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How, and where, strategic thinking about the constitution takes place in government. Overall, how effectively the constitution is being safeguarded in government.

Several government departments have responsibility for different parts of the constitution. The Prime Minister through his allocation of ministerial responsibilities, and ability to transfer functions between departments, is ultimately responsible for who is responsible for what.

Strategic thinking about the constitution takes place mainly in the Cabinet Office, which has a Constitution Directorate within the Propriety and Constitution Group. The Cabinet Office produced an excellent summary of the British constitution and its underlying principles in the Introduction to the Cabinet Manual (2011). As the Constitution Committee observed in its 2022 report, the Cabinet Manual badly needs updating; the previous government agreed to produce a new draft during the last parliament, but failed to do so. Production of a new version might trigger a discussion about whether anyone in government has overall responsibility for the constitution. That is clearly desirable in theory, in terms of strategic thinking and co-ordination; but the answer in Whitehall practice is likely to be that there are lots of individual guardians of different bits of the constitution, rather than a single overall guardian.

How effectively the constitution is safeguarded depends on the effectiveness of individual guardians of its different aspects. To offer three examples of individual guardians, the Lord Chancellor is formally responsible for upholding the rule of law and independence of the judiciary under the Constitutional Reform Act 2005 (ss 1 and 3). The Chancellor of the Duchy of Lancaster has overall responsibility for intergovernmental relations within the UK, but the territorial Secretaries of State are responsible for the devolution settlement with their respective nations. The Speaker of the House of Commons is responsible for resourcing the Electoral Commission through the Speaker's Committee which he chairs, but the Ministry of Housing, Communities and Local Government (MHCLG) and local authorities are responsible for resourcing local Electoral Registration and Returning Officers.

Many other examples could be given of individual guardians, amongst officials as well as ministers. The Cabinet Secretary, Comptroller and Auditor General, First Parliamentary Counsel, and Permanent Secretaries in their departments all have constitutional responsibilities. Given how many departments and individual office holders there are with responsibility for different aspects of the constitution, it may be unrealistic to suggest that any single individual should have overall responsibility. If there were to be a single individual, it would have to be the Prime Minister: only the Prime Minister has authority over all the other ministers with responsibility for different aspects of the constitution.

Which ministers within the current machinery of government are responsible for constitutional matters, and how these matters are divided amongst those ministers' portfolios.

The Prime Minister is principal constitutional adviser to the King, and is responsible for asking the King to summon, dissolve and prorogue parliament. (The King should also be mentioned amongst the individual guardians of the constitution, because he may refuse an untimely request for dissolution or prorogation). The Prime Minister is also responsible for issuing the Cabinet Manual and the Ministerial Code, and for deciding whether ministers who breach the Code should resign. The Prime Minister allocates responsibility for different aspects of the constitution to individual ministers, and can change those allocations.

In the current government Pat McFadden as Chancellor of the Duchy of Lancaster is the most senior minister in the Cabinet Office, and Minister for Intergovernmental Relations. Nick Thomas-Symonds is Minister for the Constitution and EU Relations, but he is not in the Cabinet, and in the Cabinet Office he is subordinate to Pat McFadden. Given the importance attached by the government to improving EU relations, and the amount of travelling required, it must be doubted how much time Nick Thomas-Symonds can devote to his responsibilities for the constitution: these include reform of the House of Lords.

Other ministers with constitutional responsibilities are the Lord Chancellor Shabana Mahmood; Hilary Benn, Ian Murray and Jo Stevens, the Secretaries of State for Northern Ireland, Scotland and Wales respectively; and Angela Rayner, responsible for devolution in England.

Mention should also be made of the Attorney General, Richard Hermer KC, who is the government's chief legal adviser, and has given high profile speeches about the need to restore and uphold the rule of law.

What the governance and decision-making processes are when it comes to matters of constitutional interest. The mechanisms, both formal and informal, through which the areas of government responsible for the constitution interact. This could include, for example, the Union and Constitution cabinet committee or IGR forums.

There is a new Cabinet Committee on the Union and the Constitution, to consider matters related to the Union and constitutional reform. It is chaired by the Prime Minister, with Pat McFadden as deputy chair. It has ten other members, including all the ministers mentioned above, plus the Leaders of the House of Commons and House of Lords.

Other Cabinet Committees which touch on the constitution are the Committee on Europe (also chaired by the Prime Minister), and Parliamentary Business and Legislation (PBL, chaired by Lucy Powell as Leader of the House of Commons). To illustrate how areas of government interact, take as an example how the government might seek to redress the imbalance between primary and secondary legislation, as suggested by Richard Hermer in his recent Bingham lecture. As the committee which must approve all bills before their introduction,

it would fall to PBL to reject skeleton bills, or bills with excessive delegated powers; and to Parliamentary Counsel to follow through as the drafters of all government legislation. Parliament also plays an important role in policing the boundary between primary and secondary legislation: drafters are well aware of the close scrutiny which bills receive from the House of Lords Delegated Powers and Regulatory Reform Committee.

How the governance arrangement has changed in recent years, and any impact this has had on constitutional governance.

One example, responsibility for elections, may suffice to show how mobile the governance arrangements for constitutional matters have been in recent years. Until the election of the Blair government in 1997 the Home Office had been responsible for a wide range of constitutional matters: not just for elections, but for issues such as Lords reform and human rights. The Home Office was the lead department for introducing the Human Rights Act in 1998 and the Freedom of Information Act 2000, as well as the Political Parties, Elections and Referendums Act 2000.

But with the creation of the Department for Constitutional Affairs (DCA) in 2003, responsibility for electoral policy and administration transferred to the DCA. Four years later, when the DCA became the Ministry of Justice in 2007, responsibility for elections was transferred to the Cabinet Office. It remained there until 2021, when Michael Gove (who had been a Cabinet Office minister) took responsibility for elections with him when he became Secretary of State for Levelling Up, Housing and Communities. Responsibility for elections remains in that department, since renamed the Ministry of Housing, Communities and Local Government.

So in the last 25 years responsibility for elections has moved between four government departments. It may fairly be asked how much that matters: the team of officials responsible for elections has moved with the responsibility. But in terms of longer term institutional memory there has to be some loss. It would reduce fragmentation if responsibility for elections were transferred back to the Constitution Directorate of the Cabinet Office; but since elections are delivered on the ground by local authorities, there is an equally strong case for leaving the responsibility with MHCLG.

How prominent a role constitutional matters play in the development of policy. How the new government manages constitutional matters and how this might be improved.

Constitutional matters are clearly at the forefront when policy involves a change to the constitution: as with the current bill to remove the hereditary peers. But constitutional issues and values can often be overlooked in the development of other policy, as the Constitution Committee frequently points out in its regular scrutiny of all bills for such issues. One indicator that there is no systematic awareness of constitutional issues in Whitehall is that in the Cabinet Office *Guide to Making Legislation* (2022), although there are separate chapters on the ECHR, devolved legislatures and administrations, delegated powers, Crown dependencies, and Queen's and Prince's Consent, there is no chapter about

constitutional issues. It would help to promote greater awareness of constitutional issues if the Constitution Committee from time to time produced thematic summaries of the issues it has raised in its legislative scrutiny role. The Constitution Unit has attempted to do this in publishing *The Constitutional Standards of the House of Lords Select Committee on the Constitution* (third edition, CU report 176, 2017); but it would be preferable and more authoritative if these summaries came from the committee itself.

Responsibility for constitutional matters is inevitably scattered across several Whitehall departments, and that is not going to change. One small improvement would be greater transparency, publishing more information about who does what. The Cabinet Office List of Ministerial Responsibilities, said to be updated on 12 September 2024, still contains a list of ministers in the previous government with their responsibilities.

It would also be helpful to publish more information about which officials are responsible for what. There is no information on the Cabinet Office website about who does what in the Constitution Directorate: the most recent published organisation chart dates from 2010, showing Rowena Collins-Rice as Director General of the Constitution Group, and Vijay Rangarajan as Director, Political and Constitutional Reform. That could and should be updated, and extended down to the level of Deputy Director.

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