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A COALITION GOVERNMENT IN WESTMINSTER

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SUMMARY

Constitutional change under the first UK coalition government for many years has exhibited a full range of characteristics: from skilful adaptation of governing arrangements in a famously flexible constitution to ill-conceived reforms inside Whitehall, and on to panic in the face of a remarkable exercise in popular sovereignty. The chapter elaborates on this by looking in turn at three main aspects, beginning with the constitutional footprint produced by the fact of the Cameron–Clegg administration. Developments relating to the office of prime minister (and deputy prime minister), and especially to the need to sustain coalition government through restrictions on termination and via the convention of collective ministerial responsibility, are key features. As regards the second main aspect, the constitutional position of the Civil Service and the relations of ministers with agencies and officials, the Cameron–Clegg government is seen generating more heat than light. The overarching demand for austerity has naturally been a chief driver of reform, but, set in terms of some important historical benchmarks, several significant initiatives appear poorly thought through. The territorial distribution of executive power in the UK especially in the light of the Scottish independence referendum is—of course—the third main aspect. With an eye to a looser Union (state), the chapter highlights the demand to rework traditional—centralized—conceptualizations of the ‘executive’, a basic territorial duality of the Whitehall machine, and the special demands placed on Whitehall if the Union is to survive and prosper. Descriptively telling and suitably provocative, the conceptual label ‘UK (English) government’ is introduced into the lexicon of the changing constitution.

TWEAKING AND FIXING, REVERTING: TWO PARTY GOVERNMENT

VENTURING THE UNFAMILIAR

Truly a case of the novel and challenging, May 2010 witnessed the establishment of the first peacetime coalition government at Westminster since the 1930s. Successful

in becoming the largest party, but failing to secure a majority in the House of Commons at the UK general election, the Conservatives led by new Prime Minister David Cameron had struck deals on policy and process with the third party, the Liberal Democrats, led by new Deputy Prime Minister Nick Clegg. Eschewing other possible outcomes from an inconclusive exercise in popular will, for example minority government with an agreement to provide ‘confidence and supply’, it was time they explained in suitably uplifting fashion for ‘partnership government... inspired by the values of freedom, fairness and responsibility’.¹ In creating a majority administration jointly maintained by some 56 per cent of MPs, the demand for stability and firm action on the public finances in the wake of the global financial crisis was naturally uppermost.²

From the constitutional standpoint, the Cameron–Clegg experiment commands attention precisely because many conventions and elements of constitutional practice relating to the Westminster model of parliamentary government developed under single party (commonly majority) rule,³ a ~~hitherto~~ dominant set of political conditions effectively buttressed by the non-proportional electoral system misleadingly called ‘first past the post’. Conversely, the advent of coalition government at Westminster in part reflects long-term trends in voting behaviour: a decline in major party allegiances and increased representation for a variety of smaller parties.⁴ Nor does the dynamic show much sign of slackening: quite the reverse! The auguries for single-party majority rule, in other words, are not good.

There obviously was a wealth of comparative material on coalition government to draw upon: close to home in the context of devolution, particularly from Commonwealth countries like New Zealand, and also from other EU member states.⁵ Then Cabinet Secretary Gus O’Donnell was notably assiduous in preparing the ground by taking on board comparative experience and helping to facilitate the intense political negotiations leading to government formation.⁶ The change-over was duly underwritten in what would be grandly called ‘the Coalition documentation’. Ranging widely across the policy piece, the 30-page *Programme for Government* would in turn provide an official benchmark of life under the Cameron–Clegg administration.⁷

¹ HM Government, *The Coalition: Our Programme for Government* (20 May 2010), foreword. This document built on an initial set of policy determinations: Conservatives and Liberal Democrats, *Agreements Reached* (11 May 2010).

² For more or less racy accounts of the creation, see David Laws, *22 Days in May: The Birth of the Lib Dem–Conservative Coalition* (2010); and (giving a Labour perspective), Andrew Adonis, *5 Days in May: The Coalition and Beyond* (2013).

³ See to this effect, House of Lords Constitution Committee, *Constitutional Implications of Coalition Government*, HL 130 (2013–14).

⁴ For details, see House of Commons Library, *UK Election Statistics 1918–2012* (2012).

⁵ As exemplified by K. Strøm et al., *Cabinets and Coalition Bargaining: The Democratic Life Cycle in Western Europe* (2008).

⁶ See UK Cabinet Office, *Civil Service Support to Coalition Negotiations* (2010).

⁷ HM Government, *The Coalition: Together in the National Interest—Mid-term Review* (2013); and *Programme for Government Update* (2013).

For present purposes, the four-page *Agreement for Stability and Reform* on how the parties envisaged their coalition government operating is especially noteworthy.⁸ As a major example of ‘soft law’—in broad terms the use of rules and/or agreements which, better to preserve political space and/or administrative flexibility, are not intended to be directly legally enforceable—it signalled some thoughtful tweaking in a famously flexible uncodified constitution, indeed one in which hard law is strikingly absent in matters like the office of prime minister.⁹ If strictly conceived there was ‘no constitutional difference’ between coalition and single-party government, ‘working practices need[ed] to adapt’. As for the lovey-dovey stuff, the Coalition parties would ‘work together effectively to deliver our programme, on the basis of goodwill, mutual trust and agreed procedures which foster collective decision making and responsibility while respecting each party’s identity’.¹⁰

It was one thing to exchange vows, another to make them stick. A most practical exercise in political self-preservation, especially on the part of Liberal Democrats otherwise vulnerable to the prime minister’s use of prerogative power to go to the country when it suited the Conservatives, longevity was the first item in the parties’ agreement. It declared their intention not only to see out the maximum five-year term, but also to bring forward legislation, now the Fixed-term Parliaments Act 2011,¹¹ to change the constitutional rules of the political game.¹² ‘The scaffolding for the coalition building’ is an apt—insider’s—description.¹³

The new dispensation had been signalled in the Liberal Democrats’ election manifesto but not in the Conservatives’ one. So it could be said not to enjoy the protection against House of Lords interference under the classic Salisbury–Addison convention.¹⁴ The title of the Act is of course a misnomer since, in establishing the default position of a five-year term, the legislation provides for early dissolution through either a two-thirds vote of MPs or, express space for wheeling and dealing, a successful motion of no confidence and then no successful motion of confidence within 14 days. On the one hand, in reducing the prime minister’s room for manoeuvre, with putative knock-on effects in terms of political leverage and party management, the Act naturally colours the calculations over government formation in a future ‘hung’ Parliament.¹⁵ On the other hand, the legislation stands for twin diminutions in democratic accountability: fewer expressions of popular will through the ballot

⁸ *Coalition Agreement for Stability and Reform* (May 2010).

⁹ R. Rawlings, ‘Soft Law Never Dies’ in D. Feldman and M. Elliott (eds.), *Cambridge Handbook of Public Law* (forthcoming).

¹⁰ *Coalition Agreement for Stability and Reform*, 1.

¹¹ See House of Lords Constitution Committee, *Fixed-term Parliaments Bill*, HL 69 (2010–11).

¹² *Coalition Agreement for Stability and Reform*, 1.

¹³ *Constitutional Implications of Coalition Government*, para. 13. See further, V. Bogdanor, *The Coalition and the Constitution* (2011), ch. 6.

¹⁴ For discussion of this convention in the conditions of coalition government, see *Constitutional Implications of Coalition Government*, paras. 93–100.

¹⁵ For backbench musings as the 2015 UK general election approached, see Hansard, HC, cols. 1069–113 (23 October 2014).

box and lessened capacity of the House of Commons to bring down a government. In fact, the *Programme for Government* envisaged a trigger of 55 per cent of MPs, a figure also just above the then proportion of all non-Conservative Members; only in the light of opposition complaints of gerrymandering was the threshold raised.¹⁶ It all adds up to a telling cocktail of formal statute and opaque and fraught workings of a famously termed ‘political constitution’.¹⁷

ON HIGH

The second item in the *Agreement* concerned distribution of the spoils. At the heart of this was a self-declared ‘principle of balance’, boldly portrayed as underpinning ‘all aspects of the conduct of the Government’s business, including the allocation of responsibilities, the Government’s policy and legislative programme... and the resolution of disputes’. Underlining the importance of political patronage, it was immediately given tangible expression through a ‘share of Cabinet, Ministerial and Whip appointments... approximately in proportion to the size of the two Parliamentary parties’.¹⁸

A quick look round the UK Cabinet table is revealing.¹⁹ The Conservatives as the much larger party take an iron grip on, first, the historic ‘great offices of State’ (Chancellor of the Exchequer, Home Secretary, Foreign Secretary); and, secondly, the big-spending departments (Work and Pensions, Health, Defence, etc.) Meanwhile, naturally concerned as the smaller party to guard the *Programme for Government*, the Liberal Democrats opt for width over concentration, with representation in most, though not all, government departments. As Deputy Prime Minister Clegg later explained, being ‘held responsible for everything the government do but having no say in what they do across the piece’ represented for the party ‘the worst of all worlds’.²⁰ Very much a story of ‘one-out, one-in’, the basic pattern of ministerial representation would endure throughout the life of the administration, as indeed the *Agreement* had envisaged.

From the constitutional standpoint, attention naturally focuses on the position of the prime minister. After all, a pre-existing historical process of increased prime ministerial functions, even elements of a presidential-type role, is amply attested in the literature.²¹ ‘A guide to laws, conventions and rules on the operation of

¹⁶ *Programme for Government*, 26; Hansard, HC, cols. 628–9 (13 September 2010).

¹⁷ J. Griffith, ‘The Political Constitution’ (1979) 42 *MLR* 1.

¹⁸ *Coalition Agreement for Stability and Reform*, 1.

¹⁹ For further details, see M. Debus, ‘Portfolio Allocation and Policy Compromises: How and Why the Conservatives Formed a Coalition Government’ (2011) 82 *Pol Q* 293; and T. Heppell, ‘Ministerial Selection and Portfolio Allocation in the Cameron Government’ (2014) 67 *Parliamentary Affairs* 64.

²⁰ House of Lords Constitution Committee, *Annual Oral Evidence Session with the Deputy Prime Minister* (9 April 2014), 12.

²¹ P. Hennessy, *The Prime Minister: The Office and its Holders since 1945* (2000); A. Blick and G. Jones, *Premiership: The Development, Nature and Power of the Office of the British Prime Minister* (2010).

government’ and first fully published in 2011, the UK *Cabinet Manual* is today the obvious reference point. Reflecting and reinforcing the orthodox understanding, the *Manual* solemnly explains that the prime minister has ‘certain prerogatives’, for example ‘recommending the appointment of ministers’ and ‘determining the membership of Cabinet and Cabinet committees’; ‘however, in some circumstances the Prime Minister may agree to consult others before exercising those prerogatives’.²² Yet as the *Agreement* had already made evident, this is apt to be economical with the truth in the conditions of coalition. Constitutional nicety recorded: ‘the Prime Minister, following consultation with the Deputy Prime Minister, will make nominations for the appointment of Ministers’. Constitutional practice reworked: ‘the Prime Minister will nominate Conservative Party Ministers’, ‘the Deputy Prime Minister will nominate Liberal Democrat Ministers’, they ‘will agree the nomination of the Law Officers’.²³ Confused and confusing yes, but nonetheless some important precedent was being set, to the effect of blurring a hitherto clear line of constitutional responsibility.

Political scientists have had a field day debating the shifting balances of power (or not) inside the Cameron–Clegg administration. Given that forming a coalition government involves compromise, broader questions are raised about intra-executive political leverage,²⁴ as well as institutional resources,²⁵ and in particular about how far the prime minister is constrained by, and more likely constrains, the deputy prime minister. After all, our constitutional actors had again to venture the unfamiliar. Although the role of deputy prime minister became increasingly familiar in the past half-century, the wartime Churchill–Atlee ~~Administration~~ provided the only previous example in coalition government, hardly equivalent. In the event, testimony to the innate sensitivities of coalition politics, the *Agreement* was notably fulsome in buttressing the deputy prime minister’s otherwise vulnerable constitutional position. For example, ‘close consultation’ between the prime minister and deputy prime minister would help found ‘the Coalition’s success.’ More concretely, the establishment and terms of reference of all Cabinet committees would now require the agreement of the deputy prime minister, who would also serve, or nominate another (Liberal Democrat) minister to serve, on each Cabinet committee and subcommittee. As against a presidential-style model of concentrated informational and agenda-setting powers, a second ‘general principle’ was established of the prime minister and deputy prime minister both having a full and contemporaneous overview of the business of government, with each having the power to commission papers from the Cabinet

²² UK Cabinet Office, *Cabinet Manual* (2011), para. 3.3.

²³ *Coalition Agreement for Stability and Reform*, 1.

²⁴ For this genre, see M. Bennister and R. Heffernan, ‘Cameron as Prime Minister: The Intra-Executive Politics of Britain’s Coalition Government’ (2012) 65 *Parliamentary Affairs* 778.

²⁵ See House of Lords Constitution Committee, *The Cabinet Office and the Centre of Government*, HL 30 (2009–10); also, Institute for Government, *Centre Forward, Effective Support for the Prime Minister at the Centre of Government* (2014).

secretariat.²⁶ Reverting to the UK *Cabinet Manual*, a single bland paragraph on the deputy prime minister has again obscured a richer tapestry.²⁷ Perhaps not surprisingly, Mr Clegg would continue to portray his position as ‘quite different’ in function, content, and powers from previous holders of the title in single-party government.²⁸ On the basis of a lengthy inquiry into the office of prime minister,²⁹ the Commons Political and Constitutional Reform Committee has though reached similar conclusions. Naturally enough, with the powers of the prime minister somewhat constrained, coalition government ‘made a more collegiate style of government necessary’.³⁰

HANGING TOGETHER

The principle of collective responsibility, which of course provides the basis of Cabinet government, was the other main item in the parties’ *Agreement*. As the Lords’ Constitution Committee later observed in a wide-ranging report on the constitutional implications of coalition government, this would be the convention most affected.³¹ There was though a modicum of constitutional practice to go on in the shape of ‘agreements to disagree’ on particular issues. Tariff reform is the famous example from the National government in 1931–2, with the other two occasions, also involving agreements made collectively by the Cabinet, being under Labour in the 1970s (the referendum on EEC membership and direct elections to the European Parliament). For the new coalition partners, it was then a case, first, of underscoring the importance of day-to-day routines of collective ministerial responsibility; and, secondly, by building on constitutional precedent, of reflecting the political reality that a coalition cannot be expected to agree on every issue.

Picking up on the twin input and output functions of the convention, collective development of policy with a view to better decisions, and public presentation of, and responsibility to Parliament of the whole government for, agreed policies, the *Agreement* carefully rehearsed the disciplines. The language is familiar from the UK *Ministerial Code* and *Cabinet Manual*:³² ‘an appropriate degree’ of consultation and discussion among ministers to allow them ‘to express their views frankly as decisions are reached’; ‘opinions expressed... within Government to remain private’; and ‘decisions of the Cabinet to be binding on and supported by all Ministers’—save, that is, where the convention ‘is explicitly set aside’.³³ The *Programme for Government* duly specified five matters on which the parties could

²⁶ *Coalition Agreement for Stability and Reform*, 2. ²⁷ *Cabinet Manual*, para. 3.11.

²⁸ ‘Annual Oral Evidence Session with the Deputy Prime Minister’, 13. Mr Clegg had also been appointed Lord President of the Council, with ministerial responsibility for political and constitutional reform.

²⁹ Political and Constitutional Reform Committee, *Role and Powers of the Prime Minister*, HC 351 (2014–15).

³⁰ *Ibid.*, 20. ³¹ *Constitutional Implications of Coalition Government*, 4.

³² UK *Ministerial Code*, paras. 2.1–2.4; *Cabinet Manual*, paras. 4.1–4.4.

³³ *Coalition Agreement for Stability and Reform*, 2. The standard exceptions to consultation, such as the Chancellor’s Budget judgements, were naturally catered for.

disagree, among them renewal of the UK's nuclear deterrent and the (ill-fated) referendum on electing the House of Commons by Alternative Vote. Thus far, it may be said, suitably transparent and constitutionally rigorous. The Coalition government could now secure a requisite element of legitimacy through the vote on the Queen's Speech.³⁴

But of course not all eventualities could be anticipated. The architects of the *Agreement* were rightly concerned to establish standing machinery to oversee the functioning of the government and implementation of the *Programme*; and, more especially, for the resolution of disputes between the parties. Provision was thus made for a 'Coalition Committee' co-chaired by the prime minister and deputy prime minister and with equal numbers of Conservative and Liberal Democrat ministers.³⁵ Perhaps not surprisingly however, this body was rapidly superseded by more streamlined machinery in the form of the so-called 'Quad': regular meetings between the prime minister and Chancellor of the Exchequer, and the deputy prime minister and (a second Liberal Democrat) the Chief Secretary to the Treasury.³⁶ Putting this in constitutional perspective, the fact of the Quad, a kind of equally balanced 'inner Cabinet', underwrote the constraint on prime ministerial authority. The considerable space for informal or highly contextual political arrangements at the heart of government is further highlighted.

The rosy days of May 2010 would soon give way to a burst of backbench Conservative rebellion, which in fluctuating fashion then proceeded to dog the life of the government.³⁷ So too, the convention of collective responsibility would come under increased strain, reflected in some extraordinary acts of constitutional and political theatre. These include the prime minister and deputy prime minister making separate statements to the House in response to the Leveson report on media regulation,³⁸ and a free vote for Conservative MPs on an amendment regretting the absence of an EU referendum bill in the 2013 Queen's Speech.³⁹ The most politically contentious however was the decision by the Liberal Democrats to agree with a Lords amendment⁴⁰ postponing the review of constituency boundaries until after the 2015 UK general election, in practice to the Conservatives' disadvantage. According to Deputy Prime Minister Clegg, this setting aside of collective responsibility outside the terms of the *Agreement* was justified because of ~~continuing~~ opposition to the (ill-fated) House of Lords Reform bill, ~~already~~ bogged-down

³⁴ See *Constitutional Implications of Coalition Government*, ch. 3.

³⁵ *Coalition Agreement for Stability and Reform*, 3.

³⁶ See further, R. Hazell, 'How the Coalition Works at the Centre' in R. Hazell and B. Yong, *The Politics of Coalition* (2012).

³⁷ House of Commons Library, *Coalitions at Westminster* (2014), provides references. For critical perspectives on the competing ideologies, see M. Beech and S. Lee, *The Cameron–Clegg Government: Coalition Politics in an Age of Austerity* (2011).

³⁸ Hansard, HC, cols. 446–82 (29 November 2012). See also, Hansard, HC, cols. 282–304WH (13 February 2013).

³⁹ Hansard, HC, cols. 669, 749 (15 May 2013).

⁴⁰ To the Electoral Registration and Administration Bill; see Hansard, HC, cols. 806–40 (29 January 2013).

in the House of Commons. A key part of what he was pleased to call ‘the coalition’s contract’ had been broken.⁴¹ Not so said the then Conservative Leader of the House of Lords, Lord Strathclyde, declaring the Liberal Democrats guilty of ‘a dirty trick’; the boundary review had as political consideration the AV referendum.⁴² Be this as it may, the recriminations would persist through the lifetime of the government.⁴³

Civilized partnership, uneasy cohabitation and divorce constitute a simple but neat way of visualizing the life-cycle of the Coalition.⁴⁴ Most obviously with a view to exploring possible policy lines and to projecting distinct identities, it would be strange indeed if ministers in both parties had not increasingly expressed differing views as the 2015 UK general election loomed ever larger. For which read, in the party conference season, welfare reform, immigration, and always Europe,⁴⁵ to name but a few. Constitutionally speaking, the touchstone of this reversion in favour of single-party politics is the Conservative Party’s policy document *Protecting Human Rights in the UK* published in October 2014.⁴⁶ In making proposals that involved replacing the Human Rights Act 1998 with a British Bill of Rights and Responsibilities, this was a controversial document, to put it mildly. Correctly, however, it did not appear under an official government imprimatur, being produced instead in-house. Though one cannot help but feel that had the document been subject to the usual governmental processes of legal as well as political scrutiny, it would have been, at the very least, more tightly drafted.⁴⁷

Published in February 2014, the Constitution Committee’s report on the constitutional implications of coalition government made some useful recommendations, chief among them on collective responsibility. As one would expect, these senior Parliamentarians stood firmly on the constitutional importance of the convention; setting aside ‘should be rare, and only ever a last resort’. Effectively supplying a missing piece in the jigsaw of the parties’ *Agreement*, the Committee made the case for a standing process to govern such exigencies in this and any other future coalition government. A clear nod in the direction of collegiality, the Cabinet as a whole should agree a specific exception preferably for a specified period of time; ‘rules’ should be set out governing how ministers may express their differing views.⁴⁸ Properly timed as a prompt to ministers, the report also concentrated on matters relating to the end of the Parliament, for example legislative practice (the ‘wash-up’) and access to papers

⁴¹ ‘Nick Clegg: Lords Reform to Be Abandoned’, *BBC News* (6 August 2012).

⁴² *Constitutional Implications of Coalition Government*, para. 71.

⁴³ See Hansard, HL, cols. 1812–58 (13 May 2014).

⁴⁴ See in this vein, R. Hayton, ‘Conservative Party Statecraft and the Politics of Coalition’ (2014) 67 *Parliamentary Affairs* 6.

⁴⁵ E. Goes, ‘The Coalition and Europe: A Tale of Reckless Drivers, Steady Navigators and Imperfect Roadmaps’ (2014) 67 *Parliamentary Affairs* 45.

⁴⁶ Conservative Party, *Protecting Human Rights in the UK: The Conservatives’ Proposals for Changing Britain’s Human Rights Laws* (2014).

⁴⁷ See further, Colm O’Cinneide’s chapter in this volume (ch. 3).

⁴⁸ *Constitutional Implications of Coalition Government*, paras. 78–9

of a previous administration.⁴⁹ However, in flagrant disregard of the conventional understanding of a reply within two months, important for effective parliamentary oversight of government, the minister was still prevaricating another six months later,⁵⁰ a consequence presumably of disagreement between the Coalition parties. Eventually published in ~~... the response was short and bland. The Government recognised.... But....~~⁵¹ ~~PREDICTION OBVIOUSLY UPDATE.~~⁵²

THRASHING ABOUT: MINISTERS, AGENCIES, AND OFFICIALS

BENCHMARKS

Some 150 years ago, as Britain experienced an industrial revolution and approached the zenith of empire, the basis of today's Civil Service was being laid. As state intervention flowered in fields like public health, education, and the factories, so at home as well in the colonies there was an inexorable demand for a more capable bureaucracy. Opposing patronage and the buying of office, the justly famous Northcote–Trevelyan review⁵³ grounded a system of entry and promotion on merit via open competition. Viewed in constitutional perspective, this reflected and reinforced the concept of a permanent and politically disinterested Civil Service; and, more particularly, core values of objectivity, impartiality, and integrity. As today's UK *Cabinet Manual* puts it, first and foremost 'the Civil Service supports the Government of the day in developing and implementing its policies, and in delivering public services'.⁵⁴ However, a significant feature in an uncodified constitution centred round parliamentary sovereignty, it is also implicit that the Civil Service 'does not exist solely to serve the Government of the day, but also future governments'. Put slightly differently, it is 'one of the great institutions of state, critical to the continuation and stability of government'.⁵⁵

Some 100 years ago, against the backdrop of the Great War and also the beginnings of what would become known as the welfare state, much thought was being given to the organization and effective exercise of central government responsibilities. On from more ad hoc and piecemeal arrangements, the Haldane report established a determinedly functional approach to the machinery of government premised on individual departments, whereby the 'field of activity in the case of each department' should be

⁴⁹ *Ibid.*, ch. 5. See also Political and Constitutional Reform Committee, *Fixed-term Parliaments: The Final Year of a Parliament*, HC 976 (2013–14); Institute for Government, *Year Five: Whitehall and the Parties in the Final Year of Coalition* (2014).

⁵⁰ Hansard, HL, col. 154W (29 October 2014).

⁵¹ ~~Ref UPDATE~~

⁵² ~~Ref UPDATE~~

⁵³ *Report on the Organisation of the Permanent Civil Service*, 1854, q/JN 426 NOR.

⁵⁴ *Cabinet Manual* (1st edn, 2011), para. 7.1. But see later, Constitutional Reform and Governance Act 2010, s. 7.

⁵⁵ *Public Administration Select Committee, Truth to Power: How Civil Service Reform Can Succeed*, HC 74 (2013–14), para. 1.

‘the particular service which it renders to the community as a whole’.⁵⁶ Expanding on Northcote–Trevelyan, which had spoken of a professional body of officials advising a minister with direct responsibility to Parliament, Haldane underwrote another key principle in the Westminster model of parliamentary government: the indivisible relationship of ministers and officials. For which read the mathematical-style formula of the great constitutional convention of individual ministerial responsibility: in the first, internal limb that civil servants are fully accountable to ministers; in the second, external limb that ministers are fully accountable to Parliament for all their and their department’s actions and omissions. Today the principle is given due prominence in both the Civil Service Code and the UK *Cabinet Manual*; to quote the Cameron–Clegg administration’s Civil Service Reform Plan, it is ‘well-established and underpins the effective working of Government’.⁵⁷ There is a long-standing and important exception, the role of accounting officer, whereby, bound up with the historic constitutional functions of the House of Commons in providing for and overseeing government expenditure, Parliament holds designated senior civil servants directly to account for their stewardship of public funds.⁵⁸

Some 50 years ago, in the twin contexts, first, of an expanded administrative apparatus associated with ‘cradle to grave’ welfare provision and substantial public ownership in a mixed economy, and, secondly, of a country struggling to come to terms with relative economic decline and retreat from Empire, the Fulton Committee⁵⁹ was tasked with considering issues of recruitment, management, and training with a view to ensuring that the Civil Service was properly equipped for its role in the modern state. Trumpeting a lack of skilled management, and also the limitations of a (public school) cult of the generalist in an increasingly technological age, Fulton’s mix of recommendations included a less rigid hierarchy (far fewer classes of civil servant), more responsibilities for specialists including scientists, and increased interchange with the private and voluntary sectors. The inquiry would be heavily criticized, in part for avoiding basic constitutional questions about the design of the Whitehall machinery, and in part for an evident failure of implementation in the face of resistance from the higher Civil Service.⁶⁰ Yet in the long view, much in Fulton foreshadows the radical transformation of government, and particularly of administrative culture, pursued by the Conservatives under Margaret Thatcher from 1979.⁶¹

It is worth pausing to consider how a student of the not-so changing constitution of the 1970s⁶² might have visualized the situation. Representing the model of (by now) big Whitehall departments constructed on the basis of strong bureaucratic hierarchy,

⁵⁶ Ministry of Reconstruction, *Report of the Machinery of Government Committee*, Cm 9230 (1918), 8.

⁵⁷ HM Government, *The Civil Service Reform Plan* (June 2012), 20.

⁵⁸ HM Treasury, *Managing Public Money* (updated version, July 2013), ch. 3.

⁵⁹ *The Civil Service, Report of the [Fulton] Committee 1966–68*, vol. 1, Cm 3638 (1968).

⁶⁰ P. Kellner and N. Crowther-Hunt, *The Civil Servants: An Inquiry into Britain’s Ruling Class* (1980).

⁶¹ R. Lowe, *The Official History of the British Civil Service: Reforming the Civil Service, I: The Fulton Years, 1966–81* (2011), provides a top-down perspective.

⁶² For a suitably provocative account, see N. Johnson, *In Search of the Constitution* (1977).

a series of towering institutional pyramids dominates the scene.⁶³ Individual departments are governed from on high through a (variable) mix of political direction from the Secretary of State and junior ministers and the administrative judgement of the Permanent Secretary and other ‘mandarins’; perhaps hopefully, the internal lines of managerial direction and accountability reach down through the middle ranks to the very many junior officials applying rules and rendering individual decisions. From the legal standpoint,⁶⁴ two particular pieces of engineering help to sustain this set of structures. First, there is the time-hallowed method of statutory empowerment, whereby Parliament delegates public power to ‘the Secretary of State’. At one and the same time, the constitutional and administrative model of individual ministerial responsibility is reflected and reinforced, and, since the statutory phrase also is a generic one, flexibility is preserved through an ongoing executive capacity to transfer functions.⁶⁵ Secondly, giving tangible expression to the notion of indivisibility, there is the dose of judicial common-sense constituted in the *Carltona* principle;⁶⁶ namely, that such are the multifarious functions of modern government, responsible officials may generally exercise them in the name of ministers.

Our student is also well-versed in the constitutional learning associated with the famous episode of ‘Crichel Down’ (1954), in which a minister resigned ostensibly over serious errors by officials.⁶⁷ This is the flipside or shielding aspect of individual ministerial responsibility, whereby, helping to keep the Civil Service out of the political arena, the minister is expected to protect officials carrying out orders or properly implementing a policy, and not to subject them to public criticism for minor mistakes.⁶⁸ Already however questions are raised about the practical workings in view of the growth in the size and complexity of the state and a propensity among ministers to distance themselves from government blunders.⁶⁹ Much, however, remains shrouded in mystery, and designedly so, by reason of the draconian Official Secrets Act 1911.⁷⁰ According to the classic routines, the MP may inquire of the minister who, suitably briefed, will give an answer to the question, but generally no more than that. Only in 1967 was the Parliamentary Ombudsman created as a supplementary means of chasing down maladministration through a dose of investigative technique.⁷¹ Meanwhile, testimony to the strength of the conventional paradigm, direct engagement between parliamentarians and civil servants remains sporadic and peripheral. Only in 1979 would a properly planned select committee system be established in the

⁶³ C. Harlow and R. Rawlings, *Law and Administration* (1st edn, 1984).

⁶⁴ For classic accounts, see R. Brazier *Ministers of the Crown* (1997); and T. Daintith and A. Page, *The Executive in the Constitution* (1999).

⁶⁵ See Ministers of the Crown Act 1975.

⁶⁶ *Carltona Ltd v. Works Commissioners* [1943] 2 All ER 560.

⁶⁷ But see I. Nicholson, *The Mystery of Crichel Down* (1986).

⁶⁸ Hansard, HC, cols. 1285–7 (20 July 1954) (Home Secretary David Maxwell Fyfe).

⁶⁹ A. Birch, *Representative and Responsible Government* (1964).

⁷⁰ For a useful overview, see C. Moran, *Classified: Secrecy and the State in Modern Britain* (2012).

⁷¹ Parliamentary Commissioner Act 1967.

House of Commons with a view to securing cross-the-board scrutiny of departmental policy and administration.⁷²

AGE OF MANAGERIALISM

Previous editions of this book posed the question: ‘The Executive: Towards Accountable Government and Effective Governance?’ Behind this seemingly unending quest lay a well-known narrative: the shift toward more market-oriented, performance driven, and ‘business-like’ modes of public service delivery beginning in earnest with Prime Minister Thatcher.⁷³ Much would be heard of the functional values of ‘economy, efficiency, and effectiveness’ and, associated with a rule-bound methodology of targeted goals, standard-setting, performance indicators, measurement and control, and ‘value for money’ (VFM) audit, something called ‘New Public Management’ (NPM).⁷⁴ In terms of accountability for performance, considerable confidence was reposed in transparency via detailed specification, as with advanced forms of contracting-out of public services, and in pseudo-market forces, as with citizens as consumers and ‘league tables’ of public bodies.

Attention is drawn to the fashion for ‘agencification’; in constitutional terms, more autonomous decision-making by so-called arm’s-length public bodies operating outside the classic lines of ministerial hierarchical control hitherto associated with centralist practices of parliamentarianism. To this effect, demands for sharp issue focus and specialist expertise locked up with the prevailing market ideology and, an even stronger driver today,⁷⁵ burgeoning European demands for ‘independent’ regulation in the Single Market. Testifying to the strength of the broad development, the ugly term ‘distributed public governance’ would soon be used to underscore the sense of greater institutional complexity; and, further, of the old top-down British view of ‘the executive’ being reworked so as to incorporate broader and more flexible elements of decision-making founded on myriad policy communities and networks.⁷⁶ Meanwhile, the related metaphor of ‘hollowing out of the state’ suitably highlighted the passage of central government functions sideways to agencies and (via privatization, etc.) to business, as well as upwards to Brussels.⁷⁷

Arm’s-length bodies would exhibit many forms, ranging through executive agencies tasked with day-to-day implementation of policies, powerful non-ministerial

⁷² G. Drewry (ed.), *The New Select Committees* (1985).

⁷³ C. Harlow and R. Rawlings, *Law and Administration* (2nd edn, 1997). For another flavour of the times, see P. Hennessy, *Whitehall* (1989).

⁷⁴ As illustrated by G. Hammerschmid et al., *Public Administration Reform in Europe* (2013), the precise contours of NPM remain contested.

⁷⁵ C. Harlow and R. Rawlings, *Process and Procedure in EU Administration* (2014).

⁷⁶ M. Flinders, *Delegated Governance and the British State* (2008). For the government/governance distinction, see R. Rhodes, ‘The New Governance: Governing without Government’ (1996) 44 *Political Studies* 652.

⁷⁷ R. Rhodes, ‘The Hollowing Out of the State: The Changing Nature of the Public Service in Britain’ (1994) 65 *Pol Q* 138.

departments such as HM Revenue & Customs, and all those so-called ‘quangos’: non-departmental public bodies (NDPBs) with their own legal personality but subject to greater or lesser forms of ‘steering’ by ministers through strategic direction and guidance, funding, etc.⁷⁸ Privatization also meant new regulatory agencies armed (if weakly) with statutory powers across broad swathes of the functioning economy. For present purposes, the rise of executive agencies—referred to in the Thatcher years as ‘next steps agencies’⁷⁹—further serves to illustrate the important role of ‘soft law’ techniques in the internal organization and workings of the executive. Cut out of monolithic central departments, bodies like the Prisons Service or the Highways Agency would thus remain paper creations, operating according to published framework documents agreed by ministers. By the early 1990s, our model student would have been visualizing the situation in terms of ‘hub-and-spoke’: not so much institutional pyramids but policy-oriented departmental cores flanked by, or working in partnership with, multiple executive agencies. To which would promptly be added the unsurprising ‘core executive thesis’ of a small number of powerful institutions like the Treasury doing much by way of policy-setting, business coordination, and oversight above the level of departments.⁸⁰

Concern was naturally expressed about the effects on classic forms of political accountability. The touchstone is the adoption in 1997 of resolutions in both Houses changing the doctrine of individual ministerial responsibility from an unwritten constitutional convention into the express parliamentary rule that ‘ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and executive agencies’.⁸¹ This followed a well-known imbroglio over operational failures in the Prison Service, which saw the minister demand the chief executive’s resignation and the chief executive allege that the minister interfered in operational matters while seeking to avoid responsibility for failures in respect of which—shades of Haldane—he was accountable to Parliament.⁸² Predictably, the general issue has rumbled on, with senior parliamentarians holding to the line of no constitutional difference between the terms responsibility and accountability in the face of restrictive executive views of ministerial obligation.⁸³ The proper functioning of the Westminster model of parliamentary government, it may be said, demands nothing less.

The election of Tony Blair’s New Labour government famously heralded much by way of constitutional change, some of which bears directly on the position of the Civil

⁷⁸ For this (simple) threefold classification, see House of Lords Select Committee on the Constitution, *The Accountability of Civil Servants*, HL 61 (2012–13), ch. 5.

⁷⁹ UK Cabinet Office, *Improving Management in Government: The Next Steps* (1988).

⁸⁰ M. Smith, *The Core Executive in Britain* (1999).

⁸¹ Hansard, HC, cols. 1046–7 (19 March 1997); HL, cols. 1055–62 (20 March 1977).

⁸² A. Barker, ‘Political Responsibility for UK Prison Security: Ministers Escape Again’ (1998) 76 *Public Administration* 1.

⁸³ *Government Response to the Lords Constitution Committee’s Report on the Accountability of Civil Servants* (February 2013).

Service. One thinks immediately of the Freedom of Information Act 2000, which for all its many exceptions has clearly changed much in the day-to-day working assumptions.⁸⁴ However, to anticipate the argument in the next section, ‘devolution’ constituted the more profound change. Another product of a tortuous history, Northern Ireland already had a separately organized Civil Service. But the (re-)birth of parliamentary and governmental institutions in Scotland and Wales also required mirroring inside the home Civil Service. Officials in Edinburgh and Cardiff would now owe their day-to-day loyalty not to London but to their own ministers (a constitutional position subsequently formalized in the Constitutional Reform and Governance Act 2010⁸⁵).

Rather than reverse the paradigm shift denoted by ‘the Thatcher revolution’—rolling back the extended administrative state and imposing competitive disciplines—the Blair government aimed to soften some of the effects.⁸⁶ In supplementing hard-edged functional values with responsive nostrums of public service, a 1999 White Paper set the tone: linking citizen choice to improved service standards and delivery, it spoke bravely of forward-looking, inclusive, and fair policies.⁸⁷ From computerized front-line decision-making to new opportunities for citizen participation or at least consultation, stress was rightly laid on the potentials for ‘e-governance’ in light of the revolution in ICT. Naturally, however, the looming prospect of a surveillance society,⁸⁸ and, latterly underscored in the so-called ‘war against terror’, the expanding capacities of the security state, were glossed over.

Risk regulation would be a leitmotif of UK public administration under New Labour.⁸⁹ Behind this lay the (worldwide) search for ‘better’ and/or ‘smart’ regulation founded on principles of proportionality, consistency and targeting, and transparency and accountability.⁹⁰ Demonstrating the way in which some Conservative approaches were taken to new heights, this helped to fuel the rise of super-agencies such as OFCOM, the telecommunications regulator, and the Financial Services Authority (later abolished in the wake of the 2007–8 global financial crisis). It was then a time of regulatory commissions, extended regulatory objectives, and enhanced enforcement powers, as well as heightened process requirements.⁹¹ Distributed public governance writ large, this determinedly sprawling development represented the apotheosis in the UK of a familiar if contested concept in law and political science: the regulatory state.⁹²

⁸⁴ See further, Patrick Birkinshaw’s chapter.

⁸⁵ Constitutional Reform and Governance Act 2010, s. 7.

⁸⁶ C. Harlow and R. Rawlings, *Law and Administration* (3rd edn, 2009).

⁸⁷ *Modernising Government*, Cm 4130 (1999).

⁸⁸ See especially House of Lords Constitution Committee, *Surveillance: Citizens and the State*, HL 18 (2008–9).

⁸⁹ E. Fisher, *Risk Regulation and Administrative Constitutionalism* (2007).

⁹⁰ R. Baldwin, M. Cave, and M. Lodge, *Understanding Regulation* (2nd edn, 2011).

⁹¹ See e.g. House of Lords Constitution Committee, *The Regulatory State: Ensuring its Accountability*, HL 68 (2003–4).

⁹² M. Moran, *The British Regulatory State* (2003); D. Oliver, T. Prosser, and R. Rawlings (eds.), *The Regulatory State: Constitutional Implications* (2010).

To Prime Minister Gordon Brown goes the accolade of finally delivering one of Northcote–Trevelyan’s main recommendations: a clear statutory basis for the Civil Service and hence at least partial release from the arcane mysteries of prerogative power.⁹³ If by comparison with some other common law jurisdictions⁹⁴ the provision in the Constitutional Reform and Governance (CRAG) Act 2010 is limited, nonetheless some of it is appropriately described as constitutionally fundamental. The development also shows the scope for close interplay between hard and soft law techniques, with the statute effectively underpinning, and promoting the further elaboration of, pre-existing requirements in the Civil Service Code. In trumpeting the core values, s. 7 of the Act thus provides that ‘the code must require civil servants to carry out their duties... with integrity and honesty... and with objectivity and impartiality’. An updated version of the Code then explains that objectivity for example includes not ignoring inconvenient facts or relevant considerations when providing advice or making decisions (a formulation which the judicial review practitioner would immediately recognize).⁹⁵ Meanwhile, corresponding provisions in the *Ministerial Code* state that ‘Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code.’⁹⁶ Other key legislative statements in CRAG include the merit principle (‘a person’s selection must be on merit on the basis of fair and open competition’ (s. 10)) and separate legal status for the Civil Service Commission, the arm’s-length body which oversees recruitment competitions for senior officials (s. 2). The development, it is rightly said, hardly amounts to a revolution in UK public administration; the imposition of formal legal norms should not distract from the overarching importance of organizational culture.⁹⁷ The constitutional significance is nonetheless worth emphasizing. Through this assertion by Parliament of its primary authority on the regulation of the Civil Service,⁹⁸ there is some further defence against unwarranted political interference. Doings under the Cameron–Clegg government will be seen later highlighting this aspect.

RAGBAG

Ad hoc and piecemeal, naturally politically driven, it is a commonplace that changes in the UK’s constitutional arrangements happen on the hoof.⁹⁹ Yet viewed against this backdrop, the Coalition’s dealings with the machinery of government appear

⁹³ On which see *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374 (the famous ‘GCHQ case’).

⁹⁴ For a comparative perspective, see IPPR, *Accountability and Responsiveness in the Senior Civil Service: Lessons from Overseas* (2013).

⁹⁵ UK Civil Service Code (2010 version), para. 10.

⁹⁶ UK *Ministerial Code*, para. 5.1.

⁹⁷ Drewry (ed.), *The New Select Committees*, 209, 212.

⁹⁸ See in this vein, A. Tomkins, *The Constitution After Scott* (1998).

⁹⁹ D. Oliver, ‘Politics, Law and Constitutional Moments in the UK’ in D. Feldman (ed.), *Law in Politics, Politics in Law* (2013).

more than usually disjointed. On the one hand, the evident need to tackle a huge budget deficit in the wake of the global economic crisis was a powerful factor: a more stringent approach to the public sector at large was only to be expected. On the other hand, careful and joined-up thinking about important matters of institutional—and hence constitutional—design proved hostage to the particular exigencies of the moment.

A Conservative-led government seeking to roll back the boundaries of agencification: the irony will not be lost on the reader. The policy was one of the key constitutional initiatives of the Coalition's early years and had in theory much to commend it. A seeming bonfire of the quangos, the Minister for the Cabinet Office spoke of restoring political accountability for decisions affecting people's lives and the way taxpayers' money is spent; individual NDPBs should only be retained where there was a demonstrable need for performance of a technical function, or for political impartiality, or for acting independently to establish facts.¹⁰⁰ But the bill which eventually became the Public Bodies Act 2011 was the business manager's nightmare; living up to its unkind nickname of 'quango of the quangos', the Upper House duly deliberated at great length on the great virtues of executive bodies on which sit the great and good. Ministers reckoned to pre-empt much in the public debate by using so-called 'Henry VIII clause' powers on an industrial scale to abolish, merge, and transfer functions; happily, however, from the standpoint of constitutional—democratic—principle, this too raised the ire of senior parliamentarians.¹⁰¹ In the event, the government could point to some major savings in the costs of running public bodies (some £900 million per year).¹⁰² Nonetheless, the reform proved something of a damp squib, certainly if an official UK government list of some 500 NDPBs (grouped round 24 ministerial departments or offices) is anything to go by.¹⁰³ For confirmation, one need only refer to a 2014 review by the Public Administration Select Committee (PASC), which speaks of 'inconsistency, overlaps, confusion and clutter'.¹⁰⁴ There also were some unfortunate casualties, for example the Administrative Justice and Tribunals Council, a harmless little body which was doing good work in promoting principled guidance, training and research concerning citizen grievance.¹⁰⁵

Highlighting some complaints by ministers of deliberate obstruction of policy decisions, and also their concerns about institutional constraints in terms of competence and culture, media reports of a 'Whitehall at war' abounded under the Cameron–Clegg

¹⁰⁰ Francis Maude MP, UK Cabinet Office statement, 14 October 2010; see further, Institute for Government, *Read before Burning: Arm's Length Government for a New Administration* (2010).

¹⁰¹ House of Lords Constitution Committee, *Public Bodies Bill*, HL 51(2010–11).

¹⁰² UK Cabinet Office, *Progress on Public Bodies Reform* (2013).

¹⁰³ UK Cabinet Office, *Public Bodies* (2013).

¹⁰⁴ Public Administration Select Committee, *Who's Accountable? Relationships between Government and Arm's Length Bodies*, HC 110 (2014–15), para. 78. See further, K. Dommert et al., 'Did they "Read Before Burning"? The Coalition and Quangos' (2014) 85 *Pol Q* 133.

¹⁰⁵ AJTC, *Putting it Right* (2012).

administration. Members of select committees were naturally interested to get to the bottom of this, yet, faced by ministers' failure to improve on anecdote with a firm evidence base, they struggled to do so. In PASC's weary words, 'the Government has not... identified any fundamental problem with the Civil Service'.¹⁰⁶ Equally however, PASC was scathing about the government's initial failure to produce any sort of Civil Service reform plan: for change not to be defeated by inertia, ministers needed to set clear goals and pursue implementation through close timetabling.¹⁰⁷

Ministers eventually published a Plan in 2012.¹⁰⁸ Predictably in this age of austerity, the chief demand was for a much smaller Civil Service. Connecting with the rise of e-governance (a 'digital by default' approach to the delivery of services), but also sitting comfortably with Conservative ideology, cuts of roughly 25 per cent in staff numbers were envisaged. In the event, staffing would fall from some 480,000 at the Spending Review in 2010 to some 410,000 by mid-2014.¹⁰⁹ Flanking initiatives in the Plan included more outsourcing, to the extent of 'think-tanks' bidding to provide policy advice, and, with a view to tackling a familiar source of government blunders,¹¹⁰ attempts to improve the handling of major projects. Especially noteworthy from the constitutional standpoint was the demand by Coalition ministers for a greater say in senior appointments in order to reflect their own accountability to Parliament for a department's performance¹¹¹—for which read downplaying Civil Service independence from political masters in favour of (still greater) responsiveness to the government of the day.¹¹²

An official evaluation in 2013 confirmed that the government was 'slow to mobilise'; indeed, implementation of the Plan had been 'held back by some of the very things that it was designed to address'—'weaknesses in capability', 'lack of clear accountability', and failings in (something called) 'delivery discipline'.¹¹³ Lamenting the many difficulties of driving forward bureaucratic reform across largely autonomous and sprawling departmental structures, an external evaluation in early 2014 further pointed up 'weak and confused' leadership at the centre.¹¹⁴ Even so, at the same time as having to provide effective support for radical ministerial agendas in various policy domains, the Civil Service at large was already making unprecedented costs-savings. A second official evaluation in late 2014 put a braver face on matters, to the effect of a reform programme gradually picking up speed.¹¹⁵ It spoke of 'real progress towards

¹⁰⁶ PASC, *Truth to Power*, 3.

¹⁰⁷ Public Administration Select Committee, *Change in Government: The Agenda for Leadership*, HC 714 (2010–12).

¹⁰⁸ [UK Cabinet Office, *Civil Service Reform Plan \(June 2012\)*](#).

¹⁰⁹ For the number-crunching, see Institute for Government, *Whitehall Monitor* (Annual Report, 2014).

¹¹⁰ For chapter and verse, see A. King and I. Crewe, *The Blunders of our Governments* (2013).

¹¹¹ [UK Cabinet Office, *Civil Service Reform Plan*](#), 21.

¹¹² On the further, vexed, issue of special advisers, see B. Yong and R. Hazell, *Special Advisers: Who They Are, What They Do and Why They Matter* (2014).

¹¹³ [Civil Service Reform Plan: One Year On](#) (2013), 5.

¹¹⁴ Institute for Government, *Leading Change in the Civil Service* (2014), 9.

¹¹⁵ UK Cabinet Office, *Civil Service Reform: Progress Report* (2014).

the government's vision of a service that is more skilled, less bureaucratic and hierarchical, and more unified'.¹¹⁶ Time will tell.

Meanwhile, the scene had been set for a fine establishment imbroglio over the position of permanent secretaries. With the declared aim of strengthening their individual accountability, ministers announced an immediate move to fixed tenure (five-year contracts) for all new appointments at this exalted level.¹¹⁷ However, praying in aid Northcote–Trevelyan and the concerns about personal favouritism and patronage, the Civil Service Commission stoutly resisted the further idea of substituting direct ministerial choice for the (rarely exercised) prime ministerial power to veto the independently selected candidate. At this point the CRAG Act bit home, with Coalition ministers effectively being dared to amend the provisions enshrining the merit principle and the role of the Commission. By the end of 2012 an uneasy compromise had resulted, with revised Commission guidance allowing for multiple consultations with the relevant Secretary of State.¹¹⁸ In the face however of renewed party political pressure, the Commission evidently felt obliged to cede more ground. As from late 2014, the prime minister is allowed to interview and choose the top-most civil servants in Whitehall, those heading the main departments and directly accountable to a Cabinet Minister.¹¹⁹ Yes, the merit principle remains in place, buttressed by the safeguard of an independent panel dealing with the shortlist, but the development naturally reinforces concerns about politicization of the Civil Service. Perhaps hopefully, an important constitutional principle has been dented and not fractured.

Happenings at the very centre of government highlight the propensity for ill-thought-out reform. When chief civil servant Gus O'Donnell retired in 2011, his role was divided three ways: Cabinet Secretary; Head of the Home Civil Service; and Permanent Secretary, Cabinet Office. But as PASC was quick to observe, this was a recipe not only for weakened leadership or domestic tension, but also for blurred lines of responsibility in the heart of Whitehall.¹²⁰ Hardly testimony to success, the chairs were then rearranged in the government's final year: first, by (re-)combining the titles of Cabinet Secretary and Head of the Home Civil Service; and, secondly, by conjuring up the title 'Civil Service Chief Executive'. To compound matters, the latter title is misleading. The new office-holder, it is envisaged, will not run ~~things~~, but instead focus on issues of efficiency and effectiveness, reporting in turn to various ministers including the Chief Secretary to the Treasury, as well as to the Cabinet Secretary.¹²¹ More higgledy-piggledy beckons.

¹¹⁶ Ibid., foreword.

¹¹⁷ *Civil Service Reform Plan: One Year On*, 31.

¹¹⁸ Civil Service Commission, *Recruiting Permanent Secretaries: Ministerial Involvement* (December 2012).

¹¹⁹ Civil Service Commission, press notice 15 October 2014. Within the Scottish and Welsh governments, it will be the First Minister's decision.

¹²⁰ Public Administration Select Committee, *Leadership of Change: New Arrangements for the Roles of the Head of the Civil Service and the Cabinet Secretary*, HC 1582 (2010–12).

¹²¹ UK Cabinet Office, *Chief Executive Job Description* (July 2014). See further, House of Commons Public Accounts Committee, *The Centre of Government*, HC 107 (2014–15).

As regards the broader constitutional issue of ministerial and/or Civil Service accountability, matters plumbed the depths with the collapse in 2012 of the tendering process for the West Coast Main Line.¹²² Triggered by a claim for judicial review, this expensive and embarrassing debacle for the government produced a blame game both inside and outside the department. The affair sheds light on the complex web of organizational factors likely to be involved when things go wrong. Yes, there were major errors by front-line officials, but there also were insufficient specialist staff, little by way of institutional memory, serious failings in line management, and so on. Individual shortcomings, long experience teaches, should not be allowed to obscure wider defects in systems, skills, and culture for which others are responsible.

In the light of broader moves towards Westminster asserting its authority over Whitehall, and more particularly the evident ambition of certain parliamentary committees,¹²³ there would be more calls to open up the accountability of civil servants to MPs.¹²⁴ Yet as the Constitution Committee¹²⁵ was soon reminding its readers, the convention of individual ministerial responsibility effectively contains the principal mechanism of Civil Service accountability, while also grounding much of the day-to-day conduct of government business and associated scrutiny in the Westminster system. So although it might be supplemented by other accountability mechanisms, these should not dilute ministers' constitutional responsibility to Parliament. Indeed, in the case of thoroughgoing institutional reform of the NHS in England, the Constitution Committee had effectively demanded a statutory guarantee of continuing ministerial responsibility for provision of the service, a constitutional 'first' at Westminster.¹²⁶

A chief touchstone is the so-called 'Osmotherly Rules', the government's (and not Parliament's) guidance to officials appearing before committees in both Houses. Originally couched in highly restrictive language, but liberalized somewhat over the years, this classic soft law document continues to underwrite important classical understandings. Eventually published in October 2014, the current version emphasizes that civil servants giving evidence do so, 'not in a personal capacity, but as representatives of their Ministers'.¹²⁷ This, it is (tortuously) explained, 'does not mean that officials may not be called upon to give a full account of government policies, or the justification, objectives and effects of these policies'. Rightly however the purpose in doing so is 'to contribute to the process of ministerial accountability'; likewise, better to avoid undermining their political impartiality, it is 'not to offer personal views or judgements on matters of government policy'. In particular, officials 'should as far as possible avoid being drawn into discussion of the merits of alternative policies, including their advice to Ministers'.¹²⁸

¹²² *Report of the Laidlaw Inquiry*, HC 809 (2012–13); House of Commons Transport Committee, *Cancellation of the InterCity West Coast Franchise Competition*, HC 537 (2012–13).

¹²³ See Philip Norton's chapter in this volume (ch. 6).

¹²⁴ Institute for Government, *Civil Service Accountability to Parliament* (2013).

¹²⁵ House of Lords Select Committee on the Constitution, *The Accountability of Civil Servants*.

¹²⁶ House of Lords Constitution Committee, *Health and Social Care Bill*, HL 197 (2010–12); and *Health and Social Care Bill: Follow-up*, HL 240 (2010–12); Health and Social Care Act 2012, s. 1.

¹²⁷ UK Cabinet Office, *Giving Evidence to Select Committees: Evidence to Select Committees* (2014), para. 5.

¹²⁸ *Ibid.*, paras. 6, 33.

The new guidance contributes two useful tweaks. First, underpinning a constitutionally important piece of machinery, former Accounting Officers can now expect to be called in to give evidence about their previous responsibilities. Secondly, reflecting the contemporary realities of government management, the lead officials ('Senior Responsible Owners') on major projects will now be directly accountable at Westminster for implementation.

Looking forward, PASC makes a powerful case for the establishment of a parliamentary commission into the Civil Service.¹²⁹ This would concentrate on the strategic long-term vision or basic issues of role and structure, while facilitating proper—public—debate of the different constitutional implications. As well as the internal relationship between the centre and departments, it would be important to consider changing patterns of Civil Service structures and responsibilities in the context of a loosening Union state—a point missed by PASC. Fifty years on from Fulton, questions of skills and culture also need revisiting, not least because of the immediate and incessant demands of transparency and public scrutiny that so characterize our digital age. Sitting comfortably with the assertion of legislative power in the CRAG Act, an explicitly parliamentary dimension has much to commend it.

SHOCK WAVES: UK (ENGLISH) GOVERNMENT

THE EXECUTIVE(S) IN THE UNION

The Cameron–Clegg administration will go down in history as the government which nearly lost the Union. The sight of a complacent and then panicked Westminster elite vowing¹³⁰ major constitutional reform—'devo-more' or 'faster, safer and better change'—in the face of an exercise in (Scottish) popular sovereignty¹³¹ will live long in folk memory. Looking forward, the shock waves generated by the hard-fought campaign and close 'no' vote in the Scottish independence referendum will continue to reverberate, effectively heralding a looser form of Union (state). If the precise contours currently defy prediction, old unitary-style understandings of what is denoted by the 'Executive' (and 'Parliament') will need revisiting. Reflecting the fact of several governments or the sharing (out) of executive power among the Union 'family' of countries, using the conceptual label 'UK (English) government' with reference to an imperiously titled 'Her Majesty's Government' is a fair start.

Viewed through the lens of individual ministerial responsibility, another look round the UK Cabinet table is revealing. The prime minister, the deputy prime minister and the Chancellor of the Exchequer obviously straddle the UK and English

¹²⁹ PASC, *Truth to Power*; see further, Hansard, HL, cols. 354–93 (16 January 2014).

¹³⁰ *Daily Record*, 16 September 2014.

¹³¹ As facilitated by the (Edinburgh) *Agreement between the United Kingdom Government and the Scottish Government on an Independence Referendum for Scotland* (October 2012). See A. Tomkins, 'Scotland's Choice, Britain's Future', (2014) 130 *LQR* 215.

dimensions of policy. Determinedly pan-Union elements are exemplified by the Secretaries of State for Defence and Foreign and Commonwealth Affairs. Conversely, high-spend departments led by the Secretaries of State for Education, Health, and Communities and Local Government, stand for a distinctively English territorial or spatial component¹³²—to the extent, it might be said mischievously, that the (historically hallowed) designation is misleading: ‘State’, what ‘English State’? Meanwhile, voices for the ‘others’, but today largely stripped of day-to-day decision-making responsibilities, the Secretaries of State for Scotland, Wales and Northern Ireland bring up the rear.

More product of convoluted histories, there are of course other functional motifs: ‘Great Britain’, as mostly with the Department for Work and Pensions in standing for a ‘social union’, and more particularly ‘England and Wales’, as with Home Office and Ministry of Justice responsibilities for policing and criminal justice, and courts and prisons, respectively.¹³³ In a polity as large and complex as the UK, overlapping and interlocking responsibilities are common, a point further underscored in the administrative procedural context of EU membership.¹³⁴ Collective responsibility and efforts at joined-up policies, key elements of commonality in the Home Civil Service,¹³⁵ and, yes, a sense of ‘Britishness’, necessarily contribute to the broader Whitehall mix. ~~All this said however,~~ the basic duality of UK (English) government, as also the propensity with a loosening Union further to accentuate the English dimension,¹³⁶ ~~shines through.~~

Today, ~~it is not simply that ‘devolution’ is centre stage in UK wide constitutional debates. The~~ ‘devolution mindset’ which starts with the assumption that the UK is fundamentally a centralized state (if never a wholly unitary one¹³⁷) is itself challenged. Representing a determinedly more advanced form of constitutional thinking, most obviously in terms of greater institutional pluralism and diversity, a ~~‘New Union’~~ mindset¹³⁸ speaks directly to a state boasting several systems of parliamentary government grounded in popular sovereignty and cooperating for mutual benefit. ‘Devolution’, it may be said, is not only about how each country is separately governed, but also the whole governance of the UK, the starting point being four administrations

¹³² On the argument for tidying away the few exceptions through Transfer of Functions Orders, see Society of Conservative Lawyers, *Our Quasi-Federal Kingdom* (2014).

¹³³ See further on this chameleon-like quality, R. Hazell and R. Rawlings (eds.), *Devolution, Law Making and the Constitution* (2005).

¹³⁴ Harlow and Rawlings, *Process and Procedure in EU Administration*.

¹³⁵ See further, Institute for Government, *The Civil Service in Territorial Perspective* (2014). Interestingly, the Scottish government’s submission to the Smith Commission (see later) did not make an issue of this.

¹³⁶ ~~Ongoing debates over policing and prisons provide immediate illustration in the case of England and Wales:~~ see (Silk) Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (2014), ch. 10. ~~See also, Secretary of State for Wales Stephen Crabb, ‘A Long Term Vision on Devolution’ (2014).~~

¹³⁷ See latterly, L. Colley, *Acts of Union, Acts of Disunion* (2013).

¹³⁸ As elaborated in particular by Welsh First Minister Carwyn Jones, ~~‘Constitutional Reform in the UK: A Federal Future?’ (2014).~~

which are, in the words of a Welsh government notably committed to the Union, ‘in a relationship which is not hierarchical’.¹³⁹ In this perspective, the fact of ‘national devolution’¹⁴⁰ to Scotland and Wales, with all the political and symbolic capital which this implies, and of course the huge sensitivities associated with the peace process in Northern Ireland,¹⁴¹ should never be forgotten. Set in these terms, conflating ‘Whitehall’ with ‘the Executive’ is highly misleading. Perhaps hopefully, the behaviour of what in the old lexicon is ‘central government’ will be moulded accordingly.

Public discussion of the legal architecture of human rights protection serves to point up the practical connotations. Evidencing a severe lack of joined-up thinking in public law, the general accounts at first focused almost exclusively on the Human Rights Act 1998, so passing over the doubled protection in three of the four countries of the Union by virtue of the direct incorporation of provisions of the European Convention on Human Rights into the 1998 devolution statutes.¹⁴² As late as 2012, members of the independent Commission on a Bill of Rights were apparently surprised to learn that the Celtic polities might have their own human rights commitments to nurture and defend.¹⁴³ At the time of writing, it is the Conservatives’ plan to replace the Human Rights Act with a British Bill of Rights and Responsibilities which commands attention. In the words of the policy document, ‘we will work with the devolved administrations and legislatures as necessary to make sure there is an effective new settlement across the UK’.¹⁴⁴ Of course behind this lies Dicey’s (English) doctrine of Parliamentary Sovereignty, reserved powers, and all that. But while the Whitehall–Westminster axis is dominant in so many ways, countervailing dynamics of constrained authority ranging across the creative legislative power of the ‘other’ systems, the political discipline of the Sewel Convention,¹⁴⁵ and the overarching sense of a fragile Union, are brought sharply into focus here. If they ever materialize, the projected encounters should be lively.

The wide range of submissions made to the Smith Commission, hastily assembled to facilitate talks in the light of the three pro-Union parties’ ‘vow’,¹⁴⁶ illuminates the competing demands for recalibration—further hollowing-out—of Whitehall capacities as part of the move to a looser Union. The Scottish government (SNP) paper naturally propounded the (slippery) concept of ‘devo-max’, for which read minimizing

¹³⁹ Welsh Government, *Evidence to the ~~(Sill)~~ Commission on Devolution in Wales* (February 2013), para. 5.

¹⁴⁰ R. Rawlings, *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution* (2003).

¹⁴¹ See Brice Dickson’s chapter in this volume (ch. 9).

¹⁴² See R. Rawlings, ‘Taking Wales Seriously’ in T. Campbell, K. Ewing, and A. Tomkins (eds.), *Sceptical Essays on Human Rights* (2001).

¹⁴³ Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* (2 vols. 2012).

¹⁴⁴ Conservative Party, *Protecting Human Rights in the UK*, 6.

¹⁴⁵ Hansard, HL, col. 791 (21 July 1998).

¹⁴⁶ See the prime minister’s press statement, ‘Scottish Independence Referendum’ (19 September 2014). The three parties’ proposals rehashed their existing policy offers: see Scottish Office, *The Parties’ Published Proposals for Further Devolution to Scotland*, Cm 8946 (2014); Hansard, HC, cols. 168–271 (14 October 2014).

(at least in respect of Scotland) the UK component of UK (English) government.¹⁴⁷ This is the stuff, on the one hand, of full fiscal autonomy, and, on the other hand, of a very basic core (monetary policy; foreign policy, defence, and security; citizenship). At the other end of the spectrum, Labour envisaged some limited expansion of tax devolution¹⁴⁸ as well as some further devolution of specific welfare benefits. The profound nature of the constitutional challenge for a political party historically associated with large-scale and creative uses of the power of *dominium* or deployment of wealth by the (central) state is made apparent.¹⁴⁹ The intermediate position propounded by the Conservatives is especially noteworthy: a major party with a long track record of opposing devolution now envisaging the ~~virtual cession~~ of income tax powers. Nor is it entirely surprising to find the ~~Commission, tasked with brokering a deal,~~ publishing heads of agreement along ~~these lines: INFORMED PREDICTION OBVIOUSLY! UPDATE~~¹⁵⁰ Projecting forwards into the new UK Parliament, ~~another Scotland Bill~~ will see HM Government losing some more pan-Union policy space.¹⁵¹

ENGLAND, THEIR ENGLAND

England has been the spectre at the devolution feast. But events in Scotland have predictably served to (re)focus attention on the so-called ‘English question’, the well-known collection of problems about how England should be governed in a looser Union, particular twists like devolution finance and the dreaded ‘West Lothian question’,¹⁵² and, ultimately, social and cultural issues of (national) identity or sense of belonging.¹⁵³ As for the field of choice, some reform options appear more constitutionally challenging than others not least because of the implications for UK (English) government.

Suggestions for new structures of English localism abound, blending in turn into bigger projects for so-called ‘city-states’ and, despite having been unsuccessfully trailed under New Labour, regional assemblies. The signing in November 2014 of a ‘devolution plan’ for Greater Manchester, centred on an elected mayor with powers over transport, planning, housing, and policing, is a milestone in this regard.¹⁵⁴ Much in the general argument is commendable, especially with a view to democratic renewal¹⁵⁵ and in light of the exceeding economic and political dominance of London,

¹⁴⁷ Scottish Government, *More Powers for the Scottish Parliament* (2014); building on the White Paper, *Your Scotland, Your Voice* (2009).

¹⁴⁸ Building in turn on the taxing and expenditure powers contained in the Scotland Act 2012. The Wales Bill 2014 contains more limited financial powers. UPDATE

¹⁴⁹ See Gordon Brown, *My Scotland, Our Britain* (2014).

¹⁵⁰ ~~Smith Commission, Ref~~ (November 2014). UPDATE

¹⁵¹ ~~Following on the UK Government’s draft legislative proposals published in January 2015.~~ UPDATE

¹⁵² R. Hazell (ed.), *The English Question* (Manchester University Press, 2005); also, IPPR, *Answering the English Question: a new policy agenda for England* (2008).

¹⁵³ M. Kenny, *The Politics of English Nationhood* (2014).

¹⁵⁴ HM Treasury, *Greater Manchester Agreement* (2014). See further, Ian Leigh’s chapter.

¹⁵⁵ IPPR, *Decentralisation decade: A plan for economic prosperity, public service transformation and democratic renewal in England* (2014).

constitutionally underscored these days by a Greater London Authority made up of the directly elected Mayor and Assembly.¹⁵⁶ From a 'New Union' perspective, there would also be some worthwhile diluting of England in Whitehall, most obviously in terms of budgets. Looking forward, the Commons' Communities and Local Government Committee recently made a compelling case for what it termed 'devolution in England' with special reference to fiscal devolution.¹⁵⁷ After all, the historical legacy of developing Whitehall dominium underwritten by, but also predating, the Thatcher government, there is 'by international standards... a highly centralised system of taxation and expenditure'.¹⁵⁸

Then there is EVEL, the constitutional mantra of 'English votes for English laws'. Confirming the strong sense of dissatisfaction with how England is currently governed, the leading attitudinal survey indicates substantial and increased support for this type of approach.¹⁵⁹ Add in the particular challenge for a Labour Party historically strong in Scotland and Wales, and more immediately the evident populist appeal of UKIP, and the political conditions were ripe for the prime minister immediately to link the Scottish 'vow' and 'no' vote to requiring a 'decisive answer' on EVEL.¹⁶⁰ The idea is hardly new. Indeed, much in the constitutional discussion is tediously familiar: on the one hand, claims about lack of fairness and/or accommodation of Englishness; on the other, concerns about knock-on effects and different classes of MPs (and hence the long-term viability of the Union), as well as technical issues of procedure and definition. Yet the basic duality of UK (English) government bears directly on the matter. Adopted in strong form, broad veto powers perhaps on the command of law or exercise of *imperium*, EVEL could conjure risks for governability, and indeed for collective responsibility, precisely because of the element of division. A product of the Coalition's *Programme for Government*, the independent Mackay Commission was thus understandably cautious in proposing instead close deliberation and forceful recommendation by an English committee of MPs.¹⁶¹ This lesser form of EVEL could be tolerated by Whitehall.¹⁶²

The idea of an 'English Parliament' obviously is qualitatively different.¹⁶³ In notably paradoxical fashion, the sheer size of the country—some 85 per cent of the UK population—has been seen to present an insuperable difficulty (assuming, that is, the continued existence of the Union).¹⁶⁴ Multiple potentials for problems of governability

¹⁵⁶ Greater London Authority Act 1999, as amended.

¹⁵⁷ House of Commons, Communities and Local Government Committee, *Devolution in England: The Case for Local Government*, HC 503 (2014/15).

¹⁵⁸ *Ibid.*, para. 5.

¹⁵⁹ C. Jeffery et al. (eds.), *Taking England Seriously: The New English Politics. The Future of England Survey* (2014).

¹⁶⁰ Via referral to a UK Cabinet Committee: 'Scottish Independence Referendum' (19 September 2014).

¹⁶¹ *Report of the (Mackay) Commission on the Consequences of Devolution for the House of Commons* (2013).

¹⁶² For the further idea of blocking up multiple territorial functions into a single 'England Office', see Local Government Association, *Rewiring Public Services* (2013).

¹⁶³ Campaign for an English Parliament, at <http://thecep.org.uk/>.

¹⁶⁴ Hence part of the argument against a formal federal solution: *Report of the Royal Commission on the Constitution, the Kilbrandon Commission* (1973).

or stand-offs with the UK Parliament present a grim spectre; indeed, the currency markets could have a field day. But our discerning student will happily press the matter. Constitutional responsibility according to the Westminster model: does not an ‘English Parliament’ in practice mean an ‘English government’ (first minister, treasury minister, departments and all)? So where, goes the not so gentle inquiry, is the great popular clamour for a bigger governing class? Or is the duality of UK (English) government somehow to be catered for via ~~two separate representative institutions?~~ Prime minister’s garb on Mondays and Tuesdays perhaps, first minister’s attire later in the week: such would be a constitutional theatre of the absurd.

BEYOND CONSTITUTIONAL PATRIARCHY

‘Asymmetrical quasi-federalism’ is not a phrase to set the pulses racing. But it suggests a constitutional way of life which Whitehall will be increasingly challenged to adopt.¹⁶⁵ Referencing ~~‘New Union’~~-style thinking in suitably flexible fashion, their chief institutions are thus said to embody democratic accountability in the four constituent countries, with more or less pooling of powers and resources in the light of particular historic, demographic, and economic considerations. Simply put, the routine workings of Dicey’s doctrine of Parliamentary Sovereignty may be fine for the English but not for everybody else. In this determinedly rich perspective, the limited appeal of formal federal structures does not negate the case for a strong dose of federal thinking in the UK constitution: quite the reverse. Typically then, the talk is of enabling unity while guaranteeing diversity through a process of balancing power in a more differentiated political order.¹⁶⁶

Some encouraging noises are made in the concordats, the myriad soft law documentation on principles, structures, and processes first agreed by the four governments in 1999 with a view to constructive, efficient, and effective forms of intergovernmental relations.¹⁶⁷ As well as providing for political machinery in the guise(s) of the Joint Ministerial Committee, the principal Memorandum of Understanding (MoU) thus highlights cooperation and consultation, as well as coordination, as basic desiderata.¹⁶⁸ Looking forward, Whitehall will have heightened responsibility for upholding such precepts in a looser form of Union characterized by more exclusive territorial authority and much shared interest. To this effect, the political and administrative demands are not new but have still greater significance amid the shock waves now rippling through the UK constitution.

¹⁶⁵ ~~‘Constitutional Reform in the UK: a Federal Future?’~~ See also, Institute for Government, *Governing after the Referendum: Future Constitutional Scenarios for the UK* (2014).

¹⁶⁶ ~~Citing in particular~~ the Council of Europe Parliamentary Assembly’s report, *Towards a Better European Democracy: Facing the Challenges of a Federal Europe* (2014).

¹⁶⁷ R. Rawlings, ‘Concordats of the Constitution’ (2000) 116 *LQR* 257.

¹⁶⁸ *Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee* (2013 version).

In fact, whirring away in the background, the bureaucratic modalities of intergovernmental relations have not received the attention they deserve in discussion of the changing constitution. Notably, much of the traffic involves matters of bilateral relations between Whitehall and one of the other governments. Ranging across the spectrum from open and friendly dealings to poor awareness and failure to engage, the performance of Whitehall departments and policy teams appears decidedly mixed; the Welsh government, for example, speaks of ‘professional, business-like, constructive, numerous, complex and sometimes frustrating’ working relationships.¹⁶⁹ Despite periodic review and fine-tuning of the multilateral machinery, ~~there is continuing concern about~~ lack of transparency and organizational skews in favour of Whitehall (as through permanent chairing of the JMC’s disputes panel).¹⁷⁰ ~~The incipient issue of ‘two hats’ demands very sensitive handling here.~~

In grounding a distinctive set of constitutional priorities, ~~New Union~~’-style thinking also provides a litmus test of future constitutional development and, in particular, of the behaviour of UK (English) government—most obviously in terms of pathology or push-back. Towards the fag-end of the Cameron–Clegg government, a small but significant imbroglio broke out over the state of the NHS in Wales. Aided and abetted by powerful media interests, the prime minister and the Secretary of State for Health went out of their way to criticize performance levels, to the extent of complaining about cross-border flows of patients into England.¹⁷¹ Meanwhile, the Labour administration in Wales struggled to make its voice heard in rebuttal.¹⁷² Inside Whitehall, the affair was no doubt considered clever politics ahead of a looming UK general election. Yet, not simply a case of robust debate, it can also be viewed as a very public bullying of one member of the Union ‘family’ by the most powerful one. Attention is drawn to the corrosive potentials for respect and trust, key constitutional qualities on which the Union at large ultimately depends. Reverting to concordatry, it has been said that locked in the chief MoU and waiting to escape is the fundamental constitutional principle of comity.¹⁷³ It is time it did.

CONCLUSION

The historical fact of the Cameron–Clegg administration enduring was hardly a given in May 2010. Constitutionally speaking, the obvious product is a Fixed-term Parliaments Act which itself works to shape future political calculation. But there also was some skilful adaptation of governing arrangements, very much in the evolutionary

¹⁶⁹ Welsh Government, Written Statement, 18 June 2013.

¹⁷⁰ ~~See e.g. A. Trench (ed.), *Devolution and Power in the United Kingdom* (2007).~~

¹⁷¹ Hansard, HC, cols. 753–4 (21 October 2014) and cols. 890–3 (22 October 2014).

¹⁷² *Record of Proceedings*, National Assembly for Wales, 21 October 2014.

¹⁷³ Rawlings, ‘Concordats of the Constitution’, 267. The reference is to constitutional practice in advanced federal systems like Germany (‘Bundestreue’).

tradition of the UK's uncodified arrangements. The creative use of soft law technique going with the grain of, and elaborating on, essential conventional understandings is of the essence of this. Time will tell about the scale of the resulting constitutional footprint, though it will surely be more substantial than at first appears. Yes, the Cameron–Clegg experiment is only one possible form of response to the political arithmetic of no overall majority for a single party, but it would be most odd if future constitutional actors did not factor in the seeming strengths and limitations. The fact of political and institutional learning involved in novel processes of government formation and operation is itself significant; the later criticism of insufficient procedural provision for departures from collective ministerial responsibility is also out there. An old truth perhaps, but constitutional effect must be measured not simply by reference to what subsequently happens but also what does not.

Tensions between ministers and officials are hardly new, but they were a particular feature of life under the Cameron–Clegg government. Punctuated with outbursts of negativity, a slew of ad hoc and piecemeal developments also demonstrate the lack of a clear sense of direction when dealing with machinery of government issues: the more so, when measured against the likes of Northcote–Trevelyan and Haldane and even, dare one say it, the Thatcher years. The bonfire or not of quangos, or more accurately the scattered burnings, speaks volumes in this regard. Put another way, individual initiatives may or may not have had merit, but the belated fact of a Civil Service Reform Plan cannot obscure the shortcomings—in the context of a loosening Union, one is tempted to say myopia—in terms of strategic vision. So too, with reference to other developments taking place under the Cameron–Clegg administration, one need not be a devoted follower of the mandarin to insist on the importance of both sides of the convention of individual ministerial responsibility; and, in particular, of the constitutional value of protecting a professional bureaucracy from political patronage. Viewed in the round, it is a poor way of undertaking the task of machinery of government reform.

Future historians will surely consider September 2014 and all its works a key constitutional moment in the life of this Atlantic archipelago. ~~In the long view, the Cameron–Clegg government is apt to pale in significance, though of course it happened on their watch.~~ Today, the direction of travel is firmly in favour of a looser Union, with, speak it loudly, profound implications for the structures, powers, and practices of the post-imperial Whitehall machine. This highlights, at one level, the expanding distribution of executive responsibilities to other democratically elected governments and with it the challenge to old (English) conceptions of constitutional hierarchy; at another level, through the concept of UK (English) government, the twin dynamics of hollowing the Union component and reworking the largest territorial one; and at another level again, the extended premium placed on intergovernmental relations. The third part of the chapter has ~~sought to improve on~~ predominantly Anglo-centric and Metropolitan views of the changing constitution. Looking forwards, much constitutional and political wisdom will be required, most obviously on the part of ministers in London, if—and it is a big if—the Union is to survive and prosper.

FURTHER READING

HOUSE OF LORDS CONSTITUTION COMMITTEE, *Constitutional Implications of Coalition Government*, HL 130 (2013–14)

HOUSE OF COMMONS POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE, *Role and Powers of the Prime Minister*, HC 351 (2014–15)

HOUSE OF LORDS CONSTITUTION COMMITTEE, *The Accountability of Civil Servants*, HL 61 (2012–13)

KENNY, M., *The Politics of English Nationhood* (2014)

PUBLIC ADMINISTRATION SELECT COMMITTEE, *Truth to Power: How Civil Service Reform Can Succeed*, HC 74 (2013–14)

~~WELSH FIRST MINISTER CARWYN JONES, 'Constitutional Reform in the UK: A Federal Future?', *World Congress of Political Science* (2014)~~