# Monitor

The Constitution Unit Bulletin Issue 26 March 2004

# Voting Systems all up for Review

The Government has announced not one, not two, but potentially three reviews of voting systems to coincide with the delivery of the report of the Independent Commission on PR. The Constitution Unit established the Commission in summer 2002 to help fulfil Labour's manifesto commitment to review the experience of Britain's new voting systems before assessing whether changes might be made to the electoral system for the House of Commons. The Commission's report will now be followed by the Government's own review (see page 9), which Lord Falconer has said is to be open to outsiders and not a purely internal exercise. Following a surprise announcement by Alistair Darling on 9 February, it will also be followed by a review of the four different voting systems in Scotland, and of the consequences of different constituency boundaries between Westminster and Holyrood; and possibly by a review of the voting system for the National Assembly for Wales.

The PR Commission has been jointly chaired by Peter Riddell and David Butler, with Robert Hazell as vice-chair and the Unit's electoral expert Simon King as secretary. The Commission includes electoral experts and members from all parties, some supporting PR and some first-past-the-post, but with most being uncommitted in the debate over electoral systems. The dominant theme in the Commission's report is the extent of change in British elections in recent years. First-past-the-post is no longer the sole, or even the predominant, system. Voters in London, Scotland, Wales and Northern Ireland are as

likely to use PR systems in elections as first-past-the-post.

Each of the new bodies set up since 1997 has used a different means of electing its members. The Scottish Parliament, Welsh Assembly and Greater London Assembly are elected by AMS, using a combination of constituency and list members. Since 1999 the European Parliament has been elected by regional list PR, using closed lists. The London Mayor and other directly elected mayors are elected by the preferential Supplementary Vote. The Northern Ireland Assembly is elected by STV, and Scotland is introducing STV for local Government elections from 2007. That leaves only the House of Commons, and English and Welsh local Government elections using firstpast-the-post.

The PR Commission's report begins by explaining the five different electoral systems now used in the UK, and discusses their strengths and weaknesses, and it concludes with a long chapter summarising the implications for any change in the voting system at Westminster. There is no ideal electoral system, but the experience of new voting systems in the UK helps to undermine some widely-held myths on both sides of the debate. There is no evidence that PR is too complicated for voters, or that the resulting coalition Governments in Scotland and in Wales are necessarily weak or ineffective. On the other hand, low turnout in all the PR elections held so far contradicts the claims of advocates that PR helps to increase turnout.

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The Constitution Unit

Director: Professor Robert Hazell www.ucl.ac.uk/constitution-unit email constitution@ucl.ac.uk phone 020 7679 4977 fax 020 7679 4978 Labour in Scotland and in Wales has become increasingly concerned about list members, the additional members elected to provide greater proportionality who overwhelmingly come from the opposition parties. These concerns erupted in a report of the Commons Scottish Affairs Committee on parliamentary constituency boundaries in Scotland (HC 77, 3 February—see page 8), and in the Commons Second Reading debate on the Scottish Parliament (Constituencies) Bill on 9 February.

The Government's wider review of the new voting systems and the lessons they offer for the House of Commons is likely to be conducted in parallel with the Scottish and Welsh reviews. The Government will reach conclusions in the new Cabinet committee on Electoral Policy (MISC 24), which is chaired by Peter Hain. They have run out of time to implement the Electoral Commission's legislative agenda before the next election, so they now have time for other electoral matters.

Robert Hazell, r.hazell@ucl.ac.uk

# Supreme Court and Judicial Appointments Committee

The Government has obtained the support of the judiciary for the new Judicial Appointments Commission, but is running into difficulties with its plans for a new Supreme Court. The Lord Chief Justice, Lord Woolf, dismissed it as a second class Supreme Court in a lecture in Cambridge on 3 March, and the House of Lords has decided, on a motion laid by Lord Lloyd (a recently retired law lord) to refer the bill to a Select Committee. This would follow the recommendation of the Commons Select Committee on Constitutional Affairs, which has questioned the need for haste and called for the legislation to be brought forward in draft, especially on the new Supreme Court. This was one of the conclusions of the committee's inquiry into Judicial Appointments and a Supreme Court, published on 10 February (HC 48).

At the time of writing the passage of the Constitutional Reform Bill through the Lords was uncertain. It has three purposes: to abolish the office of Lord Chancellor, set up an Judicial independent **Appointments** Commission, and establish the new Supreme Court. The Lord Chancellor was seen as embodying the constitutional conscience of the Government, and guarding the rule of law; and the judges are worried that those values will be thrown away together with his office. Their concerns have surfaced again and again in House of Lords debates which are summarised below.

After lengthy negotiations, the Lord Chancellor and Lord Chief Justice announced a concordat

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to the House of Lords on 26 January. The LCJ will take on most of the Lord Chancellor's functions as head of the judiciary. These include the education and training of judges, their individual deployment, judicial discipline and conduct. The Secretary of State will share responsibility for complaints and discipline, and the Government will remain responsible for the administration of the courts. Ministers will be placed under a general statutory duty to respect and maintain judicial independence, and the Constitutional Affairs Secretary under a specific duty to defend and uphold the independence of the judiciary.

Lord Falconer made a statement about the new Supreme Court on 9 February, heralding the proposals subsequently published in the Constitutional Reform Bill. The court's jurisdiction would remain unchanged from the House of Lords, save that it would take over devolution issues from the Privy Council. Supreme Court justices and other senior judges like the Lord Chief Justice would no longer sit in the House of Lords.

On 12 February the Lords held a full debate. Most speakers opposed abolition of the office of Lord Chancellor. Four law lords who spoke also opposed the plans for the new Supreme Court. The law lords who favour the new Supreme Court, led by the senior law lord Lord Bingham, believe that judges should not speak in Lords debates on matters of political controversy. The risk is that by not speaking their case will go by default.

# The Hutton Report: Impacts on the future of the judiciary

The report by Lord Hutton into the death of Dr David Kelly (HC 247, 28 January) largely exonerated the Government of blame, but strongly criticised the BBC. Amidst the subsequent charges of a whitewash, two interesting sets of comments have been made. The first is that by publishing all the evidence on the enquiry's website, Lord Hutton enabled media commentators and the public to come to their own conclusions on the totality of the evidence received. He has set standards of openness which may become a benchmark in the conduct of public enquiries.

Second, some have questioned the suitability of asking judges to conduct political enquiries,

with the associated risk of compromising the judiciary's legitimacy and reputation by taking it outside its traditional role. The Government may still ask judges to conduct public enquiries, but in future judges may think twice before agreeing to do so. One consequence of the Lord Chancellor ceasing to be head of the judiciary is that he will no longer have the authority to ask judges to take on additional roles. Judges may in future refuse; or the judges may collectively decide as a matter of policy that they should not conduct public enquiries, except those of a quasi-judicial kind.

www.the-hutton-inquiry.org.uk/content/report/index.htm

## **Parliament**

## Government announcements on the Lords

As the Monitor went to press the House of Lords reform bill appeared to have been delayed further. The bill will implement the proposals set out in the September 2003 white paper, to remove the remaining 92 hereditary peers, establish a statutory appointments commission, and link the balance of future appointments to the chamber to the most recent general election result. The delay adds to the difficulties already facing its passage. If, as seems likely, it is rejected by the House of Lords the Government would have difficulty passing it under the Parliament Acts before a spring 2005 general election. Under the Acts a bill cannot pass without Lords consent until a year after its initial second reading in the Commons, which now cannot happen before mid March.

One reason for the delay is the continuing political difficulty about the long term future of the upper house. Since the White Paper was published ministers have been at pains to emphasise that this is not the final stage and that further reform will follow. However, opposition parties and Labour backbenchers—many of them favouring an elected chamber—remain sceptical. The future of the Lords was

an open question in Labour's 'Big Conversation' document in November, and looks likely for inclusion in the next manifesto. Leader of the House of Commons Peter Hain has declared himself attracted to the 'secondary mandate' option proposed by the singer Billy Bragg, as have the Lord Chancellor and other Labour figures. However this solution, which would allocate seats by region in the upper house on the basis of general election votes, holds many difficulties. It is unlikely to satisfy those demanding election.

If the Government seeks to quell opposition with promises of further reform beyond the next election this may not be enough to prevent Liberal Democrats, Conservatives and rebel Labour backbenchers, derailing the bill in the House of Lords. When the bill is published interest will focus on whether amendments to implement election, either immediately or at some later date, will be within its scope. If so, such amendments are likely. The prime minister, at his press conference on 26 February, indicated that any future decisions in parliament over election or appointment will be taken by free votes.

Meanwhile, rumours continue that there will shortly be a round of new political appointments made to the chamber. Appointment of a Labour-heavy list just before the bill removes most of the prime minister's remaining patronage powers is certain to be viewed critically. However the Government is increasingly concerned about its dwindling numbers in the House of Lords, with four Labour peers having died in January and February alone.

Meg Russell, meg.russell@ucl.ac.uk

# Connecting Parliament with the public

The House of Commons Modernisation Committee is conducting an inquiry on connecting Parliament with the public. This topic, linked to concerns about falling public engagement with politics, as well as the opportunities created by new technology, was adopted by the committee when Robin Cook was chair, and is now being taken forward by Peter Hain.

As part of the inquiry the committee is for the first time taking evidence at meetings outside Westminster. It is also conducting an online consultation in conjunction with the Hansard Society. The consultation website, active throughout March and early April, can be found at www.tellparliament.net/modernisation. Questions the committee are interested in include how Westminster can be made more visitor-friendly, how parliamentary proceedings could be made easier to follow, and how well Westminster connects through the internet, the media and parliamentary publications.

In a related move the Hansard Society has established a commission on Parliament's relationship with the media, chaired by Lord Puttnam.

www.hansardsociety.org.uk

# Review of Select Committees' working methods

In the light of the Hutton inquiry, the House of Commons Liaison Committee (made up of the select committee chairs) is reviewing select committee working practices. The Hutton process raised questions both through comparisons between its methods and those of parliamentary committees, and in terms of any lessons to be learnt from Dr David Kelly's appearance at the Foreign Affairs Committee.

The committee has released a discussion paper, available on its website, asking a range of questions. These include committees' powers to call for people and papers, and the extent to which Government should be expected to co-operate with their inquiries. Cases where committees have been frustrated by non-availability of civil servants (such as those working for central units with no clear link to a single committee), ministers, and documents are cited. The paper also asks about committees' own practices. Questioning the Prime Minister in February, the Liaison Committee's chair pointed out that the rules regarding committees' access to information have not been revised for 20 years. Both the committee and the Government have agreed to consider what changes might be appropriate.

www.publications.parliament.uk/pa/cm/cmliaisn.htm

#### House of Lords speakership

On 12 January the House of Lords agreed in principle the report of the committee established to consider the speakership of the House, following the abolition of the post of Lord Chancellor. This would maintain the self regulating nature of the House, rather than introducing a powerful speaker along the House of Commons model. Following the debate, a motion to put the changes into effect is due to be brought forward. The Speaker of the House of Commons is rumoured to be unhappy with the proposed title of 'Lord Speaker', so a new title may need to be found.

#### Draft Single Currency Referendums Bill

This bill has been published on the website of the Department for Constitutional Affairs. There is no mention of consultation, and no plans for pre-legislative scrutiny. This is the first time a draft bill has been published with no provision for public discussion or feedback.

www.dca.gov.uk/elections/euro/secbill-draft.pdf

#### People on the Move

Gillian Shephard MP and Baroness Maddock have been appointed to the Committee on Standards in Public Life for three-year terms in succession to Lord MacGregor and Lord Goodhart.

### **Devolution**

#### Scotland

The West Lothian Question (WLQ) had been a major issue in pre-devolutionary debates but was pushed to the fringes of politics after devolution was established. However, in the last quarter it has returned to the fore not only at Westminster but in Scottish politics. The role of Scottish MPs at Westminster was highlighted by three issues: the vote on NHS Foundation Hospitals; the vote on the Higher Education Bill; and Conservative calls for constraints on Scottish MPs. Added to this has been the continuing issue of redrawn boundaries for Westminster constituencies.

The Conservatives have seen an opportunity with Labour MPs voting for policies which have been rejected by the Scottish Parliament. During the last Parliament, William Hague vainly tried to make this an issue but there were no high profile cases exemplifying the problems associated with the WLQ. The return of the Blair Government in 2001 with another substantial majority suggested that WLQ would not emerge in this Parliament but the extent of Labour rebellions and consequent need for the Government to rely on its Scottish MPs has ensured that this issue has emerged.

Related to this has been discussion on higher educational finance. An enquiry early in the last Scottish Parliament recommended a different policy from south of the border, a move thought likely to have cross-border implications. This policy will now need to be looked at again in light of the spill-over consequences of the Higher Education Bill going through Westminster. Funding of higher education remains a contentious issue across the UK but is proving to have particular effect because of devolved government.

www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland\_february\_2004.pdf

#### Wales

Due to European enlargement West Wales and the Valleys will lose their Objective One status in 2006 but will continue to receive 75% of current £1.2 billion funding levels—approximately £931 million—between 2007 and 2013. This was announced as part of the European Commission's new 'Convergence

Fund'. This will replace the current structural funds at the end of 2006 as a result of the EU's expansion from 15 to 25 members. While West Wales and the Valleys remain below 75% of the average GDP of the current 15 member states, the percentage will rise above the 75% when the East European accession states join.

Meanwhile, on the basis of confidential Government figures, Carmarthen Plaid Cymru MP Adam Price claimed that the Assembly Government had spent less on European projects than the Conservatives did in the three-year period pre-devolution. The figures obtained from the DTI show that an annual average of £153.4 million was spent on Wales between 2000 and 2002, compared to £172.275 million in 1994–9. He also claimed that the statistics show that in the first three years, the average annual spend on Objective One in West Wales and the Valleys has been almost 50% less that the average figures pledged before the start of the programme.

However, Assembly Government Economic Minister, Andrew Davies said the figures were not comparing like with like. "The Objective One programme was not approved by the Commission until July 2000 and consequently virtually nothing was spent during that year," he said. "It is therefore not surprising that spend was lower during 2000–02 compared with the old programme."

Ahead of the Richard Commission's report on the National Assembly's powers and electoral arrangements, expected at the end of March, First Minister Rhodri Morgan said he favoured primary legislative powers but was against taxvarying powers. At the same time Rural Affairs Minister Carwyn Jones, in a booklet *The Future* of Welsh Labour (IWA, February 2004), not only advocated primary powers but also argued that there was a need to reform the Barnett Formula so that it more accurately reflected Welsh spending needs. Meanwhile, in a letter to the Secretary of State for Wales, 19 Welsh Labour MPs declared that any move towards primary powers for the Assembly would require a further referendum.

Ron Davies, former Secretary of State for Wales and Caerphilly AM, announced he was leaving Labour and joining the party founded by

former Wrexham Labour AM John Marek, now the deputy Presiding Officer. The new party, Forward Wales, is expected to contest the European elections in June with Ron Davies heading its list.

www.ucl.ac.uk/constitution-unit/monrep/wales/wales\_february\_2004.pdf

#### Project News: Coalition Governance in Scotland and Wales

Scotland and Wales have been the subject of plentiful research since 1999, but this has mainly focused on devolution issues and the nature of the new assemblies. Precious little attention has been focused on the executives. Yet these also represent a novelty in the British context, since they are formed from coalitions of two parties. In Scotland, a Labour-Liberal Democrat coalition has governed continuously since 1999, while in Wales, a similar coalition ran from October 2000 to May 2003. Yet outside local councils such power sharing arrangements are the exception in Britain. The two devolved coalitions thus offer a rare opportunity to study how power sharing executives operate.

Following on from the Unit's initial study of coalition Government in four overseas jurisdictions (Jan 2002), we have now conducted a follow up study of power sharing executives in Scotland and Wales. The study assesses changes in the way the coalitions form and are managed as the new arrangements have matured. The research draws on a set of interviews conducted with ministers, backbenchers, civil servants and political advisers in Edinburgh and Cardiff in autumn 2003. Specific issues covered in the report are:

- · The role of elections;
- The formation of coalitions, particularly the negotiating process;
- The role of the coalition agreement;
- The internal management of coalitions;
- · Coalitions within a devolved polity.

Ben Seyd, Coalition governance in Scotland and Wales, March 2004, c.20pp, £8

#### Northern Ireland

If politics in Northern Ireland had been in slow motion since the suspension of devolution in October 2002, after the election on 26 November 2003 it seemed to hit a dead stop.

The election confirmed the at-first-sight paradoxical trend, evident since the Belfast agreement of 1998, of growing sectarian polarisation. The Democratic Unionist Party of Ian Paisley, fundamentalist preacher, and Sinn Féin, political wing of the IRA, achieved clear hegemony within the respective Protestant and Catholic 'communities' (if, in the case of the former, only because of post-election defections from the rival Ulster Unionists).

There was no prospect in this context of the assembly being able to form a Government *via* the election of a first and deputy first minister, requiring as this procedure does the support for both of a majority in each of the *soi-disant* 'unionist' and 'nationalist' blocs in the chamber, after elected members have so 'designated' themselves. The Northern Ireland secretary, Paul Murphy, therefore did not convene the assembly—to do so would have set a six-week clock running on another election, if the FM/DFM election failed—and instead, with his Dublin counterpart, Brian Cowen, opened the overdue four-year review of the operation of the agreement.

The review got off to a leisurely start in February, with an informal deadline of Easter posted by the two Governments. But immediately the clashing agendas were evident. SF and its defeated nationalist competitor, the SDLP, argued for no change in the agreement, despite its manifest dysfunction; the DUP demanded a new agreement, in a reasonable-sounding document which would in fact have allowed it to exercise a political stranglehold; and the UUP insisted the real issue was IRA weapons anyway. The UUP has since left the review. The Alliance produced a comprehensive set of proposals, only to be attacked by nationalists questioning the agreement's consociationalist Holy Grail. The two Governments appeared bereft of any ideas of their own.

The Northern Ireland Office team continued to act in hope, rather than expectation, of restored devolution, with sustained ministerial activism.

There was progress on developing a community-relations strategy—to address the polarisation on the ground, as against at Stormont. And a nettle was finally grasped with the announcement that selection at 11 would be abolished—albeit not until 2008.

www.ucl.ac.uk/constitution-unit/monrep/ni/ ni\_february\_2004.pdf

## Project News: Devolution and Health Website

The Devolution and Health website has been relaunched with constantly updated news and analysis, links to publications, and archived monitoring reports from the first four years of devolution.

www.ucl.ac.uk/constitution-unit/health

#### **English Regions**

With referendums in the three northern regions eight months away, there are signs that the public debate might be coming to life. January saw the Deputy Prime Minister tour the northern regions by rail. The tour included large meetings in Manchester, Leeds and Newcastle. The Manchester event saw over 400 people attend, with others being turned away.

At the same time, the Deputy Prime Minister made the first tentative moves to promote a new economic agenda for the three northern regions, focused on the creation of a northern growth corridor ('the Northern way') linking the major cities and designed to provide a counterbalance to recently announced growth plans in the South. This is likely to prefigure special treatment for the North in the Chancellor's forthcoming Spending Review.

The Government announced a series of hearings would be held in each of the Northern regions designed to elicit views about the proposed powers of the Assemblies, with ministers hinting that a stronger package than that outlined in its white paper, *Your Region, Your Choice*, will be unveiled in the draft bill later this year.

The Yes and No campaigns continued to shape up in different ways in the regions. The No campaign in the North West has continued to attract some Labour MPs. One such, Graham

Stringer, found himself in heated public debate with the Deputy Prime Minister in the Manchester meeting mentioned above. In Yorkshire, Lord Haskins was announced as chair of the Yes campaign.

In the North East the media reported tensions between Neil Herron, a leading figure in the opposition to regional Government, and leading local Conservatives, who have yet to agree on a common campaign. The North East Yes campaign meanwhile attracted unexpected support from the self-confessed Thatcherite, Sir John Hall, the president of Newcastle United FC, and other well known business figures.

www.ucl.ac.uk/constitution-unit/monrep/regions/regions\_february\_2004.pdf

# Vacancy: Lawyer wanted for Law and Devolution project

We are urgently looking for a public lawyer to work for 4 to 6 months to help finish our Law and Devolution project. The main tasks are to interview selected Government lawyers and to help complete a book which is largely written. If you are interested contact r.hazell@ucl.ac.uk

#### The Centre

The West Lothian Question was widely debated in the run-up to the vote on the Higher Education Bill (see also Scotland, page 4). The Bill contains the controversial measure to allow universities in England and Wales to charge variable tuition fees. This does not apply to Scotland as student finance is a devolved matter. As such the Conservatives argued that all Scottish MPs should abstain from voting. Conservative leader, Michael Howard, said that it would be 'absolutely wrong' for Scottish MPs to vote on the issue. And in an Opposition day debate led by the shadow Scottish Secretary. Peter Duncan MP, the Conservatives argued that the Speaker should certify those Bills which cover areas of policy devolved to the Scottish Parliament, and that Scottish MPs should abstain from voting on such Bills.

In the end the Government did need the support of its Scottish MPs to get the Bill through the Commons. The Bill was passed by 316 to 311 votes, yet if only MPs from England and Wales had voted the Bill would have been defeated by

276 to 270 votes. 46 Scottish Labour MPs voted for the Bill. Critics who argued that Scottish MPs should not have voted since the Bill does not apply to Scotland are only partially correct—Part 1 of the Bill provides for the establishment of the Arts and Humanities Research Council which extends to the whole of the UK, leading some to suggest that Scottish MPs were justified in voting.

A YouGov poll commissioned by the Telegraph found that 66% of English and Welsh voters

and 78% of Scottish voters felt that Scottish MPs should not be allowed to vote on matters that only affect England and Wales. However, the Government are still not prepared to accept any limitations on what Scottish MPs can vote on. They believe that the Conservative solution is unworkable and would create two classes of MP, which they oppose.

www.ucl.ac.uk/constitution-unit/monrep/centre/centre\_february\_2004.pdf

## Civil Service and Government

#### Civil Service Act

On 5 January the Commons Public Administration Committee published a draft Civil Service Bill (HC 128-1). The bill would put the Civil Service Commission onto a statutory footing, and allow it to initiate its own inquiries instead of merely responding to complaints by civil servants. The bill provides for a Civil Service Code, with a right of appeal direct to the

Commission, and for the regulation of Special Advisers, whose numbers would be subject to approval by Parliament. On 21 January Douglas Alexander, Minister for the Civil Service, promised to introduce a draft Civil Service bill in the current session.

www.publications.parliament.uk/pa/cm200304/cmselect/cmpubadm/128/12802.htm

### Elections and Parties

#### Changes to Scottish constituencies

The Scottish Parliament (Constituencies) Bill received its Commons second reading in February. This Bill ends the link between the numbers of constituency MPs and MSPs in Scotland, allowing for the Scottish Parliament to retain its size, while the number of Scottish MPs at Westminster is cut from 73 to 59. The Government proposed the establishment of an independent commission to review the relationship between the—previously coterminous—Westminster and Holyrood constituency boundaries. The commission will consider the use of four different electoral systems for Scottish voters: first past the post (Westminster), AMS (Holyrood), list system (European Parliament) and STV (local Government from 2007). The commission will 'look into the consequences of four different voting systems in Scotland and the different boundaries for Westminster and Holyrood constituencies'. Details of the commission's membership are expected to be published shortly.

The second reading debate was preceded by the report of the Scottish Affairs Committee on the number of constituencies in the Scottish Parliament. In its report, *The coincidence of*  Parliamentary boundaries in Scotland and the consequences of change, published on 3 February 2004, the Committee argued against ending coterminous boundaries on the grounds that it will confuse the Scottish electorate and deter people from voting. Nevertheless, the Committee recommended that the Parliament remain at its current size, with 129 members. In its most controversial recommendation, the Committee suggested achieving this by increasing the number of constituency MSPs to 118, and reducing the number of list members to 11.

www.publications.parliament.uk/pa/cm/cmscotaf.htm

#### London elections

The second round of elections to the Greater London Authority will take place on 10 June, having been moved to coincide with elections to the European Parliament on the same day. Current polls give the Mayor, Ken Livingstone, around 50% of the vote. Livingstone was accepted back into the Labour Party on 7 January 2004. The selected Labour candidate for the mayoral election, Nicky Gavron, had agreed to stand aside in Livingstone's favour, and on 3 February London Labour Party

members confirmed him as their choice for candidate, some 93% voting in favour of Livingstone.

The leading threat to Livingstone will come once again from Steven Norris of the Conservative Party, with Simon Hughes MP standing for the Liberal Democrats. Small parties such as the BNP and the socialist 'Respect Coalition' may be able to gain a seat on the Assembly, and with it a platform though little power.

# Regional/local government referendums

Voters in the North West, North East and Yorkshire and the Humber are facing referendums on regional assemblies in the autumn, currently planned for 21 October 2004. The Government will hold a vote at the same time on the options for moving from two tier local authorities to single tier unitary councils. The Boundary Committee's period for consultation on its draft recommendations for

unitary authorities ended on 23 February, and it will publish its final recommendations on 25 May 2004. These recommendations will be placed before the public in the October referendums. The three referendums will also be held by all-postal ballots.

www.boundarycommittee.org.uk/our-work/ DraftRecs.cfm

#### New voting methods

The Government has extended the number of regions to further pilot all-postal voting from two to four. At the combined local and European Parliament elections on 10 June 2004, the East Midlands and the North East will be joined by Yorkshire and the Humber and the North West in holding all-postal ballots. The Electoral Commission recommended just two regional pilots on the basis that relatively few local elections would be held in the original two regions. But the Government clearly wishes to press ahead with initiatives capable of boosting turnout.

## Freedom of Information and Data Protection

## Data Protection—Court of Appeal decision

In a recent case (Durant v Financial Services Authority), the Court of Appeal gave a decision on important issues of law concerning the definition of "personal data". Mr Durant had appealed to the Court against a refusal by the FSA to give him access to certain manual files.

Firstly, the Court ruled that to be considered personal under the Data Protection Act, information must have the individual as its focus and affect an individual's privacy, whether in his personal or family life, business or professional capacity.

Secondly, the Court ruled that when information is processed manually, it is only covered by the Act if the manual files are of sufficient sophistication to provide the same or similar ready accessibility as a computerised filing system.

The effect of the Court's judgement is to narrow significantly the rather wider interpretation to "personal data" previously given by the Information Commissioner. The Commissioner has now issued revised guidance.

www.informationcommissioner.gov.uk/eventual.aspx?id=5152

## Phillis Report on Government Communications

The Independent Review of Government Communications, chaired by Bob Phillis, reported in January 2004. It had been established in response to the Public Administration Select Committee's inquiry into the Jo Moore/Martin Sixsmith affair and had a remit to conduct a radical review of Government communications.

The report states that the Freedom of Information Act offers a "real opportunity to make Government at every level more accountable, breaking the culture of secrecy and partial disclosure of information". However, the report goes on to criticise some of the details of the Act introduced by the Government between the publication of the FOI White Paper in 1997 and the Act stating that "the Act itself accentuated some of the problems of trust and credibility that are at the root of the crisis of public confidence".

The report recommends that the Government should announce publicly that Ministers will not use the right of veto; replace class exemptions by a harm test as far as possible; require all requests for information to be met within 20

days; and remove the £600 limit on the cost of providing information in complex cases involving significant issues of public interest.

www.gcreview.gov.uk

## Events: Freedom of Information Workshops and Conference

The Constitution Unit and Capita are holding two half-day **workshops** on Freedom of Information. The first is on 5 April 2004, at the Queens Hotel in Leeds and then on 7 April, Copthorne Tara Hotel, London. There will be workshops led by relevant experts on three key themes—training, working with journalists and dealing with environmental information.

The Constitution Unit's annual Freedom of Information Conference takes place on 12 May 2004. The Information Commissioner and the Department for Constitutional Affairs are joint sponsors of the conference. Key speakers will include Lord Filkin, the Minister in charge of Fol, Anand Satyanand (New Zealand Ombudsman), Richard Thomas (Information Commissioner) and Andrew McDonald, Constitution Director at the DCA.

For more information about both events contact Samantha Boyle: samantha.boyle@capita.co.uk www.ucl.ac.uk/constitution-unit/foidp/events.htm www.capita-ld.co.uk/conferences

## Constitution Unit News

Simon King, the Unit's senior research fellow in electoral issues, left in March 2004 to join Hedra, a management consultancy.

#### **Publication Sales Help Needed**

The Constitution Unit is looking for volunteers to help with its thriving publication sales department. We need a few people (2 or 3) to help out once a month in the processing and packaging of publication orders. We cannot offer a salary but can offer a year's free subscription to all new Unit publications and unlimited access to our back catalogue. Anyone interested should contact our Administrator Helen Daines on 020 7679 4902 or h.daines@ucl.ac.uk

## European Union News

#### Collapse of Giscard Convention

The EU summit held in December 2003. originally intended to finalise agreement on the EU constitution, ended in failure. The talks collapsed as a result of a disagreement between Spain and Poland on the one hand and Germany and France on the other over the contentious issue of voting rights in a postenlargement EU. The Nice Treaty signed in 2000 handed Poland and Spain 27 votes each in the Council of Ministers, compared to the 29 that Germany and France obtained. This gave Poland and Spain disproportionate voting rights relative to their populations—something that Germany and France were unhappy about. They wanted to use the process of drafting a constitution to increase their voting powers to reflect their larger populations and, particularly in the case of Germany, their financial contribution to the EU.

The draft EU Constitution sought to simplify the voting arrangements agreed at Nice, and advocated a 'double majority' system whereby a vote is passed when it secures the support of 50% of EU member states, representing 60% of the EU's population. Poland and Spain argued that such a proposal would see them lose the voting powers they gained at Nice and give too much power to the larger member states. They therefore refused to accept the draft Constitution. The absence of an agreement at the December EU summit will not affect enlargement, which will go ahead in May, using the voting arrangements agreed at Nice. (The Nice voting rules were always intended to be used until 2009).

The debacle on voting rights obscured the fact that on many other issues relating to the EU constitution agreement had been reached. The UK Government were particularly pleased with what had been agreed, claiming that it had adequately protected its 'red lines' on issues like taxation and defence.

The Presidency of the EU now lies with Ireland and Taoiseach Bertie Ahern has made reaching an agreement on the EU constitution his top priority. He will report to a summit in Brussels in March on the level of progress that has been achieved. However, at this stage agreement still seems unlikely as Poland have given no indication that they are prepared to relinquish the gains they made at Nice.

## **Publications**

# The British Constitution in the Twentieth Century

Vernon Bogdanor ed. 2003, Oxford, Oxford University Press, xvi + 795pp + index, ISBN 0 19 726271 6, £55

There is no single book providing a coherent account of that elusive animal, the British constitution, in the twentieth century, but this magisterial history does much more than fill the gap. With contributions from eight lawyers, four political scientists, three historians and two parliamentary clerks, it provides a comprehensive and rounded account. With 800 pages at their disposal there is plenty of fascinating detail. And the century itself provides the story, because it was a century of extraordinary constitutional development, especially at the beginning and the end.

Vernon Bogdanor's opening and closing chapters set the scene, and the tone for the rest of the volume. At the beginning of the century, the Cabinet had 'no regular time of assembly nor fixed place of meeting.... There were no rules of order, no quorum, no agenda and no record or minutes of what was decided; and it was considered contrary to etiquette to take notes at a Cabinet meeting'. The Cabinet Office was established by Lloyd George in 1916 to take notes of Cabinet proceedings, and to co-ordinate the work of departments. Less well known is the relapse at the end of the century under Blair, with short Cabinet meetings and few papers or policy discussions. This led Lord Butler of Brockwell, his first Cabinet Secretary, to describe Cabinet meetings as having reverted to what they were in the eighteenth century, a meeting of political friends.

There are plenty of other echoes from the beginning of the century which still reverberate strongly at the end. Irish home rule raised all the political and constitutional issues which New Labour found itself facing when trying to introduce an asymmetrical scheme of devolution: not least the English Question. William Hague and Michael

#### People on the Move

Murray Hunt, barrister with Matrix Chambers, has been appointed Legal Adviser to the parliamentary Joint Committee on Human Rights, in succession to Professor David Feldman.

Howard have both proposed 'English votes on English laws' (also toyed with by Gladstone, and known in his day as the 'In and Out' rule). English votes on English laws would be a much bigger change than they recognise: it would amount in effect to the creation of an English parliament within the shell of the Westminster Parliament. They would do well to ponder the advice of their predecessor Winston Churchill (then a Liberal) in a Cabinet memorandum of 1911: 'It seems...absolutely impossible that an English Parliament, and still more an English Executive, could exist side by side with an Imperial Parliament and an Imperial Executive'. Substitute UK for Imperial, and the same advice could be given today. Churchill proposed as an alternative regional devolution within England, a solution to which modern day Conservatives are stoutly opposed.

The book is so full of riches that it is invidious to single out chapters for special mention. The other contributors are Geoffrey Marshall on the theory and interpretation of the constitution, Rodney Brazier on the monarchy, Anthony Seldon on the Cabinet system, Paul Seaward and Paul Silk on the House of Commons, and Rhodri Walters on the House of Lords. Vernon Bogdanor writes again on the civil service, Diana Woodhouse on Ministerial responsibility, Robert Stevens on Government and the Judiciary, Jeffrey Jowell on administrative law, and David Feldman on civil liberties. John Curtice writes on the electoral system, Martin Loughlin on the demise of local government, Clive Emsley on the police, Brigid Hadfield on the UK as a territorial state, Robert Holland on Britain. Commonwealth and the end of Empire, and Ian Loveland on Britain and Europe.

Robert Hazell, r.hazell@ucl.ac.uk

### Project News: Effective Scrutiny

On 20 February the final report was launched of the local government section of the Unit's programme of research on Effective Scrutiny. This report examines the practice of overview and scrutiny in nine different local authorities, concluding that many authorities have as yet only met some of the goals of the new committee system.

Mark Sandford and Lucinda Maer, *Old Habits Die Hard? Overview and Scrutiny in English local authorities*, Constitution Unit, London, 2004, £10

# BulletinBoard

#### Constitution Unit Events

#### FoI Annual Conference

Key Speakers to include Lord Filkin and Anand Satyanand (New Zealand Ombudsman) 12 May 2004

Contact Samantha Boyle at Capita: samantha.boyle@capita.co.uk www.ucl.ac.uk/constitution-unit/foidp/events.htm

The Constitution Unit Seminar Series www.ucl.ac.uk/constitution-unit/events or contact m.butt@ucl.ac.uk, 020 7679 4977

Designing a New Constitution for Europe
Rt Hon Denis MacShane MP, Minister of State,
Foreign and Commonwealth Office
1pm, Tuesday 30 March

Does the Welsh Assembly Need More Powers? Lord Richard: Chair of the Commission 1pm, Wednesday 21 April

The Benefits of Freedom of Information

Judge Anand Satyanand, New Zealand
Ombudsman
6.15pm, Wednesday 19 May

The Future of the Law Lords Rt Hon Dame Brenda Hale 6.15pm, Thursday 10 June

London Votes: For What? The challenges facing the new GLA

Tony Travers, Director, Greater London Group, London School of Economics 6.15pm, Wednesday 30 June

#### Joint Seminar with DCA

#### How we Do Constitutional Reform

Professor Rodney Brazier, University of Manchester

1 pm, Thursday 22 April 2004, 10 Greycoat Place

#### Events outside the Unit

Speeches at Barnard's Inn Hall, Gresham College, off Holborn. Admission free.

**Lord Falconer of Thoroton**, Thursday 22 April 2004

Lord Woolf, Tuesday 11 May 2004

#### **Unit Publications**

Full listings of unit publications are available on line at www.ucl.ac.uk/constitution-unit/reports

Alan Trench ed, *Has Devolution Made a Difference? The state of the nations 2004*, January 2004, Thorverton, Imprint Academic, £14.95, ISBN 0 907845 87 8

Scott Greer, Four Way Bet: How devolution has led to four different models for the NHS, January 2004, London, The Constitution Unit, £8.00, ISBN 1 903903 26 2

Mark Sandford and Lucinda Maer, *Old Habits Die Hard? Overview and Scrutiny in English local authorities*, February 2004, London, The Constitution Unit, £10.00, ISBN 1 903903 27 0

Ben Seyd, Coalition governance in Scotland and Wales, March 2004, £8.00

#### **Useful Recent Publications**

Mark Evans, *Constitution-Making and the Labour Party*, 2003, Basingstoke, Palgrave

Rick Rawlings, *Delineating Wales*, 2003, Cardiff, University of Wales Press

James Mitchell, *Governing Scotland*, 2003, Basingstoke, Palgrave

Vernon Bogdanor ed, *The British Constitution in the Twentieth Century*, 2003, Oxford, Oxford University Press

John Adams, Peter Robinson and Anthony Vigor, *A new regional policy for the UK*, 2003, London, IPPR

Alexandra Dobrolowsky and Vivien Hart ed, Women Making Constitutions: New politics and comparative perspectives, Palgrave, Basingstoke, 2003

Anna Randle, *Mayors Mid-Term*, 2004, London, New Local Government Network

### Useful websites

#### Regional Government campaigns

www.northeastnocampaign.co.uk www.northwestsaysno.org.uk www.yes4yorkshire.org.uk www.yorkshiresaysno.co.uk