In his inaugural lecture last month Robert Hazell highlighted some of the main themes in the Unit’s forthcoming book Constitutional Futures: A History of the next Ten Years, which will be published by OUP in February. These themes will be further discussed at a major conference that month.

The book is the most ambitious project the Constitution Unit has yet undertaken. The Unit has made its name for its detailed studies of individual reforms (devolution to Scotland and Wales, Lords reform etc.). In this book we have tried to view the Annual Subscriptions

Government’s reform programme as a whole, to forecast the cumulative impact of all these different constitutional changes, and to explore the interactive effects between them.

We do so at a time of extraordinarily rapid constitutional change. In all, the Government has constitutional bills in the first session of the new Parliament; with more reforms to come (see The Queen’s Speech, inside). They will transform the political landscape, in ways which are not yet fully understood, and some of which the government almost certainly does not intend.

The book is the first systematic attempt to foresee the full effects of the constitutional reform programme. Because of the scale of the project, all the members of the Unit have been involved, together with experts from six other universities: Professor Paul Craig (Oxford), Professor Conor Gearty (King’s College, London), Professor Richard Macrory (Imperial College, London), Jeremy Mitchell (Open University), Professor Brendan O’Leary (London School of Economics), Frank Vibert (European Policy... [contd. on p.2]
Forum) and Professor Helen Wallace (Sussex). They kindly came to regular meetings of a Steering Group to discuss draft chapters as the book gradually took shape.

However, the result is more than a collection of essays by individual authors. It is a collective attempt to explore the linkages between the different elements in the reform programme, and to develop a better sense of where the programme as a whole may be taking us. The book has a dozen chapters, analysing the impact of the constitutional reform agenda from a wide range of different angles: devolution, Europe, the courts and the legal system, the political and party systems, Westminster, Whitehall, the environment, citizenship and national identity, the nature of the new constitutional settlement.

In his lecture Robert Hazell was able to touch on only a few of the main themes: the huge scale of the changes, most of which are irreversible; the unfolding and dynamic nature of the devolution settlement; and the changes required at the centre if the new constitutional settlement is to rest on sure foundations.

The courts

Changes are required in all three branches of central government: in the executive, the legislature and the judiciary. The courts will play a central part in shaping the new constitutional settlement; and will themselves come under much greater public scrutiny. They will be called upon to adjudicate in high profile political cases, whether devolution disputes or clashes of controversial human rights. That will throw the spotlight on the judges, and on the system for their appointment - in human rights cases on their gender and social background, and in devolution cases on the territorial balance. In government more thought has been given to the judicial impact of ECHR than of devolution. In terms of the workload on the courts that is probably right; but devolution will impose a different set of pressures. It will require a strong legal system, and a system which commands confidence and respect on all sides, to hold the Union together when the politics comes under strain.

The Commons and the Lords

At Westminster both Houses of Parliament will need to rethink their structures and procedures as they adjust to being part of a quasi-federal Parliament post-devolution. There will be major consequences for the House of Commons; but at the present juncture most interest is focused on the changing role of the House of Lords. The whole of our constitutional architecture is changing, and the role of the Lords is likely to change with it. Baroness Jay has said that she wants a Royal Commission to think about the second stage of Lords reform against the background of the other constitutional changes - devolution, the growing influence of the EU, the incorporation of the ECHR, and possible changes to the electoral system for the House of Commons.

Of these the most important is devolution, and the potential in a quasi-federal system for the Lords to represent the nations and regions of the UK. Other roles have also been posited for the House of Lords: that it should integrate upwards as well as downwards, and strengthen links with the EU; or that it should be a human rights watchdog and guardian of the constitution. Not all these roles are necessarily compatible; different expertise would be required, and there is a risk of the Lords becoming overloaded by reformers with different sets of wish lists. But there is also a risk of undershooting on Lords reform: it creates a unique opportunity to underpin other parts of the constitutional settlement, and would be a major opportunity missed if reform simply stopped at removal of the hereditary peers.

Whitehall

In Whitehall the long term consequences of devolution will include an end to the separate Secretaries of State for Scotland, Wales and Northern Ireland; an end to the unified civil service, with the creation of a separate civil service serving the new governments in Scotland and Wales; and more conscious differentiation in Whitehall between all-UK and English functions. The conduct of intergovernmental relations will need to be managed by a strong Secretariat in the Cabinet Office, and to be led by a senior Minister. A strong Ministerial lead is necessary not only in Whitehall but outside, to explain the constitutional reform programme to the wider public. These are fundamental changes to our system of government: as they begin to bite they will require much more explanation.

The text of Robert Hazell’s lecture is now available priced £5 - see order form no. 33. A limited number of copies of the book Constitutional Futures can be ordered at a special pre-publication price of £13 (plus £2 p&p) - see the separate flyer enclosed with this mailing.

A one day conference to discuss the main findings of the book will be held in London on 25 February. See the conference flyer enclosed.
Neill Commission on party funding

This autumn has seen the publication of two key reports: one from a committee headed by Lord Neill, the other from a commission under Lord Jenkins (see below). Although it is the latter that has attracted most of the publicity, the implications of the former are arguably as significant for the UK’s party-based system of democracy.

Neill argued that party funding needs reforming from two angles. First, raising money, where the Committee recommended the disclosure of any donation at or above £5,000. With the partial exception of the Conservatives, this reform was largely supported by the parties and commentators.

More controversial was Neill’s argument that rules covering spending were also required. The Committee remained “agnostic” on whether money could ‘buy’ elections. Of more concern was the possibility that ever increasing spending could reduce politics “to mere consumer preference”. As a result, the Committee recommended that election spending be capped at £20m per party.

Issues that arise from Neill’s recommendations on funding include:

- The impact of the disclosure requirement on donations to the parties. The Committee recognised that the impact might be to reduce levels of private funding; if this persisted, the report acknowledged that the question of state funding would need to be revisited;
- The effect on the parties of capping election spending. At the 1997 election, Labour spent £26m and the Conservatives £28m. In purely cash terms then, spending is significantly scaled back by the proposed limit. But the Committee also recommended that the £20m limit should include ‘in-kind’ benefits; this is likely to affect Labour in particular, since it makes extensive use of trade union funded organisers at election time.

Jenkins Commission on voting reform

The report of the Commission on the Voting System provides for a limited revolution in British politics. At one level, the proposed “AV Top Up” system would end “electoral deserts”, ensuring that both of the two main parties are represented by constituency or top up members throughout the UK. However, the limited proportionality of the proposed system will have only a minor fragmentary effect on the party system. The high thresholds (the minimum vote necessary to gain a top up seat at the 1997 election would have been 10.9%, in Nottinghamshire) mean that only one or two new parties might be expected to gain seats and survive (a Conservative pro-EU breakaway remains the most obvious possibility).

The main issue of debate is how far the proposed system would lead to changes in the type of government in the UK. The Committee was careful not to design a system that ruled out one party government, while at the same time taking a relaxed view of coalitions. While argument has raged over how many past governments would have been coalitions under ‘AV Top Up’, the Committee argues that three out of the last four administrations would have been single party.

Contrary to received wisdom prior to the Jenkins report, it appears as though broad proportionality can be secured through only a limited number of top up seats; between 15-20% of the total. Of the 82 proposed top ups (elected through open lists), 65 would be in England, divided between the metropolitan areas and the counties.

Electoral Commission: has its hour finally come?

Three reports in the last three months have all recommended the establishment of an Electoral Commission. First came the report of the Home Affairs Select Committee on Electoral Law and Administration (September 1998, HC 768). It recommended an Electoral Commission to provide a more continuous and active scrutiny of electoral issues than has traditionally come from the Home Office; and to be the supervisory body for referendums.

Next came the report of the Neill Committee on Party Funding (Oct 1998, Cm 4057). It saw an Election Commission as essential to enforce the new controls it recommended on party funding and expenditure; and suggested it should also take on registration of political parties. But Neill went further and said an independent body was needed to maintain broad oversight of the conduct of elections, to keep electoral law under review, investigate breaches, and report on the conduct of each major election and referendum.

Third came the report of the Jenkins Commission on the Voting System (Nov 1998, Cm 4090). Jenkins recommended an Electoral Commission to implement the new voting system, and to oversee
elections generally. Jenkins also saw a need for an independent body to oversee conduct of referendums, plan a civic education programme, and advise on the question.

The most pressing is the report of the Neill Committee. The government has to act on Neill’s recommendations, because it has manifesto commitments to regulate party funding. If it is to do so by the next election it must legislate in 1999-2000 to have the enforcement machinery in place. That machinery must include an independent Commission. The space to watch is whether the Commission is established simply to control party funding and campaign expenditure; or whether, as all three bodies have recommended, it is a proper Electoral Commission, and given responsibility for overseeing elections and referendums.

The Queen’s Speech

After 11 constitutional bills in the first session, a Queen’s Speech with only three such bills in the second session seems positively modest. They are the bill to reform the Lords by removing the hereditary peers; the European Parliamentary Elections Bill; and the bill to establish the new Greater London Authority and directly elected Mayor. The Lords reform bill will be the shortest but by far the most controversial. The government may want to postpone introducing the bill until it has published the White Paper setting out the new system of appointments, and established the Royal Commission which is to advise on stage two.

The European Parliamentary Elections Bill is being re-introduced after it fell at the end of the last session, when the Lords voted five times to reject the system of closed party lists. Without co-operation from the Lords it will not become law in time to introduce the new PR voting system for the Euro-elections next June. Having made their point the Lords could back down and accept closed lists; or the government could compromise on the system of semi-open lists used in Belgium (see the Unit’s Briefing no. 20 on open and closed lists). Failing agreement the government will invoke the Parliament Acts to force the bill through, but it would not take effect until the next Euro-elections in 2004.

Three other constitutional bills are promised in draft during the second session. The long-awaited Freedom of Information Bill will appear around February, and then be submitted to pre-legislative scrutiny by Select Committees in both the Commons and the Lords. Legislation for directly elected mayors and a cabinet system for local government is to be published in draft form; as is the bill to regulate party funding. The draft party funding bill will also establish the parameters of an Electoral Commission (see above).

The ‘democracy day’ referendums

A major concern for the government in its forward planning programme is how to tie up the loose ends arising from reforms to the House of Lords and the electoral system. Labour has a manifesto commitment to hold a referendum on PR, and will put stage two of Lords reform to a Royal Commission.

One idea currently being floated (although its origin is obscure) is for the two issues to be put simultaneously to the electorate in a ‘democracy day’ referendum. The idea of linking the two issues was given a further boost when, in the Commons debate on the Jenkins report, Jack Straw indicated that the government wished to assess the merits of PR in light of other constitutional reforms, notably changes to the Lords.

Assuming a Royal Commission runs for 12-18 months, a double referendum could be held in autumn 2000. However, this involves both logistical and political downsides. First, the government may not wish to risk holding a high profile referendum so soon before a possible general election date. Second, and more substantively, this timescale would involve reaching a decision on the composition of the Lords prior to that on the Commons. As Lords Jenkins himself has pointed out, this is surely the wrong way around. Won’t voters find it difficult to assess proposals for the upper house, including the method of its composition, without knowing how the lower house is to be elected? There is also the issue of overloading the electorate: stimulating awareness of the issues involved in changing the electoral system is a major task, and might be compromised should voters also be asked to adjudicate on the Lords.

This highlights two issues. First, the disadvantages of deciding important and complex constitutional issues via a double referendum. Second, the desirability of holding the referendum on electoral reform for the Commons prior to a final decision on reform of the Lords. In a forthcoming briefing (see order form), the Unit will be setting out a number of scenarios that attempt to square this circle.
Constitution Unit News

Spring lectures, seminars & conferences

**Human Rights, Privacy and the Media**
8 January, 9am - 6pm
The Constitution Unit & The Centre for Communication and Information Law
Gustave Tuck Lecture Theatre; Gower St, UCL
Enquiries Lisa Fretton; Tel/Fax 0171 391 1514/1442

Is it Possible to Reform the Constitution without Reforming Parliament?
12 January, 12 - 1:30pm
Peter Riddell, *The Times* Political Editor
29/30 Tavistock Square, London WC1H 9EZ

**Hansard Society Forum - What Rules for Referendums?**
18 January, 6:15 - 7:45pm
House of Commons, room tbc

Constitutional Futures: Where are the Government’s reforms taking us?
25 February, 9am - 6pm
The Beveridge Room; Senate Hse; Malet St, WC1

**Directly Elected Mayors**
18 March, 6 - 7:30pm
Tony Travers, Greater London Group, LSE
29/30 Tavistock Square, London WC1H 9EZ

**The Belfast Agreement - One Year On**
15 April, 6 - 7:30pm
Prof. Brigid Hadfield, Queens University Belfast
29/30 Tavistock Square, London WC1H 9EZ

To attend please fax us on 0171 504 4978

Seminar reports

The seminars held so far in this season’s programme have been both highly informative and well attended.

**Party funding and the Neill report**

Our first public seminar was addressed by Dr Michael Pinto-Duschinsky of Brunel University, an expert in political funding. While welcoming much of what the Neill Committee proposed, he pointed to the administrative problems involved in enforcing spending constraints. In particular, the difficulties of deciding what counts as an election expense, and accurately valuing the in-kind benefits used by the parties. He suggested that Neill’s proposals would replace the legal nature of the UK’s electoral culture with an administrative one, dominated by the Electoral Commission, which would be involved in making difficult and controversial interpretations of the law.

Discussion looked at the degree to which Neill’s proposals would increase centralisation in the parties, and the efficacy of voluntary agreements between parties on some funding issues, rather than clear rules.

**Electoral reform**

One week after the report of the Jenkins Commission, the Unit was fortunate to host a discussion led by one of the Commission’s members, David Lipsey, the Political Editor of the Economist.

Lipsey took the seminar through some of the key discussions within the Commission, focusing in particular on the balance between proportionality and government stability. The Commission had been keen to avoid the exaggerative effects and large majorities involved in first past the post, without moving the UK to a permanent system of coalition government, as in Germany.

The discussion raised a number of points: the size of the top up areas and the impact on proportionality, the role of the top up members and the impact of the new system on party campaigning.

**New Research Fellows**

Welcome to three new Research Fellows. David Sinclair joined us in September, and has got *Constitutional Futures* off to press. He is planning a short study of the changes required at Westminster as a result of devolution; and a longer term study on Scottish independence. In November Aisling Reidy came as our Rubin Research Fellow in Human Rights, to prepare a handbook for the public services on the Human Rights Act, and plan for the new Parliamentary Human Rights Committee.

**New subscription opportunity**

As reported on the front page, we are launching a new subscription package, which enables you to save both time and money in ordering publications. For an annual subscription of just £100 for institutions or £50 for individuals, we will send you all our publications within the calendar year. During 1998 that would have represented a saving of 20% for institutions and 60% for individuals.

Now is the time to subscribe, as the subscription period runs from January to December. To do so, please complete the order form enclosed with this mailing.
The House of Lords is to be reformed in two stages: first, the right of hereditary peers to sit and vote will be ended, resulting in a wholly appointed transitional upper chamber. The second stage will follow after a Royal Commission has considered the options.

Canada has the only wholly appointed second chamber in the western world, so provides some insights into how our appointed chamber might operate. A new Constitution Unit briefing - the first in a series on lessons from abroad for the reformed House of Lords - analyses the lessons to be learnt.

Members of the Canadian Senate are effectively appointed by the Prime Minister, nominally to represent the country’s provinces. But appointments are made on a purely party-political basis and Prime Ministers rarely appoint from outside their own party. This system, where seats in the Senate are seen as rewards for long party service, creates particular cynicism amongst Canadians. Consequently the appointed Senate has little respect and its work is ignored, and even ridiculed, by the media and political commentators. Thus the UK government’s plan to review the appointments system so it is open and fair, and so no party has a majority in the transitional House, could be crucial to maintain public confidence.

The Canadian Senate provides a classic example of the link between composition and powers of a chamber. Although it has almost identical powers to the lower house - making it stronger than our House of Lords - it rarely uses them because it is seen as undemocratic for the appointed house to challenge the elected one. Our transitional appointed house will doubtless suffer these same problems.

Despite general agreement on the need for change to the Canadian Senate, successive reform packages over many years have failed. This is because there is no one model for the Senate which has majority support. In particular the different provinces of the country are not in agreement and use Senate reform proposals as an opportunity to vie with each other. Government have little incentive to resolve the situation, as a reformed Senate will be more powerful and more liable to challenge their programmes. The lesson for the UK is that a long drawn out debate on options for the Lords, allowing entrenched positions to develop, could result in the process being stalled. It is therefore important that the government maintains momentum for the second stage of reform if the UK’s second chamber is to be well respected.

The full briefing is now available (see order form), with further ones to follow. Contact: Meg Russell.
The New Northern Ireland Assembly - Transition programme

As part of the preparation for the New Northern Ireland Assembly a series of seminars have been held for its newly elected members. The Unit has been involved with the planning of the seminars and on Thursday 24 September Robert Hazell and Richard Cornes were in Belfast to speak at one of the seminars. The overall theme for the session was, ‘The New Northern Ireland Assembly - Relationships with Other UK Assemblies’.

Robert Hazell spoke on lessons from overseas intergovernmental bodies, focusing on the Nordic Council. Richard Cornes spoke on checks and balances in single chamber parliaments, drawing on work carried out earlier in the year in relation to the Scottish Parliament. Other speakers included: Professor Brigid Hadfield (Belfast University), who chaired the day; Simon James (Cabinet Office Constitution Secretariat); and speakers from the Scotland and Wales. The seminar was highly interactive, with members of the Assembly given the opportunity to query all the speakers about a range of issues they expect to face once the Assembly begins meeting in early 1999. The Unit will be following the progress of all three new assemblies as they begin operation in 1999. Contact: Richard Cornes.

A Panacea for Local Government? The Role of PR

In all the debates about proportional representation, one level of government has been conspicuously absent. A Panacea for Local Government? The Role of PR seeks to redress the balance by analysing the likely impact of electoral reform at the local level and places it within the wider context of other proposed changes to local government structures.

Is PR a panacea? The answer, of course, is no. There are important and useful changes that would flow from its introduction, the most obvious would be to boost the representation of opposition councillors in councils up and down the country. So called one-party states, where a single party has over 85% of the seats would be eliminated. The presence of opposition members in the council improves scrutiny and may act as a check on the governing party, particularly if previously dominant groups fear that they could lose office. On the other hand, PR has disadvantages too. Most notably, hung councils, which are that much more likely under PR, increase the time pressures on already overstretched councillors. If retaining talented councillors is a problem, it is likely to be even more of one under PR.

Despite this mixed endorsement we argue that PR needs to be considered now, not least because if introduced alongside reforms (such as an executive model) some of its disadvantages can be avoided. More importantly, the government’s proposal to move to annual elections for local councils is incompatible with most forms of PR. The increase in ward size necessitated by a move to PR could be minimised by using the existing multi-member wards or by combining two such wards. If annual elections are introduced, this option no longer exists. Another plank of the government’s reform programme, directly elected mayors, should also be considered alongside PR because of the desirability of ensuring that mayor and council are elected using compatible systems.

In the end, the report is a plea for joined up thinking. Local government has seen too much rushed and badly thought out change imposed from above. If the new modernisation programme is to work, electoral reform must be considered in tandem with the wider reforms, and not left to a later stage.

For details of the report, see the enclosed order form. Contact: David Sinclair.

Open and Closed Lists

The main dispute between the Commons and Lords in the last session, running over into this one, was on the European Parliament Elections Bill. It centres on the degree of choice given to voters when electing candidates from party lists. In the technical parlance, the government proposes the ‘closed’ list variant, used in five other EU countries, with the Conservatives seeking an ‘open’ list alternative, used in four others.

If the issue were only about the merits of the systems, a solution might be to look to the ‘semi open’ lists used in, for example, Belgium and the Netherlands. Here, voters can choose to support either a party or a particular candidate, with party votes being used to decide which candidates are elected. While this rarely leads to candidates being elected ‘out of list order’, it does build in a safety valve against unrepresentative party control over the lists, and so offers a compromise. The various models, and the degree of voter choice and party control they offer have all been analysed in a Unit briefing Elections under regional lists: A guide to the new system for electing MEPs.
New publications by the Unit

- Single Chamber Parliaments: a Comparative Study (Stage Two) (October 1998) £10
- A Panacea for Local Government? The Role of PR (October 1998) £5
- Public Understanding of New Voting Systems (January 1999) £10 report, £5 briefing

Forthcoming Publications by the Unit

- Constitutional Futures: A History of the Next Ten Years edited by Professor Robert Hazell (OUP, February 1999) £18 (see page 2 for discount price).

Forthcoming events

- Human Rights Act 1998 - The Implications for Children Tuesday 26 January 1999. NSPCC & Save the Children Conference, One Great George Street, London SW1. For further details please contact Specialist Conferences Ltd. Tel 0171 727 9732 Fax 0171 221 5187.
- Constitutions and the Politics of Identity 3-6pm Wednesday 27 January 1999. King’s College London Legal Theory Seminars. For further details please contact: Adam Tomkins, John Gardner or Tim Macklem on 0171 836 5454.
- Liberal Constitutional Theory Revisited 3-6pm Wednesday 10 February. King’s College London Legal Theory Seminars. For further details please contact: Adam Tomkins, John Gardner or Tim Macklem on 0171 836 5454.
- New Labour Triumphs: Britain at the Polls by Anthony King (Chatham House Publishers Inc. 1998) ISBN 1 56643 057 7
- Political Power and Democratic Control in Britain by David Beetham & Stuart Weir (Routledge, 1998)
- ‘Representatives of the People? The Constituency role of MPs’ by Greg Power, Fabian Pamphlet (October 1998), £10. Tel. 0171 222 8877
- Stability and Choice by Ian Budge, Democratic Audit Paper No. 15 (£12.50). To order please contact Democratic Audit, PO Box 18000, London N1 7WW. Tel 0171 684 3850.

Spring Events

For details of the Constitution
Unit’s Spring series of lectures, seminars and conferences please
see page 5.

Constitution Unit Website

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

The Constitution Unit website is funded by The Economist