

Monitor 49

Constitution Unit Newsletter | October 2011

Clegg delivers for the Conservatives

Constitutional reform is generally believed to be the Liberal Democrats' contribution to the coalition government's agenda. The Conservatives certainly do not see themselves as constitutional reformers. But before the election their reform agenda was as extensive as the Liberal Democrats: see the Unit's Briefing 148 on *The Conservative Agenda for Constitutional Reform*.

Nick Clegg said last May that one reason for joining the coalition was to deliver the Lib Dems' long-held plans for constitutional reform. In government he leads on the whole constitutional reform programme. But early analysis suggests that at the end of this government, Clegg will have delivered more of the Conservative package of constitutional reforms than his own. In particular, he has not succeeded on the AV referendum and is unlikely to accomplish Lords reform, the Lib Dems' two biggest priorities.

The analysis is in Table 1 below and shows the main constitutional reform items in the coalition's Programme for Government. It is inevitably a crude score card, listing all the reforms as if they were equal, when some are clearly more important than others.

The table shows where a commitment in the Programme for Government came from: the Lib Dem manifesto (col 2), the Conservative manifesto (col 3), or both. Of the 14 items listed, 10 were in the Conservative manifesto, and eight in the Lib Dem manifesto.

Column 4 headed Result indicates whether the commitment is likely to be delivered or not. This requires some educated guesswork, and not everyone will agree with the forecasts. Those who disagree can insert their own, to see if they come to a different overall conclusion. The provisional analysis of this scorecard suggests that at the end of this Parliament Nick Clegg will have delivered six of the Conservative commitments for constitutional reform, but only four of his own. He will get little credit from the Conservatives for this, because they do not see themselves as constitutional reformers. The risk is that he will be damned by his own side for his failures, and ignored by the Conservatives for his successes.

Table 1. Constitutional reforms in the Coalition Programme for Government, and their origins

Programme for Government	LD	C	Result	Lib Dem manifesto	Conservative manifesto
Referendum on AV	○		x	Introduce proportional voting system, preferably STV	Retain first past the post
Reduce House of Commons to 600 MPs	○	●	✓	Reduce to 500 MPs if elected by STV	Reduce to 585 MPs
Introduce referendum on further Welsh devolution	●	○	✓	Give Welsh Assembly primary legislative powers	Will not stand in the way of Welsh referendum on further legislative powers
Implement Calman Commission in Scotland	●	○	✓	Implement Calman on new powers to Scotland	White Paper on how to deal with Calman
Fixed term parliaments	●		✓	Fixed term parliaments	Make royal prerogative subject to greater parliamentary control
Legislate so that future treaties are subject to 'referendum lock'		●	✓		Amend ECA 1972 so that future Treaties subject to referendum lock
Hold referendums on elected mayors in 12 largest English cities		●	✓		Give citizens in England's 12 largest cities chance of having an elected mayor
Wholly or mainly elected second chamber	●	○	x	Elected House of Lords	Build consensus for a mainly elected second chamber
Commission on British bill of rights	○	●	x	Protect the Human Rights Act	Replace Human Rights Act with UK bill of rights
Commission on West Lothian Question		●	x		English votes on English laws
Right of recall of MPs	●	●	✓	Power of recall in the event of serious wrongdoing	Power of recall triggered by proven serious wrongdoing
200 all postal primaries		●	x		All postal primaries
Petitions to force issues onto Parliament's agenda		●	✓		Petitions to force issues onto Parliament's agenda
Reform of party funding	●	●	x	Seek agreement on comprehensive reform to include donations cap	Cap donations at £10k, limit spending through electoral cycle

Key:

● = manifesto commitment fully incorporated into Programme for Government

○ = manifesto commitment only partially incorporated

✓ = likely to be delivered x = unlikely to be delivered.

PARLIAMENT



Government plans for Lords reform

Officially, following the publication of the White Paper and draft bill in May, Lords reform is proceeding smoothly, with a bill to be introduced next year. The proposal is to move to a largely or wholly elected chamber, chosen by proportional representation. However, the obstacles to this occurring remain significant (as discussed in Monitor 48). The White Paper and bill were debated in both chambers in June (in the Lords on 21 and 22, in the Commons on 27), and came in for heavy criticism. Numerous objections were raised in both chambers, by representatives of all parties and none, with only a small number of supportive speeches. Key issues include whether the chamber should be 80% or 100% elected, whether 15 year non-renewable terms are appropriate, and whether such a large change should be subject to a referendum (which is not currently proposed). But the biggest issue of all was the likely effect on the balance of powers between the two chambers. Clause 2 of the bill, which states that 'Nothing in the provisions of this Act... affects the primacy of the House of Commons... or the conventions governing the relationship between the two Houses' has already become somewhat notorious. Not only is it impossible to legislate meaningfully for such a matter, but the claim that the relationship will remain unchanged is widely questioned. Some believe that changes to the chamber's membership will strengthen it vis-à-vis the Commons, and welcome this: they include Lords leader Lord Strathclyde, who stated this repeatedly in the chamber when the proposals were announced on 17 May. Some, including the minister responsible for the bill, Nick Clegg, claim that the relationship will remain unchanged. Many others anticipate a strengthening, but consider this undesirable.

These will all be issues closely examined by the parliamentary joint committee on the bill, which was established in July. It comprises 13 peers and 13 MPs, and will be chaired by former (Labour) Lords leader, Lord Richard. The committee has initially been given until the end of February to report, but is widely expected to ask for more time. It will certainly have a lot to consider, and has invited written submissions, ideally by 12 October. Notable members of the committee include constitutional academics Lord (Philip) Norton of Louth, and Lord (Peter) Hennessy of Nympsfield. A bill may or may not be included in the Queen's speech in May 2012.

Internal Lords reforms debated

Internal reforms of the Lords working practices may have a better prospect of success, and there have now been two reports by two separate Leader's Groups, chaired by Lord Hunt of Wirral (on options for retirement), and Lord Goodlad (on working practices more widely), respectively. These were outlined in Monitors 47 and 48. The Hunt report proposed that members should be able voluntarily to retire from the chamber. The Procedure Committee reported on 23 May, providing standing orders to put these recommendations into effect, and peers discussed and agreed this on 27 June. However there are doubts about how effective the provisions will be, as retirement is unenforceable without legislation, and few members may volunteer.

The Goodlad report made far-reaching recommendations for reform, which were debated on the same day. Many of the recommendations, such as proposals for more systematic post-legislative scrutiny, were

welcomed by peers while others, such as giving greater control to the chair in debates, were more controversial. Some proposals, including establishment of a legislative standards committee, received a somewhat lukewarm government response. Lord Strathclyde promised that the chamber would have 'the chance to approve or reject proposals for implementing a range of the group's recommendations... at the earliest available opportunity', once the Procedure Committee and other committees have considered the details.

Election of New Lord Speaker

Baroness Hayman's five-year term of office as Lord Speaker has ended, and elections were held for her replacement. There were six candidates, with the result announced on 18 July. Lord Goodlad (Conservative) had initially been considered a frontrunner, but the election was won by Baroness D'Souza (Crossbench). She had only weeks before ended her four-year stint as convener of the Crossbench peers. The new Crossbench convener is Lord Laming. At a hustings meeting organised by the Hansard Society, all candidates for Lord Speaker were cautious about proposals for reforming working practices; they expressed a desire to retain 'self-regulation' and showed a lack of enthusiasm for giving the Lord Speaker more powers. Ultimately, as all candidates emphasised, it will be for members of the chamber to decide these matters.

NAO report on IPSA

On 7 July the National Audit Office published a report into the operation of the new Independent Parliamentary Standards Authority (IPSA), which was created following the MPs' expenses scandal. Ever since its establishment IPSA has been subjected to significant criticism, particularly from MPs and their staff. The NAO gave a mixed scorecard, congratulating IPSA for getting up and running so quickly, and for providing a full service to MPs after May 2010, but suggesting that the procedures in place are onerous for MPs and that more should be done to address this. It recommended that IPSA should work with the parliamentary authorities to try and minimise the inconvenience and cost to MPs of the existing scheme.

Process of Constitutional Change

In July the Lords Constitution Committee published their report on the Process of Constitutional Change, following a six-month inquiry. The report says it is not acceptable for the UK to have no agreed process for constitutional change when the constitution is the foundation upon which law and government are built. The government should not be able to 'pick and choose' what processes apply in different cases. Constitutional legislation should meet the highest standards of consultation, consideration and scrutiny.

The report sets out a 'comprehensive package' of processes which governments should follow to ensure it meets these standards, including publishing green and white papers and draft bills. The committee adds that the minister responsible for initiating constitutional change should explain to Parliament the processes used to develop the government's proposals when a new bill is introduced. This is intended to focus ministers' minds and ensure that the government justify any failure to meet the highest standards. The committee's concern was prompted by two bills which were rushed through Parliament in the first year, the Parliamentary Voting System and Constituencies Bill, and the Fixed Term Parliaments Bill. The government is likely to reply that in future it will follow best practice, pointing to the draft bills on Lords reform and individual voter registration as examples.

Parliamentary Boundaries Review

The Boundary Commissions have been working fast to produce new boundaries for a House of Commons of 600 not 650 MPs. The draft proposals for England were announced on 12 September, exploding like a cluster grenade over the party conferences. There will now be a 12-week consultation period, through to December. In early 2012 the Boundary Commissions will publish revised proposals, and there will be two more rounds of consultation before the final constituency boundaries are laid before Parliament for approval in October 2013.

Labour is likely to challenge the proposals all the way, including bringing actions for judicial review, and voting against the changes in 2013. This final parliamentary vote will give the Liberal Democrats some leverage if they want to gain concessions from the Conservatives at that stage in the Parliament. As one example, October 2013 is the last point at which the government could invoke the Parliament Acts to push through their proposals on Lords reform.

All the parties will need to reorganise their local branches to map onto the new constituency boundaries. They can now start planning for this, because most of the proposed constituencies are likely also to be the final ones.

Right of Recall of MPs

The government has a White Paper ready for publication in the autumn. All parties agree that the power of recall should only be triggered by 'serious wrongdoing'. The threshold could be a prison sentence of 12 months or more; or a lower threshold of conviction for an imprisonable offence.

Parliamentary scrutiny of Senior Public Appointments

Since 2008 Select Committees have been examining the government's preferred candidate for 60 of the top public appointments. In September the Commons Liaison Committee published a report recommending a more selective approach, with much closer scrutiny of the very top appointments, but allowing committees more discretion further down the list.

A dozen key constitutional posts would effectively be joint appointments between Parliament and the Executive, confirmed by a vote of the House of Commons and with a parliamentary lock on dismissal. For another two dozen posts, Parliament should exercise an 'effective veto' over appointments: Ministers would be required to justify any decision to reject a committee's recommendation, and in the case of disputes the decision might be referred to the floor of the House. For posts in the third tier, a pre-appointment hearing should be at the discretion of the relevant Select Committee.

The Liaison Committee also proposes:

- greater consultation between ministers and committees at the outset of the recruitment process on the definition of the post and the criteria for selection;
- more information to be provided to committees in advance of hearings about the field of candidates from which the preferred candidate has been selected;
- a resolution of the House of Commons confirming appointments in certain cases.

Annexed to the report is draft guidance to be agreed with the government setting out the new procedures. See House of Commons Liaison Committee, *Select Committees and Public Appointments*, HC 1230.

EXECUTIVE



Party funding

Inter-party talks about changes to party funding cannot begin until the Committee on Standards in Public Life (CSPL) has delivered its report, delayed until September. CSPL is believed to be trying to devise a solution, rather than setting out some ideas and principles, or options, or a process for taking things forward. The risk is that the parties will reject Sir Christopher's Kelly's proposed solution, just as they rejected the package proposed by Sir Hayden Phillips.

Relations between the government and opposition spokesmen are not good, which will not help the inter-party talks, to be chaired by Nick Clegg. This may lead the government to eventually impose a settlement rather than proceed with all-party agreement. The Lib Dems will want the settlement to include support for parties in government as well as in opposition, since their parliamentary party suffered particularly badly from the withdrawal of Short and Cranborne money. The UK is unusual in channelling state funding only to opposition parties.

Commission on Bill of Rights

In August the Commission published a short discussion paper to start the process of public consultation. It asked four questions:

(1) Do you think we need a UK Bill of Rights? If so, (2) what do you think a UK Bill of Rights should contain? (3) How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales? (4) Are there any other views which you would like to put forward at this stage?

In a portent of the difficulties the Commission will face in reaching agreement, Michael Pinto-Duschinsky said 'While I welcome and support this consultation, I strongly regret the terms in which it has been presented. The key issues of Britain's future relationship with the European Court of Human Rights and the recent decisive protest in the House of Commons against that court's ruling on prisoner voting are not even included in the commission's list of questions'. The deadline for responses is 11 November.

Reform of the European Court of Human Rights

The Commission is also invited in its terms of reference to 'provide interim advice to the government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe'. The UK assumes the chair in November, for six months. The government has already signalled its intent to push for the European Court of Human Rights to allow a greater margin of appreciation to member states, and to take more effective action to tackle its huge backlog. The UK hopes that a big push could set in train a reform agenda that would continue under the chairmanships of Albania, Andorra, Armenia, Austria and Azerbaijan. The chair rotates round the 47 member states of the Council of Europe in alphabetical order.

Commission on West Lothian Question

Jolted by the unexpected success of Harriet Baldwin's Private Member's Bill, which has passed all its stages in the Commons,

the government will move this autumn to establish the Commission promised in the coalition agreement. It is primarily seeking to implement the Conservative policy of English votes on English laws, so the policy lead could have been given to Sir George Young as Leader of the House of Commons. But it rests with Nick Clegg as part of his overall responsibility for constitutional reform. The Liberal Democrats will want to widen the agenda to include their vision for a federal Britain, and issues such as an English Parliament, so the terms of reference will not be easy.

Individual voter registration

In June the government published its plans for Individual Electoral Registration (IER) in a White Paper and draft bill. The aim is to introduce IER by 2014, in time for the next election, so the timing is tight. The next step is pre-legislative scrutiny of the draft bill, which will take place in Autumn/Winter 2011. The new electoral rolls based on IER will not be available in time to inform the review of parliamentary boundaries, which are based on 2010 data.

IER is intended to improve the accuracy of the electoral register, currently based on registration by households, and to reduce electoral fraud. Every elector will have to register individually and provide identifying information. There is concern that some electors will drop off the register, so the government is also taking steps to improve the completeness of the register. In June it launched a series of data matching pilots to test how far comparing electoral registers against other public databases will allow eligible people missing from the register to be identified and asked if they would like to register. Comments on these proposals are invited by emailing the Electoral Registration Transformation Programme by 14 October 2011: electoralregistration@cabinet-office.gsi.gov.uk.



Scotland

Over the last four months a fixation with the constitution has sat alongside the day-to-day business of the Scottish government. The latest poll conducted by *The Herald* suggests that 39% favour independence and 38% do not ('Yes voters take lead in new independence poll', 5 September). *The Herald* treated this result as a major event, since pro-independence has not taken the lead for three years. This latest poll was phrased as follows: 'The Scottish government should negotiate a settlement with the government of the United Kingdom so that Scotland becomes an independent state – yes or no'. However, when the wording is changed to include the scary term 'separate state', the balance shifts in favour of retaining devolution. Further, when people are given three main options (independence, devolution, no Scottish Parliament; or, independence, further devolution, status quo), devolution (or further devolution) always wins and sometimes gains a majority of responses.

However, the effect of the SNP's avalanche election win is that it now seems to have the moral authority not only to pursue an independence referendum, but also to change fundamentally the way that the new Scotland Bill is being processed. Unusually, the Scotland Bill was subject to scrutiny from both Parliaments. The Scottish Parliament's Scotland Bill committee (which at the time had an SNP minority) approved the bill conditionally in March, subject to a recommendation

to reconsider some issues and return an amended Scotland Bill to the Scottish Parliament for further approval via a second Sewel motion. While the SNP criticised the bill, it voted to support the Sewel motion giving Westminster the power to legislate. This initial conditional support now puts the SNP in a much stronger position, with a Scottish Parliament committee now much less likely to accept the bill as it stands. Instead, the Scottish Parliament's new Scotland Committee Bill, with an SNP majority, will reconsider its provisions and use its new inquiry to explore issues such as the devolution of corporation tax before reporting at the end of 2011.

In the meantime, the Scottish government will pursue its new legislative and policy agenda, announced on 7 September. This agenda does not include an early referendum on independence, but focuses on the Scotland Bill in the short term. It reintroduces one of the main casualties of the SNP's minority position from 2007-11: a bill to introduce a minimum price for a unit of alcohol (it has not signalled a bill to introduce a local income tax). Alex Salmond's statement also focused on the limited economic levers available to the Scottish government (coupled with a criticism of the UK government's austerity programme); the provision of modern apprenticeships and public service reform (including single fire and police service authorities) is the best it can do. The bill to tackle sectarianism is also part of this agenda, following the Scottish government's decision not to introduce it as an emergency bill before the summer.

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Northern Ireland

If devolution to Scotland, and to a lesser extent Wales, came about as a result of popular demand to do politics differently in the face of apathy or antipathy in London, re-devolution to Northern Ireland was fondly desired in the UK capital from the moment 'direct rule' was reluctantly embraced in 1972. Courtesy of modern high-resolution cameras, however, we discovered that it once again topped the agenda at the last cabinet meeting in August.

As ever, 'security' considerations, rather than the quality of life in the region itself, made Northern Ireland the priority. Inter-communal riots in July in Belfast, preceding those in England (though with parallel elements of social marginalisation) and the steadily growing threat from IRA splinter groups (albeit from a low absolute level), allied to a question mark over the ceasefires by Protestant paramilitaries, were the agenda-setters.

These were painful reminders that the incorporation of one set of paramilitaries into government through the protracted 'peace process' had not removed the stain of *paramilitarism*, still less sectarianism, from Northern Ireland's public and political life. Peter Bunting, leader for the Irish Congress of Trade Unions in the region, condemned its politicians for their failure to agree a credible strategy on community relations.

Before the Northern Ireland Assembly rose for its summer recess, it was addressed by David Cameron. Using language borrowed from the chief executive of the Community Relations Council, Duncan Morrow, he reminded Members of the Legislative Assembly that the region needed 'a genuinely shared future', not 'a shared-out future'. He said that the political dispensation afforded the chance to 'move on from the politics of endless negotiations ... to address people's everyday concerns'.

Yet evidence continued to build of the policy inertia that the institutionalisation of sectarian division in the political structures of Northern Ireland has unwittingly brought about. The scale of university

tuition fees from 2012 remained in the pending tray of the Executive Committee over the summer, leaving Northern Irish universities to produce prospectuses without this essential information.

It was the same story on the key 'bread and butter' issues for the public as a whole. An electricity price hike bringing nearly half of all households into fuel poverty saw the Consumer Council demand a timescale for executive action to stem it. A Federation of Master Builders (FMB) survey found construction activity down for the 14th month in a row; the FMB appealed to the executive to implement the Green New Deal, agreed among the social partners, to retrofit energy-inefficient homes. And it emerged that there had been a 6,000 per cent increase in two years in the number of people waiting more than nine weeks for a first hospital appointment, a situation the Chartered Institute of Physiotherapy described as 'totally unacceptable'.

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Wales

The second part of the year has been less dramatic than the first, when the referendum on the National Assembly's legislative powers was closely followed by elections. Following the poll Labour decided to govern alone, though its lack of a working majority—with 30 seats, it has exactly half the Assembly Members (AMs)—means this will present many challenges. The Cabinet announced after the elections brought few new faces into government, though some junior ministers were promoted to Cabinet rank. There were some changes, with Theodore Huckle (a QC in private practice) being appointed as Counsel General from outside the Assembly. The executive body was also renamed the 'Welsh government', dropping the confusing 'Assembly' from its title. There are ongoing suggestions that a coalition, probably with Plaid Cymru, might be formed later in the Assembly's term. With just seven ministers in Cabinet and three junior ministers, the present government is quite slim in personnel and there would be room for a coalition to be established without huge changes to the structure.

All the other parties have experienced some disruption in the wake of the election. Plaid Cymru's Ieuan Wyn Jones announced his intention to step down as leader during the first part of the Assembly's term. Candidates to succeed him in this slow-motion leadership election include Elin Jones, former Rural Affairs Minister, Dafydd Elis-Thomas, former Presiding Officer, and possibly Simon Thomas and Leanne Wood. Adam Price, former AM, is still studying at Harvard and is clearly out of the running for the time being. The Conservatives also needed a new leader after Nick Bourne lost his seat, and chose Andrew RT Davies, who is seen as being from the traditional rather than the modernising Bourne-ite side of the party. The Lib Dems lost two AMs who had broken electoral rules by holding disqualifying offices when elected; the Assembly voted to seat one of them, Aled Roberts, but not the other, John Dixon. It took until July to do so, though, giving Labour a two-seat majority for a short time.

The new government announced its legislative programme for its five-year term in July, with five priorities for the coming session. Two of these concern local government, and others relate to food hygiene, schools and the Wales Audit Office.

Looking forward, the key issues relate to finance. One is the long-promised commission on the funding of the Welsh government, now widely dubbed 'Ap Calman'. The UK government has restated its

commitment to this on numerous occasions, but behind-the-scenes wrangling over its remit and timescale has yet to be resolved, despite a letter from all four party leaders in the Assembly to the Secretary of State in June. The second issue is the budget, which will prove the first key test of Labour's command of the Assembly. Jane Hutt has enough experience of being a minority finance minister to know the challenges that will present.

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<http://devolutionmatters.wordpress.com/>

COURTS AND THE JUDICIARY



Judges and the media: From super-injunctions to the Leveson Inquiry

What a difference a few months can make. At the beginning of the summer the judiciary appeared beleaguered. They had been subjected to a bout of media criticism on various topics: the sex offenders register, votes for prisoners, and super-injunctions. Most trenchant of all was the campaign against the latter, with personal criticism of some of the judges involved. In response, the Master of the Rolls established a committee to examine the awarding of super-injunctions. The resulting report, published in May, conceded that super-injunctions had at one point been granted too frequently, but said that this was no longer the case. The committee recommended that these orders should be granted only where strictly necessary and affirmed the importance of open justice. Several days later Ryan Giggs was named as the holder of a super-injunction by an MP under the shield of parliamentary privilege, posing a direct challenge to the court's order.

Then the story moved on. The trial and conviction of Levi Bellfield for the murder of Milly Dowler in June led to further media criticism of the judiciary and the courts; in that case, for insensitivity to the Dowler family during the trial. Within days the news agenda shifted abruptly from the failings of the judiciary to the failings of the media, as it emerged that Milly Dowler's phone had been hacked by the *News of the World* after her disappearance. The dominant news story quickly became the behaviour of the *News of the World* and News International, as well as media ethics more generally.

This hacking scandal has had two important implications. First, a newly chastened media appears reluctant to raise the issue of super-injunctions and controls on reporting whilst media ethics remain in the spotlight. Second, a judge, Lord Justice Leveson, has been appointed to lead the inquiry into the 'culture, practices and ethics of the press', and to investigate the relationships which newspapers have had with politicians and with the police. The scope of the inquiry is wide, and Lord Justice Leveson has already indicated that it may not be able to complete its work within a year.

In his speech at the Lord Mayor's dinner for the judges (13 July), the Lord Chief Justice argued that judges had been subject to critical attacks for doing what judges are supposed to do – applying the law; but this was also why a judge-led inquiry was sought in response to the phone-hacking scandal. The independence of judges is praised in the abstract, and valued in a crisis, but not always appreciated when it leads to unpopular decisions.

FREEDOM OF INFORMATION



Where next For Cameron's transparency revolution?

The UK's online transparency 'revolution' continues. The information published online now stretches from 6,000 datasets on data.gov.uk to crime maps and all local authorities spending over £500. Earlier this month the Cabinet Office published a new consultation paper asking where it could go next.

Politicians hope that Open Data, like FOI before it, will do many things, from saving money to fighting crime and increasing trust. The coalition government also believes it will motivate an 'Army of Armchair Auditors' to monitor spending. But what has the impact been?

To take the publication of all spending over £500 at local government level, our current project shows the effect is uneven. Some authorities we have spoken to have had little interest from anyone. Others have reported an initial spike in interest which then dropped off. Other local authorities have had much heavier use by the opposition, local journalists, businesses, trade unions and even councillors themselves wanting to score points. The local media have highlighted odd spending from crematorium costs to consultants. Some officials feel the benefits are internal, as members and officials better understand their own budgets, previously a mystery to everyone except accountants.

There has been little sign yet of the 'army of armchair auditors'. A few recently made a splash in Barnet and there are a few 'audit' websites such as 'armchair auditor' or 'reluctant armchair auditor', but they have not multiplied. As with other crowd-sourcing exercises, motivating and engaging citizen auditors may prove difficult. There is not yet a groundswell of 'active' citizens questioning their local authorities.

So what are the best and worst case scenarios? One area we can draw lessons from is E-government. South Korea is the most advanced E-government innovator according to the UN. It has developed some rather wonderful online innovations including an E-ombudsman, a one stop shop for answering questions, linked data portals and a 'suggest a policy and win a prize' platform. But this took wide ranging reform, resources and a willingness to innovate, partly motivated by political crisis.

But could it go wrong? President Obama's Data.gov data portal has either been ignored or been subject to 'minimal compliance' from many agencies, who happily deposit old, less useful data but continue to guard valuable, and politically useful, information. This in turn has contributed to falling levels of public use. Now political tussles have led to funding being slashed.

The hopes of the Open Data advocates rest on two rather uncertain bases. The first concerns how the public will use the information. As with FOI, it will undoubtedly be used but in a less 'political' way than hoped. It is more likely to be used for businesses, campaigns and hobbies. The second rather shaky foundation is the enthusiasm and co-operation of politicians and officials themselves. Getting departments and authorities to co-operate requires a great deal of time, patience and energy. It also needs politicians to support the agenda over a long period of time, even, and this happens often with transparency, when openness comes back to haunt them.

So will it improve? The government is determined to push on to phase two and create a new right to data, make information 'open by default' and encourage new innovation. They have recognised some of the difficulties. It may be, however, that we are looking in the wrong place. Experience in the US shows that one key area to keep an eye on is the new 'third party' innovations. In the UK sites such as Openly Local allow information to be compared and analysed in all sorts of ways. It may be here that the really interesting developments and number crunching happen.

INTERNATIONAL FOCUS

New Zealand: MMP referendum and constitutional review

The 2008 Confidence and Supply Agreement between the National Party and the Maori Party included an agreement to establish a group to consider constitutional issues. After much delay, the National-led government has established a three year review of New Zealand's constitutional arrangements. The terms of reference involve examining (amongst other matters) the size of parliament, the length of parliamentary terms and fixed terms, electorate size, Maori representation, the Treaty of Waitangi, and whether New Zealand should have a written constitution.

The review is to take place in stages. The first stage involves clarifying issues for consideration until mid-2011; a public engagement and education programme will follow in 2012; and a final report is due at the end of 2013, with the government expected to respond to this within six months. Any constitutional changes would involve cross-party support and/or a majority of voters at a referendum.

The review is to be led by Deputy Prime Minister Bill English (National) and Dr Pita Sharples (leader of the Maori Party, Minister of Maori Affairs), and supported by a Constitutional Advisory Panel. The advisory panel has just been named, and includes a former law commissioner, a Deputy PM and Waitangi Tribunal member. The ministers are also expected to consult with a cross-party 'reference group' of MPs prior to the submission of the interim and final reports. Given the nature of the review and the specified process of consultation, the review seems unlikely to produce anything radical. The key issue remains the Treaty of Waitangi and its status within the New Zealand constitution.

More imminent is the referendum to be held on the future of the electoral system. The Electoral Referendum Act, in line with the National Party's pre-election promise to hold a referendum on Mixed-Member Proportional voting (MMP), was passed unanimously in December 2010. Under the Act, an indicative referendum will be held to coincide with the 2011 general election. Voters will be asked two questions: do they wish to retain MMP; and if they wish to change, to what system. Voters will be given four options: First Past the Post, Preferential Vote (AV), the Single Transferable Vote (STV), and the Supplementary Member system. If a majority of those voting wish to change the electoral system, a second referendum will be held in 2014 to choose between MMP and the preferred alternative.

What the results of the referendum will be is anyone's guess. One recent poll suggested that more New Zealand voters wish to retain the current electoral system (50%) than those who wish to change it (41%), the remainder not being sure.

PEOPLE ON THE MOVE

Ciaran Martin, formerly Security and Intelligence Director, has succeeded **Vijay Rangarajan** as Constitution Director in the Cabinet Office. Vijay has returned to the Foreign Office to work on international human rights and conflict prevention. The Constitution Directorate have moved out from the Ministry of Justice, and are now at 1 Horseguards Road, London. **Rowena Collins-Rice**, Director General of the Constitution Group in Cabinet Office, has been appointed Secretary to the Leveson Inquiry into the News International phone hacking scandal. Lord Justice Leveson will work with a panel of six other experts, Sir David Bell, Shami Chakrabarti, Lord Currie, Elinor Goodman, George Jones and Sir Paul Scott-Lee. **Chris Wormald** (Director General, Cabinet Office) has become the full time head of the Office of the Deputy Prime Minister. For the last year he has combined this with being Head of the Economic and Domestic Affairs Secretariat, but a new Head of EDS is being appointed. **Rabinder Singh QC** has been appointed a High Court judge, the first Sikh to do so. **Baroness Hayman** has retired as Lord Speaker, and the Lords have elected as her successor **Baroness D'Souza**. Baroness D'Souza in turn is replaced as convener of the Crossbench peers by **Lord Laming**. **Robert Rogers** has become Clerk of the House of Commons, on the retirement of Sir Malcolm Jack. **Martyn Atkins** has succeeded **Clive Porro** as Clerk of the Public Administration Select Committee (PASC).

CONSTITUTION UNIT NEWS

New project on legislative committees

Meg Russell has won funding from the Joseph Rowntree Charitable Trust for a new project on reform of legislative committees in the House of Commons. It is notable that in recent years - particularly as a result of the Wright committee reforms - select committees have been significantly reformed, but that bill committees have received far less attention, and less reform. Although changes were introduced in 2007 to allow evidence-taking by public bill committees (see Unit briefing 145), these committees remain non-specialist and temporary, and their members continue to be appointed by the whips. This project will look to practice in other parliaments to set out options for reforming legislative committees in the Commons in order to strengthen the Commons' role in the legislative process. The main researcher on the project will be Dr Phil Larkin, a parliamentary specialist who was until recently an academic at the University of Canberra, and has previously worked for a select committee in the Commons. A report is due to be published at the end of the year. See: <https://www.ucl.ac.uk/constitution-unit/research/parliament/legislative-committees>

Select Committee study completed

Selective Influence: The Policy Impact of House of Commons Select Committees by Meg Russell and Meghan Benton was published in June. The report was based on detailed study of seven departmental select committees from 1997 to 2010, and over 50 interviews with parliamentary and government insiders. The study, funded by the Nuffield Foundation, found that a third of committee recommendations calling for significant policy change are implemented by government. But committees' main form of influence may not be in making recommendations at all but in 'generating fear' in government, where ministers and senior officials factor potential committee inquiries into their decision making. The report was launched in the House of Commons on 29 June, with speeches from Sir Alan Beith, Liaison Committee Chair, the two report authors, and Sarah Petit, a committee specialist who carried out some of the research. The event was well

attended by a distinguished audience of MPs, peers, parliamentary officials and academics, and Radio 4's Mark D'Arcy reported on the event on *Today in Parliament*. A link to this piece, as well as other media coverage, is provided on the report webpage, where you can also download a copy of the full report: <http://www.ucl.ac.uk/constitution-unit/research/parliament/select-committees>

'The Sword and the Shield': FOI's impact on Parliament and Parliamentarians

This Leverhulme-funded project has been completed and a Unit report is now online: <http://www.ucl.ac.uk/constitution-unit/research/foi/foi-and-parliament>. We assessed the use made of FOI by parliamentarians, and the impact of FOI upon Parliament as an institution, undertaking 46 interviews and analysis of hundreds of media articles and FOI requests. Some parliamentarians have developed policy or successfully advocated for constituents through making FOI requests. But many more do not, the combined product of sufficient existing scrutiny methods, a lack of time and resources, and FOI's supposed 'grubby' nature (the latter opinion more held by the Lords). On the other side, FOI has been a conduit for Parliament to share more information about itself, especially regarding its corporate governance. Parliamentary process, however, has not been exposed by FOI. It is infrequently requested and protected by Parliamentary Privilege. The focus of requests to the Commons was always on its members, whose interests created inertia when confronting the juggernaut of the MPs' expenses scandal. Having strong corporate leadership, separated from political actors, and getting buy-in from all in the organisation, are the important lessons Parliament provides for other UK bodies subject to the FOI Act.

FOI Live

Delegates to the Unit's annual Conference on Information Rights in June heard from Tim Kelsey, the government's senior adviser on Transparency and Open Data, the ICO's Graham Smith, and a panel of requesters who shared their experiences. Tim Kelsey outlined the Cabinet Office's vision of the potential impact of Open Data for improved public services. Graham Smith provided an overview of the current FOI landscape, and the interaction between the existing FOI regime and the government's new transparency agenda. Martin Rosenbaum (BBC), Maurice Frankel (Campaign for Freedom of Information), Paul Francis (Kent Messenger) and Matthew Sinclair (Taxpayers' Alliance) provided insights from the requesters' perspective. The Conference closed with a discussion about future developments, led by Oliver Lendrum (MOJ), Chris Taggart (Openly Local), and Nicola Westmore (Cabinet Office).

First Global Conference on Transparency Research

The Constitution Unit was a sponsor of the First Global Conference on Transparency Research held in May. 200 academics, researchers and activists gathered at Rutgers University, New Jersey in the first large meeting of its kind to hear about research being conducted in five continents.

Constitution Unit Staff Update

Eimear O'Casey joined the Unit as a Research Assistant in July. She previously worked on parliamentary strengthening and political party regulation in emerging democracies at the Office for Democratic Institutions and Human Rights in Warsaw.

Interns The Unit is indebted to interns John Adenitire, Chris Appleby, Srijaanee Bhattacharyya, Katherine Benson, Eleanor Forbes, and Miranda Simon for their support and contributions.

Bulletin Board Constitution Unit Newsletter

Forthcoming Events

Information about all our events is available at <http://www.ucl.ac.uk/constitution-unit/events>

Public Seminars

- **Wednesday 19 October, 1.00 pm.**
Sir George Young, Leader of the House of Commons, will discuss parliamentary reform thus far under the coalition government
Venue: Council Room, The Constitution Unit
- **Wednesday 2 November, 1.00 pm.**
Prof Tim Heppell (University of Leeds) will discuss discipline within the Conservative party in the context of the coalition.
Venue: Council Room, The Constitution Unit
- **Wednesday 11 January 2012, 1.00 pm.**
Prof Ron Johnston (University of Bristol) will discuss the implications of the parliamentary boundaries review.
Venue: Council Room, The Constitution Unit
- **Tuesday 22 May 2012, 6.00 pm.**
Lord Adonis will discuss elected mayors and the viability of expanding the practice across the country.
Venue: Council Room, The Constitution Unit

A complete seminar programme for 2011/2012 will be available on our events webpage soon. Seminars are free and open to all.

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

Missed an event?

We now film all the presentations from our events and these can be viewed on our website. You can also subscribe to our seminar series on iTunes U for automatic updates (in audio or video). All the information and links can be found at:

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

Constitution Unit Publications

- Meg Russell and Meghan Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees*, 29 June 2011. <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/153.pdf>
- Meg Russell, 'Judging the White Paper against international practice of bicameralism' in A. Fitzpatrick (ed.) *The End of the Peer Show? Responses to the draft bill on Lords Reform* (Centre Forum and The Constitution Society, 2011)
- Meg Russell, 'The Constitution' in R. Heffernan, P. Cowley and C. Hay (eds.) *Developments in British Politics 9* (Palgrave Macmillan, 2011)
- Patrick O'Brien, 'Judicial Independence and the UK Supreme Court', *British Politics Review* 6(3), Summer 2011

Publications of Note

- D. Gover, *Turbulent Priests: The Archbishop of Canterbury in Contemporary British Politics* (Theos, 2011). Daniel Gover is now a Research Assistant at the Unit.
- Commission on a Bill of Rights, *Do we need a UK Bill of Rights?* Discussion paper, launched in August 2011. Available at <http://www.justice.gov.uk/downloads/about/cbr/cbr-discussion-paper.pdf>
- A. Blais (ed.) *To Keep or to Change First Past the Post? The Politics of Electoral Reform* (Oxford University Press, 2008)
- G. Tardi, *The Theory and Practice of Political Law* (Carswell, 2011)
- A. Blick and P. Hennessy, *The Hidden Wiring Emerges: The Cabinet Manual and the Working of the British Constitution* (Institute for Public Policy Research, August, 2011). Available at http://www.ippr.org/images/media/files/publication/2011/08/hiddenwiringemerges_Aug2011_7911.pdf

Unit in the News

Rights helped lead to UK riots, Cameron says – Toronto Star (15 August)
<http://www.thestar.com/news/world/article/1039798--rights-helped-lead-to-u-k-riots-cameron-says>

Lords Reform and Rhetoric – a Letter to The Times (29 June) <http://www.timesplus.co.uk/tto/news/?login=false&url=http%3A%2F%2Fwww.thetimes.co.uk%2Fto%2Fopinion%2Fletters%2Farticle3077536.ece> (behind paywall)

Nick Clegg is doing better – but will it be enough? – The Guardian (27 June)
<http://www.guardian.co.uk/politics/blog/2011/jun/17/nick-clegg-doing-better-michael-white>

No. 10 happy with civil servant advisers – The Guardian (9 June) <http://www.guardian.co.uk/public-leaders-network/2011/jun/09/no-10-civil-servant-advisers>

What happened to collective responsibility? – Public Finance (5 June) <http://opinion.publicfinance.co.uk/2011/06/what-happened-to-collective-responsibility/>

How David Cameron and Nick Clegg decide policy: by phone – The Daily Telegraph (4 June) <http://www.telegraph.co.uk/news/politics/8555758/How-David-Cameron-and-Nick-Clegg-decide-policy-by-phone.html>

Radio 4 You and Yours: (17 May)
<http://www.bbc.co.uk/iplayer/console/b0112fgj>

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