

CONSTITUTION UNIT MONITOR 53

FEBRUARY 2013

Commission on a Bill of Rights reports

The Commission on a Bill of Rights delivered its report to the government in December. It did not offer a strong or unanimous way forward.

On the central issue, seven of the commission's nine members came down in favour of a UK Bill of Rights. Such a bill would incorporate and build on all of the UK's obligations under the European Convention on Human Rights (ECHR), and would provide no less protection than is contained in the current Human Rights Act and the devolution settlements. Some of the majority also believed that a UK Bill of Rights could define more clearly the scope of some rights, and adjust the balance between different rights. The most powerful arguments for a new constitutional instrument were the lack of ownership by the public of the existing Human Rights Act, and the opportunity which a UK Bill of Rights would offer to provide greater protection against possible abuses of power.

The two members opposed to this conclusion – Helena Kennedy QC and Prof Philippe Sands – felt that the time was not ripe for a UK Bill of Rights, and the majority had failed to identify any shortcomings in the Human Rights Act. They remained open to a UK Bill of Rights, so long as it carried no risk of uncoupling the UK from the ECHR. But they feared that one of the principal arguments relied upon by the majority—public ownership of rights—would be used to promote other aims, including the diminution of rights, and a decoupling of the UK from the ECHR.

Devolution played a large part in the commission's deliberations. Any future debate on a UK Bill of Rights must involve the devolved administrations, and respect the different political and legal traditions in different parts of the UK. It should not interfere with the separate development of a Northern Ireland Bill of Rights (required by the Belfast Agreement, and the subject of protracted negotiation over the last 10 years). It should also be sensitive to the different legal tradition in Scotland, and issues raised in the independence debate.

The minority were concerned that a premature move to a UK Bill of Rights would be contentious and possibly even dangerous, with unintended consequences.

Beyond the core issue, the commission broadly agreed that a UK Bill of Rights should also include responsibilities; that it should include additional rights beyond those in the Human Rights Act; and that the mechanisms should be broadly similar to those in the Human Rights Act (declarations of incompatibility, and no strike down power). In these respects and in recommending a UK Bill of Rights, the commission reflected the similar recommendations of the parliamentary Joint Committee on Human Rights, in their 2008 report on a British Bill of Rights.

Nothing further is likely to happen in this Parliament. The government remains divided, with the Conservatives critical of the Human Rights Act, and the Liberal Democrats staunch defenders. Even if there were a clear way forward, there is no appetite left for big constitutional reforms under this government. In the run-up to the next election the parties will differentiate on the issue, with the Conservatives

repeating their commitment (first announced by Cameron in 2006) to repeal the Human Rights Act and replace it with a UK Bill of Rights; and Labour and the Lib Dems committed to its retention.

Sir Leigh Lewis, chairman of the Commission on a Bill of Rights, talked about the report at a Constitution Unit Seminar on 24 January – see website.

EXECUTIVE



The Cabinet Office review of the Committee for Standards in Public Life

The Committee for Standards in Public Life (CSPL) was established in response to the Cash for Questions scandal in 1994. To underline his concern the Prime Minister established it as a permanent body. Since its establishment it has published reports on such matters as standards of conduct for MPs and peers, special advisers, MPs' expenses and allowances, and most recently on the longstanding debate over party funding.

The Cabinet Office has asked Peter Riddell, Director of the Institute for Government, to conduct a review of the committee. CSPL chair Sir Christopher Kelly has argued publicly for his committee to maintain its permanent status so that it may remain independent and can launch its own inquiries.

But the review comes at a bad time. The government has been pushing to abolish as many public bodies as possible. The Westminster landscape has seen a proliferation of regulatory bodies, or 'constitutional watchdogs', such as the Electoral Commission and the Independent Parliamentary Standards Authority. Moreover, it remains unclear what outstanding issues remain for the committee to examine.

So the case for the continued existence of the committee is difficult to make. It may be that Peter Riddell recommends abolition, a downgrading of its status or merging the committee with some of the other regulatory bodies.

Blog: www.constitution-unit.com
Facebook & Flickr: Constitution Unit
Follow us on Twitter: @ConUnit_UCL



UCL Department of Political Science
Director: Professor Robert Hazell CBE
Deputy Director: Dr Meg Russell
www.ucl.ac.uk/constitution-unit
Email: constitution@ucl.ac.uk
Phone: +44 (0) 20 7679 4977



Civil Service reform

Since the publication of the government's plans for civil service reform in June 2012 (noted in *Monitor 52*), there have been a number of developments. Francis Maude, Minister for the Cabinet Office, has continued to push for greater government involvement in the selection and appointment of senior officials, citing the civil service's apparent inability to deliver on the government's policies.

Maude's complaints about the civil service coincided with the cancellation of the competition for the West Coast Mainline franchise by the new Transport Secretary, Patrick McLoughlin, in October 2012. McLoughlin stated that he had been forced to do this following the discovery of mistakes made by officials in the tendering process. A number of civil servants have since been suspended. An independent report suggested a number of failings by officials, but also that resources at the Department for Transport were stretched as a result of the government's spending review.

In November 2012, it was reported that No 10 had rejected the potential appointment of David Kennedy, currently CEO of the climate change committee, as Permanent Secretary of the Department of Energy and Climate Change. This raised the possibility of political interference in civil service appointments. And in late December, the performance targets of Whitehall's permanent secretaries were published.

2012 ended in stalemate however, with the Civil Service Commission's response to Maude's suggested reforms. The commission stated that while Secretaries of State could be more involved in the appointment process, they could not impose a candidate on a department as this would amount to politicisation.

Parliament has also taken interest in the work, responsibilities and accountability of civil servants. The House of Lords Constitution Committee published its report on the accountability of civil servants in October 2012. It made cautious note of the government's proposed reforms, but affirmed the need to maintain the key principles of open competition and merit. The Public Administration Select Committee has also launched a full inquiry into the future of the civil service, which will begin this year.

Collective cabinet responsibility and the coalition

As the coalition marks its halfway point with the publication of its mid-term review, one under-appreciated consequence of coalition government can be seen in its impact on collective cabinet responsibility. This is the constitutional convention which dictates that members of the Cabinet must publicly support all governmental decisions made in Cabinet, even if they do not privately agree with them.

But that doctrine does not really work for coalitions, especially when the two parties are seeking to distinguish themselves in the eyes of the electorate—as they already are and will do increasingly as the next election approaches. So the usually subliminal but sometimes overt message has become: 'This is what we have agreed, but left to ourselves we would have done something different'.

There are also signs that the increasing freedom to dissent from government policy is beginning to affect the coalition partners themselves. The recent disagreements over energy policy have been a clear case of dissent within the Tory party as much as dissent between the Tories and the Lib Dems. This is consistent with one very clear trend in the current Parliament, namely, the unprecedented number of backbench rebellions.

This may, of course, be a healthy development in that it is perhaps foolish to pretend that every member of any government agrees with everything the government does. But as the next election approaches, there must be a question mark over how effectively the government will be able to govern if the coalition partners are seeking to spend more energy on making their views distinctive than they are on forging agreement.

PARLIAMENT



HOUSE OF LORDS

Lords reform: time for smaller changes?

Following the collapse of the coalition's bill in August, talk of major Lords reform is off the agenda, at least until the general election. Meanwhile, peers (and some MPs) are keen to maintain pressure for smaller changes. Conservative MP Eleanor Laing (a former member of the joint committee on the government's draft bill) has taken up Lord Steel's private member's bill in the Commons, although this still awaits a Second Reading. The bill would allow members to retire, and forcibly remove those who fail to attend or have been convicted of serious criminal offences. But it has little chance without government backing. Peers are also considering whether further changes could be introduced without legislation, for example via standing orders, changes to allowances (e.g. ending payments to those aged over 85), or even passage of declaratory motions (proposing a cap on the chamber's size, or that members should retire after a certain age or length of service). Such changes would not have legal force, but could help create new conventions. Such imaginative thinking seems necessary, given the difficulty of agreeing a bill.

Discussion also continues about internal procedural reform. In a debate on working practices on 1 November, many peers pressed for implementation of the remaining elements in the report of the Leader's Group chaired by Lord Goodlad (see *Monitor 48*). These include the possibility of a legislative standards committee, and a backbench business committee like that in the Commons. As some peers pointed out, the government previously resisted progress on the basis that large-scale reform was planned. That excuse no longer exists, so continuing pressure is likely on the new Leader of the Lords, Lord Hill of Oareford.

Lords changes in personnel, and practice?

The departure of Lord Strathclyde as Leader of the Lords in January marks the end of a long era of continuity. Strathclyde served over 14 years as Conservative Leader in the chamber, taking in Labour's entire period in government, as well as the coalition's administration to date. Lord Hill of Oareford who replaces him is a relatively new peer, having entered the chamber only in 2010. What further changes this will bring remains to be seen.

On 3 December there was a little-noticed Lords defeat on a piece of secondary legislation (the Legal Aid, Sentencing and Punishment of Offenders Act 2012 [Amendment of Schedule 1] Order 2012). This remains only the third such defeat since 1968. Shortly after the 1999 reform Lord Strathclyde indicated that Conservatives might start voting against such legislation (over which the Lords enjoys an absolute veto power), but following one defeat in 2000 this threat evaporated. Only one further narrow defeat occurred on the Manchester 'super casino' in 2007. But in December, a full 162 Labour peers voted

against the government: perhaps indicating increased opposition and assertiveness, and further pressure on conventions.

Three further unusual defeats occurred on 21 November, on the Justice and Security Bill (over closed material procedures a.k.a. secret courts). Only 12 Liberal Democrat peers supported the government (most of them frontbenchers) while 57 voted against. Had a rebellion on this scale occurred in the Commons, it would have been front-page news. N.B. The Constitution Unit provides a breakdown of all government defeats in the Lords on its website – this can also be subscribed to.

Finally, an unusual vote took place at Committee stage of the Electoral Registration and Administration Bill in the Lords on 14 January (see also Elections section, p.4), which saw an amendment passed to delay the boundary commissions' next report on Commons constituencies until 2018. It was the first time in either House that coalition parties have voted in opposite lobbies, with the Conservatives whipped in favour of keeping the legislation as it was and the Liberal Democrats whipped against. This division throws up uncharted territory for parliamentary analysts in terms of defining government defeats under coalition. While clearly not a government win or a free vote (both parties were whipped), with the entire Lib Dem front bench voting for the amendment, it can hardly be described as a defeat either. See Meg Russell's blog post for further discussion.

HOUSE OF COMMONS

Liaison Committee report on select committee effectiveness

On 8 November the Liaison Committee (made up of select committee chairs) published its report on *Select Committee Effectiveness, Resources and Powers*. Pleasingly, this cited extensively from the Constitution Unit report of 2011 (*Selective Influence*) by Meg Russell and Meghan Benton which analysed the policy impact of these committees, and how they could improve their practice. The Liaison Committee agreed with the Unit's analysis that the committees are growing in strength, but could do better, and that changes such as setting clearer objectives for inquiries, producing shorter, punchier reports, commissioning their own original research, and following up their recommendations later would all help. Other recommendations from the Liaison Committee included more training for committee members, improvements in questioning witnesses, and a new 'compact' with government, setting out how ministers, civil servants and parliamentary committees can work together better in the interest of good governance.

Reviews of the Wright Committee reforms

On 22 November the Procedure Committee published its review of the Backbench Business Committee, concluding that it has been 'successful and effective', and congratulating its members and chair for creating such a presence in its first (two-year) session of existence. A few fairly minor recommendations were made for change, including greater certainty for the timing of backbench debates, and a proportional allocation of debate days in longer sessions (as standing orders merely specify a sessional minimum of 35 days). Despite earlier arguments about the government's sudden change to the way that members of the Backbench Business Committee are elected (see *Monitor 51*), the Procedure Committee concluded that while it was 'not persuaded' that the change had been necessary, it did 'not consider it appropriate to recommend further changes so soon afterwards'.

On 13 December the Commons Political and Constitutional Reform Committee announced a potentially overlapping review, of the 'impact of the Wright reforms'. This will go further than the Procedure Committee's

inquiry, also taking in the changes to select committees (i.e. election of chairs and members) and the reforms that are yet to be introduced. The obvious outstanding issue is establishment of a House business committee to schedule government business, and for such business to be presented to the chamber in an amendable motion. The coalition has promised to act on the first of these recommendations, and this now falls to new Leader of the Commons Andrew Lansley.

e-Petitions

The right to petition Parliament, dating back to the reign of Richard II in the 14th Century, entered the modern era on 4 August 2011 with the launch of the government-backed e-petitions website. Touted by proponents as a means to 'give people real control over how they are governed', the e-petitions service permits British citizens who reside in the UK to submit a petition on any topic, for possible debate in the House of Commons. With 100,000 signatures needed to trigger a debate, just 10 out of 15,600 valid petitions actually achieved this feat in the service's first year, although many more passed the 10,000 mark required for a government response.

Concerns about its operation over the past 18 months have led to questions about whether a range of alternative responses besides a debate should be available and how much influence it actually gives members of the public. Confusion also stems from the fact that the system was created and is operated by government, while the onus is largely on Parliament to respond.

The Commons Procedure Committee evaluated the system in January 2012 and whilst supporting the principle of e-Petitions, drew attention to two areas for improvement: scheduling time for debates, and public understanding of the system. As a result, the House adopted the Committee's recommendation to allow the Backbench Business Committee to schedule time on Monday afternoons for e-Petitions to be debated in Westminster Hall, on a trial basis. The first e-petition to do so related to the West Coast Mainline franchise decision which was debated in Westminster Hall in September 2012.

ELECTIONS AND POLITICAL PARTIES



Police and Crime Commissioner elections

The first ever police and crime commissioner (PCC) elections took place on 15 December, to widespread, sharp criticism. Covering 41 police commissions across England and Wales, the polls were described by UnLock Democracy as 'disastrous' and by the Electoral Reform Society as the 'worst elections ever'. These assessments stemmed from the historically low turnout, which averaged 15 per cent—the worst of any peacetime national election—and the unusually high number of spoilt ballots—10 times the average for general elections—suggesting widespread disillusionment. Beyond polling day, the lack of information on both the elections and candidates, a lack of support for the concept of elected PCCs, and the timing of the poll were sources of great frustration. Some criticisms extended to the government's 'localism agenda' more generally, seeing both the mayoral referenda and commissioner elections as failed, half-baked attempts at greater direct democracy. Prime Minister Cameron insisted in Parliament that the elected commissioners had a mandate, despite the low turnout and surrounding concerns.

The Electoral Commission has launched an inquiry into the elections, and is due to report in January. This is only likely to compound the negative assessment; the commission has already said that it disagreed with several decisions taken by the government on the poll, notably not providing a free mail shot to candidates and the highly unusual decision for the Home Office to run its own public awareness campaign.

The elected commissioners look likely to experience difficult times ahead, too. They only have until 31 January to submit their financial plan for the year, as well as to lay out strategies for the Chief Constable. This very short time-frame stems from the government's decision to hold the poll in November, rather than in the spring as originally intended.

Electoral Registration and Administration Bill and the boundary review

The Electoral Registration and Administration Bill, which provides for a new system of individual rather than household voter registration, was home to a dramatic amendment in the Lords in January. Back in October, an opposition amendment was tabled at Committee stage which sought to change the publication date of the Boundary Commission's report on new constituencies from October 2013 to October 2018. The government suspended proceedings, explaining that there were concerns that the amendment was inadmissible on the basis of not being relevant to the bill. The new registration system is due to be introduced in 2014, in time for the 2015 general election.

When the Committee returned in January, the clerks ruled that the amendment was inadmissible. Labour's Lord Hart of Chilton moved it nonetheless, paving the way for the first formal split coalition vote in either House: the Conservatives whipped to vote against and the Lib Dems for (see Lords changes, p.3). Heated exchanges took place between coalition peers, with Clegg accused by Conservatives of 'double-crossing' and 'gerrymandering the constitution'.

The amendment played to the ongoing tensions around the boundary changes, particularly over how the new electoral register is likely to influence them. There is widespread concern that if the changes go ahead as planned (due to be implemented in time for the 2015 election) they will be based upon artificially low numbers of voters as a result of the drop-off effect under individual registration. For Labour, who fear they will lose out significantly from the disenfranchisement of lower socio-economic groups, the amendment can be seen as an attempt to stave off the risk of unrepresentative registers making for unrepresentative constituencies. For the Lib Dems, supporting the delaying amendment was a means of following through on Clegg's announcement in September that his party would not back the proposed boundary change timetable as a result of Conservative failure to deliver on Lords reform.

Cameron will attempt to reverse the decision when the Bill returns to the Commons later in January, but success will rely on support from the nationalist parties.

COURTS AND THE JUDICIARY



Votes for prisoners and the new model Lord Chancellor

In November the Justice Secretary and Lord Chancellor, Chris Grayling, introduced a draft bill on the vexed topic of votes for prisoners. It offers Parliament three options: first, a ban on voting for prisoners sentenced to

four years' imprisonment or more; second, a ban on those sentenced to more than six months; third, re-enactment of the existing blanket ban. Mr Grayling introduced the draft bill just 24 hours before a deadline imposed by the European Court of Human Rights. The third option—to re-enact the current ban—would breach the Court's judgments in the *Hirst*, *Greens* and *Scoppola* cases. Introducing the draft bill in the Commons, Mr Grayling cited Lord Hoffman in the House of Lords judgment in *ex parte Simms* that 'Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights'. In evidence before the Lords Constitution Committee the previous day, Mr Grayling had stated more directly that 'certainly ... we have an obligation to comply with the rulings of the European Court but, as we also know, parliamentary sovereignty supersedes those rulings.' These are bold statements, but the Lord Chancellor needed to reassure his backbenchers, and he could do so confident that the Council of Europe is anxious to avoid a direct conflict with the United Kingdom.

In his speech to the Commons Mr Grayling drew a distinction between his position as Lord Chancellor, the government, and Parliament. He noted that the government (and in particular the Lord Chancellor) is obliged to uphold the rule of law and is required by the *Scoppola* judgment 'to bring forward legislative proposals for Parliament to consider'. Being sovereign, Parliament could refuse to pass these proposals. In an interview with Andrew Neil on BBC *Sunday Politics*, he put his position more succinctly: 'We've said to Parliament, "Right, this is the legal position. We're under an obligation to do that, you're not."'

The overall approach—three options and a long consultation process—suggests that the government is anxious to delay a decision on the matter as long as possible, and to avoid responsibility for whatever decision is ultimately made. It may be that the Lord Chancellor and the government are hoping that Strasbourg will blink first rather than create a rift with a United Kingdom that has been a leading member of the Council of Europe. The Lord Chancellor's approach to the bill also suggests that his formal duty to protect the rule of law—hitherto taken for granted—is becoming more important as the nature of the office changes. Mr Grayling acknowledged to Andrew Neil that he may be unable to vote for the government's own bill if the final draft contains the third option.

CHURCH AND STATE

Female bishops, Parliament and Church Establishment

On 21 November, the Church of England rejected proposals to create female bishops (see Unit blog). Subsequently, the Commons agonised about the situation on 12 December and could agree only that it had 'considered the matter of the Church of England vote on women bishops'. This limp conclusion at least negated parliamentary voices wishing to legislate for women bishops against the wishes of the Church's Synod. The government's announcement of its gay marriage proposals in early December provoked some further Anglican dismay. For many—if they noticed—the Church's continued struggle with gender and human sexuality issues epitomised the doubtfulness of its continuing relevance to a much-changed society.

Unsurprisingly, calls for disestablishment resurfaced upon publication of the Succession to the Crown Bill on 13 December. The government propose to abolish one, but one only, of the remaining constitutional disabilities imposed on Catholics: under the bill, while a person will be able to marry a Catholic and remain in line to the throne, the rule that the monarch may not themselves

be Catholic will not change. Further, the bill provides no relief for all others not 'in communion with' Anglicanism. Other provisions in the bill include the scrapping of male primogeniture and limiting required sovereign approval for marriage to the next six people in line to the throne only.

The government is determined to rush through the succession bill. This may prevent immediate further parliamentary discussion but will not close off continuing concerns about the Church's role. It remains to be seen how the course of that discussion will run. Establishment reform may be best seen as a matter of securing particular change when opportunity arises, rather than railing against the concept as a whole.

DEVOLUTION



NORTHERN IRELAND

Sectarian violence

The summer violence in Northern Ireland described in the last *Monitor* got a whole lot worse in the intervening period.

The rioting was explained in the context of how devolution in Northern Ireland, unlike in Scotland and Wales, had meant political involution and inertia—a climate in which Northern Ireland's sectarian 'force field' would repeatedly assert itself.

And so it did, with the murder in November by 'dissident republican' paramilitaries of a prison officer, David Black, on his way to work. The following month, a decision by Belfast City Council to fly the Union flag on 17 specified days rather than throughout the year—as is already the case at Stormont—led to sustained rioting by 'loyalist' protesters.

Some features of this upsurge in violence were particularly troubling. Mr Black's murder was admitted by a new coalition of IRA splinters which, in the summer, had told the *Guardian* it was constituting a 'new' IRA. And as night followed night of riots against the city council decision, it became evident that members of the second largest Protestant paramilitary organisation, the Ulster Volunteer Force, were significantly involved. Shots were fired at police, bullets having been sent through the post to a number of politicians.

Members of the non-sectarian Alliance Party and the mainly Catholic Social Democratic and Labour Party (SDLP) were targeted, with windows broken at their homes and an Alliance office burnt. The main Protestant party, the Democratic Unionist Party (DUP), supported by the smaller Ulster Unionist Party, had escalated tensions by distributing 40,000 leaflets in predominantly Protestant East Belfast in the run-up to the vote, attacking Alliance over its stance on flags.

Alliance now holds the balance of power in Belfast City Council, as demographic changes in the city have seen the SDLP and the main Catholic party, Sinn Féin (SF), marginally overtake their Protestant counterparts—they had originally joined forces to demand the removal of the Union flag altogether before Alliance's compromise amendment was passed.

Days after the meeting, further data were published from the 2011 census, showing a narrowing of the gap between Catholics and Protestants across Northern Ireland as a whole. This fuelled sectarian tensions—tensions unassuaged by the failure, yet again in this period, of the DUP and SF to agree at Stormont a policy document to tackle sectarian intolerance. The parties remained divided on how to deal with communal parades, the clashing perspectives on Northern Ireland's troubled past and ... flags.

Dr Robin Wilson, 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

Independence referendum

The main autumn headline was the Edinburgh Agreement of 15 October: First Minister Alex Salmond and Prime Minister David Cameron signed an agreement between the Scottish and UK governments outlining the next steps for a referendum on Scottish independence. Both sides have noted the negotiations that took place before the agreement, although their detailed aims are often implicit or slightly different in tone. For example, the Scottish government is presenting the process as Scotland-driven, and has commented that the Agreement 'will see a Section 30 order laid in the Scottish Parliament and at Westminster to confirm Holyrood has the power necessary for a single question referendum, ensuring that the 2014 vote will be designed and run by the people of Scotland'. Salmond and Deputy First Minister Nicola Sturgeon are spearheading the referendum as a team, ensuring that they can present a public image of parity of esteem when dealing with Cameron and Scottish Secretary Michael Moore. The line in the sand for the UK government, on the other hand, seems to have been securing a single yes-or-no question on independence rather than a multi-option referendum which would also include a further question on 'Devolution Plus'.

The next step is for the Scottish government to bring forward a bill to the Scottish Parliament outlining the details - the date (likely to be October 2014), a minimum voting age (likely to be 16), question wording, and rules of campaigning - on its understanding that it now controls those decisions (this view does not seem to be shared by Westminster's Scottish Affairs Committee, however).

The independence project was dealt a blow in December by European Commission President Barroso. His letter to the House of Lords Economic Affairs Committee cast doubt on Scotland's automatic EU membership post-independence. Barroso wrote that 'a new independent state would, by the fact of its independence, become a third country with respect to the EU and the [EU's founding] Treaties would no longer apply on its territory'. Barroso was not commenting on the Scottish case specifically. However, the implication that Scotland would have to negotiate entry to the EU after becoming independent caused the Scottish government discomfort. The Finance Secretary was forced to argue that Barroso's observations would not apply to Scotland, meaning it would not be subject to the same accession process as other candidate states which includes obtaining unanimous acceptance by member states. The Scottish government has claimed the support of former European Court judge Professor Sir David Edward for this opinion. He has argued that post-referendum negotiations setting out relationships between the EU, Scotland and the rest of the UK would probably avoid a new accession process.

WALES

Silk Commission report

The most important development of the autumn was the publication of the Silk Commission's Part 1 report, on Welsh devolved finances and 'financial accountability'. The cross-party commission's unanimous report recommended a package of fiscal devolution very similar to that of the Calman Commission for Scotland: devolution of 10 'points' of income tax, and smaller land-related taxes including stamp duty, but not corporation tax, VAT or national insurance. It proposes implementation of this package by 2020. The commission also briefly noted the relationship between 'fair funding' (which now means a 'Barnett floor' in practical terms, not a full-blown needs assessment). This is also a key Welsh government requirement, noted in an October joint statement of progress on funding reform issued by the UK and Welsh governments.

There are two major differences between the Silk recommendations and those of Calman and the Scotland Act 2012. First, there should be a referendum before devolved income tax powers come into effect—a key Labour requirement. Second, the devolved tax power should be variable across all three tax rates, not move in lockstep across them as in Scotland. That would increase devolved fiscal autonomy, and enable the devolved government a measure of control over how regressive the tax system was.

The UK government expects to respond formally to the Silk recommendations in the spring. The October joint statement suggests that the Welsh government is ready to reach a deal with the UK government, provided 'fair funding' and a referendum are part of the package for income tax powers, and there is a power to borrow for capital projects too. Both it and the commission hope for a bill to go before the present Parliament, without waiting for the Silk Commission's second report on devolving further functions. The key question is therefore whether the UK government is willing to play ball.

Welsh government powers upheld

The first bill passed by the National Assembly after the March 2011 referendum—the rather technical Local Government Byelaws (Wales) Bill—was upheld by the UK Supreme Court, following a reference by the UK Attorney General concerned that it unlawfully interfered with UK ministerial functions. By declaring that the bill's interference was only incidental or consequential, and so did not need the Secretary of State's consent, the Court made the legislative scheme in the Part 4 of the 2006 Act more workable, if more likely to create work for lawyers.

Alan Trench, Constitution Unit Honorary Senior Research fellow and author of the Devolution Matters blog: www.devolutionmatters.wordpress.com

INTERNATIONAL



Egypt's Constitution

In the wake of the protests that ousted former President Mubarak in early 2011, elites from all over the world expected Egypt to transition to democracy. The rhetoric of the broad coalition that opposed former President Mubarak in Tahrir Square certainly seemed to indicate democratic aspirations. The new constitution could have symbolized Egypt beginning to realize those aspirations. Instead, hope for a

democratic Egypt has faded, and the new constitution comes with a realization that the struggle for democracy in Egypt is just beginning.

Concerns over the new constitution are more about the circumstances surrounding its drafting and promulgation than about the text itself. Drafting started last summer and was plagued by delays and challenges from the courts from the outset. In late November, President Morsi, frustrated with the drafting process and emboldened by his diplomatic success in the most recent dispute between Israel and Palestine, issued a set of decrees that removed laws and decrees passed during his tenure in office from the purview of the courts. Quickly thereafter the Constituent Assembly passed a draft of the constitution that was approved in a referendum a few weeks later. The result is a divisive constitution. By the end of the drafting process, virtually all non-Islamic members of the Constituent Assembly had resigned, leading to a draft constitution that was largely written and approved by its Islamic members. The referendum results further illustrated the differential support for the constitution, with only 33 per cent of the electorate turning out to vote and more than one third of those individuals voting against the draft. As a result, after two years of political turmoil, the constitution's coming into force was marked by the promise of continued opposition to it, rather than a moment of celebration and national unity.

The hope for a democratic Egypt now lies squarely with this divisive text. There is much to critique in the constitution: weak protection of basic human rights, lack of protection for women and minorities, tying Sharia to the Sunni sect of Islam, and the significant powers it grants to the military. Oddly, hope for Egyptian democracy comes not from what is specified in the text but from what is not specified. Roughly one-third of the articles in the constitution are to be determined "by law", which means that the first Parliament will play a large role in completing the text. There are also ten oversight bodies established by the constitution that are charged with checking the power of elected officials but need individuals appointed to them. Egyptian democracy is still possible but will require Parliament to guarantee some political power to minority groups during the process of filling the constitution's gaps and when appointing members to oversight bodies. Such a move would give minority groups a stake in maintaining the new constitutional order and, hopefully, ease their opposition to its edicts.

Bermudian riddle

The December 2012 elections in Bermuda presented the Governor with an interesting quandary. Bermuda's Parliament is the oldest in the Commonwealth outside the British Isles, dating back to 1620. Bermuda's population is only 64,000, and the Parliament has 36 seats to represent its 43,652 electors. The election was forecast to be very close, with a strong possibility that the opposition would win 18 seats, and the governing party 18 seats. In the event the opposition won 19 seats, so the Governor invited the leader of the opposition to form the new government.

Had the election result been 18:18 the Governor would presumably have invited the previous Premier to remain in office. At any rate that would have been the expectation in the UK: the incumbent PM has the right to remain in office, and to meet the new Parliament to see if he can command confidence (as Baldwin did in 1924). But there was a twist: the Bermudian Premier was defeated in her constituency, so was no longer a member of Parliament. Had the election result been 18:18 and the existing Premier lost her seat, what should the Governor have done?

PEOPLE ON THE MOVE

John Lyon has retired as Parliamentary Commissioner for Standards, and is succeeded by **Kathryn Hudson**, former Deputy Parliamentary and Health Service Ombudsman. **Richard Heaton**, First Parliamentary Counsel, since last August has also been Permanent Secretary at the Cabinet Office responsible for implementing the Civil Service reform programme. **Clare Salters** has become Chief Executive of the Civil Service Commission, in succession to **Richard Jarvis**. **Lord Strathclyde** stepped down as Leader of the House of Lords in January after 14 years. He is replaced by Conservative **Lord Hill of Oareford**.

CONSTITUTION UNIT NEWS

The Politics of Coalition shortlisted for prize

The Unit's book *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works* (Hart Publishing, June 2012) has been shortlisted for Political Book of the Year in The Paddy Power and Total Politics Political Book Awards. The awards ceremony will take place on 6 February 2013. The book was mainly written by Unit Director Robert Hazell and Research Associate Ben Yong, with additional chapters by Eimear O'Casey, Brian Walker and Peter Waller. The coalition project was funded by the Nuffield Foundation.

Special Advisers, 1979–2012: project extension

The Unit has been engaged in a project examining the roles and functions of special advisers (spads) from 1997 up to present day. The project team has decided to extend the project back to look at the experience of special advisers under the Conservative governments of 1979-97.

Examining the earlier Conservative cohort of spads will allow us to compare and assess the changes that have occurred under Labour and the coalition. So we are interested in getting in touch with former special advisers of the Conservative period (1979-97), their ministers and the officials who had contact with Conservative spads, so that we can better understand the impact of special advisers.

The Joseph Rowntree Charitable Trust is funding our work on the 1997-2013 period and the Unit is now looking for funding for analysis of the Conservative period. For more information on the project, please contact Dr Ben Yong at b.yong@ucl.ac.uk. The project webpage is at www.ucl.ac.uk/constitution-unit/research/special-advisers.

The role of government lawyers

In determining the legal scope of executive action, lawyers and academics have mostly concerned themselves with what the courts say and do. But there are a group of actors within the Executive who may also have a role: government lawyers.

The Unit has begun a short project examining the role of government lawyers. More specifically, we wish to know:

- What are the current institutional arrangements of the Government Legal Service in Whitehall, and how has this changed over time? Are lawyers now more integral to policy making, with the growth of judicial review, and the Human Rights Act?

- What is the hierarchy of legal advice in Whitehall? How are differences resolved?
- What are the pros and cons of departments having in-house lawyers? Should No 10 and the Cabinet Office have in-house lawyers?
- To what extent do lawyers in government see themselves as different from other civil servants or lawyers in private practice?

Nat Le Roux, Chairman of the Constitution Society, has agreed to provide funding for this scoping project. The project will run from December 2012 to May 2013, and is led by Dr Ben Yong. The key proposed outputs are a final report, and a broader research proposal.

We are interested in getting in touch with former and current government lawyers, and civil servants who have or have had regular contact with government lawyers. For more information, please contact Dr Ben Yong at b.yong@ucl.ac.uk. The project webpage is at www.ucl.ac.uk/constitution-unit/research/government-lawyers

Robert Hazell gives evidence on Scottish independence to Foreign Affairs Committee

Constitution Unit Director Prof Robert Hazell and former Unit researcher Dr Jo Murkens gave evidence to the Common's Foreign Affairs Committee's inquiry into the foreign policy implications of and for a separate Scotland on 16 October. Their written evidence can be viewed on the inquiry's homepage. Dr Murkens (now at LSE) and Peter Jones authored *Scottish Independence: a Practical Guide* (Edinburgh University Press, 2002).

Staff Update

Ben Webb took up his role as the Unit's new administrator in November. Ben was previously in the administration team at UCL's Wolfson and Cancer Institutes for two years. Jon Handcock, a previous intern on the FOI project and UCL School of Public Policy alumnus, returned between September and December to review and develop the Unit's website and IT systems. Finally, Kristina Wollter left in December to have her second baby. Kristina has worked in the Unit's Parliament team in different capacities since 2009. Over the past year she has been a Research Assistant on the Policy Impact of Parliament project.

Interns

The Unit is very grateful for all the hard work of interns Will Allchorn, Katie Evans, Matthew Honeyman and Chris Veck between October and January, and wishes them success in their future careers.



**Constitution
Unit Blog**

www.constitution-unit.com

Bulletin Board Constitution Unit Newsletter

Constitution Unit Events in 2013

- **Prospects for a British Bill of Rights**
Speaker: Sir Leigh Lewis KCB (Chair, Commission on a Bill of Rights)
Thursday 24 January 2013, 1.00pm
- **What Place for the Referendum in the UK?**
Speaker: Prof Vernon Bogdanor (King's College London)
Thursday 21 February 2013, 1.00pm
- **Expertise and Policy: the Rise of the Government "Tsar"**
Speakers: Dr Ruth Levitt (King's College London) and Stephen Boys Smith (fmr civil servant)
Thursday 21 March 2013, 1.00pm
- **The Parliamentary and Health Service Ombudsman**
Speaker: Dame Julie Mellor (Ombudsman)
Wednesday 17 April 2013, 1.00pm
- **How Unique is the UK 's Constitution?**
Speaker: Dr James Melton (Constitution Unit)
Thursday 9 May 2013, 1.00pm

For more information and to register to attend, visit the Events page at <http://www.ucl.ac.uk/constitution-unit/events>. Seminars are free and open to all, and are held in the Council Room at the Constitution Unit premises at 29-30 Tavistock Sq.

We now film all the presentations from our events and these can be viewed on our website.

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

Constitution Unit Publications:

R Hazell, 'Would Holyrood pay for independence in Euros?' *The World Today* 68(11)

Unit in the Press:

Attorney General Veto

Release of Prince Charles' letters to ministers vetoed – *Times* (behind paywall) – (16 Oct)

Jack Straw: the Prince of Wales must be free to give his opinion – *Telegraph* (17 Oct)

Coalition Government

Disraeli was wrong. Coalition has worked – *Times* (14 Dec) (behind paywall)

Cameron's coalition has defied the doomsayers, but faces difficult middle age – *Guardian* (7 Nov)

Lords Reform

Polly Toynbee: David Cameron's ermine multitude will suffocate democracy – *Guardian* (26 Nov)

Scottish Independence

Scottish Independence: Danny Alexander in grim forecast of age and poverty – *Scotsman* (17 Oct)

Robert Hazell appeared on RTE Radio 1's *Morning Ireland* programme to discuss Scottish independence (16 Oct). Listen here

Devolution and Autonomy Systems Compared – *El Imparcial (Spain)* (25 Sep)

Sealing the deal on the independence vote – *Channel 4* (15 Oct)

Welsh Devolution

Unit Honorary Senior Research Fellow Alan Trench discussed Welsh assembly powers on BBC Radio Wales (9 Oct). Listen here

Succession to the Throne

Prince Charles questions Catholic on throne – *The Australian* (9 Jan)

Prince fears a 'threat to law of succession' – *Times* (9 Jan) (behind paywall)

Ongoing Calls for Evidence:

- The Commission on Devolution in Wales published a call for evidence on 29 Nov on the non-financial aspects of the current devolution settlement and will be accepting submissions until 1 March.
- The Political and Constitutional Reform Committee (HoC) on 6 Dec requested written submission for its inquiry into the role and powers of the Prime Minister by 31 January 2013.
- The Joint Committee on Parliamentary Privilege is accepting written evidence for its review of the Green Paper on Parliamentary Privilege.

Other Recent Inquiry Activity:

- The Secondary Legislation Scrutiny Committee (HoL) closed its request for written evidence on the government's new approach to consultation on 19 Nov
- The Political and Constitutional Reform Committee (HoC) held a further session of oral evidence on 8 Nov for its inquiry into the need for a constitutional convention in the UK
- The Political and Constitutional Reform Committee (HoC) held a further session of oral evidence on 6 Dec on the impact and effectiveness of ministerial reshuffles
- The Law Commission published its Scoping Report on Electoral Law in the United Kingdom on 11 Dec
- The Public Administration Select Committee held its annual survey of the Parliamentary and Health Service Ombudsman's performance on 18 Dec



Constitution Unit Blog

www.constitution-unit.com

UCL Department of Political Science Director: Professor Robert Hazell CBE **Deputy Director:** Dr Meg Russell
www.ucl.ac.uk/constitution-unit | **Email:** constitution@ucl.ac.uk | **Phone:** +44 (0) 20 7679 4977
Blog: www.constitution-unit.com | **Facebook & Flickr:** Constitution Unit | **Follow Us on Twitter:** @ConUnit_UCL
The Constitution Unit, UCL Department of Political Science, 29–30 Tavistock Square, London WC1H 9QU