

MONITOR

The Constitution Unit Bulletin

Constitution Unit expands again

From this month the Constitution Unit is back to its original size, and back in full production with a growing list of publications. As before, the main thrust of the Unit's work will continue to be a forward looking programme of research and analysis, consultancy and advice. Details of the work programme are on page 10.

The members of the new Constitution Unit team are:

Robert Hazell, founder and director. Robert plans and guides all the Unit's work, and is writing much of Constitutional Futures. This is to be a book which aims to describe the shape of the UK's constitutional and political landscape in 10 years' time. He is co-author of the recent reports on Devolution and Health and Devolution and Higher Education.

Ben Seyd, former researcher and policy analyst at the CBI. Author of the Unit's recent Briefings on Lords Reform and on Open vs Closed Party Lists. Ben will lead the programme of work on new electoral systems and machinery, and political parties.

Richard Cornes, New Zealand lawyer who came to us from the Constitutional Centenary

Foundation in Melbourne.

Author of the Unit's recent work on Single Chamber Parliaments, and project leader for Constitutional Futures.

Mads Qvortrup, a Danish journalist and political scientist, who has just completed research on referendums at Oxford. Mads will start by looking at the Nordic Council, to draw out some lessons for the proposed new British-Irish Council. His main task will be a major comparative study of Second Chambers Overseas, to inform thinking about the second stage of Lords reform. This will be done jointly with

Meg Russell, currently national women's officer of the Labour Party, who is to join us in August. In addition to the study of Second Chambers Overseas, Meg will work on gender balance in the selection of party candidates; and on parliamentary reform, and the work of the Modernisation Committee of the House of Commons.

Sara Northey, administrator, who produces the Monitor, maintains the website and database, and deals with all inquiries.

Colin Braggins, volunteer, who handles the orders for all the Unit's publications.

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The Northern Ireland Assembly

by Brendan O'Leary

A political rather than a religious miracle occurred in Ireland on Good Friday. An Agreement was reached by the prime ministers of Ireland and the UK, and the leaders of eight political parties in Northern Ireland. Credit for the miracle is being widely claimed, though no one has said that it was God's work. It is, in fact, the product of many hands, and many long and arduous negotiations, and sustaining the miracle will be as difficult as it was to make.

The Agreement could not have happened without the willingness of most republican, and then loyalist paramilitaries, as well as their respective political parties, to change their strategies and shift towards constitutional politics. It could not have happened without a military stalemate in which republicans could not win their long war for Irish unification, and the British Government could not win what it had called its war against terrorism. It could not have happened without the Anglo-Irish Agreement of 1985 that laid the foundations for this new Agreement by establishing 'bi-governmentalism': institutionalised British and Irish co-operation.

That 1985 Agreement spelled a clear message: Northern Ireland could be reformed, and Ulster

Constitution should state that there is only one way of reversing partition: through consent.

In return unionists have agreed to establish a North-South Ministerial Council in which Northern Ministers and Ministers from the Republic will meet in a manner modelled on the Council of European Ministers. The Council will consult, harmonise and implement agreements in functions with both a cross-border and an all-Ireland character. The Council will operate by consensus but will have the capacity to expand its remit, by agreement.

The last relationship is that between Ireland and Britain. There will be a new British and Irish Council of the Isles - linking the new devolved governments of Wales, Scotland and Northern Ireland with the governments of the UK and the Republic of Ireland. It will be less important than the North-South Ministerial Council but will signify an attempt to heal the remaining antagonisms between the two islands. The Dublin and London governments will retain a standing conference to monitor Northern Irish politics and to discuss functions not devolved to the new Assembly.

It is an impressive piece of political architecture, painfully constructed. It establishes equality, proportionality and power-sharing as operative principles of government in the North, and it links both communities to their preferred nation-state. It combines consociation and co-sovereignty. It corresponds to what is required. It is a model for the management of differences rather than their elimination.

Celebrations should, however, be restrained, even though the Agreement has since been endorsed in the referendums. Restraint is required not just in memory of the victims of the long war, and not just because we know some will try to destroy this new Agreement through further political violence. Restraint is required because there are obvious stress points in the new political architecture.

The rapid release on license of the imprisoned paramilitaries belonging to organisations that have sustained cease-fires, and who support political parties that have sought mandates and negotiated a settlement, is an essential precondition of a sustained peace. But it will cause tension with victims and their families. The disbanding of the mainstream paramilitaries' organisations is also essential, but it is probably best left to themselves or to international observation - and it cannot be expected before there is rapid movement on the

release of prisoners. A voluntary and controlled disbanding is also necessary to limit the resources and personnel that might otherwise accrue to the ultras who oppose the settlement - the LVF, the INLA and the Continuity IRA.

The withdrawal of the British Army to its barracks and its return to bases in Great Britain must be accomplished quickly even though there will be accompanying risks. But the security sticking point in managing the miracle will be the RUC rather than the Army. Policing issues are to be handed to an independent commission. Unless this commission recommends means to ensure that Catholics and Protestants are proportionally represented in local policing services, and unless a British Government delivers unequivocally on its recommendations, then Northern Ireland will never be at peace. Northern nationalists have bitter experiences of commissions attached to treaties - the Anglo-Irish Treaty of 1921 was accompanied by promises of a Boundary Commission.

There will be a downsizing of Britain's financial support over time so the region will have to pull together or suffer severe peripheralisation. Unionists on the new power-sharing executive will have some difficulties living with Sinn Fein should its members choose, as I think they will, to take their seats. The executive will be vulnerable to the withdrawal of support in the assembly - if more unionists join the Reverend Ian Paisley's Democratic Unionist Party in refusing the Agreement. The executive and the assembly may deadlock on the development of the North-South ministerial council.

As nationalist support grows through demographic change hard-line unionists will become a minority in the Assembly - and that will require them to learn a new politics. Much responsibility will accrue to the Alliance and other cross-community parties in bridging a shrinking majority and a rising minority. The establishment and management of the North-South body will have to be meaningful to bind most republicans to the settlement, and both jurisdictions will have to live with the likelihood that Sinn Fein will become the fastest growing party in both locations with concomitant ambitions to unify or at least federalise Ireland. The Secretary of State for Northern Ireland Dr Mowlam, or her successor, will still have a plentiful in-tray in promoting equality and establishing a regime for the protection of human rights. And Irish governments, present and future, will have to prepare their state for the possibility of a federal Ireland in which there will be a very significant British minority.

At the heart of this Agreement lie two calculations by those who have accepted it, or who will accept it. The Unionists calculate it will prevent something worse. They accept it because they fear the demographically expanding minority and they fear alienation from Great Britain and its new government. They accept it because they know it will end the IRA's campaign. They also accept it because they think it the best way, in the long run, to keep the Union safe, and to reconcile Irish nationalists to that Union. The Nationalists calculate that the Agreement offers them an improvement on the status quo. It offers them equality now. But, they also accept it because they believe it opens the door to unification, if not now, later. The new architecture enables both to have good reasons to believe they are right. Whether it can be sustained when we learn who is right no one knows, but that is just as well.

Brendan O'Leary is Professor of Political Science at the LSE and a member of the Unit's consultative group on Constitutional Futures. He is the author of the Unit's Briefing The British-Irish Agreement: Power-Sharing Plus.

Northern Ireland: what next?

The British-Irish Agreement was put to a simultaneous referendum on 22 May in Ireland, North and South. In Northern Ireland on an 81% turnout, 71% voted in support of the Agreement. In the Republic the Yes vote was 94% on a turnout of 58%.

The next steps will unfold very quickly. Legislation has already been passed for the holding of the first elections to the Assembly, on 25 June. A Northern Ireland Assembly Bill is to be introduced as soon as possible, with the aim of reaching Royal Assent in October. If necessary, it could be the first bill to benefit from the new provisions for carry over to the next session. The North-South Council and the British-Irish Council will begin operating in shadow form. The intention is that the Northern Ireland Assembly, and the North-South Council and the British-Irish Council will all start operating for real from February 1999. The Northern Ireland Assembly will thus be the first of the devolved assemblies, and should be up and running before the first elections have even been held in Scotland and Wales.

Government of Wales Bill

The Bill was amended in the Commons in March to create a cabinet structure for the Assembly, which should produce clearer accountability and quicker decision taking (the need for a cabinet system was first raised in the Constitution Unit's report

functions. The second chamber will need to have sufficient powers to enable it to fulfil its functions, yet it should not threaten the primacy of the House of Commons. Here, there is a link with the composition of the second chamber, in that a directly elected second chamber may prove too much of a challenge to the legitimacy of the first. It will also need to be elected on a different electoral system; but this could not be determined until after the referendum on the voting system for the House of Commons.

The Unit's briefing sets out a logical and comprehensive agenda for a joint committee to tackle at stage two of the process. In many respects, a reformed second chamber lies at the heart of the UK's changing constitutional framework, in its potential relationship to both the regions and Europe, its work on ECHR and its possible role in scrutinising the executive. It needs to be part of the new constitutional settlement, and not simply patching up the old. As such, second chamber reform might need to wait until the next parliament when the joint committee will be able to take account of how the devolution settlement is bedding down, possible English Regional Chambers and any new voting system for the House of Commons.

Second chambers overseas

Stage two of Lords reform will open the question of why the UK needs a second chamber? The answers put forward usually refer back to the existing functions of the Lords, rather than taking a broader perspective on what role a second chamber should perform in a modern democratic state. To help expand horizons and clarify options, the Unit is undertaking a major study of second chambers of parliament overseas, funded by the Leverhulme Trust.

The study will examine second chambers in Australia, Canada, France, Germany, Ireland, Italy, South Africa and Spain. Research will focus on the role, powers and composition of the upper houses in these countries. The study will not be prescriptive; rather, it will highlight what options exist for reforming the UK's second chamber, and analyse what conditions are necessary for the different models to operate effectively. As well as filling a gap in the current literature, the study will also serve as a vital source of information for stage two of Lords reform.

The study will be undertaken jointly by the Unit's new staff members, Meg Russell & Mads Qvortrup.

PR for the European Parliament elections

The European Parliament (EP) elections in June 1999 will be the first time in which politicians across Great Britain will be elected through a system of . ntentOxTj7entded it0 0 18 ,y byrather, 126ons and f

In the event, the Government decided to opt for closed lists, for the European Parliament elections and for the elections to the new Scottish Parliament and Welsh Assembly. Voters will have no opportunity to express a preference between the list candidates put forward by the parties. The position on the list for each candidate will be crucial. But this may not be the end of the story. The Jenkins Commission is likely to say something about open and closed lists in its discussion of the additional member system in its forthcoming report.

Contact: Ben Seyd

Electoral Commission

An Electoral Commission does not yet feature as part of the government's constitutional reform programme, but it is creeping up the agenda. Three current inquiries all involve a possible role for an Electoral Commission:

- the Neill Committee is likely to propose an Electoral Commissioner to enforce the new controls on party funding (report expected September)
- the Home Affairs Select Committee inquiry into Electoral Law and Administration has received a submission from the Labour Party recommending an Electoral Commission to provide "continuity, a permanent expertise on electoral matters, and ensure that good practice was being followed throughout the country"
- the Jenkins Commission on the Voting System is likely to say something about the need for public information and education before a referendum is held on the electoral system for the House of Commons.

Freedom of information

The Public Administration Select Committee has been conducting an inquiry into the government's Freedom of Information proposals. The Select Committee is critical of the government's White Paper in two respects:

- the total exclusion of all law enforcement information, whether held by the police or other agencies, such as the DSS, Immigration Service or the Environment Agency. This goes much further than in other countries, where law

enforcement information is subject to a normal exemption provision, so that decisions to withhold information can be challenged. Jack Straw, when giving evidence to the committee, implied that a normal exemption would be acceptable so long as it was subject to a simple harm test.

- the overlap between freedom of information and the Data Protection Bill currently going through Parliament. The White Paper proposed that individuals should be able to find out what is held on them by public authorities under either the Freedom of Information or the Data Protection Act. It emerged during the Committee's inquiry that the government now believes that access to personal files (which are likely to form the bulk of FOI requests) should be channelled under the Data Protection Act. This is a fundamental shift. It creates a much more important role for the Data Protection Act, which is not a user or access friendly piece of legislation, and a much more important role for the new Data Protection Commissioner.

Drafting the Freedom of Information Bill has been delayed as a result of this difficulty, which has been exacerbated by the Cabinet Office leading on FOI but the Home Office leading on data protection. The Select Committee hopes to debate the draft bill under the new pre-legislative procedures, but may be left with little time between publication of the draft bill and the summer recess. If the much-heralded Cabinet reshuffle then takes place, responsibility for introducing the Freedom of Information Bill may fall to Peter Mandelson.

Robert Hazell acted as Specialist Adviser to the Select Committee for this inquiry. The Constitution Unit has held a series of six private seminars on government information policy, attended by the main Whitehall departments and invited experts.

Constitution Secretariat

Kenneth Mackenzie, head of the Constitution Secretariat, left the Cabinet Office in April to return to the Scottish Office. He will be succeeded by Quentin Thomas, Deputy Secretary in charge of the Rights, International and Constitutional and Political divisions of the Northern Ireland Office.

Electoral reform in New Zealand: Lessons for the UK

The Jenkins Commission is due to report in the autumn on alternatives to first past the post (FPTP) for elections to the House of Commons. The government is committed to holding a referendum during the current parliament, maybe as early as 1999; but this would require legislation in 1998-99. Referendums on the electoral system were held in New Zealand in the early 1990s, and members of the Jenkins Commission are visiting New Zealand in late May. In their bags they had an early draft of the Unit's new briefing on the lessons of the New Zealand referendums for the UK.

The Commission will mainly be interested in how the German additional member system works in a Westminster-type parliament previously elected by first past the post.

Of equal importance to the UK, however, is the conduct of the New Zealand referendums themselves, in particular:

- their timing
- voter education
- the nature, funding and regulation of the campaigns
- the role of the government and the political parties
- media coverage.

In providing for a referendum on electoral change, New Zealand faced the same problem that will confront the UK: how to encourage an informed response from electors whose baseline knowledge of voting systems is low? The Unit's briefing focuses on this question, and on the effectiveness of the public education programmes initiated in New Zealand prior to both referendums. We hope to obtain some feedback from the Jenkins Commission on these aspects, and to publish a briefing in June.

Contact: Ben Seyd

Voter understanding of electoral systems

Next year, three elections will be held under new voting systems: in Scotland, Wales and for the European Parliament. Without adequate public education and information voters may find these new systems difficult to understand, and unintentionally spoil their ballot papers or stay away from the polls.

The Unit has devised a programme of action research to identify the aspects of the new electoral

systems that cause particular concern and confusion. Together with Social and Community Planning Research we are planning to investigate voters' current understanding, and to trial different forms of ballot papers for the new electoral system. The intention is to design easy to use ballot papers, and to inform a focused and targeted programme of public education.

The research has gained financial support from the Gatsby Charitable Foundation, with contributions from four government departments, and will run between June and November 1998. The initial focus will be on regional lists (European Parliament elections) and additional member systems (Scottish Parliament and Welsh Assembly). The Unit intends that the study will be the first part of a wider programme of research into voter understanding that can inform any further changes to the electoral system: in particular the referendum on the voting system for the House of Commons.

Contact: Ben Seyd

Single Chamber Parliaments

The Unit has completed stage one of a comparative study of six unicameral parliaments for the Scottish Office. The research provides material for use in the planning and design of the Scottish Parliament, which itself will have just one chamber. The study has looked at Quebec, British Columbia, Queensland, Denmark, Sweden and New Zealand. Five of these parliaments began with a second chamber, but all now have only one.

The report has two principal conclusions:

- checks and balances need to be set against the dynamic relationship between the parliament and the executive
- the effectiveness of a parliament is a question of overall design

Unicameral parliaments can be effective if well designed, ineffective if badly designed. A Parliament's procedural arrangements can themselves obviate the need for a second chamber. A comprehensive committee system can take care of the second chamber review function, while the electoral system and a bill of rights can cater for the constitutional watchdog role.

Ineffective parliaments have included Queensland, a state which was rocked in the 1980s by a culture of sleaze that led to four National Party ministers and a

former police commissioner being jailed for corruption and related offences. Another ineffective parliament was British Columbia, which was long subject to one party domination. Until change began

- Checks and balances required in single chamber parliaments (Scottish Office £9k. Interim report published February 1998. Final Report due August 1998)
- Devolution and Health (Nuffield Trust £35k. Final Report to be published June 1998)
- The Council of the Isles: lessons from the Nordic Council (May - July 1998)
- Regional Chambers and Regional Assemblies: role, functions, internal constitutions, external relations (1999 onwards)
- Intergovernmental relations: the new Whitehall Concordats and intergovernmental agreements in federal systems (1999-2000)

Contact: Robert Hazell, Mads Qvortrup

Rights and citizenship

Bulletin Board

New publications by the Unit

Elections under Regional Lists: a guide to the new