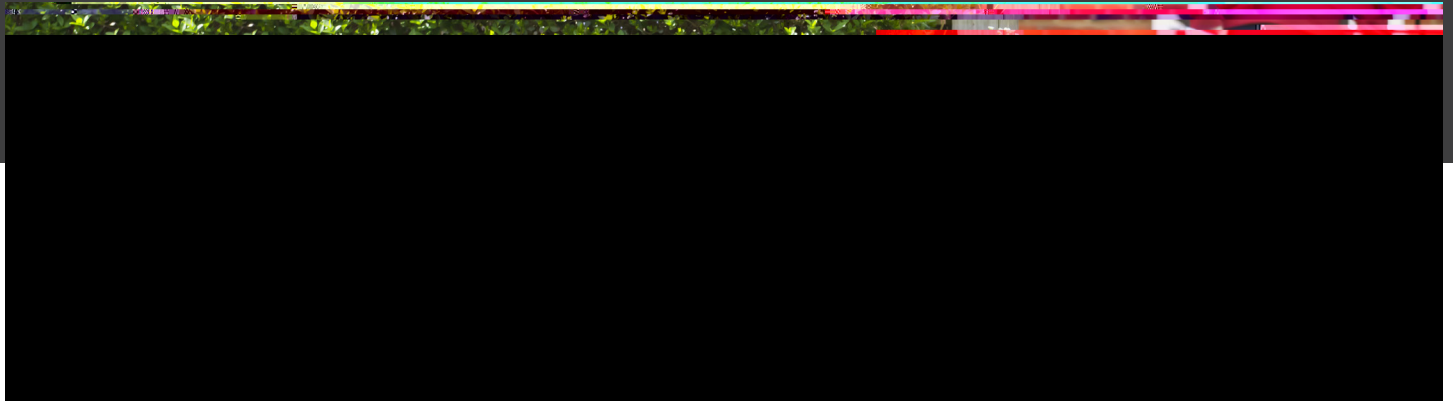


Monitor 59 / February 2015



Preparing for another hung parliament

Recent polls have suggested that the 2015 general election will result in another hung parliament, with no single party gaining an overall majority. The media and voters may assume that 2015 will then see a replay of 2010, with the swift formation of another coalition government. Not necessarily so, as Robert Hazell and Peter Riddell of the Institute for Government have been

L_WSH PUPUN PU WYL LSLJ[PVU IYPLÄUNZ M VY [OL IYVHRJHZ[LYZ

Here are their key messages in response to some of the questions raised.

Will the leader of the largest party become Prime Minister?

Not necessarily. The constitutional rule is that the WVSP[PJPHU ^OV JHU JVTTHUK [OL JV House of Commons becomes PM. This could be the leader of the second largest party, if he can secure Z\IJPLU[Z\WWVY[MYVT [OPYK HUK TP

Does the Queen play a formative role?

No. The political parties must establish between [OLTZLS]LZ ^OV JHU JVTTHUK JVUÄKL House of Commons. The Queen will be kept informed, and will appoint that person as Prime Minister when the result of the negotiations becomes clear.

What if the negotiations result in a stalemate, with two rival combinations staking equal claims to be the next government?

The default position is that the incumbent PM has the YPNO[[V YLTHPU PU VIJL HUK TLL[[O [LZ[PM OL JHU Z[PSS JVTTHUK JVUÄK did in 1923-24.

Will another hung parliament lead to another coalition?

Not necessarily. A minority government is equally possible. In the twentieth century Britain had 20 NV]LYUTLU[Z" Ä]L ^LYL JVHSP[PVUZ H minority governments. It is also possible to have a minority coalition.

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What is the role of the civil service?

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ULNV[PH[PUUZ PU *HIPUL[6IJL "
H]HP SHISL [V VHLY PUMVYTH[PUV I\

as note takers if required. The parties may choose a
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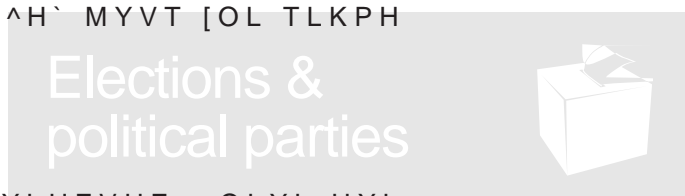
such as parliament.

LHLJ[P]LS` YLX\PY PUN [OL Z\WWWVY[V
VY MVSSV^PUN H]V[L VM UV JVUÄKLU
[PUV M VY [OL WHY]`
government is formed in 14 days. Some MPs have
called for repeal of the Act, and others believe it could
be overridden, but they have yet to explain how.

How long will the negotiations take?

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YLHZVUZ ;OLYL HYL

likely to be more parties involved than the three which
negotiated in 2010. Their backbenchers will insist on
more thorough consultation, and endorsement by the
parliamentary party, before agreeing to any coalition
agreement or support arrangements. It should also
be noted that in 2010 it took 13 days to settle the
full coalition agreement. The detailed Programme for
Government was published on 19 May.



Constitutional reform and the party manifestos

With the long campaign to the May 2015 general election well underway, it is becoming clearer which key constitutional commitments are likely to appear in [OL THPU WHY[` THUPMLZ[VZ OU WHY commitments made at the [party conferences](#), which took place shortly after the Scottish referendum.

Who governs in the meantime?

The incumbent Prime Minister and his government
YLTHPU PU VIJL <UKLY [OL JHYL [HRLY JVUILLUPVU
they cannot make decisions which would bind the
hands of a future government. So they cannot make
new policies, public appointments or let important
government contracts. If decisions cannot be deferred
the government must consult the opposition parties, as
Alistair Darling did the weekend after the 2010 election,
when he attended the [ECOFIN meeting on 9 May 2010](#).

Territorial concerns will almost certainly feature highly. First are the necessary reassurances from all parties on the [Smith Commission](#) on Scotland, and the [Silk Commission](#) on Wales. On the assumption that no progress is made pre-election, parties will also set out their competing visions of English Votes on English 3H^Z ZLL HY[PJSL PU 7HYSPHTLU[ZL. visions of devolution in England are also likely, with the Liberal Democrats, Greens and Labour committed to regionalism, UKIP previously committed to an English Parliament, and all parties likely to include warm words on further localism.

What happens to Ministers who lose their seats?

They remain Ministers, even though they are no longer MPs. Jim Knight attended Gordon Brown's last Cabinet meeting on 9 May 2010 although he had lost his seat. In 1964 Patrick Gordon Walker was appointed Foreign Secretary by Harold Wilson, even though he had lost his seat, and served for three months until he also lost a by-election in early 1965.

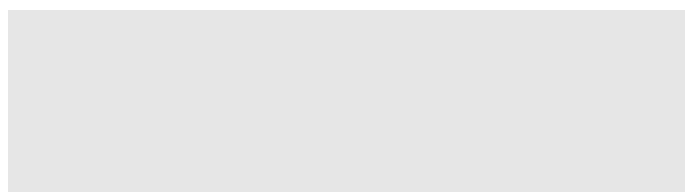
Labour's central commitment, explicitly supported by all the main UK-wide parties except the Conservatives ZV MHY ^PSS IL [V H JVUZ[P[\[PVUH YLX\PYLZ WHY[PLZ [V YL[HPU ZVTL ÄL to other promises, as it would clearly be nonsense to create a convention if the future of English devolution MVY L_HTWSL PZ HSYLHK` WYLKLLY not to mention the need to allow for possible coalition negotiations after the election - also allows parties ZPNUPÄJHU[ÄL_PIPSP[` VU V[OLY TH[include declaratory statements on the principles of 3VYKZ YLMVYT ZLL ILSV^ I\ [SLH]L [the convention.

Will there be a second election?

There has been talk of Cameron or Miliband forming a minority government and then calling a second election to strengthen their numbers, as Wilson did in 1964 and again in 1974. This is made much harder by the [Fixed Term Parliaments Act](#), which abolished the prerogative power of dissolution. Under the Act parliament can only be dissolved by a two-thirds majority in the Commons

Commitments on elector900330sh d059>1ment005B069604CC approached with caution following the failure of the 2011

established parties and local newspaper journalists have yet to tackle the more probing questions that one might expect to be answered by candidates who



of a membership nearing 850, and expressed concerns about yet more possible appointments post-May 2015. Various proposals were put forward, including organised retirements based on length of service, or age, or the possibility of all groups downsizing proportionately - perhaps based on election, as in 1999. But as some peers pointed out, any system of retirement is likely to fail until there are restrictions put on the number of appointments by the Prime Minister (see details in the [new Unit report](#) ;V KH[L VUS` Ä]L WLLYZ OH]L THKL use of the permanent retirement scheme in the House of Lords Reform Act 2014 - the most recent being Lord 7H[Y PJR 1LURPU VM 9VKPUN VU [OL KH` VM [OL KLIH[L

Lords reform proposals – large and small

Interest in Lords reform has somewhat revived, following the Scottish referendum and in the run-up to the general election. Labour in particular has claimed that a reformed Lords could help bind the Union together, with Ed Miliband calling in a speech in December for a ‘territorial Senate’ to replace the House of Lords. The precise shape of this remains unclear, and despite some media reports that this implies a ‘US-style Senate’ there are THU` KPHLYLU[TVKLSZ :VTL Z\NNLZ[of members of the second chamber by subnational assemblies, but this would be challenging when there remains no uniform pattern of such assemblies across the UK. The other party which has particularly seized on Lords reform as a campaign issue is the SNP, which OHZ HS^H`Z ZW\YULK WLLYHNLZ 0[Z out by Pete Wishart in a [Westminster Hall debate](#) on 14 January, is for an ‘exclusively democratic’ replacement for the Lords.

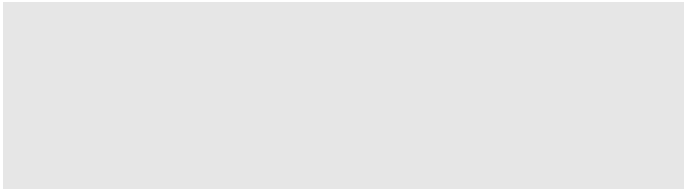
>OPSL [OLZL WYVWVZHSZ YLTHPU ZVT another very small reform may succeed before the election. :OL /V\ZL VM 3VYKZ , W\SZPVU [Bill](#) was proposed by former Lord Speaker Baroness Hayman, and completed its stages in the Lords on 7 January. It has been picked up in the Commons by former Conservative Leader of the House, Sir George Young. The bill is very short, and simply allows the Lords to specify in standing orders procedures for permanently L_WLSSPUN TLTILYZ VY Z\ZWLKUPUN [OLT MVY H ZWLJPÄLK time. Its target is members who abuse procedures, for example through ‘cash for questions’ or impropriety over L_WLUZLZ [OV\NO P[^V\SK UV[OH]L YL[YVZWLJ[P]L LHLJ[

Digital democracy

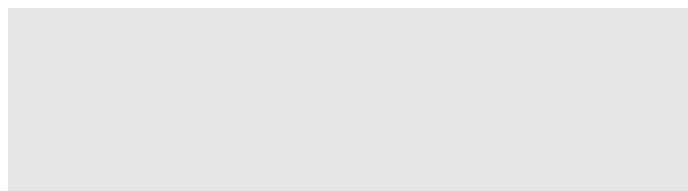
The [Commission on Digital Democracy](#) was set up by Commons Speaker John Bercow in November 2013. It sought to consider the potential of digital technology for UK democracy through a wide range of evidence-taking procedures as well as engagement with numerous groups via roundtables, student forums and conferences.

The [Commission report](#), published on 26 January, sets out a series of recommendations for the House of Commons to enhance its engagement with citizens through the use of digital technology. It endorses the introduction of online voting by 2020 and proposes piloting the use of MPs’ identity cards to record votes electronically during the next session of parliament, whilst also retaining the procedure of walking through division lobbies. Other recommendations include giving citizens opportunities to participate in the legislative process during the policy development and pre-legislative stages’, to engage with select committees, and to submit questions to ministers or to the Prime Minister.

The report also suggests several targets for making parliament more accessible by publishing jargon-free annotations to Bills and making Hansard available as open data. This suggestion ties in with a point of action [previously suggested](#) by the House of Commons



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delivered a bland response, because the main incentives
for collective responsibility are political rather than legal

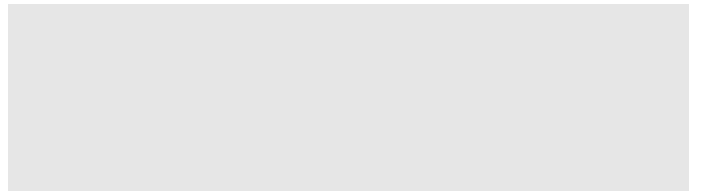


The Independence debate had produced a 'window of
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the nature of the current and future Scottish political
system. Potential topics included its economic future,
its relationship with UK and international organisations,
the prospect of political reform, and the extent to which
its politics and policies might resemble those of Nordic
K L T V J Y H J P L Z ; O L M \ Y [O L Y K L] V S \ [P V U K L I H [L V H L Y L K H
much more limited, albeit still important, debate about
[O L W V S P [P J H S H U K W Y H J [P J H S Y L H Z V U Z [V K L] V S] L Z W L J P Ä J
powers to Scotland. Still, these recommendations have
raised a number of potential problems that will take
Z V T L [P T L [V I L Y L Z V S] L K P U J S \ K P U N !

- . O U [L Y N V] L Y U T L U [H S Y L S H [P V U Z ¶ [O L W Y V W V Z H S Z T V] L \ Z
from a relatively clear devolved settlement, closer to a
shared powers model, in which the governments may
have cooperate more systematically than they have in
the past
- . - P U H U J L ¶ P [P Z U V [` L [J S L H Y O V ^ [O L K L] V S \ [P V U
of further taxes will work in practice. The UK

expense of liberal Protestants—to behave as if they were somehow other than ethnic tribunes.

The [Stormont House Agreement](#) eked out in December



International

Pakistan gives military courts more power

The [21st amendment](#) to the [Pakistani constitution](#) was promulgated on 7 January 2015. The amendment has

* VUZ[P[\[PVUHS °TVKPÄJH[PVUZ » PU ,J\HKVY
'Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at serial No. 6, 7, 8 and 9 of sub-part III or Part I of the First Schedule, who claims, or is known, to belong to any terrorist group or organization, using the name of religion or a sect.'

Last June the president of the National Assembly in Ecuador submitted a proposal to the Constitutional Court to amend 17 articles in [Ecuador's constitution](#). The president of the National Assembly sought advice of the executive and legislature, both controlled by the PAIS Alliance. The amendments would modify article 88, allowing the National Assembly to regulate complaints to the judiciary about arbitrary state action; article 158, allowing the military to provide support during domestic security operations; and article 384, reclassifying communications as a 'public service' giving the executive broad regulatory powers over the media.

VU ^OL[OLY VY UV[[OL HTLUKTLU[Z HYL °TVKPÄJH[PVUZ » VY °WHY[PHS YLMVYT » ;OL KPZ[PUJ[PVU PZ ZPNUPÄJHU[ILJH\ZL PM [OL HTLUKTLU[Z HYL TLYLS °TVKPÄJH[PVUZ YH[PÄJH[PVU VUS` YLX\PYLZ HWWYV]HS °VM[\V\POBYKZ °VM[OL

National Assembly. A partial reform would also require a referendum. In November, the court ruled that the HTLUKTLU[Z X\HSPÄLK HZ TVKPÄJH[PVUZ °ZV[OL JHU TL YH[PÄLK ^P[OV\ [H YLMLYLUK\T

The amendment removes the trials of persons belonging to religious or sect-based terrorist organisations from the jurisdiction of the ordinary court system.

The second part of the amendment places four federal acts in the First Schedule of the Constitution, including [The Protection of Pakistan Act, 2014](#), which gives Military Courts jurisdiction over cases of terrorism. All laws in the First Schedule are exempt from being declared void on the grounds that they are incompatible with the fA00oP86 0.57 ofghjur0.57.9(ed)-ndule the Firstitution

;OL HTLUKTLU[Z ^PSS ZPNUPÄJHU[S` LUONUJL[OL W\LY
of the executive and legislature, both controlled by the PAIS Alliance. The amendments would modify article 88, allowing the National Assembly to regulate complaints to the judiciary about arbitrary state action; article 158, allowing the military to provide support during domestic security operations; and article 384, reclassifying communications as a 'public service' giving the executive broad regulatory powers over the media.

7LYOHWZ TVZ[ZPNUPÄJHU[[OV\NO HYL [OL JOHUNLZ [V
articles 114 and 144, which completely remove term SPTP[Z VU LSLJ[LK VIJPHSZ : \JO H JOHUNL ^V\SK HSSV^
President Rafael Correa to run for a fourth term in 2017.

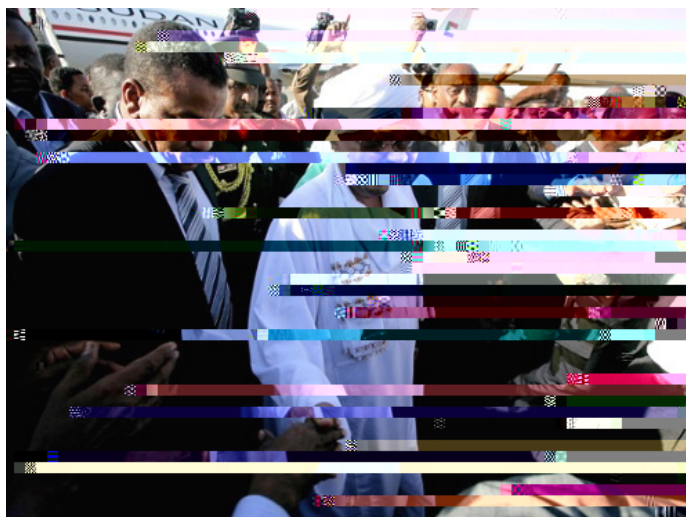
Note that the 2008 Constitution allowed President Correa to evade the term limits set forth in the 1998 Constitution, which would have barred him from re-election in 2009.

Opponents of the PAIS Alliance are currently gathering signatures to petition the National Assembly to send the proposed amendments to a referendum. They need signatures from at least 5% of the electorate to force a referendum. However, given that President Correa's approval rating hovers around 70%, a referendum seems unlikely to stop the amendments from being promulgated.

The most notable changes are to the powers of the executive. The president will now have power to appoint provincial governors and senior judicial posts. This threatens to undermine the independence of the judiciary and, perhaps more importantly, threatens to undermine the federal system established by the constitution. Previously, governors were elected by the people of each province. The concern with presidential appointment of governors is that they will be subservient to the central government, rather than to the citizens of the provinces.

The other major change made by the amendments is to the mandate of the National Security Service. Article 151.3 of the Interim Constitution states that '[t]he National Security Service shall be professional and its mandate shall focus on information gathering, analysis and advice to the appropriate authorities.' The new amendments change this mandate to focus on security, rather than information, putting the National Security Service on an equal plane with the army and police. Given that the National Security Service is under the supervision of the president his own personal security force.

Both of these changes threaten the stability of Sudan because they remove important constitutional protections held by minority ethnic groups. The potential instability created by these amendments is compounded by two factors. First, Sudan is a weak state with a history likely. Second, the amendments enhance the power of President Al-Bashir, a suspected war criminal. Thus the amendments are likely to heighten sectarian violence in Sudan, rather than quell it.



Tanzania calls a referendum on new constitution

VIJPHSZ PUJS\KPUN

In October, the Constituent Assembly in Tanzania approved a [draft constitution](#) for consideration by the Tanzanian people. Recall from the [last Monitor](#) that the process to create a new constitution started back in November 2011 and has proceeded slowly through two separate drafting stages. The expectation back in early September was that President Jakaya Kikwete would wait to ratify the new constitution until after the 6J[VILY LSLJ[PVU /V^L]LY [OL WY expectations and called a referendum on the draft constitution for late April 2015.

The proposed constitution makes a number of changes to the constitutional system in Tanzania. The most controversial changes are to the structure of the union. The constitution will leave Zanzibar a great deal of autonomy. In addition to its existing powers, Zanzibar will gain the ability to take on government debt and be allowed to explore the island for oil and gas reserves.

Some Zulu Herders are being driven from Taganyika, the Tanzanian mainland, in order to give it the same constitutional status as Zanzibar, but this additional SL]LS VM NV]LYUTLU[^HZ VTP[[LK MYV

Another major change from the extant constitution is in the status of women. The proposed constitution has a number of provisions related to gender equality. In addition to the Total Equality provisions that prohibit discrimination based on gender, article 54 is entirely devoted to the rights of women. The article gives women the right to participate in elections, to be paid the same salary as a man, to protection of their employment while pregnant and after delivery, and to own property. If these rights are complied ^P[O [OL` OH]L [OL WV[LU[PHS [V ZPNU status of women in Tanzanian society.

Thailand prepares new constitution

The Constitutional Drafting Committee established by Section 32 of the [Interim Constitution](#) began work on Thailand's next 'permanent' constitution on 12 January 2015. The new constitution, the country's 20th, is expected to be promulgated and put into force in July. Although drafting only began a few weeks ago, there are already rumours as to its contents.

The leaked content is a bit of a mixed bag. In terms of rights, there is reason for optimism. One of the earliest provisions leaked from the drafting committee provides protection from discrimination for gay and transgender people. The courts will also be strengthened under the new constitution, which may provide for better enforcement of whatever rights are eventually included.

The other leaked provisions are less encouraging. For instance, the constitution is likely to provide for an unelected Senate and prime minister. This will give the politics even after a new National Assembly is elected later this year. There is also the risk that a greatly empowered judiciary could be used by the military and political elite to 'rule by law' rather than enhance the 'rule of law'. In sum, despite what initially appears to be a relatively liberal bill of rights, the constitution is likely to entrench the power of the military and political elite, which will be detrimental to any hope of returning to democratic rule.

Click [here](#) to see the Unit blogpost reviewing the 2014 Thai Interim Constitution.



New Unit report on regulating Lords appointments

On 9 February the Unit published [a report on regulating Lords appointments](#).

[Regulating Prime Ministerial Appointments to the](#)

[Lords](#), exploring the options for a formula to put Lords

appointments on a more sustainable basis. The report

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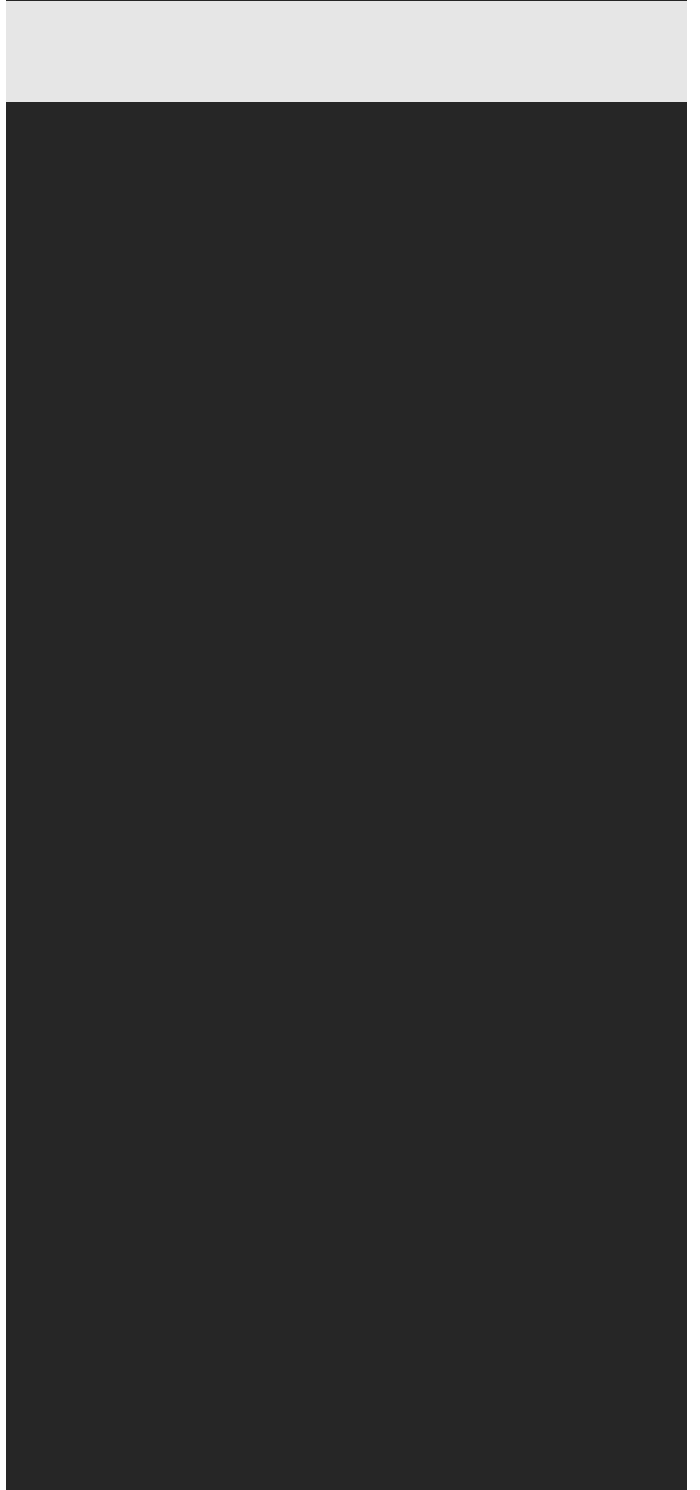
explores the options for a formula to put Lords appointments on a more sustainable basis. The report

explores the options for a formula to put Lords appointments on a more sustainable basis. The report

The report's launch in the House of Lords was chaired by former Lord Speaker Baroness Hayman, and speakers included former chair of the House of Lords Appointments Commission Lord Jay of Ewelme, former Labour chief whip Lord Grocott, and Conservative MP Jesse Norman. The report calls on the two main party leaders to commit to a new system of Lords appointments from May 2015, arguing that continuing the present system would 'simply be irresponsible'.

The Hansard Society and the Constitution Society backed the report, in partnership with the Unit.

[Unit report on regulating Lords appointments](#)



Bulletin Board

Events

To sign up to our events, visit the Constitution Unit [event page](#)

Seminars are free and open to all. They are held in the Council Room, Rubin Building, 29-30

parliamentary change over 40 years

Jack Straw and George Young

4 March 2015, 5pm

Houses of Parliament, Committee Room 3

Forecasting the 2015 election result, and preparing for a hung parliament

Gus O'Donnell

12 March 2015

Coalition or minority government in 2015?

Robert Hazell and Peter Riddell

15 April, 1pm

These seminars are funded by the family of Barbara Parhey, late of UCL, who greatly enjoyed them.

Watch our previous events online on our [Vimeo page](#)

Unit in the news

Meg Russell on mixing of business and politics in House of Lords ([Wall Street Journal](#) 5 V]

PCUK research quoted in article on rise of career politicians ([The Telegraph](#) 5 V]

Robert Hazell on royal visit to America ([Newsweek](#) + L J

Link to Unit research on government defeats in House of Lords ([BBC News](#) + L J

PCUK research quoted in The Guardian's view on a year in feminism ([The Guardian](#) + L J

Robert Hazell speaks about 10-year anniversary of the Freedom of Information Act on Radio 4's Today

[BBC iPlayer](#) 1 H U

Jennifer Hudson talks about PCUK project on Radio 4's Westminster Hour [35.15] ([BBC iPlayer](#) 1 H U

Enough is Enough report covered in Guardian and FT ([The Guardian](#), & [FT](#) - L I

Unit publications

Graham Gee, Robert Hazell, Kate Malleson and Patrick O'Brien, The Politics of Judicial Independence in the UK's Changing Constitution (Cambridge [order](#) voucher code 'Constitution2014' for a 20% discount

Edited by Jennifer Hudson, The Political Costs of the 2009 British MPs' Expenses Scandal

[order online](#) and use PM14THIRTY for a 30% discount.

Meg Russell and Tom Semlyen Enough is Enough: Regulating Prime Ministerial Appointments to the Lords [view](#)

Robert Hazell and Mark Sandford 'The English Question or the Union Question? Neither Has Easy Answers' Political Quarterly [\] P L ^ online](#)

Daniel Gover and Meg Russell 'The House

[view online](#)

solutions' Public Law [view online](#)

Announcements

House of Lords Constitution Committee seeks legal adviser

The House of Lords Constitution Committee is inviting applications for the vacant post of one of its two legal advisers.

The role is part-time, remunerated by daily fee. The successful candidate will demonstrate well-established constitutional law in particular. The primary task is to advise on the constitutional implications of all public bills, but the adviser will also help the committee with its inquiry work.

A full job description, and details of how to apply, can be found on the [Committee's website](#). The deadline for applications is Friday 27 February.

Constitutional Law Discussion Group: Edinburgh Law School

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[V OLSW [OL JVTTP[[LL M\SÄS P[Z YVSL L_HTPUPUN [OL