

# Constitution Unit

Monitor 67 / November 2017

Assembly members, who included more Leave than Remain supporters, expressed a preference for the kind of bespoke trade deal that the government says it is seeking. But members were very clear that if this cannot be achieved, a 'no deal' outcome was undesirable. They preferred that the UK remained a member of the Single Market and Customs Union to this. Politicians should reflect on such findings carefully, because boxing themselves in to no deal could prove electorally dangerous.

A key place for some of the tensions to be played out is during discussions on the government's EU Withdrawal Bill (see pages 3-4). The bill implements the legal changes needed to make Brexit a reality, and is a

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## European Union (Withdrawal) Bill

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The 2017–18 parliamentary session seems set to be dominated by debate on the [European Union \(Withdrawal\) Bill](#), the key measure implementing Brexit in UK law. Clause 1 of the bill repeals the European Communities Act 1972, and its remaining 18 clauses and nine schedules seek to deal with the immediate legal consequences. Formerly dubbed the ‘Great Repeal Bill’, a central aspect is – ironically – to bring a vast corpus of EU law into domestic legislation to ensure continuity post-Brexit, then allowing its subsequent amendment through UK channels.

The bill has been, since its earliest announcement, highly controversial. Not only does it implement the fundamentally contested matter of Brexit, but disentangling UK law from a body of rules built up over more than 40 years raises major practical and

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The minority government's approach to opposition days has also caused some controversy. In July, the Speaker granted an [emergency debate](#) on the scheduling of these after none had been arranged for before the summer recess. The first opposition debates of the parliament eventually [took place on 13 September](#), with Labour tabling motions on NHS pay and tuition fees. Both posed potential difficulties for the government and so the Conservatives [opted to abstain](#). Subsequently it was [reported](#) that the government might routinely take this approach to opposition motions. This provoked a furious response from opposition MPs, who argued that the government was not taking parliament seriously, and led to a further [emergency debate](#) being granted. During this Leadsom said that the government would assess future motions 'case by case'. The government [abstained](#) again in the vote following an opposition day debate on the roll-out of universal credit, held on 18 October.

## House of Commons select committees

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The process of establishing departmental select committees in the new House of Commons was completed in September. The only change to the allocation of chairs between parties compared to 2015–17 was for the Liberal Democrats to gain the Science and Technology Committee from the Conservatives. The chairs of 17 committees took up their positions unopposed, while the remainder were [elected by the whole chamber on 12 July](#). Perhaps the most striking result was the election of Conservative MP Tom Tugendhat to chair the Foreign Affairs Committee, toppling incumbent Crispin Blunt. Tugendhat is the first 2015 intake MP to become a committee chair. BespondGS0ed fJacob Rons-Moggmons was In l sts to gai1 0

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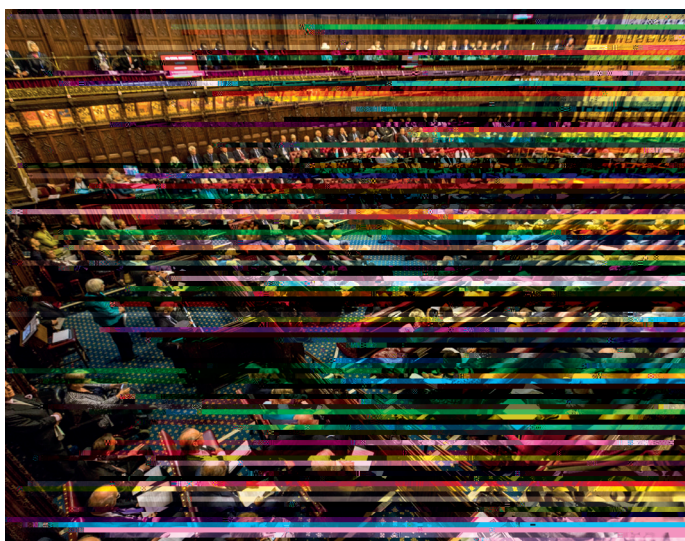
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The proposals are carefully crafted in order to be implemented through House of Lords standing orders, rather than requiring a bill – given the potential difficulties of passing new legislation. However, they will stand or fall on whether the Prime Minister makes a commitment to adhere to the new appointments regime. Notably, since becoming Prime Minister Theresa May has refrained from the kinds of political appointments that have led to the current problem. She has so far appointed just eight peers – three to serve as ministers (one in [June](#) and [two in October](#)), the other [five as non-party peers](#) falling into ‘quasi-automatic’ categories, including the new Lord Chief Justice and the retiring Chief of the Defence Staff and Metropolitan Police Commissioner.

The Burns report is likely to be debated in the Lords fairly soon. In future months the House of Commons Public Administration and Constitutional Affairs Committee may also report on the size of the Lords, following suspension of its inquiry on this topic before the general election.



Question time in the House of Lords, 26 September 2017. This image is subject to [parliamentary copyright](#). [www.parliament.uk](http://www.parliament.uk).

## The Salisbury-Addison convention and minority government

On 20 October the House of Lords Constitution Committee [published a short report](#) on the Salisbury-Addison convention, and whether this should be considered to apply in the new situation of minority government. The convention demands that the House of Lords should not block wholesale bills that implement government manifesto commitments, or pass ‘wrecking’ amendments to them. It dates to 1945, when the Labour government had just won a landslide, but faced a

Conservative-dominated second chamber. This report essentially just raised the question of the convention’s status in the current climate, largely comprising an appendix made up of five written submissions – from the main group leaders in the Lords, and the Unit’s Meg Russell.

The submissions provide interesting contrasts of interpretation. Leader of the House of Lords Baroness Evans of Bowes Park stated that the ‘Government is clear that the Salisbury-Addison convention... continues to apply’, while the Labour Shadow Leader Baroness Smith of Basildon stated that it is ‘far from clear that [it]... was ever intended to apply to minority Governments’. Likewise, the Crossbench Convenor Lord Hope of Craighead suggested that ‘it is hard to see why it should apply to a minority government’. All witnesses noted, however, that in practice the Lords rarely blocks any government bill. Meg Russell hence described the convention as something of a ‘red herring’, suggesting that it would be ‘both considerably more accurate and transparent’ to focus on this wider presumption. For now, the Constitution Committee has simply stated that it ‘may return to this subject in the future’, noting that ‘it is valuable to publish these submissions to aid understanding’.

## Lords sessional committees

In accordance with the practice of recent years, the Lords Liaison Committee proposed the creation of three ad hoc select committees at the start of the new parliamentary session to inquire into major current issues that cut across departmental boundaries. One of these – on [Artificial Intelligence](#) – is only tangentially related to constitutional affairs. A second – [Citizenship and Civic Engagement](#) – focuses on the rights and responsibilities that should be associated with UK citizenship, with a particular focus on their impact on social cohesion.

The third relates to [Political Polling and Digital Media](#) and is chaired by Lord (David) Lipsey. It has identified five areas of primary interest: polling methods and accuracy; the influence of polls on voters and politicians; media coverage of polls; whether the current system of self-regulation in the polling industry is ‘fit for purpose’; and the impact of social and digital media on ‘the way people interact with opinion polls and their accuracy’. The committee has held several evidence sessions with academics and others. It is due to report by March next year.

## Restoration and renewal of the Palace of Westminster

Over a year has now passed since a joint committee [reported](#) on restoration and renewal of the Palace of Westminster, recommending a full decant of MPs and peers while the work takes place (see [\\_\\_\\_\\_\\_ 64](#), page 4). Votes in both parliamentary chambers on restoration and renewal have long been promised, but repeatedly delayed. The Leader of the House of Commons, Andrea Leadsom, has [announced](#) that they will finally be held in December. However, instead of asking MPs and peers to endorse the committee's proposals, the motion put before both parliamentary chambers will seek to delegate the final decision to a sponsor board. This body would be invited to examine three possibilities – a full decant, a partial decant (where the Commons and Lords would be renovated one at a time) and a third option that would see parliament retaining a limited 'foothold' in the Palace of Westminster during the work, for example through continuing to hold State Opening there.

The obstacles that may be faced in reaching consensus on restoration and renewal were highlighted by a row over a [separate renovation of the Elizabeth Tower](#). It was announced in August that, during the four years of this work, Big Ben's chimes will be heard only on special occasions such as Remembrance Sunday and New Year's Eve. This decision had been approved by the House of Commons Commission, but its announcement prompted a [backlash](#) from some MPs, [including the Prime Minister](#). Following this, the Commission announced a review.



The Elizabeth Tower surrounded by scaffolding, 1 July 2017. © [Dun.can](#).



## New cabinet committees

The government's updated list of [cabinet committees](#) was published on 20 July. There are just five full committees, with ten sub-committees. Brexit dominates the agenda, and the Prime Minister chairs the EU Exit and Trade Committee, which has three sub-committees, on the Negotiations, International Trade, and European Affairs. There are no longer committees on Public Expenditure or on Constitutional Reform. The Home Affairs Committee has become a sub-committee of the Social Reform Committee, also chaired by the Prime Minister. As an indication of how little spare capacity the new government has for social reform, it has established just four implementation taskforces, compared with ten set up by David Cameron in 2015. They are on Housing, Digital, Modern Slavery and Immigration. Damian Green, the First Secretary of State, chairs a total of eight cabinet sub-committees and taskforces.

## PACAC inquiry into the civil service

The Public Administration and Constitutional Affairs Committee (PACAC) has announced that it is to resume its inquiry into the effectiveness of the civil service. The inquiry was unfinished at the time of the general election, resulting in publication of an [interim report](#). The committee is [focusing](#) on the civil service's capacity to deliver Brexit and on the relationship between ministers and officials. The deadline for submitting evidence is 1 December.



## Electoral Commission reports

The Electoral Commission has begun to report on the administration of the 2017 general election.

Its [first report](#) addressed electoral registration. The number of voters on the register at the time of the election – 46.8 million – was the highest ever. The Commission notes that online registration 'has



significantly improved access to elections in Great Britain since it was introduced in June 2014', and the great bulk of registration applications are now made online. But it also highlights two limitations. First, online registration is not yet available in Northern Ireland: the Commission wants this to change as soon as possible. Second, applications by people who are already registered impose significant administrative burdens on local election officials. Between 30% and 70% (depending on the area) of the applications made in the run up to the general election were from such people. The Commission points out (as it has in the past) that it is now easier to apply to register than to check whether one is already registered. It proposes, among other measures, a system allowing electors to check their status online.

The Commission has also reported on [donations received by political parties](#) during the election period. Counting only donations above the minimum reporting thresholds, the Conservatives in the second quarter of 2017 received £24.9 million, Labour £10.2 million, and the Liberal Democrats £4.9 million.

The Commission's [report on the 2017 Scottish local elections](#) also deserves attention, as it includes the latest research on the impact of enfranchising 16- and 17-year-olds. In line with experience elsewhere, the report finds that 16- and 17-year-olds turn out more and are, at least in the ways measured, better prepared for voting than 18–24-year-olds. It also highlights the Commission's work in schools to raise awareness in advance of the elections.

## Voter ID trials

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The government [announced](#) in September that trials will be held in certain local authority areas in 2018 requiring voters to show ID at the polling station. The areas – which all volunteered to participate – were initially to be Bromley, Gosport, Slough, Watford and Woking. Slough, however, subsequently (and controversially) [pulled out](#). In addition, Tower Hamlets will test ways of improving the security of postal voting.

The trials follow the [Pickles review](#), published last year (see [\\_\\_\\_\\_\\_ 64](#), page 8), which advocated an ID requirement as one of various changes designed to tackle electoral fraud. Preceding the Pickles review were two reports by the Electoral Commission: the [first](#), published in January 2014, recommended the principle

of requiring ID to vote; the [second](#), in December 2015, explored the details of how this might be done. The announcement of the trials was [welcomed](#) by the Electoral Commission's Chief Executive, Claire Bassett.

Two of the five original trial areas – Slough and Woking – were among sixteen local authorities identified by the Electoral Commission in its 2014 report as being at particularly high risk of fraud. According to the government's announcement, 'The form of identification to be used will be set by the councils, but the pilot will involve trialling both photo ID and non-photo ID to see what is most effective and efficient.'

What will happen after the trials remains unclear.

The [Conservative manifesto](#) for the June election said that the party would 'legislate to ensure that a form of identification must be presented before voting'. Amidst a legislative programme packed with contentious Brexit-related measures, however, it appears unlikely that the matter will be high on the government's list of priorities.

## Boundary reviews continue

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The process of reviewing the boundaries of Westminster parliamentary constituencies took its latest step forward on 17 October, when the Boundary Commissions for [England](#), [Scotland](#), and [Wales](#) published revised proposals taking account of feedback on the initial recommendations that they produced last year. The Boundary Commission for Northern Ireland is expected to set out revised proposals in the spring.

It is now widely assumed, however, that the proposals will never be implemented. They are designed not only to adjust for population shifts over recent years, but also to reduce the number of seats from 650 to 600 and to apply the new, narrower band of permitted variation in constituency sizes that was set out in the 2011 [Parliamentary Voting System and Constituencies Act](#). They therefore have many parliamentary opponents among parties and individual MPs who will lose out. Importantly, the DUP issued a [statement](#) in September saying the changes proposed for Northern Ireland 'would produce an unrepresentative political result that would have the potential to have far-reaching and negative political consequences for the constitutional stability of Northern Ireland'.

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The second measure, the [Judicial Council Bill 2017](#), aims to fulfil a long-standing demand of the judiciary to create a judicial council (modelled on similar bodies in Australia and Canada) that will be judge-led and will take responsibility for education and training, ethics and standards, judicial representation and – most importantly – judicial discipline. There is currently no way of disciplining Irish judges other than impeachment (which has never been used). The need for a Judicial Council and the outline that it should take have been accepted across politics and the judiciary for at least 15 years. Nonetheless, successive bills on the subject have failed to pass through the , often (it appears) because of lack of political urgency. The current bill may suffer the same fate.

## Electoral reform in Italy

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After months of delay, a new electoral law for the Italian parliament has been approved. The proposal is supposedly [based on the 'German-style' mixed system](#). At [first glance](#), it looks like a predominantly proportional system: one-third of seats would be allocated in single-member districts, and two-thirds in multi-member list areas. However, unlike in Germany, electors would be allowed to cast only one vote. Hence, they could not vote for a district candidate from one party and a different party's regional list. Moreover, party lists are closed; the Constitutional Court has previously ruled closed lists to be unconstitutional, as they prevent a choice among individual candidates – though it has said that they may be valid if the regions are small enough and the lists therefore do not contain too many names.

The parliamentary passage of the legislation was eventful: in the Chamber of Deputies the government asked for three separate confidence votes on different articles (a highly controversial practice in the case of an electoral law, which has been [contested in the past](#)). The Chamber eventually passed the proposal by 372 votes to 215 in a final 'secret ballot', with between [30 and 50 'franchi tiratori'](#) (government MPs who voted against the proposal and remained unidentified). On the day of the vote, [public protests](#) led by the populist Five Star Movement took place just outside the Chamber of Deputies. It was [agreed](#) by the Senate on 26 October, meaning that it will be in use for the election that must take place by May 2018.

## People on the move

**Lord (Martin) Callanan** has been appointed as a minister at the Department for Exiting the European Union, replacing **Baroness (Joyce) Anelay of St Johns**, who resigned citing the worsening of an injury.

**Sir Vince Cable** has become Leader of the Liberal Democrats unopposed, following the resignation of Tim Farron in the aftermath of the general election.

**Jo Swinson** took up the position of Deputy Leader, also unopposed. **Henry Bolton** was elected as UKIP's third new permanent leader in just over 12 months, succeeding **Paul Nuttall**



## Citizens' Assembly on Brexit

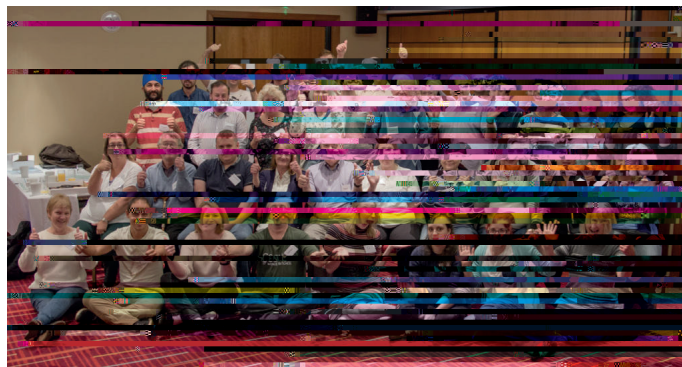
In September and early October, the Constitution Unit led a team, also including the [Centre for the Study of Democracy](#) at the University of Westminster, the University of Southampton, [Involve](#) and the [Electoral Reform Society](#), that hosted a [Citizens' Assembly on Brexit](#). The Assembly was a group of 50 people, selected randomly to be broadly representative of the UK electorate, who met over two weekends in Manchester to consider their priorities for Brexit, learn about and deliberate on the options (focusing on trade and migration), and draw out recommendations.

The Assembly was a huge success. All of those who signed up to attend [did so](#). They engaged in two very rich weekends of constructive and amicable discussions. They heard from a balanced set of experts, all of whose contributions they greatly valued. They reached conclusions that were consistent and provided a coherent vision of the kind of Brexit that most Assembly members would like to see.

The Assembly concluded in favour of a bespoke trade deal between the UK and the EU. If no such deal is possible, however, the substantial majority of members would prefer to stay in the Single Market and Customs Union than to leave with no deal. The members wanted the UK to maintain free movement of labour between the UK and the EU, but to introduce a range of measures permitted within Single Market rules that would limit immigration, particularly by those who cannot support themselves financially. Full details are available in the Assembly's [summary report](#).

The next phase of the project seeks to spread awareness of the lessons that can be learnt. The Citizens' Assembly on Brexit has gone further than any previous exercise in illuminating what people want from Brexit when they have had the chance to learn about and discuss the issues in depth. On the principle that policy decisions in a democracy should be rooted in public opinion, and that public opinion should, so far as possible, be informed and considered, Assembly members' views on Brexit hence deserve to be listened to and taken seriously.

In addition, the Assembly shows the value of deliberative approaches to democratic politics. The project team strongly wants to encourage further examination of how a variety of deliberative mechanisms could be used to foster deeper public participation and better policy-making across a range of issues.



The members of the Citizens' Assembly on Brexit. © Cade Hannan.

## Independent Commission on Referendums

The Unit has established an [Independent Commission on Referendums](#) comprising twelve senior figures from politics, public service, the media, regulation, and academia, to consider the role that referendums should play in the UK's democratic system and how referendums should be conducted. It is examining, for example, when referendums might or might not be desirable, whether they should be subject to additional safeguards, what role governments should play during campaigns, and how the quality of information available to voters during campaigns could be improved.

The Commission is chaired by former senior civil servant Sir Joseph Pilling. Its members are former Anglican Archbishop of Armagh Lord (Robin) Eames, Conservative MP and former Secretary of State for Wales Cheryl Gillan, Conservative MP and former Attorney General Dominic Grieve, former Head of BBC Political Programmes Sue English, Labour MP Seema Malhotra, senior pollster Deborah Mattinson, media specialist Dr Martin Moore, political theorist Professor David Runciman, former Labour MP and chair of the Vote Leave campaign Gisela Stuart, former Electoral Commission chair Jenny Watson and former SNP MSP Andrew Wilson.

The Commissioners met for the first time on 16 October, and will meet monthly until early next summer. Their diverse expertise on referendums and politics in the UK will be supplemented by detailed comparative research



carried out within the Constitution Unit. We expect that the Commission's final report will be published in June 2018.

The Commission has launched an expert consultation to seek views on the issues within its remit, which will close on 1 December. Any readers who have not been invited to participate but would like to do so are welcome to write to Jess Sargeant, via [icreferendums@ucl.ac.uk](mailto:icreferendums@ucl.ac.uk), explaining their relevant expertise.

## EU (Withdrawal) Bill coalition

The Unit is working in collaboration with the [Bingham Centre for the Rule of Law](#) in supporting an [Expert Working Group](#), chaired by former Conservative Attorney General Dominic Grieve MP, exploring the rule of law issues in the European Union (Withdrawal) Bill. Group members include several eminent parliamentarians, legal specialists and senior figures from key organisations such as the [Hansard Society](#), [Justice](#) and the [Institute for Government](#). The Group will publish briefings on the bill, as well as working with parliamentarians on how it might be improved from a rule of law perspective.

## New book: *Legislation at Westminster*

Late August saw publication by Oxford University Press of Meg Russell and Daniel Gover's book [Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law](#).

This is the final scheduled product of the Unit's [Nuffield Foundation-funded project](#) on parliament's impact on legislation. The book is based on careful study of the passage of 12 government bills through both parliamentary chambers, including analysis of over 4000 amendments and more than 100 interviews with key participants. It is structured by different 'actors' in the legislative process (government, government backbenchers, opposition, non-party parliamentarians, select committees and pressure groups) as well as including introductory chapters on the legislative process, an analysis of cross-party working, and a substantial conclusion about the nature of parliamentary influence at and beyond Westminster.

The book's findings (which were summarised on the [Constitution Unit blog](#)) challenge some common assumptions about parliament and its role. Westminster is often seen as relatively non-influential on legislation,

and is even sometimes dismissed as a 'rubber stamp', which simply approves proposals made by government. But close inspection shows this to be simplistic. While most bills agreed are government bills, and most amendments made are also proposed in the name of ministers, many government amendments respond to non-government concerns in parliament. Additionally, government puts significant planning into ensuring that bills are 'parliament-ready' and that likely concerns have been addressed at early stages; parliamentarians also frequently put issues onto the policy agenda, influencing proposals in future government bills. The book proposes that there are six 'faces' of parliamentary power on legislation, only one of which is forcing amendments.

A highly successful launch party was held on Monday 16 October, kindly hosted by the House of Commons Speaker, John Bercow, in his apartments. A [public seminar](#) discussing its contents takes place on 15 November. For details of the book, and to purchase at a 30% discount (applicable until 31 December 2017) visit its dedicated [web page](#).





## New report on pre-appointment scrutiny hearings

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In July a [new Unit report](#) was published on the impact of parliamentary scrutiny of public appointments. The report, by Robert Hazell, Turan Hursit, Harmish Mehta and Peter Waller, finds that pre-appointment scrutiny hearings, which Commons select committees hold with preferred candidates for the most senior public appointments, can have real impact. Since the system was introduced in 2007, there have been cases where candidates have not been appointed as a result of hearings, and others where they have been forced to resign. The conclusions have been summarised on the [Constitution Unit blog](#).

## Research volunteers

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The Unit is grateful for the hard work and diligence of our research volunteers in summer 2017: Brad Albrow, Jessica Bryant, Alex Diggins, Linda Hien, Georgina Hill, Aleksei Opacic, Marc Phoon, Naveen Saini and Susanna Smith.



## Cambridge Institute for Public Policy

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Michael Kenny took up the post of Professor of Public Policy at the University of Cambridge in June 2017. He is the inaugural Director of the [Cambridge Institute for Public Policy](#), which will conduct high-level policy research and advanced training (incorporating the well-established M.Phil in Public Policy, which Professor Kenny will direct). It will bring together research and researchers from different parts of the University, and stimulate further research collaboration in three broad areas: place and public policy; science and the future of democracy; and re-inventing government (with a brand-new programme on digital government soon to be launched).

Professor Kenny is also a co-investigator on a new ESRC-funded project, working with colleagues in universities across the UK and the Republic of Ireland – ‘Between Two Unions: The Constitutional Future of the UK and Ireland after Brexit’. Led by Professor

Michael Keating from the University of Aberdeen, this research programme will explore changing constitutional relationships across the UK and Ireland in the context of Brexit.

## The institutional representation of parliament

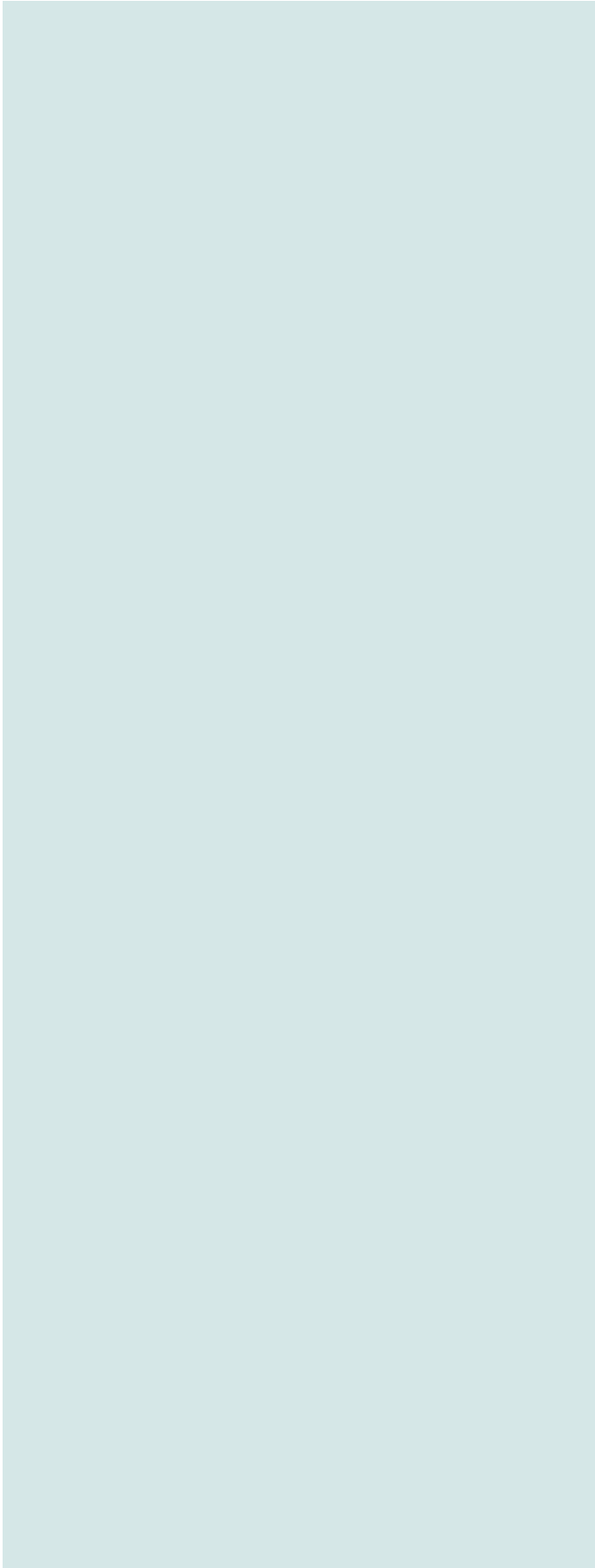
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The journal [Journal of Parliamentary & Political Research](#) has published a [new article](#) by Cristina Leston-Bandeira (Constitution Unit Fellow and Professor of Politics at the University of Leeds) and David Judge (Emeritus Professor of Politics at the University of Strathclyde). The article is titled ‘The institutional representation of parliament’ and stems from a [comparative ESRC project](#) led by Professor Leston-Bandeira, which explored how parliaments conceptualise and manage their public image, focusing on five European legislatures.

In the new article the authors explore what they term the second dimension of parliamentary representation: institutional representation. Recent theoretical re-conceptualisations of political representation and contemporary empirical analyses of parliamentary representation have largely neglected the representation of parliaments as institutions. As a consequence, relatively little attention has been paid to what is being communicated to citizens about parliaments and upon the nature of the parliamentary institutions that citizens are expected to engage with.

Using interview data from 39 key actors in the Scottish, Westminster and European Parliaments, the authors analyse who act as ‘claim-makers’ on behalf of parliaments, the nature of these claims in different political contexts, and the ‘symbolic intent’ and claims associated with the architectural design of parliamentary buildings. They identify a basic paradox of institutional representation in that those who ‘speak for’ (most loudly and most persistently) and ‘act for’ parliaments as institutions are not primarily elected representatives but rather non-elected officials. The article’s key findings in relation to the UK parliament have been [summarised on the Constitution Unit blog](#).

# Bulletin Board



# Bulletin Board

Alan Renwick wrote an article about how the Citizens' Assembly on Brexit's conclusions demonstrated a lack

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