

| THE CONSTITUTION UNIT NEWSLETTER | ISSUE 35 | JANUARY 2007 |

MONITOR

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MAJOR COMMONS REFORMS (CONT'D)

'39 steps' he wished to complete before leaving office in 2007 (*The Times*, 27 September). In October there was a comprehensive leak to the *Sunday Times* of the proposals being discussed at the all-party talks. These, indeed, included a 50/50 chamber, with 450 members. A new statutory appointments commission would select half the members, with the remainder probably elected on 'semi open' proportional lists. The link between the peerage and membership of the House would be broken, and the changes phased in over three elections. Speaking at the Constitution Unit annual lecture on 24 October, Straw did not deny the leak's veracity, and indicated that a white paper (the government's fourth on Lords reform) would be published 'within the next few weeks'.

By the end of the year, however, no such paper had appeared. No bill was featured in the Queen's Speech, which merely promised that the government would 'work to build a consensus on reform of the House of Lords' and 'bring forward proposals'. Hesitation may reflect continuing deep divisions within government. It may also be a response to the reception that the leaked proposals attracted. Despite being party to the talks, the Conservative leader in the Lords, Lord Strathclyde, denounced them publicly as inadequate in almost every way (*Evening Standard*, 23 October). Lib Dem constitutional affairs spokesman Simon Hughes also criticised the proposals for having too few elected members. Straw's proposals thus looked very capable of falling apart.

Conventions governing the House of Lords

In November the parliamentary Joint Committee on Conventions published its report on the conventions governing the House of Lords (HL 265). As reported in the last *Monitor* the committee had collected a range of evidence and was presented with some interesting and complex issues. The government's thinking in establishing it was clearly to try and find a way of containing the growing confidence of the Lords by codifying existing conventions. The evidence that ministers gave suggested that unless this was done, further reform of the Lords' membership could not proceed. The committee, however, challenged the very basis on which it had been established, concluding that 'In our view the word "codification" is unhelpful, since to most people it implies rule-making, with definitions and enforcement mechanisms. Conventions, by their very nature, are unenforceable. In this sense, therefore, codifying conventions is a contradiction in terms'. It insisted not only that conventions must remain 'flexible and unenforceable', but also that current conventions could not

necessarily be expected to hold if the chamber were further reformed to include elected members. This can only have added to the government's caution in proceeding with reform (as reported above).

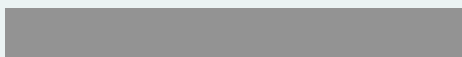
Despite these reservations, the committee did suggest that some understandings about working relationships might be reached between the chambers by mutual resolution. In a response in December the government accepted these recommendations.

Agreements could include manifesto bills not being subject to 'wrecking' amendments, government legislation being considered

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Angela Merkel hopes to have won agreement for a road map to revive the constitutional treaty, in limbo since the French and Dutch rejected it by referenda in 2005. But as usual, rhetoric and reality diverge. Europe remains weak and divided. The election of a new French President by 8 May leaves too little time for a bold initiative. Too many states including Germany are ruled by weak coalitions, and the UK will be approaching the point of transition between Prime Ministers. It is unlikely that more than the present 16 states will ratify the treaty in its full,

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making powers are transferred to the National Assembly. In addition to the Order in Council process established in the Government of Wales Act (GoWA) 2006, several bills are set to amend Schedule 5 of the GoWA 2006 by adding 'Matters' under the various subject fields. While doubtless innovative and interesting in their own right, neither development is unproblematic from the perspective of accountability and legitimacy.

In the case of the provision of framework powers, the danger is that this will further strengthen an already apparent trend towards executive dominance of the National Assembly – unless steps are taken to transfer these powers to the Assembly itself rather than allowing them to remain with the Welsh Executive. In the case of the transfer of Measure-making powers via Acts of Parliament, the fact remains that there is no mechanism by which the Assembly might influence the contents of the 'Matters' being transferred: hardly a satisfactory state of affairs for a body that enjoys its own democratic mandate. The further layers of complexity added to the devolutionary dispensation by these and other related developments is yet another source of concern.

Authoritative voices have raised concerns about various aspects of the new arrangements that have been introduced by – and in the wake of – the GoWA 2006. Of particular note are the comments of Lord Ivor Richard, Chair of the Richard Commission on the Powers and Electoral Arrangements of the Assembly, who, at an Institute of Welsh Politics conference in Cardiff, highlighted what he termed the 'Proustian complexity' of the provisions the 2006 Act. The convoluted nature of the Measure-making process was also a point at issue in an important recent conference organised by the Cymru Yfory / Tomorrow's Wales ginger group.

As a codicil, readers of the *Monitor* will be aware that the banning of dual candidacy was a major point of contention during the passage of the GoWA 2006. During the various debates, much was made by ministers of the negative impact of dual candidacy on public perceptions of the Assembly and voter turnout. Until now there has been no credible evidence of public attitudes on this matter. Recent research conducted on behalf of the Electoral Commission has found, however, that 'dual candidacy had little effect in deterring people from voting'. The same research also suggests that the prospects for election turnout in 2007 appear, if anything, to be even worse than in 2003.

tension may be on the horizon, particularly if the SNP turns poll leads into electoral victory next May. Blair's government has already had to concede that it cannot impose new nuclear power stations on Scotland if the Scottish Executive refuses planning permission. It now faces a spat relating to the replacement of the Trident nuclear submarines, with calls for devolved environmental powers to be used



rights might be formulated and adopted.

The JUSTICE project is led by JUSTICE's director Roger Smith supported by Emma Douglas. In addition to thinking about the content of a bill of rights, the project will look at the relationship between a British bill of rights and the ECHR, the prospects for entrenching a bill of rights, and the implications for the balance of powers

Recent Events at the Constitution Unit

On 28 September, **former Chancellor Kenneth Clarke**, who is heading the Conservative Party's Democracy task force, told the Unit of his aim to 'reverse the trends towards opaque, presidential government.' Clarke wants to cut the number and power of special advisers and make future investigations into the ministerial code of conduct independent. He favours a smaller Commons, the election of committee chairs by secret ballot and a loosening of government whips' tight grip on timetabling parliamentary business. Clarke also recommends more timely debates on key issues and a 'significant reduction' of the use of the royal prerogative to make war and treaties – 'an absurd anomaly'.

Leader of the Commons Jack Straw chose the **Constitution Unit Annual Lecture** (October 24) to announce a personal U-turn in favour of a hybrid 50:50 elected/appointed House of Lords, reducing its size from 740 to around 450. According to his 'five principles', a reformed Lords would become more representative without rivalling the Commons, would never have a single-party majority and would retain non-elected cross benchers. Though it would clean up the appointments process, the 50:50 compromise has so far failed to break the party deadlock on reform (see page 2 for further comment).

An elective element for the Lords is likely to feature in a new 'constitutional settlement' from Gordon Brown as Prime Minister, according to **Times political commentator Peter Riddell** (Unit Seminar, 9 November). His 'cautious' settlement however might be limited to 'unspecific concordats'. It might offer 'new procedures and understandings' with the Commons on any new war powers. Despite his enthusiasm in opposition for Charter 88 reforms, Brown is now cool on direct democracy and a British Bill of Rights.

Parliamentary Ombudsman Ann Abraham responded boldly (Unit Seminar, 4 December) to the government's rejection of two of her findings, on the extent of government liability for the collapse of private pensions schemes and the 'debt of honour' owed to Commonwealth and other non-British prisoners of war under the Japanese. If her recommendations were 'regularly and systematically' rejected, she might begin to favour legal enforceability, she said. Ms Abraham is considering asking the government to allow complaints to be sent to her directly from the public, rather than being routed through MPs.

Constitutional Futures 2

Following the success of *Constitutional Futures* (published in 1999), the Unit is about to embark upon its second futurological foray, *Constitutional Futures 2*. The new 'history of the next ten years' aims to shed light on the momentum unleashed in the latest rounds of constitutional reform. Funding has been secured from the Nuffield Foundation and, it is hoped, the book will be published by Oxford University Press. Work starts in January, with a two-day workshop for contributors in spring.

Lords in 2006: New Briefing

This briefing summarises developments on both Lords reform and the chamber's treatment of legislation in 2006. It suggests that the Lords is growing in strength, taking a new place in British politics as an increasingly important site of policy negotiation, and developing a new partnership with the Commons which is strengthening parliament as a whole. The text will appear as a chapter in *The Palgrave Review of British Politics* (ed. Rush and Giddings), but here includes additional appendices listing all government defeats in the Lords and all arrivals and departures in the chamber over the year.

Freedom of Information Projects

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Baimbridge, Mark (ed.), *The 1975 Referendum on Europe: Volumes 1&2* (Exeter: Imprint Academic, 2006)

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English Regions Network/Regeneris Consulting, *Adding Value to Regions: Regional Assemblies and the Comprehensive Spending Review 2007: A Report to the English Regions Network* (Birmingham: English Regions Network, 2006)

Giddings, Philips, *The Future of Parliament: Issues for a New Century* (Basingstoke, Hampshire: Palgrave Macmillian, 2006)

Goodwin-Gill, Guy S., *Free and Fair Elections: New Expanded Edition* (Geneva: Inter-Parliamentary Union, 2006)