate pits a 'political' constitution, driven by elected politicians, against a more 'legalistic' constraint on supranational power overseen by a European constitutional court.

Overseas News

Calls for US Reform

The recent election controversy in the United States has brought increased attention to the electoral college and led to calls for changing the system. Senators Richard Durbin, Arlen Specter and Hillary Clinton have called for replacing the electoral college with a national first-past-the-post system. It is hardly an accident that these three Senators come from three of the most populous states - Illinois, Pennsylvania and New York - states whose large populations could be expected to weigh heavily in any national popular vote contest.

This path of reform would require a constitutional amendment and would likely meet fierce resistance from the smaller states. A constitutional amendment requires two-thirds support in both Houses of Congress and the approval of three-quarters of the states (38 out of 50). Small states easily have the power to thwart such an effort. It is more likely that some states will change the way they individually assign electors, from the current winner-take-all system to one where individual electors are assigned based upon the highest Presidential vote winner in each Congressional district with a bonus two electors going to a statewide winner. Two states (Maine and Nebraska) currently assign electors in this fashion and it is likely that a handful of others might follow suit in the future.

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People on the Move

Sir George Young MP resigned from the shadow cabinet to join the race to be Commons Speaker. This resulted in a minor reshuffle, with **Angela Browning MP** replacing Sir George as shadow leader of the Commons and spokesperson on the constitution. **David Heathcoat-Amory MP** replaces her as shadow Agriculture Secretary, and his role as shadow Chief Secretary to the Treasury is taken by **Oliver Letwin MP**.

Private Secretary to the Commons Chief Whip, **Murdo Maclean**, has retired after 22 years. This highly influential position has been filled by **Roy Stone**.

In Scotland, **Donald Dewar's** untimely death led to changes in the Executive. **Henry McLeish** takes over as First Minister (see Scotland, p. 3). **Wendy Alexander** takes over McLeish's previous position as Minister for Enterprise and Lifelong Learning. **Angus MacKay** enters the cabinet as Minister for Finance and Local Government, with previous Finance Minister **Jack McConnell** taking over as Minister for Education, Europe and External Affairs. **Sam Galbraith**, previously Minister for Children and Education, becomes Minister for Environment, Sport and Culture. **Jackie Baillie** enters the cabinet as Minister for Social Justice.

In Wales the new Assembly cabinet saw **Mike German** become Deputy First Minister for Economic Development and fellow Lib Dem **Jenny Randerson** become Minister for Culture, Sport and the Welsh Language. **Tom Middlehurst** resigned from the cabinet in protest at the new coalition. Fellow Education Minister **Rosemary Butler** left the cabinet in the reshuffle and Deputy Presiding Officer **Jane Davidson** took over the entire Education portfolio. **Peter Law** also left the cabinet and his responsibility for local government has passed to **Edwina Hart**, also Minister for Finance. The new Deputy Presiding Officer is **John Marek**.

Project Reports

Constitution Unit News

New Faces

Welcome to **Mark Sandford** and **Alan Trench**. Mark joined us in November as a Research Assistant to work on the Devolution and English Regions project funded by the Joseph Rowntree Foundation. Alan will join us in February 2001 to lead our work on the law and devolution. Alan has been a local government lawyer with Bristol City Council and with Leicester City Council. He will work on a new ESRC-funded project on how the law and devolution disputes shape the devolution settlement, and a related project on intergovernmental relations between the UK government and the devolved administrations. Meanwhile, **Dylan Griffiths**, who left the Unit in August, has taken up a post of Policy Officer for York City Council. We wish him all the best.

Consultancy and Training on Human Rights and Freedom of Information

The Unit is stepping up its training, consultancy and support services on **Human Rights and Freedom of Information**. Jeremy Croft has led human rights training for government departments and public authorities, and is producing training materials for local government and the health service. On FOI, the Unit organised a conference with CAPITA in October attended by 180 civil servants, and is planning more conferences and FOI training events in 2001. The Unit's team of FOI experts (Jim Amos, Dick Baxter, Jeremy Croft, Robert Hazell and Andrew McDonald) are preparing case studies and training materials drawn from real examples and best practice from around the world. Enquiries to Jeremy Croft: jeremy.croft@ucl.ac.uk, tel. 020 7679 4979, fax 020 7679 4978.

Receive our Devolution Reports by Email

The Unit publishes detailed quarterly reports on the state of devolution in Scotland, Wales and Northern Ireland; and from November on the English regions. If you want to have these reports emailed to you as soon as they are published, instead of looking for them on our website, contact Gareth Lewes (g.lewes@ucl.ac.uk).

Regional Government in England

Work is continuing on the Devolution and the English Regions project, funded by the Joseph Rowntree Foundation. The Unit's work has shifted towards a more thorough analysis of the possible options for directly elected regional government in England, in the light of the experience in London and the models of regional government overseas.

The main study is expected to be complete by the end of April 2001. It will deal briefly with the run-up to the present situation and alternatives to regional government, but will focus mainly upon the decisions to be made if elected assemblies are introduced in the English regions. These include the method of financing; the range of powers; the constitutional relationships with other parts of government, particularly the UK government; the effect on local government; the possible size and methods of election of assemblies; and how elected regional government would be achieved starting from present circumstances

The project is proceeding under Paul McQuail and Mark Sandford, and it is hoped that it will constitute a thought-provoking 'guide' to the practical and effective achievement of elected regional assemblies in England, alerting policy-makers to the pitfalls that such a strategy might entail.

Contact: *Mark Sandford*, 020 7679 4976, constitution@ucl.ac.uk.

Regional Government in France and Spain

This briefing summarises the lessons for the UK from the very different experiences of regional government over the last 20 years in France and Spain. Andy Smith (Bordeaux) describes how regional assemblies were introduced top-down in France, with limited budgets and functions (economic development, environment, training and tourism). With few services of their own, they rely on other levels of government to put their policies into practice; and risk having their priorities diverted by external sources of funding. Paul Heywood (Nottingham) analyses the more flexible, bottom-up process of

devolution in Spain, with a separate statute of autonomy for each region. The Spanish experience shows how devolution can establish a strong momentum of its own; lead to disputes over competences which require arbitration in the courts; give a boost to regional and nationalist parties; and create big political tensions over finance.

The report is now available (see publication list for details). Contact: Robert Hazell, 020 7679 4971, r.hazell@ucl.ac.uk.

Coalition Government in Germany

The Unit has published a short piece of research on coalition government in Germany, initiated during a visiting fellowship at the Unit by Bernt Gebauer of Freiburg University. The paper, entitled 'Coalition Government in Germany: The Formation and Operation of Multi-Party Rule', focuses on various features of coalition government since 1949. It examines the nomination of the Chancellor, the coalition formation process, the role of the cabinet, the relationship between the executive and parliament, and in particular the structures and processes devised to ensure the smooth internal management of coalition governments. The research, which ends with a short analysis of the advantages and drawbacks of Germany's system of coalition government, is based on a wide range of secondary sources in both English and German.

The paper (c.13pp) is available free of charge from the Unit. Contact: Ben Seyd, 020 7679 4972, b.seyd@ucl.ac.uk

Top Courts

Research visits on this project have now been carried out to the Spanish Constitutional Court, High Court of Australia, Supreme Court of the United States, and Supreme Court of Canada. The German Constitutional Court will be visited in the new year. In addition to meeting both judicial and administrative members of the courts, Andrew Le Sueur and Richard Cornes have also spoken to officials in lower level courts, government departments, members of the media and practitioners. Current work on the project is centred around preparation of the report for the ESRC. This report will set out a series of basic questions raised by the project - from the major structural issues (for example, what sorts of top courts should the UK have) through to more detailed issues such as how

cases in the top court or courts should be dealt with - e.g. how much of the argument should be dealt with orally. This report will then be used to undertake further consultation within the UK on any possible reforms, and inform the writing of the book which will be the final product of the research.

Contact: Richard Cornes, 01206 873380, rmcornes@essex.ac.uk.

Managing Conflicts After Devolution

Managing Conflicts After Devolution: A Toolkit for Civil Servants (Constitution Unit occasional paper) by Lucy Hunter offers a series of practical techniques on conflict management between administrations post-devolution. Using examples from Australia and Canada the paper provides a template from which strategies for dispute resolution can be gleaned, breaking down the process into issues relating to the problem, the process and the people involved so as to allow easier identification of the root of the problem. The paper discusses conflict resolution in terms of avoidance and long term relationship management, as well as at the most basic level of effective use of public resources. *Managing Conflicts after Devolution* will provide useful guidance for anyone with policy responsibilities working for any of the governments in the United Kingdom; but as the paper itself stresses the principles which guide conflict management can also be applied on a much wider scale.

The report is now available (see publication list for details). Contact: Robert Hazell, 020 7679 4971, r.hazell@ucl.ac.uk

Publications received

- *Under Pressure: Are we getting the most from our MPs?*, edited by Greg Power, Hansard Society, £10.
- *Creating a Working Parliament: Reform of the Commons chamber*, by Greg Power, Hansard Society, £7.50.
- *The New Gender Agenda*, edited by Anna Coote, IPPR, £10.95.
- *Left Turn: The New Zealand General Election of 1999*, ed. J. Boston et al, (Victoria University Press: 2000) ISBN 0 86473 404 2
- *State of the Nation Poll*, Joseph Rowntree Reform Trust: <http://www.icmresearch.co.uk/reviews/2000/state-of-the-nation-2000.htm>
- *Blair's Britain, England's Europe: A View from Ireland*, ed. Paul Gillespie, Institute of European Affairs (The Brunswick Press: Dublin, 2000) ISBN 1-874109540, £15.

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please return the events flyer enclosed. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm

Lecture: State of the Union Lecture

Professor Robert Hazell, Director, Constitution Unit
'An Unstable Union: Devolution & the English Question'
11 December, 6.00 p.m. One Great George Street

Seminar: Can Politicians and Judges Work Together to Protect Human Rights?

Dr Janet Hiebert: Department of Political Studies, Queen's University, Canada
12 January 2001, 1.00-2.30 p.m., The Constitution Unit,
(sandwiches available from 12.30)

Seminar: The British Constitution in the 20th Century

Professor Vernon Bogdanor: Brasenose College, Oxford
15 February 2001, 6.00 p.m. The Constitution Unit, UCL

Seminar: What Works and Doesn't Work in London's New Assembly?

Trevor Phillips: Chair of the Greater London Assembly
16 March 2001, 1.00-2.30 p.m., The Constitution Unit,
(sandwiches available from 12.30)

Future Events

Canadian High Commission

Conference: Freedom of Information: what can the UK learn from the Canadian experience?

5 March 2001, Canada House, Trafalgar Square
contact: Gillian Licari, tel: 020 7258 6624

Public Management and Policy Association (PMPA)

Lecture: Reform of the Civil Service: a sceptical view

Prof. Vernon Bogdanor, Chair: Sir Christopher Foster
6 February 2001, PricewaterhouseCoopers
contact: Michaela Lavender, fax: 020 7543 5695

Public Management and Policy Association (PMPA)

Lecture: Reforming and modernising the Civil Service

Sir Richard Wilson (Head of Home Civil Service)
15 March 2001
contact: Michaela Lavender, fax: 020 7543 5695

Public Management and Policy Association with FDA

Lecture: The Union comes under pressure: how can the State survive?

Robert Hazell - 8 March 2001, Belfast
contact: Michaela Lavender, fax: 020 7543 5695

New Publications by the Unit

Please refer to the Unit's order form for further details:

- *The State and the Nations: The First Year of Devolution in the United Kingdom*, ed. Robert Hazell (Imprint Academic: Dec 2000) pbk. £14.95
- *Regional Government in France and Spain*, by Paul Heywood and Andy Smith, Unit briefing with the Joseph Rowntree Foundation pp. 40 (Aug 2000) £5.
- *An Unstable Union: Devolution and the English Question*, State of the Union Lecture, by Professor Robert Hazell, Unit paper, (Dec 2000) £5.
- *Managing Conflict After Devolution: A Toolkit for Civil Servants*, by Lucy Hunter, Unit briefing (Dec 2000) £10.
- *Coalition Government in Germany: The Formation and Operation of Multi-Party Rule*, by Bernt Gebauer, Unit occasional paper, pp.13 (Dec 2000) free.

Useful Websites

Hansard Society: Consultation on Scrutiny Role of Westminster

<http://www.democracyforum.org.uk/>

House of Lords Appointments Commission:

<http://www.houseoflordsappointmentscommission.gov.uk/>

Neill Committee Report:

<http://www.public-standards.gov.uk/>

Points for Prosecutors:

<http://www.lslo.gov.uk/>

Data Protection and FOI:

<http://www.dataprotection.gov.uk/foi.htm>

New Bibliography on Federalism: The Institute of Intergovernmental Relations at Queen's University Canada, has created a new resource on federalism, available to users on-line.

<http://130.15.161.15/iir/>

Castan Centre for Human Rights Law, Monash University, Australia:

<http://www.law.monash.edu.au/castancentre>

Centre for Ombudsman and Governance Studies, University of Reading:

<http://www.rdg.ac.uk/AcaDepts/lp/PolIR/GSEISframe.html>

The Forum of Federations, Canada:

<http://www.forumoffederations.org>

