

Constitution Unit

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Brexit and the changing logic of British politics

The Brexit tumult goes on, and is increasingly challenging some central tenets of British politics.

Having been due to leave the European Union on 29 March, the UK will now remain until at least 31 October. Right up to the original deadline, the government was making frenetic efforts to negotiate addenda to the Withdrawal Agreement (see page 2), but it could not gain concessions adequate to persuade MPs to accept the deal (see page 4). Extensions were agreed, first just for two weeks, then for seven months. A key obstacle is fragmentation on the government side, with Conservative MPs (mostly those who are pro-Brexit) refusing to compromise. With great reluctance, the Prime Minister ultimately turned to seeking a pact with the Labour Party – a distinctly un-British approach whose necessity her European partners had apparently seen long before she did.

[Theresa May announces her intention to resign, 24 May \(OGL 3\)](#)

But, with the pressure of an immediate deadline gone, and with looming European Parliamentary elections that she had never wanted to hold, the chaotic politics of a cross-party deal proved unworkable. Following [her promise](#) that a proposed Withdrawal Agreement Bill would include a referendum clause, Theresa May's cross-party flirtations sufficiently [inflicted sections of her party](#) that she was eventually forced to acknowledge defeat. On 24 May she [announced](#) her intention to step down, triggering a contest for the leadership of the Conservative Party and (very likely) the country.

Throughout these months of tumult, the role of parliament has been central, and hotly contested. The 2016 referendum initiated such a crisis, by pitting popular sovereignty against the conventional logic of parliamentary sovereignty. Most recently there has been a long battle of wills between government and parliament. A key argument (see page 4) has concerned parliament's ability to control its own agenda, with initiatives from backbenchers firmly blocked up by the Commons Speaker. While these had mixed success, many MPs are clearly now willing to use all the powers they possess to prevent an outcome they believe would be deeply damaging to the country.

At the heart of these arguments is a question about whether the correct interpretation of Westminster convention is to privilege the parliamentary majority or the government. For most of our recent history these two have reliably coincided.



Brexit and Parliament

Parliament, and specifically the House of Commons, has remained a key forum for dramatic developments over Brexit, including government defeats, procedural innovations, and interesting cross-party alliances and internal party splits.

As reported in [Monitor 71](#) (see page 3), on 15 January MPs heavily rejected the deal negotiated by Theresa May with the EU27 in a ‘meaningful vote’ under the European Union (Withdrawal) Act. Subsequently some backbenchers tried unsuccessfully to temporarily wrest control of the Commons agenda from the government in order to debate alternatives, and motions were twice

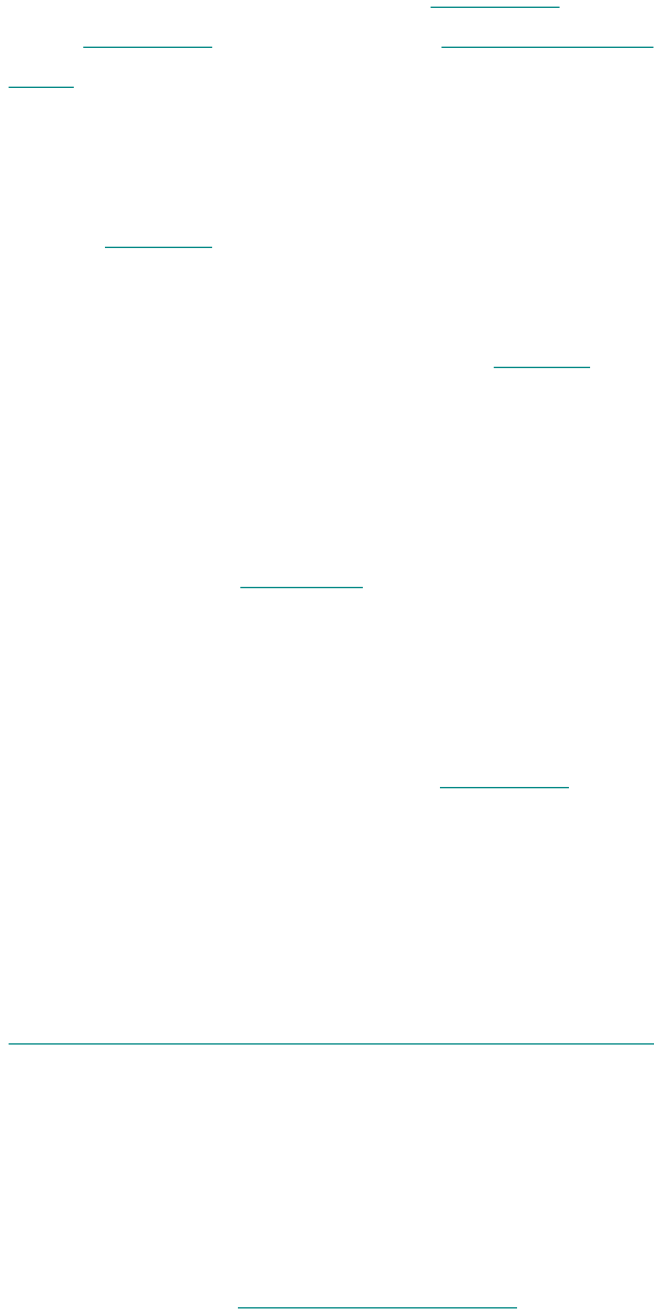


This followed a statement from the Prime Minister in

(see [Monitor 71](#), page 7 and [our blog](#)). This marks 40 years since the establishment of the departmental select

Local elections

The European elections were presaged three weeks earlier by [local elections](#) in most of England – excluding



While the broad thrust of the report was widely welcomed, many – including the chair of the Commons DCMS Committee, [Damian Collins](#), and Labour’s DCMS Shadow Secretary of State, [Tom Watson](#) – criticised its lack of specific action on political advertising. In May, however, the Cabinet Office [announced](#) a commitment to introducing a requirement for online political advertising to carry an imprint specifying its source. It promised to publish detailed proposals later in the year.



[Theresa May at the Online Harms Summit in Paris](#), by [UK Prime Minister](#) (CC BY-NC-ND 2.0).

Parliamentary committee work on elections and democracy

Parliament continues to take a close interest in matters relating to elections and democracy.

The Commons Public Administration and Constitutional Affairs Committee launched an [inquiry into electoral law](#) in March. This asks ‘how urgently comprehensive electoral reform is required, what should be prioritised, and whether there is a need to go beyond the Law Commission’s proposals outlined in their 2016 interim report’. Though broad, the inquiry’s terms of reference exclude some of the most pressing issues – such as the regulation of national campaigns and online advertising – as well as fundamentals like voting systems and the franchise.

In April, the Commons DCMS Committee established a [Sub-Committee on Disinformation](#), designed to become ‘Parliament’s “institutional home” for matters concerning disinformation and data privacy’. As Michela

Palese [suggested on the Unit’s blog](#), ‘One of the primary benefits of the sub-committee is that it will allow for the ongoing monitoring of developments in the field of disinformation and digital campaigning, and provide a constant, long-term parliamentary focus in this area.’ The DCMS Committee has also continued its innovative collaboration with counterparts in other legislatures through the [International Grand Committee on Big Data, Privacy and Democracy](#). Following its inaugural meeting in Westminster in November 2018, this met over three days in Ottawa in late May.

The Lords Liaison Committee [announced](#) in March its proposals for the next set of ‘special inquiry’ committees, which are constituted on a temporary basis to investigate a specific topical issue. Two of the four proposed committees relate to electoral matters. First, a post-legislative scrutiny committee on the [Electoral Registration and Administration Act 2013](#) is due to examine the introduction of individual voter registration and consider whether further reforms are needed. Second, a committee on ‘Democracy and Digital Technologies’ will examine ‘the extent of the harm caused by digital media to politics and political campaigning’, review existing recommendations and progress towards their implementation, and consider alternative responses.

Boris Johnson in court

In the latest in a series of court cases seeking to hold campaigners in the 2016 Brexit referendum to account for their inaccurate statements, Boris Johnson [was summonsed](#) to answer a charge of misconduct in public office as part of a crowdfunded private prosecution. The alleged misconduct was Johnson’s repeatedly making the [false claim](#) that ‘the UK sends £350 million a week’ to the EU. Even some of Johnson’s strongest critics, however – including the Director of the Good Law Project, [Jolyon Maugham](#) – argued that the move was unhelpful for the protection of democracy and free speech. Johnson was quick to apply for judicial review of the decision, and in a rolled up permission and decision hearing on 7 June, the High Court [quashed the summons](#). At the time of writing, it is unclear if the decision will be appealed.

Meanwhile, Vote Leave [dropped its appeal](#) against an Electoral Commission ruling last summer that it violated referendum campaign spending regulations.

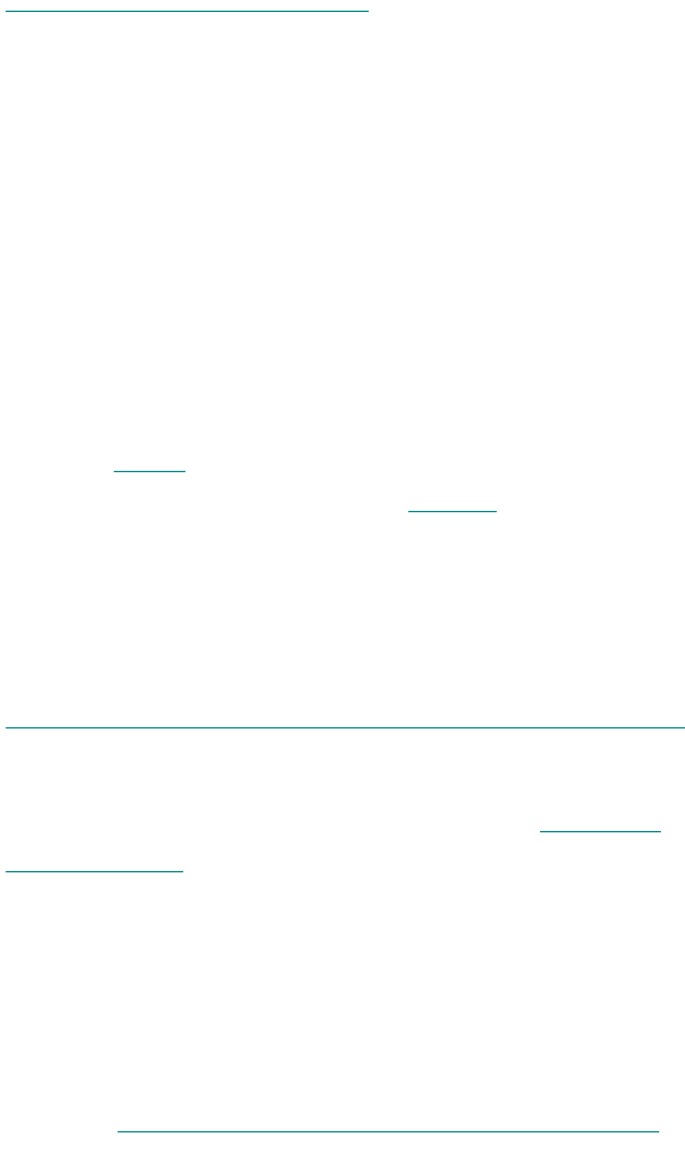
Committee of Conservative backbench MPs signalled its willingness to change those rules if she did not announce her departure. On 24 May, therefore, Mrs May [said](#) that she would resign as party leader on 7 June. With the number of MPs declaring their intention to run reaching as high as 13, the 1922 Committee executive showed again on 4 June its willingness to fit the rules to current needs. Whereas previously an MP required only a nominator and seconder to reach the ballot paper, this was changed to require them to have eight supporters. And candidates would now need at least 17 votes in the first ballot and 33 in the second to stay in the race (a [Commons Library briefing paper](#) provides a useful summary). By close of nominations on 10 June, 10 candidates had formally entered the contest, of whom seven made it through the first round three days later. Through four further rounds of voting, MPs gradually whittled these down to two: Jeremy Hunt and Boris

Relations, [Michael Russell](#), as well as from Unit Fellow [Nicola McEwen](#) and experts from Spain, Belgium and Canada.

The efficient functioning of Scottish-UK relations depends largely on personal relationships and trust. The committee found that both had been damaged in recent years, first by the 2014 Scottish independence

agreement on resumed devolution 'in a narrow window of opportunity' ahead. Given the divisions that have emerged – such as over equal marriage and Irish language legislation – that is a tall order, and the first 'intensified' talks on 3 June [broke up after just 25 minutes](#). The report of the [Inquiry into the Renewable Heat Incentive](#) is expected soon and its conclusions on the DUP's handling of the scheme could provide fresh impetus to the process: this was the stated cause of the [resignation of Deputy First Minister Martin McGuinness](#), which led to the government's collapse in January 2017.

Another factor in those talks will be the recent election results. At the [local elections](#) in May, the cross-



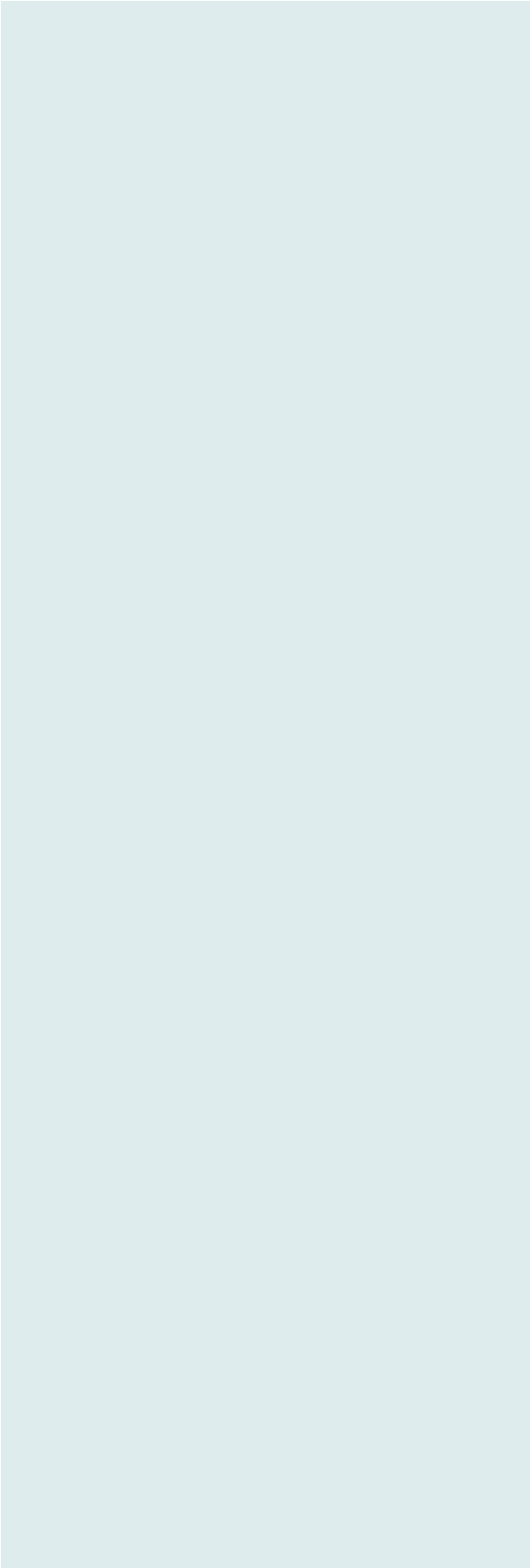
for UKIP on the regional list system. Plaid Cymru came second with 19.6% , beating the Brexit Party in Ceredigion, Gwynedd and Anglesey and coming ahead of Labour Wales-wide. The results saw Labour lose in a Wales-wide poll for only the second time since 1922. In the immediate aftermath of the results, First Minister Mark Drakeford [signalled his support](#) for a second referendum in which Welsh Labour would campaign to remain in the EU.

Prior to the election, in a [keynote speech](#) at the Institute for Government in May, the First Minister called for major, UK-wide constitutional reforms. Echoing the ‘new unionism’ espoused by his predecessor, Carwyn Jones, he called for a ‘fundamental rethink’ of the role of the Welsh and Scottish Offices, along with reforms to the UK’s intergovernmental arrangements and the House of Lords.

In the Assembly, major legislative reforms are well underway. The [Legislation \(Wales\) Bill](#) has proceeded to the third stage of the legislative process after the Constitutional and Legislative Affairs Committee (CLAC) [reported](#) in favour of its general principles in March. The bill was amended during the second stage of the legislative process and will now proceed to consideration in plenary. If passed, it will require the Welsh government to bring forward plans for the codification of Welsh law.

[kingmaker](#), as is Spanish Prime Minister Pedro Sanchez, who stands strengthened by [a strong domestic win for his Socialist Party](#).

Despite its losses, the EPP remains by far the biggest bloc and would like to see its candidate, German MEP Manfred Weber, prevail. Socialist candidate Frans Timmermans or Liberal favourite Margrethe Vestager top the list of alternatives. However, the need for compromise could mean the winning candidate is someone not currently nominated, such as Michel Barnier, a former Commissioner



Philip Rycroft retired from the Civil Service on 29 March. He has been replaced as Permanent Secretary at the Department for Exiting the European Union by **Clare Moriarty**.

Sarah Healey is the new Permanent Secretary at DCMS. She replaces **Dame Sue Owen**, who retired from the Civil Service at the end of March.

Bob Posner has been confirmed as the permanent Chief Executive of the Electoral Commission after holding the position in a temporary capacity.

Sir Vince Cable

by the students in the class. This year 30 students worked together to gather data on the types of people and organisations who submit evidence to House of Commons select committees. The award is a credit not only to Meg's teaching, but also to the great value of parliament's university outreach programme, and to what a fascinating time it currently is to study the UK parliament. Further details can be found [here](#).

The Secretary of State must by law call a poll if a majority of people in Northern Ireland would be likely to vote for Irish unity; this was a key part of the Good Friday Agreement. A poll in the Republic would also be needed. But beyond that the provision is stark and minimal. The report says there is little evidence at present of a majority for Irish unity, but adds that it is clear that opinion has

Meg Russell appears before House of Commons Liaison Committee

On 29 April Meg Russell was among the first witnesses to give oral evidence to the House of Commons Liaison Committee's inquiry into the effectiveness of House of Commons select committees (see page 8). In her evidence (which is summarised [here](#)), she argued that the select committees have become a highly valued part of the parliamentary landscape and are more effective than is often assumed. However, having reached high prominence they are now potentially more vulnerable to criticism – so a review is timely. Among her suggestions were greater coordination between committees, and greater opportunities for committees to commission research – including to gain a more developed understanding of public opinion on complex policy issues.

Northern Ireland border poll report

A new Constitution Unit report, [A Northern Ireland Border Poll](#), was published in March. Written by Honorary Senior Research Associate [Alan Whysall](#), it outlines the current state of opinion on a border poll and the provision in law for one to happen, before analysing the many gaps in the framework for a potential transition to a united Ireland.

Meg Russell was quoted by [BBC News](#) (21 May) on the same subject, and the Unit's [report](#) on the mechanics of such a referendum was also referred to in the [Times](#) (29 May).

Alan Renwick discussed electoral systems on Sky News' *All Out Politics* on the day of the European elections (23 May).

Alan Renwick's [blogpost](#) on lessons to be learned from the European elections was referred to in an article about the electoral fortunes of the Remain parties on [politics.co.uk](#) (31 May).

Meg Russell appeared on the Radio 4 programme *Rethinking Representation* ([31 May](#), [7 June](#) and [14 June](#)), hosted by David Runciman, to discuss the role of representative democracy in the UK.

Meg Russell appeared on Austria's [ZIB 1](#) and [Abendjournal](#) (both 7 June) to discuss Theresa May's resignation.

Meg Russell appeared on Radio 4's [The World Tonight](#) to discuss parliamentary attempts to prevent a 'no deal' Brexit (11 June).

Select committee appearances

Meg Russell gave evidence to the Commons Liaison Committee's inquiry into the effectiveness of House of Commons select committees ([29 April](#)).

Unit publications

Alan Whysall, [A Northern Ireland Border Poll](#) (Constitution Unit report, March).

Meg Russell, 'Parliament' in [Article 50 Two Years On](#) (The UK in a Changing Europe, March)

Alan Renwick and Michela Palese, '[Can Democracy Be Done Better?](#)' (*Political Insight*, May).

Jean-Benoit Pilet and Alan Renwick, 'Personalization and Electoral Systems', in [The Personalization of Democratic Politics and the Challenge for Political Parties](#) (ECPR Press/Rowman & Littlefield International).

Publications to note

Richard Bellamy, [A Republican Europe of States](#) (Cambridge University Press, January).

Andrew Gamble and Tony Wright (editors), [Rethinking Democracy](#) (Wiley, January)

Thomas Christiansen and Diane Fromage (editors), [Brexit and Democracy: The Role of Parliaments in the UK and Europe](#) (Palgrave Macmillan, March).

Maddy Thimont Jack and Hannah White, [Parliament after Brexit](#) (Institute for Government, May).

Jorge M Fernandes and Cristina Leston-Bandeira, [The Iberian Legislatures in Comparative Perspective](#) (Routledge, May).

James Mitchell and Jim Johnston (editors), [The Scottish Parliament at Twenty](#) (Luath Press, June).

Contributors to 72

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The issue was edited by Dave Busfield-Birch.