

CONSTITUTION UNIT MONITOR 54

JUNE 2013

The Coalition at Three

The Conservative-Liberal Democrat coalition is three years old. This commentary considers how well it has performed so far, before looking ahead to the next two years and beyond. In 2010 the prophets of doom (including Cameron before the election) had forecast that coalition government must inevitably be quarrelsome, short term and weak. By contrast, in its early years the coalition proved to be remarkably harmonious, stable in Parliament and bold in its decision making—for some critics, too bold. It was more consultative and collective in its approach to Cabinet government than its Labour predecessor, riven by the Blair-Brown feuds.

That honeymoon period has passed. The divisions are becoming sharper, over a referendum on Europe, the failings of the deficit reduction strategy, and the tit for tat over Lords reform and the Commons boundary reviews. The mid-term review in January showed how difficult it was to agree any new strategy: it became a restatement of the 2010 coalition agreement. With the 2015 election now looming into view, the partners will focus increasingly on differentiating themselves.

As the divisions grow sharper, the media have started to speculate about whether the coalition can hold together. There has been loose talk about Cameron calling an early election. But the Prime Minister can no longer seek an early dissolution, because of the Fixed Term Parliaments Act 2011. That Act allows for mid-term dissolution in just two circumstances: following a successful no confidence motion; or following a resolution of two-thirds of the House of Commons. These are very high thresholds. The Act does help to buttress the stability of the government. Whether it also enables governments to focus on governing without worrying about the next election is something that we will find out over the next two years.

There has also been speculation that the coalition partners must dissolve the coalition early, to fight the next election as two separate parties. In part this is wishful thinking from discontented Tories. It goes against the usual practice in Europe, and in Westminster countries like Scotland and New Zealand, where coalitions have governed through to election day. If the coalition does dissolve earlier, it will be because the Liberal Democrats decide to leave. They could continue to support the government on confidence and supply, under the kind of agreement which supported the Lib-Lab Pact in 1977-78. But they would be unlikely to benefit electorally unless they could show a big reason for leaving the government, on an issue which commanded public support. If the only reason was to achieve a more distinct profile the public would be left bemused, and the Lib Dems might not achieve their aim. Government gives politicians a lot more profile than opposition, especially for the third party. For the Conservatives, it would obviously weaken the government to lose their majority; but it could strengthen the Conservative case for seeking an outright majority at the next election.

Lessons for future coalitions are explored in the last chapter of The Politics of Coalition, by Robert Hazell and Ben Yong, published in 2012 by Hart Publishing.

EXECUTIVE



Queen's Speech

The Queen's Speech contained three constitutional items. The Northern Ireland Bill will prevent members of the Northern Ireland Assembly also being MPs in the House of Commons or the Irish Parliament; and it will increase the transparency of political donations. The Local Audit and Accountability Bill will close down the Audit Commission and replace it with a new local audit framework. And there is to be a draft Wales Bill, preventing Assembly members from also sitting in the House of Commons; but enabling candidates in Assembly elections to stand on both a regional list and in a constituency. It would also move the Welsh assembly on to sitting for fixed five-year terms, reducing the likelihood of Assembly elections clashing with parliamentary elections (see Devolution section, p.4-5). Missing from the Queen's Speech were three constitutional items which were in the Coalition Agreement in 2010, and were repeated in the Coalition's 2013 mid-term review. These are regulation of lobbying, reform of party funding, and a right of recall for MPs. With only two legislative sessions left, it seems unlikely that these will be reached.

PARLIAMENT



West Lothian Question report

In March the McKay Commission on the Consequences of Devolution for the House of Commons delivered its report. Despite its narrow terms of reference, the Commission started by considering the English Question more widely. England remains a gaping hole in the devolution settlement, with survey evidence showing growing resentment among the English at the advantages conferred on Scotland in particular, but the English do not seem to want devolution for themselves. In chapter two of their report the Commission reject all other solutions to the English Question: federalism, whether with an English Parliament or English regions; strengthening local government in England; or electoral reform, including proportional representation, or a reduction in the number of MPs representing Scotland, Wales or Northern Ireland.

Continued overleaf

Despite rejecting these wider solutions, the Commission felt that in response to the growing sense of grievance among the English, some way must be found of giving a voice for England. They developed a principle, which is the reciprocal of the Sewel convention, that the UK Parliament will not normally legislate on devolved matters except with the agreement of the devolved legislatures. Applying this principle to England, they suggested that decisions with a separate and distinct effect for England should normally be taken only with the consent of a majority of MPs for constituencies in England.

This principle should be adopted by a resolution of the House of Commons. The main means through which it would be given effect would be a specially constituted Public Bill Committee with an English (or English and Welsh) party balance. But MPs from outside England should not be prevented from voting on matters before Parliament; and the right of the House of Commons to make the final decision should remain. So the whole House could still override the views of the specially constituted Public Bill Committee; but they would do so knowing the views of the party balance in England.

The Commission's report will now be considered by Nick Clegg, as the minister responsible for overall devolution strategy, and Chloe Smith, the new Parliamentary Secretary in the Cabinet Office for Political and Constitutional Reform. There are three reasons why they may decide to do nothing. First, they will not want to do anything before the Scottish independence referendum, so as not to provoke the Scots (Alex Salmond's solution to the English Question is Scottish independence). Second, they may feel that minor changes to parliamentary procedure will not assuage the wider English sense of grievance. And third, they may conclude that there is already in place a political self-correcting mechanism: no governing party will want to upset English voters if they want to win the next election, because the English comprise more than 80 per cent of the total electorate.

Prof Charlie Jeffery and Sir Stephen Laws talked about the McKay Commission's report at a Constitution Unit seminar in May. See video on our website <http://www.ucl.ac.uk/constitution-unit/events>

Lords reform rumblings

Lords reform remains far from the government's agenda, following the failure of last year's bill. But both peers and MPs are keeping up pressure for smaller scale changes. In the Lords there have long been concerns that a new set of appointees may be coming, on top of the large number of new peers already created by Cameron in his first year. On 28 February there was a heavy government defeat on a motion proposed by Lord Steel of Aikwood (former party leader David Steel, Liberal Democrat), as amended by Lord Hunt of Kings Heath (Philip Hunt, Labour), calling for 'restraint' in creation of new peers, the immediate introduction of retirement procedures, and the barring of those peers who do not attend or are convicted of criminal offences. A total of 217 peers voted for the amended motion, while only 45 supported the government, making this (at 172 votes) the coalition's largest defeat, and the third largest defeat in the chamber since its reform in 1999. Steel's original motion went much further, seeking to deny an introduction ceremony to any new peers until a system of permanent appointment had been established. This was clearly seen by some as a step too far. But it was an ingenious proposal by which the House might get control of its own numbers, and could yet be returned to.

In the Commons, the Political and Constitutional Reform Committee announced in late January an inquiry into 'House of Lords reform: what next?', with particular emphasis on possible incremental changes such as introducing retirement, a cap on the size of the House, a proportionality formula for appointments, and/or fixed term appointments. Written evidence was invited by 26 March, and oral evidence will follow. The Unit's Meg Russell submitted written evidence, which is available on the Unit website. She is expected to also give oral evidence, probably in June. An authoritative report from this committee, with cross-party support, might help move matters on. One or more private members' bills on the topic in the 2013-14 session seem likely.

New House of Lords committees

In the 2010-12 session, the House of Lords Liaison Committee conducted a review of select committee activity, proposing some streamlining of existing committees and establishment of new sessional committees. This responded to the proposals of the Leader's Group on Working Practices (chaired by Lord Goodlad), but also in part to the greater availability of members to contribute to committee work due to the growing number of peers. In March 2013 the Liaison Committee published its review of these committees' operation in the 2012-13 session, and made recommendations for establishment of new sessional committees for 2013-14. Following 27 proposals from members for new select committees, five are to be established. Two will focus on post-legislative scrutiny: on the Mental Capacity Act 2005 and Inquiries Act 2005. Three will be investigative committees, into 'soft power' in promoting UK interests abroad, the regeneration and sporting legacy from the Olympic Games, and the use of personal service companies for tax collection. The Liaison Committee resisted calls from several peers for establishment of a foreign affairs committee (largely to avoid duplication with the Commons), but the chair indicated in debate on 21 March that such peers 'are pushing at a door that might not be open but is more than slightly ajar'.

COURTS AND THE JUDICIARY



Crime and Courts Act 2013

The Crime and Courts Bill received Royal Assent at the end of April and contains a few points of constitutional significance. Section 33 abolishes the crime of scandalising the judiciary in England and Wales, following controversy over the prosecution of Peter Hain by the Attorney General for Northern Ireland in relation to comments made in his autobiography about a judge (the crime remains in existence in Northern Ireland, pending a consultation there). Sections 34-42 relate to the operation of the new press regulator, providing essentially that exemplary damages may not be awarded against publishers who are members of the approved regulator.

Notably, the Act makes changes to the rules governing judicial appointments and contains specific measures to increase judicial diversity. It provides that where two candidates are of equal merit one may be preferred over the other for the purposes of increasing diversity. Provision is also made for part-time working by judges and the Lord Chancellor and Lord Chief Justice are given a general obligation to encourage judicial

diversity. The diversity provisions are phrased negatively, and it is not clear that they will have significant effect. However, the end result—and particularly the obligation on the Lord Chancellor and Lord Chief Justice to encourage diversity—is stronger than the original draft and may go some way to improving the currently very poor representation of women and minorities amongst the senior judiciary.

Animal Defenders International v. UK

On 22 April the European Court of Human Rights (ECtHR) handed down its judgment in the case of *Animal Defenders International v. United Kingdom*. The applicants had sought to broadcast a television advertisement as part of a campaign against the keeping of primates in zoos and circuses, but this was banned as political advertising under section 321 of the Communications Act. Having lost appeals against this decision in the High Court and the House of Lords, the applicants took their case to Strasbourg, arguing that the blanket ban on political advertising on radio and television contained in section 321 is in contravention of Article 10 of the European Convention (the protection of freedom of expression). The Grand Chamber of the ECtHR rejected the argument by a narrow majority, concluding that the ban on political advertising did not violate Article 10. The majority noted that there is no consensus in Europe on how to regulate political advertising, which allowed the UK government a wide margin of appreciation in determining how to regulate such advertising.

Allowing a less restrictive prohibition on political advertising could give rise to uncertainty, litigation, expense and delay, with the risk that wealthy groups would use smaller social advocacy groups to advocate in their own interest. The minority judgments focus primarily on the fact that the *Animal Defenders* decision is inconsistent with another decision by the ECtHR in *VgT v. Switzerland*, in which it was held that a very similar prohibition on political advertising contravened Article 10. Five dissenting judges said that they found it 'extremely difficult to understand this double standard'.

The ECtHR is not bound by its own precedents and so there is nothing legally wrong with this inconsistency, although direct contradictions between its judgments are unusual. The British judge Sir Nicholas Bratza argued in his concurring judgment that the *VgT* case had been wrongly decided. The relationship between the UK and the ECtHR has become increasingly strained and politicised, with recent press speculation that the UK might withdraw temporarily from the Convention. Is it possible that the majority on the ECtHR were seeking to avoid a damaging split with Britain?

MONARCHY



Succession to the Crown Act

The Succession to the Crown Act, passed finally on 22 April, creates gender-neutral in place of male-preference primogeniture, abolishes marriage to Catholics as a disqualification for succession to the throne, and replaces former wide-ranging royal marriage consent rules with a tighter scheme confined to the first six in line. The Act will be brought into force when it is clear that the 15 Commonwealth 'realms' (those

countries which also have the Queen as head of state) have passed any necessary local legislation. That this may not happen before the expected royal birth in July is covered by the Act's provision making its effects retrospective to the date of the original agreement between the realms in October 2011.

A classic illustration of executive dominance in our parliamentary system, these important alterations to the constitution have been carried through with scant explanation, let alone consultation, about their content or effects—as illustrated by the confused state of much of the parliamentary debate. From the government's point of view, there was no convenient alternative: the imperative was to make sure that, if altered, a single set of royal succession rules should continue to prevail across all 16 realms. In effect, therefore, Parliament was faced with a *fait accompli* because any alteration to the proposals would necessitate going back to the other fifteen realms.

Does any of this matter? At first sight, not a lot: gender neutrality and a pared down marriage consent rule seem fair tidying-up. On the other hand, as indicated in *Monitor 53*, important unfinished business is left hanging: removing one of the discriminatory provisions against Catholics draws attention to the ones left, both explicitly (no Catholic may succeed) and implicitly for Catholics and everyone else not 'in communion with' the Church of England, as successors must be. Catholic voices in both Houses wondered whether there were ways of circumnavigating the supposed fatal objection that, because the sovereign is head of the Church of England, it would be impossible for a Catholic to assume that role. Ministers stuck doggedly to the government's continuing support for Anglican establishment and were not prepared to contemplate further change on principle, let alone on realms handling grounds. But is it sustainable to *half* open cans of worms: can the present form of church establishment really remain unchanged; and what about monarchy's survival in the Commonwealth?

ELECTIONS AND POLITICAL PARTIES



Electoral Registration and Administration Act and the boundaries review

The Electoral Registration and Administration Bill gained Royal Assent in January, following a tumultuous passage through Parliament. Most significant was the Lords' victory in postponing publication of the next boundary review until October 2018. The defeat was orchestrated by both the Lib Dems and Labour: by the Lib Dems in retaliation for the Tories' failure to honour their commitment to Lords reform, and by Labour for fear that new boundaries combined with the new electoral registration system would see a drop-off of lower socio-economic group voters. In the Commons, the defeat was secured when the smaller parties joined the Lib Dems, Labour and four Tory rebels to support the postponement. Much was made of the fact that the vote was the first time that the coalition partners whipped their parties into opposite lobbies (first in the Lords and then in the Commons), but there is little sign that it has acted as a watershed for coalition disharmony.

This is a sideshow to the Act's main purpose, which is the introduction of individual electoral registration (IER) in place of household

registration. IER introduction will involve checking current electors' names against a DWP database, with those who do not match being asked to provide NI numbers and dates of birth as proof of identity. Full implementation is expected in 2015 or 2016. At earlier stages, the government was forced to make several concessions: removing a rolling opt-out, and ensuring that a civil penalty would be created for those who refused to respond when requested to register to vote.

The Act paves the way for an historic change to the UK electoral process, and the potential enfranchisement of over 6 million eligible voters identified by the Electoral Commission as missing from the register in 2010.

DEVOLUTION



NORTHERN IRELAND

The 15th anniversary of the Belfast agreement came, and went, in April. There were no political celebrations and journalistic and academic coverage was remarkably downbeat. 'Is this it?' was the leitmotif. A feminist commentator even despairingly urged the restoration of direct rule from Westminster, on the grounds that this could not be more conservative than the devolved government.

For example, the extension of the Marie Stopes Clinic to Northern Ireland late last year provoked a storm of political protest, from both unionists and nationalists. Women in Northern Ireland continue to be denied access to the 1967 Abortion Act. No one can imagine the legalisation of gay marriage by Stormont, where the Democratic Unionist Party health minister, Edwin Poots, has sustained the ban on blood donations by gays.

With the parties sustaining Stormont's populist resistance to water charging, health and education spending is suffering drastically, over and above the depressing effects of Westminster austerity. Mr Poots (whose brief includes social care) was embroiled in a visceral public row as massive closures in senior citizens' care homes were signalled and an end to heart surgery for children in Belfast was mooted, with parents left considering having to take their child 100 miles to Dublin instead.

In education, meanwhile, the strength of sectarian religious and political interests means that the idea of integrated schooling—despite there being a statutory duty to promote it—has been diluted in favour of 'shared' school campuses. This would achieve some economic rationalisation but do nothing to break down the walls in the heads of teachers, parents and children.

In April, the first and deputy first ministers, Peter Robinson of the DUP and Martin McGuinness of Sinn Féin, finally announced a successor to the *A Shared Future* policy framework elaborated under direct rule to promote reconciliation. But an announcement was all that it was—a series of modest, bullet-point proposals which represented the lowest common denominator on which the two could agree.

Perhaps the most extraordinary development in this regard was the revelation in March that Stormont would not follow Westminster in tightening up the UK's notorious libel laws. Never minded to antagonise the rich or powerful, the finance minister, Sammy Wilson of the DUP, was responsible for failing to bring this before the devolved executive.

Libel tourists may no longer have London as an option but the High Court in Belfast will continue to accommodate them.

Dr Robin Wilson, Honorary Research Fellow

SCOTLAND

Referendum pre-campaign hots up

The focus of constitutional debate in Scotland has, unsurprisingly, centred on the referendum campaign in the last four months. At the end of January, the Scottish government confirmed the wording of the question, adopting that recommended by the Electoral Commission: 'Should Scotland be an independent country?'. It also accepted spending limits amounting to around £6 million (considerably increased from those initially proposed by the Scottish Government), and a 16-week period for the formal campaign during which those limits would apply. In March, it announced its proposed referendum date: 18 September 2014. Since then, it has published its two referendum bills—one extending the franchise to 16- and 17-year olds and making other preparations, the other relating to organisation of the referendum itself. These are now being considered in the Scottish Parliament, first by the Referendum Bill (Scotland) Committee, before moving to the full Parliament.

While the process of legislating for the referendum may be smoothly underway, the same cannot be said for the pro-independence campaign. The UK government and the pro-Union 'Better Together' campaign have started to turn their guns on key elements of the proposed form of Scottish independence. The UK government has released the first two of its Scotland Analysis papers (13 are promised in all), addressing issues of state succession and international law, including membership of the European Union, and of currency. These papers are meant to be 'factual', with the UK government eschewing any 'pre-negotiation' of the terms of independence despite calls from SNP politicians to do so. In practice, the papers also set out the parameters of any future negotiation and give an indication of the UK negotiating position—which, of course, is not particularly favourable to the SNP. As well as the UK government papers, detailed reports have appeared from the Commons Foreign Affairs Committee and the Lords Economic Affairs Committee, as well as ongoing work by the Commons Scottish Affairs Committee. While these committees can all be accused of bias—none includes an SNP MP—they have nonetheless marshalled a range of powerful criticisms of the SNP's plans for independence.

At the same time, the pro-independence campaign seems to be becalmed in the polls. In none has it got support from more than one-third of voters. Its chairman, former MSP Dennis Canavan, has said it needs to 'up its game'. That may be easier said than done; the row about whether an independent Scotland would be able to retain sterling rather than establish its own currency has led to considerable disagreement among independence supporters.

Attempts by the Unionist parties to work out what they might propose as extended devolution following a No vote have also continued. Scottish Labour's devolution commission has produced an interim report proposing devolution of income tax, and some smaller taxes, for 'consultation'. It was published at the party's spring conference, but was accompanied by considerable complaint from a number of mainly Westminster-based Labour politicians about the lack of consultation and the danger of 'appeasing' Nationalists. The Scottish

Conservatives have also established a working group to look at how devolution works, with a remit to report early in 2014. The Unionist side continues to regard this more positive approach as a low priority, instead focussing on attacking plans for independence.

Alan Trench, Honorary Research Fellow
www.devolutionmatters.wordpress.org

WALES

Making the legislative Assembly work

In Wales, the Labour government appears to have abandoned the idea of forming a coalition with another party to supply it with a majority for the rest of the Assembly's term. The March reshuffle brought Mark Drakeford, former special adviser to Rhodri Morgan and coiner of the idea of 'progressive universalism', into government as health minister, and elevated Alun Davies to the cabinet from being a deputy minister. In 2011 there was speculation that the cabinet was deliberately kept small to make room for a coalition partner later on; filling up the ranks suggests that that idea has been ditched. The Labour administration clearly feels happier governing alone with 30 of the Assembly's 60 seats than seeking an accommodation with either the Liberal Democrats or Plaid Cymru.

The legislative programme has seen a number of carefully-framed bills that avoid difficult constitutional issues about the limits on the Assembly's powers. The bill on organ donation has replaced an 'opt-out' scheme with one based on deemed consent, achieving a similar outcome without being so legally provocative. An innovative private member's bill from Mick Antoniw AM will enable the Welsh government to recover NHS costs for victims of asbestos diseases, when civil claims for those conditions are settled.

Considering the Welsh constitution

The promised spring response from the UK government to the Part 1 report of the Silk Commission, on financial devolution, had still not materialised in May. That did not prevent the Welsh government hinting that it would agree to partial income-tax devolution on the Calman model, saying it would help block a Yes vote in the Scottish independence referendum. Signs are that the Treasury is also happy to move ahead with such devolution, suggesting that the main opposition to it comes from the Wales Office.

The Silk Commission has been moving ahead with Part 2 of its work, on whether further powers should be devolved and what those might be. Among the evidence it received was a lengthy submission from the Wales Office, indicating considerable reservations about devolution of any further functions. It also received a carefully-framed note from the Welsh government, calling for the 'reserved powers' model to be applied, devolution of a range of other functions to bring Welsh devolution into line with that for Scotland, and in the longer term devolution of criminal justice and policing and rejecting the idea of devolving social security. The Welsh government emphasised that these were not immediate priorities, nor was the creation of a Welsh legal jurisdiction—despite the problems there would be in moving to a 'reserved powers' model without one.

Although the May Queen's Speech contained no mention of implementing the Silk report, it did contain a draft Wales bill. This concerns electoral arrangements for the National Assembly, extending

Assembly terms to 5 years, removing the ban on 'dual candidacy' and allowing candidates to run for both constituency and regional-list seats, and banning AMs from also sitting as MPs. It does nothing about the size of the Assembly, which would remain at 60.

Alan Trench, Honorary Research Fellow
www.devolutionmatters.wordpress.org

INTERNATIONAL



Zimbabwe

Zimbabwe is set to replace its 33 year-old constitution in the coming weeks. The new constitution was approved by 94 per cent of voters in a referendum held on 16-17 March and, as of this writing, is making its way through the approval process in the Zimbabwean Parliament. The constitution is expected to be promulgated before the end of May by President Mugabe.

The motivation for a new constitution stems from the country's 2008 elections. In those elections, President Mugabe, who has ruled Zimbabwe since its independence in 1980, managed to defeat opposition leader Morgan Tsvangirai in a violent, two-round contest that left many dead and hundreds wounded. However, in the parliamentary elections, President Mugabe's party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), lost control of the lower house to Mr. Tsvangirai's Movement for Democratic Change (MDC). The violence and claims of electoral fraud surrounding the 2008 elections prompted the international community to call for negotiations between ZANU-PF and the MDC. The constitution currently under consideration is one of the concessions made to the MDC in those negotiations.

The new constitution has been highly criticised for granting too much power to the President and failing to adequately protect human rights. For instance, like the previous constitution, the President unilaterally selects the government, has absolute control over the military and police forces, and is granted absolute immunity. In addition, virtually all rights can be restricted by ordinary legislation, and the property rights provisions explicitly allow President Mugabe's controversial land reform policy. Still, it is a significant improvement over its predecessor. Like the 2008 constitution, it establishes a number of oversight commissions; however, rather than allowing the President sole discretion over appointments to those commissions, opposition parties have opportunities to be appointed. There are also more rights included in the new constitution, including protection for women and a number of socioeconomic rights, and unlike the 1980 constitution, the rights provided are not laden with explicit restrictions. Particularly important among the new rights is the inviolable right to human dignity, which, if given a broad interpretation by the courts, can be used to extend unenumerated rights to Zimbabweans.

Will the new constitution improve the daily lives of Zimbabweans? Probably not while President Mugabe and ZANU-PF control the reins of government, but it at least lays the foundation for a more competitive, rights-conscious political system in the quickly approaching post-Mugabe era.

The Leveson Inquiry

The Leveson Inquiry was established in mid-2011 following the phone hacking scandal. The inquiry was chaired by Justice Leveson, and held a number of public hearings over 16 months, examining more broadly the relationship between the press and the public, politicians and police. The final report was published in late November 2012.

The Leveson Report raised some constitutional issues, aside from the central question of press regulation. The first was whether Parliament could require a judge to give evidence to a Select Committee. John Whittingdale's Culture, Media and Sport Committee tried hard to persuade Leveson to appear before them, but he persistently declined, saying that his report spoke for itself. The second issue arose from Cameron's suggestion of a Royal Charter. As information emerged about the way in which the Privy Council operates on the advice of ministers, the choice came increasingly under question, because the rules of Charter bodies are more easily changed by ministers than those of bodies regulated by statute.

The third issue is a wider one, about the desirability of judges chairing inquiries into controversial issues. Britain has a long history of judges chairing controversial inquiries, from the 1959 Devlin report on Nyasaland to Wilberforce on miners' pay, Scarman on the Brixton riots and Scott on arms to Iraq. But now that the judiciary is a more separate and independent branch of government, and the Lord Chancellor is no longer its head, judges may be less willing to accept such invitations, in order to keep their distance from government and preserve their judicial impartiality.

PEOPLE ON THE MOVE

Lucinda Maer is to be head of the Parliament and Constitution Centre in the House of Commons Library, in succession to **Oonagh Gay** (who is now part-time). **Alex Aiken** is the new Executive Director of Government Communications, replacing Godric Smith who had been an interim since Jenny Grey left last autumn. **Mark Sedwill** is the new Permanent Secretary at the Home Office, and **Stephen Lovegrove** is the new Permanent Secretary at DECC. **Jillian Kay** is the new Chief Executive of the Judicial Office, supporting the Lord Chief Justice and the judiciary. Two new Supreme Court judges were appointed in April: **Lord Hughes** (succeeding Lord Dyson, who became Master of the Rolls last October) and **Lord Toulson** (succeeding Lord Walker, who retired last month).

CONSTITUTION UNIT NEWS

COMPLETED PROJECTS AND PUBLICATIONS

Meg Russell's book on the Lords

Meg Russell's new book *The Contemporary House of Lords: Westminster Bicameralism Revived* will be published by Oxford University Press in July or early August. It offers an up-to-date account

of the Lords' contribution to the policy process, as well as a general account of its membership and functions. The book also includes chapters on the chamber's history, on bicameralism in other parliaments around the world, on views of the Lords' 'legitimacy', and prospects for its reform. A central argument is that the 1999 reform that removed most hereditary peers was transformative, as a chamber previously dominated by the Conservatives became one of 'no overall control'. This gave peers both the ability, and a greater confidence, to inflict government defeats and extract policy concessions. Under Labour this empowered the Liberal Democrats in particular, while under the coalition the independent Crossbenchers have now taken a central role. But a stronger Lords does not mean a weaker Commons; instead the two chambers frequently work together, with the result being an overall strengthening of Parliament against the government.

Monitor readers can order the book for £30 (rather than the usual £50), by visiting <http://ukcatalogue.oup.com/product/9780199671564.do#UbXLBNhdCr3> and entering the term 'RUSS13' when prompted for a promotional code. There will also be events in the autumn promoting the book.

Reforming Commons bill committees

June sees publication of the report from the Unit's project on strengthening public bill committees in the House of Commons, funded by the Joseph Rowntree Charitable Trust. This research looked at the experience of legislation committees in other comparable parliaments, to see what Westminster can learn. It shows that the House of Commons is a complete outlier, with its non-specialist, temporary committees for scrutiny of legislation. The public bill committees also now look increasingly odd when compared to the House of Commons select committees, which are (like legislation committees elsewhere) both permanent and specialist. This means that members can build up expertise in the policy field covered by a government department, and also develop effective relationships with each other across party lines. Since the 'Wright Committee' reforms of 2009-10, the select committees are also elected, while the public bill committees continue effectively to be appointed by party whips with no oversight by the chamber. Based on both UK and overseas experience, the report makes a number of recommendations for change, to introduce greater specialism and permanence into the public bill committee system and greater accountability for how these committees' members are chosen. The report can be found [here](#).

Government lawyers in Whitehall

Dr Ben Yong, in conjunction with the Constitution Society, has carried out a short, four-month study examining the work of government lawyers and their role in the provision of legal advice within Whitehall.

The study examined the hierarchy of legal advice within Whitehall; the changing role of government lawyers in the decision and policy-making process; the questions of legality and legitimacy that government lawyers must deal with in being confronted with proposed decisions and policies; and a case study of the legal advice given over the 2003 invasion of Iraq.

Ben Yong found that the arrangements for the provision of legal advice within Whitehall remain primarily departmental, although there are various mechanisms in place for sharing particular legal services and ensuring coordination and consistency of legal advice across

government. Government lawyers are involved earlier and in greater depth in the policy-making process than before, because of changes on the administrative side, a more 'proactive' approach from lawyers, and the uncertainty created by increasingly complex legal frameworks such as the Human Rights Act. There is a formal hierarchy of legal advice, but there are also intermediary actors such as First Treasury Counsel whose legal advice may be considered authoritative in practice.

This project was funded by Nat Le Roux, Chairman of the Constitution Society. The report will be available on both the Constitution Unit and Constitution Society's websites.

Policy impact of parliament

One of the Constitution Unit's recent major areas of research has been a two-year study, led by Meg Russell, looking at the Westminster Parliament's influence on government legislation. The project is funded by the Nuffield Foundation and builds upon previous research into the policy impact of select committees, and of defeats in the House of Lords.

The research has included detailed examination of the passage through both chambers of 12 case study government bills: seven from the 2005-10 Parliament and five from the 2010-12 session. As well as logging and coding over 4,000 legislative amendments that were proposed to these bills, the research team conducted over 120 interviews with key individuals—including parliamentarians, civil servants and representatives of outside groups.

The findings—which indicate that Westminster is more influential on policy than is often appreciated—have already been reported in preliminary form to conferences of the Political Studies Association and the European Consortium for Political Research. We are now writing a number of journal articles from the project, which will be submitted for publication over the coming months.

Because the research has gathered a large amount of rich and valuable data, the Nuffield Foundation has now agreed to provide additional funding for the project. We intend to use this to write a book about how the legislative process works, which we hope will be of significant interest to academics, students, and parliamentarians, as well as to those seeking to influence legislation through parliament.

The project web page is at www.ucl.ac.uk/constitution-unit/research/parliament/legislation. For further information, please contact Meg Russell at meg.russell@ucl.ac.uk or Daniel Gover at d.gover@ucl.ac.uk.

NEW PROJECTS

Constitutional excerpts

The Unit's James Melton received funding for the Constitutional Excerpts Project in March, which aims to address constitutional drafters' need for systematic information on the contents of other countries' constitutions.

On average, 30 constitutions are amended and five are completely replaced each year. Despite this 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. Instead, drafters of new constitutions and constitutional amendments 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 (and perhaps even previous constitutions in their own country) that could help them decide what topics should be included in their constitution and how they should be addressed. Even external advisors, who are frequently asked to consult on constitutional drafting processes, are able to draw on only anecdotal evidence for the efficacy of particular approaches and tend to rely on a relatively small set of well-known models.

The project will draw on data collected by the Comparative Constitutions Project to provide free, online access to virtually every constitutional text within each country's series of constitutional laws. Both the full texts of these constitutions as well as a tool that allows users to access excerpts from those texts on particular provisions (e.g. freedom of religion or executive decree authority) will be made available on ConstitutionMaking.org later this summer.

The project is run by James Melton in collaboration with Zachary Elkins and Tom Ginsburg and is supported by Google Ideas and the Indigo Trust.

Financial privilege

The Parliament team has recently started work on another Nuffield-funded project, examining parliamentary financial privilege. In Britain, the Commons has primacy over the Lords in all matters relating to taxation and public spending. Consequently, in the event that the Lords passes a legislative amendment with financial implications that the Commons subsequently disagrees with, the Commons can invoke 'financial privilege' and the Lords by convention does not then insist on its amendment.

Although not new to the coalition government, controversy about the use of financial privilege has grown in the current Parliament. Most notably, its use on the Welfare Reform Bill in 2012 provoked claims from some that the Lords was being inappropriately prevented from scrutinising government legislation. Such concerns may well re-emerge in the future, particularly if peers seek to limit government spending cuts.

This project will clarify the existing rules and conventions surrounding financial privilege, and assess how it has in practice been used in recent years. Based on this investigation, we hope to establish whether existing arrangements need to be reformed to strengthen Parliament's scrutiny of government legislation.

The project runs from May until October 2013, and we intend to publish a report later this year. For more information, please contact Daniel Gover at d.gover@ucl.ac.uk.

STAFF UPDATE

In April, Researcher Tom Semlyen successfully defended his PhD at King's College London, looking at some of the theoretical and empirical dimensions of the rise of equality and diversity in Britain. He will be taking on additional work on the Lords with Meg Russell from June. Research Assistant and Monitor editor Eimear O'Casey left the Unit in May to take up the Alfa professional fellowship in Moscow, where she will be working with the EU delegation to Russia. Unit Affiliate Dr Jeff King has received a Humboldt Research Fellowship. He will be researching 'the rule of law in the welfare state' in Germany, France, Britain and the US.

Interns: The Unit is extremely grateful to interns Nick Bamber, Tom Holm, Daniella Lock and Gabriele Ruberto for all their invaluable work between January and May.

Bulletin Board Constitution Unit Newsletter

Forthcoming Seminars

Civil Service Accountability
Guy Lodge (IPPR) and Sir Leigh Lewis
Tuesday 18 June, 1.00pm
Venue: Council Room, Constitution Unit

For more information and to register to attend, visit the Events page at www.ucl.ac.uk/constitution-unit/events. Seminars are free and open to all, and are held in the Council Room at the Constitution Unit premises at 29-30 Tavistock Sq. We film all the presentations from our events and these can be viewed on our website. Check our website for the Autumn 2013 series.

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

Former Cabinet Secretary and Visiting Professor Gus O'Donnell delivered his inaugural lecture 'Building a Better Government' on 23 Apr. See footage at www.ucl.ac.uk/constitution-unit/events

Publications to Note

MSR Palmer, 'What Place does the Treaty have in New Zealand's constitutional arrangements?' *The Treaty Debates Series 2013: Finding a Place for the Treaty*. Te Papa, Wellington (Jan 2013)

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

Unit Publications

Z Elkins, T Ginsburg and J Melton, 'Comments on Law and Versteeg's The Declining Influence of the United States Constitution' *NYU Law Review Online* 87(11) 2012

Z Elkins, T Ginsburg and J Melton, 'US Gun Rights Truly Are American Exceptionalism' *Bloomberg* (7 Mar 2013)

R Hazell, 'Coalition government: Lessons for the future' *Politics Review* 22(4) 2013

J Melton, Z Elkins, T Ginsburg and K Leetaru, 'On the Interpretability of Law: Lessons from the Decoding of National Constitutions' *British Journal of Political Science* 43(2) 2013

RM Morris, 'Succession to the Crown Bill: Possible Untoward Effects?' *Ecclesiastical Law Journal* 15(2) May 2013.

P O'Brien, 'When Judges Misbehave: The Strange Case of Jonah Barrington' *UK Constitutional Law Group Blog* Mar 2013

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

Unit in the News

Next Coronation to involve other faiths beside Christianity – *Daily Telegraph* (18 May)

Why the Queen will never step aside – *Daily Telegraph* (11 May)

UK tallies the cost of an independent Scotland – *Christian Science Monitor* (1 May)

Which side is David Cameron's new team on? – *Daily Telegraph* (1 May)

Devolution and Westminster: how productive are non-English MPs? – *Guardian* (27 Mar)

Robert Hazell spoke about constitutional protocol of funerals on BBC News 24, BBC 6 o'clock News and BBC London (Apr)

AG Noorani: Coalition Lesson: Book Review – *Frontline* (Oct 2012)

Unit Committee Appearances and Evidence

- The HoC Political and Constitutional Reform Committee opened an enquiry into the impact of the Wright Reforms in Jan 2013. Meg Russell gave oral evidence to the committee. See footage here.
- The Political and Constitutional Reform Committee opened an enquiry titled 'House of Lords Reform: what next?' in Jan 2013. Meg Russell submitted written evidence to the committee in March. Read evidence here. She will be giving oral evidence in June.



Constitution Unit Blog

www.constitution-unit.com

UCL Department of Political Science Director: Professor Robert Hazell CBE Deputy Director: Dr Meg Russell
www.ucl.ac.uk/constitution-unit | Email: constitution@ucl.ac.uk | Phone: +44 (0) 20 7679 4977
Blog: www.constitution-unit.com | Facebook & Flickr: Constitution Unit | Follow Us on Twitter: @ConUnit_UCL
The Constitution Unit, UCL Department of Political Science, 29–30 Tavistock Square, London WC1H 9QU