

CONSTITUTION UNIT MONITOR 55 / NOVEMBER 2013

Major New International Venture The Launch of **Constitute**: The World's Constitutions to Read, Search and Compare

The Constitution unit is delighted to be associated with a major new international venture launched in September and run by UCL's James Melton. **Constitute** (www.constituteproject.org) is a website for reading, searching, and comparing the world's constitutions. Constitutions are critical to countries' development. Outcomes, such as democracy, economic performance and human rights protection, are all associated with the contents of countries' constitutions. It is little wonder that constitutions are often blamed for poor economic and political outcomes or that such outcomes commonly result in constitutional change. Constitute aims to improve constitutional design and, in doing so, increase the likelihood that countries' constitutions will facilitate development, rather than hinder it.

Each year sees numerous countries changing their constitution. Already this year we have observed new constitutions in Fiji and Zimbabwe and constitutional amendments in Brazil, Colombia, the Czech Republic, Georgia, Hungary, Mexico, Switzerland and Tonga. In addition, countries like Egypt, Myanmar (Burma), Tunisia and Yemen are all known to be in various stages of the constitutional revision process. Some might be surprised to learn that so many countries have either recently revised or intend to revise their constitutions. After all, constitutions are meant to be timeless documents that establish the foundations for politics and governance from one generation to the next. This may be true in the United States or Western Europe, but most countries' constitutions are more fragile. A typical constitution lasts only 19 years, which means that, on average, 5 constitutions are replaced and 30 are amended each year.

Despite the high level of constitutional change, there is no country that changes its constitution often enough for public officials to gain much experience as constitutional drafters. Constitutional drafters are typically engaged in a task that they have never done before and will never do again. They lack systematic information on the contents of other countries' constitutions that could help them to decide what topics should be included in their constitution and how to address those topics. Such information is hard to acquire. There is no single location that constitutional drafters can use to access and compare constitutional documents and language – which is critical to drafters – because these documents are locked up in libraries or on the hard drives of constitutional experts.

Constitute addresses this problem by putting searchable copies of the world's constitutions online. However, Constitute is more than just a repository of constitutional texts. The project draws on data collected by the Comparative Constitutions Project over the last 8 years to assign topic tags to provisions within constitutions. This allows for powerful, topic-based searches of those texts. There are more than 300 topics for users to choose from on the site, which range from the fairly general – e.g. the structure of the branches of government – to the very specific – e.g. voting rights for indigenous groups.

For those interested in regional or temporal trends in constitution-making, the search results can be filtered by country and year.

Our hope is that Constitute will improve constitution-making by allowing drafters to consider the full array of possible choices when determining the contents of their country's constitution. We also anticipate that the tool will empower domestic actors not directly involved in drafting the constitution but who are, nonetheless, integral to the success of that process. Increasingly, constitution-making processes ask the public to participate, for example by submitting suggestions to the constitutional drafting committee or approving the completed draft in a public referendum. Constitute will facilitate participation in these aspects of the constitution-making process by allowing groups in civil society, academia, and the general public to inform themselves about how other countries have tackled particular problems.

More generally, the constitutions available on Constitute will be of great interest to numerous domestic actors in countries all over the world. Many constitutions are not available in digital form, and tools to organize their provisions for a non-specialist are rare. But there is substantial demand for such tools from public officials, lawyers, non-governmental organizations, students, etc. Constitute can be used by such individuals to learn about their constitutions. Want to know if your constitution protects freedom of religion or the right to health care or even the rights of breast-feeding mothers? Just search for the term you are interested in, using either a topic or free text search, and filter the results to display only the country where you reside. (For the curious reader, note that only Ecuador's constitution mentions the rights of breast-feeding mothers.)

Constitute was launched at the New York Palace Hotel on 23 September, 2013. Speakers at the event included President Marzouki of Tunisia and former President Otunbayeva of the Kyrgyz Republic. Both Presidents had many kind words to say about the new site. However, they also both emphasized that an effective constitution requires not only meticulous drafting, but also the support of the citizens living under its edicts. By providing universal access to the world's constitutions, we expect that Constitute will help constitutions meet both of these requirements.

For more, see James Melton in the Constitution blog:
<http://constitution-unit.com/>.

Constitute (www.constituteproject.org) was made possible by support from Google Ideas and the Indigo Trust.

Scotland: The Independence Debate

The legal framework for the independence referendum was agreed between governments a year ago. Legislation is still trundling through the Holyrood Parliament, but all the process questions are settled. The question will be “Should Scotland be an independent country?” The franchise will include 16 and 17-year-olds; and the Electoral Commission will hold the jackets. With another year to go, how is the campaign shaping up?

Two Campaigns are up and running. *Yes Scotland* is chaired by former Labour MP Dennis Canavan. The cross party *Better Together* is chaired by former Chancellor Alistair Darling MP. More of the argument however has been between the two Governments. SNP Ministers have produced papers and speeches but their core White Paper is not out until November. UK Ministers have produced several reports in a series of heavyweight “Scotland Analysis” papers, with more to come.

Alex Salmond has put striking emphasis on interdependence rather than independence - the “unions” which independence will involve: not just the EU but a shared monarchy, a shared currency, meaning economic union, a defence union (essentially NATO) and an ill-defined social union. But of course he cannot commit others, notably the UK, to “unions” on his terms. The UK’s Constitutional Analysis paper included a legal opinion that an independent Scotland would be a new state and would have to apply to join any such unions.

Legal opinions, or their absence, featured heavily in the EU debate. The Scottish Government did not have (as they had implied) legal advice that Scotland would automatically remain an EU member. They now accept that Scotland, as a new member state, would have to negotiate membership and its conditions and they hope to complete negotiations, with UK assistance, before independence. A possible UK referendum on EU membership in 2017 adds further uncertainty to the choice facing voters.

Much debate has been on the economics of independence, with polls showing that both sides believe that Scots would be £500 better off if Scotland left the UK. The SNP argue Scotland is held back by membership of a London-centric UK and would immediately become the world’s eighth richest country. (The North Sea would count in Scotland’s GDP, but no-one would be a penny better off). Corporation tax would be 3% lower in an independent Scotland than the UK. On the public finances, the SNP argue that at present Scotland “more than pays its own way”, and would do better after separation.

This is all about oil. Include it, and Scotland has higher per capita tax income than the UK. The Scottish Government say £1.5 trillion of oil remains in the North Sea. It will generate as much tax in the next 6 years as the last. So there is no need for spending cuts or tax rises, and scope to build up an oil fund. The UK is scathing about those sums. They value reserves at a Net Present Value of £120bn, about one twelfth of the SNP number, and say Scotland is currently very far from the sustainable fiscal position to make an oil fund viable. An oil fund like Norway’s implies impossibly large spending cuts or tax increases. The Institute for Fiscal Studies analysis is close to the UK’s: independence would require marked fiscal tightening. Forecasting oil revenues is a mug’s game, and Governments are not disinterested. In a recent interview, the 95-year-old former Labour Chancellor, Denis

Healey, said Labour in the 1970s had “downplayed” North Sea oil potential for fear of nationalism. It’s hard to escape the conclusion that the incentives on nationalists are all the other way.

Currency choices too have been controversial. Scottish Ministers’ economic advisers argue for a Sterling currency union, with the Bank of England serving both countries, governance arrangements including joint control over monetary policy, and a fiscal pact, so that the currency is not undermined by excessive borrowing. They argue this is in both Scottish and UK interests.

The UK takes a different view. Their Analysis paper suggested these currency options on independence: a Sterling currency union, using Sterling unilaterally, joining the Euro, or an independent Scottish currency. Monetary union works in the UK because there is a fiscal union and a political union to support and oversee it. The Chancellor strongly hinted that continued monetary union without those would not be in the UK’s interests. Independent observers criticised the Scottish Government’s currency plan as not a credible option, as the complex governance arrangements proposed could not cope with a financial crisis; most pointed to an independent currency.

The First Minister restated his commitment to formal monetary union in the Isle of Man, perhaps hinting the alternative was using Sterling without a formal monetary union, as the Isle of Man does. The UK argued this would allow Scotland only the most limited monetary powers. Certainly it would be impossible for a country with no lender of last resort to support a sophisticated banking system. The UK analysis also covered banking and financial services: Scotland was more dependent on financial services than any part of the UK except London, and its customers mainly lived elsewhere in the UK. Independence would put this at risk, as there would no longer be a single UK market for financial services.

Both Governments produced papers on microeconomic issues. The Scottish Government planned to streamline economic regulators to reduce cost in a more flexible framework. The UK made a micro economic argument for the benefits to business and trade of an integrated UK market. In a matching macroeconomic paper they set out an abstract economic argument for an integrated market, estimating it was worth about £2000 to each Scottish household. Apart from EU membership, international issues have had a lower profile. The SNP policy shift towards NATO membership while banning nuclear weapons has been controversial. Unionist commentators argued that NATO was fundamentally a nuclear alliance; even some nationalists thought a non-nuclear stance might block NATO membership. Some suggested that SNP defence plans were based on electoral, not defence, considerations (eg basing a Scottish navy on the Clyde to save jobs, rather than on the North Sea to safeguard oil installations).

The Scottish Government committed to reversing unpopular UK welfare reforms, notably the “bedroom tax”, under independence. They also propose delaying the planned pension age increase (costing about £6bn over 10 years). Meanwhile former Prime Minister Gordon Brown argued for social solidarity across the whole UK, saying this was a “bigger idea” than nationalism. The Institute of Chartered Accountants in Scotland drew attention to EU pension rules implying that independence could require unaffordably large immediate contributions to occupational pension schemes.

There have been some developments in devolution policy. The think tanks Devo Plus and IPPR have made proposals, and each of the main Unionist parties is reviewing policy. In addition to the report of the Liberal Democrat Campbell Commission, we now have an interim report from the Labour Party's Commission, chaired by Johann Lamont. It recommends devolving income tax, but argues strongly for a common system of welfare. The parallel Conservative body, chaired by Lord Strathclyde, has just started.

So far debate has tended towards the negative. The Scottish Government argues the opportunities of independence, but often that just means reversing unpopular UK policies. Where it has produced its own plans, eg on the EU and currency, it has been on the defensive. Although the UK too emphasises the positive, its unusually detailed analytical work has highlighted the risks and uncertainties of independence. The two Campaigns have had limited impact, though attention is likely to turn towards them as the referendum date nears. Public opinion so far has remained stolidly unmoved, so both have work to do.

Further detail, including full references, is in the Scotland's Choices online update at www.eupublishing.com/page/ScotlandsChoices

PARLIAMENT



COMMONS

Syria Vote

On 29 August the government was defeated in the House of Commons on military action in Syria. The constitutional significance of the vote was analysed by Professor Gavin Phillipson at <http://ukconstitutionallaw.org/2013/09>. He concludes that there is now a constitutional convention requiring parliamentary approval for military action. According to this analysis, the significance of the vote lies in three parts: (1) that Ministers felt bound by the vote, establishing that the Commons has a real veto in these situations; (2) that the debate was held before military action, as opposed to Iraq and Libya where Parliament faced a *fait accompli*; and (3) the government's publication of the legal advice may be a precedent-within-a-precedent requiring the disclosure of legal advice. Phillipson concludes that future governments must hold a debate and vote in the Commons before military action, and abide by the result. For complementary analyses, see Meg Russell's post on the Constitution Unit's blog and the report of the Lords Constitution Committee at <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldconst/46/4603.htm>

Europe

The European Union (Referendum) Bill was introduced in the House of Commons on 19 June and second reading took place on 5 July, with committee stage in July and September. The bill requires that a referendum on the UK's EU membership take place before 31 December 2017 and was made possible by Conservative backbencher James Wharton's success in the ballot for Private Members' Bills. Based heavily on the draft bill which his party published in May,

it comes alongside the government's review of the balance of competences, an ongoing attempt to produce a cost-benefit analysis of membership.

The bill is not the first of the Parliament to seek a referendum, following five failed backbench attempts. The European Union Act 2011 already requires referendums before any further transfer of powers. It is hard to tell whether this attempt will succeed. Although Labour abstained at second reading, it has since attempted to obstruct the bill: the Public Bill Committee spent approximately three hours deciding when to meet. The passage of the bill far from guarantees that a referendum will actually take place. Even if the bill receives royal assent, Parliament must subsequently approve the orders clarifying the rules and date of the vote by 31 December 2016. Given that a general election is due to be held before this, such approval cannot be guaranteed.

The first six reports of the government's review of competences were published on 22 June, covering policy areas including the single market and development cooperation. Perhaps disappointingly both for Conservative backbenchers desperate for negative EU publicity and a Prime Minister searching for areas where he can gain concessions, the reports failed to deliver an especially pessimistic analysis of membership. The government might be further alarmed that only two EU governments (Italy and Bulgaria) submitted evidence and Germany and France refused to assist. Mr Cameron's renegotiation strategy also faces practical difficulties and possible interruptions: a new European Commission will take office in late 2014, by which time he might hope to have made meaningful progress before fighting to retain his own office in 2015.

Lobbying Bill

The Cabinet Office introduced a bill on 17 July that proposes to create a register of lobbyists and restrict donations from third-party organisations "for election purposes" and which promote the electoral success of a particular candidate during an election campaign. The bill is to be used to reduce the limit of third party spending from £988,000 to £390,000.

Charities and other third party organisations protested that it would restrict their activities and the chairman of the Political and Constitutional Reform Committee Graham Allen called the bill "rushed and ridiculous... a dog's breakfast.." In response the leader of the Commons Andrew Lansley performed a U-turn by agreeing to revert to the wording of existing legislation which defined controlled expenditure as spending "which can reasonably be regarded as intended to promote or procure electoral success".

The bill would no longer penalise campaigning "otherwise enhancing the standing of a party or candidates", and charities would be regulated only if their campaigns could "reasonably be regarded as intended to 'promote or procure the electoral success' of a party or candidate. The government would also replace the references to advertising, unsolicited material and manifesto and policy documents with "election material", which is the term covered by existing guidance from the Electoral Commission.

Mr Lansley was confident that the bill would pass but the TUC warned that its problems had not gone away as it still limited campaigns against extremist parties, breached the privacy of trade union members and failed to tackle "lobbying in the shadows".

Committees

In June, the Foreign Affairs Select Committee published its report *The future of the European Union: UK Government Policy*, an examination of the principles that should be central to government policy. Its conclusion, that “the Government should frame its approach and its language in pan-EU rather than UK-only terms; and should remain constructive, positive and engaged”, highlighted the difficulty of making any agreed cross-party contribution to the increasingly polarised debate on Europe.

House Business Committee proposals dropped

Following the recommendations of the ‘Wright committee’ in 2009, the coalition agreement included a commitment to introduce a House Business Committee ‘by the third year of the parliament’. This would have responsibility for programming government business in the Commons, as the Backbench Business Committee does (since 2010) for backbench business. Last December the Political and Constitutional Reform Committee began an inquiry ‘revisiting’ the Wright committee reforms, with a key question being progress on the House Business Committee. But in evidence to the PCRC on 16 May Leader of the House of Commons Andrew Lansley confirmed that the promise in the coalition agreement would ‘not be met’ and stated that the government was ‘exercising a reality check and recognising we are not in a place to do this yet’. The committee’s report, published in July, described this as ‘disappointing’ and made a number of recommendations for minor improvements to the Backbench Business Committee process and other matters.

Political and Constitutional Reform Committee on legislative standards

The PCRC also reported, in May, on its inquiry on ‘ensuring standards in the legislative process’. Central to the recommendations was establishment of a ‘legislative standards committee’, along the lines previously proposed by the Better Government Initiative and Hansard Society. Such a committee would vet all incoming government bills against clear quality criteria. But the government’s reply to the committee’s report – published in July – bluntly rejected the proposal. A similar recommendation was previously made by the Leader’s Group on Working Practices in the Lords, to be established as a Lords committee. The PCRC had instead proposed a joint committee of both chambers. The best hope for such a proposal probably remains in the Lords, where the government is weaker both numerically and procedurally.

Procedure Committee reports: EDMs and PMBs

The Commons Procedure Committee has also pursued interesting inquiries this year under its new chair Charles Walker (Conservative). In July the committee published a report on Early Day Motions (EDMs) which some dismiss as pointless ‘parliamentary graffiti’. But the committee concluded that EDMs are valued by many members, and can perform an important role in communicating parliamentary opinion (although some are more trivial, and signed by just a handful of members). It rejected any large-scale change to the system. In September the committee reported on Private Members’ Bills (PMBs). The recommendations included renaming PMBs as “backbench bills”,

possible replacement of the ballot system with prioritisation based on number of signatures (with a requirement for cross-party support), and possible timetabling (perhaps including use of the current ten minute rule slot). The committee rejected the idea of moving PMBs from their traditional debate on Fridays to a Tuesday or Wednesday evening.

Procedure Committee inquiry: bill committee memberships

In June – shortly after publication of the Unit’s report on Commons bill committees (see page 7) – the Procedure Committee announced a new inquiry, considering how members are selected for such committees. While select committee members are now chosen by ballot, bill committee members continue to be chosen by the whips. Both the ‘Wright committee’ and the Unit’s report had proposed that this be changed. The **first witnesses in the inquiry**, on 19 June, were Meg Russell and Tony Wright.

Political Reform and Constitutional Committee: Reshuffles

In its report of June 2013, the committee was critical of the culture of constant reshuffles that has characterised British politics for much of its modern history, but complimented the government for engaging in only one major reshuffle since taking office. It concluded quite boldly that Secretaries of State should be ‘left in post for the length of a Parliament’ and that junior ministers should have a minimum of two years so that all ministers can build up effective networks of international contacts and stable relationships with the civil servants in their departments. However, it seemed to acknowledge that reshuffles were likely to continue despite its recommendation.

Its second major recommendation concerned the creation of a ‘Minister with responsibility for ministerial development’ located in the Cabinet Office, though the committee was divided on this point. The proposed responsibilities of this minister were varied but would include helping to ensure smooth transitions between ministers and setting up a training programme with the Institute for Government ‘that should be compulsory for all new Ministers’

LORDS

Support gathering for small-scale reform

The last Monitor noted the new inquiry by the Commons Political and Constitutional Reform Committee (PCRC) on “House of Lords reform: what next?” This has since been taking evidence on the options for – and desirability of – small-scale reform, following the failure of the government’s bill in 2012. The Unit’s Meg Russell gave oral evidence to the committee on 27 June. The committee is expected to report in the autumn, and is weighing up the merits of changes such as introducing voluntary or compulsory retirement, removing the remaining hereditary peers, and fixing a maximum size for the chamber. One possible vehicle for such changes is a private member’s bill, and in this field there has also been movement in both chambers. Helene Hayman, the former Lord Speaker (Crossbench), has proposed a bill in the Lords, closely resembling that pursued over many years by the former Liberal leader David Steel (Lord Steel of Aikwood). In the Commons, the Conservative backbencher Dan Byles came fifth in the private

member's bill ballot for the 2013-14 session, and has announced his intent to introduce a House of Lords Reform (No. 2) Bill, which remains unpublished but is scheduled for second reading on 18 October. This is expected to resemble Hayman's bill, but may be amended to reflect the views of both the government and the PCRC. With respect to the former, Deputy Prime Minister Nick Clegg has now slightly softened his position on the possibility of small-scale reform, having previously been hostile to the Steel bill. Answering a question in the Commons on 4 June he stated that he was prepared to consider 'housekeeping measures', such as facilitating peers' retirement. Government support will be crucial if Byles' bill is to have any chance of success.

An additional (non-balloted) bill has been published by Conservative PCRC member Christopher Chope, which would limit the size of the Lords to 650 from June 2015, with forced retirements to achieve this if necessary.

Cameron's latest appointments

This last initiative clearly responds to concerns about the growing size of the Lords, which were further fuelled by the announcement of a new round of appointments in early August. The numbers were relatively modest in contrast to Cameron's previous additions: 30 new peers, comprising 14 Conservative, 10 Lib Dem, 5 Labour and 1 Green. But despite this, and despite there having been just two political appointments (and six new Crossbenchers) since early 2011, this round still brought the size of the chamber to a post-1999 high of 838 members (including 53 on leave of absence or otherwise temporarily excluded). Just after the majority of hereditaries were removed in 1999 the equivalent figure was 666. Aside from this, the appointment of a Green (Jenny Jones) was also an important milestone. The party has been pressing to be given peerages ever since Lord Beaumont of Whitley died in 2008. He was - unbeknown to many - the first Green member of the Westminster parliament, but had defected from the Liberal benches. Jones (a former member of the GLA) is therefore the first Green to have ever been appointed. She is also the first peer to have been chosen in her party via an all-member ballot.

New chair of House of Lords Appointments Commission

The body responsible for vetting new party peers for propriety, and for selecting most Crossbenchers, has a new chair after Sir Michael (Lord) Jay completed his five-year term. The new chair is Ajay (Lord) Kakkar, a Crossbencher and Professor of Surgery here at UCL. He has been a member of the Lords since 2010, and was himself chosen by the Commission. The Commons Political and Constitutional Reform Committee held a brief pre-appointment hearing with Lord Kakkar in July, and supported his appointment.

Lords Constitution Committee on the use of armed force

In July, the House of Lords Constitution Committee published their report on the constitutional arrangements for the use of armed force. Despite the Committee having reviewed the topic as recently as 2006, the changing nature of conflicts the UK has intervened in and new institutional bodies such as the National Security Council meant the topic warranted a fresh look.

On the key question of the role of Parliament in declaring war, the Committee endorsed the current convention; that although the decision to deploy armed forces overseas continues to rest with the Cabinet, Parliament should – save in exceptional circumstances – have the opportunity to debate and vote on the deployment.

Gay marriage and the 'new' House of Lords

The extent to which the House of Lords has changed was made starkly clear by the vote on the government's Marriage (Same-Sex Couples) Bill on 4 June. Campaigners had expressed concerns that the historically conservative second chamber would block the bill, and Lord Dear (Crossbencher) proposed an amendment to deny it a second reading. But peers overwhelmingly rejected this by 390 votes to 148, and allowed the bill to complete its passage smoothly. This was a neat contrast to a similar second reading vote by the immediately pre-1999 reform chamber – on the Sexual Offences (Amendment) Bill, which equalised the age of consent. This bill was rejected by 222 votes to 146, and had to be forced through using the Parliament Acts. Unfortunately these events occurred just too late to appear in Meg Russell's new book on the changed House of Lords (see page 7).

EXECUTIVE



Civil Service Reform

In the second half of 2012 Francis Maude, Minister for the Cabinet Office, published his civil service reform plan. Amongst other matters, he argued that ministers should have greater control over the appointment of permanent secretaries. Maude also announced he would commission from an organisation external to Whitehall a two-month comparative review of government structures of a number of countries, with the possibility of adoption of identified best practices.

The Institute for Public Policy Research (IPPR), which won the research contract, published its long-awaited report *Accountability and Responsiveness in the Senior Civil Service: Lessons from Overseas* in June 2013. The report made a number of recommendations, including:

- Strengthening the role of ministers in the appointment of permanent secretaries
- Strengthening the support of Secretaries of State and the ministerial office
- The introduction of fixed term contracts for permanent secretaries
- Strengthening the external accountability of certain senior civil servants.

A month following the publication of the IPPR report, the Cabinet Office then published a report *Civil Service Reform Plan: One Year On*. Some of the IPPR's recommendations were adopted: in particular, the introduction of fixed term contracts for permanent secretaries; and an 'extended ministerial office'. This would involve the personal appointment of more ministerial staff which would include both political appointees and expert advisers. Strengthening the power of ministers in the selection of permanent secretaries was not included. All this has taken place in a context in which government ministers have begun to openly blame the civil service for recent government failures.

In September, the Public Administration Select Committee published its report *Truth to power: How Civil Service Reform Can Succeed*. It noted that the Government had not identified any fundamental problem with the civil service, and at the same time, insisted that fundamental reform was not necessary. The Committee had one simple but bold recommendation: the establishment of a parliamentary commission with bicameral membership to examine the future of civil service. In particular, the Committee wanted a close examination of the doctrine of ministerial responsibility to see if it was 'fit for purpose'. Perhaps it is time: unsurprisingly, the IPPR report and the Cabinet Office had little to say about the responsibilities of ministers to their officials.

IPPR Accountability and Responsiveness in the Senior Civil Service: Lessons from Overseas:

<https://www.gov.uk/government/publications/accountability-and-responsiveness-in-the-senior-civil-service>

Cabinet Office Civil Service Reform Plan: One Year On:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211506/CSR_OYO_LOW_RES_PDF.pdf

The Unit seminar on civil service reform with Guy Lodge and Sir Leigh Lewis can be found here:

<http://vimeo.com/72972774>

Public Administration Select Committee *Truth to power: how Civil Service reform can succeed:*

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/74/74.pdf>

ELECTIONS



Synchronisation of Voting Cycles

The passage of the *Fixed-term Parliaments Act 2011* received considerable media coverage and created a five-year cycle between general elections. The bill also moved forward the elections to the Scottish Parliament and the National Assembly for Wales to 2016 in order to avoid a clash between elections to those bodies and Westminster. Whilst this was intended to be a temporary change, recent events suggest that there is a push from the government to formalise five-year cycles in all of the devolved representative bodies to avoid potential clashes with UK general elections. The Queen's Speech in May of this year announced the government's intention to switch both the National Assembly for Wales and the Northern Ireland Assembly to permanent five-year terms. The latter bill has completed its committee stage in the Commons whilst the former is forthcoming. There have been no suggestions to permanently alter the Scottish Parliament's timetable, though this may be on hold until after the referendum in 2014.

Voting Age

The discussion about whether to lower the voting age to 16 has reignited this year for a number of reasons. Firstly, the Scottish Parliament in late June overwhelmingly approved a bill to lower the voting age for the 2014 Independence referendum to 16, with only the Scottish Conservatives voting against the legislation. Secondly, Ed Miliband has committed Labour to dropping the voting age to 16 in its 2015 election manifesto. As this pledge is a long-standing Liberal Democrat policy, this announcement may be an attempt to make a Labour-Lib Dem coalition more likely in the event of a hung parliament. The combination of these factors might make the second reading in late October of a private member's bill (*Voting Age (Comprehensive Reduction) Bill HL 10*) seeking to lower the voting age to 16 for all elections in the UK more lively than otherwise expected. This issue will probably divide the Coalition, as a Lib Dem peer (Lord Tyler) introduced the bill and comments from Chloe Smith (Parliamentary Secretary at the Cabinet Office) suggest Conservative opposition.

MONARCHY



Succession to the Crown

Royal male primogeniture ended when Parliament passed the succession to the Crown Act 2013. The Act also removed the statutory rule that anyone who marries a Roman Catholic loses their place in the line of succession. But it leaves in place the statutory prohibition against the Monarch being a Catholic – and also leaves untouched the ban on anyone else not in communion with the Church of England. The government have said that the Act will not be brought into force until all the other Realms where the Queen is also head of state have made the necessary changes to their own law. In Canada that may take some time, because of legal challenges. In order to avoid the need for constitutional amendment (a process requiring assent of all the provinces) the Canadian government proposed a minimal change enacted by the Succession to the Throne Act 2013, which merely assents to the change in the law made by Westminster.

That has now been the subject of two court challenges. In Ontario a law student Bryan Teskey presented an application to the province's Superior Court arguing the Succession to the Throne Act, 2013, is unconstitutional, being in violation of the Canada Act 1982 and the Canadian Charter of Rights and Freedoms. That application was dismissed in August, but is now subject to appeal. In Quebec two professors from Laval University filed a broadly similar motion with the Quebec Superior Court. The Justice Minister had the option of referring the question directly to the Canadian Supreme Court, but that has not been done. The litigation will proceed more slowly, but seems certain to end up in the Supreme Court.

In the meantime, the wider process remains on hold, and the birth of Prince George has removed any sense of urgency. The UK government has always insisted that all the realms must change course together. The fear is that if the Canadian law is found to be unconstitutional, Canada could end up having a different line of succession to the other realms.

DEVOLUTION



Northern Ireland

It was a grim summer in Northern Ireland, with Protestant protests against the regulated flying of the Union flag over Belfast City Hall in the winter re-erupting over communal parades. Sustained rioting followed the rerouting of the most symbolic Orange Order march in north Belfast on the twelfth of July.

The Sinn Féin mayor of Belfast was subjected to nasty physical jostling and abuse when he attempted to carry out his civic duties in the Protestant Shankill area the following month. Further bitterness was injected by a parade in Castleterragh, Co Tyrone, supported by SF, to commemorate dead IRA 'volunteers'. This in turn became a pretext for the first minister, Peter Robinson of the Democratic Unionist Party, to withdraw support for a proposed 'peace centre' at the old Maze prison outside Belfast. It was to be largely funded by the European Union special programme for Northern Ireland, and strongly supported by SF because of its association with the IRA hunger strikes of 1980-81.

Concern about deteriorating intercommunal relations had been expressed in June by the US president, Barack Obama, visiting for the G8 summit in Co Fermanagh. The former US envoy to the region Richard Haass was subsequently appointed to mediate between the parties on the visceral issues of flags, parades and dealing with the past. Mr Haass had his first meetings with them in September. While he attempted to set an end-of-year deadline for agreement, he was immediately countermanded by Mr Robinson, only willing to concede that 'progress' could by then be made.

Wales

The key development for Wales has still not materialised; the UK Government has still not published its response to the Silk Commission's report, which was publicly postponed from 'the spring' at the end of June. There has been a complex ongoing private intergovernmental negotiation, with the Welsh Secretary seeking to minimise any changes, despite support from the Treasury for Calman-style partial devolution of income tax. The Welsh Government appears willing to accept tax devolution subject to various safeguards – notably, a referendum before any income tax devolution comes into effect. One precondition was a short summer consultation on the devolution of stamp duty land tax, insisted on by the Secretary of State, which closed early in September. No doubt the response will materialise later in the autumn, enabling it to be incorporated in the draft Wales bill currently being framed with a legislative slot in the 2014-15 Westminster session.

The Welsh Government's determination to test the limits of the National Assembly's current legislative powers saw the introduction and rapid passing of a bill to establish powers for Welsh ministers to regulate the pay of agricultural workers, following the abolition of the (England and Wales) Agricultural wages board by the UK Government. The Welsh Government claims this is within devolved powers relating to agriculture. The UK Government clearly disagrees – though the same matter is devolved in Scotland – and the Attorney General has referred the bill to the UK Supreme Court.

The implications of the Scottish independence referendum continue to be felt in Wales, with the First Minister continuing to call for a post-referendum 'constitutional convention' to entrench devolution and put an end to ongoing debates about devolution and what he has called 'constitutional tinkering'.

People On The Move

Sir John Thomas is the new Lord Chief Justice, following the retirement of Lord Judge. **Lord Justice Leveson** was appointed President of the Queens' Bench Division in Thomas's place. **Professor Lord (Ajay) Kakkar** is the new chairman of the House of Lords Appointments Commission. **Roger Masterman** (former researcher with the Constitution Unit) has been made Professor and Head of Department at the Durham Law School. **Baroness Hale** is the new Deputy President of the Supreme Court, following the retirement of **Lord Hope**.

CONSTITUTION UNIT NEWS

Meg Russell's book launched in the Lords:

On 17 July Meg Russell's new book *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford University Press) was launched at an event hosted by the Lord Speaker, Frances D'Souza, in the House of Lords River Room. This was attended by peers of all parties, and others from inside and outside parliament. D'Souza welcomed the book - which describes the internal dynamics of the post-1999 Lords and its impact on policy, drawing on official records, interviews and questionnaire evidence from peers - as a much-needed contribution to public understanding of parliament. The book also includes media analysis and public opinion poll evidence on whether the Lords can be considered 'legitimate', discusses the chamber's historical development, bicameralism overseas, and options for Lords reform – arguing that the chamber is much changed, and now relatively influential, but little understood. **It can be ordered from the OUP website at a 40% discount (£30 rather than £50) for a limited period, by using the discount code RUSS13. For more details of the book and reaction to it, see the dedicated page on the Unit website.**

Report on Commons bill committees taken up by Procedure Committee:

June also saw the launch of our Rowntree-funded report on reform of public bill committees, at a well attended event in the House of Commons. The report - *Fitting the Bill* - was introduced by its lead author Meg Russell, with responses from former Leader of the House Jack Straw (Labour) and Procedure Committee chair Charles Walker (Conservative). It called for a number of reforms to encourage greater permanence and subject specialism on bill committees, arguing that they have fallen well behind the Commons departmental select committees in terms of both influence and reputation. The research was based on both a historical survey of bill committees in the Commons and calls for their reform, and study of equivalent committees in overseas parliaments - which are almost invariably permanent and subject specialist (as are our select committees). It rejected the notion of handing the departmental select committees responsibility for scrutinising government bills, and instead suggested experimentation with different models. It emphasised the need to reform how bill committee members are chosen, which is still (unlike for the select committees) controlled by party whips. Within days of publication the Procedure Committee had announced an inquiry on this same subject, which is ongoing (see page 4).

Bulletin Board Constitution Unit Newsletter

Constitution Unit seminar series:

The House of Lords: Westminster Bicameralism Revived? Meg Russell and Mark D'Arcy Tuesday 12 November, 6pm.

Exploring Constitute: A New Tool for Searching National Constitutions James Melton Wednesday 11th December 2013, 1pm.

For information on Constitution Unit Events and to register to attend, visit the Events page at <http://www.ucl.ac.uk/constitution-unit/events>. Seminars are free and open to all. Seminars are held in the Council Room at the Constitution Unit premises at 29-30 Tavistock Sq.

These seminars are funded by her family in memory of Barbara Farbey, late of UCL, who greatly enjoyed them and who died in 2009.

Publications to note:

Ed. M Qvortrup *The British Constitution: Continuity and Change*. A Festschrift for Vernon Bogdanor (Hart Publishing, 2013)

T Wright *British Politics: A Very Short Introduction* (Oxford University Press, 2013)

I McLean, J Gallagher & G Lodge *Scotland's Choices: The Referendum and What Happens Afterwards* (Edinburgh University Press, 2013)

Constitution Unit Publications:

M Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (OUP, July 2013)

M Russell, R Morris and P Larkin, *Fitting the Bill: Bringing Commons legislation into line with best practice* (Constitution Unit, June 2013)

M Russell, 'Parliamentary Party Cohesion: Some explanations from psychology' *Party Politics* 202; doi: 10.1177/1354068812453370

Staff Update

After four years of distinguished work as a Research Associate with the Unit, Dr Ben Yong left in September 2013 to take up a one year lectureship in public law at Queen Mary, University London. He had worked at the Unit for four years on such projects as Ministers from outside Parliament and a study of the role of government lawyers. Ben was a principal co-author with Robert Hazell of our book, *The Politics of Coalition*, concentrating on the government's first eighteen months. He is currently completing a book with the Unit on the work of special advisers.

In July, we welcomed **Christine Stuart**, who has been appointed Research Assistant and will be working with Dr James Melton on the Comparative Constitutions Project, which aims to catalogue the contents of all constitutions written in independent states since 1789. Prior to joining the unit, Christine worked as a researcher for a market research company. She holds a Politics and International Relations degree from the University of Aberdeen and has previously interned at the Scottish Parliament Information Centre (SPICe).

The Unit is very grateful to interns **Stephen Clark, John Crook, Josh Crossley, Seemi Davies, Marc Fuster, Max Goplerud, Robin McGhee and Lucy Shaddock**.

Unit in the Media: some examples

Monarchy

Charities fear funding crisis after accession of Charles to throne – *Independent* (02 June)

Australia inquiry regarding the royal birth *ABC* (06 July)

Robert Hazell was interviewed on World at One about the birth of the Royal baby *BBC Radio 4* (22nd July)

Royal prince could be first monarch of the 22nd century *Telegraph* (23rd July)

Parliament

Unreformed House of Lords getting larger all the time *The Guardian* (01 August)

Meg Russell was interviewed by Caroline Quinn on BBC Westminster hour on the effect of Tony Blair's expulsion of hereditary peers in the House of Lords in 1999, the role of the House of Lords and about her latest book 'The Contemporary House of Lords: Westminster Bicameralism Revived.' (08 Sept) and in BBC Parliament's Booktalk.

Coalition Government

Viewpoints: Is coalition politics here to stay? *BBC News* (17 September)

Unit Committee Appearances and Evidence

The Political and Constitutional Reform Committee opened an enquiry titled 'House of Lords Reform: What Next?' In Jan 2013. Meg Russell submitted written evidence in March. She also gave oral evidence to the committee in June. Read the evidence and view the footage here.

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