Monitor

The Constitution Unit Bulletin
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The Government has announced not one, not two, but potentially three reviews of voting systems to coincide with the delivery of the report of the Independent Commission on PR. The Constitution Unit established the Commission in summer 2002 to help fulfil Labour's manifesto commitment to review the experience of Britain's new voting systems before assessing whether changes might be made to the electoral system for the House of Commons. The Commission's report will now be followed by the Government's own review (see page 9), which Lord Falconer has said is to be open to outsiders and not a purely internal exercise. Following a surprise announcement by Alistair Darling on 9 February, it will also be followed by a review of the four different voting systems in Scotland, and of the consequences of different constituency boundaries between Westminster and Holyrood; and possibly by a review of the voting system for the National Assembly for Wales.

The PR Commission has been jointly chaired by Peter Riddell and David Butler, with Robert Hazell as vice-chair and the Unit's electoral expert Simon King as secretary. The Commission includes electoral experts and members from all parties, some supporting PR and some first-past-the-post, but with most being uncommitted in the debate over electoral systems. The dominant theme in the Commission's report is the extent of change in British elections in recent years. First-past-the-post is no longer the sole, or even the predominant, system. Voters in London, Scotland, Wales and Northern Ireland are as likely to use PR systems in elections as first-past-the-post.

Each of the new bodies set up since 1997 has used a different means of electing its members. The Scottish Parliament, Welsh Assembly and Greater London Assembly are elected by AMS, using a combination of constituency and list members. Since 1999 the European Parliament has been elected by regional list PR, using closed lists. The London Mayor and other directly elected mayors are elected by the preferential Supplementary Vote. The Northern Ireland Assembly is elected by STV, and Scotland is introducing STV for local Government elections from 2007. That leaves only the House of Commons, and English and Welsh local Government elections using first-past-the-post.

The PR Commission's report begins by explaining the five different electoral systems now used in the UK, and discusses their strengths and weaknesses, and it concludes with a long chapter summarising the implications for any change in the voting system at Westminster. There is no ideal electoral system, but the experience of new voting systems in the UK helps to undermine some widely-held myths on both sides of the debate. There is no evidence that PR is too complicated for voters, or that the resulting coalition Governments in Scotland and in Wales are necessarily weak or ineffective. On the other hand, low turnout in all the PR elections held so far contradicts the claims of advocates that PR helps to increase turnout.

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Labour in Scotland and in Wales has become increasingly concerned about list members, the additional members elected to provide greater proportionality who overwhelmingly come from the opposition parties. These concerns erupted in a report of the Commons Scottish Affairs Committee on parliamentary constituency boundaries in Scotland (HC 77, 3 February—see page 8), and in the Commons Second Reading debate on the Scottish Parliament (Constituencies) Bill on 9 February.

The Government's wider review of the new voting systems and the lessons they offer for the House of Commons is likely to be conducted in parallel with the Scottish and Welsh reviews. The Government will reach conclusions in the new Cabinet committee on Electoral Policy (MISC 24), which is chaired by Peter Hain. They have run out of time to implement the Electoral Commission's legislative agenda before the next election, so they now have time for other electoral matters.

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The Government has obtained the support of the judiciary for the new Judicial Appointments Commission, but is running into difficulties with its plans for a new Supreme Court. The Lord Chief Justice, Lord Woolf, dismissed it as a second class Supreme Court in a lecture in Cambridge on 3 March, and the House of Lords has decided, on a motion laid by Lord Lloyd (a recently retired law lord) to refer the bill to a Select Committee. This would follow the recommendation of the Commons Select Committee on Constitutional Affairs, which has questioned the need for haste and called for the legislation to be brought forward in draft, especially on the new Supreme Court. This was one of the conclusions of the committee's inquiry into Judicial Appointments and a Supreme Court, published on 10 February (HC 48).

At the time of writing the passage of the Constitutional Reform Bill through the Lords was uncertain. It has three purposes: to abolish the office of Lord Chancellor, set up an independent Judicial Appointments Commission, and establish the new Supreme Court. The Lord Chancellor was seen as embodying the constitutional conscience of the Government, and guarding the rule of law; and the judges are worried that those values will be thrown away together with his office. Their concerns have surfaced again and again in House of Lords debates which are summarised below.

After lengthy negotiations, the Lord Chancellor and Lord Chief Justice announced a concordat to the House of Lords on 26 January. The LCJ will take on most of the Lord Chancellor's functions as head of the judiciary. These include the education and training of judges, their individual deployment, judicial discipline and conduct. The Secretary of State will share responsibility for complaints and discipline, and the Government will remain responsible for the administration of the courts. Ministers will be placed under a general statutory duty to respect and maintain judicial independence, and the Constitutional Affairs Secretary under a specific duty to defend and uphold the independence of the judiciary.

Lord Falconer made a statement about the new Supreme Court on 9 February, heralding the proposals subsequently published in the Constitutional Reform Bill. The court's jurisdiction would remain unchanged from the House of Lords, save that it would take over devolution issues from the Privy Council. Supreme Court justices and other senior judges like the Lord Chief Justice would no longer sit in the House of Lords.

On 12 February the Lords held a full debate. Most speakers opposed abolition of the office of Lord Chancellor. Four law lords who spoke also opposed the plans for the new Supreme Court. The law lords who favour the new Supreme Court, led by the senior law lord Lord Bingham, believe that judges should not speak in Lords debates on matters of political controversy. The risk is that by not speaking their case will go by default.

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Labour-heavy list just before the bill removes most of the prime minister's remaining patronage powers is certain to be viewed critically. However the Government is increasingly concerned about its dwindling numbers in the House of Lords, with four Labour peers having died in January and February alone.

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The House of Commons Modernisation Committee is conducting an inquiry on connecting Parliament with the public. This topic, linked to concerns about falling public engagement with politics, as well as the opportunities created by new technology, was adopted by the committee when Robin Cook was chair, and is now being taken forward by Peter Hain.

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The West Lothian Question (WLQ) had been a major issue in pre-devolutionary debates but was pushed to the fringes of politics after devolution was established. However, in the last quarter it has returned to the fore not only at Westminster but in Scottish politics. The role of Scottish MPs at Westminster was highlighted by three issues: the vote on NHS Foundation Hospitals; the vote on the Higher Education Bill; and Conservative calls for constraints on Scottish MPs. Added to this has been the continuing issue of redrawn boundaries for Westminster constituencies.

The Conservatives have seen an opportunity with Labour MPs voting for policies which have been rejected by the Scottish Parliament. During the last Parliament, William Hague vainly tried to make this an issue but there were no high profile cases exemplifying the problems associated with the WLQ. The return of the Blair Government in 2001 with another substantial majority suggested that WLQ would not emerge in this Parliament but the extent of Labour rebellions and consequent need for the Government to rely on its Scottish MPs has ensured that this issue has emerged.

Related to this has been discussion on higher educational finance. An enquiry early in the last Scottish Parliament recommended a different policy from south of the border, a move thought likely to have cross-border implications. This policy will now need to be looked at again in light of the spill-over consequences of the Higher Education Bill going through Westminster. Funding of higher education remains a contentious issue across the UK but is proving to have particular effect because of devolved government.

www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland_february_2004.pdf

Due to European enlargement West Wales and the Valleys will lose their Objective One status in 2006 but will continue to receive 75% of current £1.2 billion funding levels—approximately £931 million—between 2007 and 2013. This was announced as part of the European Commission's new 'Convergence Fund'. This will replace the current structural funds at the end of 2006 as a result of the EU's expansion from 15 to 25 members. While West Wales and the Valleys remain below 75% of the average GDP of the current 15 member states, the percentage will rise above the 75% when the East European accession states join.

Meanwhile, on the basis of confidential Government figures, Carmarthen Plaid Cymru MP Adam Price claimed that the Assembly Government had spent less on European projects than the Conservatives did in the three-year period pre-devolution. The figures obtained from the DTI show that an annual average of £153.4 million was spent on Wales between 2000 and 2002, compared to £172.275 million in 1994–9. He also claimed that the statistics show that in the first three years, the average annual spend on Objective One in West Wales and the Valleys has been almost 50% less that the average figures pledged before the start of the programme.

However, Assembly Government Economic Minister, Andrew Davies said the figures were not comparing like with like. "The Objective One programme was not approved by the Commission until July 2000 and consequently virtually nothing was spent during that year," he said. "It is therefore not surprising that spend was lower during 2000–02 compared with the old programme."

Ahead of the Richard Commission's report on

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There was progress on developing a community-relations strategy—to address the polarisation on the ground, as against at Stormont. And a nettle was finally grasped with the announcement that selection at 11 would be abolished—albeit not until 2008.

www.ucl.ac.uk/constitution-unit/monrep/ni/ni_february_2004.pdf

With referendums in the three northern regions eight months away, there are signs that the public debate might be coming to life. January saw the Deputy Prime Minister tour the northern regions by rail. The tour included large meetings in Manchester, Leeds and Newcastle. The Manchester event saw over 400 people attend, with others being turned away.

At the same time, the Deputy Prime Minister made the first tentative moves to promote a new economic agenda for the three northern regions, focused on the creation of a northern growth corridor ('the Northern way') linking the major cities and designed to provide a counter-balance to recently announced growth plans in the South. This is likely to prefigure special treatment for the North in the Chancellor's forthcoming Spending Review.

The Government announced a series of hearings would be held in each of the Northern regions designed to elicit views about the proposed powers of the Assemblies, with ministers hinting that a stronger package than that outlined in its white paper, *Your Region, Your Choice*, will be unveiled in the draft bill later

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On 5 January the Commons Public Administration Committee published a draft

members confirmed him as their choice for candidate, some 93% voting in favour of Livingstone.

The leading threat to Livingstone will come once again from Steven Norris of the Conservative Party, with Simon Hughes MP standing for the Liberal Democrats. Small parties such as the BNP and the socialist 'Respect Coalition' may be able to gain a seat on the Assembly, and with it a platform though little power.

Voters in the North West, North East and Yorkshire and the Humber are facing referendums on regional assemblies in the autumn, currently planned for 21 October 2004. The Government will hold a vote at the same time on the options for moving from two tier local authorities to single tier unitary councils. The Boundary Committee's period for consultation on its draft recommendations for

In a recent case (Durant v Financial Services Authority), the Court of Appeal gave a decision on important issues of law concerning the definition of "personal data". Mr Durant had appealed to the Court against a refusal by the FSA to give him access to certain manual files.

Firstly, the Court ruled that to be considered personal under the Data Protection Act, information must have the individual as its focus and affect an individual's privacy, whether in his personal or family life, business or professional capacity.

Secondly, the Court ruled that when information is processed manually, it is only covered by the Act if the manual files are of sufficient sophistication to provide the same or similar ready accessibility as a computerised filing system.

The effect of the Court's judgement is to narrow significantly the rather wider interpretation to "personal data" previously given by the Information Commissioner. The Commissioner has now issued revised guidance.

www.informationcommissioner.gov.uk/eventual.aspx?id=5152

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days; and remove the £600 limit on the cost of providing information in complex cases involving significant issues of public interest.

www.gcreview.gov.uk

The Constitution Unit and Capita are holding two half-day **workshops** on Freedom of Information. The first is on 5 April 2004, at the Queens Hotel in Leeds and then on 7 April, Copthorne Tara Hotel, London. There will be workshops led by relevant experts on three key themes—training, working with journalists and dealing with environmental information.

The Constitution Unit's annual **Freedom of Information Conference** takes place on 12 May 2004. The Information Commissioner and the Department for Constitutional Affairs are joint sponsors of the conference. Key speakers will include Lord Filkin, the Minister in charge of FoI, Anand Satyanand (New Zealand Ombudsman), Richard Thomas (Information Commissioner) and Andrew McDonald, Constitution Director at the DCA.

For more information about both events contact Samantha Boyle:
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www.ucl.ac.uk/constitution-unit/foidp/events.htm
www.capita-ld.co.uk/conferences

Simon King, the Unit's senior research fellow in electoral issues, left in March 2004 to join Hedra, a management consultancy.

The Constitution Unit is looking for volunteers to help with its thriving publication sales department. We need a few people (2 or 3) to help out once a month in the processing and packaging of publication orders. We cannot offer a salary but can offer a year's free subscription to all new Unit publications and unlimited access to our back catalogue. Anyone interested should contact our Administrator Helen Daines on 020 7679 4902 or h.daines@ucl.ac.uk

The EU summit held in December 2003, originally intended to finalise agreement on the EU constitution, ended in failure. The talks collapsed as a result of a disagreement between Spain and Poland on the one hand and Germany and France on the other over the contentious issue of voting rights in a post-enlargement EU. The Nice Treaty signed in 2000 handed Poland and Spain 27 votes each in the Council of Ministers, compared to the 29 that Germany and France obtained. This gave Poland and Spain disproportionate voting rights relative to their populations—something that Germany and France were unhappy about. They wanted to use the process of drafting a constitution to increase their voting powers to reflect their larger populations and, particularly in the case of Germany, their financial contribution to the EU.

The draft EU Constitution sought to simplify the voting arrangements agreed at Nice, and advocated a 'double majority' system whereby a vote is passed when it secures the support of 50% of EU member states, representing 60% of the EU's population. Poland and Spain argued that such a proposal would see them lose the voting powers they gained at Nice and give too much power to the larger member states. They therefore refused to accept the draft Constitution. The absence of an agreement at the December EU summit will not affect enlargement, which will go ahead in May, using the voting arrangements agreed at Nice. (The Nice voting rules were always intended to be used until 2009).

The debacle on voting rights obscured the fact that on many other issues relating to the EU constitution agreement had been reached. The UK Government were particularly pleased with what had been agreed, claiming that it had adequately protected its 'red lines' on issues like taxation and defence.

The Presidency of the EU now lies with Ireland and Taoiseach Bertie Ahern has made reaching an agreement on the EU constitution his top priority. He will report to a summit in Brussels in March on the level of progress that has been achieved. However, at this stage agreement still seems unlikely as Poland have given no indication that they are prepared to relinquish the gains they made at Nice.

Vernon Bogdanor ed. 2003, Oxford, Oxford University Press, xvi + 795pp + index, ISBN 0 19 726271 6, £55

There is no single book providing a coherent account of that elusive animal, the British constitution, in the twentieth century, but this magisterial history does much more than fill the gap. With contributions from eight lawyers, four political scientists, three historians and two parliamentary clerks, it provides a comprehensive and rounded account. With 800 pages at their disposal there is plenty of fascinating detail. And the century itself provides the story, because it was a century of extraordinary constitutional development, especially at the beginning and the end.

Vernon Bogdanor's opening and closing chapters set the scene, and the tone for the rest of the volume. At the beginning of the century, the Cabinet had 'no regular time of assembly nor fixed place of meeting…. There were no rules of order, no quorum, no agenda and no record or minutes of what was decided; and it was considered contrary to etiquette to take notes at a Cabinet meeting'. The Cabinet Office was established by Lloyd George in 1916 to take notes of Cabinet proceedings, and to co-ordinate the work of departments. Less well known is the relapse at the end of the century under Blair, with short Cabinet meetings and few papers or policy discussions. This led Lord Butler of Brockwell, his first Cabinet Secretary, to describe Cabinet meetings as having reverted to what they were in the eighteenth century, a meeting of political friends.

There are plenty of other echoes from the beginning of the century which still reverberate strongly at the end. Irish home rule raised all the political and constitutional issues which New Labour found itself facing when trying to introduce an asymmetrical scheme of devolution: not least the English Question. William Hague and Michael Howard have both proposed 'English votes on English laws' (also toyed with by Gladstone, and known in his day as the 'In and Out' rule). English votes on English laws would be a much bigger change than they recognise: it would amount in effect to the creation of an English parliament within the shell of the Westminster Parliament. They would do well to ponder the advice of their predecessor Winston Churchill (then a Liberal) in a Cabinet memorandum of 1911: 'It seems…absolutely impossible that an English Parliament, and still more an English Executive, could exist side by side with an Imperial Parliament and an Imperial Executive'. Substitute UK for Imperial, and the same advice could be given today. Churchill proposed as an alternative regional devolution within England, a solution to which modern day Conservatives are stoutly opposed.

The book is so full of riches that it is invidious to single out chapters for special mention. The other contributors are Geoffrey Marshall on the theory and interpretation of the constitution, Rodney Brazier on the monarchy, Anthony Seldon on the Cabinet system, Paul Seaward and Paul Silk on the House of Commons, and Rhodri Walters on the House of Lords. Vernon Bogdanor writes again on the civil service, Diana Woodhouse on Ministerial responsibility, Robert Stevens on Government and the Judiciary, Jeffrey Jowell on administrative law, and David Feldman on civil liberties. John Curtice writes on the electoral system, Martin Loughlin on the demise of local government, Clive Emsley on the police, Brigid Hadfield on the UK as a territorial state, Robert Holland on Britain, Commonwealth and the end of Empire, and Ian Loveland on Britain and Europe.

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Murray Hunt, barrister with Matrix Chambers, has been appointed Legal Adviser to the parliamentary Joint Committee on Human Rights, in succession to Professor David Feldman.

On 20 February the final report was launched of the local government section of the Unit's programme of research on Effective Scrutiny. This report examines the practice of overview and scrutiny in nine different local authorities, concluding that many authorities have as yet only met some of the goals of the new committee system.

Mark Sandford and Lucinda Maer, *Old Habits Die Hard? Overview and Scrutiny in English local authorities*, Constitution Unit, London, 2004, £10

BulletinBoard

Key Speakers to include Lord Filkin and Anand Satyanand (New Zealand Ombudsman)
12 May 2004

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

www.ucl.ac.uk/constitution-unit/events or contact m.butt@ucl.ac.uk, 020 7679 4977

Rt Hon Denis MacShane MP, Minister of State, Foreign and Commonwealth Office
1pm, Tuesday 30 March

Lord Richard: Chair of the Commission
1pm, Wednesday 21 April