

**Better Government Initiative 6th Plenary Conference in association with The
Constitution Society**

Ditchley Park 17th – 18th June 2011

**Better Government: Progress Made and Prospects
for the Future**

Summary Minutes

Summarising the proceedings of the Conference, Sir Richard Mottram observed that the discussions had been rich and nuanced. The event had differed from previous occasions through the contribution of The Constitution Society, though the emphasis on next practical steps had been maintained.

Civil Service

Handover and transition following the 2011 election had generally gone well. Both had benefitted from careful preparation, all the more important because of complication introduced by the creation of the coalition. This had, among other things, underlined the value of a permanent and politically impartial civil service. In the longer term it was undesirable that the turnover in post of civil servants – and of Ministers too – should be so rapid: nine out of sixteen Permanent Secretaries had changed in the year since the election, while the long-term average term in post for Ministers was only 27 months. This degree of turbulence was damaging to the corporate memory, continuity and subject knowledge of civil servants and Departments – and thus to the support that Ministers rightly expected. The coalition's requirements were however likely to be helpful in reducing ministerial mobility. Too frequent changes in machinery of government were a related issue and it was good to see that there had not been either a general ministerial reshuffle or a machinery of government change this year.

There remained major weaknesses in the specialist management skills of civil servants, in such areas as corporate finance, HR, accountancy and IT. Although there had been significant enhancement in these functions, with more in hand, these were of key importance in providing assurance for ministers of proper accountability and clear responsibility. It was doubtful whether there was yet parity of esteem between professional and generalist civil servants; or whether Departments were fully geared to the needs of ministers. A central weakness identified by ministers was in project management (though some had complained about civil servants' lack of writing skills). The service should be more integrated and corporate in its approach to recruitment and training: for core civil service skills training should be done in a uniform way, with that for specialist functions designed to meet particular needs of departments.

The trend in recent years for most posts to be advertised had damaged departments' ability to manage their staff resources, so tilting too far from the needs of the institutions to those of individuals. This should be reversed. It is important also that downsizing of the service should give priority to institutional needs and those of individuals.

The Executive

There were three principal coalition innovations: decentralisation; Departmental Boards and Plans and data transparency:

Decentralisation required distinguishing between those strategic functions needing to be centralised from those which could – and should - be put out to the front line with a strong presumption against micro - management from the centre; (a distinction commonly known as “tight/loose”). The discussion explored some of the difficulties implicit in the tight/loose approach, in particular questions of definition; whether ministers will in practice be able to escape being held accountable for (inevitable) failure in the provision of front-line services; or, contrariwise, whether they will in practice be able to resist meddling in the running of such services;

Departmental Boards and Plans on the lines proposed were agreed to be a useful innovation. However there was still much to be done, as Ministers recognized, to make the Plans more than “to do” lists. The discussion identified some issues about Boards on which their effectiveness might turn: whether Secretaries of State would have the necessary enthusiasm and the skills to make them good chairs, recognising that they should be non-executive; and how much traction non-executive directors would have, in particular whether, if they thought a policy impracticable, they would be listened to. There was unease also about the proposed role of the NEDs in reporting about the performance of Ministers and senior officials.

Data Transparency: the principle of increasing transparency by publishing Government data was supported; but there were different views on whether it is better to release data in their raw state because that informs public choice, irons out errors and maximises economic value; or with interpretation to avoid the public anxiety and blight which can come from media misrepresentation or selective quotation. In the latter case, there was a distinction and choice to be made; whether interpretation should extend to drawing out implications and providing commentary on the quality of data and methods of compiling it.

More Effective Parliamentary Scrutiny;

Substantial progress had been made on several aspects of Parliamentary scrutiny since the publication of *Good Government* and the general election which had brought many new MPs into the House:

- Elected Select Committees with elected Chairs;
- Successful introduction of a Backbench Business Committee able to set its own agenda and to put down and discuss votable motions;
- Programme motions not routinely voted against;
- Within the Executive the Parliamentary Business and Legislation Committee has become more proactive: 8 bills to be published in draft by the end of the current session;
- The Commons becoming more assertive; the debate now not about expenses, but about whether the House is doing its job;
- Publication of proposals for reform of the House of Lords.

Further Progress Needed:

- General agreement on the case for better Parliamentary scrutiny; but different views on effective means;
- Further improvement in executive processes;
- Propose and agree a Resolution on legislative standards on the lines of Annex C of *Good Government*;
- A Legislative Standards Committee to get the executive to raise its game. Enquiry set up by the Liaison Committee involving 3 or 4 Select Committees.

Other Proposals:

- Important to preserve Backbench Business Committee: more important to have votable amendments on programme motions than to set up House Business Committee, likely to be dominated by Whips;
- Public Bill Committees should sit before Second Reading especially when there has been no pre-legislative scrutiny;
- Separate principle from detail; government defeat on Second Reading to be treated as matter of confidence only exceptionally, as on Supply or other major issue;
- Develop proposals for evaluation as new measures are introduced.

Coalition

The evening session opened with a reminder of a fundamental issue: Politics.

Formal coalition machinery is rarely used – a sign of success. Cabinet Committees are meeting and largely agreeing policy. Problems are resolved by informal weekly discussion between PM and DPM or by the Quad where finance is involved. Problems are as much about media handling as about substance. The informal approach is supported by good staff work at senior level; by good personal relationships; and the broad overlap of views on most policy issues. The overlap may have helped to create a broader political space in which some ministers have felt able to develop policies which they would not have advanced in a single party context.

There are mixed signals on whether the coalition agreement makes it harder to make concessions in Parliament, but concessions are easier on second order issues if the main principles of legislation are accepted. Parties in Parliament are more rebellious and need more management than in the recent past. Back-bench Committees have re-emerged as important channels of communication: LD Ministers are mandated to attend regularly and the Conservatives are extending the role of the 1922 Committee. Even so voting rebellions are common. The session ended with a warning: “ Coalitions decay from the bottom up”.

Improving the Process of Constitutional Change

There was some disagreement about the nature – or even the existence – of the problem to be addressed. The widest support was expressed for the proposition that it was deeply unsatisfactory for the executive to have authority as under the doctrine of Parliamentary sovereignty to effect radical constitutional change with no mechanism of constraint. Among the difficulties identified were that there is no defined distinction between a constitutional and a non-constitutional change; and that there appeared to be no clear notion of constitutionalism in the culture of the UK that might suggest a way forward or a means of changing that culture. There was a range of opinion as to whether or not the number and nature of some changes of recent decades (notably the Single European Act and the Human Rights Act) meant that we were already unwittingly on the road to having a constitution; and to whether this was a matter of grave concern.

However, there was very wide agreement that a written constitution would not be a practical way out for practical, conceptual and political reasons. But there was support, in a number of forms, for a gradualist approach. This might build on practice as it had developed in handling unarguably constitutional matters including devolution to Scotland Wales and Northern Ireland as well as EU measures and Human Rights.

One possibility worth pursuing was a dynamic model, which accepted a process of change, guided by a Constitutional Convention or Royal Commission endorsed by Parliament with a wide agenda charged with producing a skeleton framework for constitutional development rather than a constitution as such.

Particularly strong, some contradictory, views were voiced on the respective roles of Parliament and the judiciary in determining constitutional change. This would be ground on which the latter would, no doubt, step with care.

House of Lords

Mark Harper explained the proposals set out in the recent White paper for the membership, functions, election, voting system and transition arrangements for the reformed House of Lords. The House would be much reduced to 312 members: 240

elected, 60 appointed and 12 bishops. The underlying principle was that those who made law should be elected; functions would be as at present, with the legitimacy of the new arrangements strengthened and the primacy of the Commons maintained by the retention of existing powers of restraint. The risk of capture by a single party would be reduced by the staggering of elections. The independence of members would be bolstered by their fifteen year tenure. A non-party Appointments Commission would aim to secure the necessary expertise.

In discussion a number of reservations, including the following, were expressed:

- The reformed HOL seemed too small for its expected workload;
- The description of the functions and purpose of the House was thin, by comparison with the attention given to the workings of the system;
- If the HOC remained supreme, the case for strengthening the legitimacy of a second elected chamber seemed less evident;
- Whatever the constraints put in place, an elected HOL would diminish the authority of the HOC and would seek to compete with it;
- Restrictions on the powers of the HOL would tend to reduce its attractiveness and hence the quality of membership;
- Despite the staggering of elections there was a risk that both Houses would be dominated by the same party, which would emasculate the HOL, or by different parties, which would result in deadlock;
- The elected members of the HOL were unlikely to have the expertise needed to deal with such issues as scrutiny of European law, statutory instruments and constitutional matters; it might be necessary to create a separate, high status body to carry out these tasks;
- Greater equality between the bodies could lead, as in the USA, to severe difficulties in carrying out the business of government. It might be more effective, and cheaper, to concentrate measures to improve the quality of an appointed HOL.

However, it was argued that the Government's proposals on the composition of the HOL resulted from long consideration and drew on international experience and had been robustly set out by the Minister. The increased legitimacy of the HOL would strengthen the authority of parliament as a whole in its dealings with the Executive. The supremacy of the HOC would be protected by the continuation of existing arrangements, notably its control of supply. Notwithstanding the reservations expressed about the present proposals, many of these could be met in the passage of the Bill through Parliament. The option of retaining the existing system was not a sustainable alternative.

Paul McQuail

July 2011