

# MONITOR

## CONSTITUTIONAL REFORM PUT ON HOLD

Amidst the gathering economic gloom the government's constitutional reform plans are being quietly shelved. After the fanfare for The Governance of Britain in summer 2007, the draft Constitutional Renewal Bill was greeted by parliamentarians as a bit of a disappointment when they scrutinised its detailed proposals a year later. That might be why the Constitutional Renewal Bill did not feature in the legislative programme announced in the Queen's Speech in November. It may yet be included; but more likely is that some proposals (eg the Civil Service bill) will be introduced separately, in the summer.

A similar sense of slippage afflicts plans for a British Bill of Rights. The government first promised to publish a consultation paper by the spring of 2008; then the summer; then the autumn. In August the parliamentary Joint Committee on Human Rights published their own detailed proposals, with draft bill attached. That failed to galvanise things, and by the end of 2008 the government's proposals had still to appear.

This is not to say that the bill of rights debate is dead. All three political parties are committed to introducing a British bill of rights (in the case of the Conservatives, as a replacement for the Human Rights Act, which they are pledged to repeal). There is a longstanding commitment to a Bill of Rights for Northern Ireland, and growing interest in Scotland. But the Labour government is having particular difficulty in bringing forward its own proposals.

The main difficulty is the lack of enthusiasm for a bill of rights amongst the Cabinet colleagues. The devolved administrations have also raised strong objections. The proposed link to a British statement of values does not help. And now the economic crisis looms darkly over everything. The Ministry of Justice has to find savings of £1bn over the next two years. Senior staff in the Constitution Directorate are moving on. Gordon Brown had hoped to give a new lease of life to the constitutional reform programme, with a bill of rights at its centre, but with time running out, he may have to accept that the time for big constitutional reforms has passed.

### SPEAKER'S CONFERENCE ON DIVERSITY IN PARLIAMENT

In November, MPs approved a motion to create a Speaker's Conference to examine the under-representation of women, ethnic minorities and people with disabilities in the Commons. The idea of a Speaker's Conference was first mooted by Prime Minister Gordon Brown in September 2007, when he suggested representation should

be considered against the 'backdrop' of declining voter turn-out. The Conference's mandate to discover ways to make parliament's membership mirror the diversity in the UK population at large is as urgent as ever: since 1918 a total of 4,659 Members have been elected to Parliament. Of these, just 291 (6%) have been women. Of 646 current Members, only 15 are black or Asian.

Speaker's Conferences are rare: this will be only the sixth ever. Five were formed in the 20th century to consider reforms to the electoral system, such as seat distribution and minimum voting age. They embody a parliamentary convention that controversial changes to electoral law should be agreed on an all-party basis, although this convention has not always been observed. Previous conferences contained around 30 members, and Speaker Selwyn-Lloyd, who chaired the conference of 1973-74, argued the mechanism was too time-consuming and cumbersome. This conference will be less unwieldy. It is made up of sixteen MPs from four parties plus the Speaker.

Their record of success is mixed: in some cases, nearly all of the Conference's recommendations were carried into law, whereas another has been described as 'abortive' since the parties could agree on nothing. Arguably, the first Speaker's Conference in 1916-17, was the most successful: it paved the way for the extension of the franchise to women over 30.

Speaker Michael Martin will chair the Conference. He issued a statement in December emphasising that his main role would be to ensure good order, rather than to ask questions of witnesses himself. The Conference's Vice-Chair is Labour MP Anne Begg. Other Members include Diane Abbott (Lab), John Bercow (Con), David Blunkett (Lab), Parmjit Dhanda (Lab), and Jo Swinson (LD). It will have powers to call witnesses and make recommendations.

Those who have sought answers to the persistent under-representation of women at Westminster could be forgiven for thinking that potential solutions are obvious and that they lie with the political parties. There is an emerging consensus amongst feminist scholars that parties' internal procedures, not broader social factors, are decisive in women's electoral success. The increases in women MPs at Westminster since 1997 are party specific and dependent on the use of equality guarantees, such as all women shortlists. Only Labour has embraced such guarantees; the Conservatives are opposed, and Liberal Democrats are divided. This would likely make recommendations by the Conference a first step to further party reform.

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## DIVERSITY CONFERENCE (CONT'D)

While MPs from the three main parties broadly welcomed the new Conference in the November 12th debate, some complained about the apparent narrowing of its remit. Brown's speech proposing the Conference linked it with proposals for weekend voting and lowering the voting age. On the issue of parliamentary diversity, some MPs called for gays and lesbians and working class people to be explicitly included. And what of the perennial issue of replacing Westminster's first-past-the-post electoral system with a more proportional one – a reform that some believe would help to redress unequal representation? The terms of reference do not rule it out, but a debate in the House of Lords in October saw the Parliamentary Under-Secretary of State for the Ministry of Justice, Lord Hunt, argue that the Conference should not be "distracted" by "going down the cul-de-sac" of electoral reform.

*Faith Armitage, Birkbeck University*

## PARLIAMENT

## House of Lords Appointments Commission

Lord Jay of Ewelme took over (from Lord Stevenson of Coddendam) as chair of the House of Lords Appointments Commission on 1 October. Lord Jay is a former Permanent Secretary of the Foreign Office who was made a peer in 2006 on his retirement, and sits as a Crossbencher. The other three independent members of the Commission have also changed, the new members being Professor Dame Joan Higgins, Dr John Low and Baroness Jane Campbell (herself appointed as a Crossbench peer by the Commission in 2007). The three political party representatives remain unchanged. At his pre-appointment hearing with the Public Administration Committee on 22 July Lord Jay expressed a commitment to improving the image of the House of Lords, including through diversity amongst appointees. He also emphasised that new members appointed to the Crossbenches should be expected to play an "active part" in the work of the House, indicating that the Commission continues to seek greater commitments from potential members to attend and/or vote as time goes on. Lord Jay himself has been a regular attender in the Lords since his appointment and (in contrast to Lord Stevenson, who made a point of absenting himself) has voted in 29% of eligible divisions. In his PASC evidence Lord Jay also suggested that the name of the House of Lords should be changed, and that the Appointments Commission should be put on a statutory basis. His voting record shows that he is not hostile to further reform. In the Lords

votes of March 2007 he supported a 50% or 60% elected chamber and voted against an 80% or 100% elected chamber, and against a wholly appointed chamber.

*See back page for details of a new Unit publication on the Crossbenchers.*

## New faces

In September the Appointments Commission announced two new Crossbench peers: Susan Campbell (now Baroness Campbell of Loughborough) and David Pannick. The October reshuffle then brought important changes. As well as Peter Mandelson, two other Labour members were appointed to the House as ministers: Stephen Carter and Paul Myners. Mervyn Davies joined them in January as the new Trade Minister. Former Leader of the House Baroness Ashton replaced Mandelson as European Commissioner, and was in turn replaced by former Chief Whip Baroness Royall. The new Chief Whip is Lord Bassam of Brighton. Sir Igor Judge also entered the House in October as Lord Chief Justice.

## European Parliament (House of Lords Disqualification) Regulations

On 14 October the Lords debated new regulations which edge the system gradually closer to allowing life peers to depart the chamber. In 2004 it was agreed (in line with European requirements) that "dual mandates", where members sit in the British parliament at the same time as being MEPs, would be disallowed. This however disadvantages peers who, having already entered the House, wish to stand for the European Parliament - as there is no mechanism for renouncing a seat in the Lords. It was feared that allowing members to take temporary "leave of absence" (as Baroness Ashton has following her appointment as European Commissioner) would not meet European legal requirements. The new regulations thereby stipulate that a peer who is an MEP may not attend the House, and will not be issued a writ of summons. This accommodates at least one peer who wishes to stand in the 2009 elections. But it also raises the question of whether other members should not be able voluntarily to depart the chamber in a more formal way. Such a change has often been suggested as a next small step in reform.

## PARTIES AND ELECTIONS

Following publication of the White Paper *Party finance and expenditure in the United Kingdom*, June 2008 (see *Monitor* 40), the

Political Parties and Elections Bill received its second reading in October 2008. At the time of writing (January 2009), it is awaiting movement to Report Stage.

There are four key reforms proposed in the Bill: a greater range of sanctions to be available to the Electoral Commission; increased transparency in respect of donations; the appointment of party nominees as Electoral Commissioners; and amendments to the rules covering candidate election expenses. The first two are relatively uncontroversial. The Electoral Commission has long been calling for a greater range of sanctions, and these calls were supported by the Phillips, CASC and CPSL reviews of party funding and the Commission. The call for greater transparency reflects concerns about the apparent growth in donations by unincorporated associations and by intermediaries. Whilst the proposed measures are uncontroversial, some have argued that the Bill does not go far enough in identifying the original sources of contributions to the unincorporated associations.

The proposal to appoint four party nominees as Electoral Commissioners (one for each of the three main parties at Westminster plus one from the smaller ones) also followed proposals from previous reviews. And, whilst this idea has been favoured by the larger parties, it has still generated controversy – reflected in the hearings at Committee stage. First, it has been argued that the appointment of any party nominees may diminish the independence of the Commission, both literally and in the eyes of the electorate. Second, allocation of the fourth appointment is based solely on representation at Westminster. This could be problematic, since the Commission is also responsible for oversight of elections at other levels of government, where of course, there are other parties in government.

The most controversial proposal, however, is to re-introduce 'triggering' for candidate election expenses. This would mark a return to the system used before 2001 where the *Political Parties, Elections and Referendums Act* (PPERA) defined the start point for monitoring candidate expenses as being the point of dissolution. The view that the current regulatory period fails adequately to capture candidate spending is relatively uncontroversial. However, the proposal to re-introduce 'triggering' has been widely criticised. Firstly, prior to PPERA, 'triggering' barely worked as a regulatory instrument as a result of a lack of legal clarity. Secondly, 'triggering' would present a regulatory problem in as much as there could be as many campaign start points as there are candidates.

In 2005, there were 3,354 candidates. Restricting the analysis to the three largest parties could still mean 1,896 different campaign start points at the next election. Thirdly, it could place an unreasonable burden on electoral agents, 75% of whom were volunteers in 2005. In sum, the proposal has been criticised as being virtually unworkable. This issue received scant attention outside the evidence sessions at the Committee stage. Subsequent scrutiny of this issue, however, may well cause difficulty for the Bill.

*Justin Fisher is Director of the Magna Carta Institute, Brunel University*

## CONSTITUTIONAL WATCHDOGS

### Second government response to PASC report

Staccato dialogue between the Cabinet Office and the Public Administration Select Committee (PASC) about 'constitutional watchdogs' continues. At issue is the watchdogs' governance arrangements: to whom should they account; by whom should they be 'sponsored' (appointed, funded and overseen)?

PASC's original report on the matter, *Ethics and Standards: the Regulation of Conduct in Public Life* (HC 121, April 2007) urged two things. First, that watchdogs be independent of (ie not funded or sponsored by) those they regulate. This critique normally refers to the watchdogs sponsored by the executive, but can also apply to parliament. Second, it urges that a more coherent, collegiate and principles-based approach be taken to the governance and accountability arrangements of the watchdogs. Bringing the watchdogs under a statutory sponsoring commission on behalf of parliament and government was suggested as a means to both ends.

The government's first response, in November 2007 (HC 88), acknowledged the importance of independence. This could be secured by accepting PASC's recommendation that watchdogs' terms of appointment be longer and non-renewable. Beyond that, their independence was 'not in question'. But where PASC has urged a 'collegiate' approach, the Cabinet Office has emphasised the uniqueness of each watchdog, and sidestepped this issue in its second response in January (HC 43). PASC's disappointment at this was compounded by the fact that the move to put the Civil Service Commissioners on a statutory footing had in the meantime fallen by the wayside with the Constitutional Renewal Bill.

Perhaps PASC missed a trick in not capitalising on momentum generated by its first report and subsequent debate in the House of Commons. Oonagh Gay and Barry Winetrobe attempt to recapture it by launching a briefing on the subject (see back page and Unit News, page 07). The briefing provides evidence of comparative approaches to the issue, and develops further principles for the design of the overarching sponsoring body mooted by PASC. Solving this constitutional conundrum is one next step. Set against arguments about the *sui generis* nature of each watchdog, the other will be defining and making a persuasive case for the existence of a class of constitutional watchdog in its own right.

## CHURCH AND STATE

Anglican Communion agonies over gender and sexual orientation at the 2008 Lambeth Conference of bishops did not take all the attention away from specifically UK constitutional issues. On the contrary, the Prime Minister's withdrawal from active involvement in the appointment of bishops raised fresh questions about the rationale of the continued presence of 26 bishops in the House of Lords, and there were signs that the Labour Party was actively thinking about revisiting the Act of Settlement. This 1701 legislation bars Roman Catholics from the throne and requires monarchs to be in communion with the Church of England.

Since a seminar arranged in 2006, the Unit has been continuing to examine the nature of church establishment in England and Scotland. One of the contributions to *Constitutional Futures Revisited* (see back page and Unit news) looked at the future of the monarchy including how far the present character of its religious features could remain unchanged. This coming spring, *Church and State in 21st Century Britain* will review the whole of the system and look at the options for change from disestablishment downwards.

The book is not a polemic for or against establishment. Its aim, rather, is to analyse present arrangements and expose the choices for bringing them more into line with the realities of current belief and unbelief. The task is to make adjustments without damaging the institutions involved even where the nature of possible change may seem uncomfortable and challenging. Whilst repealing the prohibitions against Roman Catholics, for example, could lead to sundering the *compulsory* link between the sovereign and the Church of England, it would not necessarily involve 'disestablishment'. Accordingly, it is hoped that

the book will both encourage and inform the national discussion that needs to take place.

*More about Church and State in 21st Century Britain on back page and at: <http://www.palgrave.com/products/title.aspx?PID=280775>*

## HUMAN RIGHTS

In its second Annual Report, *Monitoring the Government's Response to Human Rights Judgements* (HL 173/HC 1078), published in October, the Joint Select Committee on Human Rights repeated its message from its 2007 report that the government must do more to comply with court judgments which find breaches of individual rights. It also calls on the government to provide a substantive response to recommendations from its last report on adverse judgements, which has been delayed by more than a year.

The latest report highlights law, policy and practice in the UK which continue to infringe on individual rights protected by the Human Rights Act, such as corporal punishment of children, investigations into cases involving the use of lethal force and the total ban on prisoners' voting. Upward delays of five years in resolving the most significant breaches of the European Convention are not acceptable and risk tarnishing the UK's good record in responding to European Court of Human Rights (ECtHR) judgements. Failure to provide domestic remedies may also engage the UK's international obligations - the UK has primary responsibility under the ECHR to give effect to Convention rights.

The Committee repeats previous calls for the Government to provide coherent guidance to Ministerial departments in responses to declarations of incompatibility, and for the Ministry of Justice to play a coordinating role in this. It also calls for a Government response to the new annual report of the Committee of Ministers on The Supervision of the Execution of Judgements of the European Court of Human Rights (first published in March 2008), a Council of Europe body which acts as a public monitoring mechanism on the implementation of ECtHR decisions. The JCHR also requests improved channels of communication for ongoing case developments from the Government to the Committee.

*Link to JCHR report for the 2007-2008 session: <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/173/173.pdf>*

## DEVOLUTION

**Devolution and the Centre**

As the global economic climate has continued to worsen, the governments of the United Kingdom have increasingly had to work together to solve shared economic problems.

Inter-governmental co-operation has also been apparent on the passage of legislation. Welsh and UK institutions have continued to work together to progress further Legislative Competence Orders (LCOs) and in November 2008 the Scottish Parliament passed another Legislative Consent Motion (LCM) in relation to the UK Energy Act. The Queen's Speech contained a range of legislation with applicability in the devolved regions, suggesting that the relationship between the devolved administrations and the centre is going to continue to be lively over the course of the upcoming year. Much of the legislation will require the consent of the devolved assemblies and much of the remainder will at least need the co-operation of the devolved administrations in order to work effectively.

Devolution finance remains an issue of growing importance. The interim report of the Calman Commission on the Future of Scottish Devolution published in December 2008 devoted a detailed chapter to the financial accountability of the Scottish Parliament, and has undertaken to identify different combinations of funding mechanisms in the next stage of its work. In Wales the Independent Commission on Funding and Finance was launched in October, and its chair Gerry Holtham has promised a first report by summer 2009. Meanwhile at Westminster the House of Lords has established an ad hoc Select Committee to examine the effectiveness of the Barnett formula and consider alternative mechanisms: the committee first met on 17 December.

Northern Ireland saw two major developments take place which are likely to have long-lasting repercussions. Firstly, after months of deadlock, an agreement has been reached between the DUP and Sinn Féin on the process to devolve policing and criminal justice powers to Northern Ireland and to start holding meetings of the Northern Ireland Executive again. The second development is that the Conservative and Ulster Unionist parties have reached an election pact whereby they will put up joint candidates in General and European elections. Both of these events suggest a continuing normalisation of politics in Northern Ireland. The DUP-Sinn Féin agreement on devolution reaffirms the hope that politics can work in Northern Ireland without the need for violence; while the introduction of a mainstream UK party offers Northern Ireland

the opportunity for political choices beyond the unionist-nationalist divide.

**Scotland**

The constitutional debate in Scotland was once again overshadowed by Westminster politics following the bye-election campaign in Glenrothes (Gordon Brown's 'back yard'). If the SNP had repeated its 'earthquake' win in a safe Labour seat then this would have improved its prospect of winning more UK seats, and therefore its negotiating position on independence. However, Labour's Lindsay Roy was elected with 55.1% of the vote and a 6737 majority over the SNP (down from John MacDougall's majority of 10,664 in 2005).

While the previous SNP by-election success cemented its new image as a serious challenge to Labour dominance, its 'failure' to repeat the task tells us less about their respective longer term prospects. Clearer is the fact that the personalisation of these by-elections as a gauge of Gordon Brown's government worked in Labour's favour this time, due to the international reception of his financial rescue plan.

This new image of Brown extended to a comparison with Alex Salmond. While Brown seemed able to intervene personally by giving his formal permission to Lloyds TSB to takeover HBOS, Salmond's role was restricted to informal negotiations with the banks over the future of Scottish jobs and the Bank of Scotland's HQ and ability to produce Scottish notes. The process accentuated the image of small nations as vulnerable to global economic shifts. It also did much to damage a carefully cultivated image of Salmond as a statesman on the world stage. This perhaps contributed to a greater ability of Labour to campaign on issues of 'low politics'. In particular, the SNP candidate was the leader of Fife Council, Peter Grant, who became too closely associated with a new charging regime for 'free' personal care for older people.

The SNP's national conversation also appeared to take a back seat to the Calman Commission's first report. Following the restatement of its overarching point – that devolution has been a success within the much-needed Union – and its principle of fiscal autonomy – 'greater tax devolution would be associated with less shared social citizenship' – it emphasises the prospect not only of giving the Scottish Parliament more powers (in areas such as health and safety) but also taking some back (nuclear power). Overall, the report is a masterly attempt to say very little but hint at a lot.

*Paul Cairney, University of Aberdeen*

**Northern Ireland**

Northern Ireland's political class ended another year of living dangerously with the devolved executive meeting once more – ending a five-month hiatus. The deadlock, arising from the refusal by the Democratic Unionist Party to accept the devolution of policing and justice by May 2008, had led Sinn Féin to veto meetings of the Executive Committee from June.

Amid the deepening economic crisis, public unease mounted, as a disconnect yawned between the continued prioritisation of constitutional issues by the dominant parties and the widespread aspiration for the focus to shift towards day-to-day, 'bread-and-butter' concerns. The *Belfast Telegraph* accused the politicians of 'living in some parallel province ... unaware of the rising anger'.

With business activity falling and unemployment mounting, particularly in construction, the business community lobbied hard for ministers to return to the executive table, concerned that public contracts were being held up. The CBI's regional director complained: 'We are in the midst of the world's worst financial crisis and our politicians cannot agree to sit down and talk to each other.'

In November, with fully 60 papers having accumulated in the Executive Committee's in-tray for signing-off, a deal was cobbled together which allowed the executive to reconvene. No date for the devolution of policing and justice was secured by SF, but there was a tacit belief that it would take place after the June 2009 European Parliament election, when the DUP faced an awkward challenge from a party defector and feared SF would top the single-transferable-vote poll.

Fractures remained, however, with the two parties still at loggerheads on other issues, notably the future of academic selection – with chaos looming after its termination this school year. At an angry meeting in west Belfast, one parent declared: 'This is an absolute shambles. I feel such anger that I do not have a clue what is going to happen to my child next year.'

The Ulster Unionist Party and SDLP ministers increasingly behaved as an opposition within the government, casting doubt alongside Alliance on the viability of the DUP-SF relationship. The UUP leader, Sir Reg Empey, described it as 'a coalition of the "ourselves alone" parties, based on the principle of sustaining the divisions and building newer and higher walls'. There were tensions within his own party about a limited electoral liaison with the Conservatives, which provoked DUP

## DEVOLUTION (CONT'D)

ire over the prospect of unionist division at the next Westminster election in seats with a fine sectarian balance.

*Robin Wilson, Queen's University Belfast*

### Wales

Whether this is a reflection of the country's immature political media, more comfortable with personalised sensation than serious analysis, or whether it indicates a more fundamental instability, post-devolution Welsh politics has been dominated by questions of political leadership. In the closing months of 2008, political Wales has been fascinated by the deliciously fractious race for the leadership of the Welsh Liberal Democrats, as well as the sound and fury surrounding the expense claims of Tory leader Nick Bourne. The phoney war preceding the inevitable race to succeed Rhodri Morgan has also continued, with two candidates clearly preparing to stand – favourite Carwyn Jones, as well as Huw Lewis – and speculation continuing about the ambitions of a third possible contender, Edwina Hart.

Given the potential role of the Liberal Democrats as a hinge party in coalition arrangements, Kirsty Williams' victory over Jenny Randerson in the battle to succeed Mike German has wider ramifications for Welsh politics. Williams' elevation makes a future Lib-Lab deal more likely. Not only is she more ideologically attuned to Labour; more parochial concerns also point in this direction. In contrast to Randerson's Cardiff Central constituency, where Labour is the main enemy, in Williams' Brecon and Radnorshire the battle is with the Conservatives, with tactical support from Labour voters an important factor for the Liberal Democrats. It may also be significant that Rhodri Morgan has floated a proposal that Labour soften its stand against PR for local government – this specifically in order to facilitate future coalition negotiations with the Liberal Democrats.

Of more immediate importance, however, are the continued problems surrounding the operation of the current devolutionary dispensation, and in particular the LCO process. While most of the tensions between Cardiff and London remain contained behind close doors, it is clear that the Select Committee on Welsh Affairs is becoming an increasingly assertive veto player in the Assembly Government's legislative plans. Should this trend continue – and there is every reason to expect that it will – then this will inevitably generate very significant tensions within the current governing coalition in Cardiff Bay, but also inside the Welsh Labour Party.

*Richard Wyn Jones & Roger Scully,  
Institute of Welsh Politics*

### Regions

The period has been dominated by bad economic news. Determined to show that it was responding to the challenge of the downturn, in September the Government established a National Economic Council (NEC) to co-ordinate a policy response. This cross-departmental ministerial forum is supported by two committees with a regional dimension: firstly, a Council of Regional Ministers, attended by each of the Regional Ministers to discuss the wider issues affecting the regions; and secondly, a Regional Economic Council that brings regional stakeholders and ministers together to discuss the "real issues" facing their local economies. The prominent role that has now been found for Regional Ministers is striking.

It also raises the question of how they will interact with the new Regional Select Committees (RSCs) at Westminster, which come into effect in January 2009. In July 2008 the Modernisation Select Committee recommended the creation of regional select committees as well as grand committees for each administrative region (except London) in order to strengthen scrutiny of the regional tier, and RDAs in particular. It was proposed that committees would have a small membership, reflect the political composition of the House, and have the ability to travel around and meet in the regions. The Government accepted the recommendations of the Committee, and on 12 November the House of Commons voted for the Standing Order to establish eight regional select committees and the same number of grand committees. The role of the RSCs will be to "examine regional strategies and the work of regional bodies", rather than considering the impact of nationally-set policies.

Progress continues with the existing seven Multi-Area Agreements that were confirmed in the summer of 2008, and negotiations are continuing with other city- or sub-regions that wish to become MAAs. Some (perhaps three) will be ready for sign-off in January 2009, while a further group is aiming to complete in the spring. Contained within the Pre-Budget Report was an indication that two city-regions will be selected at Budget 2009 to become statutory city-regions (to be known as Economic Prosperity Boards). In the same week the Government published its response to consultation on the Sub-National Review. This confirmed that: RDAs will be responsible, jointly with newly-created regional Local Authority Leaders Boards, for a single regional

strategy; that LAs will be required to produce an assessment of local economic conditions; and confirmed the direction of travel on sub-city-regional working.

The strands of sub-regional policy have been drawn into two bills for the new session announced in the Queen's Speech in early December. The Local Democracy, Economic Development and Construction Bill underpins the Government's Community Empowerment agenda but also aims to "devolve decision making to regions and local areas". The second, the Business Rate Supplement Bill, will introduce a limited degree of financial devolution by allowing upper tier local authorities to use the product of a business rate supplement of 2p in £1 to support economic development. Whether any authorities will try to use the power, and any business communities support them, during a recession, remains to be seen.

*James Rees & Alan Harding, University of Manchester*

## INFORMATION POLICY

### Freedom of Information

#### *Freedom of Information and Trust*

One of the objectives of Britain's FOI legislation is to improve levels of public trust in government. Two recent publications highlight the difficulties surrounding this issue.

The first finding is from the 11th Ministry of Justice Information Rights Tracker Survey, published in October. The survey asks the public, among other things, whether public authorities are more open and trustworthy. The latest results found that 37% agreed that authorities were more open and trustworthy while 46% disagreed and 24% neither agreed nor disagreed. The data across all the tracker surveys shows that 'consistently more respondents have disagreed than agreed' that authorities are more open and trustworthy. Although the tracker found that the 'gap has narrowed in the last two waves', it was too early to tell whether this represented simply 'volatility' or a 'discernible trend' of improving trust.

The second set of findings, from the Committee on Standards in Public Life's *Survey of public attitudes towards conduct in public life 2008*, shows the further complexity caused by the role of the media in using and reporting FOI disclosures. The survey found that levels of trust in politicians and their conduct continues to fall. It then asked respondents what issues

INFORMATION POLICY (CONT'D)

were foremost in their mind when answering. The issues most frequently mentioned included the release of MPs' expenses and the Speaker's use of taxis, both of which were disclosed as a result of FOI. Similarly, respondents in Northern Ireland most commonly cited the resignation Ian Paisley jnr, who resigned after a series of FOI requests by a journalist revealed close links to property developer Seymour Sweeney. While all the disclosures can be viewed as 'positive' in making political figures more accountable, the overall effect was a negative impact on public trust and confidence.

*Cabinet Minutes on Iraq*

On 25 and 26 November the Information Tribunal reviewed the Commissioner's recent decision that the Cabinet Office should have to disclose cabinet meeting minutes concerning the Iraq War. Amongst the witnesses was Cabinet Secretary Sir Gus O'Donnell who defended the Government's position of non-disclosure, making the point that "there is a strong public interest for a space within Cabinet for ministers to make their case without fear this will be used against them." Highlighting current circumstances, Sir Gus remarked that disclosure would have a "strong deleterious [effect] on any future discussion."

The Information Commissioner argued that the damage will be limited and that the public interest in showing what went on at this hugely controversial moment in history outweighs the need to protect it. Professor Peter Hennessy,

a witness for the Commissioner, said that the episode should be subject to scrutiny as it represented a major failure of collective Cabinet government.

**Data Protection**

The Information Commissioner is to be given more powers to regulate the Data Protection Act. The MoJ has put forward proposals following the Data Sharing Review and consultation on the Information Commissioner's inspection powers and funding under the Data Protection Act 1998. Among the key proposals are the power to carry out spot-checks on government departments and public authorities, impose monetary penalties for loss of data and the publication of a statutory data sharing code of practice. The proposals are to be introduced 'as soon as parliamentary time allows'.

PEOPLE ON THE MOVE

The October Labour reshuffle saw **Jim Murphy** move from Minister for Europe to replace Des Browne as **Scottish Secretary**, and **Baroness Royall of Blaisdon** replaces Baroness Ashton of Upholland as **Leader of the Lords**.

Nick Clegg's January reshuffle saw **David Heath** become Shadow Leader of the House, and **David Howarth** replaces Chris Huhne as Shadow Secretary of State for Justice.

David Cameron moved **Dominic Grieve** to replace Nick Herbert as Shadow Secretary of State for Justice, and **Alan Duncan** to Shadow Leader of the House.

**Christopher Graham** (Director General of the Advertising Standards Authority), has been named as the new Information Commissioner to succeed Richard Thomas, who steps down at the end of June. **Sir Andrew Likierman** is to be the inaugural chairman of the National Audit Office board, and **Amyas Morse** is to become Comptroller and Auditor General.

**Vijay Rangarajan** has taken up post as the new Constitution Director in the Ministry of Justice.

**Professor Sir Bernard Crick**

The Unit notes with sadness the death of Bernard Crick on 19 December. Sir Bernard was a UCL alumnus, and officially opened the Department of Political Science in 2007. He was also a founder member of the Study of Parliament Group, and his *In Defence of Politics* (1962) remains essential reading for all those concerned about political disengagement.

The Constitution Unit

INTERNATIONAL FOCUS

FOCUS ON CANADA

Canada had an exciting time constitutionally during the autumn. First, a federal general election on 14 October returned the Conservative government to power, with more seats but still as a minority. It proceeded to try to cut federal funding to all political parties, which stung the three opposition parties (the Liberals, the New Democrats and the sovereigntist Bloc Québécois) to band together at the end of November to form an alternative coalition government of Liberals and NDP, with support from the Bloc from outside, to replace the Tories. That news prompted the Prime Minister, Stephen Harper, to ask the Governor-General (the Queen's representative in Canada) to prorogue Parliament until late January 2009 to avoid a confidence vote which it was clear he would lose. Rather controversially, the Governor-General agreed. This action could have parallels for other Commonwealth states (including the UK) where the head of state or his/her representative acts on the advice of the prime minister.

One consequence of the deferred confidence vote was that the federal Liberals moved rapidly to replace Stéphane Dion, party leader and apparent architect of the coalition. He has been succeeded by Michael Ignatieff, who was notably sceptical about the coalition but who has announced his intention to maintain it. Another was that Conservatives' Quebec allies, Action Démocratique du Québec, collapsed and the Parti Québécois surged back, as the Parti Libéral du Québec won a majority in the provincial election on 8 December. But what the situation will be come January and the federal budget may be a different matter.

## CONSTITUTION UNIT NEWS

### State of the Nations 2008

December saw the release of *The State of the Nations 2008*, the latest edition in the Unit's well-established State of the Nations series. Edited by Alan Trench and in collaboration with academics from across the UK the book continues the work of previous volumes; analysing the key events and developments in devolution over 2007 and the first half of 2008.

2007 was a year of great change for devolution in the United Kingdom, it saw nationalist parties enter government in Wales and Scotland for the first time, devolved government return to Northern Ireland and a new Prime Minister in Westminster. The State of the Nations 2008 looks into the background and the likely impact of these and other, less high-profile, developments in assessing the state of devolution in 2008. In addition the book tackles underlying issues, including trends in policy-making and the increasingly problematic way in which devolution is financed.

At a time when devolution is under review the book makes an important contribution, predicting that until Whitehall fully comes to terms with the implications of devolution government will suffer across the UK.

More details at: [www.ucl.ac.uk/constitution-unit/research/devolution/sotn08.htm](http://www.ucl.ac.uk/constitution-unit/research/devolution/sotn08.htm)

### Devolution and Higher Education

A report on devolution and higher education commissioned from the Constitution Unit was published in December 2008. Written by Alan Trench (honorary senior research fellow at the Unit) for Universities UK, which represents university principals and vice-chancellors, the report finds that the devolved governments are subject to greater constraints in shaping their own approaches to higher education than many have thought. Key to this is funding: the system of deferred variable fees (which applies in England, Wales and Northern Ireland) of up to £3145 a year payable after graduation, increases higher education funding at the expense of students. This means the extra income for universities is outside the Barnett formula – so Scotland gets no extra funding, and faces hard choices if it wishes to take a different approach to funding higher education while maintaining the high quality of its universities. Wales has struggled to find ways to mitigate the impact of the UK policy there.

The overall tendency of the UK policy is to reward already-successful institutions, and they are concentrated in south-east England.

It will be harder for universities in Scotland, Wales and Northern Ireland to maintain their position, let alone break into the top league of UK universities if they are not there already.

The report is available from Universities UK's website at: <http://www.universitiesuk.ac.uk/Publications/Pages/Devolution.aspx>

### Constitutional Futures Revisited Launch

The Constitution Unit launched *Constitutional Futures Revisited: Britain's Constitution to 2020*, at a conference in the grand setting of Lancaster House, London, in mid November.

A day of lively and informative panel discussions ensued with academics, politicians, journalists and officials responding to the themes of the book. The sessions mirrored the book's structure, with guests debating the future of devolution, the institutions of the central state, new forms of accountability, and representation.

*Constitutional Futures Revisited* has used the technique of 'futures studies' to create scenarios of how the British constitution is likely to develop over the coming decade. The approach aims to make the book useful for everyone involved or interested in the future of the political landscape. Amongst other questions, it asks whether the future will bring greater dispersal of power from the centre, what is the future of Britishness, and what the implications are of political parties' dual dilemmas over membership and finance?

The conference was hosted in conjunction with the Institute for Government, and the research for the book was funded by the Nuffield Foundation.

To order the book at a 50% discount see: <http://www.ucl.ac.uk/constitution-unit/research/constitutional-futures-revisited>

### Meg Russell Research Fellowship

On 1 October Meg Russell began her three-year ESRC-funded Research Fellowship. This will continue work on the contemporary House of Lords, and also begin two new areas of research. The first is work on the Policy Impact of Parliament, where it is hoped to put together a collaboration investigating the real policy impact of both Commons and Lords. The second area is exploratory work using theories from social psychology to explain political (and in particular parliamentary) behaviour. Meghan Benton, a PhD student in the Department of Political Science, has been appointed as part-time Research Assistant to the programme. Suggestions about the policy impact of

parliament, and use of social psychology are welcome: [meg.russell@ucl.ac.uk](mailto:meg.russell@ucl.ac.uk)

### Constitution Unit seminars

In November, Sam Younger, outgoing chair of the Electoral Commission, gave a seminar in which he reflected on the challenges he faced in his eight years at the helm of the organisation, and those which await his successor. In particular, he highlighted the work the Electoral Commission has undertaken in areas of huge change and controversy such as party finance, modernisation of the electoral process, electoral administration and promoting public awareness of democratic institutions and processes.

Constitutional watchdogs were the subject of the December seminar, where Oonagh Gay and Barry Winetrobe presented the findings of their recent report. Both emphasised the need to set out an overarching set of principles to ensure that constitutional watchdogs can strike a balance between the twin demands of independence and accountability, key among them the concept of "interdependence" between officers, parliament and the executive (see next item).

### Parliament's Watchdogs: at the Crossroads

Five years on from a previous Unit study on constitutional watchdogs, Oonagh Gay and Barry Winetrobe revisit and assess the changing regulatory landscape in the proper conduct of public business. The recent proliferation of watchdogs, their role in comparative jurisdictions and an examination of their relationships to Parliament are central to this edited briefing, which also contains a foreword by Tony Wright MP.

More details at: <http://www.ucl.ac.uk/constitution-unit/publications/unit-publications/144.htm>

### Personnel news

Welcome to Meghan Benton. Meghan has started work as a part-time research assistant to Meg Russell in her work on the House of Lords, the Policy Impact of Parliament and the social psychology of political behaviour. Meghan is working on a PhD in the department on the rights of resident non-citizens. Previously she worked for the Institute for Public Policy Research, and for an MP.

The Unit would also like to thank its sprightly batch of interns for their company and hard work this autumn: Chris Austin, Tony Daly, Peter Lamb, Chris Loxton, Jessica Levy and Chris McCarthy.

# BULLETIN BOARD

## RECENT UNIT PUBLICATIONS

- Gay, O. and Winetrobe, B.K. (eds) *Parliament's Watchdogs: At The Crossroads*. Constitution Unit briefing in association with the UK Study of Parliament Group, 2008.
- Hazell, R. (ed.) *Constitutional Futures Revisited: Britain's Constitution to 2020* (Basingstoke: Palgrave Macmillan, 2009).
- Morris, R.M. (ed.) *Church and State in 21st Century Britain. The Future of Church Establishment* (Basingstoke: Palgrave Macmillan, forthcoming).
- Paun, A. *Towards a New Settlement? A review of experience from the first decade of Scottish devolution*. Constitution Unit Report to the Commission on Scottish Devolution (Calman Commission), July 2009.
- Russell, M. and Sciarra, M. 'Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords', *Parliamentary Affairs* 62(1): 32-52.
- Russell, M. and Sciarra, M. 'The Policy Impact of Defeats in the House of Lords', *British Journal of Politics & International Relations* 10(4): 571 – 589.
- Trench, A. (ed.) *The State of the Nations 2008. Into the Third Term of Devolution in the United Kingdom* (Exeter: Imprint Academic, 2009).
- Trench, A. *Devolution and Higher Education: impact and future trends*. Research report prepared for Universities UK, December 2008.
- Various authors, *Devolution Monitoring Reports September 2008* (Scotland, Wales, Northern Ireland, English Regions, and Devolution & The Centre) Available at [www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html](http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html).

## FORTHCOMING EVENTS

### Constitution Unit Seminars

- Sir Chris Kelly (Chair, Committee on Standards in Public Life), Tuesday 24 February, 6pm, *The Role of the Committee on Standards in Public Life*.
- Tony Travers (Director, Greater London Group, LSE), date tbc, *Elected Mayors*.
- Sir Alan Beith MP (Chair, Justice Select Committee), date tbc, *Devolution: A Decade On*. In association with the Constitutional Law Group.

Other speakers this year will include:

- Jenny Watson (Chair, Electoral Commission)
- Richard Thomas (Information Commissioner)
- Lord Jay of Ewelme (Chair, House of Lords Appointments Commission)

### Constitution Unit and Ministry of Justice seminars

Programme to be announced. Check website or subscribe to events mailing list for details: <http://www.ucl.ac.uk/constitution-unit/events/index.html>

### Government Information Policy seminar series (subscription only)

- Rudi Leoni (Wandsworth Borough Council), Thursday 19 February, 6.15pm. *The Good, the Bad, and the Ugly: Vexatious requests*.
- Richard Allan (European Government Affairs Director, Cisco, and chair of Power of Information Taskforce), Wednesday 20 May, 6.15pm, *Public Information and Public Participation*

Other speakers in the series include:

- The Ministry of Justice Information Directorate
- The Information Commissioner's Office
- The Information Tribunal

For details on how to subscribe see:

<http://www.ucl.ac.uk/constitution-unit/foip/events/seminar-series.html>

## PUBLICATIONS RECEIVED

- Allan, J.R., Courchene, T.J. and Leuprecht, C. (eds) *Canada: The State of the Federation 2006/7. Transitions: Fiscal and Political Federalism in an Era of Change* (Montreal & Kingston: McGill-Queen's University Press, 2009).
- Commission on Scottish Devolution (Calman Commission), *The Future of Scottish Devolution within the Union: A First Report, Vols I and II* (Edinburgh: Committee on Scottish Devolution, 2008).
- Committee on Standards in Public Life, *Survey of public attitudes towards conduct in public life 2008* (London: Committee on Standards in Public Life, November 2008).
- Gash, T., Hallsworth, M., Ismail, S. and Paun, A. *Performance Art: Enabling better management of public services* (London: Institute for Government, November 2008).
- Grauberg, J., Jackson, P.M., Gray, A., Parsons, W., Boaz, A., Shaxson, L. and Parker, M. *Evidence-based policy making*, (London: National School of Government and Public Management and Policy Association, 2008).
- Ministry of Justice, *Freedom of Information Act 2000 – Statistics on implementation in central government: Q3 July – September 2008* (London: Ministry of Justice, December 2008)
- Parliamentary and Health Service Ombudsman, *Improving Public Service: a matter of principle. First Report*, HC9 (London: The Stationery Office, 2008)