

MONITOR

GORDON BROWN AND THE CONSTITUTION

Gordon Brown is a longstanding supporter of constitutional reform. In preparation for his premiership the Constitution Unit prepared a detailed briefing on all the unfinished business, in terms of Lords reform, devolution, funding of political parties, electoral reform and a bill of rights. The briefing set out a timetabled and practical programme of constitutional change, focusing on what can be delivered at this stage in the political and parliamentary cycle. We cautioned that Lords reform and a British bill of rights cannot be delivered in the remainder of this parliament, and explained the difficulties in reaching agreement on a written constitution.

Much of our briefing was reflected in the new government's plans for constitutional reform set out in the Green Paper *The Governance of Britain* (Cm 7170, 3 July), published in Gordon Brown's first week as Prime Minister. The government was bold about many of the smaller things, but understandably cautious about the big things. On a bill of rights and a written constitution the Green Paper recognises that neither could come into being except over an extended period of time, and not without achieving broad consensus upon what they should contain. On Lords reform, Jack Straw subsequently confirmed on 19 July (discussed further under 'Lords Reform' below) that there would be no legislation in this parliament. So the government will start with a long list of smaller things. This is not to diminish their importance; but a possible difficulty is that few of these items will resonate with the media or the general public.

The main focus of Brown's initial reforms is on strengthening Parliament, and bringing the prerogative powers under parliamentary scrutiny and control. The war making power is to be subjected to a model resolution, giving Parliament a say over future military deployments. The power of recalling parliament in the recess is to be controlled by the Speaker, not the government. There will be annual parliamentary debates on the objectives and plans of the main government departments. The Intelligence and Security Committee is to be made a proper parliamentary committee, and there will be greater parliamentary involvement in treaty making. The Civil Service will be regulated by statute, and parliamentary committees will scrutinise some senior public appointments. The Prime Minister will give up his patronage powers to select bishops, and the government is minded to relinquish any involvement in the appointment of judges.

The whole thrust of making executive power more accountable is strongly to be welcomed, but the government could have gone further in two respects. While subjecting the prerogative powers

to more control, the Prime Minister could give up his patronage power to select party members in the House of Lords and give this power to the House of Lords Appointments Commission. Secondly, making the power of dissolution subject to parliamentary vote is not an effective check on abuse of the power. If the PM really wanted to restrict his power to choose the date of the next election, he should introduce fixed term parliaments as Canada has just done.

Finally, there are two respects in which we believe the government risks going too far. It should not relinquish all involvement in the appointment of judges. The Lord Chancellor should retain the power to select judges, and senior judges should be subject to the same parliamentary pre-appointment hearings as the government is proposing for other senior public appointments. Secondly, lowering the voting age to 16 would almost certainly reduce voter turnout. 18-25 year olds already vote less than older age groups, and the risk is that young voters who start in life not voting are likely to continue as non-voters.

The Unit's Briefing, Towards a New Constitutional Settlement, and the Unit's Response to the Green Paper can both be found on the website, at www.ucl.ac.uk/constitution-unit/news/index.htm.

BROWN'S NEW TEAM

In Gordon Brown's first Cabinet all the key constitutional portfolios have changed hands. The new Justice Minister and Lord Chancellor is Jack Straw, who will play a central role in Brown's programme for constitutional reform. Straw's appointment marks the latest stage in the changing relationship between the three branches of government, with the Lord Chancellor coming from outside the House of Lords for the first time. Straw is supported on constitutional reform by Minister of State Michael Wills, while his former position of Leader of the House has been given to Harriet Harman, Labour's new deputy leader and party chair.

Both the Scotland and Wales Offices will continue to be headed by part-time secretaries of state, Des Browne and Peter Hain respectively. Even more so than in the last Blair Cabinet, there are serious doubts as to how much time the Scotland and Wales Secretaries will have for their territorial jobs as both men are also in charge of major departments: Defence (Browne) and Work and Pensions (Hain). Junior ministers David Cairns and Huw Irranca-Davies are likely to handle much of the day-to-day work of the two departments.

At the Northern Ireland Office, the top job has been given to Shaun Woodward and made a

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BROWN'S NEW TEAM (CONT'D)

full-time role once more. However, there is now only one junior minister, reflecting the reduced workload following the resumption of devolved governance in Belfast.

Other significant appointments include that of Baroness Scotland, only the second black woman to be a Cabinet member, as Attorney General, Baroness Ashton as Leader of the Lords, and close Brown ally Ed Miliband as Minister for the Cabinet Office.

Alongside the reshuffle, Gordon Brown made some significant changes to the machinery of government, following the earlier creation of the Ministry of Justice (see previous *Monitor*). There are three new departments: the Department for Children, Schools and Families, the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills. Consequently, the Department of Trade and Industry, and the Department for Education and Skills (as well as the Deputy Prime Minister's Office) will cease to exist. As noted below, these changes were the subject of a critical report of the Public Administration Committee.

Role of the Attorney General

The new Attorney General, Baroness Scotland, published a consultation paper on possible changes to her role on 26 July. One option is to appoint a lawyer from outside politics, as in Scotland, Ireland and Israel. The Attorney's regular attendance at Cabinet (in itself a recent Blair innovation) could be ended. The Attorney could be removed from any part in individual decisions to prosecute, except possibly where national security or international interests arise (as in the decision not to prosecute following the Serious Fraud Office's bribery investigation into BAE Systems). The PM is said to favour making the Director of Public Prosecutions independent of the Attorney General, and Lady Scotland has said that during the consultation she will not be involved in individual prosecution decisions.

The most radical option is to make the Attorney's legal advice public. Any such move would have to address the need to protect national security and other interests, and to ensure that ministers and departments were not inhibited from seeking legal advice. For this reason it is the least likely to be adopted. But Parliament might instead be given a fuller explanation of the legal basis for a decision, or alternatively Parliament might be provided with its own separate source of legal advice.

AFTER THE RESHUFFLE: KEY PLAYERS IN CONSTITUTIONAL POLICY			
	Government	Conservative	Liberal Democrat
Secretary of State for Justice & Lord Chancellor	Jack Straw	Nick Herbert	David Heath
Attorney General	Baroness Scotland of Ashal	Dominic Grieve	Lord Thomas of Gresford
Secretary of State for Scotland	Des Browne	David Mundell	Alistair Carmichael
Secretary of State for Wales	Peter Hain	Cheryl Gillan	Roger Williams
Secretary of State for Northern Ireland	Shaun Woodward	David Lidington	Alistair Carmichael
Cabinet Office Minister	Ed Miliband	Francis Maude	Norman Baker
Leader of House of Commons	Harriet Harman	Theresa May	Simon Hughes
Leader of House of Lords	Baroness Ashton of Upholland	Lord Strathclyde	Lord McNally

PASC: 'Ad hocery' ad nauseam

In three recent reports, the Public Administration Select Committee (PASC) seems to have tired of the incremental 'British way' of approaching public administration.

In *Ethics and Standards: the Regulation of Conduct in Public Life* (HC 121-1), PASC reviewed the network of 'constitutional watchdogs'. The committee found an overlapping system of bodies created in response to crises, with tension between their independence and accountability. To bring coherence, the committee recommends a more 'collegiate' direction of travel and a Public Standards Commission – at arm's length from government and parliament – to sponsor the watchdogs. In terms of balance between independence and accountability, the National Audit Office (NAO), which is funded by a parliamentary vote set and laid by the statutory Public Accounts Commission (PAC), is seen as the exemplar.

In *Skills for Government* (HC 93-1), PASC floats the idea of a National Performance Office ('NPO') to carry out the departmental Capability Reviews. Just as the NAO scrutinises government's accounts, an 'NPO' would scrutinise government's performance. This would make sure the assessor is independent of the assessed, while accountability to Parliament would drive up standards.

Less ad hocery is also the aim of PASC's *Machinery of Government Changes*, (HC

672) recommendations. PASC finds that such changes seem to be prompted by political expediency, with little thought for their frictional cost. While government organisation is a royal prerogative power, the Ministers of the Crown Act 1975 provides for Transfer of Function Orders to be laid in Parliament subject to the negative procedure – i.e., Parliament must 'pray' against them to prompt a debate. By amending the Act such that the affirmative procedure – i.e., the formal approval of both Houses – is necessary, government would have to make a business case for the investment of public money in the reorganisation. More radically, PASC recommends a 'new Haldane' review of the departmental structure of government.

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Lords reform

Despite the seemingly decisive Commons vote in March for a largely or wholly elected upper house, little progress has since been made. Instead government has announced that reform will not proceed until after the general election. Gordon Brown's green paper gave little attention to Lords reform, and promised no specific action. In a statement to the House of Commons on 19 July the new Secretary of State for Justice, Jack Straw, made clear that there will be a further period of reflection and inter-party talks, and possibly another White Paper, before reform proceeds. These echoed remarks made on 19 June when he gave evidence to the House of

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Commons Constitutional Affairs Select Committee. One reason for delay is simply the difficulty of reaching agreement, with many on the Labour side opposed to election and the Conservatives officially supportive, but highly critical of any specific proposals. The other reason is that many consider it wiser to proceed only once there is a precise commitment in a manifesto, in order to help neutralise opposition in the Lords. The Labour manifesto is likely for the first time to include a commitment to a largely or wholly elected house, and the Conservatives will do likewise. This is, however, no guarantee that reform will follow and certainly no guarantee that it will be consensual. Particularly as Jack Straw has indicated that the government is now looking at limiting the Lords' powers.

In the meantime, Lord Steel has sought support for his bill, which would tidy up the current situation by making the appointments commission statutory, ending the hereditary by-elections, and allowing members to retire from the chamber. This received a second reading in the House of Lords on 20 July. During a whole day's debate the great majority of speakers were supportive of the bill. Many quoted the recent Constitution Unit survey which found 89% of peers favouring a statutory appointments commission and 69% supporting an end to the hereditaries' rights to sit.

Another reason that the urgency has gone out of Lords reform is that after 18 months of investigation, and thousands of column inches of allegations and gossip in the media, the police announced they would not be pressing any charges over 'cash for peerages'. The Public Administration Select Committee has now indicated that it will return to its inquiry (postponed in 2006 following warnings from the police), which may now focus as much on the investigation as on the original allegations. Although the Blair administration is formally in the clear, the Brown administration has not decisively avoided getting into similar problems in the future. Despite announcements about ending prime ministerial patronage in spheres such as judicial and church appointments, Brown has not chosen to divest himself of any powers over appointing peers.

Lords Personnel changes

The new prime minister indeed began his term of office by announcing the creation of several new peers, in order to allow outsiders to serve in his 'government of all the talents'. The new Labour appointees were Alan West, Ara Darzi, Mark Malloch-Brown and, most

controversially, Digby Jones. David Cameron reciprocated by announcing in his reshuffle that Pauline Neville-Jones and Sayeeda Warsi would be appointed as Conservative peers and shadow ministers. Brown's arrival also resulted in some switching between the benches, as Lord Joffe and Lord Wedderburn (both formerly Crossbenchers) announced that they would take the Labour whip. The Conservatives did not make similar gains, and indeed lost Lord (Conrad) Black, who was ejected from the party group in July after being found guilty of fraud. There were also some significant deaths over the period. On 24 May Lord Renton, Britain's longest-serving parliamentarian having taken a Commons seat in 1945, died aged 98. On 6 May Lord Weatherill, former convener of the Crossbenchers and Speaker of the House of Commons 1983-92, also passed away and received warm tributes from across the House. The current Crossbench convener, Lord Williamson of Horton, announced his retirement from the position and will be replaced in the autumn by Baroness D'Souza. She is the first of the 'Stevenson' peers to rise to such a high position.

Commons Reform: Tory Proposals

While the debate on parliamentary reform has been dominated by the government's own proposals, the Conservative Party's Democracy Taskforce, chaired by Ken Clarke, also recently set out a thoroughgoing reformist agenda in its second report, *Power to the People: Rebuilding Parliament*. The report seeks to enhance the autonomy of the Commons from executive control and to make it more responsive to events and public opinion in terms of the business scheduled for consideration.

Specific proposals include the creation of a Business Committee, with a chair elected by the whole House, to agree the business of the House and to consider the programming of government legislation. It is also suggested that the Modernisation Committee (which, unusually, is chaired by a Cabinet minister, the Leader of the House) be merged with the Procedure Committee under an Opposition backbench chair. Proposals were also made to dilute the whips' influence over committee appointments, for example that select committee chairs be elected by the House as a whole in secret ballots.

Proposed changes to the timetable range from an increased scope for topical business, new procedures for the consideration of petitions and committee reports in the House and Westminster Hall, increased time for

Private Members' Bills and new opportunities for members' motions.

Commons Reform: Committee Reports

Two other recent reports have fed into the ongoing debate on parliamentary reform.

On 22 May, the Commons Procedure Committee published *Public Petitions and Early Day Motions* (HC 513), whose recommendations were less than radical. The committee concluded that a specialist Petitions Committee should not be established and that petitions should continue to be presented to the House by MPs, rejecting the idea of direct petitioning by members of the public. It also came down against imposing restrictions on either the number of EDMs that members can sign, or the subject matter of such motions. A bolder proposal was for a regular opportunity for Members to initiate debates on specific petitions, an idea that was echoed in *The Governance of Britain*.

On 20 June, the Modernisation Committee published its first report of the session, *Revitalising the Chamber: the role of the back bench Member* (HC 337), proposing a revamping of the induction programme for new MPs, as well as greater provision of 'continuous development opportunities' – such as training on parliamentary procedure – for MPs at all stages of their career. The report also treads some similar ground to the Conservative Democracy Taskforce, recommending the introduction of facilities for more regular topical and urgent questions and debates, weekly oral ministerial responses to committee reports, and private members' motions.

In *The Governance of Britain*, the government welcomed the Modernisation Committee proposals while emphasising that it would be for Parliament to decide whether to implement reform. Ironically, however – given the intention of these various reports to enhance the autonomy of backbenchers – reform will depend on government providing time for debate on the proposals.

Tebbit Review

In October 2006, the House of Commons Commission announced a Review of Management and Services of the House of Commons, to be led by Sir Kevin Tebbit, a former Permanent Secretary at the MOD.

On 25 June, the Tebbit Review published its report. Perhaps its most important

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recommendation is that a new chief executive separate from the position of Clerk of the House should *not* be created. Rather, the report continues to load the post of Clerk with more responsibility for management, with the Office of the Clerk upgraded to assist.

The House of Commons Commission would also remain in place, but the Board of Management would be remodelled with the addition of external non-executive directors to advise. As the membership of the Commission is set out in an Act of Parliament no non-MPs could be added to it without primary legislation.

The report also recommended closer cooperation between the Clerks and the Library in the provision of information. It examined the question of communication with the public, recommending that the existing Group on Information for the Public continue to be headed by the Librarian, and that the website be improved. The overall tenor of the report is pretty much to continue with business as usual, but with some detailed recommendations on more efficient administration, with greater emphasis on finding comparators and developing balanced score cards.

The Commission is seeking a Westminster Hall debate on the report following the summer recess.

BROWN HOLDS OUT AGAINST EU REFERENDUM PRESSURE

In spite of mounting pressure from an unprecedented coalition of Europhiles and sceptics, Gordon Brown has set his face against a referendum on the European Reform Treaty which at 200 pages is smaller in size, but not so different in effect to the 400-page Constitutional Treaty that was aborted in 2005 after negative referendums in France and the Netherlands.

Brown's main public argument is that the treaty changes nothing of constitutional significance. At the EU June summit, British 'red lines' were held against an appeal role for the European Court of Justice in UK labour and social legislation and EU involvement in tax and welfare policy. The UK continues to stand apart from the EU's justice and policing machinery but will co-operate with it over terrorism and the like, and can opt in later.

Brown's private argument is that a referendum could well be lost. No matter that a referendum was promised in the 2005

Labour manifesto. No matter too, that the EU consensus is that the treaty is in substance the same measure as the abandoned constitution.

The debate is likely to extend up to and well beyond the next general election. Ratification by national parliaments will begin after the EU Intergovernmental Conference on 18-19 October, followed by a vote in the new European Parliament in 2009, and then implementation, delayed in response to Polish objections, in 2014.

THE STATE AND RELIGION IN ENGLAND

Present arrangements remain rooted in the geopolitics of early modern England. The sovereign is Supreme Governor of an 'established' Church of England and appoints all the senior clergy. The sovereign may not be, or marry, a Roman Catholic and must be in communion with the Church of England.

Whilst much of the detail has altered, the core is unchanged: to protect sovereigns from political controversy, Prime Ministers still advise (that is, instruct) sovereigns on ecclesiastical appointments.

Gordon Brown now challenges the appointment arrangements by proposing (Cm 7170) automatically to pass Church of England recommendations to the sovereign. This raises the question whether the Prime Minister should be involved at all. If he is merely a postbox, then his political function can have no force. In practice, the Church will be making its own appointments, in which case it would seem best to take the sovereign out of the process too.

Roman Catholics believe that their treatment is discriminatory. Governments riposte that the discrimination is more theoretical than real: no-one really near to the throne has run foul of the arrangements in practice. An uncomfortable truth is that a Roman Catholic sovereign as Supreme Governor of the Church of England would be incompatible with that Church's position. Thus the appointments and discrimination questions are alike: better to remove the sovereign's formal position as well as the Prime Minister's. The Church could cease to be under the *government* but retain a special position in the *state*.

The Prime Minister and the sovereign could then be of any religion or none – all the better for both to operate in today's vastly changed condition of pluralised belief and greater unbelief. Religions would continue

to be recognised by the state but adherence would be a private matter for everyone.

These arguments are developed at greater length in the Unit's response to The Governance of Britain: see www.ucl.ac.uk/constitution-unit/news/index.htm.

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Scotland: On the road to independence?

The crowning moment of Alex Salmond's first 100 days in office was the publication of the long-awaited White Paper *Choosing Scotland's Future – A National Conversation*, which invites the people of Scotland to participate in a public discussion about Scotland's future.

Much will be written on the three choices the SNP has identified for Scotland: the status quo; an extension of the powers of the Scottish Parliament within the framework of devolution; or full independence. But the major constitutional question – which the White Paper does not resolve – is how Scotland could become independent.

The White Paper proposes a single referendum on Scottish independence in which voters would be asked whether: 'The Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state.'

The question is deliberately worded to be about commencing negotiations rather than about independence itself, in order to stay within the confines of the powers of the Scottish Executive and Scottish Parliament defined in the Scotland Act 1998. The question does not fully spell out what independence means, namely that Scotland would separate from the United Kingdom.

The White Paper also rejects the idea that two referendums would be needed before proceeding to independence, one on the principle of independence, giving the Scottish Executive authority to enter into negotiations, and a second on the terms of independence after negotiations. This case was made by the Constitution Unit in *Scottish Independence – A Practical Guide* (Edinburgh University Press, 2002), but rejected by the Scottish government on the grounds that a single referendum would give sufficient clarity about the wishes of the Scottish people and a mandate for the Scottish Parliament to deliver independence.

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The prospect of a second referendum, in contrast, 'could reduce the certainty of the choice facing the people at the [first] referendum, and reduce the impact of the decision that the people make' (para 5.11).

These arguments fail to deal with the issue of constitutional certainty: a vote on the *principle* of independence does not settle the issue of whether the *terms* of independence are acceptable to the Scottish people. They also run counter to the stated objective of the 'national conversation', which is to allow the electorate to make an 'informed choice' about independence (para. 6.51).

On the question of Scotland's relationship with the European Union, the SNP used to argue that an independent Scotland would automatically continue to be an EU member. This claim was analysed and questioned in our book *Scottish Independence* (Chapter 6). The White Paper maintains the claim that an independent Scotland would continue to be a member of the European Union, but acknowledges that there would be 'negotiations on the detailed terms of membership' (para. 3.21). Recognising the need for negotiations must include recognising the possibility that those negotiations might fail, especially if other European governments saw Scottish independence as a dangerous precedent which should not be encouraged.

Wales

On almost every measure, the third election to the Welsh Assembly on 3 May was a disaster for Labour. The party fell back over 7% on the 2003 election, scoring its lowest share of the vote in Wales since 1918. Worse still, the decline was a nation-wide phenomenon, with the party losing vote share in all five regions on the second vote, and in 39 of 40 constituencies on the first vote. Nonetheless, Labour dropped only four seats thereby remaining comfortably the largest party in the Assembly. This was largely due to the failure of the three main Opposition parties to capitalise on Labour's decline, with many disillusioned voters turning instead to independent candidates and fringe parties. The final tally in terms of seats was Labour (26), Plaid Cymru (15), Conservatives (12), LibDems (6), Others (1).

Surprisingly, despite clear indications that it would lose seats, Labour appeared to have done little to prepare the ground for a post-election situation in which it had fallen far short of an overall majority. Leading Labour figures saw fit to both insult (describing as 'inedible', and 'unpalatable') and ignore

(through Rhodri Morgan going on a post-election break) potential coalition partners in the immediate aftermath of the election. And it is inexplicable that Labour did not do more immediately after the election to try to secure a coalition with the Liberal Democrats, before the prospect of a Rainbow coalition involving the other 3 main parties began to solidify.

Ultimately, Labour only clung on to office thanks to the deep divisions in the Welsh Liberal Democrats, who failed to agree to the coalition deal that party leader Mike German had concluded with his Plaid and Tory counterparts. The party's failure to endorse the deal – and subsequent reversal of this position well after 'the horse had bolted' – has left the Welsh LibDems both divided and widely discredited. A challenge to Mike German's leadership appears imminent.

Shortly after the collapse of the Rainbow option, Rhodri Morgan was returned as First Minister at the head of a minority government. Within weeks, however, Labour and Plaid had sealed a deal bringing the nationalists into government for the first time, guaranteeing Rhodri Morgan a stable majority in the Assembly for the first time since 2003. For Plaid leader Ieuan Wyn Jones, the deal was a mixed blessing, as it entailed the end, for now at least, of his hopes of taking the top job. But more significantly for the immediate future of Wales, Labour signed up to a joint commitment to move 'as soon as practicable' to a referendum on the transfer of full legislative powers from Westminster to Cardiff Bay, as well as to 'campaign for a successful outcome'. Under the terms of the Government of Wales Act 2006, a referendum can only take place if approved by two-thirds of Assembly Members, leaving Labour with an effective permanent veto. Although this is only one of several hurdles – the British Government and both Houses of Parliament also exercise vetoes, while there is also significant opposition among Welsh Labour MPs – it now seems probable that within five years Welsh voters will have the chance of deciding whether they want their own law-making Parliament for the first time.

Northern Ireland

After four and a half long years, devolution was finally restored to Northern Ireland on 8 May 2007. It was a personal triumph for the prime minister, Tony Blair, and he timed his resignation announcement to make the most of it – and the media images which winged around the world. The laughter of the new first and deputy first ministers, Rev Ian Paisley of the Democratic Unionist Party and Martin McGuinness of Sinn Féin, captured the

celebration of the ending of direct rule and the reformation, after successive rounds of inter-party negotiations since 2002, of a power-sharing government.

There were further positive signs once the cameras had gone. The d'Hondt proportionality rule for the formation of the Executive Committee having already informally been run, on the basis of the party strengths established in the 7 March assembly election, ministers were quickly allocated their anticipated places and the executive got down to business. The committee chairs and deputy chairs were also appointed and the committees, ministers and officials began to address their policy agendas.

In further signs of a welcome normalisation, a British-Irish Council summit was held in Belfast, and the North/South Ministerial Council – which had been in cold storage, like the devolved executive – reconvened in Armagh. Meanwhile, a visit by the European Commission president, Jose Manuel Barroso, to Stormont, provided the opportunity to stress the EU's commitment to the region.

Under the surface, however, all was not quite so rosy as the carefully staged media events suggested. Graphically, it emerged that a new 'peace wall' – by the official count, the 47th – was to be built in north Belfast, on of all places land used as the playground of an integrated (Catholic and Protestant) school. The assembly, meanwhile, found itself unable to endorse the direct-rule administration's policy on 'community relations', *A Shared Future*, electing merely to note it instead.

There was a stand-off between the DUP and SF over the commitments in the St Andrews agreement of October 2006, setting the framework for the renewal of devolution, to the devolution of policing and criminal justice by May 2008 and the introduction of an Irish Language Act. St Andrews had bequeathed a system of governance even more replete with deadlocking vetoes, which threatened chaos in education after the expiry of the '11+' transfer test in 2008.

In particular, dealing with Northern Ireland's 'troubled' past had the potential to derail the new arrangements. As the army finally ended 'Operation Banner' after 38 years, a number of episodes excited neuralgic reminders, particularly in the Catholic community, of the unassuaged wounds left by decades of ethno-nationalist antagonism.

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English Regions

Gordon Brown's reshuffle as well as the publication of the long awaited Sub National Review of Economic Development and Regeneration (SNR) has opened up the prospect of some serious activity on the English regional front. Policy has in fact been emerging over the last two years, but what is different this time is the degree of commitment to move things forward plus some concrete proposals for action.

Brown has effectively given primary responsibility for the lead on regional economic development to the newly created Department for Business Enterprise and Regulatory Reform (DBERR) under John Hutton. It has assumed lead responsibility for achieving the Regional Economic Performance PSA targets and it has been made clear that other government departments would be expected to demonstrate their commitment to delivering this target in future spending periods. The DBERR has also taken on clear responsibility for the RDAs. In the central pursuit of economic development across all the English regions, the DBERR will work closely alongside the Treasury and the Department for Communities and Local Government.

The reshuffle was accompanied by the appointment of nine regional ministers, one for each of the regions including London. These are tasked with representing their regions in Whitehall and Westminster, while also representing central government in their regions. They are expected to fulfil these roles alongside their other junior ministerial duties. It is not yet clear how these new appointments will operate, how their dual representative function will be sustained, and what access they will have to the central policy making departments mentioned above. Despite these uncertainties, the scheme is, potentially, a significant innovation. The new administration is also proposing, subject to the approval of Parliament, to create select committees for each region, in order to hold regional ministers and agencies to account, notably RDAs, but also Government Offices.

In addition to changes on the ministerial and accountability fronts, the publication of the SNR brought more of the current regional debate into concrete policy proposals. At the *regional* level the review announced: the abolition of Regional Assemblies; a timetable for their demise and transfer of their planning responsibilities to RDAs; a scrutiny role in respect of the RDAs for new joint-local authority bodies; an enhanced

responsibility for RDAs to produce a single, overarching regional strategy; a streamlining of RDA activities so as to encourage a clearer focus upon economic development; and an expectation that RDAs will become more 'strategic' and will, whenever possible, delegate responsibilities to sub-regional levels. At the *city or sub-regional* level, the SNR promised guidance on the production and delivery of Multi-Area Agreements (MAAs). The first round of agreements would become operational by mid-2008 and be backed by placing a duty of co-operation upon local authorities. Most importantly, for the first time, the Government made a commitment to explore the possibility of creating statutory city- or sub-regional authorities for economic development purposes. Finally, at the *local* level, the review committed the Government to explore giving greater incentives to local authorities to promote economic development and regeneration, including consultation on a new power for local authorities to levy a supplementary business rate for economic development purposes.

FREEDOM OF INFORMATION

Controversy continued over Conservative MP David Maclean's Freedom of Information (Amendment) Bill, which, if passed, would exempt Parliament from FOI and disclosure of correspondence between constituents and their MPs. The bill passed the House of Commons with 96 ayes and only 25 noes on 18 May, provoking an angry response from the press and several MPs. The Parliamentary Labour Party encouraged members to vote for the bill, and Jack Straw – then Leader of the House – indicated his support. Gordon Brown remained neutral, disappointing those who would have liked him to come out against it. The bill failed to find a sponsor in the House of Lords, and it is stalled until October and generally assumed to be dead.

With less fanfare, in June LibDem MP Tom Brake introduced a ten-minute rule bill proposing tougher FOI legislation. If passed, it would remove the ministerial veto on FOI decisions and limit the time allowed for considerations of public interest, as well as increase the number of bodies covered by FOI. However, it was adjourned due to opposition and is unlikely to progress.

The second consultation period for proposed changes to the FOI fees regime closed on 21 June. Though there will be no official response from Government until September, it seems likely that the proposal will be dropped and gentler steps taken to reduce the burden

of FOI on public authorities (see below).

Jack Straw, who introduced the FOI Act 2000 to Parliament as Home Secretary, regained responsibility for FOI as Lord Chancellor and Secretary of State for Justice. Directly in charge of FOI is Michael Wills, Minister of State in the MoJ, who was also responsible for FOI at the Lord Chancellor's department in 2001-02. Liberal Democrat Lord Lester of Herne Hill, a vocal supporter of FOI, has been appointed adviser on constitutional reform.

Though FOI did not feature prominently in *The Governance of Britain* (Cm 7170), one notable mention was made. The paper states that the Justice Secretary and Information Commissioner will 'produce guidance to public authorities to ensure that they apply the [FOI] Act in a way that balances openness with the need to protect the privacy of [MPs'] constituents', which is a significantly milder recommendation than David Maclean's bill. The new administration also implicitly reaffirmed a commitment to FOI by including it in a list of the Labour government's major constitutional reform successes.

Unease about the effect of FOI on good governance remains, however. On 25 July the Public Administration Select Committee (PASC) held a session to explore the concerns addressed in Alistair Darling's letter to the Lord Chancellor. These included the implications of recent Information Tribunal decisions and the potentially negative effects on policy-making of disclosing ministers' and MPs' correspondence and advice from officials to ministers. The Information Commissioner and his deputy, Graham Smith, as well as Campaign for Freedom of Information director Maurice Frankel, gave evidence at the session.

People on the Move

Jeremy Heywood has become head of domestic policy and strategy in the Cabinet Office, **Simon McDonald** head of foreign and defence policy, and **Jon Cunliffe** head of international economic affairs and Europe. **Nigel Smith** becomes chief executive of the Office of Government Commerce in September. **Jim Gallagher**, a senior official from the Scottish Executive is moving to the Ministry of Justice and Cabinet Office to become Director General, Devolution. At Westminster, **Michael Pownall** has been promoted to Clerk of the Parliaments, with his position as Clerk Assistant taken by **David Beamish**.

CONSTITUTION UNIT NEWS

Unit Seminar Reports

The Unit held four seminars between May and July before our regular seminar series took a break for the summer.

On 22 May, leading political journalists Peter Jones and Martin Shipton spoke on the new political situations in Scotland and Wales. Jones described the SNP administration in Edinburgh as confrontational and with mixed prospects for its political programme. However, according to Shipton, the uncertainty in Scotland was nothing compared to the chaos reigning in Cardiff, where a new government had yet to be formed.

On 18 June, Meg Russell of the Constitution Unit led a seminar on the House of Lords. Russell set out a detailed case showing how the House has grown more assertive since the elimination of all but 92 hereditary peers in 1999. One striking piece of evidence is the number of government defeats at the hands of the Lords – an average of 49 a year.

On 25 June, Professors Guy Laforest and James Mitchell spoke on the development of the constitutional settlements of Quebec and Scotland. Both described the systems of co-ordination between national and sub-national governments – in Canada and the UK respectively – as inadequate and problematic, with Mitchell challenging the notion that the new nationalist government in Scotland had been unnecessarily confrontational.

On 19 July, MP and Chair of the Joint Committee on Human Rights Andrew Dismore spoke on the subject of 'Making Human Rights Matter'. Dismore believes that the Human Rights Act is worth saving, but only if it can be made relevant to all, which will require a significant change in culture.

Unit Summer Party and Briefing Launch

On 25 June the Constitution Unit published a major new briefing proposing to the new prime minister a detailed agenda of specific constitutional reforms that the government could implement, dividing these into steps for the first 100 days, the next two years and the next parliament. The publication was launched at the Unit's annual summer party at which nearly 100 supporters gathered under a marquee in nearby Gordon Square. The briefing, *Towards a New Constitutional Settlement: An agenda for Gordon Brown's First 100 Days and Beyond*, can be downloaded from www.ucl.ac.uk/constitution-

unit/publications.

Freedom of Information Conference

The Unit held its Fifth Annual Information Rights Conference for the Public Sector: FOI Live 2007 in partnership with the Ministry Of Justice and Information Commissioner on 24 May in London. Over 350 delegates from central and local government, the police, health and education sectors heard Baroness Ashton, Richard Thomas, and many other FOI specialists speak about the practical issues of FOI compliance. An evening drinks reception and speech by Lord Falconer rounded out the day's programme.

Constitutional Futures 2

A major challenge facing this forecasting exercise is that the ground is shifting under our feet – many of the things we predicted to happen over the next twelve years from our vantage point in March have started to happen already. But the current state of flux makes the forthcoming book even more timely. Summer has seen a series of discussion meetings of the individual chapters to draw out common themes. The book should be completed by the end of October.

Governance of Parliament Project

This two year project concludes this Autumn, with the publication of its final report. Authored by Unit researchers Meg Russell and Akash Paun, the report will set out a programme of reform proposals to improve the institutional autonomy of the House of Commons vis-à-vis the executive. In particular, by drawing on the examples of five parliamentary chambers from elsewhere in the world, the report will assess the possibility of enhancing MPs' control of the parliamentary timetable, of the Commons committee system and appointments processes, and of the rules by which the Commons conducts its business. Full details of this report will be available on the Unit website shortly.

Lords Project Update

Responses have been flooding in to our second survey of peers. As with the previous survey, almost 400 members of the chamber have replied. We are very grateful to all of those who have taken part, and will be feeding back some of the results at a seminar in the Lords in the autumn. In July Meg Russell spoke at two conferences for A level teachers, about the growing assertiveness

of the House of Lords. She also spoke at an all-day event at the British Academy, on Parliament: Past and Future, which was followed by a public evening event asking whether we are experiencing a new 'golden age' of parliament. In September Meg gave a paper at the European Consortium of Political Research conference in Pisa. Links to the last two of these can be found on the project website.

Devolution Monitoring Programme News

The Constitution Unit would like to thank Peter Jones for his work on the Devolution Monitoring Project. Peter has been the editor of the Scotland Devolution Monitoring Reports since Autumn 2005 and now hands on the baton to the Institute of Governance, University of Edinburgh. We are delighted to work in partnership with the Institute and its director Professor Charlie Jeffery.

The latest issues of all five series of devolution monitoring reports are available at: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html

Personnel Changes

The Unit is sad to see the departure of two of its research team and two of the departmental administrative team. At the end of October Sarah Holsen will be leaving to take a position at the Institut de haute administration publique (IDHEAP) in Lausanne, Switzerland. Maria Sciara, Research Assistant on the House of Lords has taken up teaching positions at the University of Oxford and UCL. Congratulations to them both.

The Unit would also like to thank Sally Welham, Executive Administrator of the School of Public Policy, and Aaron Crompton, the departmental Web/IT Administrator for their help over the years, and to wish them well in their new positions.

Finally, thanks are due to the nine interns recruited to the team over the summer months: Tania Bardawil, Orla Berry, Lucy Dale, Harry Eccles-Williams, Tom Guiney, René Holbach, Naomi Holford, Shokofeh Hejazi and Maria Stemmler.

BULLETIN BOARD

RECENT UNIT PUBLICATIONS

- Amos, Jim and Sarah Holsen, *FOI and Local Government in 2006: The Experience of Authorities in England, Northern Ireland and Wales* (September 2007)
- Hazell, Robert, *Constitution Unit response to Cm 7170: The Governance of Britain July 2007*. (July 2007). Available at: www.ucl.ac.uk/constitution-unit/files/publications/GovernanceResponse.pdf
- Hazell, Robert, et al, *Towards a New Constitutional Settlement: An Agenda for Gordon Brown's First 100 Days and Beyond* (June 2007). Also available at: www.ucl.ac.uk/constitution-unit/files/archive/Briefing%20v8%20final%2014%20june%2007.pdf
- Hazell, Robert, 'Gordon's Go' (an article on constitutional reform under Gordon Brown), *Prospect* (June 2007)
- Hazell, Robert, 'Out of Court: Why Have the Courts Played No Role in Resolving Devolution Disputes in the United Kingdom?' *Publius: The journal of federalism* 37(4): 578-598 (2007)
- Hazell, Robert and Akash Paun, 'What next for devolution?', *The House Magazine*, Labour Party Conference Special Issue (September 2007)
- Russell, Meg, 'The British House of Lords: A tale of adaptation and resilience', in Luther, J. et al (eds), *A World of Second Chambers* (Milan: Giuffrè, 2006)
- Russell, Meg, 'Reform of the British House of Lords: A test of Lijphart and Tsebelis', Paper to the ECPR Conference, Pisa (September 2007)
- Russell, Meg, 'A House of Cards?' (article on Lords reform), *Parliamentary Brief* (May 2007)
- Russell, Meg and Jonathan Bradbury, 'The Constituency Work of Scottish and Welsh MPs: Adjusting to Devolution' *Regional and Federal Studies* 17:1 (2007)
- Russell, Meg and Maria Sciara, 'The House of Lords: Negotiating a Stronger Second Chamber', in M. Rush and P. Giddings (eds.) *The Palgrave Review of British Politics 2006*. Basingstoke: Palgrave Macmillan (2007)

Further details on Constitution Unit publications can be found at www.ucl.ac.uk/constitution-unit/publications.

FORTHCOMING EVENTS

Constitution Unit Seminars

Info at: www.ucl.ac.uk/constitution-unit/events

- Sara Nathan and Lady Justice Heather Hallett (Judicial Appointments Commission) Thursday 18 October, 1pm. *Finding tomorrow's judges: the work of the new Judicial Appointments Commission*
- Roger Smith (Director, JUSTICE) 6.00pm Tuesday 13 November. *A British Bill of Rights?*
- Lord Philip Norton of Louth and Helen Irwin (Clerk of Committees, House of Commons) 1.00pm Wednesday 5 December. *Reforming the Legislative Process: reports of the Lords Constitution Committee and Commons Modernisation Committee*

Constitution Unit & Ministry of Justice Seminar Series

- The Rt. Hon. the Lord Holme 1-2pm Wednesday 26 September 2007. *Controlling the War Making Power*
- Paul Grice (Chief Executive of the Scottish Parliament) 1-2pm Wednesday 24 October 2007. *The Scottish Parliament: the inside story*

Information Policy Seminars

For information on the Constitution Unit's Information Policy Seminar Series, which consider freedom of information and data protection policy issues, please go to: www.ucl.ac.uk/constitution-unit/foidp/events

Please note that this is a subscription-only series.

Selected External Events

- The Centre for Public Policy for Regions, University of Glasgow, 9.00am-5.30pm Tuesday 25 September. *Fiscal Issues in Scotland: Lessons from Home and Abroad*. Details at: www.cppr.ac.uk
- Policy Exchange is hosting a discussion on the Green Paper, 'The Governance of Britain' on 9 October 2007. Details at: www.policyexchange.org.uk
- The British and Comparative Territorial Politics Group of the Political Studies Association is holding a conference at the University of Edinburgh on 10-11 January 2008. Details at: www.psa.ac.uk
- The Hansard Society's annual eDemocracy conference takes place on 8 November in London. Details at: www.hansardsociety.org.uk/events

PUBLICATIONS RECEIVED

- Bryant, Chris (ed.), *Towards a New Constitutional Settlement*, (London: The Smith Institute, 2007)
- Brown, Gordon, and Douglas Alexander, *Stronger Together: The 21st century case for Scotland and Britain*, (London: Fabian Society, 2007)
- Conservative Democracy Taskforce, *Power to the People: Rebuilding Parliament* (London: The Conservative Party, 2007)
- Gagnon, Alain-G, *Au-delà de la nation unificatrice: Plaidoyer pour le fédéralisme multinational*, (Barcelona: Institut d'Estudis Autònoms, 2007)
- House of Lords Select Committee on the Constitution, Relations between the Executive, *the Judiciary and Parliament, 6th Report of Session 2006-07*, (London: House of Lords, 2007)
- León Alfonso, Sandra, *The Political Economy of Fiscal Decentralisation, Bringing Politics to the Study of Intergovernmental Transfers*, (Barcelona: Institut d'Estudis Autònoms, 2007)
- Luther, J. et al (eds), *A World of Second Chambers* (Milan: Giuffrè, 2006)
- McDonald, Andrew (ed), *Reinventing Britain: Constitutional Change under New Labour*, (London: Politico's, 2007)
- Ministry of Justice, *The Governance of Britain*, Cm 7170, (London: The Stationery Office, 2007)
- Scottish Executive, *Choosing Scotland's Future: A National Conversation* (Edinburgh: Scottish Executive, 2007)
- Sagar, Rahul, 'On Combating the Abuse of State Secrecy', *The Journal of Political Philosophy* (2007)
- Sinclair, Frauke, *Rethinking Representation 2 MSPs' Experience of the Second Term of the Scottish Parliament*, (Scotland: Scottish Council Federation, 2007)
- Solace Foundation, *Comparing for Improvement* (pamphlet on local government performance regimes) (London: Solace Foundation, 2007)



The Constitution Unit