

M O N I T O R

Issue 15

The Constitution Unit Bulletin

June 2001

Do Britain's political parties understand devolution?

The UK General Election has revealed that the UK's main political parties do not really understand what devolution has meant for the constitution.

A detailed analysis by the Constitution Unit of the UK election manifestos (available on the Unit's website) shows considerable confusion about what is devolved to Scotland, Wales or Northern Ireland.

Both Tory and Labour manifestos contain extensive UK-wide commitments in areas such as health and education - although these are now devolved. The Conservatives also make UK-wide commitments on crime and criminal justice, although these are devolved subjects in Scotland.

The Constitution Unit has scored all the main parties for the 'devolution literacy' of their manifestos, analysing the devolution awareness of their pledges in seven policy areas. The Conservatives come bottom (mean score 4 out of 10), and the

Liberal Democrats come top (with a score of 7). In between lie Plaid Cymru (6), Labour (5) and the SNP (5).

The SNP's policy commitments make no distinction between areas devolved to Scotland and remaining UK functions. Plaid Cymru are somewhat better. There is a tactical point in this - both want to show the scale of their visions for their respective countries. But readers of their manifestos would not understand what they are really voting for, and would derive little political education in terms of understanding which level of government does what.

The Liberal Democrats score high marks for devolution awareness. Their UK manifesto is drafted so as to cover non-devolved policy areas for the whole UK, but only England for devolved ones. Separate manifestos for Scotland and Wales set out their policies with a clear understanding of what Westminster still can and cannot do.

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New Devolution and Health Website



The Devolution and Health website is currently being updated and revised. New features include a comprehensive 'News and Documents' page with links.

See: <http://www.ucl.ac.uk/constitution-unit/d&h/>

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The English Question

All the major parties' UK General Election manifestos address the 'English question'. The Tories propose to abolish regional development agencies (RDAs), and to ensure that only English (or English and Welsh) MPs vote at Westminster on legislation for England (or England and Wales).

Labour oppose this, saying 'English MPs make up 85 per cent of the UK Parliament, so there is no case for threatening the unity of the UK with an English Parliament or the denial of voting rights to Scottish, Welsh and Northern Ireland's MPs at Westminster'. Labour and the Lib Dems both support elected regional government in England, where there is demand tested in a regional referendum. In the interim they would strengthen RDAs and the existing regional chambers.

Devolution

Wales

As the UK general election approached, the electoral politics of the Westminster debate threatened to drown out the concerns of the National Assembly. Nowhere was this more so than in the mounting sense of crisis around the position of Deputy First Minister Mike German and the stability of the Coalition. Accused of impropriety in his former position as Head of the Welsh Joint Education Committee's European Unit, German became besieged by a media-led campaign demanding that he resign, or at least stand aside until he had cleared his name. First Minister Rhodri Morgan insisted throughout that his Deputy need not resign unless and until there was a formal police investigation. As of end of May this had not materialised, despite the WJEC handing a copy of an internal auditor's report on Mike German's activities to the South Wales Police.

The allegations had first appeared when the Coalition Administration was formed in October 2000, raising suspicions then about their timing. Their re-emergence in the middle of the general election campaign rekindled these questions. Despite divisions within the Labour Group the Administration's line has been held, at least until after the general election. The issue may re-emerge as a result of an investigation underway by the European Commission's anti-fraud unit into contracts between the EU and the WJEC, apparently signed by Mike German. This may result in the WJEC being forced to repay as much as £1m of EU grants. Rhodri Morgan insisted that no Minister subject to 'speculative allegations'

should be forced to stand aside and declared Mike German was being subjected to 'trial by media'. It was noteworthy, however, that the issue hardly penetrated the media beyond the border.

Neither did the Welsh Administration's record in handling the foot and mouth outbreak, but it proved a significant event in the Assembly's development. It consolidated devolution providing an opportunity for the Assembly to prove its credibility. In particular the Administration, led by an authoritative Agriculture Minister in Carwyn Jones, demonstrated that it was capable of handling complex problems involving multi-level governance in a period of crisis. In turn this reflected on the Assembly more generally, doing something to dispel a widespread view that it is little more than a talking shop. In the process there developed a sense that Cardiff is increasingly replacing London as the main location of political accountability in Wales.

Meanwhile the Assembly's Operational Review under the chairmanship of the Presiding Officer increasingly took on the character of a Constitutional Convention. Substantial submissions were made by each of the parties, in particular the Conservatives and Plaid Cymru. The Review is being carried out within the framework of the 1998 Government of Wales Act and is concentrating on procedures rather than policy. Nevertheless, it is striking how rapidly a consensus is developing across the parties on such matters as the need for a stronger identity for the Welsh Government in the Assembly, the role of the Subject Committees, and improved mechanisms for influencing primary legislation in Westminster.

Northern Ireland

The London and Dublin governments are still unable to broker a settlement of the longstanding issues deadlocking the outworking of the Belfast agreement. The first minister, frustrated with the republican movement, threatened—though he denied this would be the effect—to bring down the house of cards with a resignation letter, to take effect on July 1st, in the absence of substantive progress on IRA decommissioning. If the resignation were not countermanded, this would leave a further six weeks before new elections would have to be held or—more plausibly—for the agreement to be suspended once more.

It was a period marked by ill-tempered exchanges in the assembly, over confidence in Sinn Féin's electoral probity and confidence in the SF education minister, Martin McGuinness—now 'outing' (past) IRA links. Most dispiriting was a

row over two vases of lilies sitting in the foyer during the Easter recess.

The foot-and-mouth crisis and new data on organised crime meanwhile lifted the lid on the underbelly of incivility and entrenched paramilitarism in 'post-agreement' Northern Ireland. And the still-fledgling Civic Forum was the subject of uncivil comment, in the assembly and the media.

Moderate Protestant opinion was growing increasingly restive, encouraging the Democratic Unionist Party to anticipate electoral gains. Sinn Féin, meanwhile, continued to hardball to reassure fundamentalist supporters and pursued a shamelessly ethnic electoral strategy, though the SDLP resisted its overtures for an electoral pact. Amidst considerable candidate volatility, significant changes in Northern Ireland's electoral landscape looked likely in June.

Yet, once again, there was much 'business as usual'. The revised Programme for Government was published and agreed by the assembly. Foot and mouth gave the executive a sense of common purpose and public confidence was enhanced by the performance of the agriculture minister, Brid Rodgers.

Away from the media spotlight, the committees toiled away purposely and there were signs of a committee *system* emerging. And public opinion seemed to support the bread-and-butter focus of the assembly's work.

Nor did the continued hiatus surrounding the North/South Ministerial Council, arising from the first minister's ban on SF colleagues' involvement, or the atrophy of the British-Irish Council prevent technocratic progress on the north-south axis or relationship-building 'east-west'. Preparations also continued for the new rounds of EU structural funding, and some 'Euro-regionalist' muscles were flexed. But all eyes are now on David Trimble.

Scotland

The imminence of a UK General Election saw the parties in the Scottish Parliament focused on preparing for this event. The election campaign was played out on the floor of the Parliament and spin and counter-spin were even more a feature of Parliamentary politics than normal. Even British elections are viewed through a Scottish Parliamentary prism. The foot and mouth crisis required the attention of the Scottish Executive and a great deal of co-ordination between the various administrations within the United Kingdom was necessary. Notably, the Executive's role in this

British-wide crisis was to act as an agent for central government rather than operate on its own.

A further issue which strictly speaking comes under reserved matters was Motorola's decision to close its West Lothian plant with a loss of 3000 jobs. Just as the Scottish Office came to be expected by Scots to respond to matters such as plant closures which were not strictly under its remit, so too the Scottish Parliament and Executive could not simply declare that this was a problem for London. For many Scots, the Executive's reaction and, more importantly, the impact of that reaction to crises such as Motorola will determine how devolution is perceived to be operating as much as the handling of everyday devolved matters. It may be unfair to expect that an Executive with limited powers, or even London with its more extensive powers, could do much to prevent the closure. It may even be too much to expect much in the way of ameliorating the impact of closure. But devolution was sold to Scottish voters in part as a 'solution' to crises and may, however unfairly, be judged accordingly.

English Regions

English regional government has moved on again: three months ago we reported that it was attracting interest from a growing band of 'insiders' – ministers, RDA chiefs and campaigners. Since then the subject has received much increased press interest and public comment, and has moved still further towards the political centre-stage. But the flow has not been uniform: some developments have appeared to move away from regionalism. And the brief reference to elected assemblies in the Labour manifesto will have disappointed those who believed that the party's conversion to the cause of regionalism was only a matter of time.

The most significant development has been the announcement of £5m of funding for the eight Regional Chambers in a March 2001 consultation paper. Each chamber would be able to draw £500,000, with a further £1m for 'collaborative projects'. There would be no restrictions on the spending of this money, though DETR (the sponsoring department) made clear that they expected scrutiny of the RDA (the Chambers' only statutory duty) to be a central concern.

Constitutional Conventions have continued to develop, with the South-West officially launching on May 19, and a Yorkshire Constitutional Convention planned for July 7. The Campaign for the English Regions has also been active, organising a petition signed by many MPs, MEPs, and local councillors in favour of elected regional

assemblies, and carrying out a survey in the North-East showing over 70% of respondents in favour of an assembly for the region.

Parliament has also debated regional assemblies, with a debate in the House of Lords following January's Commons debate. The Commons revived Standing Committee on Regional Affairs met for the first time; debate focused to a great extent on regional finance. Junior minister Beverley Hughes was present.

Press comment has picked up on the prominence of the issue, with the Financial Times running a series on the English regions in April, and several commentators lending their voices both for and against regional government. The Greater London Authority has issued its first challenge (after only a year) to London's 'devolution settlement'; both Trevor Phillips and Sally Hamwee (ex-chair and chair of the Assembly) have publicly called for more executive and co-ordination powers for the Assembly.

At the same time, some policy developments indicate the Government to be far from whole-hearted about regionalism. The Arts Council has proposed abolition of its regional bodies in favour of a national organisation with regional divisions. The regional boards have not acceded (yet) to their own disbandment. And the Health Secretary Alan Milburn announced plans to merge regional and local health authorities into a structure of 'unitary' health authorities, with only a residual function at regional level. The latter will be relocated within Government Offices.

The Centre

The general election result included one gain for the Conservatives in Scotland, where they took Galloway and Upper Nithsdale from the SNP. The party still holds no seats in Wales. The ending of the all-English monopoly in the parliamentary party may nonetheless change the political dynamics somewhat, and could offer a new opportunity for the Conservatives to co-ordinate activity in the Scottish Parliament and Westminster.

The Joint Ministerial Committee on Devolution:

A meeting of the Joint Ministerial Committee on Europe took place in London on 1st March 2001 chaired by the Foreign Secretary, Robin Cook. The agenda included a review of the arrangements established when the EU concordat was agreed in October 1999, and the agreement of a common approach to be taken at the meeting of the Stockholm European Council held in late March.

Cabinet Office Publications:

DGN 9 (Post Devolution Primary Legislation Affecting Wales) was published by the Cabinet Office on 27th February 2001. Similarly to previous DGNs the document encourages interaction between administrations from an early stage.

DGN 8 (Post-Devolution Primary Legislation affecting Northern Ireland) was published in April, and a revised edition of DGN 6 (Circulation of Inter-Ministerial and Inter-Departmental Correspondence) in March 2001.

Also published was a brief guide entitled *Devolution in Practice: a checklist for officials*. The document pays particular attention to communications, consultation and confidentiality.

The Barnett formula

The Government has ruled out any reform of the Barnett formula, which regulates public spending in Scotland and Wales, in the next three years. This does not affect individual regions directly, but has been perceived as a snub to calls in the North for greater regional autonomy.

In an interview with *The Guardian* (24 April) John Prescott said that the Barnett formula for distributing additional spending money to Scotland, Wales and Northern Ireland was not 'written in stone'. He suggested that the government might bite the bullet and review the formula after the election, perhaps in the context of a review of local government finance. This prompted an immediate denial from 10 Downing Street and the Treasury. The Barnett formula was working well, there were no plans to change it, and spending plans were in place until 2004 (*Times*, FT 25 April).

Subsequent comment reported the latest Treasury figures published in the *Public Expenditure Statistical Analyses 2001* (www.hm-treasury.gov.uk). These showed that on a base of UK=100, public spending per capita in England in 1999-2000 was 96, Wales 113, Scotland 118 and Northern Ireland 133. These differentials have not changed in the last three years: there is no sign yet of the Barnett formula becoming (as some have predicted) the Barnett squeeze. But strong calls have come from the administrations in Wales and Northern Ireland for the formula to be reviewed: see e.g. David Trimble at the last Northern Ireland Questions before the election (HC Deb 9 May 2001 Col 103). If all three devolved governments called for a review of the formula it might be hard for the UK government to resist.

Parliamentary Reform

Hansard Society: Parliamentary Scrutiny

The Hansard Society Commission's Report, *The Challenge for Parliament: Making Government Accountable*, will be published in June 2001, priced £35. A conference, 'A Parliament with a Purpose', will take place on 12 July 2001 at the Church House Conference Centre, London SW1. The conference will bring together senior politicians, civil servants, parliamentary officials and academics; it will be the first opportunity of the new Parliament to debate the principles and prospects for parliamentary reform. To order the publication or book a conference place, please contact the Hansard Society, tel: 020 7955 7478 or e-mail hansard@hansard.lse.ac.uk.

New Peers Appointed

On 26 April the new Appointments Commission announced the first tranche of crossbench peers under the new appointments system. A larger than expected 15 members were chosen from amongst the 3,166 applicants to the Commission. The calibre of those appointed, who included seven knights, one lady and four professors, differed little from those selected under the old system. This led to wide criticism in the press for not providing the new type of 'people's peer' that the public had been led to expect (by government, though not by the Commission itself). Notably, only four of the 15 appointees were women, falling short of the 30% minimum which the Wakeham Commission had proposed should make up the reformed chamber. Four were from ethnic minorities.

Surprisingly, on the day of the Commission's announcement, government also announced the appointment of a sixteenth crossbench peer, General Sir Charles Guthrie, ex-Chief of the Defence Staff. This immediately breached Tony Blair's commitment that he would give all powers for crossbench appointments to the Commission.

On 2 June the dissolution honours list was published. It announced peerages for 24 retiring MPs; twelve Labour, five Conservative, five Lib Dem and two Ulster Unionists. Only two are women. The list attracted critical comment because two of the MPs honoured had stood down to create last minute vacancies for Blairite candidates. *The Times* (2 June) commented 'one factor links all their names: they have been appointed by party leaders... If Labour is even remotely serious on this subject then the list issued yesterday should be the last of its kind.' It was suggested that the

independent Appointments Commission would investigate this practice after the general election.

Another new Labour peerage was announced on 11 June when it was stated that Sally Morgan, previously head of Tony Blair's political office from 1997-2001 would become a Baroness and immediately resume office as a Cabinet Office minister.

Calls to Strengthen Select Committees

The House of Commons Liaison Committee (made up of all select committee chairs) has published a third report calling for reform of the select committee system. This follows the publication in March 2000 of its report *Shifting the Balance* and its later response to the government's dismissive reply. The new report, *Shifting the Balance: Unfinished Business*, reiterates some of the previous proposals, including removing the power of committee appointments from the whips and more opportunity to debate select committee reports. It also acknowledges some changes that have been made, and makes some amended proposals following debate and comment on its earlier recommendations. This report also includes an audit of select committee activity, which highlights some difficulties such as slow government replies and poor organisation over publication of draft bills. The committee has used this report to set an agenda for reform after the election, and to exert itself further as a defender of the interests of parliament.

Standing Committee on Regional Affairs

This committee held its first meeting on 10 May 2001, over a year after the House of Commons in April 2000 approved changes to Standing Orders to revive the committee. The long delay was caused by Conservative resistance to the establishment of the committee. This may be the reason for the committee having joint chairmen: Bill O'Brien (Lab) and Jonathan Sayeed (Con). The committee has 13 members, none very well known, but any English MP may attend and speak at its meetings (MPs from Scotland, Wales and Northern Ireland may not).

Conservative lack of interest was in evidence at the first meeting on 10 May, when only one Conservative MP (Anthony Steen) briefly attended. Nine members of the committee attended and six others, mostly from the North East, to debate Regional Economic Performance and Regional Imbalances. The debate was answered by Beverley Hughes, Parliamentary Under-Secretary in DETR.

Select Committee on Public Administration

The Public Administration Committee published a wide ranging report *Making Government Work* (HC 94, April 2001). The committee criticised the growing centralism caused by the proliferation of central government initiatives. Ministerial pressure for quick wins risked worsening 'already considerable problems of co-ordination at local and regional level'. With dissent from the Conservative member Andrew Tyrie, the committee argued for a system of elected regional government combined with unitary local authorities.

The committee urged government to fulfil its long standing promise to introduce a Civil Service Act to put the service on a clearer and firmer constitutional footing. 'Civil servants may now have over-riding statutory obligations which considerably circumscribe the traditional dicta that they are there simply to serve Ministers'. On the role of the centre in Whitehall, the committee argues for the Cabinet Office to become 'more of a central strategist and performance monitor with real clout within government'.

Elections and parties

Electoral reform

The shifting sands of the electoral reform debate were not made much firmer by Labour's election manifesto. There had been concern among electoral reformers that the party would ditch its 1997 commitment to a referendum on the voting system. But, pressed by Charles Kennedy, Tony Blair agreed that the Labour manifesto should at least keep alive the prospect of reform. Noting that the government has 'introduced major [electoral reform] innovations' already, the manifesto goes on to say that a Labour government 'will review the experience of the new systems and the Jenkins report to assess whether changes might be made [to the Commons' electoral system]'. While both sides of the PR debate claimed these words constituted victory, it is difficult to tell who has really won. Formally, Labour has done no more than reiterate the conclusions of its National Policy Forum meeting in Exeter last year, which committed the party to only taking a decision on a referendum once the PR systems introduced in 1999 and 2000 could be assessed. The question is when the review might take place? If, as seems likely, it is held only after the next Scottish and Welsh elections in 2003, there will be no time to change the Westminster system before the general election in 2005/06. However, if Labour's support

crumbles during the next parliament, it may bring forward the review to bind in the Liberal Democrats. The only sure thing is that Labour's internal debate will continue.

Party regulation

For the first time, political parties in the UK have been obliged to reveal the size and source of their donations. Anyone can view these records, which are updated weekly during the election period and quarterly thereafter, on the Electoral Commission's website. After the election, the Commission will have to review all the party funding regulations, including the allocation of 'Short money'. Labour complained to the Commission that the Conservatives had used part of their allocation of funding - intended for parliamentary work - for campaign activity within Central Office.

Local government

Elected mayors

The local campaigns for directly elected mayors go on. Four local authorities have set dates for referendums on elected mayors. Those are Berwick-upon-Tweed (7 June), Cheltenham and Gloucester (28 June), and Watford (12 July). It is noteworthy that three of these are predominantly urban district authorities.

According to the New Local Government Network there were, at the end of May, 22 proposed local mayoral referendums: 11 through petitions of local voters, 10 proposed by the council and one by a 'democracy commission'.

Human Rights

Joint Committee on Human Rights

The Joint Parliamentary Committee on Human Rights completed its examination of the initial introduction of the Human Rights Act 1998 in April without expressing a view on the effectiveness or otherwise of the steps being taken to implement the new Act. The previous month, the Committee published its first substantive report questioning the compatibility of the Criminal Justice and Police Bill with the HRA and ECHR. Reports on four other bills followed including the controversial Hunting Bill where questions were raised over whether the possibility of banning hunting with dogs would conflict with rights to respect for private and family life and the peaceful enjoyment of property contained in the Convention. Looking ahead, the Committee issued an 'open-minded' consultation paper on the

question of a Human Rights Commission for the UK inviting submissions of written evidence by 2 July.

Manifestos

Of the three main political parties, only the Liberal Democrats expressed support for the establishment of a Human Rights Commission. Labour proposed to introduce a victims' bill of rights. The Conservatives stated that they would exempt the armed forces from the ambit of the ECHR (without indicating the manner in which this could be done).

European Convention on Human Rights

In February, following the replacement of the Prevention of Terrorism Act (Temporary Provisions) Act 1989 by the Terrorism Act 2000, the government withdrew its longstanding derogation from Article 5 (3) of the ECHR which had been used to allow the police to detain persons for seven days under the former Act.

The European Court found against the UK over its failure to provide children with appropriate protection against serious long-term neglect and abuse (*Z and others v the UK*) deeming this to be a breach of Article 3 (inhuman and degrading treatment) and awarded substantial damages (for Strasbourg) exceeding £100,000. The Court also considered the failure to properly investigate killings by the security forces in Northern Ireland to constitute a breach of Article 2 (the right to life).

Human Rights Act

The Act is beginning to show its teeth. New 'declarations of incompatibility' have been made in respect of the Mental Health Act 1983 and Consumer Credit Act 1974 as well as the 'reading down' of the rape shield law (see courts below). In a potentially far reaching judgement, the Court of Appeal (Civil Division) has interpreted the Children's Act 1989 to give the courts the power to check whether social workers are properly carrying out plans for children in care. But the traffic is not all one way, the Law Lords overturned the earlier declaration of incompatibility made concerning the impartiality of aspects of the planning system (*Alconbury*) and an attempt in the *Shayler* trial to use the new Act to champion a public interest defence under the Official Secrets Act failed at the first hurdle.

Human Rights in the Courts

R v A (House of Lords)

On 17th May 2001 the Appellate Committee of the House of Lords held that a prior consensual sexual relationship between complainant and defendant may, in some circumstances, be relevant to the issue of consent in rape proceedings. Where exclusion of such information would prejudice the proceedings against the law lords read into s.41(3)(c) of the Youth Justice and Criminal Evidence Act 1999 a requirement to allow admissibility of such evidence.

The so-called 'rape shield' law had prevented cross-examination of rape victims over their sexual history and in doing so had removed judicial discretion to allow such questioning where relevant. By invoking s.3 of the Human Rights Act 1998 (which requires a court to interpret legislative clauses so as to be, as far as possible, compatible with the Convention rights), the Law Lords interpreted the clause to allow such questioning where its omission would breach the defendant's right to a fair trial under Article 6(1) of the ECHR.

Section 3 of the Human Rights Act has previously been used by the Court of Appeal to read the 'two strikes and you're out' rule in the Crime (Sentences) Act 1997 in a way that was compatible with Convention rights.

Freedom of Information

FOI Act timetable

The Home Office proposed timetable for implementation of the FOI Act, starting with central government in summer 2002, had not been approved collectively by Ministers before the election was called. It will have to go back before the new Home Secretary. This will delay announcement of the timetable until July at the earliest, and may lead to a delay in the implementation programme itself.

Secrecy in Public Bodies

The Public Administration Committee's report *Mapping the Quango State* (HC 367, March 2001) criticised public bodies for their continuing secrecy. The committee found that 52 per cent of executive non-departmental public bodies (NDPBs) complied with the recommended criteria on public audit, freedom of information, public access to documents and meetings. The average rate of compliance among advisory NDPBs was only 11 per cent. The committee noted that it was not surprising that public confidence in the

advisory NDPBs on food safety, drugs, GM crops etc. was low.

Amsterdam Treaty

After years of negotiations the EU has agreed the new openness regime promised in the Amsterdam Treaty. The Access to Documents Regulation was approved by the European Parliament in May (*The Guardian*, 26 April and 4 May). It represents a compromise for the Swedish presidency, who fought hard for a more open regime.

European News

Personal Visions for EU constitution

European leaders are taking turns elaborating their own personal vision of Europe's constitutional future. Yet, far from converging, the visions are in danger of being perceived as a cacophony of soundbites. German chancellor Schröder and French prime minister Jospin have recently spelled out what kind of animal Europe should be, and in so doing have highlighted the different mindset prevalent in Berlin and Paris.

Schröder is an outspoken federalist whose European vision is inspired by his own country's system. He favours a 'superstate' with its own ministers, president, and a bicameral parliament with full control over public spending. Jospin, on the other hand, envisages a 'federation of nation states' by which he means 'a gradual, controlled process of sharing competences'.

This debate ties in with the one on the EU's constitution. Whilst Blair last year endorsed a statement of political principles, both Schröder and Jospin are demanding a written constitution to identify and delineate the sphere of competences of regional, national and EU institutions. The constitutional debate will return at regular intervals until the next IGC in 2004. Its force will be strengthened if the two key players in Europe can consolidate their visions.

Overseas News

New Zealand

The parliamentary review of New Zealand's Multi Member Proportional (MMP) voting system is due to be completed shortly. The MMP Review Select Committee is due to issue its report by 30th June. It is thought unlikely that the Committee will recommend another referendum on the voting system. However, a private petition is currently trying to gather signatures from the required ten percent of voters to force a Citizen Initiated

Referendum on the voting system. As part of its deliberations, the Committee commissioned research into voters' attitudes towards the system. The research, based on a large scale survey, focus groups and in-depth interviews, found that:

- Two thirds of respondents claimed to know at least a 'fair amount' about MMP, with one third knowing 'not that much' or less
- Just over one half felt that MMP is too complicated, with one quarter disagreeing
- Almost two thirds of voters felt MMP had made a lot or some difference to the way that parties and governments operate
- Attitudes to MMP are closely bound up with the behaviour of politicians and of governments formed since the 1996 transition
- The rapid formation of the coalition in December 1999 helped MMP's cause; at that point, for the first time since 1996, MMP was more popular than first past the post, although FPTP has since regained a slight lead in voters' affections
- Given the choice, voters would retain MMP over switching back to FPTP, but would make changes to its operation.

One of the proposals to improve the operation of MMP is contained in the government introduced Electoral (Integrity) Amendment Bill. This would compel MPs who left their party to resign their seat. The government argues that the basic rationale for MMP is that it ensures a proportionate allocation of seats between the parties. Defections by MPs, of which New Zealand has experienced several since MMP was introduced, upsets this proportionality. But the Bill ran into opposition from the National, ACT and Green parties, who argued that anti-defection legislation would compromise the independence of elected members. The Bill split the Justice and Electoral Committee, which considered the Bill but could only produce a divided report.

New Zealand's move away from plurality voting may be extended to local government. The Justice and Electoral Committee has recently reported on the Local Electoral Bill, and recommended that local authorities be allowed to use either first past the post or the Single Transferable Vote for their elections. The system used can be determined either by the council, or by local voters if 5% support a referendum. The Bill also makes provision for greater variety of electoral arrangements, including postal and electronic voting. See 'Useful websites' for the Bill.

Constitution Unit News

FOI Conference

The Constitution Unit held a big conference with CAPITA on 25 April, entitled *The Challenge of Freedom of Information - Are You Prepared?*, which was attended by 180 civil servants. Further training conferences are planned for autumn 2001 and spring 2002. The Unit has also organised one day training events and short seminars for government departments on FOI and data protection. Two of the Unit's FOI Associates, Jim Amos and Dick Baxter, are working with the Information Commissioner in preparing guidance on publication schemes. Enquiries can be sent to: r.hazell@ucl.ac.uk or tel: 020 7679 4971.

Arthritis Research Campaign

The Constitution Unit's administrator, Rebecca Blackwell, ran the 2001 Flora London Marathon to raise money for the Arthritis Research Campaign. She finished in a time of 4 hours, 17 minutes, just behind Frank Bruno! A big thank you to everyone who supported her and made a donation. The total raised so far is £2,097.38.

People on the Move

Sir Colin Campbell, Vice Chancellor of the University of Nottingham, has been appointed first Commissioner for Judicial Appointments. **Lord Justice Brooke** has been appointed to the position of Judge in Charge of Modernisation. **Anne Owers**, Director of Justice, will be the next Chief Inspector of Prisons. **Robin Young** (DCMS) succeeds Sir Michael Scholar as Permanent Secretary at the Department of Trade and Industry.

Constitution Unit Reports

Evaluating new electoral systems

The Constitution Unit has published a Briefing analysing the main lessons from Britain's first mass PR elections. The analysis covers the Scottish, Welsh and European Parliament elections in 1999, and the London election in 2000. The Briefing, written by John Curtice (CREST), Philip Cowley, Stephen Lochore (both Hull) and Ben Seyd (Constitution Unit) examines voters' attitudes to the new electoral systems, their behaviour under new voting conditions and the impact on elected members in Scotland. Among the main results are:

- While PR for the devolved bodies gains support in Scotland and Wales, this does not translate into support for electoral reform at Westminster. A majority of voters in Scotland and Wales would prefer to retain First Past the Post for this tier.
- The new voting arrangements allowed voters to express more complex preferences. In Scotland

and Wales, AMS allowed voters to respond to candidates' personal qualities rather than their party. Between 20% and 25% of voters 'split their ticket', by voting for different parties on the two sections of the ballot.

- The electoral system appears to be having an effect on the role and behaviour of elected members, with indications of an emerging distinction between constituency and list MSPs. Constituency MSPs have stronger links with their constituents than list MSPs do to their districts. By contrast, list MSPs place a slightly higher premium than constituency MSPs on policy making and scrutiny of the Executive.

The briefing is now available (see publications list for details). Contact: *Ben Seyd*, 020 7679 4972, b.seyd@ucl.ac.uk.

Unfinished Business

Labour's constitutional reform programme is not complete. Tucked away in the Labour manifesto are commitments on the second stage of Lords reform; regional government in England; electoral reform for the House of Commons; and the referendum on the Euro. This briefing explores how and when these reforms might be implemented.

The first part of the briefing records the detail of each commitment, and then explores the logistical and political factors which will determine the timetable for Lords reform, regional government etc. Introduction of the Euro will take priority, with the most likely date for a referendum being autumn 2002. Lords reform will require legislation in the first or second session if the first elections are to be held in 2004. The referendum on the voting

system is postponed until after a review of the next PR elections in Scotland and Wales in 2003.

The final part of the briefing draws together the timelines for the individual reforms into a composite timetable, and sets out the main options for implementing Labour's constitutional reform commitments in their second term.

The briefing is now available (see publications list for details). Contact: *Robert Hazell*, 020 7679 4971, r.hazell@ucl.ac.uk.

Guide to Human Rights and Health

This guide examines the manner in which the new Human Rights Act 1998 may impact upon decisions concerning access to NHS treatment and services in England and Wales. It identifies areas of health care provision where Convention rights may be brought into play illustrated by real life examples and relevant case studies. The guide includes checklists through which health care professionals will be able to base treatment decisions with proper regard to human rights considerations and the new human rights legislation. It will provide a valuable introduction and tool for all health care professionals in making the Human Rights Act a positive influence in the provision of health care.

The briefing will be available in July (see publications list for details). Contact: *Jeremy Croft*, 020 7679 4979, jeremy.croft@ucl.ac.uk

Devolution and Health

As differences between the four UK health systems in health policy and health politics increase, the Devolution and Health project is starting new activities. The questions we are asking are: what do differences in health policies tell us about the politics of England, Northern Ireland, Scotland and Wales? How are politics changed by devolution? How do politicians and practitioners manage the transition to a devolved system, and what can we learn from the experience of devolved health policy so far?

The established monitoring teams in Northern Ireland, Scotland and Wales continue to produce their reports, and the annual report will be available online within weeks. This and news and documents links (updated weekly) can be found in the Devolution and Health section of the Constitution Unit website.

Meanwhile, a comprehensive survey of health policy makers and practitioners in the three devolved administrations is underway. In

addition, the project is starting a study of health care in the English regional agenda through interviews and a projected survey and background analyses of the politics of health care in the new UK state structure. The reports, web site, surveys and analyses should allow the project to produce solid analysis, contribute to debates, and be a resource to policy makers.

Monitoring reports are available online, see: <http://www.ucl.ac.uk/constitution-unit/d&h/>. Contact: *Scott Greer*, 020 7679 4922, s.greer@ucl.ac.uk.

Concordats and Intergovernmental Agreements

The Unit is publishing a comparative study of how concordats and similar intergovernmental agreements work. It is written by Johanne Poirier, a Canadian lawyer researching at the Free University of Brussels and the Law Faculty at the University of Cambridge. The paper looks at how intergovernmental agreements work and the functions they serve in a variety of devolved and federal systems, including Canada, Australia, Belgium and Spain. It then assesses the Memorandum of Understanding and various overarching and departmental concordats between the UK Government and the devolved administrations against these comparisons.

Even though the concordats are not intended to be legally binding, the report concludes that they act as 'soft law' and guide the conduct of officials and ministers. They therefore work in a similar way to agreements in other devolved or federal systems. The report commends the foresight of the UK Civil Service for establishing effective tools for ensuring collaboration between levels of government, but notes that they will not automatically prevent disputes arising. The concordats' true effect will only be seen when they are tested in a dispute.

The briefing will be available in late June (see publications list for details). Contact: *Alan Trench*, 020 7679 4975, a.trench@ucl.ac.uk.

A Democratic Design? The political style of the Northern Ireland Assembly

In this project funded by the Gatsby Charitable Foundation Rick Wilford (Queen's University, Belfast) and Robin Wilson (Democratic Dialogue) set out to evaluate the performance of the Northern Ireland Assembly in its first year. In parallel with a similar audit of the Scottish Parliament, the authors ask to what extent the Assembly has ushered in a 'new politics', and managed to break from the Westminster mould. How effective is the Assembly as a legislature; in scrutinising the

Executive; and in representing the different communities in Northern Ireland?

The authors give the Assembly a mixed scorecard. It is more proportional in party terms than Westminster, thanks to the STV voting system; but has an even lower proportion of women (13%). Its committees have focused on scrutiny, with none so far initiating legislation. The committees have found it hard effectively to challenge the Executive, because of its inclusive nature, with all four main parties represented on it. Positive innovations have been the Business Committee, chaired by the Presiding Officer; and the Civic Forum, which involves the social partners. By comparison with Scotland the Assembly has been conservative in finding new ways of reaching out to the wider community, and in developing an effective petitions procedure.

The briefing is now available (see publications list for details). Contact: *Robert Hazell, 020 7679 4971, r.hazell@ucl.ac.uk*.

The Future of the UK's Highest Courts

Richard Cornes (Essex) and Andrew LeSueur (Birmingham) started this project when both were at UCL, Richard in the Constitution Unit, Andrew in the Law Faculty. Their aim was to analyse the possible options for future reform of the two top courts in the UK, in the House of Lords and the Privy Council. With research grants from the ESRC and the British Academy, they have visited the top courts in Australia, Canada, the USA, Spain and Germany to learn the lessons from different models overseas.

They identify four main options for the future structure of the UK's top level courts: continuation of the status quo; a supreme court, amalgamating the current jurisdiction of the House of Lords and Privy Council; a constitutional court, specialising in devolution issues, human rights and judicial review appeals; and a 'court of justice' hearing references from the UK's three legal systems on the ECJ model. The pressures on the top courts will increase; but there are substantial obstacles to change, because no one in government has clear ownership of policy making about their future. Leadership will be required: a Royal Commission or similar inquiry is needed to point the way forward.

Related publications: *What is the Future of the Judicial Committee of the Privy Council?* by Andrew LeSueur, May 2001. The final report will be available in July 2001 (see publications list for details). Contact: *Robert Hazell, 020 7679 4971,*

r.hazell@ucl.ac.uk, or, a.lesueur@bham.ac.uk, or rmcornes@essex.ac.uk.

Regional Government in England

Devolution to Scotland, Wales and Northern Ireland has raised the question of the lack of similar arrangements in England. Several government ministers have raised the issue of elected regional government publicly, and campaigning organisations exist in many of the English regions. But little has been written beyond the aspirational; no firm proposals have been available with which to test public opinion.

Paul McQuail and Mark Sandford are completing a report, funded by the Joseph Rowntree Foundation, producing three detailed models of elected regional assemblies for England. These are situated within an overall analysis of the surrounding issues. Impact on central and local government, sources of finance, the process of setting up assemblies, and issues of electoral design (voting systems, number of members etc.) are all covered. A historical account of developments in the UK, the rationale for (and against) the creation of regional governments, and the possible alternatives in the UK context, are also set out.

The report suggests that assemblies in England could sensibly draw a middle line between the 'strong' devolution to Scotland and Wales and the 'weak' devolution to London - but also sets out models loosely based on both Wales and London

The report will be officially launched on 16 July in conjunction with the Joseph Rowntree Foundation. Copies of the report will be available in July 2001 (see publications list for details). Contact: *Mark Sandford, 020 7679 4976, m.sandford@ucl.ac.uk.*

Publications Received

- *Redesigning Democracy: The Making of the Welsh Assembly*, by Kevin Morgan and Geoff Mungham, Seren & Poetry of Wales Press, 2000. ISBN 1-85411-283-X, £9.95.
- *Open Scotland? Journalists, Spin Doctors and Lobbyists*, by Philip Schlesinger, David Millar, and William Dinan, Polygon, Edinburgh University Press, 2001. ISBN 10902930-28-2.
- *The Challenge for Parliament: Making Government Accountable*, Report of the Hansard Society Commission on Parliamentary Scrutiny, June 2001. Hansard Society, tel: 020 7955 7478, £35.
- *Reforming Britain: New Labour, New Constitution?* by John Morrison, Reuters, 2001. ISBN 1-903684-03-X

- *Building the [New Zealand] Constitution*, ed. by Colin James, Institute of Policy Studies, Wellington NZ, 2000. ISBN 0-908935-48-X
- *Law, Politics and Local Democracy*, by Ian Leigh, O.U.P, 2001. ISBN 0-19-825698-1.

Useful Websites

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please contact Gareth Lewes on 020 7679 4977. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm

Seminar: Constitutional Reform in the New Parliament

Peter Riddell: *The Times*

18 June 2001, 1.00-2.30 p.m., The Constitution Unit, (sandwiches available from 12.30)

Seminar: The Search for New Cross-benchers in the House of Lords

Lord Stevenson CBE: Chairman, House of Lords

Appointment Commission

18 July 2001, 1.00-2.30 p.m., The Constitution Unit, (sandwiches available from 12.30)

State of the Union Annual Lecture

10 December 2001, 6.00 p.m.

Cruciform Lecture Theatre, UCL

reception to follow

Further details: t.b.c.

Future Events

Conference: 'A Parliament with a Purpose'

Hansard Society Commission on Parliamentary Scrutiny

Date: 12 July 2001, Church House, London, SW1.

£50, for indiv./non-profit; £100, public sector/corporate.

Further details: Hansard Society, tel: 020 7955 7478 or e-mail: hansard@hansard.lse.ac.uk.

General Election Workshop: 'Evaluating the Campaign and the Outcome'

Department of Politics/Institute for the Study of Political Parties, University of Sheffield.

Date: 15 June 2001

Further details: Sylvia McColm, s.mccolm@sheffield.ac.uk, tel. 0114 222 0660.

Freedom of Information Conference

Joint conference with the Local Government Association and the Constitution Unit.

Date: 21 November 2001, Local Government House Conference Centre, London.

Workshop: 'Multi-level Electoral Competition: Devolution in Comparative Context'

Institute of German Studies, University of Birmingham

21-22 September 2001.

Further details: Daniel Hough, 0121 414 7340, email: houghdt@hhs.bham.ac.uk.

New Publications by the Unit

Please refer to the Unit's publication order form for further details:

- 'Upper House Reform in the UK and Australia', by Meg Russell, *Australian Journal of Political Science*, vol. 36 no. 1, pp. 27-44, March 2001. ISSN 1036-1146.
- 'The Royal Commission on Reform of the House of Lords: A House for the Future?', by Meg Russell and Richard Cornes, *Modern Law Review*, vol. 64, no. 1, pp.82-99, January 2001. ISSN 0026-7961.
- *Unfinished Business: Labour's Constitutional Agenda for the Second Term*, by Robert Hazell, Constitution Unit briefing, March 2001, £5.
- *Lessons from Britain's PR Elections* by Ben Seyd, John Curtice, Phil Cowley and Stephen Lochore, Constitution Unit briefing, April 2001, £5.
- *What is the Future of the Judicial Committee of the Privy Council?* by Andrew LeSueur, Constitution Unit briefing, May 2001, £5.
- *A Democratic Design? The political style of the Northern Ireland Assembly*, by Robin Wilson and Rick Wilford, Constitution Unit report, May 2001, £10.
- *The Future of the United Kingdom's Highest Courts* by Prof. Andrew LeSueur and Richard Cornes, Constitution Unit Report, July 2001, £15.
- *The Human Rights Act 1998 and Access to NHS Treatments and Services: A Practical Guide*, by Elizabeth Haggett, Constitution Unit report, June 2001, £10.
- *Devolution and Health Annual Report 2001: Monitoring the Impact of Devolution on the United Kingdom's Health Services*, by Paul Jervis, Constitution Unit Report, June 2001, free on Unit's website.
- *The Functions of Intergovernmental Agreements: Post-devolution Concordats in a Comparative Perspective*, by Johanne Poirier, Constitution Unit briefing, June 2001, £10.
- *Regional Government in England*, by Mark Sandford, Constitution Unit Report, June 2001, £10.

