



Brexit and the transformation of British politics

The months since the [previous issue of Monitor](#) was published on 9 June have been the most dramatic in post-war UK political history. The unexpected victory for Leave in the referendum on the UK's EU membership sent shockwaves throughout the political system. Within three weeks of that vote, David Cameron had left Downing Street and been replaced as Prime Minister by Theresa May. Three quarters of Labour MPs had [voted no confidence in their leader](#), Jeremy Corbyn – and yet he sat tight, in open defiance of the traditional norms of parliamentary democracy. UKIP and the Green Party had both also entered leadership contests. Nicola Sturgeon had declared that a second referendum on Scottish independence was now [‘highly likely’](#).

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Much of this issue of *Monitor* deals with the aftermath of the Brexit vote, including its implications for Westminster (see pages [2-3](#)), Whitehall (page [6](#)), the devolved administrations (pages [10-11](#)), and the EU (page [13](#)). We also explore ongoing debates regarding the conduct of the referendum itself (pages [7-8](#)). This introduction draws out five major constitutional themes.

First, the referendum and its aftermath demonstrate that popular sovereignty, not parliamentary sovereignty, is now the central principle of the UK constitution. The doctrine that parliament is the ultimate sovereign power in the UK (or, at least, in England – Scottish nationalists discern a different heritage north of the border) was asserted by the nineteenth-century constitutional theorist A. V. Dicey. The emergence of referendums since the 1970s had eroded that principle. The referendum in June, however, was the first in which the popular vote went against the clear will of the majority in the House of Commons. That most MPs feel bound to accept that decision shows where ultimate power in UK politics actually lies. There has been [great debate](#) over the summer as to whether parliamentary approval is needed to trigger Article 50 of the Lisbon Treaty and begin formal talks on Brexit (see page [12](#)). But this has been something of a sideshow: even if the courts deem that parliament's consent is needed, it is all but certain to be granted.

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Second, the real debate now focuses on who should exercise power where the popular sovereign has not spoken. The electorate voted on whether to remain in or to leave the EU, but they were not asked, and therefore did not decide, what form Brexit should take. The degree to which that should be determined by parliament or by government, or perhaps returned to the people in the form of a second referendum, is now hotly contested. As we explore below, ministers have repeatedly insisted that they are in charge of the Brexit negotiations and that to reveal their hand to parliament in advance would weaken their negotiating position. Many MPs, however – mostly, but not exclusively, Remainers – argue that, on an issue of such fundamental importance to the country’s future, parliament’s role should be pivotal. As the UK is a parliamentary democracy, it is reasonable to interpret the people’s message as having been sent to their elected representatives in parliament, whose duty in turn is – as usual – to instruct and hold the executive to account for the detailed implementation of policy.

How these arguments will be resolved remains unclear. Parliament’s constitutional position is strong: the treaties that will define the terms of Brexit and the UK’s future relationship with the EU, as well as the legislation to give those changes domestic legal effect, will all require parliamentary approval, and government will not want to antagonise parliamentarians in advance of those votes. Normal procedures for scrutinising European business are not expected to apply to the Brexit negotiations, so mechanisms for decisive parliamentary intervention during the course of those negotiations may be lacking. Nonetheless, a great deal can be achieved by other means. Parliament’s role as a public, representative arena where ministers are required to explain themselves (via questions, debates and statements) has potential to expose both splits and unclear thinking. Ultimately, how hard parliament pushes is likely to depend on the mood of the popular sovereign. The same applies to calls for a second referendum on the Brexit deal, made by prominent figures such as Labour leadership candidate [Owen Smith](#) and Liberal Democrat leader [Tim Farron](#): parliament will agree to such a referendum only if there is evidence of a clear shift in the public mood on Brexit.

Third, any effects that Brexit might have on the future unity of the UK are on hold. Nicola Sturgeon has offered fighting talk on the possibility of a second independence referendum – both in the [early days](#) following the Brexit vote and again [at the SNP’s October conference](#).

Yet her actions suggest greater caution: she has published a draft bill for such a referendum, but has offered no timetable on further progress. [Polls](#) have shown no lasting shift in Scottish opinion on independence since the EU vote. Sturgeon [will not call another referendum](#) unless this changes, and – [as we pointed out in May](#) – post-Brexit Scottish independence may be a tough sell. Indeed, it [could be in Northern Ireland](#) rather than in Scotland that Brexit has the most destabilising consequences.

Fourth, if popular sovereignty is now the founding principle of our constitution, much greater thought is needed as to how that is best exercised when referendums are held. [Research by the Electoral Commission](#) finds widespread dissatisfaction on both sides of the Brexit debate with conduct of the EU referendum (see page [7](#)). Constitution Unit researchers have argued that work is urgently needed to explore how that situation might be improved, and what the proper role for referendums should be (see page [15](#)). Thought should also be given to how the public can be enabled to participate more deliberatively in politics.

Finally, the referendum result was driven more than anything else by the perception across large parts of society that the Westminster ‘establishment’ is deaf to their needs and concerns. The challenges posed by Brexit are acknowledged by almost everyone as very large. But the challenge of closing this deep political and social divide may be greater still.

Parliament



Westminster and Brexit

As indicated above, the months since the referendum have seen much discussion about the role that parliament should play in the Brexit process. Many MPs and peers have called for a more active role than the government has appeared to envisage. Demands for greater parliamentary involvement initially centred on the question of whether the triggering of Article 50 should be subject to a vote in either or both chambers. In a report published in September the House of Lords Constitution Committee [supported this](#), arguing that it is

‘constitutionally appropriate that Parliament should take the decision to act following the referendum’. However, Theresa May has [resisted these calls](#), telling the Conservative conference in early October that it is ‘up to the government to trigger Article 50 and the government alone’. This is the subject of court challenges (see page [12](#)) and remained unresolved as this issue of *Monitor* went to press.

The government has also been under increasing pressure to hold a vote, prior to the beginning of negotiations, on the type of continuing relationship with the EU that should be sought. This is supported by many MPs who campaigned for Remain during the referendum but, significantly, also by the Leave supporting MP [Stephen Phillips](#). Advocates of such a vote argue that the referendum result did not give the government a mandate for a so-called ‘hard Brexit’, under which the UK would leave the European single market, and that it should be for parliament to determine the form that Brexit should take. In response to questions on 10 October, the Secretary of State for Exiting the European Union, David Davis, [insisted](#) that the government has ‘the largest mandate that this country has ever given to a Government on any subject in our history’ and that to hold the type of vote being demanded would ‘compromise the negotiation’. Nonetheless, when an [opposition day debate](#) was held two days later the government tellingly chose to accept the motion ‘that there should be a full and transparent debate on the Government’s plan for leaving the EU’ rather than risking a vote, and several key Conservative MPs spoke out in favour.

Theresa May has announced that the first legislation relating to Brexit – a [‘Great Repeal Bill’](#), overturning the European Communities Act 1972 and providing for existing EU law to be translated into UK law post-Brexit – will be included in the 2017 Queen’s speech. In her [speech to the Conservative conference](#), the Prime Minister also announced her intention to trigger Article 50 by the end of March, opening the formal negotiations with the other 27 EU member states. Despite the focus on what votes might be held, parliament’s involvement in these negotiations and any later trade negotiations with non-EU countries is likely to be primarily in a scrutiny role. As well as subjecting the lead ministers to question times, the House of Commons has now established select committees to shadow the two new departments that were established in July (see page [6](#)).

The [Exiting the European Union Committee](#) is unusually large, composed of 21 members – a number that allows representatives of some of the smaller parties in the chamber to be included among the membership, but which the Institute for Government has warned [may hamper the committee’s effectiveness](#). Senior Labour MP Hilary Benn was [elected to the chair](#) on 19 October. SNP MP Angus Brendan MacNeil was elected unopposed as chair of the [International Trade Committee](#), which has the usual 11 members. Many of the other departmental select committees in the Commons will also conduct Brexit-related inquiries – [18 had been announced](#) by mid-October.

In the House of Lords, the existing European Union Committee will take the leading role. On 12 September this committee took [evidence](#) from the Secretary of State for Exiting the European Union, David Davis, on parliamentary scrutiny of the forthcoming negotiations. Whilst saying that he wanted to ‘engage and consult with parliament as widely as possible’, Davis told the committee that the need to avoid giving away the government’s negotiating position meant that he ‘may not be able to tell you everything, even in private hearings’. This is consistent with Theresa May’s repeated statements that the government will not be giving a ‘running commentary’ on the progress of the negotiations. Parliament’s efforts at scrutinising the negotiations may, therefore, be hampered by not being fully informed of progress – though Davis did make a commitment that Westminster committees would be kept at least as informed as European Parliament committees.



David Davis giving evidence to the House of Lords EU Select Committee. This image is subject to [parliamentary copyright](#). www.parliament.uk

Restoration and renewal: a decision for change

The long-awaited [report](#) from the Joint Select Committee on Restoration and Renewal of the Palace of Westminster was published on 8 September, recommending a single decant for all MPs, peers and staff as the lowest risk, most cost-effective and quickest option for the immediate works required. There was deep concern running through the report on value for money, and a welcome recommendation to establish a sponsor board and delivery authority to prepare detailed costings and plans. The next step is for debates to be held in both Houses on a draft motion to set up these bodies. The committee was co-chaired by Chris Grayling and Baroness Stowell of Beeston, respectively Leaders of the House of Commons and House of Lords at the time of the committee's establishment. However, both Leaders were replaced in Theresa May's reshuffle in July. The new postholders, David Lidington and Baroness Evans of Bowes Park, have yet to comment on their approach to restoration and renewal.

The report was clear about the preferred locations for the temporary decant of both chambers. For the Commons, it is the inner courtyard of adjacent Richmond House, which was already under consideration for parliament as part of a separate decant plan for the Northern Estate (Norman Shaw buildings, etc.). For the Lords, it is the Queen Elizabeth II conference centre. Some members will grumble, but these should both be appropriate alternative venues. Public interest, shown through a [YouGov poll](#), focused on moving parliament out of London, but this will not form part of the practical options on offer. Encouragingly, the media response to the report was positive.

The joint committee argued for the temporary chambers to replicate the current layout and for the retention of division lobbies, but final decisions on this are some way off. It accepted the case for major change to aid visitor engagement in a refurbished Palace, but did not support radical suggestions for the creation of new chambers. The need for a much more flexible mix of formal and informal meeting places for parliamentarians, staff and constituents will inevitably drive a major reconfiguration of the Palace.

English votes for English laws inquiries

This month marks the first anniversary of the implementation of 'English Votes for English Laws' (EVEL) in the House of Commons. Under this procedure, English (or English and Welsh) MPs have the opportunity to veto legislation that applies only to that part of the UK. As of 9 October, the Speaker has certified provisions in nine bills, plus around 30 statutory instruments, although EVEL has not yet made any difference to legislative outcomes.

In recent months, several parliamentary committees have launched or continued inquiries into the operation of EVEL. The Commons Procedure Committee is conducting a [technical review of the procedures](#), and is expected to publish its final recommendations (following on from its earlier [interim report](#)) later this year. Both the [Scottish Affairs Committee](#) and the [Northern Ireland Affairs Committee](#) have held evidence sessions on EVEL. And the Lords [Constitution Committee](#) is examining EVEL's constitutional implications, with its findings due to be published in the autumn. One specific controversy blew up during the Conservative leadership election, when an anonymous Conservative figure [briefed the press](#) – incorrectly – that, as a Welsh MP, candidate Stephen Crabb would be unable under EVEL to vote on his own government's English legislation.

The UK government has previously announced that it will review the operation of EVEL after one year. Daniel Gover and Michael Kenny, of the [Mile End Institute](#), will be publishing a detailed evaluation of EVEL in November, to be launched at one of the Unit's [public seminars](#). This will include a series of specific recommendations for reform and aims to feed into this review process.

Procedure Committee proposals on private members' bills

In April the House of Commons Procedure Committee [proposed changes](#) to the private members' bill process, and in June the [government response](#) was published. As the committee's chair, Charles Walker, [summarised on our blog](#), it recommended a major shake-up, with new procedures for prioritising PMBs for debate, and fewer chances for procedural blocking. This included guaranteeing a vote on second reading to the first seven bills debated on Fridays, and supplementing the current balloting system with a new ability for the Backbench Business Committee to select up to four

bills on merit for early slots, based on their substance and demonstrated degree of cross-party support. Such changes would favour genuinely popular bills, and create a more transparent and merit-based system, where bills had a better chance of success. But the government rejected virtually all of the recommendations, which Walker declared ‘[deeply disappointing](#)’. One reliable commentator suggested that this signalled ‘[war](#)’ between the government and the Conservative-led committee. On 18 October the committee issued a [further report](#), reiterating some of their earlier recommendations and saying that ‘the House must have an opportunity to come to a decision on our proposals’.

A new era for the Lords?

A coincidence of changes makes the coming period look potentially interesting in terms of Lords reform. David Cameron became somewhat notorious for his [excessive appointments](#) to the chamber, and indeed following his departure there was [speculation](#) that he would leave a super-sized resignation list (in the end his list included only [16 peers](#) – 13 Conservative, one Labour and two Crossbenchers – with the main criticism levelled at his other honours, as detailed on page [6](#)). Theresa May seems likely to want to distance herself from this behaviour and the bad headlines that it attracts.

Alongside a new Prime Minister comes the new Lord Speaker – on 13 June it was announced that former Conservative cabinet minister Lord (Norman) Fowler had [overwhelmingly won](#) the election to replace Baroness D’Souza. In a [valedictory event](#) jointly organised by the Constitution Unit in July, D’Souza spoke out about excessive, unregulated Lords appointments. Subsequently Lord Fowler has been even more outspoken. In several interviews in September, including for the [BBC](#), he supported a proposal – long advocated by many peers – that by the 2020 general election the Lords should be no larger than the Commons. This would require reduction by around 200 members. Other senior voices have made similar calls – including Conservative grandees [Lord Carrington](#) and [Lord Tebbit](#). Lord Fowler is among those who have contrasted the Lords’ increasingly bloated state with the government’s determination to shrink the Commons through boundary changes (see page [8](#)).

Conservative MP and chair of the Commons Procedure Committee Charles Walker [has even proposed](#) that agreement of the boundary changes should be made conditional on a smaller House of Lords. Pressure for incremental reform has also come from the Labour side – during the leadership contest Owen Smith [suggested a five-year moratorium](#) on political appointments, while Labour Leader in the Lords Baroness (Angela) Smith of Basildon [has urged](#) an end to both hereditary by-elections and the wearing of ceremonial robes (Jeremy Corbyn instead favours [more radical change](#), to an elected chamber).



Former Lord Speaker Baroness D’Souza in discussion with Professor Meg Russell at an event held to mark the end of her term, 20 July 2016

There are some early signs of practical moves towards regulating the Lords’ size and appointments process. Chair of the Commons Public Administration and Constitutional Affairs Committee (PACAC) Bernard Jenkin has [proposed an inquiry](#) into these issues, which may provide a blueprint for change. Developments are also afoot inside the Lords itself, and agreement of a motion supporting the principles articulated by Lord Fowler seems likely in the next few months. [On our blog](#), Meg Russell has suggested how these changes might be put into effect in a sustainable way. The key necessity is for government and parliament to agree on the principles; private members’ bills, if offered tacit government support, could then offer a means to cement them for the longer term.

Executive



Machinery of government changes

Two new departments have been created in Whitehall following the Brexit vote and the new government taking office: the [Department for Exiting the European Union](#) (DExEU), headed by David Davis; and the [Department for International Trade](#) (DIT), headed by Liam Fox. DIT has taken over UK Trade and Investment, but its most important role, negotiating new trade agreements with the EU and some 50 third countries, cannot start until the UK has left the EU. The UK Representation to the EU (UKREP) has become part of DExEU, which by September had [recruited 180 staff](#), halfway towards its full complement. In addition, the Department for Energy and Climate Change (DECC) has been abolished, with its functions absorbed into the Business department, now named the [Department for Business, Energy and Industrial Strategy](#) (DBEIS). Responsibility for higher and further education, apprenticeships and skills has been transferred from the Business department to the Department for Education. The new departments may struggle before they are fully up and running, as Peter Waller [explained](#) on the Constitution Unit blog.

The departmental changes have led to a reshuffle of Permanent Secretaries. Oliver Robbins, previously Second Permanent Secretary at the Home Office, is the new Permanent Secretary of DExEU, and Sir Martin Donnelly, previously Permanent Secretary at the Business department, is Acting Permanent Secretary at DIT. Alex Chisholm, who became Permanent Secretary at DECC just ten days before the department was abolished, is now Permanent Secretary at DBEIS.

A [list of members of cabinet committees](#) was published on 18 October. Theresa May is personally chairing key committees on Brexit, the economy and social reform. The Brexit Committee has 12 full members, half of whom supported Leave during the referendum. The Secretaries of State for Scotland, Wales and Northern Ireland attend the committee as required.

Public appointments

Sir David Normington retired in March from his dual role as First Civil Service Commissioner and Commissioner for Public Appointments. As reported in [Monitor 63](#) (page 5) he delivered a [strong critique](#) of the [Grimstone review of public appointments](#) before leaving: ‘Taken together, Grimstone’s proposals would enable ministers to set their own rules; override those rules whenever they want; appoint their own selection panels; get preferential treatment for favoured candidates; ignore the panel’s advice if they don’t like it; and appoint someone considered by the panel as not up to the job’.



Sir David Normington.
Image © [ukhomeoffice](#)

The House of Commons Public Administration and Constitution Affairs Committee (PACAC) published their [own critique](#) of the Grimstone report in July, reserving particular criticism for the weakening of the Commissioner’s role.

The new Commissioner for Public Appointments, Peter Riddell, [wrote to PACAC](#) to explain his concerns: that he should be consulted over the independent members of appointment panels (who in future will be chosen by government, not the Commissioner), consulted when an exemption from open competition is to be used, and consulted if a minister wishes to appoint a candidate who was assessed by the panel as not appointable. These will be key issues in the new Governance Code, still being negotiated with the Cabinet Office. They will also be key issues for select committees, which will need in future to scrutinise closely the recruitment process as well as the merits of the preferred candidate when conducting pre-appointment scrutiny hearings.

Resignation honours list

David Cameron published a lengthy and controversial [honours list](#) rewarding his former staff when he resigned as Prime Minister in August. Of the 16 people given peerages, five were former special advisers, including his Chief of Staff Ed Llewellyn. Of the 46 given other honours, 17 were current or former special advisers,

including the Chief and Deputy Chief of Staff to George Osborne. Unusually, two serving cabinet ministers, Michael Fallon and Patrick McLoughlin, were awarded knighthoods. According to [newspaper reports](#) some names that Cameron had put forward did not pass the Cabinet Office's vetting process, whilst it was also [reported](#) that the House of Lords Appointments Commission raised concerns about some of those proposed for peerages. After the list was published, there were [widespread calls](#) for reform of the honours system. The chair of the Committee on Standards in Public Life, Lord Bew, has [publicly argued](#) that Cameron's resignation honours list should be the last list of its kind.

New government openness agenda

Like so many new governments in the past, Theresa May's administration has proposed greater openness, stretching from private sector accountability to, more unusually, a [data-based audit of the equality of institutions](#). It is hoped that, by enabling the public to 'check how their race affects how they are treated on key issues such as health, education and employment, broken down by geographic location, income and gender', this will shine a light on how our public services treat people from different backgrounds and influence government policy to solve these problems.

The assumption behind such moves is that transparency will trigger a chain of actions: the public will be interested and use the information and data that is published, they and others will act upon the data to leverage change across organisations and, as a result, cultural and behavioural change will occur within institutions. [Research](#) increasingly questions each of these assumptions. There is no 'general' ideal user and, while some openness initiatives generate public interest, others do not. The chain from accessing data to actually receiving it and leveraging change is often a long and weak one. Whether it can drive reforms depends on the context in which the information is placed and whether the instruments are available to do something about it. The hope behind transparency – that information will rationally influence or persuade calculating voters or engaged citizens – has not been borne out. Users and voters hold deeply engrained views about government and other institutions that are hard to dislodge.

Elections and referendums



Referendum conduct

As reported in the cover story of [Monitor 63](#), the referendum on the UK's EU membership raised many questions over the rules and practices that shape the conduct of referendums in the UK. These concerns have not gone away since the vote. [Survey research conducted by the Electoral Commission](#) after the referendum found that just 34 per cent of respondents believed 'the conduct of the referendum was fair and balanced', while 52 per cent disagreed. Thirty-one per cent explained that they thought the campaign was one-sided, unbalanced, biased, or partial, and 31 per cent likewise thought that information was inaccurate or misleading.

A series of investigations into the conduct of the referendum have been held or launched. These have tended to focus primarily on two areas: whether the role played by the government in the run up to the referendum unfairly skewed the campaign in favour of Remain; and whether anything could be done to improve the quality of information available to voters.

The Electoral Commission itself published its first [report](#) on the conduct of the referendum in September. It recommended that the rules restricting government involvement in referendum campaigns should be revisited. It reiterated the Commission's longstanding view that 'it would be inappropriate for the Commission to be drawn into political debate by regulating the truthfulness of referendum campaign arguments', though it added, 'We would, however, be happy to contribute to any future debate in this area.' For details of [research](#) into aspects of referendum conduct carried out by Constitution Unit Fellow Professor Justin Fisher, see page [16](#). The Association of Electoral Administrators also [reported](#), making recommendations of a mostly technical and administrative nature.

The House of Commons Public Administration and Constitutional Affairs Select Committee announced an inquiry into '[Lessons Learned from the EU Referendum](#)'.

The terms of reference set out five areas of focus, ranging from the very broad (the ‘role and purpose of referendums and the relationship between direct and parliamentary democracy’) to the specific (such as the ‘role of the machinery of Government during the referendum campaign’). This inquiry remains ongoing. The Committee on Standards in Public Life has also taken an interest, and will hold a [joint seminar](#) with the Constitution Unit in November on referendums in the UK.

Beyond these official investigations, there has been particularly extensive comment regarding the role of the BBC and other broadcasters during the campaign. They were criticised by, among others, [Professor Angela Phillips](#), [Lord Puttnam](#), and [Professor Ivor Gaber](#). Sky’s Political Editor, Faisal Islam, [has suggested](#) that the campaigns ‘actively gamed the impartiality rules’ and former BBC Director General Mark Thompson [has said](#) that the broadcasting rules around referendums should ‘definitely’ be changed. Nevertheless, the BBC’s Director of News and Current Affairs, [James Harding](#), argued that the Corporation’s approach had been broadly correct.

Boundary review proposals

The process of reviewing the boundaries for Westminster parliamentary constituencies began earlier this year, as required by the 2011 Parliamentary Voting System and Constituencies Act. Three of the four Boundary Commissions – those for [England](#), [Wales](#), and [Northern Ireland](#) – published their initial proposals in September. The Boundary Commission for Scotland [followed](#) in October. The proposals mark the first step in a lengthy process. A period of public consultation is now underway. Revised proposals will be produced next year, after which further consultation will take place before final proposals are published in 2018 and put to parliament for approval.

This review is particularly controversial for three reasons. First, the plan is to reduce the number of seats from 650 to 600; the proposals are therefore more disruptive of existing boundaries than usual and will leave some current MPs in search of a seat. Second, tighter rules introduced in 2011 on deviations from average electorate size are being applied for the first time, which again entails much disruption – especially in Wales, where the current constituencies are unusually small.

This disruption is particularly salient in light of the divisions within the Labour Party, as it may increase the opportunities for pro-Corbyn activists to remove anti-Corbyn MPs. Third, while the constituencies are based on the electoral roll as it was in December 2015, around two million additional voters had joined the roll by the time of the EU referendum this June, concentrated particularly in urban areas with mobile electorates. Writing on the Constitution Unit blog, [Professor Ron Johnston estimates](#) that London, for example, would have been entitled to around four more seats had the most recent rolls been used – raising clear questions about fairness.

Pickles report on electoral fraud

The government’s Anti-Corruption Champion, Sir Eric Pickles, published a [report](#) in August that set out 50 recommendations on measures to tackle electoral fraud. Among the most eye-catching were proposals to require voters in Great Britain to present photo ID when voting at a polling station (as voters in Northern Ireland already do, and as the Electoral Commission [has also advocated](#)), to tighten up procedures around postal and proxy votes, and to introduce more rigorous nationality checks when individuals apply to join the electoral register. The report – which was commissioned by former Prime Minister David Cameron in 2015, in the wake of the Tower Hamlets electoral fraud case – also suggested that ‘state institutions had turned a blind eye’ to fraudulent behaviour ‘because of “politically correct” over-sensitivities about ethnicity and religion’. It recommended, for example, that English should be the required language at polling stations. The new Minister for the Constitution, Chris Skidmore, [welcomed the report](#) and said, ‘We will look closely at the recommendations.’



Sir Eric Pickles. Image © [Communities and Local Government Office](#)

Parties and politicians



Party leadership elections

The outcome of the EU referendum sparked not only the Prime Minister's resignation, but also Nigel Farage's departure as leader of UKIP and a long drawn out challenge to Labour leader Jeremy Corbyn. In May Natalie Bennett had announced that she would step down as Green Party leader, so there were four contests in the UK-wide parties over the summer – with some distinctly bumpy moments.

The Conservatives ultimately managed their contest with remarkable discipline. Party rules require MPs to whittle down the choice of candidates to two, to be put to the membership in a ballot. Three men (Liam Fox, Michael Gove and Stephen Crabb) were eliminated in the initial stages, while Boris Johnson unexpectedly withdrew. This left Theresa May and Andrea Leadsom as the final two candidates. But May had secured over [60 per cent of MPs' votes](#) even before Gove was eliminated, and there were concerns about Leadsom's relative inexperience. In the event she withdrew, causing the [second major surprise](#) of the contest. This allowed Theresa May to replace David Cameron on 13 July – less than three weeks after the referendum – with no wider membership involvement.



Theresa May enters Downing Street after being elected as Conservative leader. Image © [Tom Evans](#). This image is subject to [Crown copyright](#)

Had Leadsom not acted, the Conservatives might have elected a leader who enjoyed grassroots support but clearly lacked majority support in the parliamentary party. This is exactly the problem that has befallen Labour. After a lacklustre performance in the referendum campaign, Jeremy Corbyn suffered [mass resignations](#) from his frontbench, followed by a [vote of no confidence](#) by the Parliamentary Labour Party (carried by 172 to 40). But this pressure was insufficient to persuade him to go, and he vowed to fight a contest to demonstrate his support among grassroots members. Initial challenger [Angela Eagle dropped out](#), leaving the field open for Owen Smith as sole opponent. Attempts to keep Corbyn off the ballot (due to lack of MP nominations) failed both at the party's [National Executive Committee](#) (NEC), and in the [High Court](#). A [subsequent court decision](#) again supported (on appeal) the NEC's right to interpret the party's rules, by allowing a 'cut-off date' barring new members from participating in the ballot. Nonetheless, new 'supporters' could again sign up and take part. After a bitter contest, Corbyn won against Smith by 313,209 votes to 193,299, leaving the split between MPs and members clearer than ever. Whether differences can be resolved, or whether the party might [even ultimately split](#), remains to be seen. There have been major internal battles over the question of reintroducing elections to the shadow cabinet, but Corbyn largely imposed his will through reappointment in October.

The initial favourite in UKIP's contest, Steven Woolfe, was [excluded](#) on a technicality. It was ultimately won comfortably by MEP [Diane James](#), but she then suddenly resigned just 18 days later. A further election will now be held. Woolfe [initially indicated he would run](#), but later announced that he was [leaving the party](#) after being hospitalised following an [altercation](#) with fellow UKIP MEP Mike Hookem. The Green Party meanwhile, in a trouble-free contest, re-elected sole MP Caroline Lucas, to [job share](#) the leadership with Jonathan Bartley.

CSPL report on party funding

In the latest contribution to one of the perennial topics on the political reform agenda, the Committee on Standards in Public Life published a [report](#) in August on the funding of political parties by Dr Michael Pinto-Duschinsky. This summarises party spending in Great Britain between 2010 and 2015. It then argues that the principal problems relate not to spending – which, the author points out, has fallen significantly in real terms

over recent years – but to the sources of party funding. Pinto-Duschinsky highlights three areas that he argues are particularly problematic: the role of ‘mega-donors’ (both individual and institutional); the growth of various forms of state funding, some of them hidden; and the increasing importance of ‘off-shore islands’ of political parties – that is, think tanks that conduct research on behalf of political parties without being subject to the limits set out in the Political Parties, Elections, and Referendums Act of 2000.



Scotland and Brexit

The EU referendum result came as an unwelcome surprise to many in Scotland. Only 38 per cent of Scots voted to leave, in contrast with 52 per cent UK-wide. There were immediate calls for a rerun of the independence referendum. ‘[Highly likely](#)’, said First Minister Nicola Sturgeon initially, but three months after the vote the picture looks less clear.

Why such a marked difference? One reason is that Brexit excited less interest in Scotland than elsewhere in the UK. Referendum turnout was 67 per cent compared to England’s 73 per cent, contrasting with 85 per cent in the 2014 independence referendum. The Scottish political establishment, Conservatives included, supported Remain. In the event, the million or so Scots who voted Leave included traditional Conservative supporters, but also a good number of SNP voters. Perhaps the urges to reject the status quo are more satisfied in Scotland by supporting independence than by Brexit.

Whatever the reason, the result creates acute political problems. Some see the ‘material change of circumstance’ said by the SNP to justify another independence referendum. Public opinion, however, [remains stolidly unmoved](#). After a brief surge in the immediate aftermath of the Brexit vote, independence support, at around 46 per cent, is virtually the same as in the 2014 result. SNP leaders have set themselves a [60 per cent threshold](#) for a rerun, as losing two referendums would likely be fatal. In any event, [only 37 per cent of voters want one now](#).

This is not just about public opinion. Brexit [makes independence more complicated](#). The safety net of sharing EU membership with the UK would go. In its absence, could Scotland be in the EU at all, or might it be out of both unions? Would Scottish EU membership require a hard border at Carlisle? How could Scotland share a currency with a non-EU state? On top of the glaring fiscal problems from oil revenues hitting virtually zero, this makes independence a markedly harder sell, and many in the SNP say it requires a radical rethink.

At the beginning of September, the SNP launched a 90-day ‘[listening exercise](#)’ to gauge the mood of the nation. In October, the Scottish government went further, publishing a [draft referendum bill](#). But there is a large gap between such a symbolic move – which was greeted with loud cheers when [announced by Nicola Sturgeon](#) at the SNP’s annual conference – and an actual decision to trigger a referendum. In the same speech, Sturgeon also said that she is seeking ways for Scotland to stay in the European single market even if it continues to be part of the UK post-Brexit. A [committee of distinguished experts](#) is advising the First Minister (privately) on the implications of Brexit for Scotland within the UK. The EU provides a framework for a range of devolved issues – agriculture, fisheries, economic development, and others. So some change to the devolution settlement is inevitable. The Scottish government could even be given the power to [make international arrangements with the EU for devolved matters](#). It is intriguing to speculate whether all this might even result in a constitutional arrangement that would satisfy a substantial majority of Scots.



The Standing Council on Europe, convened by Nicola Sturgeon to advise the Scottish Government on the implications of Brexit.
Image © [First Minister of Scotland](#)

Northern Ireland and Brexit

Northern Ireland voted on 23 June by 56 per cent to 44 per cent to remain in the EU. The [implications](#) of Brexit for Northern Ireland are potentially profound. The First Minister – whose DUP, alone among larger parties, had supported leaving – and deputy First Minister [wrote](#) to the Prime Minister on 10 August. They essentially argued that Northern Ireland should suffer no detriment from leaving: no hard border; access to the single market and to EU labour; EU funded projects to receive the same level of support.

Representatives of the UK and Irish governments have also said that they do not want to see ‘hard borders’ within Ireland – potentially the most politically sensitive of all issues. Whether that is feasible remains unclear. The House of Commons Northern Ireland Affairs Committee is [considering](#) the issue.

The Executive has otherwise been silent, but a significant public debate has developed. In particular, [EUDebateNI](#), founded before the referendum to promote discussion, has produced a [further analysis](#). The parties now in opposition, following reconstitution of the Executive in May, have contributed to the EU debate – though they have so far shown little sign of working in any coordinated way.

There had been speculation that Brexit would cause nationalists, many of whom had appeared to lose enthusiasm for early Irish unification, to return to the camp. A BBC [poll](#) in September showed no dramatic shift so far – 22 per cent said that they would support a united Ireland, compared to 17 per cent in 2013.

So not much has changed in Northern Ireland politics as yet in the immediate aftermath of Brexit, though the stepping up of the civic society contribution could be a welcome development. The Executive maintains unity in public by saying very little. But Sinn Féin may be torn between that and the temptation to join other parties, North and South, in a common front on Brexit issues – perhaps thus reviving lagging enthusiasm for the nationalist cause. The DUP may find its instinctive hard Brexit approach entails serious economic and political consequences. So strains may yet emerge in the Executive; it is not clear that it will be able to make difficult decisions in order to get Northern Ireland the best deal.

Wales and Brexit

The EU referendum result in Wales (52.5 per cent Leave, 47.5 per cent Remain) more closely resembled results in England than those in Scotland and Northern Ireland. Though the vast majority of politicians in Wales campaigned for a Remain vote, [pre-referendum polls](#) showed only a slight lead for Remain, with an occasional lead for Leave. In the event, the only areas to vote Remain were Cardiff, the Vale of Glamorgan and Monmouthshire in the south, and Gwynedd and Ceredigion in the west. Unsurprisingly, there was a strong cross-over between deprived areas that had a high UKIP vote at the National Assembly for Wales election in May and a high Leave vote – particularly the south Wales valleys and the north east.

The vote leaves the Welsh government with a potential funding gap to fill: [Wales receives £79 per head more in EU funding that it pays in](#), and, though many in the Assembly have called for it to do so, the UK government has not committed to maintaining the same level of funding. The Labour-led Welsh government now argues that Wales’s and the UK’s relationship with the single market needs to change. In September it rejected a Plaid Cymru amendment in the Assembly supporting full membership of the single market, in favour of a [Conservative amendment](#) favouring market access only.

Wales Bill

The Wales Bill 2016 – which paves the way for Wales to move from a conferred- to a [reserved-powers model of devolution](#) – has now [passed through the House of Commons](#) and been introduced to the Lords. As has been discussed previously (see [Monitor 62](#), pages 8–9), there was significant opposition to the original draft Wales Bill 2015. This led to several major changes. Key among these are the withdrawal of the ‘[necessity test](#)’, which would have meant the Assembly could legislate only when necessary for a ‘devolved purpose’, the shortening of the list of powers that are reserved to Westminster, and the removal of the requirement in the 2014 Wales Act for a referendum on the devolution of income tax powers.

This current version of the bill still [faces serious challenges](#), discussed in a [critical report](#) from the Assembly’s Constitutional and Legislative Affairs Committee. But with the impending rush of legislation that will be required when Brexit gets into full swing, the UK government seems set on pushing the bill through in its current form.

English devolution

City-region devolution has suffered a number of jolts since [the last issue of Monitor](#). On 23 September, Lord (Jim) O'Neill of Gatley, the Commercial Secretary to the Treasury, who had been appointed by George Osborne partly to advance the devolution agenda, [resigned from the government](#). This followed [media speculation](#) about Theresa May's commitment to the 'Northern Powerhouse'. Meanwhile, the North East devolution deal, agreed in October 2015, [collapsed](#). Four participating councils rejected it amidst concerns over funding following the vote to leave the European Union. Ructions have also emerged in Sheffield, with the district councils of Bassetlaw and Chesterfield attempting to join the Sheffield City Region as full members. Derbyshire County Council has [launched a judicial review](#) of the city region's consultation process.

Elsewhere, however, the policy has continued to progress. Orders making arrangements for mayoral elections in the [Tees Valley](#), [Sheffield](#), [Liverpool](#) and the [West Midlands](#) have passed through parliament. Consultation on new combined authorities is underway in the West of England (Greater Bristol), Cambridgeshire, Norfolk and Suffolk, and Lincolnshire. Though devolution's profile may be lower than it was, reports indicate that Theresa May's government will accept further devolution deals and be [less prescriptive about mayors](#) than its predecessor – although there will be no renegotiation of existing deals.

On financial matters, the government has begun to develop plans for the full retention of business rates by local government by 2020. This may influence the devolution agenda, as the July 2016 consultation [Self-sufficient local government](#) intimates that the government is considering including combined authorities' funding streams in the business rate regime in future. Meanwhile, the Mayor of London, Sadiq Khan, has [reconvened the London Finance Commission](#), which produced a substantial report on fiscal devolution in 2013. It is expected to submit proposals to the government for the retention of business rates, stamp duty, and reform of council tax in time for the Autumn Statement. GLA officers are developing proposals around various London public services.

Courts and the judiciary



Brexit litigation

Brexit has already given rise to several high-profile legal cases. All are concerned with the issue of whether the UK government can trigger the Article 50 process for exiting the EU, or whether parliament must consent before this process can be initiated. Two of these cases, [Miller and Dos Santos](#), were argued before the Administrative Court [in mid-October](#). A [third case](#), brought in Northern Ireland, has commenced before the Belfast High Court. It is expected that all three cases will soon find themselves fast-tracked on the way to the Supreme Court, given the significance of the constitutional issues at stake and the need for a fast resolution of the legal points at issue.

The cases all cover similar legal ground. The UK government has taken the view that the decision to trigger Article 50 falls squarely within the scope of its prerogative power to conduct external relations, and that parliamentary consent is not legally required before it pulls this trigger. However, the litigants in all three cases are arguing that any such exercise of the prerogative power would undercut existing legislation enacted by the UK parliament – in particular the European Communities Act 1972 – thereby trespassing upon parliamentary sovereignty, and depriving individuals of legal rights provided for by statute. The Northern Ireland litigation is also focusing upon the issue of devolution and the constitutional status of the Belfast Agreement, with the argument being made that Article 50 would destabilise the post-Agreement status quo and thus should not be triggered without the consent of the UK parliament and perhaps even also the Northern Ireland Assembly.

The legal arguments being made in this litigation are far-reaching, touching as they do on the scope of executive and legislative power within the UK's unwritten constitutional system. Much will depend on how the courts view the Article 50 process, especially the way in which it sets a two-year countdown running at the end of which the UK may automatically have to leave the EU. For now, those interested can read the government's [initial legal arguments](#) in the *Miller* case, released by order of the Administrative Court.

Europe



The EU's response to Brexit

Shock and sadness were the chief emotions in Brussels in the immediate aftermath of the UK's vote to leave the EU on 23 June. However, in the subsequent days and weeks a clear and determined resolve emerged in Brussels that Brexit should not be permitted to derail the 'European project'. Indeed, it is noteworthy that, within just a few days of the referendum, officials in Brussels were already referring to 'the 27 plus Britain', indicating that the psychological break had already taken place.

There is genuine sadness among other member states that the UK will soon no longer be at the table. Despite a reputation for awkwardness (not always deserved), the UK has been admired and envied by its EU partners for a capacity to produce clear and focused policy positions on whatever issues are under discussion; and for the ability of its officials to craft compromises and facilitate agreements – no mean feat in an organisation of 28 member states. Indeed, whilst often perceived as an outlier, the UK has actually been very effective at 'playing the Brussels game' down the years. Nonetheless, whatever the personal feelings of those involved in the looming withdrawal negotiations, there will be a collective determination to ensure minimal damage from the UK's withdrawal.

Much of the recent domestic discussion in the UK around what form Brexit will take has overlooked the fact that, for the remaining 27, there is a fear that British withdrawal could damage the whole enterprise beyond repair. Moreover, in some quarters, there is growing resentment that having devoted considerable time and resources to David Cameron's much-vaunted renegotiation – all of which could have been focused on dealing with the Eurozone and refugee crises, so the argument goes – even more will now be needed to finalise the UK's departure. There may be no appetite to 'punish' the UK, but nor is there a desire to make it easy. The negotiations will be tough '*pour encourager les autres*'.

To that end, there have been some significant appointments within the key Brussels institutions ahead of the formal commencement of negotiations. Michel Barnier, a former French Foreign Minister and European Commissioner, is to be the [Commission's lead Brexit negotiator](#) and the UK's chief interlocutor.

Guy Verhofstadt, the former Belgian Prime Minister, will [represent the European Parliament](#), and has already been at pains to remind the British government that any deal needs the [European Parliament's approval](#) before it can be ratified. Perhaps the most interesting development has been the Council's decision to create a [Brexit taskforce](#) within the Secretariat-General headed by Didier Seeuws, a highly-experienced Belgian diplomat. His appointment is intended to send a clear signal to the other institutions: whatever the treaty may say about institutional responsibilities, for an issue of this magnitude the member states – and particularly the heads of government – will be keeping a tight rein on proceedings.

Even as the British government remains undecided on what Brexit will actually mean, its soon-to-be former partners are hunkering down for a tough and protracted negotiation.

International



Hungary and Poland: deepening crises

Hungary's democratic erosion continued (for background, see Zoltán Gábor Szűcs' [post](#) on the Constitution Unit blog). In a referendum on 2 October, the government asked voters to reject the EU's programme for resettling migrants. The ballot was widely viewed as [unconstitutional](#) (though the government-packed Constitutional Court endorsed it). The government made no pretence of seeking a balanced debate: it reportedly spent over [10 billion forints](#) (£29.5 million) on its own campaign, which stoked fears by inflating migrant numbers and linking immigrants to [terrorism](#) and [violence against women](#). To put this in context, the two umbrella campaign groups in the Brexit referendum were limited to spending £7 million each.

The [result](#) was mixed. 98.4 per cent of those casting a valid ballot backed the government. But only 41 per cent of eligible voters cast a valid ballot – well below the 50 per cent required for the vote to be legally valid. This was [widely interpreted](#) as a defeat for Prime Minister Viktor Orbán. Yet he [declared victory](#) and said he would amend the constitution to enshrine the result in law. Zoltán Gábor Szűcs has written about the implications of this on the Constitution Unit blog.

A week later, Hungary's largest opposition newspaper, *Népszabadság*, was suddenly closed. A [press release](#) that replaced the paper's website blamed falling circulation and mounting losses. But few doubted that government manoeuvring was the true cause. The government's opponents [were outraged](#). Even *Népszabadság's* conservative rival *Magyar Nemzet* [attributed the paper's demise](#) to government 'hypersensitivity' about criticism and condemned the 'decay of democracy'.

In Poland, meanwhile, the constitutional crisis deepened further. For an update, see our recent [blog post](#) by Aleks Szczerbiak.

Italy: referendum on constitutional reform

The referendum on the proposed far-reaching constitutional reforms in Italy (see [Monitor 63](#), page 13) will be held on 4 December, nearly two months later than previously expected. This is [potentially very destabilising](#), as Prime Minister Matteo Renzi has pledged to resign if the referendum fails, opposition parties (including the Five Star Movement, Forza Italia and Northern League) are all campaigning for 'no', and [polling looks close](#). The issues and political dynamics are explored in more detail on [our blog](#).

Canada: Senate and electoral reform

[The Special Committee on Senate Modernization](#) (see [Monitor 63](#), page 12) has released the first of two reports exploring the likely impact of the new appointments process for Canada's upper house introduced by Prime Minister Justin Trudeau and outlining options for Senate modernisation. The report grapples with the reality that an emerging majority of senators are not members of either of the traditional party caucuses, and makes proposals that aim to make the work of the Senate more visible to Canadians. It lays out 21 recommendations, including televising Senate debates,

a Senate responsibility to divide [omnibus bills](#) and expanding the definition of caucus to cover any group with nine or more members. Meanwhile, the special committee of the House of Commons established to consider options for electoral reform continues to take evidence, and has until December to deliver its recommendation. The New Democratic Party, the third largest party in the Commons, has recently staked out [its position](#) in favour of proportional representation whilst the official opposition Conservative Party has [called for a national referendum](#).

New Zealand: new Constitution proposed by former Prime Minister

New Zealand, along with the United Kingdom, is currently one of just two sovereign states without a codified Constitution. In a [new book](#), published in September, the former New Zealand Prime Minister Sir Geoffrey Palmer and Dr Andrew Butler [argue that this is not good enough](#). The book includes a 118-article draft Constitution which the authors are now seeking comments on, with a view to publishing an amended document next year. The key provisions of the draft Constitution have been [set out by Sir Geoffrey Palmer](#) on the Constitution Unit blog.

People on the move

On taking office as Prime Minister **Theresa May** carried out a major reshuffle. Key appointments included **David Davis** as Secretary of State for Exiting the European Union, **Liz Truss** as Justice Secretary and **James Brokenshire** as Northern Ireland Secretary. **David Lidington** and **Baroness Evans** of Bowes Park were appointed as Leaders of the Commons and Lords respectively. **Michael Gove**, **Oliver Letwin** and **Theresa Villiers** were among those to leave the government. A full list of ministers in the new government is available at [this link](#).

There were also major changes to the shadow cabinet over the summer, following the mass resignations in protest at Jeremy Corbyn's leadership in the aftermath of the EU referendum. **Sir Keir Starmer** as Shadow Secretary of State for Exiting the European Union, **Richard Burgon** as Shadow Justice Secretary, **David Anderson** as both Shadow Scottish Secretary and Shadow

Northern Ireland Secretary, **Jo Stevens** as Shadow Welsh Secretary and **Valerie Vaz** as Shadow Leader of the House were among Corbyn's new appointments. A full list of shadow cabinet members is available at [this link](#).

Following the Brexit vote Nicola Sturgeon appointed **Michael Russell** as Minister for UK Negotiations on Scotland's Place in Europe. **Stephen Gethins** was appointed as the SNP's Westminster spokesperson on Brexit. **Nick Clegg** has taken on the role of Liberal Democrat European Union spokesperson.

Michel Barnier has been appointed as the European Commission's chief Brexit negotiator, **Guy Verhofstadt** to the equivalent position for the European Parliament and **Didier Seeuws** as head of a European Council Brexit taskforce.

The UK's EU Commissioner **Lord Hill of Oareford** resigned following the Brexit vote. He has been replaced by **Sir Julian King**, previously Ambassador to France, who has been given the new post of Security Commissioner'.

Lord Fowler became the new Lord Speaker in September, taking over from **Baroness D'Souza**. **Lord (Dick) Newby** has replaced **Lord (Jim) Wallace** of Tankerness as leader of the Liberal Democrats in the Lords.

Oliver Robbins was appointed as Permanent Secretary at the new Department for Exiting the European Union. For other changes to Permanent Secretaries see page [6](#).

Ian Watmore has been appointed as First Civil Service Commissioner, succeeding **Sir David Normington** who retired in March. **Sir John Holmes** will succeed **Jenny Watson** as Chair of the Electoral Commission from January.

Professor Laura McAllister, previously Professor of Governance at the University of Liverpool, has joined the Wales Governance Centre at Cardiff University as Professor of Practice in Public Policy and the Governance of Wales.

Constitution Unit News

Debating the conduct of the EU referendum

Constitution Unit staff have been prominent in discussions over how the EU referendum was conducted and whether the rules and processes for any future referendums should be changed (see also pages [7-8](#)). In the weeks before polling day, Alan Renwick [coordinated a letter to the Daily Telegraph](#), signed by over 250 political scientists and academic lawyers, that criticised the amount of misinformation during the campaign and urged the case for a review. [That call was repeated](#) immediately after the result was announced. Over the summer, exploratory research began into how referendums are conducted in other countries and whether any lessons can be learned. As noted elsewhere in this *Monitor*, we will hold a [public seminar](#) on this on 25 October where speakers will include the Chair of the Electoral Commission and the BBC's Chief Adviser for Politics, and are co-convening a day-long private [seminar](#) with the Committee on Standards in Public Life in November that will gather a wide range of experts to consider how this work might be taken further.



Alan Renwick discussing the conduct of the EU referendum campaign on BBC Parliament's *The Week in Westminster*, 10 June 2016

New project on options for an English Parliament

Work began in September on a new one-year project, funded by the Nuffield Foundation, on options for an English Parliament. Since devolved assemblies for Scotland, Wales and Northern Ireland were introduced in the late 1990s there have been demands that England too should have a parliament of its own. The most vocal supporters have been the Campaign for an English Parliament, but in recent years the idea has also been endorsed by some senior Conservative and Labour MPs and in several think tank reports. Despite this, there remains no detailed work on design options for what an English Parliament might actually look like. Our project seeks to close this gap, exploring questions such as the options for size, electoral system, powers and internal organisation of such a body. The main output will be a Constitution Unit report. This work is being led by Constitution Unit Director Professor Meg Russell, supported by Jack Sheldon, newly appointed as a Research Assistant. Jack has been editor of *Monitor* and the Constitution Unit blog since autumn 2015, and also continues in that role.

Staff news

Dr Javier Sajuria left the Constitution Unit at the end of September and moved to Newcastle University, where he is now Lecturer in Politics and Associate at the Openlab, a research group in the Computer Science department. This offers an exciting opportunity for him to develop his research agenda. Javier did his Masters and PhD at UCL, taught on the research methods MSc modules for several years, and has made other important contributions to departmental life. After defending his PhD thesis successfully last December, he became Research Associate on an ESRC project for the Parties and Politicians team. He has been a great colleague and will be sorely missed. In his place we welcome Sofia Collignon Delmar, who recently completed a PhD in the department.

Research volunteers

The Unit is grateful for the hard work and diligence of our research volunteers in summer 2016: Raffaella Breeze, Zander Goss, Nazenin Kucukcan, Lakshmi Periyasamy, Toby Shevlane and Alex Waghorn.

News from Constitution Unit Fellows

Research among permitted participants at the EU referendum

Justin Fisher (Professor of Political Science at Brunel University London) recently undertook research for the Electoral Commission on the EU referendum. [His study](#) analysed permitted participants in the referendum – campaigners who wished to spend more than £10,000 and were therefore required to register with the Electoral Commission.

The study was designed to evaluate participants' experience of the regulations and legislation and included a survey of participants together with a series of in-depth interviews with a selection of participants, including the lead campaigns. The study found that some aspects of the legislation worked well. There was widespread support for the transparency obligations, expenditure rules were straightforward in terms of compliance and there was broad satisfaction with the administration of the referendum. However, participants found some aspects to be unsatisfactory. These difficulties appeared to stem from two underlying issues: the scale of the referendum and the fact that participants were frequently not experienced in election campaigning.

The scale of the referendum was such that there were an unusually large number of registered participants, which presented significant challenges in respect of the enforceability of meaningful spending limits, since unlike elections, there were only two sides competing. There may be a case for re-visiting the expenditure limit for permitted participants, which is currently £700,000.

The study also showed that the referendum regulations generally favour those with prior electoral experience in respect of ease of compliance. A particular example of this concerned the verification of permissible donations. Since electoral registers are held locally rather than nationally, campaigners were required to consult many different databases to assess permissibility. This is less of a problem for political parties, who will have organisations in each local authority and well-established databases. Participants in the referendum, however, were frequently newly-created organisations.

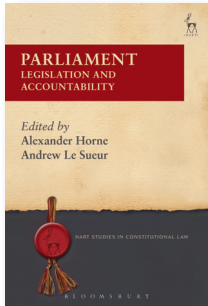
Constitutional Law from Hart Publishing



Parliament

Legislation and Accountability

Edited by Alexander Horne and Andrew Le Sueur



This collection of essays by leading academics, lawyers, parliamentarians and parliamentary officials provides a critical assessment of the UK Parliament's two main constitutional roles—as a legislature and as the preeminent institution for calling government to account. Both functions are undergoing change and facing new challenges. Part 1 (Legislation) includes chapters on Parliament's emerging responsibilities for pre-legislative scrutiny of government Bills and for evaluating proposed legislation against explicit constitutional standards. The impact on legislation of the European Union and the growing influence of the House of Lords are

also examined. Part 2 (Accountability) investigates how Parliament operates to scrutinise areas of executive action previously often shielded from effective parliamentary oversight, including national security, war-making powers and administrative justice. There are also chapters on parliamentary reform, including analysis of the House of Commons 'Wright reforms', parliamentary sovereignty, privilege and the European Convention on Human Rights, Euroscepticism, and parliamentary sovereignty and the regulation of lobbyists.

The book will be of interest to anyone who is curious about the work of Parliament and is aimed at legal academics, practitioners and political scientists.

Alexander Horne is Deputy Legal Adviser to the Joint Committee on Human Rights of the United Kingdom Parliament and a teaching fellow at University College London.

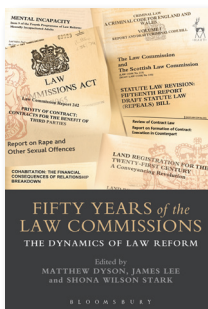
Andrew Le Sueur is Professor of Constitutional Justice, University of Essex.

Jun 2016 | 9781849467162 | 344pp | Hbk | RSP: £55

Fifty Years of the Law Commissions

The Dynamics of Law Reform

Edited by Matthew Dyson, James Lee, Shona Wilson Stark



This book brings together past and present law commissioners, judges, practitioners, academics and law reformers to analyse the past, present and future of the Law Commissions in the United Kingdom and beyond. Its internationally recognised authors bring a wealth of experience and insight into how and why law reform does and should take place, covering statutory and non-statutory reform from national and international perspectives. The chapters of the book developed from papers given at a conference to mark the fiftieth anniversary of the Law Commissions Act 1965.

Matthew Dyson is a Fellow in Law at Trinity College, Cambridge.

James Lee is Senior Lecturer in Private Law at the Dickson Poon School of Law, King's College London and an Associate Academic Fellow of the Honourable Society of the Inner Temple.

Shona Wilson Stark is a Fellow in Law at Christ's College, Cambridge, and an Affiliated Lecturer at the Faculty of Law, University of Cambridge.

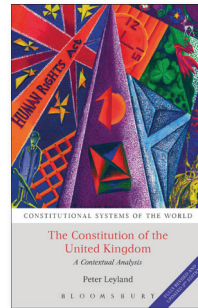
Nov 2016 | 9781849468572 | 448pp | Hbk | RSP: £95

THIRD EDITION

The Constitution of the United Kingdom

A Contextual Analysis

Peter Leyland



This acclaimed book provides a topical and contextual outline of the principles, doctrines and institutions that underpin the United Kingdom constitution. The third edition of *The Constitution of the United Kingdom* has been comprehensively revised and updated to take account of recent constitutional developments and debates. This includes: the revised framework for devolution following the 2014 referendum in Scotland, the constitutional ramifications of the realignment of UK politics reflected in the result of the 2015 general election and the debate over the possible replacement of the Human Rights Act 1998 with a British Bill of Rights.

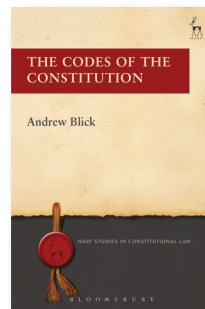
The chapters are written in sufficient detail for anyone coming to the subject for the first time to develop a clear and informed view of how the constitution is arranged and how it operates. The main themes include: discussion of the history, sources and conventions of the constitution; later chapters deal with: constitutional principles, the role of the Crown, Parliament and the electoral system, government and the executive, the constitutional role of courts including the protection of human rights, the territorial distribution of power between central, devolved and local government, and the European Union dimension. In addition, the book offers analysis of the evolution of the uncodified UK constitution, its strengths and perceived weaknesses, and of reforms aimed at its modernisation.

Peter Leyland is Professor of Public Law at SOAS, University of London and Emeritus of London Metropolitan University.

Jun 2016 | 9781849469074 | 352pp | Pbk | RSP: £15.99

The Codes of the Constitution

Andrew Blick



This book describes an astounding feat of constitutional writing and publication. For a number of decades, officials working across different branches of the United Kingdom (UK) constitution have been engaged in a series of separate projects. Taken in their totality, they amount to a vast enterprise. Yet, until now, no-one has fully recognised or critically analysed what has taken place. There has been a proliferation in the UK of publicly available codes, normally lacking a basis in statute, providing official accounts of a variety of different features of UK constitutional rules and principles. They cover institutions ranging from the

Cabinet to the Civil Service to the judiciary, and relationships between entities such as central government and the devolved executives; and between the UK executive and the Westminster Parliament. Among them are prominent texts such as the Ministerial Code, the Cabinet Manual, the Guide to Judicial Conduct and the devolution Memorandum of Understanding – as well as more obscure documents that nonetheless contain important stipulations regarding the operation of the system. Similar developments have taken place in countries including Australia, Canada and New Zealand. The author explores the history of this phenomenon in the UK, how it functions today here and elsewhere in the Commonwealth, and its implications for the UK constitution.

Andrew Blick is Lecturer in Politics and Contemporary History at King's College London.

Sept 2016 | 9781849466813 | 272pp | Hbk | RSP: £60

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Events

To sign up to our events, visit the Constitution Unit [events page](#). Seminars are free and open to all.

The Regulation of the EU Referendum

Jenny Watson, Chair of the Electoral Commission; **Ric Bailey**, Chief Adviser, Politics, BBC; **Sir Peter Housden**, Permanent Secretary to the Scottish Government, 2010–15; **Dr Paul Kildea**, Senior Lecturer in Law, University of New South Wales.

25 October 2016, 1pm
Haldane Room, North Cloister, UCL Main Buildings,
Gower Street
[Register](#)

English Votes for English Laws One Year On: a critical evaluation

Michael Kenny, Professor of Politics at Queen Mary University of London and Director of the Mile End Institute; **Daniel Gover**, Research Fellow at the Mile End Institute.

28 November 2016, 6pm
Committee Room 3, Palace of Westminster
[Register](#)

The role of the Commissioner for Public Appointments and First Civil Service Commissioner

Sir David Normington, former Commissioner for Public Appointments and First Civil Service Commissioner

8 December 2016, 1pm
The Council Room, The Rubin Building,
29–30 Tavistock Square

Watch our previous events online on our [Vimeo page](#).

Unit in the news

Media appearances relating to the EU referendum and Brexit:

Alan Renwick led an open letter, signed by [over 250 senior academics](#), criticising deliberate campaign misinformation ([Daily Telegraph](#), 14 June 2016).

Alan Renwick set out what would happen in the event of a Leave victory ([Daily Telegraph](#), 23 June 2016).

Robert Hazell discussed Brexit processes (BBC Two Victoria Derbyshire show, 27 June 2016).

Brian Walker wrote about the implications of Brexit for the future of the United Kingdom ([Irish Times](#), 2 July 2016).

Alan Renwick was interviewed about the implications of Brexit (BBC News and BBC World News, 25 June 2016, and BBC R4 *The World Tonight*, 28 June 2016).

Alan Renwick responded to Labour leadership candidate Owen Smith's call for a second referendum ([The Times](#), 26 August 2016).

Further media appearances relating to the EU referendum and Brexit are listed [here](#).

Other media appearances:

Robert Hazell was interviewed by Czech TV station Horizont ČT24 on the Queen's official 90th birthday (10 June 2016)

Javier Sajuria's [blog post](#) on the importance of leadership election rules for shaping the Labour Party's current crisis was cited in a [Guardian editorial](#) (6 July 2016)

Robert Hazell, Peter Waller and Turan Hursit wrote a [letter to The Guardian](#), correcting a point made about pre-appointment scrutiny hearings (8 July 2016)

Bulletin Board

Bob Morris was quoted in an article about Winston Churchill, Claridge's and the Crown Prince of Yugoslavia ([BBC](#), 8 July 2016)

Meg Russell wrote about Labour leadership rule changes following the Parliamentary Labour Party's overwhelming vote of no confidence in Jeremy Corbyn ([The Observer](#), 17 July)

Meg Russell was interviewed about the implications of a split in the Labour Party ([BBC Newsnight](#), 1 August)

Following the publication of David Cameron's resignation honours list Meg Russell was quoted on how he had 'lost any sense of self-control when it came to appointing peers' ([Daily Telegraph](#), 7 August)

Select committee appearances

Alan Renwick participated in a House of Lords Constitution Committee private seminar on the invoking of Article 50 on 13 July, leading to a [report](#), published on 13 September.

Unit publications

Meg Russell was co-editor (with Richard Heffernan, Colin Hay and Philip Cowley) of [Developments in British Politics 10](#) (Palgrave, September 2016).

Alan Renwick, 'Voting Behaviour and Electoral Outcomes', in *Developments in British Politics 10* (above).

Meg Russell, 'Parliament', in *Developments in British Politics 10* (above).

Alan Renwick, Matthew Flinders and Will Jennings, 'Calming the storm: fighting falsehoods, fig leaves and fairy tales', in Daniel Jackson, Einar Thorsen and Dominic Wring (eds), [EU Referendum Analysis 2016: Media, Voters and the Campaign – Early reflections from leading UK academics](#) (PSA/ Loughborough University Centre for Research in Communication & Culture/ Bournemouth University Centre for the Study of Journalism, Culture & Community, July 2016).

Javier Sajuria, 'More politics, less voting: the internet paradox', in Philip Cowley and Robert Ford (eds), [More Sex, Lies and the Ballot Box](#) (Biteback, September 2016).

Anisa Kassamali, [Judges Keep Out: Off-the-bench Influence on the UK's Anti-terror Regime](#) (Constitution Unit, October 2016).

Contributors to Monitor 64

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