

The Constitution Unit

The Commons: Reform or Modernisation

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by Andrew Kennon¹

INTRODUCTION

“The Government had a golden opportunity ... [on reforms to strengthen the House]” (John Major, House of Commons, 13 July 2000 col 1115) . The former Prime Minister did acknowledge that his administration could have done more to that end.

As this Parliament appears to be drawing to a close, perhaps it is time to take stock of what has been reformed and the reasons the hopes of modernisation have not been fulfilled. This paper concentrates on long-term reform of the House rather than day to day relations between Parliament and the Executive.

There is nothing new about the uphill struggle to reform Parliament. Richard Crossman’s diaries of his time as Leader of the House in 1966-68 relate how, on 28 September 1967, after a long discussion about the Vietnam War, the Cabinet spent 40 minutes considering his proposals for reform of the House of Commons. He goes on to say “To show how successful I was I even got the Cabinet to grant the wish of the Clerks at the Table [of the House of Commons] to have their wigs abolished – despite the Prime Minister’s proposal that they should wear them during Question Time and take them off at 3.30pm”. (vol 2 p499). In the event the Official Opposition would not support that aspect of modernisation and it was dropped. Speaker Martin, like his predecessor Betty Boothroyd, has dispensed with a wig of his own initiative but the Clerks still wear them.

The House of Commons is not actually hide-bound with out of date rituals. It does develop gradually. Sometimes what seems unusual to an outsider or newcomer is part of the shorthand any organisation uses in its work. Quaint drills may mask sensible working practices

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: the procedure for spying strangers serves three different purposes which are nothing to do with getting the House to sit in private. The title of the procedure has been changed, but its purpose has been retained.

THE PROCESS OF REFORM

A common misunderstanding is that the House has the ability to reform itself. Certainly the Procedure Committee or other committees can recommend change. Change can be implemented by a vote of the House itself. But in between these two steps are the hurdles that ensure that only changes acceptable to the Government of the day are put into effect. There are four distinct stages at which the Government can give or withhold its consent.

Say, for example, the Procedure Committee has a happy dream about reforming financial procedure. It takes written and oral evidence and produces a worthy report. First, the Government decides whether or not to bother to produce a reply to that report – believe it or not, some such reports do not even receive a response from the Government -- and this applies to previous governments as well. Second, the Government decides whether or not to find time for a debate – why waste the time of the House debating a report the Government has no intention of seeing put into effect? Thirdly, if there is a debate, the Government decides whether the House should be invited to approve the report or merely to debate it on a non-conclusive adjournment motion. Fourthly, even if the House has approved the report, it can only be implemented if the Government brings forward the necessary changes to standing orders – these are usually put to the House immediately after the report is approved.

This means that not only does any Government have the veto over any parliamentary reform – in practice no reform is likely to succeed unless it starts with the explicit support of the Government. This applies to major reforms such as the departmental select committees in 1978-79, the Jopling changes to sitting hours in 1994-95 and the post Nolan standards and privileges system in 1996.

Those who have studied past Government replies to unwanted Procedure Committee reports will have come across the phrase “This is a matter for the House to decide”. It implies a degree of free initiative for the House which does not exist. It is a phrase which should be

eliminated from Whitehall drafts, not least because -- since the Jopling reforms in 1995 -- there are no longer any opportunities for backbench Members to bring proposals to the floor of the House for debate and decision.

In these circumstances, it is entirely reasonable that the new Government in 1997 chose to lead from the front in setting up the select committee on Modernisation of the House of Commons. Not only was it chaired by Ann Taylor as Leader of the House; the inclusion of her opposition shadow, the Liberal Democrat spokesman and the chairman of the Parliamentary Labour Party were designed to ensure that it came up with reports likely to have widespread support in the House.

Apart from being chaired by the Leader of the House, the Modernisation Committee was unusual in that it did not proceed by taking oral evidence. It could well be argued that there was plenty of external and internal source material available from the Constitution Unit, the Hansard Society and past Procedure Committees on which to base their deliberations. On the other hand, evidence-based select committee reports sometimes carry greater weight.

WHAT WAS EXPECTED?

In a speech to the Charter 88 seminar on reform of Parliament on 14 May 1996, Ann Taylor, then shadow leader of the House of Commons, gave a speech entitled “New Politics, New Parliament”. She set out Labour’s thinking “on making the House of Commons a more effective and efficient legislature” and suggested the following agenda for change:

- ministerial accountability
- quality of legislation
- scrutiny of secondary legislation
- role of select committees
- more assistance to the Opposition
- better use of parliamentary time in the parliamentary year

She envisaged “a thorough audit of Parliament” and a special select committee.

Closer to the 1997 election a further indication of the Labour Party’s aims was revealed in the report of the Joint Consultative Committee on Constitutional Reform, led by Robin Cook and

Robert Maclennan. This document was concerned mainly with wider constitutional reform. The priorities of the Labour and Liberal Democrat Parties for the House of Commons were:

- programming parliamentary business – for effective scrutiny of legislation and better use of MPs’ time
- improving quality of legislation – by pre-legislative consultation and special standing committees
- “to change Prime Minister’s Question Time to make it a more genuine and serious means of holding the government to account”
- overhaul scrutiny of European legislation
- strengthen ability of MPs to make government answerable for its actions
- enhance the role of select committees in ensuring accountability.

A special committee on Modernising the House of Commons would be set up and one of its first priorities would be to report swiftly on improving the legislative process.

The manifesto itself was less specific:

An effective House of Commons

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.

Did the actual result of the election affect the willingness to reform Parliament? Certainly the size of the majority meant that the agreement with the Liberal Democrats was less essential for delivering the constitutional reform programme. Although the large majority and the record number of women MPs were striking, there was another significant factor in the composition of the new House: the number of new MPs. Normally an election brings about 100-120 new MPs to the House – about a fifth or a sixth of the total. The 1997 harvest of some 240 meant that over one-third of the House were unfamiliar with it. It is arguable that this raised expectations of modernising the most obviously strange practices and diverted attention from more serious reform.

One example of this was the pressure for Members to be called by their own names – rather than by the constituency name – in debate. This practice – together with addressing the Chair – are assumed to help maintain civility in heated debate. The argument was eventually resolved when a long-standing Labour Member pointed out that he served in the House not as Robert Sheldon but as the representative of Ashton-under-Lyme. In Washington, the House of Representatives still has a similar code for debate – though one phrase which may not cross the Atlantic is the female equivalent of “honourable gentlemen” – not many women MPs would like to be called “honourable gentle-ladies”.

One welcome and early reform was to make the House’s Order Paper more comprehensible – the accretions over the years rather than deliberate policy had made it rather obscure. Members now have a better understanding of what is going on and what they are deciding.

In retrospect it is possible to argue that there was one major reform of the House which the Government, with a surprisingly large majority, might have embarked upon: it could have asked the Boundary Commission to produce an alternative report on how constituency boundaries would be set if the House was reduced to 450 Members by, say, an election in 2010. The phrase about turkeys not voting for an early Christmas comes to mind, but all MPs know that they may be affected by boundary changes or political events in the next 10 to 15 years. Understandably this was not an option for the election manifesto; but a better opportunity for a really good reform of the House may not present itself again for a long time.

Any discussion of specific procedural reforms, should not overlook other significant developments which have had an impact in modernising the House:

- much greater use of IT – including publication of reports and evidence on the Internet
- new parliamentary building to provide better office accommodation for MPs
- Braithwaite review of internal management of House.

THE LEGISLATIVE PROCESS

The first task set for the Modernisation Committee was to review the legislative process. This was not just the Government wanting to clear the decks for action. Individual Ministers had reason to be concerned about the quality of legislation they had seen passed in previous Parliaments. The experience of the Child Support Agency was deeply ingrained in the minds of outgoing and incoming ministers. There was also an awareness that the tradition of taking constitutional bills wholly on the floor of the House would mean that the constitutional reform programme would pre-empt much of the legislative time in the first session.

The package recommended by the Modernisation Committee in July 1997 contained little that was novel – it even included procedures which already existed but had not been used recently. The new measures were all ones advocated by parliamentary reformers over the years – not least the major Hansard Society report in 1992 on Making the Law. The main points were:

- programming of Government bills
- publication of bills in draft for pre-legislative scrutiny
- better explanatory material to accompany bills
- greater use of (evidence-taking) special standing committees
- more use of split committal between the floor of the House and standing committees
- agreements to ensure all parts of bill are considered in standing committee
- carry-over of some bills from one session to the next
- more use of second reading committees
- bills to be re-committed to standing committee to consider (a) Government amendments at report stage and (b) Lords Amendments. – rather than taking such non-contentious business on the floor of the House.

This set of proposals reflected the under-lying principles that (a) the Government should be able to get its legislation passed, while (b) allowing the Opposition to debate the issues it considers the most important and (c) ensuring that all parts of a bill are properly considered. Taken individually or collectively, these measures did not create losers. As a whole, they

presented the prospect of improved quality legislation and gave greater flexibility in getting Government bills through the House.

The measures in this unanimous report from the Modernisation Committee had already been approved in advance by the Cabinet. They were supported by the Official Opposition and the Liberal Democrats. Despite reservations from several Government back-benchers, the report was approved by the House without a vote on 13 November 1997.

The rest is history: the Government bills have been subject to proper scrutiny, better use has been made of time on the floor of the House, the Government has been able to get its programme through without recourse to late sittings and guillotines and the quality of legislation has improved or, perhaps not.

What went wrong? The four hurdles reform can only pass with Government support were mentioned earlier. The final obstacle is that standing order changes to implement reform are brought forward only by the Government. Although the House approved the proposals without a vote, no temporary standing orders were brought forward to put the report into effect. Between publication of the Modernisation Committee report on 23 July 1997 and the end of the summer recess, there appears to have been a change of heart within government about implementing the Cabinet's decision to support these changes. The outcome was that the reform of the legislative process would not be put into standing orders but progress would be made if possible on individual measures on an ad hoc basis. Whether the implications of this decision were understood at the time is a matter for conjecture.

This was not just a serious setback for reform of the legislative process: it gave a very clear signal to those directly involved that no real parliamentary reform was acceptable within government. It set the tone for the rest of the administration. Against this background, who would venture down the Crossman path again?

This is not to say that no progress has been made in reforming the legislative process. On the positive side:

- much improved explanatory notes accompany bills – for which the credit both for the initiative and for carrying it out should go to Parliamentary Counsel
- one bill was referred to a special standing committee in 1998

- six bills have been published in draft and considered by committees (mainly in 1998)
- 17 bills have been programmed (mainly in 1997-98 session)
- one bill has been carried over from one session to the next in 1998.

But these are very limited achievements. Only one bill has been produced in draft in time for pre-legislative scrutiny in the 1999-2000 session. Guillotines have now returned as the main weapon for getting Government bills through instead of agreed programme motions. As a more recent report from the Modernisation Committee noted: “even with programme motions ... scrutiny of all parts of a bill is hard... to deliver”.

Ironically the failed package of 1997 has been revived three years later because Government back-benchers were fed up with late sittings. Near the end of its first term, the Government asked the House to implement on 7 November 2000 what the House itself approved three years earlier, but which the Government had then not carried through. But in 2000, the programming of legislation no longer had wide support on both sides of the House. Most bills introduced in the 2000-01 session will have a timetable from the start.

SITTINGS HOURS

Reform of sitting hours has been another prominent modernisation issue. The Jopling reforms implemented in 1994-95 had transferred some late night business from the House to committees and to morning sittings and had introduced some non-sitting or constituency Fridays. Up to the 1997 election late sittings had reduced significantly -- but the Jopling changes had not really been tested by a full Government legislative programme. Average daily sitting hours have gone up – and MPs have experienced an unpopular increase in late night sittings.

The Modernisation Committee looked at this in 1998. As with other major topics, the process started with the Government deciding internally what it wanted and putting that in a memorandum to the Committee. The two key time periods were (a) the parliamentary year and (b) the week.

Changing the parliamentary year is like one of those children’s travel games where you have to remove one piece before you can move any of the others. That one piece is the long summer recess. With that unaltered, the options for changing other dates are very limited – assuming

that the total number of sitting days should stay broadly the same. If the summer recess could be broken up by, say, a short session in September, then all sorts of other changes might become possible. Naturally Members also wanted greater certainty about parliamentary sitting times and a better connection with school holidays.

Another relevant factor was the timing of the budget and finance bill – Gordon Brown had not continued the Conservative example of a unified Budget in November and reverted to the earlier practice of March budgets – around which the current parliamentary year is based.

The first step was to see if a sitting period in September would be acceptable in other parts of the Government. The pros and cons were not fully canvassed within Whitehall, but the issue was not pursued. That was the end of any significant change to the parliamentary year. The only concession to school holidays was a half-week off in February to coincide with half-term; but the House has continued to return from a three month summer recess in the week of the October school half-term.

The other issue – the pattern of sittings during a week – was eventually decided by the geographical distribution of constituencies. Ann Taylor had made plain in the speech referred to in May 1996 that nine to five days had little appeal to her, as an MP with two children representing a northern seat. Even if sittings stopped at 6.00pm every day, two-thirds or more MPs would not be able to get home for the evening.

The focus of the Government's policy-making on this issue thus moved to striking a better balance between parliamentary and constituency work within each week. This happily coincided with the desire of the Whip's Office to get a full day's business on Thursday. Non-sitting Fridays had eroded the ability of the Government to get contentious business taken on Thursdays with a vote at 10 pm that night. This is what led to the proposal to bring Thursday sittings forward by three hours. With some adjustment to standing committee sittings on that day, this has now worked well. There seems no immediate prospect of further morning sittings.

These limited changes to the pattern of sittings demonstrate the real constraints which affect Parliament. It is not sensible to succumb to the argument that Parliament is unique and has nothing to learn from other organisations. It is difficult however to think of another organisation where the employees have to travel from all over the country to work in one

place, while undertaking weekly commitments near the home.

DEVOLUTION

Outside the House, some more dramatic constitutional changes were being put into effect. The Government's plans for handling the implications for the House of the other changes to the constitution were not developed. On devolution, the issue was only forced when the Procedure Committee of its own volition decided to conduct an inquiry. A memorandum had to be produced for that Committee setting out what changes the Government envisaged for the House once power transferred to Edinburgh and Cardiff. The House had some special procedures for dealing with Scottish, Welsh and Northern Ireland business. Some of those who gave evidence to the Procedure Committee advocated complete abolition of things like the Scottish Grand Committee.

Government policy on this had to be handled carefully. There were political concerns about expectations of regional assemblies in England. No concession could be made to the argument that Scottish MPs should be excluded from voting on bills applying only to England. Not all MPs appreciated that the Commons would no longer be able to ask questions about devolved matters, since questions to ministers crucially depend on formal ministerial responsibility.

But the Government wanted devolution to work and needed to persuade the House to adjust to change in a benign way. The unspoken spirit was that Westminster had to be a tolerant parent to the children coming of age in Edinburgh, Cardiff and Belfast. It was also possible that Westminster would have to be prepared to learn about how much better parliaments could be operated under the new politics.

The Government understandably opted for the gradualist approach – to make on devolution only those changes which were essential and then to wait and see. One significant change was to make the three Westminster select committees specifically responsible for liaison with the new parliament and assemblies in Belfast, Cardiff and Edinburgh.

This is an example of how a gradualist rather than a big bang approach is probably the more productive route to parliamentary reform. This is also an example of how external change can influence reform of the House. It is still early days and it remains to be seen which of the pre-devolution procedures will fall into disuse.

SITTINGS IN WESTMINSTER HALL

The procedural change which may well prove the most dramatic and long-lasting of this Parliament is the parallel sitting off Westminster Hall. These sittings take place 4 ½ hours on Tuesday and Wednesday mornings and three hours on Thursday afternoons in the Grand Committee Room. Procedurally they are treated as sittings of the House.

Since the post-Jopling Wednesday morning sitting has in effect been transferred from the floor of the House to Westminster Hall, it is only the Thursday afternoon sitting which occurs when the House itself is also sitting. The net gain in debating time is 7 ½ hours a week. Tuesdays and Wednesdays are devoted to back-bench MPs' adjournment debates and Thursdays divided between select committee reports and general debates. All take place on non-conclusive motions to adjourn, so no decision is reached.

How was this procedural reform introduced? It is not listed in any Labour Party plans for the House or in any distinguished academic proposals for parliamentary reform. The model is the Main Committee in the Australian House of Representatives. There, less contentious legislation and other business can be debated off the floor of the House. The House of Lords has a similar procedure for considering bills in a committee of the whole House in the Moses Room. The idea was picked up by the staff of the Modernisation Committee and blossomed in the minds of its Members.

Within Whitehall, the idea had its attractions. Following the failure to reform the legislative process in the House itself, any way of improving the flow of bills through Parliament was interesting. There was a feeling that less or non-contentious legislation (including Law Commission bills) was not getting onto the Statute Book because most legislative time had to be devoted to major political bills. A second channel for less controversial measures was worth considering.

Back-bench Members of the Modernisation Committee had a different interest – the possibility of securing extra debating time for individual MPs and select committees. The ten slots a week for individual MPs debates on the floor were divided equally not proportionately between the Government and Opposition sides of the House. Arguably this disadvantaged the numerically strong troop of Labour back-benchers. There was also a feeling that another chamber, with a

different seating arrangement, might encourage a more informal and less partisan style of debate.

The Main Committee or parallel chamber idea kicked around in the Modernisation Committee for a long time but eventually came to the top of the agenda – partly because the Modernisation Committee had run out of things to do. Within the Government there were concerns that, if such a parallel chamber made decisions on real business, the Government might be vulnerable to sudden ambush and defeat.

Expectations had been raised, however, and the chairman of the PLP was most persuasive. The compromise was that no real business would be taken at these parallel sittings – there would be no decisions or votes – but an experiment would proceed with just back-bench debates. Of course it is possible to present this as a major extension of parliamentary accountability – with Ministers now having to answer an additional 210 debates a year in Parliament. It is entirely possible that junior Ministers and the officials who prepare their speeches were blissfully unaware of the additional workload involved.

But otherwise the Government has got nothing out of it and an opportunity for creating greater flexibility in the management of parliamentary business has either been lost or at best delayed. The experiment will be continued with slight modifications into the 2000-01 session and the first session of the next Parliament. Whether this new forum will ever develop into a genuine parallel chamber taking real business — and perhaps replacing part of the sprawling structure of other debating committees – remains to be seen.

WHAT HAS CHANGED?

As the end of this Parliament draws near, how much has the House of Commons actually been reformed or modernised? The timing of Prime Minister's questions has changed, but not the tenor. Thursday sittings have been advanced by three hours. One bill has been carried over from one session to another. Additional sittings in Westminster Hall have increased back-bench opportunities for debate. European scrutiny procedures have been adjusted to reflect the Amsterdam Treaty. Six draft bills have received pre-legislative scrutiny from a variety of committees. There have been some agreed timetable motions on Government bills. Top hats for points of order and spying strangers have been abolished.

This is a pretty thin list compared with what was hinted at before the election. Whichever party was in power, some draft bills would have been published and the EU scrutiny procedures amended. The real issue is why a Government with every hope of being in power for at least two terms has not sought to reform the House even when it was in its own interest to do so.

Certainly the Modernisation Committee has slowed its pace of activity. From meeting twice a week in 1997 it now convenes about once a month. The impetus for change now seems to lie with other committees and may be driven by internal reforms in the House of Lords, irrespective of any further changes to its composition.

ON THE SHELF

There are five other areas where proposals have been made by committees but on which no action has been taken. The Government has either responded negatively to the proposals or taken no steps to implement them. They are:

- delegated legislation
- financial procedure
- parliamentary privilege
- standards of conduct
- select committees.

Scrutiny of secondary or delegated legislation has long been inadequate. The irony is that a Cabinet Office study in 1999 of how to improve the quality of legislation identified this as a major option for improvement. The theory is that more detailed legislation should not appear in bills but in statutory instruments. A little progress was made in this direction with the new procedure for Deregulation Orders in 1994. It is fully recognised by the Civil Service that Parliament – and not least the House of Lords – will not tolerate any such shift without better scrutiny procedures for statutory instruments. This could be achieved with a little “give and take” – but it is hard for any administration to “give” anything to Parliament, even if there are benefits to be received in return..

On select committees, the current focus of debate is on the Liaison Committee’s report entitled *Shifting the Balance*. Whatever the merits of their specific proposals, it is significant

that senior government back-benchers should produce such a critical report. The Government reply is full of the phrases used by successive Governments to brush aside any real reform of the House of Commons – it was described by Peter Riddell in *The Times* as “arrogant, contemptible and mendacious”. The fact that the House has not been able to debate this report on a motion leading to a decision illustrates how little control the House really has over its own reform.

WHY HAS THIS HAPPENED?

Why has a Government so committed to modernisation and constitutional reform failed to do anything significant about the House of Commons? There are a number of possible reasons:

- there was no clear objective to reform the Commons
- the decision-making structure at the centre of Government is inherently resistant to proposals for change in this area
- key ministers are inclined by experience to caution
- within Whitehall the flow and quality of advice on parliamentary matters has been restricted.

A HYPOTHETICAL STRATEGY

There is a management technique in which the employees of an organisation are asked to list its objectives and then state how they would go about achieving the *opposite* of those objectives. It is said to show that organisations unwittingly frustrate their own interests.

A new Government arriving in power with a large majority and expecting to serve for at least two terms might have a set of objectives for handling Parliament on these lines:

- articulate an approach to the role of Parliament within its wider constitutional reform plans
- include the House of Commons in its aims for modernising Britain
- achieve the smooth passage of good quality legislation
- obtain the timely approval of tax and spending plans
- minimise “unforced” errors
- build up a good credit record on accountability to offset inevitable debits

- reduce the premium on Government defeats by demonstrating responsiveness to parliamentary reaction
- avoid treating one House in a way which gives the other an excuse to reject Government proposals.

CONCLUSION

Much of the current debate about Parliament centres on the relationship between Government and Opposition, between Executive and the Legislature and between the Commons and the Lords. In all cases it is assumed that any gain for one side is unquestionably a loss for the other. Another way of looking at this is to ask what the whole process could do to deliver better governance for the country. Almost all the Modernisation Committee's first report on the legislative process would have been good for the Government *and* for the Opposition, for the Executive *and* for the Legislature. It is not necessarily a zero sum game. There was unique opportunity in 1997 to improve parliamentary government in the UK and that opportunity was not taken.

Tony Benn, in a speech on the retirement of Speaker Boothroyd on 26 July 2000 (col 1123) said "As we move more and more towards a presidential system of government, you [Madam Speaker] have asserted yourself as the Speaker of the House of Representatives". Maybe the House of Commons will become a little more congressional.

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