

CONSTITUTION UNIT MONITOR 55 / NOVEMBER 2013

Major New International Venture The Launch of Constitute: The World's Constitutions to Read, Search and Compare

The Constitution unit is delighted to be associated with a major new international venture launched in September and run by UCL's James Melton. **Constitute** (www.constituteproject.org) is a website for reading, searching, and comparing the world's constitutions. Constitutions are critical to countries' development. Outcomes, such as democracy, economic performance and human rights protection, are all associated with the contents of countries' constitutions. It is little wonder that constitutions are often blamed for poor economic and political outcomes or that such outcomes commonly result in constitutional change. Constitute aims to improve constitutional design and, in doing so, increase the likelihood that countries' constitutions will facilitate development, rather than hinder it.

Each year sees numerous countries changing their constitution. Already this year we have observed new constitutions in Fiji and Zimbabwe and constitutional amendments in Brazil, Colombia, the Czech Republic, Georgia, Hungary, Mexico, Switzerland and Tonga. In addition, countries like Egypt, Myanmar (Burma), Tunisia and Yemen are all known to be in various stages of the constitutional revision process. Some might be surprised to learn that so many countries

involved in drafting the constitution but who are, nonetheless, integral to the success of that process. Increasingly, constitution-making processes ask the public to participate, for example by submitting suggestions to the constitutional drafting committee or approving the completed draft in a public referendum. Constitute will facilitate participation in these aspects of the constitution-making process by allowing groups in civil society, academia, and the general public to inform themselves about how other countries have tackled particular problems.

More generally, the constitutions available on Constitute will be of great interest to numerous domestic actors in countries all over the world. Many constitutions are not available in digital form, and tools to organize their provisions for a non-specialist are rare. But there is substantial demand for such tools from public officials, lawyers, non-governmental organizations, students, etc. Constitute can be used by such individuals to learn about their constitutions. Want to know if your constitution protects freedom of religion or the right to health care or even the rights of breast-feeding mothers? Just search for the term you are interested in, using either a topic or free text search, and filter the results to display only the country where you reside. (For the curious reader, note that only Ecuador's constitution mentions the rights of breast-feeding mothers.)

Constitute was launched at the New York Palace Hotel on 23 September, 2013. Speakers at the event included President Marzouki of Tunisia and former President Otunbayeva of the Kyrgyz Republic. Both Presidents had many kind words to say about the new site. However, they also both emphasized that an effective constitution requires not only meticulous drafting, but also the support of the citizens living under its edicts. By providing universal access to the world's constitutions, we expect that Constitute will help



Scotland: The Independence Debate

The legal framework for the independence referendum was agreed between governments a year ago. Legislation is still trundling through the Holyrood Parliament, but all the process questions are settled. The question will be "Should Scotland be an independent country?"

There have been some developments in devolution policy. The think tanks Devo Plus and IPPR have made proposals, and each of the main Unionist parties is reviewing policy. In addition to the report of the Liberal Democrat Campbell Commission, we now have an interim report from the Labour Party's Commission, chaired by Johann Lamont. It recommends devolving income tax, but argues strongly for

member's bill ballot for the 2013-14 session, and has announced his intent to introduce a

In September, the Public Administration Select Committee published its report *Truth to power: How Civil Service Reform Can Succeed*. It noted that the Government had not identified any fundamental problem with the civil service, and at the same time, insisted that fundamental reform was not necessary. The Committee had one simple but bold recommendation: the establishment of a parliamentary commission with bicameral membership to examine the future of civil service. In particular, the Committee wanted a close examination of the doctrine of ministerial responsibility to see if it was 'fit for purpose'. Perhaps it is time: unsurprisingly, the IPPR report and the Cabinet Office had little to say about the responsibilities of ministers to their officials.

IPPR Accountability and Responsiveness in the Senior Civil Service: Lessons from Overseas:

<https://www.gov.uk/government/publications/accountability-and-responsiveness-in-the-senior-civil-service>

Civil Service Reform Plan: One Year On:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211506/CSR_OYO_LOW_RES_PDF.pdf

The Unit seminar on civil service reform with Guy Lodge and Sir Leigh Lewis can be found here:

<http://vimeo.com/72972774>

Public Administration Select Committee *Truth to power: how Civil Service reform can succeed:*

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/74/74.pdf>

Synchronisation of Voting Cycles

The passage of the *Fixed-term Parliaments Act 2011* received considerable media coverage and created a five-year cycle between general elections. The bill also moved forward the elections to the Scottish Parliament and the National Assembly for Wales to 2016 in order to avoid a clash between elections to those bodies and Westminster. Whilst this was intended to be a temporary change, recent events suggest that there is a push from the government to formalise five-year cycles in all of the devolved representative bodies to avoid potential clashes with UK general elections. The Queen's Speech in May of this year announced the government's intention to switch both the National Assembly for Wales and the Northern Ireland Assembly to permanent five-year terms. The latter bill has completed its committee stage in the Commons whilst the former is forthcoming. There have been no suggestions to permanently alter the Scottish Parliament's timetable, though this may be on hold until after the referendum in 2014.

Voting Age

The discussion about whether to lower the voting age to 16 has reignited this year for a number of reasons. Firstly, the Scottish Parliament in late June overwhelmingly approved a bill to lower the voting age for the 2014 Independence referendum to 16, with only the Scottish Conservatives voting against the legislation. Secondly, Ed Miliband has committed Labour to dropping the voting age to 16 in its 2015 election manifesto. As this pledge is a long-standing Liberal Democrat policy, this announcement may be an attempt to make a Labour-Lib Dem coalition more likely in the event of a hung parliament. The combination of these factors might make the second reading in late October of a private member's bill (*Voting Age (Comprehensive Reduction) Bill HL 10*) seeking to lower the voting age to 16 for all elections in the UK more lively than otherwise expected. This issue will probably divide the Coalition, as a Lib Dem peer (Lord Tyler) introduced the bill and comments from Chloe Smith (Parliamentary Secretary at the Cabinet Office) suggest Conservative opposition.

Succession to the Crown

Royal male primogeniture ended when Parliament passed the succession to the Crown Act 2013. The Act also removed the statutory rule that anyone who marries a Roman Catholic loses their place in the line of succession. But it leaves in place the statutory prohibition against the Monarch being a Catholic – and also leaves untouched the ban on anyone else not in communion with the Church of England. The government have said that the Act will not be brought into force until all the other Realms where the Queen is also head of state have made the necessary changes to their own law. In Canada that may take some time, because of legal challenges. In order to avoid the need for constitutional amendment (a process requiring assent of all

Northern Ireland

It was a grim summer in Northern Ireland, with Protestant protests against the regulated flying of the Union flag over Belfast City Hall in the winter re-erupting over communal parades. Sustained rioting followed the rerouting of the most symbolic Orange Order march in north Belfast on the twelfth of July.

The Sinn Féin mayor of Belfast was subjected to nasty physical jostling and abuse when he attempted to carry out his civic duties in the Protestant Shankill area the following month. Further bitterness was injected by a parade in Castleterragh, Co Tyrone, supported by SF, to commemorate dead IRA ‘volunteers’. This in turn became a pretext for the first minister, Peter Robinson of the Democratic Unionist Party, to withdraw support for a proposed ‘peace centre’ at the old Maze prison outside Belfast. It was to be largely funded by the European Union special programme for Northern Ireland, and strongly supported by SF because of its association with the IRA hunger strikes of 1980-81.

Concern about deteriorating intercommunal relations had been expressed in June by the US president, Barack Obama, visiting for the G8 summit in Co Fermanagh. The former US envoy to the region Richard Haass was subsequently appointed to mediate between the parties on the visceral issues of flags, parades and dealing with the past. Mr Haass had his first meetings with them in September. While he attempted to set an end-of-year deadline for agreement, he was immediately countermanded by Mr Robinson, only willing to concede that ‘progress’ could by then be made.

Wales

The key development for Wales has still not materialised; the UK Government has still not published its response to the Silk Commission’s report, which was publicly postponed from ‘the spring’ at the end of June. There has been a complex ongoing private intergovernmental negotiation, with the Welsh Secretary seeking to minimise any changes, despite support from the Treasury for Calman-style partial devolution of income tax. The Welsh Government appears willing to accept tax devolution subject to various safeguards – notably, a referendum before any income tax devolution comes into effect. One precondition was a short summer consultation on the devolution of stamp duty land tax, insisted on by the Secretary of State, which closed early in September. No doubt the response will materialise later in the autumn, enabling it to be incorporated in the draft Wales bill currently being framed with a legislative slot in the 2014-15 Westminster session.

The Welsh Government’s determination to test the limits of the National Assembly’s current legislative powers saw the introduction and rapid passing of a bill to establish powers for Welsh ministers to regulate the pay of agricultural workers, following the abolition of the (England and Wales) Agricultural wages board by the UK Government. The Welsh Government claims this is within devolved powers relating to agriculture. The UK Government clearly disagrees – though the same matter is devolved in Scotland – and the Attorney General has referred the bill to the UK Supreme Court.

The implications of the Scottish independence referendum continue to be felt in Wales, with the First Minister continuing to call for a post-referendum ‘constitutional convention’ to entrench devolution and put an end to ongoing debates about devolution and what he has called ‘constitutional tinkering’.

People On The Move

Sir John Thomas is the new Lord Chief Justice, following the retirement of Lord Judge. **Lord Justice Leveson** was appointed President of the Queens’ Bench Division in Thomas’s place. **Professor Lord (Ajay) Kakkar** is the new chairman of the House of Lords Appointments Commission. **Roger Masterman** (former researcher with the Constitution Unit) has been made Professor and Head of Department at the Durham Law School. **Baroness Hale** is the new Deputy President of the Supreme Court, following the retirement of **Lord Hope**.

Constitution Unit seminar series:

The House of Lords: Westminster Bicameralism Revived? Meg Russell and Mark D'Arcy Tuesday 12 November, 6pm.

Exploring Constitute: A New Tool for Searching National Constitutions James Melton Wednesday 11th December 2013, 1pm.

For information on Constitution Unit Events 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. Seminars are held in the Council Room at the Constitution Unit premises at 29-30 Tavistock Sq.

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

Publications to note:

Ed. M Qvortrup *The British Constitution: Continuity and Change*. A Festschrift for Vernon Bogdanor (Hart Publishing, 2013)

T Wright *British Politics: A Very Short Introduction* (Oxford University Press, 2013)

I McLean, J Gallagher & G Lodge *Scotland's Choices: The Referendum and What Happens Afterwards* (Edinburgh University Press, 2013)

Constitution Unit Publications:

M Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (OUP, July 2013)

M Russell, R Morris and P Larkin, *Fitting the Bill: Bringing Commons legislation into line with best practice* (Constitution Unit, June 2013)

M Russell, 'Parliamentary Party Cohesion: Some explanations from psychology' *Party Politics* 202: doi: 10.1177/1354068812453370

Staff Update

After four years of distinguished work as a Research Associate with the Unit, Dr Ben Yong left in September 2013 to take up a one year lectureship in public law at Queen Mary, University London. He had worked at the Unit for four years on such projects as Ministers from outside Parliament and a study of the role of government lawyers. Ben was a principal co-author with Robert Hazell of our book, *The Politics of Coalition*, concentrating on the government's first eighteen months. He is currently completing a book with the Unit on the work of special advisers.

In July, we welcomed **Christine Stuart**, who has been appointed Research Assistant and will be working with Dr James Melton on the Comparative Constitutions Project, which aims to catalogue the contents of all constitutions written in independent states since 1789. Prior to joining the unit, Christine worked as a researcher for a market research company. She holds a Politics and International Relations degree from the University of Aberdeen and has previously interned at the Scottish Parliament Information Centre (SPICe).

The Unit is very grateful to interns **Stephen Clark, John Crook, Josh Crossley, Seemi Davies, Marc Fuster, Max Goplerud, Robin McGhee and Lucy Shaddock**.

Unit in the Media: some examples

Monarchy

Charities fear funding crisis after accession of Charles to throne – *Independent* (02 June)

Australia inquiry regarding the royal birth *ABC* (06 July)

Robert Hazell was interviewed on World at One about the birth of the Royal baby *BBC Radio 4* (22nd July)

Royal prince could be first monarch of the 22nd century *Telegraph* (23rd July)

Parliament

Unreformed House of Lords getting larger all the time *The Guardian* (01 August)

Meg Russell was interviewed by Caroline Quinn on BBC Westminster hour on the effect of Tony Blair's expulsion of hereditary peers in the House of Lords in 1999, the role of the House of Lords and about her latest book 'The Contemporary House of Lords: Westminster Bicameralism Revived.' (08 Sept) and in BBC Parliament's Booktalk.

Coalition Government

Viewpoints: Is coalition politics here to stay? *BBC News* (17 September)

Unit Committee Appearances and Evidence Email: constitution@cl.ac.uk P