

Parliamentary public opinion and privilege

Restoring faith in the British Parliament?

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Introduction

In 2009, the British Parliament was at the centre of a media and moral panic. Details of MPs' expenses claims had been obtained by the *Daily Telegraph*. The paper drip fed the stories into the public domain, ensuring maximum coverage for each new revelation and prolonging the media and public outcry. In having elected representatives abuse their expenses system, the UK is hardly unique: the European Parliament has been the subject of a continuous stream of criticism in this respect for many years. But the scale and public anger generated in the UK in this instance mark it out. MPs from both government and opposition, and the front and backbenches were embroiled in the scandal. It saw numerous MPs choose not to contest the 2010 General Election and has even seen criminal charges in a couple of instances. The regard in which MPs, and Parliament more generally, were held, which was not high before the scandal, reached new lows.

The scale of anger made some response unavoidable. The Speaker, Michael Martin, was ousted, and a number of MPs simply decided not to contest the 2010 general election. Attention was also focussed on the regime governing the expenses claims and entitlements, however, in an example of what might be called 'agenda stretch', the scandal has also evidently provided the opportunity for a rather more far-reaching reform of Parliament that extends way beyond the expenses system at the heart of the scandal, and has ushered in some modest but significant reforms to Parliamentary practice. The scandal has been of such a magnitude, it has been argued, that reforms cannot be limited to the immediate problems of expenses, but have required changes to the way parliament operates.

Certainly the reforms fall short of the sorts and scale of reforms recommended by enthusiasts for more extensive constitutional reform.¹ The proposals of the select committee established to consider reforms in the wake of the scandal do not deal with the sort of fundamentals of the British parliament that have long been identified as in need of reform, such as the First Past The Post electoral system or

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¹ E.g. Matthew Flinders, 2010, 'Bagehot Smiling: Gordon Brown's 'New Constitution' and the Revolution that Did Not Happen', *Political Quarterly*, Vol. 81(1)

the appointed House of Lords.² It is certainly true that, whilst the expenses scandal brought in its wake claims that fundamental change was needed, the proposals are very much a case of modifying existing processes. In this respect, it may be that the Liberal Democrat — the party with the strongest commitment to constitutional change — presence in a coalition government will prove to have had significantly greater impact in prompting parliamentary reform (though their Conservative coalition partners have been more reticent in this respect). Nor are the reforms particularly novel, but have been proposed for some time in various quarters: in this sense, the scandal has merely provided a moment of opportunity for advocates of the reforms. But they do mark a reform of parliament that, within the broad, existing arrangements and in the absence of a general consensus about the direction or need for large scale constitutional reform, strengthen the role of the backbenches *vis a vis* the government (and indeed the opposition front bench).

The scandal

As Kelso notes,³ the roots of the scandal are longstanding. The issue of MPs' remuneration has long been politically controversial, with wide public suspicion of excessive pay and freeloading amongst the public. An 'allowance' for MPs was only introduced in 1911, prior to which a private income was a requirement for serving in Parliament. The allowance was subject to *ad hoc* review until the 1970s when it fell under the remit of the Top Salaries Review Board (later the Senior Salaries Review Board). But the TSRB/SSRB recommendations were not simply enacted but required a vote of the Commons. This effectively politicised it, with governments sometimes unwilling to be seen to be endorsing pay increases for MPs whilst the public sector was seeing pay freezes and redundancies and there was substantial unemployment amongst the wider population. Consequently, MPs' allowance has fallen, relative to the rest of the public service over time. In addition, MPs are entitled to Additional Cost Allowances, designed to ensure they do not incur the cost of representing their constituencies. From 1985, this included interest on mortgages of homes in London and the costs of their furnishing and maintenance.⁴ Kelso also notes the light touch regulatory system that accompanied the ACA reimbursements, added to which, they were not made public. This led to situation where:

... on the one hand, MPs pay increases were being suppressed by government so as to avoid bad publicity, leading some to feel, rightly or wrongly, that they were not being paid enough in comparison to other similar professions. On the other hand, the ACA afforded MPs the opportunity, if they wished to avail themselves of it, to claim extensive untaxed expenses which could hugely supplement their income,

² Though these have subsequently come up in the context of the coalition agreement between the Liberal Democrats and the Coalition.

³ Alexandra Kelso, 2009, 'Parliament on its Knees: MPs' Expenses and the Crisis of Transparency at Westminster', *Political Quarterly*, Vol. 80(3).

⁴ The costs of staffing and running their office, communication, travel, etc are covered by other allowance schemes.

and on the basis of a system that operated untroubled by the need to explain exactly what was being claimed for and at what cost.⁵

Unsurprisingly, the scandal precipitated an overhaul of the expenses and allowances system. Parliament, it seemed, could not be trusted to manage such matters on its own behalf. So, in addition to the tightening up of the second home allowance, the Independent Parliamentary Standards Authority was established to administer MPs' pay, allowances, and claims against their allowances, as well as drawing up the regulations governing allowances and procedures for their breach.

The prime minister announced that 'Those steps to sort out the expenses crisis are necessary, but I think we all know that they are not sufficient. We need to go further'.⁶ Apparently, such was the apparent degree of public anger that a more significant response was evidently called for; it was argued that merely tightening loopholes in the allowances system would not be a sufficient.

As such, the scandal has provided a moment of opportunity for those who have been arguing for changes to the way parliament functions more generally. In this sense, it has provides an example of what public policy scholar John Kingdon has famously labelled 'a focussing event' that has allowed parliamentary reformers the opportunity to promote their agenda as a vehicle to improve the wider, public perception of parliament.⁷ In Kingdon's schema, focussing events provide an opportunity for policy entrepreneurs to seize the initiative and use the situation as a vehicle to influence policy change. And so it proved in this instance. Dr Tony Wright, the Labour chair of the Public Administration Committee and a long standing enthusiast for parliamentary reform, wrote to the prime minister suggesting the establishment of a special select committee to investigate the scope for strengthening parliamentary scrutiny of government, reducing the whips' control of parliamentary business, and improving how Westminster connects with the public. Clearly these issues were not of direct relevance to the expenses scandal. But Wright argued 'that the expenses scandal and lack of respect for parliament stemmed partly from the fact that the role of MPs trying to hold the government to account had been reduced to one of "heckling a steamroller"'.⁸

The government accepted Wright's suggestion and the Select Committee on the Reform of the House of Commons ('the Wright Committee') was established in June 2009. Its remit was, amongst other things, to investigate the appointment of the members and chairs of select committees and the scheduling of business in the House. It is in this way that the expenses scandal initiated a process with the

⁵ Kelso, 'Parliament on its Knees', p.332

⁶ HC Deb, 10 June 2009, c795

⁷ John Kingdon, 1995, *Agendas, Alternatives and Public Policies*, 2nd edn, New York, Harper Collins

⁸ Patrick Wintour, 2009, 'Gordon Brown promises to hand power back to parliament', *Guardian*, 11 June

potential to reorient the Commons' operation away from the executive and towards the backbenches.

It is, of course, slightly paradoxical that a scandal of parliament and of parliamentarians has resulted in broader parliamentary reforms which aims to strengthen those who were, as a group, apparently so discredited. But the scandal was not limited to the expenses system, nor to the substantial minority who were seemingly rorting the system. The expenses scandal was portrayed in the media as a crisis of the British parliament more generally. Reflecting on the scandal, Kelso concludes:

...in terms of the fundamentals of how parliamentary democracy functioned, the initial reluctance of MPs to admit they had acted improperly, the inability of both the government and the House of Commons to deal with the matter authoritatively, and the utter miscalculation of the Speaker, Michael Martin, throughout the entire episode, all pointed to a political establishment whose collective political antennae had snapped off. The idea that the events of May 2009 heralded some kind of watershed moment in British politics was not, therefore, entirely without merit.⁹

Select committee reform

Some of the Wright Committee's recommendations relate to the system of select committees, notably (though not only) the method of appointment of MPs to them. In contrast with Westminster parliamentary practice more generally, select committees have evidently been held in rather higher regard than perhaps any other area of parliamentary life.¹⁰ This is in spite of their relative weakness. Select committees in the UK parliament have few of the formal powers seen in parliaments around the world.¹¹ They cannot block or amend draft legislation, for instance: bills go through a separate system of public bill committees. Nor can they block public appointments like the United States' powerful committees. And they cannot block or amend budgets. Their role is limited to scrutinising the policy, administration and finances of government, with each government shadowed by a dedicated select committee. They can hold public or private hearings and receive written submissions, and they have the power to send for 'persons, papers and records' in pursuit of these activities. In addition to these departmental select committees, there are several others with a cross-departmental remit but which operate in along the same lines. These include the committees on Public Administration, Public Accounts, Environmental Audit, and European Scrutiny. More recently, these have been joined by regional select committees.

⁹ Kelso, 'Parliament on its Knees', p.330

¹⁰ Robert Rogers and Rhodri Morgan, 2004, *How Parliament Works*, 5th edn, Harlow, Essex, Longman Pearson, p.335

¹¹ See Ingvar Mattson and Kaare Strom, 1995, 'Parliamentary Committees', in Herbert Doring (ed.), *Parliaments and Majority Rule in Western Europe*, New York, St Martin's Press.

As in many parliaments, the select committees have a reputation for successful bipartisan scrutiny of government. They are composed of backbench MPs, with the proportion from each party reflecting the balance of the parties in the Commons as a whole, meaning that they have a government majority. Committee chairs are also distributed between the parties on the basis of their numbers in the Commons, ensuring a majority are from the government backbenches.¹² However, the select committees also have a strong tradition of bipartisanship and consensus. Most reports are agreed unanimously and dissenting reports rare.¹³

Select Committees seem to be held in generally high regard — perhaps more than anything else that Parliament does. There may be several reasons for this...but probably most of all they show how politicians of different parties can work together.¹⁴

However, in spite of the generally positive views of the select committee system, their operation has, from time to time, been questioned on the grounds of selection of members. Whilst the relative proportion of members of select committees from each party is determined by their numbers in the House, specific members were assigned to select committee posts by the Committee of Selection. However, the Committee of Selection was dominated by the party whips and endorsed the lists put to them by the whips' offices. The Committee of Selection's nominations were required to be ratified by the House, but they were ordinarily passed in their entirety. But controversy has arisen over the nominations, with the suspicion that the whips' control over membership allowed them to reward loyal and obedient MPs, whilst keeping rebellious and those considered 'excessively independently minded' away from committee positions where they might cause the government (or the opposition) public embarrassment. The Liaison Committee — the select committee comprising the chairs of the other select committees — concluded that 'Members have undoubtedly been kept off committees, or removed from them, on account of their views. Oppositions as well as governments have been guilty of this', going on to note that '[i]t is wrong in principle that party managers should exercise effective control of select committee membership'.¹⁵ As if to confirm these suspicions, the chief whip of the recently ousted Labour government announced in 2008 that he would use his control over select committee selection to punish rebellious MPs.¹⁶

¹² The Public Accounts Committee is chaired by a member of the opposition.

¹³ A contrast with the standing committees of the Australian Senate, for example, where any political contentiousness seems to see party lines maintained and dissenting reports produced.

¹⁴ Rogers and Walters, *How Parliament Works*, p.335

¹⁵ Liaison Committee, 2000, *Shifting the Balance: Select Committees and the Executive*, HC 300, 1st Report of Session 1999–2000, London: TSO paras 12–13

¹⁶ Patrick Wintour, 'Chief Whip plans to punish rebellious Labour MPs', *The Guardian* (11 November 2008)

There have been several instances where the Committee of Selection's choices have led to controversy. Following the 1992 General Election, the Conservative MP Nicholas Winterton was not, as anticipated, reappointed to the Health Select Committee, of which he had been chair. The Conservative Party had changed the rules to prevent members serving more than three consecutive terms on a select committee. The suspicion was that the rule had been introduced to remove Winterton after he incurred 'the displeasure of the Conservative whips for his outspoken criticism of government policy, his voting record, and the critical stance adopted by the Health Committee under his chairmanship'. He claimed that the whips '...want to muzzle [independent] people who have something to say from a position of informed knowledge'.¹⁷ In another example, in 2001, Labour MPs Donald Anderson and Gwyneth Dunwoody were not reappointed to the Foreign Affairs and the Transport, Local Government and the Regions Select Committees respectively, of which they had been chairs. Both had presided over inquiries that had been highly critical of the Labour government.

The Anderson/Dunwoody affair saw the Committee of Selection's nominations rejected by the House following an acrimonious debate, and the former Chairs subsequently reinstated. It also prompted an attempt to change the method of selection to reduce the control of the whips. Proposals were drawn up by the Modernisation Committee for the establishment of a Committee of Nomination under the Chair of Ways and Means. It would receive nominations from the parties, based as far as possible on the expressed preferences of the members, and allocate select committee positions on that basis. But when it came to a vote on the proposals, they were defeated amidst rumours of a concerted campaign by the government whips to defeat them.¹⁸ Whilst the unhappiness with the process remained, the opportunity to change it was rejected.

The expenses scandal provided an unexpected opportunity to revisit the appointment process for select committees. The Wright Committee was faced with two potentially contradictory challenges. There was the concern to reduce or remove the power of the party whips from selection. But there was also a desire to maintain a preeminent role for parties: whilst there was a desire to remove the whips from the process as much as possible, there was also a concern to avoid other parties influencing the composition of a party's select committee appointments. For this reason the idea of direct election of select committee members by the whole House was ruled out as an option. Consequently, parties needed to continue to be central to the process.

The Wright Committee's solution was to have separate processes for the appointment of select committee chairs and members. Chairs, it was concluded,

¹⁷ Stuart Weir and David Beetham, 1999, *Political Power and Democratic Control in Britain: The Democratic Audit of the United Kingdom*, London, Routledge, p. 373–4

¹⁸ Greg Power, 2007, 'The Politics of Parliamentary Reform: Lessons from the House of Commons (2001–2005)', *Parliamentary Affairs*, Vol. 60(3), p. 498

should be elected by the whole House. Candidates would require a degree of support from members of their party and would be free to also seek support for their candidacy from MPs from other parties. They would then be chosen by secret ballot, with the further recommendation that ministers, Shadow ministers and front bench spokesmen should abstain from the votes on their portfolio select committee.¹⁹ For the selection of select committee members, the parties would remain central. But instead of selection by the whips, they would be chosen by secret ballot of the parliamentary party. The details of the process would be left to the parties, but they would be expected to be approved as ‘transparent and democratic’ by the Speaker.²⁰

Other than these matters of selection, it was also recommended that the size of all select committees be reduced to 11 from 14 to increase the competition for places and, consequently, to improve diligence. Two term limits have also been placed on chairs.

With the election of chairs and members through the new process having only taken place in the months following the general election on May 6 2010, it is too early to make any definitive statements about their impact on the way in which select committees, or indeed, the parliament as a whole operate as a result. The changes to the select committees could be argued to be of limited impact however. They do not, after all, increase their very modest formal powers. But formal powers are only one aspect that determines committees’ influence.²¹ Also important is the perception of the legitimacy and authority by ministers and by parliament more generally and there is evidence to suggest that they are seen as significant actors in the parliamentary process.²² Insofar as the changes increase their perceived independence and legitimacy then they may well increase their capacity to hold the executive to account more effectively.

Managing parliamentary business

The other significant change to parliamentary operations related to the way in which business in the House was scheduled. As with the example of select committee reform, scheduling of business was an area of some longstanding controversy. However, as with the select committee example, it is an area not connected in any immediate way to the perceptions of parliament that developed from the expenses scandal and provides more evidence of the ‘agenda stretch’ noted above.

¹⁹ Reform Committee, *Reforming the House*, paras 83–85

²⁰ Reform Committee, *Reforming the House*, paras 87–89

²¹ See John D. Lees and Malcolm Shaw, 1979, *Committees in Legislatures: A Comparative Analysis*, Durham, NC, Duke University Press

²² E.g. Andrew Hindmoor, Phil Larkin and Andrew Kennon, 2009, ‘Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997–2005’, *Journal of Legislative Studies*, Vol. 15(1)

The issue of the management of parliamentary business had been particularly noticeable in the difficulties relating to the recall of parliament in September 2002, during the long summer recess, to debate the UK's military involvement in Iraq. But it has also been an issue of more general concern. There was a feeling that time was not used effectively, too often wasted on drawn out debates on subjects of little interest whilst ignoring more current and relevant matters.²³ And whilst there was protected time for government business and for opposition and private members' business, there was very little time allocated to other matters, such as debates on committee reports.

It has also been argued that the problems of managing parliamentary time have been exacerbated by the introduction of programming motions during the first Blair government, which set, often quite tight, timetables for the progress of bills through the Commons. Academic Philip Cowley has argued that, in restricting time for debate, these programming motions may have increased the rate of backbench rebellion, with MPs facing limited opportunities for later debate and amendments.²⁴ Moreover, control of the parliamentary agenda — what gets debated (and voted on), when and for how long — will clearly have a substantial impact on the decisions parliaments are able to make.

The initial proposals for the remit of the Wright Committee confined it to consideration of the scheduling of non-government business. But it was argued that the scrutiny of legislation is a matter for the House and not the government. The government accepted this and the original motion to establish the committee was replaced with one allowing the committee to consider the scheduling of all business in the House:²⁵

'There is a strong case for regarding all time as the House's time. It is not the Government that seeks debate but the House...There is not in reality the stark dichotomy suggested between business taken in time controlled by the 'Government' and other business'.²⁶

At the establishment of the Wright Committees, certain types of business have time allocated to them in Standing Order 14. For example, 17 days a session were allotted to the Leader of the Opposition, three to the leader of the third largest party, 13 Fridays to Private Members' business and so forth. Significantly, because Standing Order 14 allocates specific numbers of days to various types of business and because the length of a session can vary significantly, the actual proportion of

²³ Reform Committee, *Reforming the House*, para. 165

²⁴ See Select Committee on Modernisation of the House of Commons, 2007, *Revitalising the Chamber*, HC337, 1st Report of Session 2006–07, London, TSO, Ev.24

²⁵ Lucinda Maer and Richard Kelly, 2010, *Establishment of the Select Committee on Reform of the House of Commons*, House of Commons Library Standard Note SN/PC05140

²⁶ House of Commons Reform Committee, *Reforming the House*, para. 129

time, rather than the precise number of hours, can also vary significantly.²⁷ Standing Order 14 also states that ‘Save as provided in this order, government business shall have precedence at every sitting’,²⁸ giving government control over scheduling of business outside time specifically allocated to others types. The reality is that business has usually been established through ‘the usual channels’ — the informal, behind the scenes, bilateral negotiations that take place between those who have been responsible for managing parliamentary activity such as the chief whips of the government and opposition, and the Leader of the House and their opposition Shadow.²⁹ In addition to the sorts of complaints already mentioned, negotiating business through the usual channels was criticized as lacking transparency.

However, as well as concern to open up the scheduling of business to be more transparent and flexible, the Committee was also mindful of the need for government to be able to schedule its own legislative programme: ‘It is entirely right that a democratically elected government should have a priority right to put its legislative and other propositions before the House at a time of its own choosing, and to be able to plan for the conclusion of that business’.³⁰

The ultimate recommendation was to replace the negotiations through the usual channels with the two new business committees: the House Business Committee and the Backbench Business Committee. The establishment of the Backbench Business Committee would see management of non-Ministerial business removed from the government and passed to a new body comprising backbenchers elected by their peers and meeting weekly. The House Business Committee would include the members of the Backbench Committee as well as frontbench members (presumably represented in the usual channels). But opinion within the Wright Committee was divided, with a minority opposed to the establishment of the House Business Committee on the grounds that it ‘shifted the balance of power from one democratically and directly elected elite (the Executive) to a less directly accountable and less expert elite (backbenchers)’.³¹

However, whilst the proposals for the Backbench Business Committee received support from the Labour government, the reception of the proposed House Business Committee was more equivocal. Whilst endorsing the principle, the government considered it too dramatic a shift. It was not even included in the motions on the Reform Committee’s proposals put to the House for vote. The agreement between the parties comprising the new coalition government commits them to ‘bring

²⁷ Meg Russell and Akash Paun, 2007, *The House Rules? International Lessons for Enhancing the Autonomy of the House of Commons*, London, Constitution Unit, p. 15

²⁸ House of Commons Public Business Standing Order No.14

²⁹ See Michael Rush and Clare Ettinghausen, 2002 *Opening Up the Usual Channels*, London: Hansard

³⁰ Reform Committee, *Reforming the House*, para. 162

³¹ Reform Committee, *Reforming the House*, p.95

forward the proposals of the Wright Committee...in full'.³² However, a degree of reticence remains. The Coalition agreement committed the new government to establishing the Backbench Business Committee in its first year. But prior to the election, the Conservatives were in favour of a Business Committee in principle but would not support a specific deadline for establishment. The agreement states that it will be established within three years.

Conclusion

The Wright Committee also made recommendations on such matters as election of the Chairman and deputies of Ways and Means. These, in conjunction with the areas discussed in more detail above, could be regarded as falling short of the claims of the root and branch reform that seemed to be suggested in the immediate wake of the expenses scandal. Government still controls the scheduling of business, and select committees still have no more formal powers than before: as Flinders notes, 'the political mainframe has not been reconstituted'.³³

However, if one ignores the claims of bold reform, it may be that a process of modest change has been put in place. It is still too early for the impact of the recent changes to be felt on parliamentary practice. But, with the backbenches controlling backbench business, it certainly has the potential to evolve from the poorly attended (and little noticed) sideshow that it too often appears to be to a more vigorous forum for debating current issues. Select committees are already seen as an effective part of the parliamentary process and whilst there was suspicion that potential troublemakers were omitted from committee assignments and chairs, and this no doubt occurred on occasion, there is no evidence that it happened systematically.³⁴ Nonetheless, the removal of whips from the selection process could instil a new self-confidence in them and allow them to scrutinise government with less fear of ramification. Furthermore, there is still the possibility that the House Business Committee will be established during the current parliament. Removing control of the parliamentary agenda from government completely has clearly been resisted because it actually might constitute something of a watershed. ▲

³² HM Government, *The Coalition: Our Programme for Government*, May 2010, www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf p. 27

³³ Flinders, 'Bagehot Smiling', p. 58

³⁴ Andrew Hindmoor and Phil Larkin, 2010, 'Voting Crimes and Committee Punishment: Appointments to select committees, evidence of front bench control?', paper to Political Studies Association Annual Conference, Edinburgh, 31 March.