

Impact case study (REF3b)

<p>Institution: King's College London</p>
<p>Unit of Assessment: 20 Law</p>
<p>Title of case study: Constitutional modernisation: Parliament, Elections & the Crown (Professor Robert Blackburn)</p>
<p>1. Summary of the impact</p> <p>There has been growing public and political debate on modernising the monarchy since the early 1990s, seeking to ensure the law best serves and harmonises with UK society for symbolic as well as practical purposes. However constitutional law is a highly complex area. Initiatives to replace uncertain 'floating' election timing with fixed-term Parliaments would involve reform of the ancient royal prerogative to dissolve Parliament. To allow female succession, or permit the monarch to marry a Roman Catholic, would mean overturning common law doctrine and ancient statutes respectively. Professor Blackburn's research and interventions have directly informed two historic legislative changes: the Fixed-term Parliaments Act 2011 and the Succession to the Crown Act 2013. His publications –leading academic works on the subject – were widely consulted by policymakers and cited in parliamentary documents. He also presented evidence to the constitutional reform committees of both Houses of Parliament.</p>
<p>2. Underpinning research</p> <p>As contributor of the <i>Halsbury's</i> titles on <i>Parliament</i> and <i>The Crown & Royal Family</i> [6], Blackburn is an authority on these subjects, founded on his research interests and publications on the law of Parliament and the monarchy since the early 1990s.</p> <p>His primary research on the personal role of the monarch in dissolution was conducted in 1993-95 [1]. Political interest in the idea of fixed-term Parliaments was gathering momentum: it was proposed in Labour's 1992 election manifesto and had also been Liberal Democrat policy since 1992. The rules on election timing have been a complex mix of ancient law, constitutional history and modern political practice, and Blackburn's 1993-95 research was the first major study to analyse the inherent problems of election timing being governed by the legal act of the monarch, and to put forward a case for fixed-term Parliaments outlining options for a new legislative framework. He examined the legal regulation of the royal prerogative, the evolution of unwritten constitutional conventions, little-understood procedural aspects of calling a general election and the political advantage derived by Prime Ministers as adviser to the monarch. The work produced coherent conclusions on conventions governing general election timing, government formation following an inconclusive result, and legitimate circumstances for calling an early second general election. Blackburn continued to generate research leading up to the 2011 Act. A publication in 2004 [2] addressed the theory and practice of the role of the monarch in dissolution, and the legitimacy of Prime Ministers calling an early second general election in hung Parliament situations. His research in 2008-09 [3] analysed a proposal by then Prime Minister, Gordon Brown, to make dissolution of Parliament subject to a prior formal parliamentary vote. Blackburn opposed this, arguing for a statutory framework for fixed-term Parliaments in the journal <i>Public Law</i> [3].</p> <p>In parallel, Blackburn conducted important primary research on the wider role of the monarchy. Research underpinning his contribution to the 2013 Act was conducted between 2003-06 and published in his book <i>King and Country</i> [5], which presented recommendations for modernisation and reform. Blackburn examined the ancient common law doctrine of male primogeniture as applied to royal succession and argued for its repeal, contending that laws relating to the royal Head of State had great symbolic importance and must evolve to reflect changing social values about equality. He also analysed the ancient legal and religious duties imposed on a monarch, notably that he or she cannot be or marry a Roman Catholic. Blackburn studied the anomaly of Catholicism being singled out for disqualification for political reasons in the 1689 and 1701 statutes, and what this signified today. He also examined the Royal Marriages Act 1772 which declared the marriage of <i>any</i> descendent of King George II to be void unless they first obtained formal consent from the reigning monarch, and argued for its repeal.</p>
<p>3. References to the research (available from King's College London on request)</p> <p>1. Robert Blackburn, <i>The Electoral System in Britain</i> (Macmillan, 1995), chapter 2: "The Timing of General Elections", pp.18-65. Positively reviewed <i>inter alia</i> by <i>The Economist</i> ("the definitive book</p>

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on the electoral system in Britain'), by Lord Plant, Master of St Catherine's College, Oxford ('... the best study of the British electoral system (including arguments for reform)...') and by Professor Dawn Oliver, Professor of Constitutional Law, UCL, and then editor of *Public Law* ('A very comprehensive and scholarly account of the electoral system ... an authoritative contribution to current debates on reform').

2. Robert Blackburn, "Monarchy and the Personal Prerogatives", *Public Law* (2004), pp. 546-563. *Public Law* is the leading peer-reviewed journal in this field.

3. Robert Blackburn, "The Prerogative Power of Dissolution of Parliament: Law, Practice and Reform", *Public Law* (2009) pp. 766-789. Cited *inter alia* in the Canadian Parliamentary Review and the Malaysian Law Journal.

4. Robert Blackburn & Raymond Plant, "Electoral Law and Administration", chapter 4 and "Monarchy and the Royal Prerogative", chapter 6 in Blackburn & Raymond Plant (eds.), *Constitutional Reform* (London: Longman, 1999), pp. 82-108 and 139-153. Cited *inter alia* in the Manitoba Law Journal.

5. Robert Blackburn, *King and Country* (London: Politico's, 2006), 206pp. Subject of 20 minute television programme on GMTV, 15 Oct 2006. Cited *inter alia* in House of Commons Library Research Papers.

6. Robert Blackburn, *The Crown & Royal Family* (4th ed, 1998, vol 12(1)), *Parliament* (5th ed., 2010, vol 78) and *Constitutional & Administrative Law* (5th ed, vol 20, in press) in *Halsbury's Laws of England* (regarded by lawyers as the definitive statement of English law).

Blackburn was awarded a Leverhulme Research Fellowship for research on "Law of the Monarchy as Head of State", May 2007- Oct 2008, to the value of £20,036.

4. Details of the impact

In 2011 the law on general election timing in the UK was reformed from a 'floating date' system, based on the ancient royal prerogative power of dissolution of Parliament of the monarch exercised by unwritten convention on the Prime Minister's request, to that of a 'fixed' five year statutory interval laid down by the Fixed-term Parliaments Act. Two years later, the Succession to the Crown Act was passed, reforming the law to remove male preference in the line of succession, to remove disqualification from the throne arising from marriage to a Roman Catholic, and to limit the requirement for the monarch's permission to marry to the six persons next in line to the throne. These reforms are of exceptional benefit to the UK public. The 2011 Act adds overdue stability and fairness to the political process, while strengthening economic planning in the public and private sectors by providing certainty over when the next election and possible change of government will occur. The 2013 Act in turn modernises and stabilises an institution that is a cornerstone of the UK's constitution and holds significant symbolic meaning for many UK and Commonwealth citizens. For both these important statutory changes, Blackburn's research and interventions had a significant impact on policy makers, by providing clarity and authoritative analysis in a complex and little understood area of law and convention, and by contributing to public and Parliamentary debate on reform and helping shape the legislative framework. A senior parliamentarian describes Blackburn's contributions to both Acts as being 'material and valuable contributions' to some of the 'most important constitutional reforms in the history of the UK' [16].

Contribution to policy debate

Blackburn has participated directly with the royal household, government and parliamentary bodies to help inform and shape thinking on how the monarchy can modernise and evolve. In 2004 he gave a lecture at the Department for Constitutional Affairs (subsequently published as an article [2]) which was attended by the Queen's Private Secretary, and made the case for reconfiguring conventions governing the monarch's exercise of prerogative powers, including election timing. Blackburn further put into the public domain his analysis of the role of the monarch in hung Parliament situations in a prominently placed letter to *The Times* in 2009 [10] and in a co-authored

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Hansard Society pamphlet [8] launched in the House of Commons in early 2010.

Regarding the law on royal marriages and succession, Blackburn's research and writings (including *King & Country*) were quoted in House of Commons Library papers [9] given to MPs and peers prior to parliamentary debates on the subject during the six years between publication of his 2006 book and preparation of the Succession to the Crown Act 2013. During this period, Blackburn also presented his research in public talks, including a public lecture in March 2007 at the Institute of Advanced Legal Studies, and at a joint Kings College London/Ipsos-MORI conference on the monarchy in November 2012 attended by over 100 people. He also spoke in the media on royal succession and modernisation issues on numerous occasions [10].

Shaping legislation

When the House of Lords Constitution Committee examined the Coalition government's constitutional reform programme in the early months of the new Parliament, Blackburn gave oral evidence on the proposal for fixed-term Parliaments [11]. During the Bill's passage, Lord Lloyd (the former Law Lord) stated that Blackburn's evidence was "important because he is the man who has made a particular study of this very issue", while Lord Norton (himself a constitutional law expert) observed that Blackburn's work *The Electoral System in Britain* was one of just two works to have considered the issue in detail since the 1970's [14]. When the Fixed-term Parliaments Bill was introduced shortly afterwards, Blackburn was the sole expert invited to give oral evidence to the House of Commons Political and Constitutional Reform Committee to inform second reading debate [12]. He also prepared written evidence for the Committee which was published in the report and was explicitly mentioned in the Government response [12]. During parliamentary consideration of the legislation, Blackburn was invited to several meetings and gave a number of lectures to audiences comprising politicians, government and parliamentary officials, and academics [13]. These informed discussion and built support for the reform and how it might be framed. He or his research was cited on several occasions in parliamentary debates on the Bill [14]. Through these interactions, Blackburn's research had a distinct and material impact on parliamentary opinion, scrutiny and debate leading to the passage of the Fixed-term Parliaments Act 2011.

The Succession to the Crown Act 2013 reached the statute book on 23 April 2013. Blackburn's research and writings were persuasive factors in parliamentarians and ministers taking up the case for modernising the law on succession to the Crown and royal marriages, and in influencing how the reforming legislation was framed so to achieve its social and political objectives. Shortly after the Coalition government announced its intention to introduce the Succession to the Crown Bill, Blackburn was requested to give oral evidence to the House of Commons Political and Constitutional Reform Committee on 10 November 2011 as one of only two experts [15]. Remarkably he was author of the only written memorandum of evidence for the Committee on the subject published in its Report [15]. The final provisions of the Act reflect closely the detailed research, analysis and proposals in Blackburn's book [5]. In particular Section 1 superseded the common law doctrine of male primogeniture, which reflected Blackburn's argument that the law relating to the royal Head of State was of great symbolic importance and must evolve to reflect changing social values. Section 2 retrospectively applied removal of disqualification from marriage to a Catholic where the person concerned is alive. The Royal Marriages Act of 1772 was repealed and Section 3 introduced a new statutory provision limiting the need for such consent to a small number of persons closest in line to the throne, whilst removing the requirement, as Blackburn had argued, for *all* descendants of George II to have the Monarch's permission. All these provisions were highlighted to policymakers on the basis of Blackburn's research and substantive engagement.

5. Sources to corroborate the impact

7. Work cited in House of Commons Library Research Papers: *Fixed Term Parliaments*, SN/PC/831, 2007, pages 5, 7, 10, 12, 13, 14, 15, 17, 21; *Fixed-term Parliaments Bill [Bill 64 of 2010-11]*, Research Paper 10/54, pages 5, 7, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 27; *Hung Parliaments*, SN/PC/04951, 2010, pages 17, 19, 23, 24, 26; *The Royal Prerogative*, SN/PC/03861, 2009, p 5.

8. Robert Blackburn, Ruth Fox, Oonagh Gay, Lucinda Maer, *Who Governs?* (Hansard Society/Study of Parliament Group, 2010), 26 pp. The Society is recognised as an independent and non-partisan authority on Parliament with access to and influence over policy makers.
9. Work cited in House of Commons Library Research Papers: *Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill*, Bill 29 of 2008-09, Research Paper 09/24, 2009, pages 9, 17, 19, 27, 28; *Royal Marriages – Constitutional Issues*, SN/PC/03417, 2008, pages 6, 10; *The Act of Settlement and the Protestant Succession*, SN/PC/683, 2011, pages 12, 13.
10. Media coverage includes GMTV television interview (20 minutes) on book, *King and Country*, 15 Oct 2006; BBC Radio 4 Today interview on the future of the monarchy on 28 Dec 2007; BBC Radio 4 feature on Prince William as heir to the throne on 1 Jan 2011; letter to the editor of *The Times*, 28 Nov 2009.
11. House of Lords Select Committee on the Constitution, *The Government's Constitutional Reform Programme*, oral evidence 21 July 2010, HL 2010.
12. House of Commons Political and Constitutional Reform Committee, *Fixed-term Parliaments Bill*, 2010, oral evidence on 7 Sep 2010, and written evidence, HC 436 (and mentioned in Government's response, Cm 7951).
13. For example, lectures to the Study of Parliament Group (parliamentary officials/academics) on "The Dissolution and Meeting of Parliaments", House of Commons, 25 Mar 2009; "The House of Commons and Hung Parliaments", House of Commons, 1 Mar 2010; and "The Fixed-Term Parliaments Bill", House of Commons, 18 Oct 2010; and on "Fixed-term Parliaments", to the Parliamentary All Party Group on the Constitution, House of Lords, 7 Dec 2010.
14. Citation in parliamentary debates on Fixed-term Parliaments Bill. *Commons Hansard*: 13 Sept 2010, cols. 633, 642, 643, 646, 688, 691; 16 Nov 2010, cols. 772, 787, 788, 794, 815, 834, 838; 1 Dec 2010, cols. 866, 869; 18 Jan 2011, col. 802. *Lords Hansard*: 1 Mar 2011, cols. 941, 995, 996, 1043 (including statements by Lords Lloyd and Norton at 995); 12 Mar 2011, col. 479; 10 May 2011, cols 780, 781, 784.
15. House of Commons Political and Constitutional Reform Committee, *The Rules of Royal Succession*, 2010-12, HC 1615, oral evidence session on 10 Nov 2011 and written memorandum of evidence.
16. Statement by the Chair of the House of Commons Political and Constitutional Reform Committee & sitting Member of Parliament, confirming the significant contribution by Blackburn to the work of the Committee in considering the 2011 and 2013 Acts.