

Monitor 50

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Will the Queen's Diamond Jubilee change the rules of succession?

The announcement in October at the Commonwealth conference in Perth of changes to the rules of succession suggested it was a done deal. David Cameron had obtained the agreement of the heads of government of the 15 other countries of which the Queen is head of state (the realms). The UK can now be expected to lead the way, riding the tide of goodwill towards the monarchy following the royal wedding in 2011 and the Queen's diamond jubilee in 2012. But all the realms will then have to change their laws, in a process which could take years.

It has been a longstanding aim of British governments to end the discrimination in the laws of succession. 11 private members' bills have been introduced into Parliament in the last 20 years to reform the Act of Settlement. Most other European monarchies have already changed their rules of succession to make them gender neutral. Sweden changed their law in 1980, Holland in 1983, Norway in 1990, Belgium in 1991, Denmark in 2009 (with a referendum), and Luxembourg in 2011. Only Liechtenstein, Monaco and Spain retain male primogeniture.

Successive governments have supported the change in principle, but have said that only the government could legislate, because only the government could negotiate with the other realms. But getting all the realms signed up seemed daunting.

Gordon Brown went to the Commonwealth conference in 2009 with the same objective as David Cameron, but failed. Since then there has been a lot of work behind the scenes to get the other 15 realms on board, with a small working party led by the New Zealand Cabinet Secretary. The hope is that the larger realms will help to shepherd the smaller realms in their part of the world. So Canada will help give a lead to Antigua and Barbuda, the Bahamas, Barbados, Belize, Grenada, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines; while Australia and New Zealand set the way for Papua New Guinea, the Solomon Islands and Tuvalu.

The fanfare of David Cameron's announcement was intended to give maximum momentum to a project which is not all plain sailing. The UK can give a lead, but cannot legislate for the other 15 realms. In Australia the six states claim a separate relationship with the Crown, and the change may require their separate consent. In Canada the federal government will almost certainly have to gain the consent of the provinces, including Quebec. In both countries it will revive the republican issue. Australia had a referendum on whether to become a republic in 1999. The Canadian Prime Minister Stephen Harper now has a majority in Ottawa, but will not wish to risk a veto from Quebec, the nemesis of previous Canadian constitutional reforms.

Questions will also be asked about why the discrimination against Roman Catholics is only to be partially removed. The prohibition on the Monarch being a Catholic will remain. Even if it were removed, no Catholic could satisfy the requirement to be 'in communion with' the Church of England and thence Supreme Governor of the Church of England. Catholics in Britain might be willing to accept that, although their numbers are now broadly equal to Anglicans. While welcoming

the removal of the 'unjust discrimination' against Catholics, the Archbishop of Westminster, Vincent Nichols, said that he recognised the importance of the established Church of England. The Catholic Church in Scotland has been less accommodating. And in the 15 realms where Catholics outnumber Anglicans by three to one, there may also be less understanding.

EXECUTIVE



Reconfiguration of the Cabinet Secretary's role

Sir Gus O'Donnell has retired as UK Cabinet Secretary after 32 years as a civil servant. He will become a life peer in the House of Lords in 2012. With Sir Gus' retirement, Downing Street has taken the opportunity to reconfigure the role of Cabinet Secretary. The roles of the current Cabinet Secretary are to be divided between three different officials. Jeremy Heywood, current Permanent Secretary of No 10, will become Cabinet Secretary and principal policy advisor to the Prime Minister; Ian Watmore, current head of the Efficiency and Reform Group within the Cabinet Office will become the Permanent Secretary for the Cabinet Office; and Sir Bob Kerslake, currently Permanent Secretary of the Department of Communities and Local Government, will take on the additional role of Head of the Civil Service.

The reconfiguration is in part a recognition of what already exists. Heywood is effectively David Cameron's principal policy adviser anyway, and Watmore's new role seems very much an extension of his current role. What is more unusual is the decision to give a permanent secretary of a main line department the additional role of Head of the Civil Service. And from a constitutional perspective, what is yet unclear is how this reconfiguration will affect the lines of responsibility and accountability as traditionally understood: who is now responsible to whom?

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The Constitution Unit

The UK Cabinet Manual

Almost two years after its inception, the UK finally has a Cabinet Manual. Gordon Brown saw it as a step towards a written constitution; David Cameron as cementing good coalition practices. Its more immediate purpose was to provide a guide to government formation should the 2010 General Election result in a hung parliament. A draft chapter covering government formation was published prior to the 2010 election, and was widely regarded as a success. A full first draft of the Manual was published in December 2010 and subject to parliamentary and public scrutiny.

There is very little that is new about the first edition. It covers the Sovereign; elections and government formation; the workings of Cabinet and the Cabinet Office; the executive and Parliament; the executive and the law; ministers and the civil service; relations with the devolved assemblies and local government; relations with the EU and international bodies; government finance and expenditure; and official information.

The Manual is meant to be a map to executive practices, written primarily for ministers and those advising them. But over time it may also become an invaluable source for those outside government, from journalists to students, on the inner workings of government. And while this may not be the intention, as practices are written down, the temptation to treat description as prescription will grow.

The new Cabinet Manual was published on 24 October 2011. It can be found at: <http://www.cabinetoffice.gov.uk/resource-library/cabinet-manual>

The Localism Bill

The coalition's Programme for Government is characterised throughout by a commitment to decentralising power away from Westminster. 'We will', it pledges, 'end the era of top-down government by giving new powers to local councils, communities, neighbourhoods and individuals'. The Localism Bill, which received Royal Assent on 15 November, represented the coalition's effort to achieve that goal, providing for a number of reforms to be made to local government. Interestingly, the Bill allowed for local referendums to be held on local matters, in particular on excessive rises in council tax, where 'excessive' is defined as greater than a limit set by central government. In theory this applies not just to conventional local councils, but to any local authority capable of raising taxes, like police authorities. Provisions are also included for referendums to be held on local governance, asking voters whether they want their council to be run by a committee of councillors, an indirectly-elected leader, or a directly-elected mayor. It is worth noting that the coalition had previously committed itself to holding referendums in the 12 largest English cities, one of which, Leicester, has already held a successful poll and elected its first mayor.

Committee on Standards in Public Life: party funding report

All three main parties committed to party funding reform ahead of the 2010 general election. The release of the Committee on Standards in Public Life's report on party financing on 22 November, however, met with a frosty reception. It recommends a yearly cap of £10,000 for individual and organisational donations (with special provisions for trade unions), which is much lower than many expected and will cause a significant loss for the two main parties. Most contentiously, the report suggests an important increase in public funding as of

2015: an additional £23 million per year, which is 50p per elector. Despite the relative gains for the Lib Dems from the proposals, Nick Clegg's response to the suggestion to use taxpayers' money to meet the funding shortfall was unequivocal: 'The case cannot be made for greater state funding of political parties at a time when budgets are being squeezed and economic recovery remains the highest priority'. The government have however announced that they will investigate how existing state funding could be reallocated. The report follows a year-long inquiry led by Sir Christopher Kelly.

PARLIAMENT



Lords reform

The joint committee on the government's draft House of Lords reform bill has now held many sessions of oral evidence. These have included no fewer than three evidence sessions with the Commons minister Mark Harper (Conservative), and others with academics and outside groups, including the House of Lords Appointments Commission. The Unit's Meg Russell gave evidence on 31 October (see Constitution Unit News, p.7).

One key issue of interest to the committee has been the likely impact on relations between the Lords and the Commons should elections be introduced to the second chamber, and whether the current conventions would survive. Meg Russell's evidence focused largely on what can be learnt on this point from other bicameral systems, and on 22 November the committee explored one of the most pertinent overseas examples through live video evidence from representatives of the Australian Senate. But aside from this, the committee's sessions have been wide-ranging, covering issues such as the design of any electoral system used, length of terms, whether and how independent and expert members can be retained, and the size of the reformed chamber. Given the large number of issues, and the large number of committee members (26) with clearly differing views, it will be quite a challenge to agree a report. The committee is currently expected to complete its work in the spring.

In the meantime, the private peer's bill promoted by Lord Steel of Aikwood passed its committee stage on 21 October. The original version of the bill would have created a statutory House of Lords appointments commission, ended hereditary peer by-elections, allowed retirements from the Lords, and excluded from membership those convicted of serious criminal offences. In order to get the bill through committee, Lord Steel agreed that he would propose removal of the provisions on the statutory appointments commission at report stage. Despite this major concession, the bill has little chance of becoming law without explicit government support.

Lords working practices

Some of the proposals resulting from the Leader's Group on Working Practices (chaired by Lord Goodlad) were put to the chamber for decision on 8 November, following a report from the Lords Procedure Committee on how they should be put into effect. One of the key proposals—that the Lord Speaker should have greater control during question times—was rejected, despite already having been watered down by the committee. The original proposal was that there should be a one-year trial period, and this was shortened to only a couple of months. But many peers still considered it too radical an option, with

Lords Leader Lord Strathclyde describing it as potentially 'the start of the end of self-regulation'. Peers also rejected a proposal that they should be able to refer to each other by name in debates (rather than as 'the noble Lord', 'the noble Baroness', etc.), but a proposal that the House of Commons could be referred to by name (rather than as 'the other place') was accepted. Several other small changes were agreed, but more substantial proposals from the Leader's Group, such as creation of new select committees, or of a new 'legislative standards committee', have yet to be put formally to the House.

Backbench Business Committee controversies

While reform in the Lords is little to be seen, the effect of recent reforms in the House of Commons continues to be felt. In particular, the Backbench Business Committee is having a significant impact on the working of the chamber. This was most notable—and most high profile—when the committee scheduled a debate on 24 October on a motion to require a referendum on Britain's continued membership of the EU. The debate caused considerable headaches for Prime Minister David Cameron, and 81 Conservative MPs voted for the motion in defiance of a three line whip (although it was still rejected by 483 votes to 111 overall). This was not however trouble entirely of the Backbench Business Committee's making: the motion followed over 100,000 people signing a Downing Street e-petition to the same effect. The government had made it known (somewhat controversially given that these are executive rather than parliament-sponsored petitions) that in such circumstances it expected the Backbench Business Committee to make time for a debate.

At the moment the Backbench Business Committee remains an experiment, and its existence is time-limited to the present parliamentary session (ending in May). Some kind of review—which would most appropriately come from the Procedure Committee—is likely before then. However, although the committee may have caused some grief to party leaders, it is extremely popular with members, which should make its future secure.

Commons sitting hours inquiry

The Commons Procedure Committee is once again investigating the 'old chestnut' of parliamentary sitting hours and calendar, and a consultation paper on this was issued on 15 November. It included familiar issues such as whether the Commons should sit for a 'normal working day' (e.g. 9am to 6pm), and whether there should be sittings in September. These issues strongly divide MPs, and there have been changes back and forth over the years. 'Normal' days are potentially convenient for members with constituencies in or near London, but markedly less so for other MPs. Another key idea floated is whether consideration of private members' bills should be moved from Fridays to earlier in the week (most likely Wednesday evenings). These issues are all likely to prove controversial. In a parallel move, the Procedure Committee in the Scottish Parliament launched an enquiry into 'remodelling the parliamentary week' in September.

Commons select committees set for more reform?

In December the House of Commons Liaison Committee (comprising select committees chairs) announced a new inquiry into select committee powers and effectiveness. This follows the recommendation by the 'Wright Committee' in 2009 (when proposing election of select committee members and chairs) that the Liaison Committee should hold a review. There have been a number of notable interventions since. Earlier this year, Alex Brazier and Ruth Fox of the Hansard Society set out an agenda for such a review

in *Parliamentary Affairs* (vol. 64, issue 2). Then came the Unit's report *Selective Influence* (see *Monitor 49*, or our website) on select committee policy influence, which has been widely circulated at Westminster. The Liaison Committee then made proposals for greater committee power over public appointments in September (again see *Monitor 49*). More recently, Commons Speaker John Bercow used a Hansard Society lecture on 3 November to echo these calls, and propose greater power for committees to compel witnesses, and greater access to the plenary agenda for discussion of their reports. The inquiry is expected to involve informal seminars and a public evidence session, and to be completed before Easter.

Parliamentary boundaries review

The Parliamentary Voting System and Constituencies Act 2011 reduced the House of Commons from 650 to 600 seats. Under the new Rules, the Boundary Commissions must recommend constituency boundaries with much smaller variation: the electoral quota is 76,640 electors per constituency, plus or minus only 5 per cent. The 2011 Act specifies the following distribution changes: Wales loses a quarter of its constituencies, down 10; England will lose 31 constituencies, Scotland seven, and Northern Ireland two. The changes are huge, and pit MPs against each other as each party prepares for comprehensive reselection.

The boundary commissions started work in March, and the English, Northern Irish and Scottish commissions published their initial proposals in September and October. The Welsh proposals are to follow in mid-January. There are three rounds of consultation. The first 12-week consultation was in the autumn, with written representations and public hearings. Four weeks are then allowed for secondary consultation on the evidence received so far. The revised proposals are then subject to a final 8-week public consultation. The final recommendations will be laid before Parliament in October 2013, when MPs must vote to approve the new boundaries. That is a crunch point for the coalition. Labour is expected to vote against, so the government will rely on the support of Lib Dem MPs, even though they stand to lose around 10 seats from the boundary changes.

Fixed Term Parliaments Act 2011

The Fixed Term Parliaments Act was finally passed in September. It provides that the next general election will be held on 7 May 2015. The Prime Minister has no discretion to call an earlier election. The only circumstances in which an earlier election might be called are if two-thirds of all MPs vote for a mid-term dissolution; or following a successful vote of no confidence, if no alternative government can be formed within 14 days.

The bill had a difficult passage. In the Commons William Cash MP forced three divisions: on removing the provision for a two-thirds majority; on removing the 14 day cooling-off period; and to require each new Parliament to opt in to fixed terms. Following critical reports from the Commons Political and Constitutional Reform Committee, and the Lords Constitution Committee, the Lords were even more sceptical. Bill Cash's sunset clause was reintroduced by Lord Pannick QC, but this was agreed to. After two rounds of ping-pong a compromise was reached on a semi-sunset clause. This requires a committee to review the operation of the Act in 2020. The committee must be established in the second half of 2020, so after the experience of two fixed terms.

ELECTIONS



Electoral Commission reports on referendums

In October the Electoral Commission published its report on the 5 May AV referendum. Amongst other things, it noted that in future the government should consider the implications of holding referendums on the same date as other elections; make clear to electors who find themselves in the polling station queue at the end of the day that they are still eligible to vote; and ensure a sufficiently long period (16 weeks) between the announcement of polling day and polling day itself. The latter would ensure that the campaigns have enough time to fully present their arguments to the electorate. The Electoral Commission did, however, praise the handling of the vote.

This followed the Commission's earlier report on the 3 March Welsh referendum on devolved powers, which highlighted a number of concerns, such as how to ensure that publicly funded bodies like local councils did not influence the campaign. There was already a ban on these bodies producing referendum material in the last 28 days of the campaign, but in 2004 the Commission had recommended that this ban be extended to the whole campaign period. The Welsh government did undertake a voluntary ban, but the UK government declined to include this in the Parliamentary Voting and Constituencies Bill which set up the 5 May AV referendum.

Impact of individual voter registration

The government's draft Individual Electoral Registration (IER) bill was published in October. While the introduction of IER was widely welcomed as a means of tackling electoral fraud, a number of concerns were raised. Responses to the draft bill from Unlock Democracy, the Labour Campaign for Electoral Reform and the Electoral Commission were critical of two proposals in particular: scrapping the legal duty to register—which Unlock Democracy said will cause millions to fall off the register—and scrapping the 2014 canvass. The Electoral Commission also noted that any changes should be accompanied by an effective public awareness campaign. The next step is pre-legislative scrutiny of the draft bill.

DEVOLUTION



Scotland

Scottish politics still consists of a distracting combination of two things: a fixation with the constitution sitting alongside the day-to-day business of Scottish government. In First Minister's Questions (FMQs) on 4 November, we saw yet again opposition party calls for a quick decision on the timing and content of the independence referendum (rebuffed by Alex Salmond). On 17 November, in a variation on the same theme, the SNP, Labour and Tory party leaders (the Liberal Democrats no longer have enough seats to participate in the same way) pursued a futile argument about who—the Scottish or the UK government—was responsible for the latest figures on youth unemployment.

This type of superficial ping-pong leaves very little room for meaningful engagement on the more substantive issues of policy; although, of course, FMQs would never serve that purpose anyway. For example, the Scottish government published its Alcohol Minimum Pricing Bill on 1 November and continues to pursue an agenda on sectarian songs sung in football stadia (these are the high profile issues; also remember the more humdrum day-to-day business of government). The party-political agenda was overshadowed by an independence-related event that came out of nowhere, when a couple that won £161 million in the EuroMillions lottery gave £1 million to the SNP to aid the referendum campaign (note that the SNP and Labour now spend just over £1 million each in Scottish Parliament elections). This came in a period when Alex Salmond was cleared of any wrongdoing over the knighthood granted to the SNP's largest single donor, Brian Souter.

These are also testing times for the Scottish-UK relationship. Scottish ministers now seem more likely to criticise publicly their UK counterparts on policy decisions (although we should not exaggerate the frequency or intensity of such disagreements). Most notably, Scottish Finance Secretary John Swinney has accused UK ministers of 'relishing' the 30 November public sector strike over pensions. This reaction is based on two main factors. First, Swinney accused the UK government of obliging the Scottish government to emulate their pension decision by threatening to withhold funding. Second, the Scottish government had just managed to avert a teacher strike on the issue of pay and conditions. Elsewhere, Education Secretary Mike Russell reiterated the Scottish government's opposition to higher education tuition fees when discussing the likely average charge to students from the rest of the UK studying in Scotland; Culture Secretary Fiona Hyslop accused the UK government of 'short-changing Scotland on the licence fee' following the announcement of BBC job losses in Scotland; and Kenny MacAskill also continued the SNP's plans to cement the status of Scotland's High Court of Justiciary in the Scotland Bill, to address their argument that the UK Supreme Court is playing an inappropriate role in Scottish criminal justice.

Dr Paul Cairney, University of Aberdeen

Northern Ireland

In November the devolved government at Stormont finally agreed a draft Programme for Government—the first since 2008, even though the Belfast agreement provides for an annual programme. It is a story of political nettles not grasped: many targets and aspirations, but few significant policy initiatives. There are references to a raft of pre-existing strategies, and proposals for several more, but none is elaborated.

Apart from long-delayed initiatives linked to public administration reform which began in 2002, the only legislation proposed for the coming three years is on outlawing age discrimination in goods and services, levying a charge on plastic bags and improving access to justice—as well as reducing corporation tax, if Westminster were to agree. The last programme declared the economy to be the executive's priority. But no actual economic policy emerged until a draft was published alongside the draft programme.

And the Programme contains big gaps. There is no mention of the deadlock between the Democratic Unionist Party and Sinn Féin on the '11+' examination, condemning more parents and teachers and yet more cohorts of primary schoolchildren to the chaos of the unregulated tests. Nor has the executive been willing to face up to the need to charge for water. Charges are to be deferred for another three years, which continues to cost the executive a huge £200 million a year, with knock-on effects on the health budget reflected in rising waiting lists.

Part of that could fund the Green New Deal programme for renewal agreed by the trade unions, the employers and the voluntary sector.

But the parties argue that what will turn the trick is reducing corporation tax to the 12.5 per cent applied in the Republic of Ireland, despite contrary evidence from development agencies on both sides of the border. Were the Treasury to accept the executive's plea, it would represent a further blow to the devolved budget of some £300 million.

This self-imposed stringency is compounded by the failure, finally, of the executive to tackle the costs arising from sectarianism—estimated in a report commissioned under direct rule, which Sinn Féin ministers sought to suppress in 2007, at up to £1.5 billion a year. The only reference in the draft programme is to a pledge to 'substantially increase' by 2015 the number of existing schools sharing facilities—but not to integrate education as such, despite the clear popular support for such a measure manifested in opinion surveys.

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

Wales

The most important development to affect Wales during the autumn (apart from the Rugby World Cup) was the establishment of the long-promised 'Calman-style' Commission on Welsh Devolution. The birth of the Commission was a protracted affair, with much haggling between Cardiff and London, and between the political parties in Wales. Unlike Calman (which reported to both the Scottish Parliament and UK government), it is a creature of the UK government only. Its chair is to be Paul Silk, formerly Clerk of the National Assembly. Its party-political members are Sue Essex (Labour), Nick Bourne (Conservative), Eurfyl ap Gwilym (Plaid Cymru) and Rob Humphreys (Lib Dem). The independent members are Dyfrig John, formerly chief executive of HSBC, and Noel Lloyd, formerly vice-chancellor of Aberystwyth University.

The Commission is to look at financial matters between September 2011 and July 2012, and then in the second year of its work to turn to constitutional ones. Its terms of reference have been carefully framed. Its financial remit includes fiscal issues and the Calman notion of 'financial accountability', but excludes issues concerning borrowing powers, the size of the block grant and 'fair funding', which the Welsh government plan to pursue government to government. Labour clearly remain opposed to devolved powers over taxation, but are willing to allow them to be considered while they address more pressing issues directly with the UK government.

The constitutional remit excludes all electoral issues (the size of the Assembly and the voting system), and will address only whether extra functions should be devolved. To keep Plaid Cymru on board, the terms of reference talk about the 'UK's fiscal objectives', but not the importance of maintaining Wales as part of the UK (as Calman's did for Scotland).

The Commission has now issued a call for evidence about financial matters, seeking submissions by 3 February 2012. Its website is <http://commissionondevolutioninwales.independent.gov.uk/>

Beyond the Silk Commission, the main event has been the Welsh government's budget. This was voted down on the first two occasions it came before the National Assembly, but was approved the third time on 25 November after the Labour administration reached a deal with the Liberal Democrats, with an extra £20 million to be spent on a 'pupil premium' for poorer pupils. Both Plaid Cymru and the Conservatives unsurprisingly denounced the deal, with Plaid saying that the Lib Dems had been bought cheaply.

Alan Trench is author of the 'Devolution Matters' blog:
<http://devolutionmatters.wordpress.com/>

COURTS AND THE JUDICIARY



The Justice and Society Green Paper

The government's Justice and Society Green Paper proposes to introduce a statutory procedure for dealing with secret material in civil litigation. At present, under Public Interest Immunity, such material can be excluded on public interest grounds but must be made available to both parties if a litigant intends to rely upon it. In the *Al Rawi* case the Supreme Court refused to allow secret material to be heard by the judge in a closed procedure, holding that this would constitute a restriction of the fundamental common law concept of a fair trial. Such a change could only be implemented through legislation and so the Green Paper has been introduced.

The Green Paper advocates the use of Closed Material Procedures, in which sensitive material is kept from the public and litigants through the use of Special Advocates. This approach is already used in some other contexts, most notably the Special Immigration Appeals Commission (SIAC). In SIAC, Special Advocates are security vetted and act for the litigant within the secret part of the litigation process, but are not permitted to disclose secret information to her or to take further instruction from her after the Advocate has seen the secret material. The Green Paper also canvasses opinions on the use of secret material in a number of other contexts.

The Joint Committee on Human Rights has written to the Justice Secretary with a series of questions. It is worried about the scope of the proposals, noting that the Green Paper defines 'sensitive information' simply as information which is likely to cause harm to the public interest if disclosed and while including security and crime issues, also refers to the economic well-being of the country in this context. Were a statute to be defined so broadly, the government might well be able to rely on the secret procedure in quite a large proportion of cases in which it is a litigant. Delivering the Atkin Memorial Lecture recently, Dinah Rose QC (who acted for one of the litigants in the *Al Rawi* case) castigated the proposals as the erosion of a fundamental common law right and, by insulating some aspects of the evidence from full challenge, a fundamental aspect of the adversarial trial.

Should the proposals in the Green Paper progress any further, it seems that any resultant legislation will at the least have to be much more narrowly drawn.

FREEDOM OF INFORMATION



Sir Gus O'Donnell on the 'chilling effect'

In November, Cabinet Secretary Sir Gus O'Donnell gave evidence to the Commons' Public Administration Select Committee's inquiry into the Role of the Head of the Civil Service. Sir Gus expressed grave concerns for free discussion due to the Freedom of Information Act.

Echoing former Prime Minister Tony Blair who said that FOI was 'not practical', Sir Gus told the Committee the Act has 'hamstrung'

government and full and frank discussion is stymied. 'If asked to give advice, I'd say I can't guarantee they [ministers] can say without fear or favour if they disagree with something, and that information will remain private, because there could be an FOI request'.

This is the proverbial 'chilling effect': opinions are not shared for fear of later ridicule and decisions and discussions are inadequately recorded, or conducted so informally as to prevent easy recording. 'Proper discussions' are silenced, or replaced by chats in the corridor, texts or phone calls.

All the Unit's research on FOI has tried to look into whether the chilling effect exists, but it is a very slippery concept. The first problem is that people will not necessarily admit doing it. Not taking records contravenes good practice and all sorts of codes of conduct and ethics and most officials fear the consequences of not having a record rather than of having one.

The second problem is one of cause and effect: how to know it is FOI's fault? Sir Gus' concerns relate to leaks as much as FOI: one interviewee in a local authority told Unit researchers how they had to stop using paper headed 'confidential' as it was 'automatically' leaked. Resources can determine how or if minutes are taken, and decision-making styles change. Tony Blair was a big fan of 'sofa government' which is not necessarily conducive to a clear audit trail, as a succession of investigations into Iraq has shown. Most difficult of all, as many officials and politicians revealed, the 'politics' of a decision is 'always off paper'.

Why records look how they do depends on many different things, some of which are outside individual civil servants' or ministers' control, but FOI appears to be a proxy for lots of concerns. Concrete examples exist and politicians from local authorities to Michael Gove and Sarah Palin are alleged to have tried all sorts of tactics—from denying meetings took place to switching to private email (which is actually still covered by FOI). The Unit concluded that FOI can have an influence occasionally but there is no systematic 'chilling'- FOI is bound up in a range of other factors and most ministers and officials are far too busy to worry about FOI.

CHURCH AND STATE

The Archbishop of Canterbury's political presence

Church-state relations have been back in the news owing to a number of high-profile political interventions by the Archbishop of Canterbury. In recent months, Rowan Williams has called for a so-called 'Robin Hood tax' on financial trading, warned on the causes of last summer's riots, and challenged Zimbabwe's President Robert Mugabe on alleged human rights abuses. Along with the Archbishop of York, he also questioned the case for a substantially elected House of Lords and backed a letter signed by 18 bishops calling for changes to the government's Welfare Reform Bill. These interventions came hot on the heels of an article for the *New Statesman* in June, in which Williams questioned flagship government policies on health, education and welfare.

It is nothing new for Archbishops of Canterbury to comment on politics. *Turbulent Priests?*, written by Constitution Unit researcher Daniel Gover and published by the think tank Theos, documents the political interventions of the three most recent Archbishops. Between 1980 and 2010, the three men engaged in political debate on a wide range of policy topics, including urban poverty, asylum and immigration, armed conflict, education, climate change, traditional morality and religious issues.

Three significant objections that may be made against the Archbishops' involvement in politics are: that they were motivated primarily by the Church of England's institutional interests; that their moral vision was outdated and unrepresentative of modern Britain; and that their contribution was irrelevant and superfluous to mainstream political debate. *Turbulent Priests?* argues that each of these criticisms is ultimately unpersuasive and that the three Archbishops have in fact succeeded in making a distinctive and valuable contribution to English political debate. Although this conclusion cannot settle questions about the proper constitutional place of the Church of England, it can and should inform the debate. *Turbulent Priests?* can be downloaded at www.theosthinktank.co.uk

INTERNATIONAL FOCUS



New Zealand's general election and electoral system referendum: more of the same, please

New Zealand held a general election on 26 November, the seventh election to be held under the multi-member proportional voting system (MMP). National, the key incumbent party, secured 48 per cent of the vote, or 60 seats in a parliament of 121 seats. This replicates the results of the 2008 election, and there is little doubt that National will form a government with support (again) from two smaller centre-right and right parties, United Future and ACT, and perhaps the weakened Maori Party.

Labour did poorly again, securing 27 per cent of the vote, or 34 seats. It was a mixed bag for the smaller parties, with both ACT and the Maori Party losing votes; and the Greens winning 10.6 per cent of the vote, or 13 seats. The real surprise of the election was Winston Peter's NZ First Party, which had been wiped out at the 2008 election. It won 7 per cent of the vote, or 8 seats.

A multi-question referendum was also held on the electoral system. The first question asked whether or not electors wished to retain MMP; the second question set out four alternatives, including first past the post (FPTP) and the supplementary member system. 58 per cent of those voting were in favour of retention, 42 per cent voted for change. 47 per cent of those indicating a preference for a different voting system voted for a return to FPTP.

PEOPLE ON THE MOVE

Lord Phillips has retired as President of the Supreme Court. The process to appoint Lord Phillips' successor will begin in this year. **Ann Abraham** has retired as the Parliamentary Ombudsman, and is succeeded by **Dame Julie Mellor**, a partner at PriceWaterhouseCoopers, and previously chair of the Equal Opportunities Commission. **William Nye** became Principal Private Secretary to the Prince of Wales in September, in succession to **Sir Michael Peat**. He was previously Director of the National Security Secretariat, Cabinet Office. **Judith Simpson** has retired from the Cabinet Office, where she has worked on constitutional issues for 13 years, having been a leading member of the Constitution Secretariat in 1997. **Richard Heaton** is to be First Parliamentary Counsel, on the retirement of **Stephen Laws**. Following the October Shadow

Cabinet reshuffle, **Angela Eagle** is now Shadow Leader of the House of Commons, replacing **Hilary Benn**, and **Lady Scotland** has been replaced by **Emily Thornberry** as Shadow Attorney General.

CONSTITUTION UNIT NEWS

Clegg implements Constitution Unit recommendations on SPADs

Following recommendations in our report into coalition government, the Deputy Prime Minister has announced six new Liberal Democrat advisers will be placed in government departments. In Clegg's central team, Neil Sherlock has been appointed as Director of External Affairs in the Cabinet Office.

The report, by Prof Robert Hazell and Dr Ben Yong, suggested that the Liberal Democrats have spread themselves too thinly and require additional resources to extend their influence, including more special advisers, expanded Private Offices, and additional support for the parliamentary party. The report is part of a one-year project into monitoring the new coalition government in the UK sponsored by the Nuffield Foundation.

Committee appearances

The Constitution Unit's Honorary Senior Research Fellow Bob Morris gave evidence to the Political and Constitution Reform Committee in November. The Committee was holding a session to investigate the implications of changing the rules of succession to give girls the same rights to the throne as boys, as well as giving monarchs the right to marry Roman Catholics. See <http://www.ucl.ac.uk/constitution-unit/constitution-unit-news/101111>

Constitution Unit Deputy Director Dr Meg Russell gave evidence to the Joint Committee on the Draft House of Lords Reform Bill in October. Dr Russell drew on her extensive research into the House of Lords and elected second chambers abroad to answer questions about the potential effects of the coalition's plans for Lords reform. See <http://www.ucl.ac.uk/constitution-unit/constitution-unit-news/311011>

Devolution

In partnership with The Constitution Unit, The Institute for Government organised a major conference on devolution on 23 September. Senior officials from the UK and devolved administrations, as well as academics and other experts, discussed key issues relating to the changing context of devolution, lessons from the first decade, the difficulties of making and coordinating policy across a devolved UK, and the management of relations between the administrations. See <http://www.instituteforgovernment.org.uk/our-work/c5/45/the-future-of-devolution>

FOI and local government

The Unit's two-year, ESRC-funded project investigating the impact of the Freedom of Information Act upon English local government ended in November. This is the first study to look comprehensively at how requesters, the media and FOI officers have changed the landscape of local government via the estimated 700,000 requests made since 2005. A Unit report has been published (see <http://www.ucl.ac.uk/constitution-unit/publications>) based on interviews conducted with 15 different local authorities, media analysis and surveys of journalists and FOI officers. Local government has always been open, but FOI has pushed new areas into the limelight, changing accountability priorities. The context of local media relations and local leadership mean FOI's

impact is not uniform, and some councils have embraced FOI more easily – and willingly – than others. FOI is also working with other innovation such as Open Data and online publication.

FOI and universities

In October, Unit researchers began looking at FOI and the Higher Education sector in the UK, after winning funding from the Leverhulme Trust. Universities' access to public funds is changing, and their competitive commercial environment has been acknowledged by the ICO as presenting difficulties for managing FOI. Royal Society president Sir Paul Nurse argues requests from tobacco companies for smoking data and climate-sceptics' requests illustrate the 'harassment' of researchers through FOI. The project will look at the realities of universities being subject to FOI beyond research: has corporate governance or decision-making changed? Are students benefitting from increased transparency? It will also look at the other side of the coin: the use academics have made of FOI in their own research, touted as a potential boon when the Act was passed but which is so far untested. The project runs until June 2012.

Tribute to James Cornford

James Cornford, co-founder of the Constitution Unit and chair of its Advisory Committee, died in September. James had a longstanding interest in constitutional reform, first awakened when he was a young Professor at Edinburgh, and later developed when he was director of the Outer Circle Policy Unit in the late 1970s. OCPU did pioneering work on devolution and drafting of a freedom of information bill, and James later became chair of the Campaign for Freedom of Information. He was the founder and first director of the Institute for Public Policy Research, and while there assembled a team of lawyers to draft a written constitution, published with a detailed commentary as *A Written Constitution for the UK* (IPPR, 1991).

In 1995 James persuaded Robert Hazell to leave the Nuffield Foundation and start a project producing detailed plans for the implementation of Labour's and the Liberal Democrats' constitutional reform proposals: devolution in Scotland and Wales, Human Rights legislation, reform of the House of Lords, freedom of information, referendums, regional government in England. In its first 18 months the Constitution Unit produced seven detailed reports on all these topics, with James reading and commenting on them all.

James was a delightful chair of the Unit's Advisory Committee, teasing and charming in equal measure formidable public servants like Sir Kerr Fraser and Sir Kenneth Bloomfield, politicians like Tony Wright, and journalists like Andrew Marr. He was full of fun and mischief, but underlying that was a real seriousness of purpose, and a capacity to puncture any kind of humbug or sloppy thinking.

James was the inspiration and founder of many organisations, of which the Constitution Unit is but one. For a fuller account of his life, see his obituary in *The Guardian* at <http://www.guardian.co.uk/politics/2011/oct/05/james-cornford-obituary>.

Constitution Unit Staff Update

Research Associate Dr Meghan Benton left the Constitution Unit at the end of December to take up a position as Policy Analyst at the Migration Policy Institute in Washington D.C. Meghan spent three years at the Constitution Unit, where she worked on a range of parliament projects.

Interns As ever, the Unit is indebted to its interns for all their hard work and support. Last autumn, these were Shyam Kapila, Jennifer Kataros, Ashley Palmer and Orlanda Ward.

Bulletin Board Constitution Unit Newsletter

Constitution Unit Events

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

- **Wednesday 11 January, 1.00 pm**
Prof Ron Johnston (University of Bristol), David Rossiter and Charles Pattie will discuss the implications of the draft proposals for redrawing parliamentary boundaries.
Venue: Council Room, The Constitution Unit
- **Monday 20 February, 1.00 pm**
Prof Dame Hazel Genn will discuss judicial diversity in England and Wales.
Venue: Council Room, The Constitution Unit
- **Tuesday 22 May, 6.00 pm**
Lord Adonis and Mayor of Hackney Jules Pipe will discuss elected mayors and the viability of extending the practice across the country.
Venue: Council Room, The Constitution Unit

Seminars are free and open to all. Please check our website regularly, as more seminars are still to be added to the 2012 series.

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

Missed an event?

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

Highlight: 'Britain in Europe'.
UCL Visiting Professor Rt Hon Jack Straw gave his inaugural lecture in December. Find the transcript and video at http://www.ucl.ac.uk/public-policy/events/Jack_Straw

Constitution Unit Publications

- Meg Russell, 'Never Allow a Crisis Go To Waste: The Wright Committee Reforms to Strengthen the House of Commons' *Parliamentary Affairs* 2011 64(3) <http://pa.oxfordjournals.org/content/64/4/612.full.pdf+html>
- Ben Worthy and Gabrielle Bourke *The Sword and the Shield: The Use of FOI by Parliamentarians and the Impact of FOI on Parliament* <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/154.pdf> 6 September

Publications of Note

- K. Dunion, *Freedom of Information in Scotland in Practice* Dundee University Press, 2011
- R. Williams and A. Paun, *Party People: How do—and how should—British political parties select their parliamentary candidates?* Institute for Government, 14 November 2011
- P. Darbyshire, *Sitting in Judgment: The Working Lives of Judges* Hart, October 2011
- J. Elvidge, *Northern Exposure: the first twelve years of devolved government in Scotland* Institute for Government, 23 September 2011

STOP PRESS: UCL RECRUITING NEW LECTURER

At time of going to press, UCL planned to advertise for a new Lecturer in British and/or Comparative Politics starting September 2012. We encourage applications from those with research complementing the Constitution Unit's agenda. Applicants will need an excellent research and publications record. Watch the Unit's website for more details.

Unit in the Press

Questioning the Queen's religious role opens a real can of worms – [politics.co.uk](http://www.politics.co.uk) <http://www.politics.co.uk/blogs/2011/12/07/questioning-the-queen-s-religious-role-opens-up-a-real-can-o> (7 December)

Councils answer more information requests at lower cost – Martin Rosenbaum on BBC News (10 November) <http://www.bbc.co.uk/news/uk-politics-15665275>

When the Supreme Court won't hear – The Guardian (3 November) <http://www.guardian.co.uk/law/2011/nov/02/when-the-supreme-court-says-no>

Alan Trench – The Electoral Commission would have no power to act – The Scotsman (3 November) http://www.scotsman.com/news/politics/alan_trench_the_electoral_commission_would_have_no_power_to_act_1_1944201

The House of Lords still drips with gold, but much has already changed – The Guardian (2 November) <http://www.guardian.co.uk/politics/2011/nov/02/house-lords-gold-gothic-changed?newsfeed=true>

Bob Morris Letter to The Times: *Should the Law on Royal Succession be Changed?* 17 October (behind paywall) <http://www.timesplus.co.uk/tto/news/?login=false&url=http%3A%2F%2Fwww.thetimes.co.uk%2Ftto%2Fnews%2Fuk%2Farticle3192842.ece>

Meg Russell on *In Defence of Politics*, BBC Radio 4, 26 September <http://www.bbc.co.uk/programmes/b015fb6c>



The Constitution Unit



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www.constitution-unit.com

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