

MONITOR

HUMAN RIGHTS SABRE RATTLING

This summer saw some strange manoeuvring as the Labour and Conservative Party leaders sought to outdo each other in attacking the Human Rights Act. Following a court decision in May overruling the proposed deportation of nine Afghan hijackers, which both party leaders said defied common sense, the Prime Minister ordered a review of the operation of the Act. In a speech to the Centre for Policy Studies on 26 June David Cameron went one stage further and promised to scrap the Human Rights Act altogether and replace it with a British bill of rights.

Both leaders were responding to a long running press campaign. The Sun, Mail and Telegraph have portrayed the act as a charter for foreigners and scoundrels, and EU inspired to boot. These papers welcomed Blair's review and Cameron's commitment to scrap the Act; but the small print of the politicians' statements was more nuanced than the headlines they generated. On the Labour side, the Prime Minister asked the Home Secretary 'to look again at whether primary legislation is needed to address the issue of court rulings which overrule the government in a way that is inconsistent with other EU countries' interpretation of the ECHR'.

The report of the government's review published on 25 July represents a victory for the DCA over No 10 and the Home Office. Lord Falconer concludes that the impact of the Human Rights Act on UK law and policy making overall has been beneficial. Difficulties have only arisen because of myths and misperceptions about the Act; and because of over-zealous interpretation by officials, who may occasionally pay too much attention to individual rights at the expense of the wider community (as seems to have happened in the case of the release by the Parole Board of Anthony Rice). To counter these difficulties the government is to lead a drive to ensure that the public are better informed about the benefits of the HRA, and that officials place appropriate emphasis on public safety. The Home Office is to review how police, probation, parole and prison services balance public protection and individual rights; and in a gesture to the Prime Minister's original concerns, the government 'if necessary, will legislate to ensure that public protection is given priority'. For the report see www.dca.gov.uk/peoples-rights/human-rights/pdf/exec_summ_intro.pdf.

The government is also planning a more proactive and strategic approach to human rights litigation. As part of this it is supporting a test case brought by the Netherlands to try to persuade the European Court of Human Rights to incorporate a balancing test into its jurisprudence on deportation. It was the court's 1996 decision in

Chahal v UK which led the High Court to rule that the Afghan hijackers could not be deported back to Afghanistan, because they faced the risk of 'inhuman or degrading treatment or punishment'.

David Cameron's pledge of a British bill of rights could have more far-reaching consequences, not least because of his wish for the bill of rights to be entrenched. Ironically it was Labour Party policy in 1997 to move to a British bill of rights as a second stage, but that was quietly dropped once the ECHR had been incorporated. Cameron recognises the UK's commitment to remain within the ECHR, so his British bill of rights would have to be the ECHR plus: unless there are further derogations, it cannot be ECHR minus. The drafting will be left to a panel of experts, but he also promised to promote public debate as the drafting proceeds, in order to achieve a lasting consensus. If that public debate is achieved, over a number of years as Cameron suggested, a British bill of rights could become as deep rooted as the Canadian Charter of Fundamental Rights and Freedoms, and no longer capable of being depicted as part of some European plot.

NEW DEVOLUTION ACT FOR WALES

The Government of Wales bill finished its parliamentary passage in July, just before Parliament rose for the summer. Its final approval followed a short stand-off between Commons and Lords, although the bill passed through the Lords with relatively few amendments. The main point of contention was the ban on 'dual candidacy' for both constituency and regional list seats in National Assembly elections. Opposition and cross-bench peers in the Lords sought to undo the proposal to ban this which had been adopted by the Commons and included in both the 2005 white paper *Better Governance for Wales*, and Labour's UK general election manifesto. Ultimately, a trade-off with a compromise on the rules for the composition of Assembly committees enabled Liberal Democrat peers to abstain, and the bill to pass with the ban intact. The new election rules will apply at the May 2007 Assembly elections, and the new arrangements including a formal split between the devolved legislature and the executive (to be called the Welsh Assembly Government) will apply after then.

The most important provisions of the new Act are those enabling legislative powers to be conferred on the Assembly. Initially, powers will be conferred on a case-by-case basis by secondary Westminster legislation. Broader legislative powers over the whole of 20 'fields' set out in the Act, including health, education, local government and agriculture, can be conferred following approval in a referendum, which the Secretary of State will call. These procedures raise many

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PARLIAMENT

questions. It is unclear what legislative powers the Assembly will seek in the short term, how transfer orders will be scrutinised at Westminster, how these powers will relate to greater proposed use of framework legislation in primary legislation for England and Wales, or even how long this 'transitional' phase might last. So far there is little indication from the Assembly Government of its legislative ideas, although the looming election campaign may stimulate the parties to come up with interesting proposals. The extent to which the new Act leaves Welsh devolved government entangled with the UK's may prove highly problematic, however, especially when different parties hold office in London and Cardiff. While the bill is an imaginative technical response to a clever political compromise, those technical responses may not be able to cope with serious political differences.

Lords Reform

The controversy over 'cash for peerages' (see below), coupled with the appointment of Jack Straw as Leader of the House of Commons, have reawakened interest in Lords reform. The May reshuffle saw Straw not only change jobs, but take responsibility for Lords reform policy from the Lord Chancellor. He was previously sceptical about elections to the upper house, having voted against all elected options in February 2003. However, since being appointed he has expressed a willingness to compromise, implying that both he and the Prime Minister have shifted position. Inter-party discussions have been going on behind the scenes and Straw's speech to the Hansard Society in July suggested that a 50/50 elected/appointed mix was likely. However, this could prove to be a compromise that suits nobody: it was defeated without a vote in 2003 and some reformers have already spoken out against it. It is doubtful whether the Liberal Democrats will accept this position, whilst it already goes too far for those favouring appointment. Matters are complicated by the inclusion of the Lords' powers in the discussion. Ministers have indicated that progress depends on agreement about Lords conventions (see below), but this appears unlikely. Nonetheless new 'free' votes on the chamber's composition have been promised in the winter.

Whilst reform is awaited the size of the chamber continues to grow. By the end of July it had reached 738, compared to

the 666 after most hereditaries departed in 1999. One difficulty is that peers cannot retire (though they can go on temporary 'leave of absence', and these figures exclude the handful who have done so). This problem was highlighted in July by former Liberal Democrat frontbencher Lord Phillips of Sudbury, when he announced his desire to leave the House. He introduced the Life Peerages (Disclaimer) Bill, which would allow life peerages to be renounced, and require the prime minister to appoint a replacement from the same political party. The bill has no immediate prospect of becoming law.

Joint committee on conventions

In May the long-awaited parliamentary joint committee on the Lords was established. However, contrary to rumour (and the report in the last *Monitor*) it will not consider the chamber's composition, but only conventions governing its relationship with the Commons. The Joint Committee on Conventions comprises 11 peers and 11 MPs (11 Lab, 6 Con, 3 Lib Dem, 2 Crossbench). It is chaired by Labour's Lord (Jack) Cunningham, who skilfully steered the previous committee away from conclusions that the Commons might agree on in 2003. In contrast this time ministers are seeking agreement, but seem unlikely to get it. The committee's terms of reference require it to consider 'the practicality of codifying the key conventions of the relationship between the two houses of Parliament which affect the consideration of legislation'. In particular it is asked to consider the Salisbury convention, and conventions over secondary legislation, government legislation being considered 'in reasonable time' and 'ping pong'.

The committee has taken evidence from government, opposition parties, the Crossbench Convener and the Clerks of both Houses. It also held a session with academics, including the Constitution Unit's Meg Russell. Oral evidence and a short scoping report can be found on its website: www.parliament.uk/parliamentary_committees/joint_committee_on_conventions.cfm.

Discussions so far have demonstrated the contradictions in the committee's task. Much time has been spent on how to define 'conventions' and whether their codification is possible at all. Whilst widely accepted conventions (such as the confidence vote applying in the Commons alone) are not being considered, others are so contentious they seem unlikely to

be agreed. Ministers have indicated that agreement is necessary if reform is to proceed, and yet most accept that reform will change the relationship between the chambers and thus conventions may crumble anyway. One thing to emerge is the government distancing itself from the manifesto proposal to limit Lords' consideration of bills to 60 sitting days – not least because evidence from the Clerks showed that almost half of bills take more time than this. A 60-day limit would thus be *contrary* to recent convention.

House of Lords Speaker Elected

On 4 July 2006, a minor piece of constitutional history was made as the House of Lords elected its first Speaker. Nine candidates stood for election to the post under the Alternative Vote System. With 581 votes cast, Baroness Hayman won the election replacing the Lord Chancellor from his centuries-old position on the 'woolsack'.

The Lords took the decision to elect its own presiding officer in July 2005 following the enactment of the Constitutional Reform Bill which makes it possible for the Lord Chancellor to be drawn from either House. The move also fits in with a trend for a clearer separation of the three branches of government – legislature, executive, judiciary – all of which, uniquely, the Lord Chancellor had belonged to.

The Lord Speaker will be elected for five years but will not be able to serve more than two terms. Her primary role will be to preside over proceedings in the Chamber but she will observe the same formalities as any other member. In other words, the Speaker will address the House, not an individual member, and will not intervene when a member is speaking. Clearly, the function of the Lord Speaker is very different from its counterpart in the House of Commons. However, the Lord Speaker is to have a slightly more active role outside of the chamber where she can decide whether Private Notice Questions need an immediate reply (although ultimately this rests with the 'general sense of the House') and will have a strong representational role acting as a non-political spokesman for the House at home and abroad.

Public Honours Under Scrutiny

The controversy over 'cash for peerages' has rumbled on without resolution. As reported in the *May Monitor*, this was caused by nominees for peerages who

had given loans to the Labour Party being blocked by the House of Lords Appointments Commission. There were also allegations that honours, including peerages, were more likely to be awarded to individuals who had donated to academy schools. A police investigation began into whether the Honours (Prevention of Abuses) Act 1925 or Political Parties, Elections and Referendums Act 2000 had been broken.

This investigation has continued, with reports that Lord Sainsbury and former Labour Party chair Ian McCartney have been brought in for questioning, along with 46 others. In July Lord Levy, Labour's chief fundraiser, was rather spectacularly arrested but quickly released. Much speculation has focussed on whether the Prime Minister himself will be questioned. Briefings from Number 10 have defended both honours for donors (as committed party supporters) and school sponsors (as supporters of government education policy).

The Public Administration Select Committee's inquiry into the scrutiny of public honours was put on hold in March at police request. Deputy Assistant Commissioner John Yates suggested to PASC chairman, Tony Wright, that committee witnesses would be 'the very people that could be central' to a criminal inquiry, and the public nature of committee meetings could prejudice the investigation. In May PASC decided to proceed with its inquiry 'in a way that minimised the risks identified by the police while still exploring the policy issues involved', and it published an interim report in July. This recommended 'making it explicit that nominations to the peerage entail

appointment to the legislature rather than the award of an honour', greater transparency within parties over how nominees are chosen, and a statutory basis for the Appointments Commission which should have a clear role and powers and consult on the criteria for future nominees.

Parliament and the Royal Prerogative

Pressure continues for reform of the exercise of prerogative powers, with particularly strong calls to strengthen parliament's role in authorising military action.

Lord Lester's ambitious private member's bill seeking to place on a statutory footing prerogative powers including war powers, treaty ratification and organisation of the civil service completed its passage through the House of Lords shortly before the summer recess. However, with the government having repeatedly expressed its opposition to the bill, it is unlikely to make any further progress. As noted in the previous issue of the *Monitor*, the Conservatives under David Cameron are also taking a keen interest in this issue; although clear policy commitments are unlikely prior to the report of the party's Democracy Commission, chaired by Ken Clarke.

Also engaging in the debate has been the influential House of Lords Constitution Committee, whose report on 'Waging War: Parliament's Role and Responsibility', (HL 236, July 2006) concludes that 'the exercise of the Royal prerogative by the government to deploy armed force overseas is outdated and should not be allowed to continue...'. However, despite

these strong words, the committee concludes against a statutory solution along the lines of Lord Lester's and other recent private member's bills. In place of this, the committee recommends the creation of a convention that government should seek parliamentary approval prior to the deployment of armed forces as occurred in 2003 with regard to Iraq, but did not happen more recently when British troops were sent to Afghanistan.

DEVOLUTION

Scotland

The most jaw-dropping political event of the summer took place in the High Court. Tommy Sheridan, former Scottish Socialist Party leader, sued the News of the World newspaper. He claimed its stories, alleging he had indulged in extra-marital sex, had libelled him. The trial featured lurid tales of visits to a Manchester sex club, three- and five-in-a-bed orgies, and drug-taking. Sheridan, backed by his wife, denied everything, alleging political and media conspiracies. The jury believed him, rather than the newspaper's 18 witnesses, and awarded £200,000 damages.

The SSP promptly split. Four of its MSPs including current leader Colin Fox, had testified that Sheridan had confessed to the sex club visits at a party meeting. They and Sheridan's supporters traded vicious insults. The split into pro- and anti-Sheridan factions appears to have killed the SSP. Only Sheridan, who retains a public following, may keep his seat at next May's elections. A pyrrhic victory indeed.

The SNP are the most likely beneficiaries of the SSP's probable loss of five seats. Leader Alex Salmond chirpily predicted seat gains and power. He was bolstered by leaked Labour party polling which warned of up to ten seat losses. The Labour party was also damaged when Susan Deacon, health minister in the first two years of the parliament but a back-bencher thereafter, announced she would not stand at the next election.

Strains over the devolution settlement at Westminster appeared with a Scottish Affairs Select Committee report warning of English discontent over Scottish MPs' votes on English matters. An IPPR pamphlet by Michael Wills, Labour MP for Swindon, also demanded action. But neither report offered a clear solution.

CONSERVATIVE PARTY CONSTITUTIONAL POLICY

The Conservative Party published its *Built to Last* document on 16 August. The paper outlines the aims and values of the party and will form the basis of their election manifesto. It is more detailed than the draft document published earlier in the year and has been amended according to feedback from Conservative Party members, who will now have the opportunity to vote on the paper.

The proposals which affect constitutional matters include:

- Replacing the Human Rights Act with a new Bill of Rights.
- Enhancing the status of Parliament by strengthening committees and giving it the power to vote on treaties and wars.
- Passing a Civil Service Act to 'protect...civil servants from politicisation'.
- Providing a 'constructive Unionist response' to the West Lothian Question.
- Abolishing unelected regional assemblies.
- Abolishing ID cards if they are introduced.

The flip side of the West Lothian question – the inability of Westminster MPs to vote on Scottish issues – was highlighted by the controversial closure of one of Lanarkshire's three Accident & Emergency units. One is represented by Health Minister Andy Kerr, another by First Minister Jack McConnell, and the third by Home Secretary John Reid. Kerr's deputy, Lewis Macdonald, rubber-stamped the health board's decision to close Reid's local unit, much to Reid's fury.

Protests erupted over Prestwick airport re-fuelling stops by US munition flights to Israel during the Lebanon invasion. The protests, mainly against Tony Blair's foreign policy, rapidly subsided when the stopovers were transferred to a military airfield in England.

Wales: Preparing for the new Assembly

Politicians and officials in Wales are starting to get ready for the changes that will be introduced under the Government of Wales Act 2006 (see page 1). This process has is taking place started against a backdrop of deteriorating relations between the politicians, which itself has

prompted Plaid Cymru to set out proposals to ensure a clean campaign in the May 2007 elections.

The most important issue under consideration is the standing orders for the new National Assembly. Crucially, these will define the legislative process, as well as how the Assembly can hold the Welsh Assembly Government to account. Standing orders will be made by Peter Hain, the UK Government's Secretary of State, and the Assembly will only be able to change them if a two-thirds majority for the change can be found. The Assembly has established a committee to prepare standing orders for the Secretary of State to consider, chaired by Jenny Randerson AM of the Liberal Democrats. This committee's role overlaps with that of the shadow Assembly Commission – but Lord Elis-Thomas, the Presiding Officer who chairs the shadow Commission, is not on the standing orders committee. Problems of co-ordinating the work of the two committees are emerging, and the standing orders committee lacks the input of one of Wales's leading experts in legislative procedures.

Northern Ireland

The prime minister, Tony Blair, and the taoiseach, Bertie Ahern, battle-scarred by their failures in 2003 and 2004 to restore the fragile institutions established by the Belfast agreement of 1998, paid yet another joint visit to Northern Ireland in June. Nearly four years on from the demise of the post-agreement institutions, they insisted that 24 November represented a final – really final – deadline for their renewal.

Mr Ahern warned bleakly that failure this time would mean devolution would be 'light years away'. And the Northern Ireland secretary, Peter Hain, spoke gloomily of a 'deep freeze'.

London and Dublin repeatedly pressed the Democratic Unionist Party to accept a power-sharing arrangement including Sinn Féin. Carrots and sticks were blandished – the carrots including the potential sacrifice of a long-overdue abolition of the '11-plus' in the region, and the sticks vaguely defined 'partnership' arrangements which conjured up a return to the old approach of the Anglo-Irish Agreement of 1985.

The two governments meanwhile talked down the concerns expressed by all parties on the Northern Ireland Affairs Committee about continued republican, as well as loyalist, involvement in the region's huge black economy and SF's continued hostility to the police – suggesting republicans had eschewed criminality and that support for the police should not be a 'precondition' of their renewed access to government. And they finessed demands from republicans that their 'community restorative justice' schemes be officially supported, in the face of robust opposition from the SDLP, the Policing Board and a former taoiseach.

The Assembly was convened in May to 'prepare for government', as the Northern Ireland secretary heroically tasked a cross-party committee. But the committee could not even agree on a chair and its proceedings were acrimonious, the DUP entering a raft of communalist political claims. Meanwhile, the move by the overshadowed Ulster Unionist leader, Sir Reg Empey, on the assembly's opening day to align himself for partisan advantage with the political representative of the Ulster Volunteer Force provoked widespread outrage.

INTERNATIONAL CONSTITUTIONAL FOCUS 1: GERMANY

The first phase of long-heralded federal reform has been passed by the governing 'grand coalition' in Germany. The package was approved in the Bundestag (Lower Chamber) by 428 out of 614 votes (a two-thirds majority of 410 votes was needed) and by 62 out of 69 votes in the Bundesrat (upper chamber).

The reform aims to rebalance the division of power between federal and regional governments, as the current set-up – in which the Länder (regional) governments, who nominate the representatives in the Bundesrat, hold a veto over 60 per cent of federal legislation – is thought to restrict the federal government's ability to legislate quickly or introduce reforms.

At its heart is a trade off: the Länder lose their substantial power of veto in the Bundesrat in return for increased policy autonomy elsewhere. Thus the proportion of federal legislation requiring Bundesrat approval drops from 60 to 30 per cent. The centre also gains control over environmental policy, while the Länder lose their place at negotiations in Brussels, unless they concern education, culture or broadcasting.

In return, the *Länder* gain more autonomy in the areas of civil servant staffing and salaries, shop opening times, education, public services, the right to protest and the penal system, and have a 'right to deviate' from some federal legislation.

The reform will come into force at the start of 2007. The second phase – reordering the financial relationship between the centre and the regions – will begin in autumn 2006. This process is set to be more arduous than the first, with smaller Länder feeling they have a lot to lose from potentially increased 'competitive federalism'.

There were tactical differences between pragmatists and fundamentalists in the DUP, with the former on best political behaviour at the British-Irish Interparliamentary Body. But the party leader, Rev Ian Paisley, delved deep into popular-Protestant tradition, invoking the Battle of the Somme to define a contemporary 'war' against republicanism from which there would be 'no discharge'. The Assembly was discharged for the summer with no tangible progress, recalling the sterile Prior assembly of the early 80s, when DUP support was at a previous peak.

The English Question

Though usually of interest principally to constitutional anoraks, the West Lothian Question and related issues have attracted a good deal of attention in recent months. At Westminster itself the clearest sign of this has been the progress of Lord Baker's Parliament (Participation of Members of the House of Commons) Bill which would enact 'English Votes for English Laws'. The bill was given its third reading in the Lords in April and now lies dormant having achieved its main aim of keeping in the public eye the perceived unfairness of the devolution settlement. A stream of opinion polls have indicated strong (if somewhat variable) support for the policy of barring Scots from voting on 'English-only' issues: good news for the Conservative leadership which remains wedded to such a move despite scepticism in the academic community as to whether the proposal is workable.

In broader public and political debate, the West Lothian Question proper – why Scottish MPs should be able to vote on 'domestic' England and Wales matters – is often conflated with other perceived anomalies related to devolution. One recurring controversy revolves around the appointment of Scottish MPs to ministerial posts with a predominantly English workload. Home Secretary John Reid has come under fire in the Tory press on these grounds even though his portfolio includes major all-UK policy matters such as asylum, immigration and terrorism policy.

More worrying for the government (or at least its Chancellor) is that questions have also been asked of whether a Scottish MP could now legitimately become Prime Minister. Shadow Cabinet member Alan Duncan suggested this would be 'almost

impossible' though he was swiftly slapped down by party leader David Cameron. Again, public opinion data is inconsistent, with three recent polls returning figures of 52, 40 and 25 per cent support for Duncan's position. However, what is rarely recognised in media coverage is that ministers (including the PM) are accountable not to their constituents but to the UK Parliament as a whole. As a result, unlike the true West Lothian Question a Scot sitting in Number 10 or in the Home Office should not be assumed a constitutional anomaly.

The final issue thrown into the pot is that of finance, with English-based media and politicians repeatedly criticising the higher per capita public spending apportioned to Scotland ('the Barnett formula' in media shorthand). One June poll found support for scrapping the formula among 70 per cent of English voters but only 12 per cent of Scots. At present neither major party has risked opening this Pandora's Box though Cameron may face pressure from his supporters to do so, which could certainly make life difficult for Gordon Brown in the next election campaign.

Regional and Local Government

The prospects for sub-national governance in England remain unclear with recent developments in Whitehall doing little to clarify the government's thinking.

May witnessed the end of John Prescott's responsibility for regional and local government as his remaining policy powers were transferred to the new Department for Communities and Local Government headed by former Education Secretary Ruth Kelly. While Prescott has long been regarded as the main ministerial champion of regionalism (in terms of strengthening the nine standard regions of England), Kelly's initial pronouncements have been interpreted as more favourable to the idea of 'city regions' as a new sub-national governmental tier.

The lack of consensus within government, however, was made evident when Treasury ministers Ed Balls and John Healey published a pamphlet criticising the idea of promoting city-region wide elected mayors and defending the performance of the existing regional institutions. They also suggested creating regional committees of MPs to increase democratic oversight of regional governance.

The water is likely to remain muddy at least until the delayed white paper on local government is published this autumn. Also likely to feed into the debate are the forthcoming reports of the Lyons Inquiry on Local Government Funding and the Commons Select Committee on Communities and Local Government which is currently investigating the question 'Is there a Future for Regional Government?'

FREEDOM OF INFORMATION

On 26 June 2006 the Constitutional Affairs Select Committee published a report on their assessment of the implementation of the Freedom of Information Act 2000 in its first year. 'Freedom of Information is clearly working, although there is room for improvement', stated Alan Beith MP, chairman of the committee, in the report. The committee welcomed the positive way in which the legislation has been used and the significant and valuable information that has been released since the Act came into force. However, the committee was disappointed by the long delays in processing FOI requests, and criticised the fact that some organisations had taken months to assess the public interest during internal reviews. The committee encouraged the Information Commissioner to take a firmer stance on delays of this nature, pointing out that such practices are contrary to the spirit of the Act. The committee members also expressed concern about the backlog of complaints waiting to be dealt with by the Information Commissioner's Office (ICO) as well as the quality of some ICO decisions. Perhaps most notably, the committee was sceptical that the relationship between the Department for Constitutional Affairs and the ICO was working effectively and recommended that the Government consider adopting the Scottish model by making the ICO directly accountable to and funded by Parliament.

The fifth quarterly report (covering January to March 2006) providing statistics on implementation of the Act across central government was published by the Department for Constitutional Affairs in June. A total of 9,400 requests across all monitored bodies were received in the first quarter of 2006; compared to 13,400 in the first quarter of 2005 and an average of 8,000 in each of the following three quarters. According to the statistics, organisations dealt with most requests in a timely fashion, with around 90 per cent of

all monitored bodies' requests answered within the statutory 20-day limit (or within permitted extensions). Of those requests resolved, 68 per cent were granted in full; 10 per cent were withheld in part; 14 per cent were withheld in full; and the remaining 8 per cent had not yet received a substantive response.

The ICO outlined the extent of the delays in its annual report published in July. Of the 2713 complaints received in 2005-6, 1666 were closed and 1290 were being processed. Around 70 per cent of cases were between 0 and 60 days old; however, 14 per cent had been with the ICO for longer than 181 days.

ELECTIONS AND PARTIES

The Future of Party Funding

Two inquiries into the future of party funding are currently under way. The Prime Minister has asked former civil servant Sir Hayden Phillips to 'examine the case for state funding of political parties including whether it should be enhanced in return for a cap on the size of donations; and to consider the transparency of political parties' funding'. Sir Hayden Phillips will seek the views of political parties, the public, academic experts and conduct some analysis of how political parties are funded in other countries. The Constitutional Affairs Select Committee is also investigating the issue

in order to establish how well the current system is working and the practicability of any possible reforms. The Constitution Unit hosted an academic seminar for the Phillips review in July.

All three major parties have been the subject of controversy concerning donations and loans in recent months. The review also comes at a time when the Labour Party and the Conservatives are under increasing financial strain. Accounts submitted to the Electoral Commission in July show Labour to have debts of £27 million and the Conservatives £18 million. The wider context, of declining party membership and increasing party expenditure, suggests the present system is unsustainable.

Conservative Leader David Cameron has advocated a cap on donations of £50,000 from individuals, corporations and unions, and 'modest' state funding. A £50,000 cap on donations has been supported by the Liberal Democrats since 1998. Such a cap is however unlikely to be supported by the Labour Party, which receives around a quarter of its income from trade unions, though this is a significantly reduced figure from previous eras. Any cap on donations supported by Labour is therefore likely to be one that applies to corporations or individuals only. There is greater consensus on the issue of limiting expenditure and some support for year-round limits rather than just at elections.

The extension of state funding beyond present forms (such as 'Short money' and policy development grants) will be challenging given the pervasive cynicism with which politicians are regarded. Matched funding, tax relief methods and funding linked to electoral success or party membership will all be considered by the Phillips review.

The review is due to report by the end of the year. Further detail can be found at www.partyfundingreview.gov.uk

THINK TANKS IN THE NEWS

Charter 88 and the New Politics Network announced a decision to 'further integrate their work together ... with regard to eventually merging the two organisations.' Following three years of collaboration on a 'Democracy Project', the two organisations intend jointly 'to make the case for a citizen-led constitutional convention to develop a new constitutional settlement for the United Kingdom'.

Also in the field of political disengagement and democratic renewal, the POWER commission recently announced plans to follow its *Power to the People* report with a 'nation-wide campaign for a more responsive and empowering democracy'.

Finally, congratulations to the Hansard Society for winning a well-deserved Thinktank of the Year award in the Public Affairs News Awards.

INTERNATIONAL CONSTITUTIONAL FOCUS 2: CATALONIA

On 18 June 2006, Catalonia voted for greater autonomy from Madrid in a referendum notable for its low turnout. Whilst 73.9 per cent of voters backed the plans supported by Spanish Prime Minister Jose Luis Rodriguez Zapatero, the turnout was only 49.4 per cent, sparking questions about the devotion of the Catalan people to greater independence.

The result gives the Catalan government greater power over a wide range of policy areas – including tax revenues, judicial appointments and airports, ports and immigration. Perhaps most significantly, the region will now officially have the right to call itself a nation.

Zapatero's minority government – dependent on the support of two Catalanian parties – backed the plan, which put the PM in the difficult position of hailing it as a 'new dawn' for Catalonia whilst simultaneously trying to reassure others that it would cause no substantial change and was not the first step to independence. It was opposed by the conservative Popular Party who argued it would lead to the break up of Spain, and from the left by groups who argued it did not go far enough.

PEOPLE ON THE MOVE

Dr Declan McHugh, formerly of the Hansard Society, has now taken up a position as Special Adviser to Jack Straw, the new Leader of the House of Commons.

CONSTITUTION UNIT NEWS

House of Lords Research

Two further conference papers have been presented from this project since the last *Monitor*. Meg Russell and Maria Sciara presented a paper entitled 'Legitimacy and Bicameral Strength: A Case Study of the House of Lords' to a meeting of the Political Studies Association specialist group on Parliaments and Legislatures in Sheffield in June. This paper, which draws on public and elite opinion polls, and media analysis, suggests that the House of Lords is coming to be seen as increasingly legitimate despite its unelected basis. It is available to download from the project website at www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html. Meg and Maria also presented a paper entitled 'Parliamentarians without Party: The "Crossbenchers" in the House of Lords' to the Seventh Workshop of Parliamentarians and Parliamentary Scholars at Wroxton College in July. This paper (like the June paper) is now due to be revised for journal publication.

Freedom of Information Projects

The Constitution Unit has been awarded £146,000 by the Economic and Social Research Council (ESRC) and an additional £40k by the Department of Constitutional Affairs to carry out an evaluative study of the implementation of the FOI Act 2000 and its effect upon the workings of Whitehall. Work on the project will commence in January 2007 and continue for 27 months to March 2009.

The Unit designed and distributed a survey at FOI Live 2006, the annual information rights conference for the public sector, with the aim of 'taking the pulse' of the FOI community. Around 350 delegates from across the public sector attended and respondents to the survey reported that private individuals appeared to be the most frequent users of the FOI Act, closely followed by journalists. The most frequently requested types of information relate to government policies and plans and the management of public funds. The majority of authorities stated that their organisation infrequently refused to disclose information. However, the proportion of respondents who stated that their FOI responses involved a partial or full refusal to disclose has increased since 2005. The overwhelming majority of authorities claimed to meet the 20 working day deadline most of the time.

Sarah Holsen and Graham Sutton undertook some consultancy work for the EU-China Information Society Project in late June of this year. The work comprised a workshop organised to consider the most recent draft of a national law on freedom of information on 23 June in Beijing and two training sessions for Chinese civil servants.

Study of the Department of Health

Scott Greer and Holly Jarman's study of the top ranks of the Department of Health (DH) finds that there is *one* traditional Whitehall civil servant left among its top 32 officials. This situation reflects more than a decade of political efforts to produce a delivery-oriented, permeable civil service, and shows how well the government's efforts have worked. The report (to be published jointly by the Constitution Unit and the Nuffield Trust) argues that the DH is the future of Whitehall, for better or worse. One important finding is that turning the DH into a constantly reorganised, permeable department without many career officials does not solve the problems it was hoped to.

Governance of Parliament

As part of the ongoing Governance of Parliament research project led by Dr Meg Russell, the Constitution Unit has published a briefing examining the case for creating a cross-party 'business committee' in the House of Commons with powers over the timetable and committee appointments (see page 8). Also under way is a consultation exercise on 'Governing the House of Commons' launched earlier this year. The project final report and recommendations are due to be published in early 2007. For further details on this research see www.ucl.ac.uk/constitution-unit/research/parliament/governance-of-parliament.html.

Scrutiny of Multi-Level Governance

The Constitution Unit has recently begun to conduct research into parliament-executive relations under conditions of multi-level governance. The specific focus of the project – led by Professor Robert Hazell and Akash Paun – has been how parliaments in the UK scrutinise and hold to account processes of intergovernmental relations at the EU level and the intra-UK level (between UK and devolved governments). The researchers presented a paper on this subject at two conferences in June. The paper is available at www.ucl.ac.uk/constitution-unit/research/devolution/scrutiny.html.

English Question Seminar

On 7 June 2006, the Constitution Unit hosted a seminar at the House of Lords on 'The English Question'. Speakers including Lord Baker, Lord Sewel, Prof. Robert Hazell and Prof. John Curtice discussed the implications of devolution for England and examined various possible solutions to the 'West Lothian Question'. The Unit's book on *The English Question* (see page 8) was also (re)launched at the event.

Church and State

The Constitution Unit hosted a residential conference at St Katharine's, Limehouse on 11-12 July to discuss Bob Morris' phase 1 report mapping Church-State relations, and his phase 2 paper on options for change. The conference was attended by 35 people including senior figures from the Church of England and a wide range of representatives from other faiths. Papers were given by Dr Edward Norman, Dr Nigel Wright, Rev Geoffrey Roper, Anil Bhanot, Andrew Copson, Keith Wood, Rev Dr Marjory McLean, Frank Cranmer, Scot Peterson and Javier Oliva. The conference papers will be edited into a book as the final publication from this project.

Fixed-Term Parliaments

The Unit is conducting a project looking into the feasibility and policy options for the introduction of fixed term parliaments. Taking the new Canadian PM Steven Harper's recent C-16 bill providing for fixed election dates on a four-year cycle as its starting point, the report looks in detail at fixed term practice elsewhere in the Commonwealth and in Europe. It also conducts a literature review, considers arguments for and against such legislation and how dissolutions could be best regulated to give the maximum of stability and accountability. The report will be available in October.

CU Summer Swallows

This year has seen a record number of interns working with us over the summer. Welcome and thanks to: Gemma Cowan, Tom Hannan, Alastair Harper, Sheung-Yuen Lee, Mehrangez Rahman, Amit Sibal, Camilla ter Haar and Claude Willan.

BULLETIN BOARD

CONSTITUTION UNIT PUBLICATIONS

- Megan Carter and Andrew Bouris, *Freedom of Information: Balancing the Public Interest* (May 2006), 327-page book + CD, £75.
 - Robert Hazell and Akash Paun, 'Parliamentary Scrutiny of Multi-Level Governance' (June 2006). Conference paper available from: www.ucl.ac.uk/constitution-unit/research/devolution/scrutiny.html.
 - Meg Russell and Akash Paun, *Managing Parliament Better? A Business Committee for the House of Commons*. 38-page Constitution Unit briefing (August 2006), £10.
 - Meg Russell and Maria Sciarra, *The House of Lords in 2005: A More Representative and Assertive Chamber*, 22-page Constitution Unit briefing (February 2006), £10.
 - Meg Russell and Maria Sciarra, 'The House of Lords in 2005: A More Representative and Assertive Chamber?', in M. Rush and P. Giddings (eds.), *The Palgrave Review of British Politics 2005* (Basingstoke: Palgrave, 2006).
 - Meg Russell and Maria Sciarra, 'Legitimacy and Bicameral Strength: A Case Study of the House of Lords', paper to conference of the PSA specialist group on Parliaments and Legislatures, University of Sheffield, June 2006.
 - Meg Russell and Maria Sciarra, 'Parliamentarians without Party: The "Crossbenchers" in the House of Lords', paper to the Seventh Workshop of Parliamentarians and Parliamentary Scholars, Wroxton College, Oxfordshire, July 2006.
 - Various authors, *Devolution Monitoring Reports* on Scotland, Wales, Northern Ireland, the English Regions, and the Centre (May 2006 and September 2006 editions). Available from: www.ucl.ac.uk/constitution-unit/research/devolution.
- For full details of all Constitution Unit publications or to make a purchase, visit our website at: www.ucl.ac.uk/constitution-unit/publications or contact the Unit on constitution@ucl.ac.uk or 020 7679 4977.

EVENTS

- CU Seminar: Thursday 28 September 1.00pm **Rt Hon Ken Clarke MP** *The Conservative Party's Democracy Task Force*
 - CU Seminar: Wednesday 11 October 1.00pm **Jonathan Hunt, New Zealand High Commissioner** *The Impact of Proportional Representation on the New Zealand Parliament*
 - CU Annual Lecture: Tuesday 24 October 6.00pm **Rt Hon Jack Straw MP** *The Reform of Parliament*
 - CU Seminar: Thursday 9 November 1.00pm **Peter Riddell, Political Journalist** *The Constitutional Reform Agenda Under Gordon Brown*
- The Constitution Unit is also planning seminars with Ann Abraham, Parliamentary and Health Service Ombudsman for England and Wales and Sam Younger, Chairman of the Electoral Commission.
- For further details of all Unit events and to book places please go to: www.ucl.ac.uk/constitution-unit/events
- The Unit's programme for the forthcoming **Government Information Policy Seminar Series** has been finalised. Speakers in the autumn include Maurice Frankel and Katherine Gundersen of the Campaign for Freedom of Information, and Jennifer Stoddart, the Privacy Commissioner of Canada. Full details of how to subscribe can be found at www.ucl.ac.uk/constitution-unit/foidp
 - On **20 September**, the Institute of Welsh Politics hosts a one-day conference in Cardiff on **The Future of Welsh Politics** with speakers including First Minister **Rhodri Morgan** and **Lord Richard**. Full details at: www.psa.ac.uk/con_and_app/welshpol.htm.
 - On **2 November**, the **Hansard Society** is holding a **conference on the Putnam Commission's 2005 report** into Parliament, communication and the media. Details at: www.hansardsociety.org.uk/node/view/622.
 - The **Electoral Reform Society** is hosting a series of **party conference events** in September and October. The schedule of events is at: www.electoral-reform.org.uk/ers/Conferences%202006.htm

PUBLICATIONS RECEIVED

- Beetham, David, *Parliament and Democracy in the Twenty-First Century* (Geneva: Inter-Parliamentary Union, 2006)
- Brazier, Alex and Vidya Ram, *The Fiscal Maze: Parliaments, Government and Public Money* (London: The Hansard Society, 2006)
- Campaign for an English Parliament, *Devolution for England: A critique of the Conservative Party Policy 'English votes on English matters'* (Campaign for an English Parliament 2006)
- Edwards, Giles, *British Politics Unravelling* (London: Politico's, 2006)
- Henig, Stanley, *Modernising British Government: Constitutional Challenges and Federal Solutions* (London: The Federal Trust for Education and Research, 2006)
- Power, Greg, *Personal Politics: Democracy, Participation and Collective Action* (Dunfermline: Carnegie Trust, 2006).
- Roberts, Alasdair, *Blacked Out: Government Secrecy in the Information Age* (New York: Cambridge University Press, 2006)
- Rogers, Robert and Rhodri Walters, *How Parliament Works, 6th edn.* (Harlow: Pearson Longman, 2006)
- Rush, Michael and Philip Giddings (eds.), *The Palgrave Review of British Politics 2005* (Basingstoke: Palgrave MacMillan, 2006)
- Steytler, Nico (ed.), *The Place and Role of Local Government in Federal Systems* (Johannesburg: Konrad Adenauer Stiftung, 2005)



The Constitution Unit

"MONITOR" LTD produces equipment for functional diagnostics: patient monitors, electrocardiographs, spirographs, spirometers. Our equipment is on the list of the domestic medical equipment, which is published on the websites of the Ministry of Industry and Trade and the Ministry of Health and Social Development.