

# Aspects of Parliamentary Reform

Research Paper 97/64

21 May 1997



The Government have announced proposals to 'modernise' Commons procedure (including changes to Prime Ministers Questions), mainly through a select committee to be established speedily, as foreshadowed in its election manifesto. Research Paper 96/82, 18 July 1996, *The constitution: principles and development*, considered some general principles of the constitution and the current debate on 'constitutional reform'. This Paper briefly seeks to develop the discussion on one central constitutional institution: Parliament. Various aspects of the issue of 'Parliamentary reform' are briefly examined, such as the 'Westminster model' of Parliamentary government, and approaches to reform proposed by the political parties and others. The general debate on 11 July 1996, HC Deb vol 281 cc 631-71, is relevant.

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## Summary

The Queen's Speech contained the following:

*They will programme House of Commons business to ensure more effective scrutiny of Bills and better use of the time of Members of the House of Commons. During the course of the session, my Government will also publish in draft for public consultation a number of Bills, which it intends to introduce in subsequent sessions of this Parliament. They will propose the establishment of a new Select Committee of the House of Commons to look at ways of marking Parliamentary procedure more effective and efficient.*

The Labour party have proposed such a 'modernisation' programme during the last Parliament and during the election campaign, and this plan was part of their joint approach with the Liberal Democrats on 'constitutional reform'. The Conservatives, when in government, supported and promoted pragmatic, incremental change, in line with their approach to constitutional change generally.

This Paper briefly examines the nature of 'Parliamentary reform', including the terminology difficulties inherent in the concept. It then examines the political parties' approaches, as well as some relevant academic approaches.

Finally this Paper examines a Government's options generally in the area of Parliamentary reform, partly by reference to the recent report from the Constitutional Unit, *Delivering constitutional reform* (which concentrated on ways in which a Government could secure enactment of a substantially body of 'constitutional' legislation<sup>1</sup>), and by a brief look at the 1945 situation where an incoming Labour Government with a large majority sought early to Parliamentary procedure in order to enact its substantial legislative programme.

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<sup>1</sup> On which see Research Paper 97/53, *The committee stage of 'constitutional bills'*, 20.5.97, for example

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# I Parliamentary Reform

"Parliamentary reform is one of those things, as Mark Twain remarked about the weather, which everybody talks about, but nobody does anything about. Seldom has there been so much public agreement that something should be done, but seldom so much private agreement that nothing is likely to be done" --- Bernard Crick, *The reform of Parliament*, 1964, preface.

"One must insist that if one is to reform the world, someone had better understand it first. To have ideas on reform is no substitute for knowing how things work and relate to each other" -- *ibid.*, 2nd ed., 1968, preface.

## A. Introduction

'Reform' of the constitution has been, and appears likely to remain, at least through the current Parliament, a major political issue, one which divides the Government and Opposition. A central theme of 'constitutional reform', if sometimes more implicitly than explicitly, is reform of Parliament, in that almost every reform proposal affects that institution of government directly or indirectly. Without a written (or, at least, codified) constitution, the key principles and practices of the UK constitution flow in and around Parliament. The Monarch is one part of Parliament for legislative purposes ('Queen-in-Parliament'); the political executive, government ministers, are members of one or other House of Parliament, and 'Parliamentary sovereignty' (or the 'legislative supremacy of Parliament') is often said to be the central tenet of the constitution.<sup>2</sup> In a democratic political system, the organ of government which directly reflects within it the elective will of the people must be central to the theory and practice of the state's constitutional and political system.

Much of the present argument over constitutional reform, in its broad sense, revolves around Parliament. European developments, as well as proposals for written constitutions and Bills of Rights', have an effect on, and are often argued in terms of, Parliamentary sovereignty in its legal sense. Europe and devolution within the UK both may affect the centrality of Parliament in its political and practical sense. Again the key relationships between the executive and judiciary are, in 'separation of powers' theory, argued in terms of Parliament's relationship with these other organs of the state. The nature of the composition of each House -- 'electoral reform' and 'House of Lords reform'<sup>3</sup> are themselves front-line issues.

The more general question of 'Parliamentary reform' as such is said to be founded on the need to restore to Parliament (or for Parliament to restore to itself) the ability to 'control' (in a variety of senses) the executive, rather than the present system where the executive is said to control Parliament. This covers particular 'internal' procedural matters<sup>4</sup> such as the legislative process and the scrutiny process through select committees, and more general issues of the

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<sup>2</sup> On the constitution generally, see Research Paper 96/82, *The constitution: principles and development*, July 1996

<sup>3</sup> On the latter, see Research Paper 97/28, *House of Lords 'Reform': recent proposals*, 17.2.97

<sup>4</sup> The debate on the new form of Prime Minister's Questions is instructive

executive's position within Parliament, the party system with its disciplinary method, and the basic bipolar 'Government-Opposition' structure of the Westminster model (including even the shape of the Chamber itself).

The opening paragraph to Judge's introduction to his 1983 study of Parliamentary reform is instructive:<sup>5</sup>

Knowing what is wrong with Parliament is the key to its reform. On such profound statements as this are academic reputations built! Yet hidden within this simple statement is the full complexity of the issue of parliamentary reform; for there is little agreement on what, if anything is wrong with Parliament, let alone what, if anything, can be done about it. Even when there is agreement both that something is wrong and that there is a common root cause for this malaise the chances are that there will still be disagreement about why this is the case and what is to be done about it. Consensus is not a marked feature of the debate on parliamentary reform.

### B. Some terminology

The very language of restoration implies that at some time in the past Parliament did 'control' the executive. Whether or not this ever was such a Parliamentary 'golden age' in the 17th, 18th or 19th century, is a question beyond the scope of this Paper. What such language does suggest is that the evolution of Parliament, in terms of its composition, powers, procedures and practices, has, in some way, been to the detriment of its position at the heart of the British political system of government. In order at least to understand the parameters of such arguments, it is necessary to appreciate particular the terminology used, such as 'Parliament', 'executive', 'sovereignty',<sup>6</sup> 'control' and so on. Some of the confusion and lack of consensus surrounding debates on Parliamentary reform may be due to participants using such terms in different ways.

'Parliament' is perhaps the term most susceptible of numerous meanings in this context. The 'Queen-in-Parliament' is the legal sovereign in the UK constitutional system, the body in whom ultimate legislative supremacy resides, and whose legislation, Acts of Parliament, is the highest form of law.<sup>7</sup> This, in strictly legal terms, is what is 'the sovereignty of Parliament'<sup>8</sup> The common use of this term to describe the nature or extent of Parliament's *practical, political* power refers, on the other hand, to 'Parliament' in the sense of the two political Houses, or even to the elected House of Commons. In this practical sense, 'Parliament' is both an institution and an organisation, and the extent to which it can be referred to, in any

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<sup>5</sup> D Judge, ed., *The politics of parliamentary reform*, 1983, p1

<sup>6</sup> On 'Parliamentary sovereignty' see Research Paper 96/82, section V

<sup>7</sup> subject to EC law, and, perhaps, to other 'constitutional laws, such as the 1707 and 1800 Union legislation. On which see Research Paper 96/82, *op cit*

<sup>8</sup> This is demonstrated by the proposition that the courts will not recognise resolutions of either or both Houses as creating law, eg *Bowles v Bank of England* [1913] 1 Ch 57

meaningful sense, as an autonomous body, separate from its component parts and membership, is at the heart of the Parliamentary reform debate.

Is there a politically/constitutionally autonomous entity called 'Parliament' which has its own interests, as against the other organs of the state such as the executive and the judiciary, and distinct from the individual interests of its members or the group interests of its political parties? Or is it in reality a forum, a place wherein all these other interests compete and inter-relate, without any meaningful autonomy? If the former accords with reality or with a desired state of affairs to be achieved by 'reform', then what are these distinct interests, and how do they differ from the interests of parliamentarians, parties and others? If the latter is the case, is the use of the term 'Parliament', as if it did describe an autonomous personality ('the will of Parliament'; 'the intention of Parliament' etc.), misleading, and, if so, is this with the intention of disguising the 'true' state of affairs for some reason? The fact that the government of the day generally can determine what 'Parliament' does, says or wishes means that, in practice, the will or intention of Parliament is, to all intents, that of the government. This can tend to lead to practical confusion in relation to the judiciary, where, in traditional separation of powers theory, the courts discover and interpret the intention of 'Parliament' when, in reality the legislation under scrutiny is generally that of the government.

The 'Westminster model' of parliamentary democracy includes the direct involvement of the executive within the legislature. What is sometimes loosely called the 'two-party system' is in reality a 'two-groupings system' of 'Government' and 'Opposition'.<sup>9</sup> The term 'government' can be applied to the ministerial members of Parliament, or to the whole 'government' side of the Chamber. 'Opposition' can mean all members other than those of the governing party or parties, or simply the members of the main non-government party. Thus there will be a multiplicity of interests within Parliament, many of which will be difficult to reconcile. This may be particularly true with 'party' and 'parliamentary' interests, as, although all members will have to be aware and take account of the interest of Parliament itself,<sup>10</sup> party concerns inevitably may seem more immediately pressing on a day-to-day basis. In this respect the position of 'government backbenchers' is an especially sensitive one, as they may have to balance directly their party loyalty with any 'wider' parliamentary concerns, where, for example, ministers propose action to curtail debate or amend or suspend standing orders to achieve their purposes. Party loyalty will most likely prevail in policy issues, such as legislative business, rather than 'domestic' Parliamentary matters. It could be argued, of course, that there should not have to be a 'party line' on matters such as the internal administration or operation of Parliament.

If Parliament is to be regarded more as a place than a body, a forum rather than an entity, then the interests, role and function of its members come to assume primary importance. The

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<sup>9</sup> This discussion concentrates on the Commons, rather than the Upper House with its crossbenches and spiritual peers

<sup>10</sup> As already noted, this may not be easy to identify or articulate

age-old arguments over representation, with the Burkeian debates over 'delegates' and 'representatives' are well known, and are not repeated here, other than to note that an emphasis on the importance and autonomy of the individual member, as the means of representing the interests of constituents to the executive and to the nation at large, inevitably derogates from that of party government and discipline, which is the modern version of regarding Parliament as an assembly, to a large degree, where the government is required to contract substantial parts of its business, such as legislation and the raising of supply.

Indeed, one could regard the fundamental distinction between the two broad types of Parliamentary function, the transaction of government business and the scrutiny of the government's actions and policies, as giving rise to the complexities of any discussion of Parliamentary reform. The transaction of government business, being a 'top-down' activity, conforms to much of the basic principle of the developing British constitution, where powers resides originally in the Crown rather than the 'people', whereas the scrutiny function is to some extent a trade-off activity to that prime function, where the executive allows (or 'the people' require) its actions to be held to account, to be justified and argued over, perhaps even to be altered or rejected. While this analysis appears to place the scrutiny function in a secondary position in the constitutional scheme of things, it is nevertheless a crucial development, in that it signifies that, though the Crown be the source of legal power, that power is not unquestionable. This is not necessarily the same as modern notions of democracy, as the framers of Magna Carta, the revolutions of the 17th century or even the 1832 Reform Act would recognise. Indeed the development of theories of representation in the British constitution took relatively little account of democracy in the sense of universal and equal political rights.<sup>11</sup>

From the perspective of the reform of Parliament, this dichotomy between the executive's priority in getting its business, presumably with the minimum of inconvenience and risk of disruption, with the 'wider' function of subjecting ministers, their policies and actions to scrutiny, makes consensus of views on the answer to the fundamental question 'what is reform for?' extremely difficult. The development of Parliamentary procedure, especially in the last century and a half, has been one of increasing governmental control over the workings of Parliament, so that the extent of that control can be seen in the terms of what is now Commons *Standing Order no. 14(1)*: "Save as provided in this order, government business shall have precedence at every sitting." The function of 'Opposition' can be regarded as a mixed one in this analysis, in that it seeks both to prevent the transaction of government business, because it believes there are an alternative and better set of policies, and to subject the policies of ministers to adversarial scrutiny in order that, somehow, a synthesis will emerge that will be better for being subjected to such interrogation. Note that this scrutiny language is still essentially reactive, and that policy initiative resides primarily with the government, and to the constitutional 'alternative government'. Modern party-dominated

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<sup>11</sup> See, eg, A H Birch, *Representative and responsible government*, 1964; S Beer, *Modern British politics*, chap 1



Parliamentary practice leaves little theoretical or practical room for substantive initiative, either by members individually or as groupings other than parties.

## II Approaches to reform

### A. The political parties

1. **Conservatives:** In a speech to the Centre for Policy Studies in June 1996 the then Prime Minister, John Major, said:<sup>12</sup>

In our constitution, Parliament is supreme, because the people are supreme. Parliament is the process through which the representatives of the people control the Executive.

Our Parliament may have its quirks and its faults, but it is hard to find another country today whose Parliament is so central to its national life. The proceedings of national Parliaments are televised in many other countries. But in how many others are they followed as avidly as here?

In Britain, Parliament is where things happen. It is the voice of the people of Britain, fighting out all the complexities of our national interest on issues which in some other countries are settled in smoke-filled rooms.

It is the focus of the nation's unity at times of national grief or outrage. And it is the theatre for the great convulsions of political history.

No-one should lightly contemplate tampering with an institution that is so ancient and yet so alive. But that is not to say that nothing about Parliament can ever change.

Nor has that been our philosophy.

The last 17 years have seen the introduction and flourishing of Select Committees; new procedures to scrutinise European legislation; reform of Parliament's working day; and a Budget, that brings together tax and spending. Now even Hansard and Bill papers may soon be on the internet.

All these developments have made Parliament more open to the citizen, and the Government more accountable. Now I want to carry this process further.

I believe we could start by looking at the Parliamentary year. The House is swamped at the turn of the year with debates on The Queen's Speech, the Budget, and the Second Reading of the bulk of the Government's major bills.

I think there's a case for change here. I would like to examine starting the Parliamentary year in May not November, so that some of these processes can begin sooner and be spread more evenly.

There are also legitimate complaints about the speed with which detailed legislative proposals are prepared and put through both Houses.

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<sup>12</sup> Conservative party press notice 374/96, 26.6.96, pp8-10

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We have already made significant progress in tackling this through publishing bills in draft form for early scrutiny.

I'd like to develop more structured planning of the legislative programme and more time for consultation. I believe this could be done by preparing each year not only detailed proposals for the Queen's Speech covering the next Session, but provisional plans for what would be in the Speech for the year after that. This would give Departments the opportunity to bring forward detailed proposals including, in some cases, draft Bills, for consultation in the year before the actual legislation was brought before Parliament.

That would allow Select Committees time to take evidence and report, and give Parliament a much more positive and forward-looking role in the policy process. It should also mean better legislation.

Improving Parliament's ability to scrutinise legislation is the sort of constitutional change I favour; it identifies a problem, and comes up with a practical solution which could help. It is not change for change's sake.

**2. Labour:** In a speech to a Charter 88 seminar in May 1996,<sup>13</sup> the then Shadow Leader of the House, Ann Taylor, said that parliamentary reform aimed to make the Commons "a more effective and efficient legislature. Our project in this area is to establish a public confidence in politics and in politicians: to reconnect electors with the political process and thereby with those they have elected" (p1). In particular "Parliament does not anymore hold Ministers properly to account ... and legislation is not given the scrutiny it requires." However "the House of Commons ... for all its faults and for all the cynicism about politics, can still be the place to which the nation looks in time of need," such as in the aftermath of the Dunblane tragedy, and MPs are very good at representing their constituents. "In reforming Parliament we should be careful to conserve that which deserves conservation while we reconstruct those that need to change" (p2).

Part of the reason for the low public esteem in which Parliament was held was due to the Conservative government's "general and systematic ... strategy of undermining collective action. Politics -- banding together to solve mutual problems -- has been attacked as redundant .... The end product of this 17 years of untrammelled arrogance is that Minister [*sic*] have been able to weld the concept of the state onto the concept of the governing party until they simply refuse to recognise the join ... Government contempt for Parliament is an example of this failing ..." (pp2-3).

She was sceptical of the long-term "conventional reformist" agenda of sitting hours<sup>14</sup>, proxy voting, timetabling and better office accommodation, some of which remained relevant "but none is essential to the main project of re-engaging the gears of the political process in a fundamental way so that ordinary voters feel genuinely connected with the people who

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<sup>13</sup> *New politics, new Parliament*, transcript, 14.5.96

<sup>14</sup> She decried simplistic calls for 9-5, 5-day weeks as "a chilling prospect for me as an MP for a Northern constituency, let alone as the mother of two children." (p3)

represent them." The Jopling reforms had made some progress with this conventional agenda, "but they really only tinkered with the process .... [T]here was little in Jopling to make parliament produce better legislation; there was nothing at all to make MPs more effective in holding the executive to account. Those tasks will be Labour's true project for parliament and, awkward though it may appear to a *few* on our side, a more accountable Government is a better Government and ultimately a more re-electable Government."

She emphasised that "I am not suggesting Labour in Government can dictate change: Parliament must own the process. Reform motivated by the need to re-establish the proper balance between a Parliament and the Executive cannot simply be imposed by a new executive even if it to the benefit of parliament. Parliament must change itself." The Nolan reforms had demonstrated that Parliamentary change can be achieved "in a relatively short time [and] with commendable speed." She said that "with a Labour Government, the first step in changing Parliamentary politics for the better will be a thorough audit of Parliament", which might include non-Parliamentarians, and a "special select committee with a panel of independent advisers." Particular areas where she believed change was necessary included Ministerial accountability (including reform of Question Time); the quality of legislation; scrutiny of secondary legislation; the role of select committees; more assistance for the Opposition, and better use of Parliamentary time in the Parliamentary year (p5).<sup>15</sup>

**3. Liberal Democrats:** In their Policy Paper 20 of June 1996, *A Parliament for the People*,<sup>16</sup> the Liberal Democrats set out proposals for improving the legislative process;<sup>17</sup> financial scrutiny; scrutiny of the executive; the operation of the Commons itself, and raising the standard of the job of a Member.

The paper examined the case for reform, highlighting, in particular, the perceived lack of independence of the Commons from the executive, and the belief that Parliament does not at present truly represent the people. The need for reform arose even independent of the party's general constitutional reform proposals, such as devolution, which would inevitably have an impact on Parliament. The paper's proposals were based on Liberal Democrat principles:

2.0.1 The basic fault with democracy in Britain today is that it is not democratic. Parliament does not truly represent the people. The interest of minorities and even majorities are often badly neglected by a powerful government sustained by a majority in the House of Commons. The present parliamentary processes give insufficient opportunity for the people to make a direct contribution, in Parliament itself, to policymaking, the preparation of legislation or the scrutiny of government policies and actions. And too often the people are kept in the dark, so Parliament fails to provide protection against government from behind closed doors:

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<sup>15</sup> Her detailed consideration of these areas is not reproduced here.

<sup>16</sup> By 'Parliament', for the purposes of their policy paper, is meant the House of Commons

<sup>17</sup> on which see p.13 of this Paper

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- MPs are not able to secure full information on all matters relevant to the conduct of government.
- Citizens need to be better informed about the working of Parliament itself.
- There should be greater openness about the financial and other interests of Members of both Houses.

2.0.2 The cures for these faults lie in applying well-established Liberal Democrat principles to the very processes of Parliament itself:

- Giving sovereignty to the people;
- Concern for minorities and individuals;
- Greater access for the citizen to the processes of Government;
- Less secrecy and more freedom.

This Paper is inspired by these principles. Its recommendations are designed to give them practical application.

2.0.3 Other themes are central to these recommendations. The volume and complexity of parliamentary business continues to increase and it is difficult, under present procedures, for all matters to be considered properly. It is therefore essential that MPs are able to make the most effective use of their time - on the floor of the House, in committees and in their offices - to scrutinise legislation and the policies and running of government, to initiate debate on other matters and to attend to the many problems of their constituents. Much more use may have to be made of committees, both to enable MPs to look at detailed matters in an informed and efficient way and to enable the wide range of business to be considered by more specialised groups of members without taking up all the time on the floor of the House. Time could then be provided, on the floor and in committees, for more debates on major policy matters or on issues of current concern to the people. MPs of all parties would have to be given the staff, technical resources, information services and facilities (including adequate facilities for Members and staff of both sexes) to enable them to do their work speedily and effectively. And MPs would have to devote their time, skills and experience to their parliamentary duties on behalf of their constituents, for which they should receive proper pay and allowances.

Because of the increasing complexity of parliamentary business, "it is difficult, under present procedures, for all matters to be considered properly." Therefore it was essential for MPs to make the most effective use of their time, for example, by greater use of committees, freeing up time for more general policy debates. All the suggested reforms "would make it almost impossible, under present procedures, for the Government .. to get its business through without unacceptable delay. A fundamental change in the organisation of business is required," such as careful programming and strict timetabling of business. Concluding the case for reform, the paper stated (p8):

2.0.5 It is time to look critically at the organisation, machinery, procedure and customs of the House of Commons. Parliament must rid itself of practices (however sanctified by tradition) that impede the

effective working of the House while retaining those (old or new) which work well. A new broom is required to sweep through our ancient Parliament. This Paper sets out how this should be done.

After considering specific reforms in the various areas listed above, the paper concluded by considering Parliament in a future where the party's package of constitutional reforms had been implemented. Central to its thinking was the belief "that Parliament belongs, ultimately, to the people .... [I]n effect the creation of a Parliament that both speaks for and to the people and through continuing communication effectively represents and defends them .. should inspire all attempts to reform the House of Commons. Without the confidence and respect of the public, the authority and influence of the Commons as the guardian of democracy on behalf of the people will wither and perish." Once it can be afforded, "Parliament will require new, modern buildings and facilities that are conducive both to efficiency and public access." This meant thinking about the location of Parliament, design of the Chambers, use of IT and so on, which must be borne in mind when considering more immediate reforms. On the legislative process, the paper contained the following summary of proposals (p2):

To improve the quality of legislation Liberal Democrats would:

- Make systematic consultation on proposed legislation the norm rather than the exception.
- Seek to make legislation easier to understand with 'plain English' drafting and better explanatory material.
- Time-table legislation in the Commons using an all-party steering committee, with select committees taking evidence on proposed legislation, on bills and on how acts have worked in practice.
- Abolish annual Parliamentary sessions and allow legislation to remain before Parliament for more than one year if necessary.
- Improve the scrutiny of secondary legislation and of European legislation.
- Improve opportunities for the House to debate and vote on private Members bills, including bills initiated by Citizens' petitions.

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### 4. The 1997 Party manifestos<sup>18</sup>

#### *Labour:*<sup>19</sup>

We believe the House of Commons is in need of modernisation and we will ask the House to establish a special Select Committee to review its procedures. Prime Minister's Questions will be made more effective. Ministerial accountability will be reviewed so as to remove recent abuses. The process for scrutinising European legislation will be overhauled.

The Nolan recommendations will be fully implemented and extended to all public bodies. We will oblige parties to declare the source of all donations above a minimum figure: Labour does this voluntarily and all parties should do so. Foreign funding will be banned. We will ask the Nolan Committee to consider how the funding of political parties should be regulated and reformed.

We are committed to a referendum on the voting system for the House of Commons. An independent commission on voting systems will be appointed early to recommend a proportional alternative to the first past-the-post system.

At this election, Labour is proud to be making major strides to rectify the under-representation of women in public life.

#### *Conservative:*<sup>20</sup>

Parliament - alongside the Crown and our legal system - is one of the three key institutions that uphold our constitution. The supremacy of parliament is fundamental to our democracy and the guarantee of our freedom. The last 17 years have seen many changes to strengthen parliament and make it more effective - the flourishing of select committees, new procedures to scrutinise European legislation, reform of parliament's working day, and a budget that brings together tax and spending.

We have therefore already done much to improve the way parliament works and will do more. We have accepted the proposal from the Public Service Select Committee and put before the House of Commons a clear new statement of the principles underlying ministerial accountability to parliament.

All these developments have made parliament open to the citizen, and the government more accountable. In the next session of parliament we will continue this careful reform.

*To give parliament more time to consider legislation thoroughly we will extend the Queen's Speech to cover not only legislation for the immediate year but also provisional plans for legislation in the year after that.*

This will mean that more draft bills will be subject to public scrutiny before they reach the floor of the House of Commons. It will give select committees more time to take evidence and report. And this should also mean better legislation.

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<sup>18</sup> Where appropriate, the extracts relate to the House of Commons and connected matters, and not, say, the House of Lords

<sup>19</sup> *New Labour: because Britain deserves better*, 1997, p.33

<sup>20</sup> *You can only be sure with the Conservatives*, 1997, pp.49-50

We do not believe there is a case for more radical reform that would undermine the House of Commons. A new Bill of Rights, for example, would risk transferring power away from parliament to legal courts - undermining the democratic supremacy of parliament as representatives of the people. Whilst this may be a necessary check in other countries which depend upon more formalised written constitutions, we do not believe it is appropriate to the UK.

Nor do we favour changes in the system of voting in parliamentary elections that would break the link between an individual member of parliament and his constituents. A system of proportional representation would be more likely to produce unstable, coalition governments that are unable to provide effective leadership - with crucial decisions being dependent on compromise deals hammered out behind closed doors. This is not the British way.

We have demonstrated we are not against change where it is practical and beneficial. But fundamental changes which have not been fully thought through - such as opposition proposals on the House of Lords - would be extremely damaging. We will oppose change for change's sake.

### *Liberal Democrat:*<sup>21</sup>

#### **Renewing democracy**

Britain's political institutions are outdated and unrepresentative.

#### **We will:**

- **Modernise the House of Commons.** We will reduce the number of MPs by 200 (one third) and introduce tougher rules for their conduct, behaviour and outside sources of income. We will improve drafting and consultation on legislation, and strengthen MPs' ability to hold the government to account.
- **Create an effective and democratic upper house.** We will, over two Parliaments, transform the House of Lords into a predominantly elected second chamber capable of representing the nations and regions of the UK and of playing a key role in scrutinising European legislation.
- **Introduce a fair system of voting.** We will introduce proportional representation for all elections, to put more power in the hands of voters and make government more representative.
- **Make politics more stable.** We will establish a fixed Parliamentary term of four years.
- **Clean up party funding.** We will reform the way political parties are funded and limit the amount they can spend on national election campaigns. We will make each party publish its accounts and list all large donors.

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<sup>21</sup> *Make the difference*, 1997, p.43

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### *Labour/Liberal Democrat Joint Report, March 1997:*

The report of the Labour/Liberal Democrat Joint Consultative Committee on constitutional reform (led by Robin Cook for Labour and Robert Macleannan for the Liberal Democrats), which was published on 5 March 1997 contained the following (pp15-16):

#### The Reform of Parliament

64. Renewing Parliament is key to the wider modernisation of our country's system of government. No programme of reform could ignore the legislature itself. Parliament for all its faults, remains central to national life. At times it can seem to embody the national spirit. It is precisely because of the importance of Parliament in our national life that it is right to consider whether it does its job well and to suggest improvements that can be made which will enable it to become a more effective legislature.

#### The House of Commons

65. The House of Commons no longer holds ministers to account and legislation is not given the scrutiny it requires. This country needs a Parliament fit for the 21st century. Sensible reforms have been proposed by the House of Commons Procedure Committee, the Hansard Society and others. Both the Labour and Liberal Democrat parties are convinced of the need to reestablish confidence in the political process, politicians and Parliament itself. A more mature approach to the consideration of legislation is required.

66. The parties' priorities for modernising the House of Commons are:

67. \* to programme parliamentary business to ensure fuller consultation, more effective scrutiny of bills and better use of MPs' time.

68. \* to improve the quality of legislation by better pre-legislative consultation and the use of mechanisms such as the special standing committee procedure where evidence is taken before legislation is passed.

69. \* to change Prime Minister's Question Time to make it a more genuine and serious means of holding the government to account.

70. \* to overhaul the process for scrutinising European legislation so that decisions from the EU are more transparent and Parliament's role is more clearly defined.

71. \* to strengthen the ability of MPs to make the government answerable for its actions.

72. \* to enhance the role of Select Committees in ensuring the accountability of departments

73. No one political party should dictate changes to parliamentary procedure: Parliament must own the process. Political parties must however take a lead. Early in a new Parliament a special Select Committee on Modernising the House of Commons should be established. Following the example of the select committee which examined the implementation of Lord Nolan's recommendations, the membership of this special Committee should reflect the full spectrum of interests and experience in the House and could include both the Leader and Shadow Leader of the House.



74. The review undertaken by the Special Committee should be open to the views of others, bringing in outside advisers where appropriate and canvassing the views of MPs, organisations involved in the work of Parliament and members of the public. It is hoped that the Special Committee could report swiftly on those matters requiring priority, especially legislation, so that it would be possible to implement at its first recommendations early in a new Parliament.

## B. Proposals for a Scottish Parliament

A great deal of work, within and outwith the Scottish Constitutional Convention, has been undertaken in recent years to flesh out the Opposition parties' devolution or independence proposals. This has provided a perhaps unique opportunity for a radical rethink about how a parliament can operate other than simply being based on the model of the Westminster Parliament.<sup>22</sup> In its 1995 report the Convention claimed that "the creation of a new parliament is a rare and exciting moment, one which affords unique opportunity for change and renewal .... It therefore expects that the parliament will provide through its practices and procedures a form of government in whose accountability, accessibility, openness and responsiveness the people of Scotland will have pride. Accordingly, the working arrangements for Scotland's parliament set out here describe a legislature that is very different from the Westminster model." The Parliament would be more accessible to its citizens, "and this proximity will be reinforced by the introduction of an information technology strategy designed expressly to encourage understanding of the Parliament's workings and participation in its decision-making by all organisations and individuals." It will "ensure the greatest possible involvement of the people of Scotland, both as Members of the Scottish Parliament and as contributors to its work. It will vary the location of its meetings, work to standard business hours and provide appropriate facilities for Members, for the media and the public." Arrangements would be made "to make sure that the Parliament remains responsive to the wishes and values of the people of Scotland."

Novel provisions in the primary Act would include the requirement that all ministers, including the chief minister, be confirmed in post by simple majority of the full Parliament; the Parliament would sit for a fixed term of four years, and, because "membership of Scotland's Parliament will be considered a full-time appointment", dual mandates (ie Westminster Parliament, European Parliament or local authorities) would be prohibited, other than in the initial Parliament. As the Convention "is committed to delivering a Parliament of a new type, [it] expects methods of operation which ensure openness, responsiveness, accessibility and accountability," and Standing Orders, to be made by the Parliament itself, should reflect these criteria, and in particular:<sup>23</sup>

- Oblige MSPs to devote themselves to the business of the Parliament and to, the interests of the electorate;
- Enable electors directly to petition the Parliament;

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<sup>22</sup> The issue of composition and the electoral system is not considered here

<sup>23</sup> *Scotland's Parliament, Scotland's right*, p26. See also, for further detailed proposals, B Crick & D Millar, *To make Scotland's Parliament a model of democracy*, 1995

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- Provide for the Parliament to operate through a system of powerful committees which are able to initiate legislation as well as to scrutinise and amend government proposals, and which have wide-ranging investigative functions;
- Require the legislators to consult widely both before and during the legislative process;
- Specify working hours and a working year designed to make it as easy as possible to stand for the Parliament and to influence it;
- Promote all aspects of equal opportunities, and monitor the Parliament's success or otherwise in this respect;
- Make appointments to public bodies as open and democratic as possible;
- Make provision for independent investigation of alleged malpractice on the part of individual MSPs or of government departments;
- Provide facilities for the public and the media to meet MSPs easily, and to observe and report on all aspects of the Parliament's activities; and encourage and promote constructive, rather than confrontational, debate and discussion.

### C. Academic approaches

Andrew Adonis concluded his *Parliament today* with a chapter entitled "*Whither Parliament?*"<sup>24</sup> He believed that "we live in a new parliamentary age. A world-wide renaissance of parliaments is among the most arresting developments in contemporary politics" (p248), and warned that people in the UK "too easily neglect the success of our parliamentary system in translating election results into tolerable yet stable government, and in rendering government continuously accountable to public opinion .... The architects of the new democracies mostly gaze at the House of Commons in awe and wonder. We who live under it are, rightly, less adulatory; but in criticising the status quo, its strengths should not be gainsaid" (p249).

Central government has proved "remarkably flexible" in this century, able to adapt not only through "its almost invariable command over a Commons majority," but also because of its residual power under the royal prerogative. By contrast the wider constitution has proved to be far more rigid (especially in the development of sub-national government and of human rights legislation) because it is 'unwritten' and unitary. "It is, therefore, the almost hegemonic position of central government which explains the weakness and obsolescence of political institutions besides the executive. Parliament exhibits both aspects. Its essential structure has remained unchanged for more than a century" (p256).

#### The 'Norton view'

Most proponents of Parliamentary reform set out their stall in terms of particular structural and procedural changes to the role and function of the two Houses and its members and staff. Some propose sweeping, comprehensive packages of root and branch change while, at the

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<sup>24</sup> 2nd ed, 1993, chap 12

other extreme, others suggest specific, targeted changes, or more gradual, incremental change. The extent to which such proposals are underpinned by theoretical analyses of the nature of Parliament in the UK governmental system, or, less ambitiously, pragmatic and practical packages of achievable change (as the Jopling reforms could be viewed) can vary greatly.

Yet it must be noted that there is a school of thought that argues that attitudinal, cultural change is as important, if not more so, as structural change, especially if such structural packages fail to take sufficient account of the wider political and governmental situation in which they are proposed. As with constitutional reform generally, change, however radical, will not have its required or intended effect if all affected do not also adjust their view to adopt the new approach. A noted proponent of this approach is Professor Philip Norton, and his 'Norton view' of Parliamentary reform is set out, for example, in his essay in the 1983 collection edited by Judge, already cited.<sup>25</sup>

He asserted that Parliamentary reform, and Parliament itself, cannot be seen in isolation, and that the UK's wider problems<sup>26</sup> "are affected by and in part reflected in Parliament but that that affect is limited. Parliamentary reform is capable of having some but very limited influence upon this nation's capacity and willingness to overcome its current economic malaise". His approach was that "in so far as Parliament can have some effect ... it should, given present conditions, seek to facilitate enhanced consent for the political system while not negating effective government, that is, the ability of government to raise and allocate resources to meet its commitments of public policy".<sup>27</sup> This is based on the concept of the 'Westminster model', the idealised version of which he defined as:<sup>28</sup>

Government effectiveness is facilitated by government being able to ensure passage of its measures via a party majority, and consent is maintained by virtue of the fact that such measures are subject to parliamentary attention and that at the end of the day the party in government can be turned out at a general election; consent which, in turn, enhances government effectiveness.

However attractive this model may be in a normative sense, "it was seen increasingly to be flawed as a descriptive one. Conditions no longer appeared to fit the Westminster model of government", and "in terms of the relationship between that part of it which forms the government, this has been apparent for some time. The House of Commons failed to keep pace with developments in government and administration" (p57). He described the recent history of reform as an attempt in the 1960s "essentially to restore rather than replace the Westminster model" by ensuring both strong government and strong opposition, through better procedures (such as the Crossman reforms in sittings hours and select committees), and improved pay and facilities for Members<sup>29</sup>; and in the 1970s (because of factors such as apparently 'weak' governments) for more radical Parliamentary and general constitutional reform ('electoral reform, bills of rights, etc.): "the Westminster model of government served not as a useful guide but rather as a hindrance, an unnecessary encumbrance" (p58).

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<sup>25</sup> P Norton, "The Norton view", in Judge, *op cit*, chap 3

<sup>26</sup> This study was published in 1983

<sup>27</sup> *Ibid.* p.54

<sup>28</sup> *Ibid.* p.57

<sup>29</sup> Readers are reminded that this discussion tends to concentrate almost exclusively on the House of Commons

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Norton's support for the Westminster model was based not on some nostalgic wish for a return to a previous 'golden age', but that "Britain has never experienced the Westminster model of government", a model which "provides a useful normative framework for positing the relationship between the House of Commons and government, one that is especially relevant to the wider context of contemporary British politics" (p59). The 'Tory' support for strong government was still relevant for the 1980s, as was the 'Whig' view of Parliamentary limitation of governmental power, especially in an era of powerful bureaucracies and external interest groups. "Indeed, a House of Commons capable of subjecting government measures to sustained scrutiny and influence could serve to strengthen rather than weaken government in its relationship with functional groups and civil servants" (pp59-60). This situation could prevail within a context of party. Even in this model, the "disparate distribution of power" in modern Britain means that the role of the Commons would be important but limited: "It is and can be one of several actors on the political stage, one of several influences impinging upon government" (p60).

Thus far this analysis can be described as an approach, based on a philosophical view of the nature of government and the relationship between its constituent parts. What is perhaps more important and relevant in the context of this Paper is the means by which Norton believes his model can be realised, the so-called 'Norton view' (p61):

One that seeks a shift in the relationship between the House of Commons and that part of it which forms the government through an attitudinal change on the part of Members of Parliament. It does not reject structural changes but argues rather that an attitudinal change is a prerequisite to effective structural or procedural change. It is an approach which exists independently of that which advocates the Westminster model of government; but it provides an effective means whereby the relationship posited by the Westminster model may be achieved. It may be said to be in the tradition of British politics in that it proffers no radical prescription divorced from experience, seeks change which will not do violence to the existing political fabric, and draws upon recent experience in order to demonstrate that it is a viable approach. Its aim is to realise a House of Commons that can provide the limits within which government can govern, subjecting it in so doing to effective scrutiny and influence, while allowing government nonetheless to govern, to indulge in forward planning on the assumption that it is likely but not guaranteed to gain the assent of the House, knowledge that the House cannot be taken for granted providing a government more responsive to anticipated parliamentary reaction. In such a relationship, the House of Commons is able, or as able as it is likely to be, to fulfil both the macro and micro functions expected of it.

The Norton view posits no new powers for the House of Commons. Rather, it argues that the power necessary to ensure a shift in the relationship between the House and that part of it which forms the government exists already: the power to defeat the government in the division lobbies, in effect to deny legitimisation to the government and to its measures. This power is a long-standing one. What has been absent has been the willingness to utilise this power: the political will has been lacking.

The reticence of Members to assert themselves in the division lobbies has been based, he argued, on misconceptions of the constraints on Members' voting behaviour, such as the 'myth' that any government defeat requires the resignation of the government or the dissolution of Parliament,<sup>30</sup> or the power of the whips or constituency parties enforcing party discipline, through withdrawal of the whip,<sup>31</sup> or denial of renomination. Even arguments that the government enjoys huge advantages over Parliament, in terms of policy information and analysis, for example, can be over-emphasised. The experience of the 1970s had shown Members that opportunities did exist for them to influence government, even on major items of policy<sup>32</sup> (such as devolution or nationalisation legislation), and even to push for structural changes, such as the departmental select committee system. "If the House of Commons is to fulfil the role of scrutiny and influence of government it can do so only if the political will exists among Members of Parliament. Once Members have that will, it is possible to provide the limits within which government can govern and create structures that will facilitate sustained scrutiny and influence of government. An attitudinal change is a prerequisite to effective structural change" (pp67-8).

Further it is a change, he argued, which would take place within a context of party, as "party remains central to Members' beliefs and behaviour. It is important that it remains so. Party gives some coherence to Members' attitudes and behaviour. What has changed has been the presumptions which forced almost unthinking cohesion. Hence a party government can assume a supportive majority in the House of Commons, but not an unquestioningly loyal majority" (p68).

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<sup>30</sup> See Research Paper 95/19, *Confidence motions*, 7.2.1995, for an analysis of this issue

<sup>31</sup> More recent instances of such penalties may trigger a reassessment of this point.

<sup>32</sup> A similar point could be made for the 1992 Parliament

### III A Government's approach to Parliamentary Reform

#### A. Generally

In theory a government with sufficient votes (in the Commons, in particular) can seek to transact whatever business (including legislation) it wishes, in whatever way it wishes. The trend of Parliamentary procedure over the last century has been a concentration of the power of initiative and control of the Parliamentary process and machinery almost entirely in the hands of the Government.<sup>33</sup> This can perhaps be illustrated most graphically by Commons S.O. no. 14 (1) -- "Save as provided in this order, government business shall have precedence at every sitting"<sup>34</sup> -- and by the dominant presence in the legislature (especially the Commons) of ministers.<sup>35</sup>

This formal omnipotence is tempered by rules and practices, which have the effect of the government relinquishing some of its power to others, such as the Houses themselves, formal groupings such as opposition parties (especially the Official Opposition), or to Members generally. The 'high' constitutional justification for this is on obvious democratic grounds, of allowing alternative opinions to be expressed effectively. On a more 'practical' level, a government will generally appreciate that it can achieve its purposes, including the passage of its legislation and other business, more effectively in the long run through a measure of cooperation with other parties. This will, for example, provide a greater degree of public legitimacy for its policies and actions, if authorised after some form of genuine debate, than simply if enacted by fiat. This arrangement, institutionalising a role for minorities (and, in particular in the Westminster model, the 'Opposition'), is the essence of what is described as 'Parliamentary government'.<sup>36</sup>

It is commonly said that a government is 'entitled' to get its Parliamentary business through. This does not, of course, mean that there should be no or minimal opposition to a government or its programme. A general discussion of the theory and practice of 'Parliamentary opposition' is well beyond the scope of this Paper,<sup>37</sup> but conventionally it is normally understood that Parliamentary opponents of the government, or of particular items of its business, are entitled to oppose by any or all appropriate means available, while accepting, in turn, that the government is also entitled to use legitimate means to get its business through. Even this simplistic description begs several questions, such as what constitutes 'appropriate' or 'legitimate' Parliamentary activity or tactics by government or opposition. One view may be that both 'sides' are entitled to exercise their powers and exploit their opportunities to the fullest extent, eg 'obstruction' and 'delay' by the opposition, and closure techniques or changes to, or suspension of standing orders by the government. On the other hand, others may prefer a more 'consensual' approach, deprecating what they may perhaps choose to describe as 'opposition for its own sake' or 'elective dictatorship'.

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<sup>33</sup> As the recent changes to Prime Minister's Questions perhaps demonstrate

<sup>34</sup> see also, eg, S.O. no.24, and see, generally, *Erskine May*, pp 258-60

<sup>35</sup> See J Griffith & M Ryle, *Parliament: functions, practices and procedures*, 1989, chap. 1

<sup>36</sup> Griffith & Ryle, *op cit*, p.10

<sup>37</sup> Something of the flavour of the argument can be detected in discussion of the legislative role of the House of Lords, or of proposals for general timetabling of bills

Other than the obvious factors that will influence the management of a government's legislative business, such as time available<sup>38</sup> and the size and controversiality of the sessional legislative programme, a government may wish also to take account of the appropriateness of the procedures to be applied to a particular bill.<sup>39</sup> For example, for present purposes, a government may not wish major, radical planks of its programme to be undermined in the mind of Parliamentarians and the public by securing their passage by means that could be subject to criticism as 'improper', 'inappropriate' or 'unconstitutional'. Resort to allegedly novel, unusual or unconventional methods of Parliamentary procedure, eg. taking the whole of the committee stage of a 'constitutional' bill in standing committee, or subjecting all its stages to a general timetable motion without prior 'usual channels' consultation or agreement, could be regarded as such by opponents.

The Constitution Unit, a research body examining ways of implementing current constitutional reform proposals, examined these issues in its 1996 report, *Delivering constitutional reform*.<sup>40</sup> It recognised that 'constitutional' legislation generally tends to consume more Parliamentary time than other forms of legislation, due, to a large extent, to the practice of taking the Commons committee stage of such bills on the floor of the House, and examined ways in which a government "can best ensure the safe passage" of such legislation while taking account of various relevant factors such as:

- the importance of public and cross party consultation.
- constitutional and parliamentary conventions.
- the desirability of informed parliamentary scrutiny and debate.
- the need for legislation to be workable and durable.
- competing legislative priorities.

The key to achieving this objective is to ensure that enough time is given for parliamentary consideration and that this time is effectively used for scrutiny of the legislation, not filibuster.

It assumed that 'constitutional bills', especially of a controversial nature, would start in the Commons (partly for reasons of the Parliament Acts procedures), and considered in detail the options at Commons committee stage.<sup>41</sup>

More generally the Unit's report examined how any changes in Parliamentary procedure to facilitate the passage of 'constitutional' bills, could be implemented, especially in the context a wider package of Parliamentary reform. It examined the factors it saw as inhibiting and stimulating such reform:

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<sup>38</sup> for example, it has become common for a spring general election to be followed by a long Parliamentary session lasting until the autumn of the following year

<sup>39</sup> For discussion of one topical aspect, see Research Paper 97/53, 20.5.97, *The Commons committee stage of constitutional bills*

<sup>40</sup> See also the recent article by one of the report's principal authors, K. Donnelly "Parliamentary reform: paving the way for constitutional change", (1997), 50 *Parliamentary Affairs* 246

<sup>41</sup> On which see below, section IID

## Factors Inhibiting Reform

143 There are a number of factors inhibiting the implementation of ideas for reform:

- in-built conflict between the interests of the Whips, frontbenchers and backbenchers, as well as between political parties wanting to score points off each other.
- views differ on the proper role and powers of Parliament - which in turn, makes it difficult to reach agreement about what should be done to improve its effectiveness.
- those who have managed to get into Government - and sometimes those who aspire to it - are unlikely to change a system that is largely designed to assist in the Government's exercise of power.
- the nature of the Commons - "essentially a closed corporation, adept at socializing new classes of membership and defining its role in terms of internally developed rules and conventions" restricts the ability of (even a new) Government to win the support of MPs for change.
- resistance to change arises partly because of the difficulty of determining in advance the likely impact of procedural changes: as with special standing committees, which were designed to assist in increasing the time available on the floor, but are perceived to cause "delay" in the system.
- the recommendations of even the most rigorous and respectable of reports, such as those of the Hansard Society Commission on the Legislative Process, are not routinely implemented. Even the Procedure Committee felt moved, in 1987, to express frustration at the lack of progress even in discussing some of their proposals: "Our final recommendation of this Parliament is that if a committee of Members is appointed by the House and spends much time deliberating in considerable depth on aspects of the current procedure of the House, which affect all Members, then time must be found by the Government for the specific proposals contained in its reports to be considered and, if thought fit, adopted by the House."

144 It is also the case that those with an immediate interest in the proceedings of parliament are most likely to be in a position to frustrate attempts at change. This perhaps best demonstrated by the fate of special standing committees, in his 1990 speech to the Statute Law Society, Sir Patrick Mayhew suggested that the reason the Special Standing Committee Procedure had not been used since 1983-84 was "that it has not found favour with the departments or business managers". He elaborated:

*"the Special Standing committee procedure... was much feared by Government business managers at its introduction, because it has the dire effect of informing their backbench members on the Standing Committee of any Bill to which it applied just what the Bill is about, what it is intended to remedy, and how the remedy is to be achieved. This of course, gets them interested, and may lead them to make speeches. All this adds up to loss of control, which to any Whip is what the loss of the Crown Jewels would be to the Governor of the Tower of London."*

## Factors Stimulating Reform

145 There are two motors that can drive procedural reform. The first is public and parliamentary recognition of a major defect in the present arrangements, as happened over the allegations of "sleaze" that prompted the establishment of the Nolan Committee on Standards in Public Life and the adoption of its recommendations and the continued existence of an independent external body that would monitor the implementation of proposals. The second motor for procedural reform is recognition within Parliament that specific procedural reforms would bring mutual benefit to Government and Opposition, or frontbenchers and backbenchers (as with the Departmental Select Committees in 1979, the recent Jopling reforms, and the procedures for scrutiny of Deregulation Orders introduced in 1993). Success has usually been secured where the objectives are limited, and the interests of different groupings within the House of Commons are balanced. Agreement between the frontbenches is a prerequisite.



- 146 Reviewing the history of procedural reform, a number of other factors also stand out as important in securing reform:
- prior consideration of the issues by the Procedure Committee or other Select Committee,
  - giving an opportunity to flush out objections and resolve potential difficulties.
  - timing - in particular, reforms have been particularly well received soon after a general election.
  - forward planning in relation to the impact on the resources available to support reforms;
  - and back-bench pressure for change.
- 147 In this context, it is perhaps the attractions of procedural reform to facilitate the passage of a large package of constitutional reforms that will be the spur necessary to prompt a Government to institute wider procedural reform.

The report concluded as follows:

- 160 In the House of Commons in particular, the time available for legislation imposes a major constraint on the Government. The time taken by constitutional measures tends to be greater than for other bills - in part because of the complexity and the controversy they tend to attract and in part because of the use of the committee of the whole House. Assuming a desire to have a significant legislative programme of non-constitutional measures, under the current system of parliamentary time allocation, there is likely to be time for at the most two constitutional bills per session.
- 161 There are essentially two different areas in which alternative procedures, or reform of existing procedures, could ease the passage of a major constitutional reform programme whilst meeting demands for adequate scrutiny:
- to take some stages of a bill off the floor of the House by using another committee forum.
  - to alter the control of time, either by limiting the amount of time which can be spent on a bill or by removing some of the constraints on time.
- 162 The discussion above has identified three proposals which may meet these criteria and ease the passage of constitutional bills.
- **partial referral of bills to a standing committee; which would reduce the amount of time that a bill takes on the floor of the House, but allow full debate in a standing committee.**
  - **automatic advance timetabling of all bills; which would ensure that all parts of a bill were looked at and minimise incentives for filibustering.**
  - **selective use of carry-over; which would mean that the time spent debating a bill in one session would not be wasted if the bill did not complete its passage in that session.**
- 163 Changing parliamentary procedure simply to facilitate or enhance the quality of a constitutional reform programme is potentially a high risk strategy. The political nature of parliamentary procedure means that changing the rules that govern the game is fraught with controversy. It is important that changes in parliamentary procedure are part of a wider process of parliamentary reform which is coherent and desirable in its own right. Reform of parliamentary procedure has a relevance which goes beyond constitutional bills and there is no shortage of suggestions for ways in which the workings of Parliament could be improved. Any procedural change is likely to be better accepted if introduced as part of a wider reform of the legislative process, aimed at balancing the interests of interests of different groupings within the House of Commons. Such reform is likely to be welcomed by a wide range of experts and outside interests, from the Hansard Society to the CBI. The desire to secure the passage of a large legislative

programme should therefore be seized as an opportunity to implement wider parliamentary reforms.

### **B. The 1945 Labour Government's approach.**<sup>42</sup>

An incoming Government may feel that it has such a large, complex and controversial legislative programme that it may wish to amend certain existing rules or practices of legislative procedure. An example of this was the Attlee Government which came to power in 1945 (with a huge majority) with a substantial programme of post-war reconstruction, including nationalisation and social welfare schemes. At a very early stage in its life, the new Government moved that the Commons establish a select committee "to consider the Procedure in the Public Business of this House and to report what alterations, if any, are desirable for the more efficient despatch of such business."<sup>43</sup> To some extent this arose out of the reconstruction plans of the wartime coalition, and the need for some procedural reform had been considered by the House during the war.<sup>44</sup>

In a note to the new Labour Cabinet on 4 August 1945 on the forthcoming King's Speech, the Lord President, Herbert Morrison, reminded his colleagues of the size of the legislative programme and suggested that "we should take the earliest possible steps to rationalise and modernise parliamentary procedure, always providing that the essential supremacy of Parliament is preserved" by adopting the Machinery of Government Committees proposals.<sup>45</sup> He pursued this in a memorandum to the Cabinet on 10 August, setting out the informal soundings among Members taken on behalf of the Coalition Government on the appointment of a Procedure committee to consider reform proposals. The war cabinet was told on 22 January 1945 that 75-85% of Conservatives were against them at that juncture, as were the Liberal Nationals, whereas Labour Members were generally in favour of steps to speed up the Parliamentary process. Therefore the majority of the Commons was against action before a general election.<sup>46</sup> Morrison regarded the matter as one of "great importance and urgency" because without a substantial speeding up of Parliamentary procedures, especially in relation to standing committees on bills, there was little prospect of carrying through their legislative programme (para 3). He thought that the 1944 proposals were "remarkably satisfactory, having regard to the political circumstances obtaining when they were prepared." As such, ministers could refer to the fact that the plan was prepared by a committee of Coalition ministers, even though the War Cabinet itself has not committed itself to it: "This would put us in a strong position in the House" (para 4). He reminded his colleagues that Campbell-Bannerman's Liberal Government had established a Procedure Committee immediately after its huge election victory in 1906, even though he admitted it had dealt with a number of less significant matters (para 5).

Morrison told the House that he hoped that his proposal would create "no serious difference of opinion ... I do not think it raises any party issues or that it is fundamentally controversial ... I ask the House to approve the motion not simply because our legislative programme is

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<sup>42</sup> See also Research Paper 97/53, *The Committee stage of 'constitutional' bills*

<sup>43</sup> HC Deb vol 413 cc984-1058, 24.8.45, agreed to without a division. See generally, Morrison, *op cit* p.218-31

<sup>44</sup> See in particular the debate initiated by Earl Winterton on 26 May 1944, HC Deb vol 400 cc1068-1111

<sup>45</sup> CP (45) 94, para 4, 4.8.45

<sup>46</sup> House of Commons procedure, 10.8.45, para 2, CP (45) 103

heavy .. though the heaviness of the legislative programme is, of course, in itself a strong reason, but also because as, I hope, a good Parliamentarian, I am anxious .. that all essential rights and principles of Parliamentary government should be maintained, and, I may add, the reputation of this great Parliamentary institution reinforced at home and abroad"<sup>47</sup> The proposals which would be put before the committee would be those agreed by a committee of ministers during the coalition government (although it was never official Government policy, not brought before the Cabinet).

For the Opposition, Churchill accepted that a new Parliament, especially one succeeding a ten-year Parliament, "should wish to review the procedure of the House in the light of the movements of modern opinion, and in the circumstances of the time in which we live" (c.991), but was uneasy because of talk by Labour leaders of using their majority to legislate by way of 'enabling bills' -- which, he claimed, "would enable great Measures to be passed into law, and then handed over for administration entirely to the executive Government, subject only to correction by the House by a vote of want of confidence or by the annulment of certain Orders which might be laid upon the Table" (c992) -- and because of the suspension of private Members' time for the 1945-46 session. He considered the legislative and wider role of the House (cc994-5):

Without it any way committing myself any way to these proposals, I certainly feel relieved that they are the limit of what His Majesty's Government propose. This House is not only a machine for legislation; perhaps it is not even mainly a machine for legislation, it is a great forum of Debate, and the process of legislation is not necessarily smooth because it is rapid or violent. The House ought to have the opportunity of moulding and shaping the laws which afterwards have to be obeyed by the people. The people give their obedience to the laws of this country to an extent remarkable, almost renowned. The people have been renowned for their obedience to law, but that is because the law comes to them from a Parliament which they themselves have chosen, and because it is believed that all views have had a fair chance of expression in that Parliament, that the minority as well as the majority have been able to put their hand upon the legislative proposals. While the Government of the day naturally carry their own programme, the legislation which emerges from our discussions is not simply party legislation, but legislation which bears the stamp of Parliamentary influence. Therefore, it would be a great mistake to think that all you have to do to improve the procedure of the House of Commons is to make it able to turn out the largest number of Bills in the shortest amount of time. That is all right if you are working a sausage factory: it is not quite the same in regard to matters which affect the lives and happiness of vast numbers people throughout the country. And it is also in the interests of the Government, that

their Bills should really be tested and sifted in Parliament, because, otherwise, all kinds of things slip through, which give needless offence when put into operation, and involve the Government in needless discredit.

Also, the House has a function not merely of passing Bills, but of stopping bad Bills from passing, or at any rate mitigating their effects, having due regard to the prevailing strength of the majority of the day. All this is part of our House of Commons system of life. I am very much impressed with this new House of Commons, with the pin-drop silence in which they listen to all speeches from all parties, and from all parts of the House, and with the earnestness and gravity with which the very large numbers of new Members here are evidently determined to approach the serious and important tasks with which they are charges. I should deeply have regretted if any violent Measure of driving legislation, through had smitten the House in a grievous manner at the very outset of the new Parliament. I think that it is not only, as I said, a question of legislation. The House is also a forum of Debate and in many ways that is more important because we have to hold our position in the world. That very largely depends upon the respect which is shown to the House of Commons which no other country - I say it with all respect - has been able to surpass or even, some may think, rival. There never has been a Assembly of such great powers, which has shown so much restraint in the using of them. Unlike the French Assembly of bygone days; the House has not

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<sup>47</sup> HC Deb vol 413 cc985, 24.8.45

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attempted to govern; it has left that to the Executive Government, and has confined itself to the functions of supervision, correction, and, in the last resort, to the removal of Ministers, if they have thought it desirable.

Winding up for the Opposition, Quintin Hogg accepted the right of the Government to carry out its manifesto programme, as approved by the electorate (c.1038):

I think the Government have no cause whatever to complain of the reception which their motion has received. In the main it has been received, if not with in all quarters, at any rate with generosity and in some respects even with cordiality. Indeed, in some ways I could not help wondering whether, if they had known it was going to be so enthusiastically received, they would have ever put it forward, because after all, as my right hon. Friend the Member for Woodford (Mr. Churchill) observed, the best way of saving time in this House and the best way of expediting business is on the whole not to ride roughshod over the opinions and feelings of your opponents, however much you may disagree with them, and even though you are proposing Measures which you know will be controversial. I cannot help thinking that in some respects this Motion and the particular terms in

which it is couched were devised in fear, which I have seen written on many faces opposite, that there was a deep-laid plot on the part of the defeated Tory Opposition to hold up the magnificent sledgehammer of democracy which the hon. Member for Bolton referred to in such eloquent terms. Of course, that is not the case. On the contrary, the decision of the electorate, however little we agree with it, must be accepted. It is a clear decision. That is what we live in a democracy for. Parties are defeated, they return to power, they are defeated again, and they return to power again. The essence of democracy is that on each separate occasion both sides should accept the result.

He warned against tyrannical use of a huge majority to override the desire for debate through, for example, routine guillotine, resort to enabling bills or even to enacting legislation altering the constitution which were not put before the electorate.

The Leader of the House wound up the debate, by responding to a number of criticisms. On Hogg's warning that his government should not threaten the constitution, he said (c.1049):

The hon. Gentleman also made a passionate declaration that we have no authority to turn inside out the British Constitution. We are not proposing to do anything of the kind; but let not the Conservative Party take the view that if anybody makes changes in Parliamentary procedure with a view to Parliament becoming a more expeditious and efficient servant of the nation that therefore he is upsetting the British Constitution. The British Constitution is the result of historical change, of

modification. It is perfectly free to move from precedent to precedent, and just as much to move away from precedent by making changes over the years. Merely because we probably shall make some changes in Parliamentary procedure, let not the hon. Gentleman work himself up into a state and declare that the whole fundamentals of the British Constitution are about to be undermined. That is only a rather wild way of saying that he does not agree with what we are proposing to do.

He also dealt with the delegated legislation point (c.1050):

We have had delegated legislation right through this century, if not before. Every Government has engaged in it - Tory, Liberal, Labour, Coalition. The tendency is for it so increase, and it is bound

to be so. What is the good of boggling at something which is bound to increase if the whole legislative process is to survive at all? It is really no good the hon. Gentleman making these some

what stuffy speeches about this subject. The real point is not to resist delegated legislation as such.

If properly handled, it is a good thing. If Parliament is to spend adequate time on the essentials of legislation and to do its best to avoid the guillotine - and I do not think that it can avoid it - it must unburden itself of its lot of detailed legislation in which no real element of principle or policy is involved. We can debate until we are blue in the face, but if for this Government or any other Government delegated legislation has increased, will increase, and, in my judgement ought to increase.

and (c.1051):

Delegated legislation must be considered in principle by the Government and the House in the framing of legislation as it as it comes, and any legislation we shall introduce we reserve that right to utilise to adequate extent the principle of delegated legislation, always provided that the essential principle of Parliamentary control over policy is maintained - and by that I do not mean merely control over broad slogans and resolutions - providing these essentials are preserved, the Government retains full right in the framing of its Bills to utilise the principle of delegated legislation in order that Parliament may be clear to do its real job, and not encumbered by a mass of detail which may be calculated to prevent it from doing its job.

He also addressed the issue of private Members' time (c.1054):

Good things have come out of the Private Members' time and Private Members' Bills now and again; but there was an awful lot of good Parliamentary time wasted on discussions in Private Members' time.

**Sir A. Herbert:** I said that a lot of time had been wasted, and in my Amendment would give an opportunity for reform. Perhaps I have anticipated the right hon. Gentleman. May I ask him a question? Does he, or does he not, intend, or hope, that there will ever be Private Members' time in this Parliament?

**Mr. Morrison:** That is a question I am unable to answer. These are Sessional matters.

**Sir A. Herbert:** Does the right hon. Gentleman hope?

**Mr. Morrison:** No. I have always been most cautious in my promises even in Elections - most cautious - that is why so few things can ever be quoted against me and, therefore, I do not want to go into hopes and promises. Each Session must take care of itself, and if the hon. and gallant Gentleman will put the question at the beginning of the next Session to the Leader of the floor, I shall, perhaps, if still Leader, be able to answer him. We must not get into the habit of worshipping Private Members' time, as such, in the form in which it was. I have some sympathy with the view that we have to find new and perhaps more beneficial ways in which Private Members of the House can express themselves. That is the real problem, and it does not necessarily follow that it can best be done by bringing into the House theoretical or Bills. The real thing is to find a proper balance between the Government getting their Business through, and the Private Members expressing themselves in a way that enables them to influence Government policy and Government activities. That is the problem, and there are far more ways than one of doing it.

## Research Paper 97/64

The Procedure Committee produced its first report in October and it was debated on 15 November.<sup>48</sup>

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<sup>48</sup> HC Deb vol 415 cc2344-59, 2363-444, 15.11.45

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