

CONSTITUTION UNIT

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Monitor goes digital

This will be the last Monitor to be published in hard copy. The next issue in May will be published exclusively online. We apologise to those supporters who like to receive their copy by post, but most small organisations now issue their newsletters electronically, and the time has come for us to follow suit. In terms of content, there will be no lessening of quality and of interest.

Indeed going digital will create opportunities for better and more frequent content and interaction. We may start to combine the Monitor with the Constitution Unit blog. Whatever happens we shall maintain the Monitor's hallmark, to provide regular factual summaries of important constitutional developments in the UK and throughout the world. We will keep you in touch with developments through future issues and our website. **If you would like to receive Monitor electronically, just send an email to constitution@ucl.ac.uk.**

Code of Constitutional Standards

In January the Unit published a code of constitutional standards based on the reports of the Lords Constitution Committee. The code is based on 149 reports published by the committee since it started in 2001. The analysis was done by Jack Simson Caird, supported by Robert Hazell and Dawn Oliver. The resulting code contains 126 standards, organised under five headings: the rule of law; delegated powers and delegated legislation; separation of powers; individual rights; and parliamentary procedure.

The Constitution Committee scrutinises every bill for constitutional issues, but has always adopted an ad hoc approach. It decided at the start not to draw up a set of constitutional norms to apply to its legislative scrutiny. But with over ten years' work and almost 150 reports it is possible to derive a set of constitutional norms from its scrutiny work, some generic and some specific to the bill in question. As an example of part of the code, here is an extract from the section on the judiciary, derived from half a dozen different reports:

- 3.1.1 The independence of the judiciary should not be undermined.
- 3.1.2 Judges' security of tenure should be preserved.
- 3.1.3 The politicisation of the judicial appointments process should be avoided.
- 3.1.4 Ouster clauses should be avoided.
- 3.1.5 The exercise of powers to combat terrorism should be subject to adequate judicial control.
- 3.1.6 The roles of parliament and the judiciary should not be conflated.

There are now three parliamentary committees which conduct systematic scrutiny of every bill, the others being the Joint Committee on Human Rights, and the Lords Delegated Powers Committee. It is no coincidence that this painstaking scrutiny is largely done by the Lords. Their work is insufficiently known. We hope through this report to make their work more accessible, and to encourage further work on codifying parliament's legislative scrutiny standards.

The report can be viewed at <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/159>

DEVOLUTION



Scotland: the referendum campaign hasn't caught fire yet

The most notable feature of the Scottish independence referendum campaign is how little has actually happened. Public opinion remains largely static, with around 30-35 per cent support for independence, and substantial numbers of 'don't knows' (around 20 per cent of voters).

One characteristic of the Scottish debate has been its focus on detailed discussions of what independence would actually involve, rather than issues of identity or abstract debate about Scotland's 'ideal' constitutional relationship with the rest of the UK.

The main event of the autumn was the long-awaited publication in late November of the Scottish government's independence 'white paper' or 'prospectus'. *Scotland's Future: Your Guide to an independent Scotland* turns out to be a substantial (630 page) and detailed blueprint for how an independent Scotland might function and what it might choose to do. Its main features were largely as expected: an independent Scotland that would be a member of the European Union, in a currency union with the remainder of the United Kingdom and retaining the Queen as head of state. It also assumed that Scotland would have a manageable public debt, but inherit the bulk of the oil and gas reserves in the North Sea. None of this resolved serious questions about such major issues as EU membership (to which the Spanish government has indicated its strong objections), the terms of currency union, or the process and timescale for independence negotiations.

The Scottish government continues to argue that a 16-month process, with independence in May 2016, would result.

The Yes campaign has also been hindered by the reluctance of the UK government to become a direct player, with (for example) David Cameron refusing to take part in TV debates with Alex Salmond. Instead, it has passed this role to the cross-party pro-union 'Better Together' campaign, led by Alistair Darling MP. In this respect, the UK government has echoed the SNP by leaving the campaign to Scottish politicians operating within Scotland. The Yes side's desire for a 'made in Scotland' constitutional process has in this respect worked against it.

The UK government's response has been its ongoing series of 'Scotland Analysis' papers. Three have been published since the autumn: on defence, security issues (including intelligence), and science and research funding. All are intended to be factually-based analyses of how the Union serves Scotland, though they also serve to highlight what Scotland might lose from the Union as a result of independence. A number of (UK) parliamentary select committees have published reports with similar themes, including recently the Commons International Development select committee.

More broadly, the No side's campaign so far has been broadly negative, emphasising more the problems of independence than a positive vision for the reformed union. The Yes side has taken to characterising this as 'Project Fear'. The No campaign and UK government strategies have, however, prevented the Yes side from using many of the weapons they would wish; they have so far prevented the SNP from mobilising anti-Conservative feeling, or turning the debate into a 'Scotland versus UK' one.

Although a form of extended devolution is clearly the preferred constitutional option of Scottish voters, little progress has been made so far by the pro-union side in formulating such an option or using it in the referendum campaign. While work is underway within both Labour and Conservative parties to formulate such a scheme, neither project appears to be making rapid progress. Failure to come up with one may have more tangible consequences as the poll nears and the campaign heats up – especially given Conservative proposals for more cuts in public spending, particularly on welfare, if returned after the 2015 UK election. The prospect of such a Conservative government may be the SNP's strongest weapon in the run-up to September's poll.

Wales: implementing Silk

The end of 2013 at last saw serious moves regarding the long-delayed response of the UK government to the Silk Commission's report on fiscal devolution. In November, the Prime Minister and Deputy Prime Minister announced that the Silk recommendations would in large part be implemented: there would be devolution of 10 'points' of income tax, plus landfill tax and stamp duty land tax, accompanied by borrowing powers. Approval in a referendum would be necessary for devolution of income tax.

In many respects, this resembles the package of 'financial accountability' enacted for Scotland by the Scotland Act 2012, though with a referendum added (in such a way as to give the Welsh government an option whether to seek those powers or not). As for Scotland, there will be a 'lockstep' for income tax; the same Welsh rate must be set for all three tax bands, without any devolved choice about having different devolved rates. This was a significant departure from the recommendations of the Silk and Holtham commissions.

As for Scotland, there will be a reduction from the block grant to allow for devolved tax powers – but as Wales is funded at or just below the level of its relative needs, this creates problems very different to those faced in Scotland.

Politically, the Silk package has support from both the Welsh Conservatives and the Liberal Democrats (who have pushed hardest for it). Labour are more ambivalent, and seem to believe that the referendum can be used to avoid the more problematic aspects of income tax devolution. Leanne Wood, leader of Plaid Cymru, has already expressed her opposition because the 'lockstep' means the power cannot in fact be used.

The draft bill is now being considered by the Finance Committee in the National Assembly and the Commons Welsh Affairs Committee at Westminster. It is to be introduced into parliament in the next session, starting in May.

Northern Ireland: deadlock over the past

Against a backdrop of growing sectarian tensions and simmering paramilitary violence on the ground, the inter-party talks which ran through the latter months of 2013 under the auspices of the former US envoy to Northern Ireland, Richard Haass, and Prof Meghan O'Sullivan from Harvard, ended in failure as the year came to a close. It never really made sense to say that the agenda for the long-suffering American mediators comprised dealing with the past, flags and parades. For the flag-waving and marching which distinguishes Northern Ireland, overwhelmingly by Protestants, is all about whose narrative of that past is to prevail.

And so the Americans proposed a flurry of new organisations – looking remarkably similar to prior organisations – to deal with each product of the Northern Ireland factory of grievances. The Protestant parties, particularly the dominant Democratic Unionist Party, balked and even the Americans' seventh draft version of an agreed text did not secure their consent.

Yet this could have been reduced to a much simpler and single proposition: a truth commission with impartial figures on one side of the table and victims and survivors, front and centre, on the other. Amnesty International, in the moving presence of many victims, launched a well-researched proposal for such a 'mechanism' at Stormont in September. It would be independent and public, would investigate abrogations of human rights during the 'troubles' by all sides without fear or favour and would draw conclusions as to the 'causes, antecedents, circumstances, contexts, nature, and extent' of violations and abuses.

As so often, the discussions were paralysed by the tendency to talk of 'a South African style truth commission'. South Africa was an outlier among the many truth commissions around the world, in exchanging immunity from prosecution for acknowledgment by agents of the uniquely powerful white-minority regime of what they had done. This has proved neither necessary nor desirable elsewhere and Amnesty made clear that truth and prosecution of offences should not be counterposed, as the Northern Ireland attorney general suggested in a remarkable proposal that the police should stop pursuing 'troubles'-related prosecutions.

If the respected international NGO, rather than the Northern Ireland political factions which are clearly *parti pris*, had been allowed to set the agenda for dealing with the past, the latest predictable stalemate might have been avoided.

THE UK AND EUROPE



EU (referendum) bill

Tension over James Wharton's private member's bill to hold an In/Out referendum on EU membership reflected Conservative members' fears of the UKIP threat during the forthcoming long electoral campaign stretching from the European and local elections in May to the general election a year later. Conservatives accused fellow peers of obstruction, on the grounds that the non-elected chamber had no business thwarting the alleged popular will in favour of a referendum.

To try to calm backbench anxieties, David Cameron promised to use the Parliament Act to force the measure through if (as is likely) the bill fails due to delay in the Lords. But even this promise presents problems. It is a private member's bill, as the Liberal Democrats would not have supported a government measure. For the Parliament Act to apply in the next session, the sponsoring MP for a new, almost identical bill would have to win a place far enough up the ballot. The new bill would also have to go through the Commons all over again where Lib Dem MPs might actively oppose it this time. Either way it might be just as likely to run out of time as its predecessor, severely embarrassing the Prime Minister at a time when the gap between Conservative ministers and backbenchers over Europe has been widening.

COURTS AND THE JUDICIARY



Judges enter the human rights debate

As 2013 drew to a close, a clutch of prominent judicial lectures addressed the role of the European Court of Human Rights in Strasbourg in British law. The Human Rights Act provides (in section 2) only that British courts must 'take into account' Strasbourg decisions. But in the *Ullah* case, the late Lord Bingham ruled that they should in general follow Strasbourg jurisprudence because the Strasbourg court is the authoritative interpreter of the ECHR. Lord Justice Laws in his third Hamlyn Lecture was against the *Ullah* approach, arguing that British courts should develop their own interpretations of the ECHR. The following week Lord Judge, the recently retired Lord Chief Justice, delivering the closing lecture for the Constitution Unit project on The Politics of Judicial Independence, endorsed this approach and suggested that the Human Rights Act should be amended to avoid any doubt. However, Lady Hale recently argued in favour of *Ullah* and advocated something like '*Ullah-plus*': the courts should generally follow Strasbourg, but should feel free to run ahead of it.

Lord Sumption expressed a more general worry that the Strasbourg court had in its jurisprudence 'gone well beyond the language, object or

purpose' of the Convention and was threatening democracy. Two of his colleagues – Lady Hale and Lord Mance – offered the opposite view, with Lord Mance describing Lord Sumption's conclusions as 'apocalyptic'.

With these speeches judges are wading into turbulent political waters. It does not help to clarify debate that they speak with so many different voices, muddying the waters for politicians and administrators who need to anticipate court decisions. That senior judges align themselves in this way with rival positions in such a deeply polarised political debate also risks undermining the tradition of a politically neutral judiciary. Might the UK Supreme Court be developing identifiable ideological factions like its US counterpart?

Changes to judicial appointments and working arrangements

Changes made by the Crime and Courts Act 2013 are aimed at increasing the diversity of the judiciary and reducing the role of the Lord Chancellor. Responsibility for appointments below High Court level has now been transferred to the Lord Chief Justice. These changes were originally proposed under Ken Clarke, who objected that his role served little purpose because he had no personal knowledge of any of the candidates. The result has, however, been to reduce the already small degree of political accountability for these appointments.

Flexible working arrangements are now available to High Court, Court of Appeal and Supreme Court judges, with the aim that this will make these senior posts more accessible to women with family commitments.

Deployment is now possible between courts and tribunals, creating the possibility that members of the tribunals judiciary (which is significantly more diverse than the courts judiciary) could gain experience in the courts system and seek jobs in the higher courts.

The key change to the selection process for judges is the creation of a 'tipping point' rule. If two candidates are of equal merit the tipping point rule allows that preference can be given to a candidate from an under represented minority. This has the potential to increase diversity, but only if the concept of 'equal merit' is given a broad definition. The Judicial Appointments Commission intends to implement the tipping point by identifying a cohort of 'equal merit' candidates within each selection exercise and using the tipping point to select within the cohort.

EXECUTIVE



Extended Ministerial Offices

In November the Cabinet Office published guidelines for Extended Ministerial Offices (EMOs), first announced by Francis Maude last July. The guidance is here:

<https://www.gov.uk/government/publications/extended-ministerial-offices-guidance-for-departments>

Continued overleaf.

EMOs will have three categories of staff: civil servants in the traditional Private Office role, Special Advisers, and external appointees. The main expansion is likely to be in the third category, and the Civil Service Commission have created a new exception to allow recruitment without competition of chosen individuals as temporary civil servants for up to five years. The previous maximum was two years: the new exception will allow outsiders to be recruited for the whole of a parliament.

Ministers who want an EMO will need first to agree the mix of staff and the budget with their Permanent Secretary, before seeking the approval of the Prime Minister. The budget must come from within the department's overall allocation. The main quality control will come from Cabinet Office and the PM's Chief of Staff in scrutinising EMO proposals.

There are two twists in the tail for ministers who want an EMO. The first is that at least one member of the EMO must focus on implementation, reporting to the Head of the Cabinet Office Implementation Unit. So there is a direct line reporting line from the EMO to the centre on whether the department is meeting its targets. The second is that requests must include 'specific proposals for strengthening the offices of junior ministers ... of a different party'. Where no EMO is planned, junior ministers can put forward their own proposals. This is primarily to strengthen the support for the dozen Liberal Democrat junior ministers scattered round Whitehall, who feel isolated and outgunned.

In the remainder of this parliament it seems unlikely that many ministers will want an EMO. Energetic ministers like Michael Gove have already found ways of recruiting additional advisers. And outsiders may be reluctant to sign up for 18 months or less when they may be paid off in 2015. So the real test will be in the next parliament. Labour's shadow Cabinet Office spokesman Jon Trickett said that he supported the government's plans for EMOs. If 2015 brings another hung parliament, the future of EMOs might depend on the Lib Dems carrying Francis Maude's idea into the next government if they hold the balance of power.

Changes in the Ministry of Justice

The appointment of the Liberal Democrat deputy leader Simon Hughes MP as Minister of State in the Ministry of Justice in December sharpened coalition differentiation as the election drew nearer but without apparently jeopardising government stability. Hughes replaced his fellow Lib Dem stalwart Lord (Tom) McNally but in a different role in the Commons. Hughes is a fervent Europhile and an opponent of sweeping legal aid cuts, whereas it had been McNally's job to defend legal aid cuts against a battery of lawyers in the upper house. McNally was replaced in that role by a very different political character Lord (Edward) Faulks, a Conservative QC who has canvassed the possibility of withdrawing from the European Convention. Hughes' portfolio of responsibilities, while it includes human rights (jointly with Damian Green at the Home Office), steers clear of legal aid and includes less contentious matters such as devolution, freedom of information, and improving justice delivery. On his retirement from politics to become chairman of the Youth Justice Board, Lord McNally was replaced as Deputy Leader of the Lords by fellow Lib Dem veteran Lord (Jim) Wallace of Tankerness.

PARLIAMENT



Lords

Conservatives become largest party

Following David Cameron's appointment of new peers in August (see *Monitor 55*), the Conservatives became the largest party in the Lords in October. As of 7 January 2014, they had 221 peers, while Labour had 220, Liberal Democrats 99 and Crossbenchers 181 (excluding members on leave of absence, etc). This particular milestone was thus reached three and a half years after the 2010 general election - significantly more quickly than applied to Labour, which took nine years post-1997 to become the largest party. The overall size of the chamber stood at 778, with an additional 55 temporarily excluded from membership.

Options crystallising for small-scale reform

The growing size of the chamber has been one of the main drivers of proposals for small-scale reform, following the withdrawal of the coalition's bill in 2012. October saw publication of the Commons Political and Constitutional Reform Committee (PCRC)'s report on "House of Lords reform: what next?". The committee expressed scepticism about some options, such as introduction of a compulsory retirement age or a complete moratorium on new appointments. It offered stronger support to others, including expelling peers convicted of serious criminal offences, strengthening the current voluntary retirement scheme and ceasing to replace hereditary peers when they die. The committee also put particular emphasis on the urgent need for agreement between the party (and Crossbench) leaders over key aspects. One was retirement, where the PCRC recognised that leaders may need to actively encourage their group members to retire, to ensure that retirements occur in 'an equitable manner' between the groups. Even more importantly, the committee urged leaders to reach agreement over a sustainable formula for future appointments to the chamber. It concluded that 'establishing a consensus about the principles which should determine the relative numerical strength of the different party groups in the House of Lords' was 'perhaps the most contentious of all the issues considered' by its inquiry, 'but also the most crucial'.

Some, but not all, of these matters are dealt with in the private member's bill proposed by (Conservative) Dan Byles MP, which had its second reading on 18 October. It includes provisions for permanent voluntary retirement, forced retirement of non-attendees, and expulsion of serious criminals. Notably, unlike the similar bill proposed by Baroness Hayman, it would not end the hereditary byelections - a concession said to have been agreed with Conservative whips, to ease its passage. The bill has attracted increasing support in government circles, including in evidence from Nick Clegg to the PCRC on 10 October, but the timetable for it to become law is very challenging. In January it still hadn't started its Commons committee stage, with much PMB time having gone instead to the European Union (Referendum) bill (see page 3).

On 12 December the Lords debated its own size problems, on a motion proposed by Lord (Philip) Norton of Louth. This allowed members to comment both on the Byles bill and the PCRC report.

Leader of the House Lord Hill confessed himself 'very aware of the mood of the House' on the issue, and indicated support for some of the PCRC conclusions. But no promises, or agreed formula, on Lords appointments were forthcoming.

The suggestion made in the debate by (backbench Conservative) peer Lord Cormack for a Lords select committee in 2014-15 to consider these matters may therefore gain support.

(More) controversies on Lords expenses

Lords expenses were again in the news in December, following an 'exposé' by the Daily Mirror into the behaviour of Lord Hanningfield (previously convicted over expenses in 2011). This led to suggestions from some peers for further change to the current system, which comprises flat rate payments of £300 per day. Such headlines undoubtedly damage the reputation of the chamber, but designing an alternative system (given that full-time salaries would not work for the Lords) is very challenging.

Commons

Government response to PCRC on Wright committee progress

On 5 December the government's response was published to the PCRC report on the impact of the Wright committee reforms (see Monitor 55). This opposed further changes, such as to the appointment of members of public bill committees and joint committees, or greater regularity in the debate days allocated to the Backbench Business Committee. Centrally, the government was not convinced by the committee's ideas for taking forward proposals for some kind of House Business Committee. In a press release responding to the government's response, committee chair Graham Allen announced that he was 'disappointed', concluding that on the last point 'the coalition government has broken a clear promise to parliament, made in the coalition agreement'. Relatively smaller changes, such as elections to committees, could potentially be pursued in future by the Procedure Committee in backbench time - even without ministerial support. But this would take considerable political will.

IPSA report published on MPs' pay

On 12 December the Independent Parliamentary Standards Authority published its long-awaited final recommendations on changes to MPs' pay. The package of proposals was intended to be broadly cost neutral, making savings from pensions and resettlement payments (for those leaving parliament) to facilitate an increased salary of roughly £74,000 a year. Current pay is £66,000, so this would represent a 9 per cent increase in 2015, over the already agreed 1 per cent this year. Despite the arm's-length nature of IPSA, and the argumentation in the report (based for example on other public sector salaries, and pay for parliamentarians overseas) there was a predictable media outcry. Party leaders hurried to distance themselves from the proposals, leaving the prospect that a pay rise could be imposed on MPs ostensibly against their wishes. The alternative is for the Commons to vote for an alternative scheme, but this would reverse the switch to an independent system, albeit against MPs' immediate financial interest. The change is not intended to be implemented until after the general

election, so some members may hope that tempers have calmed by then. A little noticed part of the report also proposed a move to a system of annual reporting for MPs against some kind of performance criteria. The public consultation showed support for this idea, though MPs themselves were less keen. The idea is to be taken forward by a working group led by former MP Tony Wright (a member of IPSA, and Professor at UCL), with a report expected in the spring.

ELECTORAL



Individual electoral registration

As election fever mounts, the system of electoral registration in Great Britain is being transformed, as individual voter registration (IER) replaces the Victorian system of registration by heads of household. Fingers are crossed that IER will reduce voter fraud without decreasing the numbers of those registering to vote. Wards featuring people of Pakistani and Bangladeshi origin in 16 council areas were under extra scrutiny for fraud by the Electoral Commission, although the numbers involved were described as 'a mere handful'. Fears of a drop in registration were eased somewhat by allowing carryover from the existing register when the new one goes live.

Towards the creation of a rolling register, an Electoral Commission report last October found that across Great Britain, there was a 78 per cent record match between the electoral registers and the DWP system, a six percentage point improvement on a pilot that the Commission evaluated earlier in the year. But match rates varied from 46.9 per cent in Kensington and Chelsea to 86.4 per cent in Mansfield. Despite that, a large majority (85 per cent) of electoral registration officers (EROs) were confident about the process of confirming electors.

Electoral Commission chair Jenny Watson warned of the risks of a tight timetable. Full testing of the IT system that will be used to verify people and a new online registration system will not begin before March, just three months before the start date for IER. 'The government must be clearer about its testing and contingency plans and how it will mitigate the risks that have been identified,' Watson said. 'Electoral registration officers and their staff need to be told as soon as possible how much funding they will receive to deliver the transition.'

Experience in Northern Ireland where IER was introduced in 2002 to combat personation will reinforce lingering concerns that it may not be fully operable in GB in time for the 2015 general election. An official report found a decline in the Northern Ireland register from 83 per cent complete and 94 per cent accurate in 2008 to 71 per cent complete and 78 per cent accurate last year. The Electoral Commission also recommended voters to bring photo ID to the polls which was introduced in Northern Ireland in 2003.

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INTERNATIONAL



New constitution in Egypt

Last year at this time, Egypt had just promulgated its new constitution. Since then, there have been regular street protests, President Morsi was removed from office, the military returned to power and the 2012 constitution was suspended and subsequently amended. The amended constitution was overwhelmingly approved in a constitutional referendum on 14 and 15 January. More than 98 per cent of those who voted in the referendum supported the constitutional changes, although turnout in the referendum was less than 40 per cent.

Although some changes to Egypt's constitution are commendable (e.g. the expansion of women's rights, stronger protections for the press and the protection of intellectual property) many of the changes are worrisome. For instance, the President has gained a significant number of new powers under the amended constitution. He can now initiate and veto legislation and has the power to propose referendums to dismiss the legislature without any repercussions (previously, a failed referendum required the President to resign). The military has also been strengthened. The Minister of Defence will be selected by the Supreme Council of the Armed Forces, rather than by the President, and the military will be given an independent budget to use as it wishes.

Given the fact that Defence Minister Abdel Fattah al-Sisi is likely to run for President in 2014, it seems that the Egyptian military is poised to maintain its grip on power for the foreseeable future. Let us hope that it uses its control over the state's institutions to implement and legitimise the tenets set forth in the constitution, which will require somehow convincing the Muslim majority to work within them.

Compare the texts of the 1971, 2012 and 2014 Egyptian constitutions at <http://comparativeconstitutionsproject.org/comparing-the-egyptian-constitution/>.

Chile elections: 'Mark Your Vote' campaign reveals pressure for constitutional change

Chile stands out as one of the few Latin American countries that did not adopt a new constitution when it democratized. The 1980 constitution, written during the Pinochet dictatorship, remains in force today. Although it has been reformed several times, the 17 amendments to the Chilean constitutions were largely elite led efforts, made with little popular involvement. Growing inequality in Chile, which is already one of Latin America's most unequal societies, threatens to upset the equilibrium established by the 1980 constitution. During current President Sebastián Piñera's term in office, he saw the emergence of large-scale student protests against inequality in the education system. The protests have escalated to a constitutional crisis, as student leaders have realised that the constitution is a barrier

to their demands, because it requires supermajorities to change many laws, including those related to education.

This mounting pressure for constitutional change was reflected in the recent presidential elections, which brought Michelle Bachelet back to the helm as President-elect of Chile. After narrowly missing an absolute majority in the first round of voting on November 17, Bachelet's coalition secured a comfortable 62 per cent of the vote in the runoff held on December 15 against centre-right candidate Evelyn Matthei. The elections were the site of intense campaigning by new social movements, most notably the youth-led 'Marca Tu Voto' campaign which succeeded in convincing 8 per cent of voters to mark 'AC' on their ballots to demand a constituent assembly to draft a new constitution for Chile.

Bachelet has pledged to create a new constitution. Such a pledge is a little ambitious because her 62 per cent majority falls just short of the 67 per cent needed to change most of the provisions in Chile's constitution. Her majority is sufficient to amend some sections of the constitution, so we can expect some constitutional changes in Chile in the immediate future.

The United States' senate goes nuclear

On the 21 November 2013, Senate Democrats detonated the, so-called, 'nuclear option'. By a vote of 52-48, largely along party lines, the Senate reinterpreted the rules surrounding cloture. According to the United States Constitution, the President nominates members of the executive and judicial branches with the 'Advice and Consent of the Senate' (Article 2, Section 2). This provision has been interpreted to mean that the Senate must formally approve such nominees by a majority vote, which leaves those nominees subject to the Senate's rules about unlimited debate. The Republicans and the Senate have used these rules to filibuster a record number of President Obama's nominees over the last 5 years. The Senate Democrats were powerless to stop these filibusters because they lacked the 60 votes necessary to invoke cloture and stop the debate. The rule change on the 21 November allows a Senate majority to invoke cloture for debates surrounding the approval of executive nominees and all judicial nominees except for those to the Supreme Court. This change is designed to prevent a Senate minority from filibustering most Presidential nominees, which has been a real problem for the Obama administration.

A lot has been made about the importance of this change, but in the long-run, it is unlikely to be very consequential. The minority can still hold up executive nominees in committee, which we should see a lot more of. Further changes to the rules surrounding filibusters and cloture are unlikely in the near future because both parties enjoy the benefits of the filibuster when they are in the minority.

Irish Seanad referendum

On 4 October, the Irish electorate defeated a referendum proposal to abolish the upper house (the Seanad) by the relatively narrow margin of 51.8 per cent to 48.2 per cent. The referendum was a personal defeat for the Taoiseach (Prime Minister Enda Kenny) who had advocated the change when he was in opposition.

The Seanad has very little formal power and has been used as both a nursery and a retirement home for politicians. Most senators are elected by other politicians and the government of the day is guaranteed a permanent majority. Only six seats allocated to university constituencies are directly elected by those who hold degrees from either Trinity College Dublin or the National University of Ireland. Nonetheless, the university constituencies have traditionally provided a platform for alternative voices in Irish politics, such as former President Mary Robinson and long-time gay rights campaigner David Norris. The Irish government sought to capitalise on an anti-politics feeling by arguing that the abolition of the Seanad would reduce the cost of politics. However, its proposed alternative – never wholly spelled out but revolving around a more robust committee system in the Dáil (lower house) – failed to convince. The weakness and uncertainty of the proposal allowed opponents to present the referendum as a populist political stunt. Following the defeat the government agreed to examine ways in which the Seanad franchise could be extended universally within the limits of the current constitutional framework.

CONSTITUTION UNIT NEWS

The New Political Class? The changing socio-economic profile of PPCs and MPs in Britain, 1945-2015

Dr Jennifer van Heerde-Hudson (Principal Investigator, UCL) and Dr Rosie Campbell (co-Principal Investigator, Birkbeck) have been awarded a grant from the Leverhulme Trust (RPG-2013-175) to investigate Britain's changing political class.

The motivation for this project emerges from an oft-cited, widely-held belief that the political parties, politicians and policymakers—the political class—who occupy the 'Westminster Village' are increasingly out of touch, insular and unable to understand the lives and concerns of the ordinary British public. In short, that the people who are elected to represent us, no longer represent us. The changing socio-demographic profile of MPs documented first by Anthony King (1981) and Michael Rush (1994), noted a shift from amateur politicians recruited from landed and working classes, to the career politician recruited from the middle class. However, both public perception and recent evidence suggests that politicians are increasingly drawn from a narrowing middle class—a privileged class—despite significant efforts at increasing the descriptive representation of elected representatives.

This two-year project focuses on three principal questions:

- How has the socio-economic profile of parliamentary candidates and MPs changed over time?
- Do social/electoral attributes influence selection and election?
- Is there a relationship between social/electoral attributes and career trajectory?

A key output of the project will be a single, publicly available dataset combining biographical, social, electoral and institutional attributes for candidates and MPs from 1945-2015. The dataset will inform the research on the key research questions and will provide the first systematic and comprehensive source of data on parliamentary candidates in Britain. The researchers will work with the political parties and the BBC's Political Research Unit to provide the most current data on candidates for the 2015 general election.

Launch of a new pamphlet: risk management: government lawyers and the provision of legal advice within Whitehall

The Constitution Society, in partnership with the Constitution Unit, launched the new report in November *Risk Management: Government Lawyers and the Provision of Legal Advice within Whitehall*. Written by the Constitution Unit's Dr Ben Yong, the report looks into the important role that legal advice plays in the British political system.

Government lawyers are a powerful and influential group within Whitehall, and as such they deserve greater understanding. Law and legality are now ever-present considerations in the policy and decision making process. Government cannot escape from the reach of the law – if it ever could. The result is that lawyers have become more integrated into the policy and decision making process in Whitehall because of the increasing penetration of law into government. But because law is inescapable, and its effect uncertain, lawyers talk of legal risk rather than legality and illegality. Government lawyers see themselves not as 'guardians' but as managers of legal risk.

This short study examines the work of government lawyers in Whitehall, looking at the changes over the past thirty years in the way that legal advice has been provided. It examines the role of lawyers in the policy and decision making process, the hierarchy of legal advice and the professional norms that government lawyers adhere to. Finally, there is a case study of the role of government lawyers in the decision to use military force against Iraq in 2002–2003. To view the publication visit The Constitution Society's website where you can also find an interview with Dr Ben Yong on the launch of the report.

Unit committee appearances & evidence

Robert Hazell gave evidence to the Lords Constitution Committee on 16 October, for their inquiry into the constitutional implications of coalition government; and to the Public Administration Select Committee on 29 October, for their inquiry into the Parliamentary Ombudsman. See committee page.

Robert Hazell and Patrick O'Brien gave evidence to the PCRC for their inquiry into the role of the judiciary if there were a codified constitution, on 28 November and 9 January. See committee page.

Staff update

- Dr Jennifer van Heerde-Hudson who is a Senior Lecturer in Political Behaviour in the Department of Political Science has joined the Unit. Together with Rosie Campbell (Birkbeck), she will be working on the New Political Class project.
- Dr Chrysa Lamprinakou has been appointed Research Associate and will be working with Dr Hudson on the New Political Class Project. Prior to joining the unit, Chrysa worked on a study on the AV Referendum campaign and produced a report on the 'Yes to Fairer Votes' campaign for the Electoral Reform Society. Since 2010 she teaches British Politics at UCL.
- The Unit is very grateful for all the hard work of the interns Elsa Piersig, Miriam Puttick and Steven Sewell.

Bulletin Board Constitution Unit Newsletter

Constitution Unit Seminar Series

Constitutional Reform in the Age of Arab Revolutions: Overcoming the Legacy of Totalitarianism

Speaker: Zaid Al-Ali

Monday 10 February 2014, 1pm

Lecture theatre LG04, 26 Bedford Way

Parliament's Role in the Use of Military Action After the Syria Vote: The New Constitutional Convention and the Next Steps

Speaker: Prof Gavin Phillipson (University of Durham)

Monday 10 March 2014, 6pm

Reforming Electoral Administration, Preparing for the 2015 Election

Speaker: Jenny Watson (Electoral Commission)

Wednesday 26 March 2014, 1pm

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

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

We now film all the presentations from our events and these can be viewed on our website. All the information and links can be found at: www.ucl.ac.uk/constitution-unit/events.

Publications to Note

Ed. J Hallwood. *If Scotland says 'No' What Next for the Union?* (The Constitution Society, 2013)

R. Gordon & A. Street. *Select Committee and Coercive Powers – Clarity or Confusion* (The Constitution Society, 2013)

A. Street. *Judicial Review and the Rule of Law* (The Constitution Society, 2013)

R. Gordon & M. Jack. *Parliamentary Privilege: Evolution or Codification* (The Constitution Society, 2013)

Constitution Unit Publications

B. Worthy & R. Hazell. 'The Impact of the Freedom of Information Act in the UK.' Ed. N. Bowles et al. *Transparency in Politics and the Media*. (University of Oxford, 2013)

M. Russell (2013). *Rethinking Bicameral Strength: A Three Dimensional Approach*. *Journal of Legislative Studies*, 19(3) 370-391

B. Yong. *Risk Management Government Lawyers and the Provision of Legal Advice within Whitehall*. (The Constitution Society, 2013)

J. Simson Caird, R. Hazell & D. Oliver 'The Constitutional Standards of the House of Lords Select Committee on the Constitution' (Constitution Unit, January 2014)

Unit in the Media

Parliament

- Meg Russell featured on *BBC Parliament* Booktalk to discuss her new book *The Contemporary House of Lords: Westminster Bicameralism Revived* in October 2013. Can be viewed on *BBC Iplayer*.
- Peers in uproar as coalition crams 30 more into House (17 October 13) *Times*

Scotland

- Professor Robert Hazell talks to John Beesley on the forthcoming Scottish independence referendum Listen on *BBC Radio 4's Westminster Hour*. (6 October)
- Scotland's rocky relationship with England - *CNN* (26 November)
- Scottish government publishes white paper on independence: Politics live blog – *The Guardian* (26 November)
- 'Revolution' in social policy promised under Scottish referendum – *Voice of Russia* (26 November)
- Professor Robert Hazell on *BBC Radio 4's World at One* talking about the consequences of Scottish independence for the Westminster government (3 January 2014)

Judicial Independence

- European court is not superior to UK supreme court, says Lord Judge *The Guardian* (4 December)
- Former chief judge supports right to defy ECHR on jail votes *The Times* (5 December)
- Strasbourg not superior to British courts' says former senior judge *The Telegraph* (4 December)
- "Thomas Jefferson would have strongly advised us against it" *The Independent* (4 December)

Comparing Constitutions

- Countries change their constitutions often. There's an app for that – *The Economist* (9 November)

Constitution Unit Blog

www.constitution-unit.com

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