

# MONITOR

## The Constitution Unit Bulletin

Issue 4

October 1998

### Year Two: Home Office takes the lead

The first year legislative programme was dominated by the devolution bills, to Scotland, Wales and Northern Ireland. In all, 11 constitutional bills will have been passed, of which six were connected with devolution. This must be a record for a single legislative session. The complete list of first year bills is on page 2. Half of them still have to complete their remaining parliamentary stages in October-November.

Three of the bills in the first session came from the Home Office, of which the biggest was the Human Rights Act. But in the second session the Home Office really moves centre stage, with

three tricky items all landing on Jack Straw's desk. First will be the report of the Neill Committee on Standards in Public Life, which should report soon on Controls on Party Funding. The report will cover the feasibility of banning overseas contributions, the machinery required to regulate other contributions, and the case for some state funding. Legislation can be expected before the next election, because the Government has a manifesto commitment to ban foreign contributions and to require disclosure of large donations. It is unlikely in the second session, because of the need to consult with the other political parties. [contd. on page 2]

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### New Look Mailing

Thanks to all of you who completed our reader survey, which was circulated with the last edition of the **MONITOR**. As a result, we have made some changes to this mailing.

For the first time we are circulating, with the Monitor, a

copy of Charter88's magazine 'Central Lobby'. This includes updates about the government's constitutional reform programme, as well as useful reference information. By circulating Central Lobby with this mailing, we can devote more space in the **MONITOR** to detailed commentary and feature articles, as well as updates about the Constitution

Unit's work. Both of these were identified as popular by readers.

We hope that by sending you both publications we are able to bring you more information which will be of interest. However, this is a trial arrangement and we would welcome your comments. Contact: Sara Northey.

**New address!      New address!      New address!      New address!**

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## **First Year Legislative Programme 1997-98**

### *Devolution*

- Referendums (Scotland and Wales) Act 1997
- Government of Wales Act 1998
- Scotland Bill 1998
- Northern Ireland (Elections) Act 1998
- Northern Ireland Bill 1998
- Regional Development Agencies Bill 1998

### *Europe (Amsterdam Treaty)*

- European Communities (Amendment) Act 1998

### *ECHR incorporation*

- Human Rights Bill 1998

### *Electoral reform*

- European Parliamentary Elections Bill 1998
- Registration of Political Parties Bill 1998

### *Elected Mayors*

- Greater London Authority Referendum Act 1998

At the end of October will come the report of the Jenkins Commission on Electoral Systems, which has been asked to recommend a proportional alternative to first past the post for elections to the House of Commons. Jenkins is widely expected to recommend 500 constituency members elected by AV or SV, topped up by 100 additional members to provide an element of proportionality. The manifesto commitment was to hold a referendum in this Parliament, but the timing already looks tight to implement the change in time for the next general election, because of the wholesale boundary review that would be required. Electoral reformers should not necessarily cry foul: the British public need a lot of educating on the issues involved, and a rushed referendum would not produce a well informed result. (See our Briefing on *Electoral Reform in New Zealand*, reported on page 5).

The third hot potato in the Home Secretary's lap is freedom of information. After David Clark was sacked in the reshuffle in July this was transferred from the Cabinet Office to the Home Office. The draft Bill, originally promised by David Clark for the spring, will now be further delayed as a new team of Ministers and officials get to grips with the

issues. It is unlikely to appear before the New Year. Only a few junior members of the Cabinet Office Freedom of Information Unit have transferred to the new bill team. The new Minister is Lord Williams of Mostyn, who led on the Data Protection Bill, and is now promoted to Minister of State.

The head of the freedom of information bill team is Lee Hughes, who has been coordinating the Home Office interests in FOI. Nigel Varney, head of the Human Rights Unit, moves across to deal with party funding and the report of the Neill Committee. The Jenkins Report will be handled by Gay Catto and Paul Regan. All report to Carolyn Sinclair, director of the Constitutional and Community Policy Directorate.

## **Blair's first reshuffle**

David Clark has been replaced by Jack Cunningham, who takes the title of Minister for the Cabinet Office. He is joined there by Lord Falconer, formerly Solicitor-General, who will assist him in the co-ordinating role of Cabinet 'enforcer'. The other casualty at the centre was Lord Richard, Lord Privy Seal and Leader in the Lords. He is replaced by Baroness Jay, who must now take the lead in developing the government's policy on reforming the Lords.

At the Scottish Office Helen Liddell has been appointed as deputy to Donald Dewar, and she will have the role of Labour's campaign co-ordinator in the run up to the first elections to the Scottish Parliament next May. If Dewar becomes First Minister in the Scottish Parliament it is expected that Mrs Liddell will succeed him as Secretary of State. In Wales Peter Hain becomes Labour's campaign co-ordinator for elections to the Welsh Assembly. His colleague Win Griffiths, junior Minister responsible for devolution, has been replaced by Jon Owen Jones, previously a whip.

The reshuffle brought two consequences in its train for Lord Irvine. The Lord Chancellor had been chairman of QFL, the Cabinet Committee which decides the future legislative programme. That job has been given to Margaret Beckett, President of the Council and Leader of the House. In September Tony Wright resigned as Lord Irvine's PPS, saying that it would enable him to contribute more freely to the debate on political and constitutional reform.

(Tony Wright has joined the Constitution Unit Council: see page 4).

## Lords reform - what next?

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The main constitutional bill in the second session will be a bill to remove the hereditary peers. It will have a stormy passage, and could lead to delays in the Lords for the rest of the government's legislative programme. How the government's bill is received will depend upon what they propose to do next. Lord Richard was planning to produce a Green Paper setting out the options for stage two. Baroness Jay will inherit that commitment, and may come under pressure to produce something quickly to avoid being upstaged by the Conservatives. In July William Hague announced the establishment of a Commission on Lords reform, which has already published an initial report (see opposite).

The government's manifesto said that a committee of both Houses would be appointed to undertake a wide ranging review of possible further change, and then to bring forward proposals for reform. To show that it is in earnest about stage two the government will certainly need to establish machinery of some kind. One way forward would be for the government to establish a joint parliamentary committee, as proposed in the manifesto; but to invite it in the first instance to advise on the composition, party balance and appointments system for the all-nominated chamber which will be left once the hereditary peers have been removed. That is a task which needs to be done, and is best done on an all-party basis which commands support in both Houses. It would also help to test whether a parliamentary committee might be capable of the wider role of advising on models for a fully reformed House of Lords. The capacity of a parliamentary committee to conduct such a wide ranging enquiry was called into question in the Unit's Briefing *Lords Reform - A step by step Guide* (see order form).

## Second Year Legislative Programme

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Lords reform is the main constitutional item to be in the Queen's Speech. The second session will also need to contain the bill to establish the Greater London Authority, if the first elections are to be held in 2000. Freedom of information will not feature, but a draft bill should be published by the Home Office during the session. This would enable pre-legislative scrutiny to take place in spring or summer 1999, and introduction of the bill proper in 1999-2000.

The wild card is the referendum on voting reform. The Liberal Democrats may press for an early referendum on the Jenkins proposals. If one is held during 1999 it would make sense to combine it with the European Parliament elections next June. (The cost of a free-standing nationwide poll is around £50m: a sum the Home Office cannot easily find after the comprehensive spending review). But no referendum can be held without legislation. This would have to be rushed through in the next six months for a referendum to be held in June. It seems unlikely that the Cabinet would be able to agree its line on the Jenkins proposals within a month, to introduce legislation at the beginning of December. It also seems unlikely that the government would want to introduce in the same session two bills which will be seen as destabilising, one of the Lords and the other of the Commons.

## Conservative Commission on Lords reform - initial report

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In July William Hague established a new 'Constitutional Commission' to look at options for a reformed second chamber. Its chairman is Lord Mackay of Clashfern, the former Lord Chancellor; the only other members so far are Lord Hurd and Douglas Slater. In September the Commission published its first report, a consultation paper inviting comments by 11 December. The Commission also plans a series of public hearings around the country.

The consultation paper is anything but prescriptive, and invites comments on all aspects of a possible new second chamber. In particular, it recognises - as the Constitution Unit has always emphasised - the importance of considering the *purpose* and *functions* of a second chamber before its composition. The paper floats the possibilities of a second chamber linking the nations and regions; mediating between the UK and European institutions; representing local government, or the professions; acting as a constitutional watchdog or overseeing human rights.

Note that the Commission also has a website, where the full document is available (see back page).

## Appeal Court Judges

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The two new judges in the Court of Appeal are to be Sir Stephen Sedley and Sir John Laws. They are known for their keen interest in constitutional law, and will greatly strengthen the Court of Appeal when hearing ECHR cases.

# Constitution Unit news

## Change of address

At the beginning of September the Constitution Unit moved to a new building, which gives us more space and better facilities for hosting meetings and seminars. We now have a new address, telephone and fax numbers - please adjust your address lists accordingly.

The Constitution Unit                      Tel: 0171 504 4977  
School of Public Policy                      Fax: 0171 504 4978  
University College London  
29/30 Tavistock Square  
London WC1H 9EZ

## Professor Robert Hazell

Congratulations to the Constitution Unit's director, Robert Hazell, who has become Professor of Government and the Constitution at UCL. Robert will give his inaugural lecture on 4 November (see below).

## Seminar and lecture programme

The Constitution Unit intends to make full use of its new facilities by hosting a series of public seminars, starting in October. Attendance is free and all seminars will be held at 29/30 Tavistock Square. The first seminars are as follows:

### **19 October, 6pm, Party Funding**

Dr Michael Pinto-Duschinsky, Brunel University

### **5 November, 6pm, Electoral Reform**

David Lipsey, Jenkins Commission member

### **7 December, 12.30pm, House of Lords Reform**

Andrew Tyrie MP, author of 'Reforming the Lords: A Conservative Approach'

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The Unit is also very pleased to be hosting two public lectures, which are as follows:

### **4 November, 6pm,**

**'Reinventing the Constitution: can the State survive?'** Inaugural lecture

*Professor Robert Hazell, Constitution Unit Director. Gustave Tuck Lecture Theatre, UCL*

### **8 December, 6.30pm,**

**Annual Constitution Unit lecture**

*Lord Irvine of Lairg, Lord Chancellor*

*Church House, Great Smith Street, Westminster.*

London SW1.

## Constitution Unit Council

The Constitution Unit has always been independent and non partisan. We are delighted to have members of all the major political parties on our new Council. The following have agreed to join the Council:

Lord Alexander of Weedon  
Graham Allen MP  
Viscount Cranborne  
Sir Brian Cubbon  
Professor Lord Currie  
Dr Nigel Forman  
Baroness Gould  
Lord Holme of Cheltenham  
Lord Howe of Aberavon  
Lord Hurd of Westwell  
Robert Jackson MP  
Lord Jenkins of Hillhead  
Baroness Kennedy QC  
Lord Lester QC  
Robert Maclennan MP  
Graham Mather MEP  
Professor David Marquand  
Professor Lord Smith  
Lord Woolf  
Tony Wright MP

## Publications and pricing

As well as asking about the format and content of the Monitor, the reader survey circulated with the last issue asked for your input into our pricing policy for publications. We have got to the point where sadly the price of our publications will need to rise.

Thank you all of you who completed and returned the questionnaire: we have done our best to act in line with the recommendations.

The good news is that, contrary to warnings in the last issue, the Monitor will continue to come to you free of charge. Although the majority of respondents said they would be prepared to pay a small sum to receive it, a significant minority did not wish to do so. Thanks to the generous sponsorship we have now secured from BT, the Monitor will continue to be sent out free of charge for at least the next two years.

However, we have decided, with the consent of many of our subscribers, slightly to increase the cost

of our publications. These price increases are reflected on our new publication list, enclosed. We will do everything we can to continue to keep down our prices, which we believe remain good value in terms of their quality, and competitive in comparison to similar organisations.

## Constitution Unit reports

### The New Zealand referendum on electoral reform: Lessons for the UK

With the final report of the Jenkins Commission on the Voting System imminent, the government will need to turn its mind to the referendum it has promised to hold during this parliament. In 1992 and 1993, New Zealand held twin referendums on changing its electoral system. The Unit has examined how these referendums were planned and conducted, and has just published its conclusions in a Briefing, 'Electoral reform in New Zealand: Lessons for the UK'.

#### The 1993 referendum ballot in New Zealand

- I vote to retain the present FIRST PAST THE POST SYSTEM
- I vote for the proposed MIXED MEMBER PROPORTIONAL SYSTEM

The conclusions fall under three headings:

#### *Preparing for the referendum*

The government can hold the referendum either as a stand alone event or alongside the next general election. The Briefing highlights the pros and cons of each option. The main argument for holding the referendum alongside the general election is the increased turnout this would produce, and the greater legitimacy accorded to the outcome. Against this must be set the difficulty of planning for a referendum when the date for UK elections is usually only made public five weeks or so beforehand.

If the UK referendum is not binding on the government, no preceding legislation will be required. But there will need to be a White Paper or similar document, to set out in detail the alternative electoral system. The New Zealand government did not issue such detailed guidelines prior to the 1992 referendum, resulting in confusion among voters about the impact that electoral reform would have on key issues, such as the size of parliament.

#### *Public education*

The UK public is not generally interested in voting systems. There needs to be an imaginative campaign to generate greater public understanding before a referendum can be held. The UK should follow New Zealand's example, by establishing an independent body to oversee voter education. New Zealand's experience shows that the time and financial cost will be significant; a well executed education programme here will take at least eight months, and cost as much as £26m.

#### *Regulating the referendum*

New Zealand's two referendums were characterised by disputes between the campaign groups on the properties and effects of the electoral options. Many of these disputes were resolved by the independent body responsible for voter education. If the UK government does not establish such a body here, it must decide how disputes might be dealt with; this will, at the least, require a temporary body to adjudicate.

**Electoral reform in New Zealand: Lessons for the UK** can be ordered on the enclosed form.

*Further details: Ben Seyd*

### Nordic Lessons for the Council of the Isles

The Belfast Agreement included as a late entry the establishment of a new 'Council of the Isles', to be known as the British-Irish Council (BIC). It will comprise representatives of the British and Irish governments, devolved institutions in Northern Ireland, Scotland and Wales, when established, together with the Isle of Man and the Channel Islands. The Joseph Rowntree Reform Trust has commissioned the Unit to carry out a study looking at the lessons which can be learnt for the BIC from the Nordic Council. The study was carried out over the summer by Mads Qvortrup, and his initial findings were discussed at a seminar in September attended by Anker Jørgensen, former President of the Nordic Council, and Henrik Hageman, its General Secretary.

The Nordic Council has an impressive history of cooperation between the Nordic countries going back to 1952. It began as a body of parliamentarians, with the Nordic Council of Ministers developing 20 years later. Ministers now hold regular meetings in 17 different sectoral groups, but the inter-parliamentary Council continues to be the primary body and source of most initiatives.

The starting point of the BIC is very different. It is to be an intergovernmental body, not inter-

parliamentary; with most of its members being dependent territories of the UK. There is a risk of it being dominated by the UK, or of its becoming effectively a bi-governmental body dominated by the UK and the Republic of Ireland. There may also be difficulty identifying a strong role for the Council alongside the North-South Ministerial Council, the British-Irish Intergovernmental Conference and the new Joint Ministerial Committee on Devolution.

The full report, **Good Neighbours: Nordic Lessons for the British-Irish Council**, will be published in early October (see order form). *Further details: Robert Hazell.*

## Public understanding of new electoral systems

Next year, three elections will be held under new voting systems, in Scotland, Wales and for the European Parliament. The hope is that these new systems will boost voter turnout, and create more participatory political cultures. But there is a risk of the reverse happening: without adequate public education, voters may find the new voting systems intimidating and stay away from the polls.

The Unit has conducted research on the information people will need in order to cast their vote, and on the design of the ballot papers themselves. The research, conducted in conjunction with Social and Community Planning Research, has been funded by the Gatsby Charitable Foundation. Through focus groups sessions in July and August, it tested various ballot paper designs and explored voters' understanding of new systems (regional lists for the EP elections; the supplementary vote for the London Mayor and variants of the additional member system for the assemblies in London, Scotland and Wales).

The level of awareness of the new systems was generally low. Basic information covering the mechanics (how many votes do I have? where do I mark the ballot?) will need to be provided. But before casting their ballot, voters also need to know how the systems work: in the main, these systems do not appear intuitive or familiar, and voters must appreciate their rationale and properties before the details can be grasped.

Such information will need to be presented well in advance of the elections; voters do not want to learn about the new systems in the polling station. They look towards properly planned education campaigns, involving various media, particularly television, and they are unlikely to be responsive to information passed on by the parties.

So far, the Scottish and Welsh Offices have committed themselves to funding public education

campaigns prior to the elections to the new devolved legislatures in May 1999. The Home Office has failed to commit itself to a similar programme for the European Parliament elections in June 1999, in spite of the low turnout (36%) at the last elections in 1994.

Preliminary results from the research have been presented to civil servants, to help them prepare the legal regulations for next year's elections. More detailed analysis is currently being undertaken, and the full results will be released in early November. *Further details: Ben Seyd*

## House of Lords reform: Lessons from overseas

Work is now underway on the comparative study of second chambers overseas and what these can teach us about the second stage of House of Lords reform. The first stage - abolition of the voting rights of hereditary peers - is expected to be announced in the Queen's speech in November.

There have been numerous proposals for a reformed second chamber, ranging from wholly appointed to directly elected, or indirectly elected to represent the UK's nations and regions. There is much that we can learn from overseas to inform the debate, and the countries represented in this study, Canada, Australia, France, Germany, Italy, Spain and Ireland, select the members of their second chambers in a variety of ways.

There has been relatively little discussion so far in the UK on the functions of a new second chamber, as opposed to its composition. This study will look at the role, functions and powers of second chambers abroad and how effectively these are carried out, as well as at election and appointment systems and how these impact on the effectiveness of the second chamber and its public perception.

If a Bill passes during the next parliamentary session, the UK's first step will be to move from a mixed hereditary/appointed house to one which is wholly appointed. This will then remain until the details of stage two are agreed and further legislation is passed. The only precedent for a wholly appointed upper house is that of Canada, where the Senate's perceived lack of legitimacy results in a poor public perception and relative lack of effectiveness.

As well as a major comparative report, due next summer, the Unit will publish several interim briefings on lessons from second chambers overseas. The first of these, **An appointed upper house: lessons from Canada**, will be available in

November (see order form). *Further details: Meg Russell*

## **Review of Local Government Commission**

In March Robert Hazell completed his review of the Local Government Commission (LGC), and the government published his report in the summer. Its main recommendation is that the LGC should be merged with the Parliamentary Boundary Commission. Both bodies are engaged in similar tasks, with the LGC reviewing ward and local authority boundaries, which then become the main building blocks for parliamentary constituencies. Merger would enable the two bodies to synchronise their reviews, spread their cyclical workload, and enable review teams to share the same information.

Merger would require legislation. This might be included in a DETR bill on Modernising Local Government; or in a Home Office bill to implement the recommendations of George Howarth's working party on electoral law and administration. One of the difficulties will be getting the two departments to agree, when both are intensely busy. But a strengthened commission may be necessary to conduct the wholesale review of parliamentary boundaries which would be required to implement the proposals of the Jenkins Commission.

Robert Hazell recommended that the Parliamentary Boundary Commission should delay starting its next review until 2001, loaning its review teams in the interim to the LGC to enable them to catch up on their backlog. He also recommended that the Speaker should no longer be the titular chair of the Parliamentary Commission, and that the deputy chair should no longer be a serving High Court judge, because the workload is too great.

Copies of the review are now available (see order form). *Further details: Robert Hazell*

## **Unicameral Parliaments - Stage Two Report to Scottish Office**

The Unit completed stage two of its research for the Scottish Office on small single chamber parliaments in early September. Four of the parliaments considered in stage one (Denmark, Sweden, Queensland and New Zealand) were visited and local personnel interviewed. In addition three further parliaments were added to the study, the German Länder Parliaments of Lower Saxony and Bavaria and the Catalan Parliament in Barcelona.

Stage two focused on design features of effective unicameral parliaments, under four headings:

- **Legislative Policy Making**

- **Investigatory and Scrutiny Powers**
- **Relationship Between Parliament & Executive**
- **Intergovernmental Relations**

Of these the first topic was the report's main focus, and recommendations include:

- Allocating parliamentary committees' subject areas on a thematic basis
- Allowing parliamentary committees, of their own initiative, to set up joint committees
- Allowing parliament to set up special advisory committees which may include outside experts with speaking but no voting rights.

Intergovernmental relations was a new theme in the second report. It addressed ways in which the Scottish Parliament could be designed to deal effectively with the UK and EU levels of government as well as scrutinising its own Executive. Intergovernmental relations is the subject of a wider research programme at the Constitution Unit.

The complete report **Single Chamber Parliaments: A Comparative Study (Stage 2)** will be available in October - see order form. *Further details: Richard Cornes*

## **Multi-layer Democracy in Germany Insights for Scottish Devolution**

This report outlines the constitutional structure of the federal Republic of Germany. It covers the division of legislative competencies between the Länder (states) and federal government, including the division of administrative responsibilities. The report also considers the Länder's participation in the federal legislative process, via the Bundesrat (federal upper house) and their role in EU policy. There is also a large section on intergovernmental relations within the German system, including financial aspects and dispute resolution between governments. Finally there is a brief section on local government.

The entire report is structured to draw comparisons between the German system and the outline for devolution in Scotland, contained in the Scotland Bill. Each section of description of the German section is mirrored by a parallel commentary on the Scotland Bill.

Copies of the report are now available from the Unit (see order form).

# Bulletin Board

## New publications by the Unit

Checks and Balances in Single Chamber Parliaments: a Comparative Study (Stage One) (February 1998)

Review of the Local Government Commission by Robert Hazell (March 1998)

Electoral Reform in New Zealand (July 1998)

Multi-Layer Democracy in Germany: Insights for Scottish Devolution by Dr Charlie Jeffery (July 1998)

## Forthcoming Publications by the Unit

Single Chamber Parliaments: a Comparative Study (Stage Two) (October 1998)

Good Neighbours: Nordic Lessons for the British-Irish Council (October 1998)

Public Understanding of New Voting Systems (November 1998)

An Appointed Upper House: Lessons from Canada (November 1998)

## Forthcoming events

**'The New Human Rights Act: Power to the People or to the Judges?'** 22 October at 12.30pm  
UCL Lunchtime Lecture by Professor Jeffrey Jowell. Darwin Lecture Theatre, UCL, Gower Street, London WC1.

**Constitutional Reform: A Critical Analysis.** Inaugural seminar series for the Centre for Legal Research and Policy Studies, Oxford Brookes University. For further details please ring 01865 484901 or email dpwoodhouse@brookes.ac.uk

**Constructing Constitutions,** King's College London Legal Theory Seminars 1998-99. For further details please contact Adam Tomkins, John Gardner or Tim Macklem on 0171 836 5454 or visit their website ( see opposite).

See page 4 for the Constitution Unit's seminar and lecture programme.

If you want us to mention a publication, website or forthcoming event in the next issue of the Monitor (December 1998), send details by the end of November to Sara Northey, School of Public Policy, 29/30 Tavistock Square, London WC1H 9EZ Tel: 0171 504 4977, Fax: 0171 504 4978, Email: s.northey@ucl.ac.uk.

## Publications received

An Introduction to Constitutional Law by Eric Barendt, Oxford University Press (1998). £14.99

Bicameralism Reconsidered by Donald Shell, Department of Politics, University of Bristol. Available from the author.

The Bogus State of Brigadoon - What can save Scotland? by Bill Jamieson (Centre for Policy Studies) £7.50.

Constitutional and Administrative Law 8th Edition by Stanley De Smith and Rodney Brazier, (Penguin, July 1998) £25.00 ISBN 0140 258167.

National Assembly for Wales - A Guide to the Government of Wales Act 1998 by Devolution Unit, Welsh Office (August 1998).

Reforming the Lords and changing Britain by John Osmond (Fabian Society - Pamphlet 587, August 1998) £5.

Regional Working in England - Policy statement and survey of the English Regional Associations by TERA. (June 1998)

## Useful Websites

Conservative Commission on Lords Reform at <http://www.mackaycommission.org.uk>

Constitutional Centenary Foundation at <http://www.centenary.org.au/>

German Bundestag at <http://www.bundestag.de/btengver/e-index.htm>

Spanish Congress of Deputies at <http://www.congreso.es/>

Political Resources on the Net at <http://www.agora.it/politic/>

School of Law, KCL  
<http://www.kcl.ac.uk/kis/schools/law/research/legaltheory/theory.htm>

Constitution Unit Website

<http://www.ucl.ac.uk/constitution-unit/>

The Constitution Unit website is funded by The Economist