

# Monitor 52

Constitution Unit Newsletter | October 2012

## Lords reform: dead, or just resting?

The biggest constitutional news of recent months was the dramatic collapse of the government's proposals for House of Lords reform. Following the publication of the draft bill, and discussions by a parliamentary joint committee (see *Monitor 51*) a bill was formally introduced into the Commons in late June, and had its second reading on 9-10 July. Its principle was approved comfortably, by 462 votes to 124. Nonetheless in August Deputy Prime Minister Nick Clegg announced at a specially-convened press conference that the bill had been dropped. He confirmed this in a Commons statement on 3 September.

For seasoned Lords reform watchers these events were no surprise. It was always clear that the Conservatives were lukewarm on Lords reform, David Cameron having told supporters before the election that it was a 'third term issue'. Previous Commons votes on the subject had shown the Conservatives, like Labour, to be very split. As it turned out, while Cameron had pledged his support to Clegg for the reform, his MPs were just not prepared to follow. Speech after speech by Tory backbenchers criticised the proposals, and 91 rebelled in the second reading vote. This passed thanks to Labour support, but both the rebels and the Labour frontbench had stated that they would vote against the 'programme motion' needed to ensure that the bill passed in reasonable time. In the face of certain defeat, the government withdrew the motion. Initial suggestions that Cameron would talk the rebels round looked hopeless, and Clegg's announcement followed. In retaliation the Liberal Democrats now plan to vote against the boundary changes scheduled for 2015 (see p.2).

So what happens next? One alternative is to shelve Lords reform until after the next election, when Labour probably sees it as a potential bargaining chip to coax the Lib Dems into coalition. But they may be no more able to deliver than the Conservatives. Tellingly, Labour frontbenchers complained about various aspects of the package (such as long, nonrenewable electoral terms) when these selfsame elements had featured in the previous government's proposals in 2007 and 2008. As some pointed out, this was essentially Jack Straw's bill. In truth Labour frontbenchers would struggle to get MPs through the lobbies in support of the detail of a largely elected chamber, even if the principle is agreed. MPs fear many aspects of the proposals, such as local competition over constituency work; some also oppose elections by PR. Yet PR elections and long, nonrenewable terms are essential to distinguish an elected second chamber from the Commons. The biggest fear of all is that an elected second chamber would fundamentally upset the power balance at Westminster. All of these concerns were set out clearly in the joint committee's report, and featured heavily in the Commons debate.

The alternative is to make progress with those few elements on which all agree that change is needed: the spiralling size of the chamber, the Prime Minister's largely unregulated patronage powers, the continuance of hereditary by-elections and the inability to expel serious criminals. These smaller changes are commonly referred to as 'the Steel bill', but in fact the private peer's bill moved by Lord Steel has been shorn of most of its content. Nonetheless, it has reached the Commons and could perhaps be picked up and used as a vehicle

for further reform. In the end, however, only a government bill is likely to succeed, which means that Nick Clegg must be persuaded of the merits. He presently looks unconvinced, but has emphasised repeatedly in the past that Lords reformers must not 'make the best of the enemy of the good'. Now he needs to decide whether this was more than rhetoric.

### EXECUTIVE



#### Civil Service reform: radical change

In June 2012, Francis Maude, Minister for the Cabinet Office, published his civil service reform plan. Much of the review covered well-trodden ground: the need to increase capacity, ensure more effective and efficient policy implementation and delivery, and so on. But there were some interesting developments. The first was the government's insistence upon far more stringent performance appraisal which would recognise the top 25 per cent but also the bottom 10 per cent of performers. The second was the determination to make policy more 'contestable', which in practice means obtaining advice from outside Whitehall. The final proposal was that ministers should have a greater choice in the appointment of permanent secretaries, and the introduction of short-term contracts for senior civil servants.

In early August 2012 Maude followed through on his call for more contestable policy advice, announcing he would commission from an organisation external to Whitehall a two-month review of government structures of at least six other countries and the EU. The objective was to be comparison of their operation and accountability, identifying best practices and making recommendations for how these could be best adopted in the UK. The price of the commissioned research was £50,000 and was subject to a competitive tender. The successful organisation is expected to produce a final report by the end of October 2012. The vast scope of the review and the short timescale in which it was expected to be completed raises questions about the legitimacy and validity of the project. Indeed, a number of think tanks declined to put in a tender, citing concerns about independence.

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The Constitution Unit



Parliament has also begun to probe the contours of the ministerial-civil service relationship. In recent months there have been confrontations between the Public Accounts Committee (PAC) and various senior civil servants, prompting the then Cabinet Secretary Sir Gus O'Donnell (now Lord O'Donnell) to write a letter criticising PAC for engaging in 'public humiliation' of senior officials. The Lords Constitution Committee has also initiated an inquiry into the accountability of civil servants, and the Institute for Government launched a new strand of work in Accountability in central government.

The coalition government's civil service reform plan can be found here.

## Register of lobbyists

On 13 July, the Political and Constitutional Reform Committee released its report on the government's proposals to introduce a statutory register of lobbyists. On the whole, the report was highly critical of the government's proposals. It suggested that they be scrapped as they would 'do nothing to improve transparency and accountability about lobbying...and could paradoxically lead to less regulation of the lobbying industry'.

After critiquing the government's plans, the committee examined existing registers across the world and suggested that the government consider a system of 'medium regulation' similar in scope to that of the EU's Transparency Register. Such a register would, among other things, include a broader definition of lobbyist (potentially including groups such as 'in-house lobbyists, trade associations, trade unions, think tanks, campaign groups and charities'); require disclosure of the issues discussed; make reference to either a new statutory code of conduct and/or industry-wide ones; and incorporate existing publically available information on ministerial meetings. Crucially, however, this register would not include detailed information on lobbyist spending, as characterises 'highly regulated' systems in the United States and Canada, due to the high cost of administering and verifying such a register in the current economic climate.

Finally, the committee made a number of specific suggestions about how the government could improve the quality and accessibility of currently published lobbying data, regardless of how it proceeds on the register of interests.

## PARLIAMENT



## Boundary reforms: The price of constitutional revenge

In the Commons on 3 September, Deputy PM Nick Clegg confirmed that the Lib Dems will now vote down implementation of the Boundary Commission's proposed changes following what he interprets as Conservative failure to deliver on the coalition agreement on Lords reform. The Boundary Commission are currently just over half-way through their review of constituency boundaries to reduce the House to 600 seats. Their final recommendations have to be delivered and presented to both House by October 2013. Should Clegg carry out his threat, here are some alternative scenarios.

The first is that the 2011 Act is repealed in autumn 2012. The Boundary Commissions will then terminate the present exercise and the previous legislation will come back into play. This requires them to undertake a review every 8-12 years. New constituencies would only

be in place in time for the 2020 election – but with at least the same number of MPs as now, and perhaps a few more.

If the Boundary Commissions complete their current task in 2013 but their recommendations are then voted down by Parliament, the 2015 election would be held in the current 650 constituencies. Much will then depend on who wins that election. If the Conservatives, they will presumably retain the current legislation. The Boundary Commissions will, under the 2011 Act, start their next review in 2015-2016, to produce a House of 600 members by October 2018, for use at the 2020 election.

If Labour forms a government in 2015 it may well repeal the 2011 legislation, which it vigorously opposed. The Boundary Commissions would then have to begin a new review based on the rules set out in the *Boundary Commissions Act 1986*. Under those conditions, it is unlikely that that review would be completed in time for new constituencies to be in place for the 2020 general election. An election would then be held in 2020 in the 650 constituencies based on data some twenty years old, with very substantial electoral inequality.

Finally, if the Commissions' recommendations for 600 new constituencies are accepted by Parliament in 2013 and used for the 2015 general election, what happens next remains a matter of conjecture. If Labour wins then it will probably seek to amend the Act, and the outcome could well be another new set of constituencies. If the Conservatives win, they are more likely to retain the current rules – though some at least of their MPs are uneasy about them.

If a week is a long time in politics, a year is a geological era, and much may happen to change Mr Clegg's stance – if not that of his Conservative partners – before the Boundary Commissions' current reviews are placed before Parliament. But if those new constituencies are not in place in time for the 2015 general election, the result will not only be a larger House of Commons than that legislated for in the coalition government's early months, but also a very unsatisfactory, ancient, set of unequal constituencies.

*Adapted from a Unit blog post by Prof Ron Johnston and Charles Pattie*

## Sitting hours

From October, the House of Commons will sit at earlier times on Tuesdays and Thursdays. The reform follows an inquiry by the Commons Procedure Committee. Reporting its findings in June, the Committee's view was that existing hours should be retained on Mondays to Wednesdays, but that MPs be given the opportunity to vote on the options. In addition to accepting a proposal to sit an hour earlier on Thursdays (now beginning at 9:30am), in July MPs agreed to also bring forward sitting hours on Tuesdays by three hours (now starting at 11:30am). Between 1999 and 2005 the House also experimented with different sitting hours, and settled on its current arrangements in 2005.

Those supporting earlier sitting times argue that it would give MPs greater control over their time and may particularly benefit those with families in London. Among the concerns raised by opponents, however, are that earlier sittings would cause more frequent clashes with other parliamentary business, such as select committee meetings, as well as restricting the number of parliamentary tours for members of the public.

## Recall of MPs

At the 2010 election all three major parties promised some form of recall for MPs. The Coalition Agreement committed the current

government to introducing legislation to allow constituents to force a by-election where their MP was found guilty of serious wrongdoing. In December 2011 the government set out its plans by publishing a White Paper and the draft Recall of MPs Bill. Under the government's proposals, a petition for recall could be triggered in one of two ways: first, where an MP receives a custodial sentence of 12 months or less (those sentenced for longer are already disqualified); and second, where the House of Commons passes a resolution. In either case, a petition would then be opened for the MP's constituents to sign; if 10 per cent of those on the electoral register sign, a by-election would be called. In June, the Commons Political and Constitutional Reform Committee published its report on the draft bill. It was critical of the proposals, arguing that the petitions would most likely be triggered 'seldom, if ever' and that the House of Commons already has sufficient disciplinary powers. Despite making specific proposals for improving the bill, the committee recommended that the government 'abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect'.

## JUDICIARY AND THE COURTS



### New Justice Secretary and Lord Chancellor

In September's cabinet reshuffle, Chris Grayling replaced Ken Clarke as Justice Secretary and Lord Chancellor. This is a constitutional first: Mr Grayling will be the first Justice Secretary who is not a lawyer since the creation of the position under the Constitutional Reform Act 2005 and the first non-lawyer to serve as Lord Chancellor since the sixteenth century. Mr Grayling's status as a non-lawyer and a politician who has expressed strong views on sentencing, human rights and law and order in the past may raise concerns. The judiciary and the legal profession have previously expressed concern at the possibility of the position being occupied by a minister without legal expertise. The 2005 Act gives the Lord Chancellor special responsibility for the protection of judicial independence.

### Judicial blogging

In early August the Senior Presiding Judge and Senior President of Tribunals issued guidance to judges requiring them to refrain from blogging or using Twitter or Facebook in their professional capacity. Judicial office holders who blog must not identify themselves as members of the judiciary and must avoid expressing opinions which would damage public confidence in their impartiality. Judges with existing blogs are also required to remove existing content (something that a number of judicial bloggers have complained may be technically impossible).

Judges have always been required to observe a degree of aloofness from public discourse in order to preserve their impartiality. But judges feel the need to open up and show that 'we are ordinary people too'. Consequently, the judiciary have in recent years been making efforts to increase public awareness of their role through the increased use of press releases, the use of new media like Twitter and measures like the televising of proceedings of the Supreme Court. Members of the Supreme Court even participated in a behind-the-scenes style TV documentary about that court early last year. Perhaps most unexpectedly, Lord Justice Stanley Burnton appeared on *Masterchef* earlier this year when the contestants cooked for Middle Temple.

In a recent public lecture for the Holdsworth Society, Lord Neuberger was critical of the increasing tendency of judges to make out of court pronouncements and appear in the media. He offered some sensible rules of thumb for judges to consider in deciding whether to make a public comment in any forum, such as the nature of the audience and the likely effect of their comments. General guidelines of this kind seem more realistic than what might amount to a blanket ban on judicial engagement with the internet.

## ELECTIONS AND POLITICAL PARTIES



### Scottish independence referendum

Negotiations are continuing between the UK and Scottish governments about the referendum on Scottish independence. Nicola Sturgeon MSP, formerly Scottish Health Minister, has been given lead responsibility on the constitutional question. She had meetings in September with David Mundell, junior minister in the Scotland Office, and later with Scottish Secretary Michael Moore. They discussed the timetable required for a section 30 Order at Westminster which would give the Scottish Parliament authority to legislate for an independence referendum, and instructed their officials to report on progress to date, and those issues on which work still needs to be done.

The major areas of disagreement will need to be resolved between Scottish First Minister Alex Salmond and David Cameron. The most important is the referendum question. The UK government insists there should be only one question, with no second question on Devolution Max. An expert panel convened by the unionist parties in Scotland has suggested very simple wording: 'Scotland should become an independent state. Agree/Disagree?'

Time is getting tight. The Scottish government had hoped for the section 30 Order to be made by December, enabling introduction of the referendum bill into the Scottish Parliament in early 2013. And they had wanted the Electoral Commission to start testing the referendum question this autumn. But the draft section 30 Order needs first to be agreed by both governments, and then by both Parliaments. The Commons Scottish Affairs Committee wants to scrutinise the proposed Order before it is considered by the House, following their report in July; and the Lords Constitution Committee may want to do the same, following their report in February. In July the Commons Foreign Affairs Committee launched an inquiry into whether Scottish separation would have an impact on future foreign policy of the UK, and of an independent Scotland.

*Robert Hazell is giving evidence to the Foreign Affairs Committee on 16 October, together with Jo Murkens, author of the Unit's book Scottish Independence – A Practical Guide (2002).*

### Law Commission review of electoral law

In June the Law Commission initiated a project to review the UK's electoral law. The project comprises three parts: first, a scoping exercise to determine which aspects of electoral administration should be included in the study, with a consultation phase (now closed) and scoping report (to be published by the end of the year); second, the consultation proper, to take place between 2013-2015; and finally, a report and draft bill, envisaged for publication by February 2017.

The scoping consultation paper, available here, anticipates the study will cover the full breadth of electoral administration law across the UK, working in conjunction with the Scottish and Northern Ireland Law Commissions. However, important contentious areas are expected to be excluded from the study to avoid treading on the toes of Parliament. These include the franchise, national campaigning and boundaries.

The review stems from the current body of law's deficiencies in terms of its volume, complexity and fragmentation. The scoping consultation paper suggests that while the current system benefits from the certainty and consistency afforded by its prescriptive and detailed nature, it is unable to deal adequately with the introduction of more modern elements such as absentee voting, and the ever-expanding number of electoral systems in place in the UK.

### Electoral Registration and Administration Bill

The Electoral Registration and Administration Bill has begun its parliamentary passage, passing through the House of Commons in May and June and receiving Second Reading in the Lords in July. Its core component is the introduction of a system of individual electoral registration to replace the current household-based registration system. The bill seeks to reduce possibilities for electoral fraud and to increase the number of registered voters. Since the draft bill was published, the government have made several changes. These include introducing a process of data matching records to reduce the number of new applications and removal of the opt-out clause, which had raised many concerns about people falling off the list.

Concerns remain, and despite the opt-out clause being removed, the possible fall in the number of people registered under the new system is still a key issue. In the Commons, Labour Shadow Minister Wayne David expressed concern over the downgrading of the Electoral Commission's role, 'with the result that there will be no independent arbitrator with the power to halt the process if it is deemed to have resulted in a sharp drop in registration levels'. When the bill reaches Lords Committee stage in October, peers are likely to also address the omission of overseas voters and the abolition of the edited register from the bill.

The Electoral Commission itself has welcomed the bill, but cautions that it will be 'the biggest change to the voter registration process since the universal franchise was introduced' and have emphasised the importance of providing electoral registration officers with enough time to adopt changes.

### Elected police commissioners

As candidates campaign for the upcoming Police and Crime Commissioners elections, unusually it is the position itself which is receiving the most scrutiny from the press. The Electoral Reform Society (ERS) has predicted a record low turnout of 18.5 per cent for the elections (scheduled for 15 November) despite the date being shared with a potential three by-elections and a vote for Bristol's mayor. ERS Chief Executive Katie Ghose fears the elections will 'degenerate into a complete shambles'.

The problem of turnout is being exacerbated by the government not providing candidates with a free mailshot to educate voters about their policies or experience. Former Policing Minister Nick Herbert stated the reason was expense, with an election address costing between £25m-£35m, and suggested all candidates should focus their attention on local and social media. The Home Office has set up a website with information about candidates, and is willing to send hard

copies to those without access to the internet, although candidates still worry this will exclude the 7 million voters without internet access. These barriers to communication will only serve to further alienate voters.

The debate has swung lately towards the issue of 'politicising the police'. The high cost of communicating with voters and the large initial deposit for candidacy (£5000, compared with £500 for an MP) seem to price-out independent candidates. Parties can provide their candidates with volunteers, exposure, and of course their party's nomination, three big advantages which may prove too big for independents to overcome.

Finally, commentators have questioned the exclusion of members of the judiciary such as magistrates (who currently sit on police authorities) and candidates who have been convicted of a crime (however petty). The Senior Presiding Judge advised that no magistrate could stand for election, but later advised that they should stand down for judicial office if elected.

## FREEDOM OF INFORMATION



### FOI post-legislative scrutiny

In its post-legislative scrutiny of the Freedom of Information Act 2000, published on 26 July, the Commons Justice Committee drew heavily on the Constitution Unit's analysis of how well the FOI Act is working, and cited the Unit's research and evidence over 40 times (see the FOI archive on our site).

The committee concluded that FOI has met its core objectives, stating that: 'The Freedom of Information Act has been a significant enhancement of our democracy ... [It] has achieved its three principal objectives, but its secondary objective of enhancing public confidence in Government has not been achieved, and was unlikely to be achieved... We do not believe that there has been any general harmful effect at all on the ability to conduct business in the public service, and in our view the additional burdens are outweighed by the benefits'.

Some of the key findings were that:

- The Freedom of Information Act has made government more transparent and more accountable.
- The Act's impact on decision-making is unclear, though the committee felt it may have had more of an impact than our own work suggested
- The Act's impact on trust is also nuanced
- Publication schemes have been overtaken by technology, though it is too early to tell what impact reforms such as Open Data have had.

The committee looked into some of the controversies around FOI. It concluded that evidence for a chilling effect (that FOI leads to ministers and officials 'not writing things down') is far from clear cut. While the concerns of senior minister and officials may indicate there is a problem, the committee pointed out that much of their evidence fitted particular circumstances, was hypothetical or anecdotal. It did

not recommend any legislative changes in this area but sought to reassure that the Act itself, combined with use of the veto, should protect the required 'safe space' for discussion. Despite a seemingly growing pressure for some form of application fee, the committee rejected this as too difficult to operate. It also outlined how difficult it was to calculate the cost of FOI.

The committee made a number of recommendations: that the internal review (the first stage of appeal) have a 20 day limit; that the safeguards to deter 'vexatious' requesters in the Act be better used; and that requesters be told how much their questions cost to process.

The most significant part of the report was what it did not do. There has been high profile criticism of FOI, from Tony Blair to David Cameron, that worried the Information Commissioner. This has led to the expectation of additional protections for Cabinet papers, the introduction of fees and other restrictions on FOI. But the Act emerged relatively unscathed from the committee's scrutiny.

## DEVOLUTION



### Northern Ireland

After years of political hand-holding in Northern Ireland during its ever-volatile 'peace process', UK ministers were only too happy to wash their hands of the region when devolution was restored in 2007. But after five years of what is better described as involution and consequent political inertia, Belfast erupted once more into sectarian violence over the summer.

First, the involution: in a remarkable reprise of the Stormont *ancien régime*, the former Sinn Féin (SF) minister for regional development, Conor Murphy, was found in June to have discriminated against a Protestant applicant for the post of head of Northern Ireland Water. The tribunal found his department had been at least twice as likely to appoint Catholics as Protestants. And the Democratic Unionist Party (DUP) health minister, Edwin Poots, not only sustained the ban on blood donations by gay people, lifted last November elsewhere in the UK, but suggested it should be extended to those who had had sex in Africa.

Second, the inertia: symbolised by the nine-week summer recess for the Northern Ireland Assembly, the Office of the First Minister and Deputy First Minister failed once more to produce the long-promised policy document on tackling the region's famed intolerance, a previous effort having been withdrawn after hostile criticism two years earlier. Worse, Alliance and Ulster Unionist Party representatives on a cross-party working group successively resigned in despair.

And so, the violence: the annual riot over an Orange Order parade on 12 July in north Belfast duly took place, followed by sustained rioting in early September over a Catholic 'dissident republican' demonstration. A senior police officer and church leaders openly bemoaned the absence of political leadership to resolve the challenge posed by communal parades and protests.

The continued marginality of Northern Ireland on the Westminster agenda was indicated by the replacement of Owen Paterson as secretary of state by Theresa Villiers amid the violence. Paterson had ideologically endorsed the Northern Ireland politicians' call for lowered corporation tax as their single idea to stem economic desperation in

the region—44 per cent of whose households subsist in fuel poverty—despite the swingeing cuts to the Northern Ireland block which would follow. As a tax lawyer, Villiers was expected to endorse Treasury concerns of tax leakage and Scottish political implications.

Dr Robin Wilson is a Constitution Unit Honorary Senior Research Fellow and author of *The Northern Ireland Experience of Conflict and Agreement: a Model for Export?* (Manchester University Press, 2010).

### Scotland

The Scottish Government announced its annual legislative programme (15 bills) on 4 September. The headline announcement is, of course, the Referendum Bill to establish the date of and specific arrangements for the referendum on independence (2014). However, there is not yet enough information on issues such as the number of questions or the wording of the question. These issues are still subject to negotiation with the UK Government (see p.3). It seems likely that the Scottish Government will extend the franchise to 16 year olds and that it will get its way on the referendum date (October 2014). The bill announcement was followed a day later by a Scottish cabinet reshuffle. It gave Nicola Sturgeon the new title of Deputy First Minister (Government strategy and the Constitution) and Cabinet Secretary for Infrastructure, Investment and Cities. Sturgeon will take the lead on the referendum process and will be responsible for Scottish economic development – identified by Salmond as key to referendum success.

The second highest profile bill is the Marriage and Civil Partnership Bill which allows same sex couples to marry. As in the UK, it prompted a 'backlash' from church groups concerned that they would be forced to conduct same sex marriages in churches. Yet the legislation makes no such provision. The bill also allows for civil partnerships to be registered through a religious ceremony. As a conscience bill, it will largely be subject to a free vote in the Scottish Parliament.

Three other bills stand out as potential statements of SNP intent. The Post-16 Education Reform Bill may become associated with Scottish Government plans to introduce grants for university students in low income families, perhaps marking further distance from the system in England; the Children and Young People Bill introduces a 'minimum of 600 hours free early learning and childcare provision'; and the Adult Health & Social Care Integration Bill seeks to integrate further some joint services between local authorities and health boards.

The remainder of the programme would probably have been introduced by most other parties in the Scottish Government (arising, for example, from professional reviews). That leaves the Forth Estuary Transport Authority Bill which may resurrect the issue of the cost and source of funding to build a new Forth bridge (a source of tension between the Scottish and UK Governments) and two bills introduce Scottish-specific taxes following their devolution in the Scotland Act 2012.

Dr Paul Cairney, University of Aberdeen

### Wales

Shortly before the summer recess, the First Minister announced the Welsh Government's legislative programme; it will have eight bills, mostly reshaping parts of the public sector including education and social services. Perhaps the most important and difficult will be the Human Tissue bill, providing for an 'opt-out' system for organ donation, which raises moral objections and faces legal objections because of its effect on functions of UK ministers which are protected under the Government of Wales Act 2006.

Those UK ministerial functions lie at the heart of the other major development: the referral to the UK Supreme Court by the UK Attorney General of the Local Government Byelaws (Wales) Bill, after it had been passed by the National Assembly but before it received Royal Assent. This is the first time any devolved legislation has been referred in this way. The bill sought to simplify the way byelaws are made by Welsh local authorities, and remove the need for some to be confirmed before coming into effect. The power to confirm byelaws was clearly held jointly by the Welsh Government and the UK Secretary of State, and the 2006 Act prevents the Assembly from removing that power without the Secretary of State's consent. The hearing is due to begin on 9 October. The judgment will affect just how workable the new model of Welsh legislative devolution is.

The autumn has a full agenda lined up. As well as the Supreme Court's decision on the Byelaws bill, the first report from the Silk Commission is due. Whether it will recommend a similar approach to 'fiscal accountability', how that will be balanced with securing 'fair funding' in the block grant, and whether a referendum on the new arrangements will be needed are all issues to look for in the final report.

Another will be the view the new UK Welsh Secretary takes. David Jones replaced Cheryl Gillan in the September Cabinet reshuffle; Gillan's departure was widely expected but still seems to have been a surprise to her. Jones now has two junior ministers; the Conservative Stephen Crabb, also a whip, and Jenny (Baroness) Randerson from the Lib Dems. This means the Wales Office now has two junior ministers – more than any other territorial office, and more than it has had since devolution in 1999.

Alan Trench is author of the 'Devolution Matters' blog:  
[www.devolutionmatters.wordpress.com](http://www.devolutionmatters.wordpress.com)

### A Matter of Honour

The honours system has been in the news again. A report on the system from the Public Administration Select Committee (PASC) at the end of August, building on a previous report by the committee in 2004, produced not just the usual press flurry but a public intervention from Head of the Civil Service Sir Bob Kerslake. In a rebuff to the committee, he wrote an article for the *Guardian* (30 August) with the strapline: 'No one gets an award for doing their day job, nor is the system open to political pressure'. Awards now go only to those who 'go the extra mile', not to time-serving civil servants and politicians.

The following week it was announced that a string of ministers sacked in the reshuffle were getting knighthoods. So much for what we might call the Kerslake Defence, or for any claim that the system is not in need of serious reform. The consistent PASC position is that what is needed is an independent and properly constituted honours commission, working to clear criteria about what it is that we think deserves to be honoured. This was rejected when it was recommended in 2004 and will be rejected again now.

There have been some improvements as a result of the earlier PASC report, at least in terms of the transparency of honours committee membership, but a refusal to accept the need for more radical and fundamental reform of the whole system. Honours can be a force for good. There will always be some subjectivity in how they are awarded, but the criteria should be clear and the process independent. If we are serious about ensuring that honours do not go to those who are just doing their day job (and this seems to be the public's view) then we should be serious about the constitutional task of getting a system that delivers this.

*Prof Tony Wright, former chair of PASC and the Select Committee on Reform of the House of Commons, and Visiting Professor of Government and Public Policy at UCL.*

## INTERNATIONAL

### Constitutional review in New Zealand and Ireland

Following the 2011 election, the New Zealand Constitutional Advisory Panel was established by the National-led government to carry out a broad review of New Zealand's constitutional arrangements. The panel was to examine (among other matters) the length of parliamentary terms, fixed terms, electorate size, the Treaty of Waitangi, and whether NZ should have a written constitution. As noted previously (*Monitor* 49, October 2011) the review seems unlikely to produce anything radical. But the process of review may provide lessons for overseas observers.

The review has now moved into its second stage and has issued its engagement strategy. This will involve creating opportunities for participation and increasing popular awareness of the review. There are a further three stages following this. The third stage involves engaging people in 'the conversation' and holding various events to talk about constitutional issues, and the fourth is to be a period of deliberation: i.e. a smaller cross section of NZers to deliberate and reflect on issues raised. The final stage involves the drafting of the final report, expected to be presented to the responsible ministers in late 2013. More details of the panel's work can be found at [www2.justice.govt.nz/cap-interim/](http://www2.justice.govt.nz/cap-interim/)

Ireland's experience of a forum very much like that being tried in New Zealand may not bode well for that process. The Irish Constitutional Review Group Report (1996; [www.constitution.ie](http://www.constitution.ie)) was an extremely thorough analysis of the constitution by an expert group (sponsored by the government and a parliamentary committee) but its report has languished since publication. Ireland will shortly hold a Constitutional Convention of its own. It will comprise 100 members: a chair, 33 politicians and 66 citizens chosen from the electoral register. The agenda of the Convention will be prescribed by the government and so far includes a rag bag of issues including: reducing the voting age to 17, reducing the term of office of the President from seven to five years, and same-sex marriage. Curiously, some proposals for constitutional change – such as the controversial proposal to abolish the Seanad (upper house) – will not be considered by the Convention. Equally strangely, experts and interest groups are to be excluded from participating. Taken together, these factors suggest that the process is destined to achieve little. It may be of value to the government primarily as a means of creating the impression of reform and managing tensions within the coalition.



## PEOPLE ON THE MOVE

Permanent Secretary of the Ministry of Justice **Sir Suma Chakrabarti** left to become President of the European Bank for Reconstruction and Development; **Ursula Brennan** has moved from the Ministry of Defence to take his place. **Moira Wallace** has resigned as Permanent Secretary at DECC and **Dame Helen Ghosh** is leaving the Home Office to become Director General of the National Trust. **Lord Neuberger**, the Master of the Rolls, took up office as President of the Supreme Court on 1 October. He was replaced by **Lord Dyson**. Former Cabinet Secretary **Lord O'Donnell** has been appointed Visiting Professor at UCL.

## CONSTITUTION UNIT NEWS

### FOI and Universities project

The FOI and Universities project was completed in June, and marks the end of the Unit's FOI research stream. The project outputs include a journal article (forthcoming) and a guide for requesters, available on our website.

The Freedom of Information Act 2000 covers many different public bodies including universities. In 2009 the so-called 'climate-gate' scandal exposed evidence of apparent attempts to evade FOI requests at the University of East Anglia. In this context, the project asked what difference FOI has made to how universities work and what it has achieved.

We found that requests for information have focused on 'day-to-day' information about admissions, financial information and HR processes. It has had little effect on record keeping or, more surprisingly, teaching.

By far the biggest worry is the possible effect on research data. Although they have been few requests for research data, some have been very high profile or on controversial topics. Universities have expressed concern about the adequacy of existing protection and about the effects of competition if rival research teams or commercial competitors can obtain data prematurely.

Interestingly, the Justice Committee review (p.4) recommended that the FOI Act should include a special protection for research work.

### Comparative Constitutions

*In September Dr James Melton joined the Constitution Unit, greatly extending our international and comparative expertise. Here he introduces himself and his work.*

I received my PhD in political science from the University of Illinois at Urbana-Champaign, USA, in 2009. Since then, I have worked at the IMT Institute for Advanced Studies in Lucca, Italy. Throughout my academic career, I have been a researcher on the Comparative Constitutions Project (CCP), becoming a principal investigator upon receiving my PhD. My involvement with the CCP has not only given me the opportunity to read dozens of constitutions, but it has also shaped my research interests, which address three aspects of constitutions: 1) their stability, 2) their effect on government practices, and 3) the origins of their provisions.

The CCP was started seven years ago by Zachary Elkins, Associate Professor at the University of Texas at Austin, and Tom Ginsburg, Professor at the University of Chicago Law School. The goal of the CCP is to catalogue the contents of all constitutions and constitutional amendments written in independent countries since 1789 – at present,

approximately 880 constitutions and 2300 constitutional amendments. Since the outset of the project, we have found and coded thousands of constitutional texts, making the CCP the most comprehensive source of information available on the contents of countries' constitutions. Data and more information about the CCP are available at [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org). In addition, ConstitutionMaking.org contains a variety of resources assembled by the CCP, in collaboration with the United States Institute of Peace, for use by constitutional drafters around the world.

Each year a non-trivial number of countries alter their formal constitutional structure. Just looking at the past 20 years, on average, 8 constitutions have been replaced by new documents and 34 constitutions have been amended each year. Recently, for instance, we have observed the drafting processes currently taking place in Fiji, Somalia, Zambia, or Zimbabwe, the constitutions recently promulgated in Hungary and Syria, and the constitutional amendments promulgated earlier this year in Bahrain and Haiti. In future issues of the *Monitor*, I will be providing further international and comparative constitutional focus, informed by my research and work on the CCP.

### Staff Update

With the end of the FOI project stream, the Unit said goodbye to Research Associate Ben Worthy and Research Assistant Gabrielle Bourke. Ben Worthy joined the Unit in October 2007, working on three major research projects: FOI and central government, FOI and parliament and FOI and local government. He is now Lecturer in Politics at Birkbeck. Gabrielle Bourke joined the Unit in 2009, and worked with Ben on the parliament, local government, and universities projects. She is now Research and Campaigns Officer at the Women's Institute.

Finally, administrator and office manager Vicki Spence left the Unit in September: *After six years as Administrator at the Constitution Unit I have decided to move on. I'm proud of our research and achievements and I've enjoyed getting to know everyone. Thanks to all my colleagues, interns and extended networks whose hard work has kept us punching above our weight. Apologies for filling up your inboxes over the years and for any excessive nagging. Please continue to send me this excellent publication and lots of love to all!*

Congratulations to Scott Greer (Researcher on the Unit's Devolution and Health project 2001-2005) for gaining tenure at Michigan University; and double congratulations for his wedding in June to Holly Jarman, who worked with him at UCL, and who now also has a job at Michigan.

Congratulations equally to former intern Ruchi Parekh, who has received a scholarship from Harvard to pursue a project with Interights.

And finally, congratulations to Harshan Kumarasingham (intern 2005), for publication of his book *A Political Legacy of the British Empire – Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (IB Tauris).

The Unit thanks interns Matt Gayle, Max Goplerud, Cosimo Montagu, Nick Perkins, Will Smith, Dan Swallow, and Jeremy Swan and for all their hard work between April and October.

# Bulletin Board Constitution Unit Newsletter

## Constitution Unit Events:

- **Wednesday 10 October 2012, 1.00pm**  
The Unit's Robert Hazell and Ben Yong will discuss the findings of their book, *The Politics of Coalition: How the Conservative-Lib Dem Government Works* (Council Room, Constitution Unit)
- **Tuesday 13 November 2012, 6.00pm**  
Lara Fielden of the Reuters Institute for the Study of Journalism will discuss international lessons in redesigning press regulation in the light of the Leveson Inquiry (Council Room, Constitution Unit)
- **Thursday 6 December 2012, 6.00pm**  
Lord Speaker Baroness D'Souza will be outlining her vision for the future of the House of Lords in terms of its role in the parliamentary process (Council Room, Constitution Unit).

See our events page for more information and booking: [www.ucl.ac.uk/constitution-unit/events](http://www.ucl.ac.uk/constitution-unit/events). **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.**

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](http://www.ucl.ac.uk/constitution-unit/events).

## Constitution Unit Publications:

G Bourke, B Worthy and R Hazell, *Making Freedom of Information Requests: a Guide for Academic Researchers* (Constitution Unit, 2012)

B Worthy and G Bourke, *'Transparency and Tension: Universities and Freedom of Information in the UK'* (forthcoming)

B Worthy, R Hazell, and G Bourke, 'Open House: Freedom of Information and its Impact on the UK Parliament' *Public Administration* 2012: Available online: DOI: 10.1111/j.1467-9299.2012.02024.

B Yong and P O'Brien, 'Constitutional Systems of the World: Problems of Perspective in Comparative Constitutionalism' *Political Studies Review* 10(3) 2012

## Publications of Note:

C Ballinger, *The House of Lords 1911-2011: a Century of Non-Reform* (Hart, 2012)

P Birkinshaw, 'Like Canute – Pushing back the Waters of the Incoming Tides: The Prospects for Re-inventing UK Constitutionalism' in PM Huber (ed.) *The EU and National Constitutional Law* (Boorberg, 2012)

P Cairney, 'Constitutional Change and Referendum on Independence' – First draft of forthcoming publication on Scottish independence. Available for review at [www.docs.google.com/file/d/0B-vqUYxLrgufYVotTmZFX2haaE0/edit?pli=1](http://www.docs.google.com/file/d/0B-vqUYxLrgufYVotTmZFX2haaE0/edit?pli=1)

Global Commission on Elections, Democracy and Security, *Deepening Democracy: a Strategy for Improving the Integrity of Elections Worldwide* (2012)

R Gordon & A Street, *Select Committees and Coercive Powers – Clarity or Confusion* (Constitution Society, London 2012)

K Ritchie, *Fixing our Broken Democracy: The Case for 'Total Representation'*

## Unit in the Press:

### House of Lords Reform

M Russell's Letter to the Times: The chamber has become too big, and the patronage enjoyed by the Prime Minister is indefensible – *Times* (10 Aug) (behind paywall)

David Steel: Clegg will look petulant if he walks away – *Times* (8 Aug) (behind paywall)

The coalition's millstone – *Economist* (14 July)

Meg Russell: Referendum on House of Lords reform "politically inevitable" – *Telegraph* (22 June)

### Coalition Government

The Politics of Coalition: Book Review – *Progress Online* (15 Aug)

Ben Yong: The Independent View: Making coalition government work – lessons for the future – *Liberal Democrat Voice* (24 July)

Harmony at the heart of the British coalition – *Irish Times* (16 June)

A Stevenson: Timid Lib Dems should vote against Hunt – [politics.co.uk](http://politics.co.uk) (13 June)



Constitution Unit Blog

[www.constitution-unit.com](http://www.constitution-unit.com)

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