

An Optimum Model for the Governance of Parliaments?#

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ABSTRACT

In developed parliamentary democracies, the responsibilities of parliamentary administrations have grown considerably. This paper considers how these should be managed in the interests of an independent parliament and its capacity to hold the government to account. It proposes that three models of parliamentary administration can be identified: the Organic model, the Corporate model and the Commission model and assesses their contribution in this context. It points to some inherent problems confronting parliamentary administrative reform and suggests a response in the Australian context where, in contrast to other achievements which push its Parliament high up the democratic performance scale, its administrative arrangements set it apart from the mainstream.

1. Introduction

In Australasia there appears to have developed a unique form of parliamentary administration. This is characterized by a Chief Executive Officer (CEO),¹ Department of Parliamentary Service(s) (DPS) with coequal powers with the Clerk(s), and by the absence of effective accountability of that CEO or those Clerks to the stakeholders, the Members of Parliament.² This gives the CEO in particular, extraordinary powers and prerogatives in relation to the services available to a parliament at a time when these are under increasing budgetary pressure and at a time, too, when they have become more significant to the capacity of a parliament to hold its government to account.

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¹ In Australia this CEO has the title Secretary, in New Zealand General Manager.

² For the most part generalizations about the Australian model of parliamentary administration in this paper refer to the New Zealand Parliament and the Australian Federal Parliament.

‘The true measure of a legislature is how well it makes public policy on behalf of the citizens its members represent, and the quality of its oversight of the executive’.³ Budgetary independence apart, examination of parliaments’ capacities in this respect tends to lead to a focus on such issues as the representative nature of a parliament, the control of parliamentary business, and the autonomies and resources available to committees. However, as parliamentary administration evolves from managing parliamentary buildings and its facilities to include responsibility for Hansard; IT; parliamentary outreach and extension; and parliamentary libraries and research services — that is for those supports which distinguish the quality of effective democratic parliaments⁴ — questions necessarily arise about their governance and control.

For Westminster-style parliaments, the precedent was — and perhaps still is — set by the House of Commons’ efforts to address the question of the development of effective parliamentary administration. Beginning with the House of Commons Administration Act of 1978 and continued with the Ibbs Report into the administration of the UK House of Commons in 1990, the Braithwaite Report in 1999 and the Tebbit Report in 2007, there has been a process of ongoing review to reflect both the increasing demands being made upon parliamentary administration and the corresponding requirement for the administration of the parliament to be fully and openly accountable for the resources required to deliver its services. More recently the question of parliamentary administration has been taken up and promoted by the Commonwealth following the declaration of the Latimer House Principles in 2004. These set out the framework for good practice governing relations between the executive, the judiciary and the legislature and went on to make a significant link between the style and nature of a parliament’s administration and a parliament’s capacity to be independent of the government and to hold that government to account.

The Latimer House Principles were followed by a recommendation to introduce corporate governance.⁵ To examine the issues arising, this paper identifies three models of parliamentary administration, the Organic, the Commission and the Corporate and considers them against Latimer House standards. Taking off from

³ ‘Toward the Development of International Standards for Democratic Legislatures: A discussion Document for Review by Interested Legislatures, Donors and International Organizations’, National Democratic Institute, January 2007, p. 1. Parliaments, of course, do not make policy but scrutinize its implementation.

⁴ See the work of Robinson and Miko on typologies of parliaments, the link between and the quality and range of support services available to them and where a parliament sits on the democratic scale from rubber stamp parliament, nascent legislature, informed legislature to independent legislature, WH Robinson and F Miko, ‘Parliamentary Development Assistance in Central Europe and the Former Soviet Union: Some Lessons from Experience’, in L D Longley (ed.) *Working Papers on Comparative Legislative Studies*, Research Committee of Legislative Specialists, Appleton, Wisconsin, 1994, pp 409–428.

⁵ ‘Administration and Financing of Parliament’, a subsequent Study Group Report by the Commonwealth Parliamentary Association and the World Bank Institute, published by the Commonwealth Parliamentary Association, November 2005, www.cpahq.org p1.

benchmarks already identified for assessing parliamentary administration,⁶ the paper goes on to point to some of the inherent problems of parliamentary administration and its reform and how these have been addressed in some cases.

One objective is to contribute to a stock take of best practice or practice conducive to best outcomes from a democratic parliament point of view. Another objective is to assist thinking about movement forward and managing obstacles both apparent and real, such as those which characterise the Australian Parliament, recognizing that, unlike the unique example of Scotland, which perhaps can be put up as an optimum model of parliamentary administration, parliamentary administrative design in most cases does not start with a blank sheet. Rather, it must build on a national, constitutional, historical and circumstantial inheritance and work with contemporary political — and institutional — reality. The model proposed for Australia later in this paper therefore is not the ‘best’, ‘blue sky’ proposal imaginable but one grounded in the reality of Australia’s parliamentary inheritance.

2. Three Models of Parliamentary Administration

Putting aside other possible concepts or arrangements for parliamentary administration such as the Quaestor model which is characteristic of the French and some other European parliaments,⁷ for the purpose of this analysis in a Westminster-style parliamentary context, three general models of parliamentary administration can be usefully identified to assist analyze some key issues arising for parliamentary administration: the Organic, the Commission and the Corporate. These are not mutually exclusive and some parliaments may share features of all of them. The Parliament of the United Kingdom in Westminster, and indeed all its recent regional offshoots, for example, fall firmly into the Commission category because, although they boast their corporate governance, that corporate governance is subservient to the direction of the stakeholders, the MPs, represented in a Commission which has decision making powers. Thus examples of all three models may feature corporate governance or aspects of corporate governance and retain organic vestiges. The choice of the term ‘Corporate’ for one model of parliamentary administration, however, is made because in this case the corporate governance driver is dominant and this, potentially at least, at the expense of the proper purposes and priorities of a parliament.

⁶ See June Verrier, *Benchmarking Parliamentary Administration: The United Kingdom, Canada, New Zealand and Australia*, *Australasian Parliamentary Review*, Autumn 2007, Vol.22(1): 45–75.

⁷ In the Quaestor model, three MPs are appointed, two from the major parties, to control the budget of the National Assembly. They report to a Bureau under the authority of the President of the Assembly. The chambers manage their budgets as they see fit and do not come under the jurisdiction of the Audit Court. The National Assembly Treasurer is a parliamentary official responsible to the Quaestors and prepares draft budgets which are debated in a joint appropriations committee of the Quaestors of both chambers.

The Organic Model

The central feature of organic parliamentary administration is that it evolves with the parliament with little or no mechanistic intrusion into the style of its administrative arrangements. Concerned primarily with the physical aspects of running and maintaining a usually major national public building and providing associated facilities, issues arising are naturally given a low priority by Members of Parliament whose inevitable focus is in the business of the Chamber. The stamp of this style continues even as the responsibilities of parliamentary administration evolve to include management of ‘democratic parliamentary pillars’ — Hansard, libraries and research services, IT, parliamentary education and outreach, and the staff of parliamentary committees.⁸

In the organic model, the Clerk/Secretary General is the CEO equivalent, and reports to the Presiding Officer(s) (the Speaker and the President). In practice, however, he has considerable autonomy over all aspects of business outside the Chamber. In this model, even with this range of responsibilities, parliamentary administration is likely to come a poor second to the role the Clerk plays as advisor in and guardian of the interests of the Chamber and protector of the Speaker, the Presiding Officer (PO).

It is the Clerk’s job to ensure the smooth running of a building of increasingly mixed businesses with the priority of preventing these matters from intruding onto the time of the PO(s). Typically he discourages his PO, much less other Members of Parliament, from being involved and ensures that the parliament’s administration runs sufficiently smoothly for there to be no need for them to do so. Apart from a House committee which may have oversight of one or another aspect of administrative business and which has advisory and not decision-making powers, there is little opportunity, and little perceived need, for stakeholder — member of parliament — involvement. The Parliament of Western Australia provides an example with member involvement in its governance through a committee of a hundred years’ standing with no terms of reference and no records which sits in an advisory capacity on the bar and the canteen. The Australian Federal Parliament provides another, boasting a joint house Library Committee dating from Federation which, in spite of recent attempts to strengthen it, remains a large, cumbersome body which meets infrequently, has no decision making powers, no public records, and can serve only as legitimisation after the fact.

The budgetary outcome for the organic parliamentary administration is determined by the government and its staff are mainstream public/civil servants. The Organic parliamentary administration is likely to be one where there has been little or no effort to introduce effective commission or corporate-style structures to reflect the increasingly sophisticated and demanding legislative and scrutiny environment or

⁸ Control of ‘parliamentary pillars’ is one of the five key benchmarks for assessing parliamentary governance identified in June Verrier *op cit*.

the professional expertise required to manage many of its functions. There may have been the recent introduction of annual reporting to the Parliament and external auditing of its accounts making for a 'modified organic' model, but there is very little transparency of its governance machinery. Authority remains firmly vested in the Clerk at the apex of the parliamentary administrative machinery.

A modified organic model of parliamentary administration may have introduced corporate governance arrangements improving the efficiency and effectiveness of its administration, but with no involvement of the stakeholders, the Members of Parliament. Parliamentary administration remains a convenient and close duopoly between the Speaker and the Clerk of the House. Albeit operating as a Department of State-equivalent rather than an independent legislature, this may work well, particularly in unicameral parliaments, or appear to work well. With no effective accountability to the client, however, there are no safeguards or safety nets to ensure that parliamentary administration remains focused on the priorities of a parliament as these may be interpreted by its members. With bureaucratic (albeit statutory and tenured) not political leadership — the Clerk is the CEO — it is unlikely to reflect, much less advocate for, the independence of the parliament from the government.

All parliaments begin this way — and many continue this way, often for political or practical reasons. In addition, when new parliaments are established or supported as in Timor Leste, Afghanistan and Iraq for example, this model is introduced by default both because little thought is given to parliamentary administration *per se* and because this Clerk dominated model is the one most likely to be recommended by Clerks who frequently act as primary advisers.

The Commission Model

The Commonwealth's recommendation to parliaments to introduce corporate governance mirror the kinds of improvements recommended in the three reports on the House of Commons administration, i.e. to improve coordinated management and decision-making, strategic direction and the use of modern management techniques, and all of this under the control of the Members of a self-governing parliament. This latter is the essence of the Commission model.

The key characteristic of the Commission model of parliamentary administration is that decision making power is vested in neither the Speaker (PO) nor in the Clerk/CEO but in a cross party committee of Members of Parliament. A Commission composed of usually senior members of parliament from across the political spectrum,⁹ identified in legislation as the legal corporate body responsible

⁹ In the case of the House of Commons, it is made up of the Speaker as ex officio chair, the Leader of the House, the Leader of the Opposition, in practice the Shadow Leader of the House who also chairs the Audit Committee, and three Members nominated by the House, who may be Ministers and in practice are one member from each of the three major parties. One of these, in practice the

for the administration of the parliament, has the statutory power to make decisions for the administration of the parliament, that is, its non-chamber business. The Commission is chaired by the Speaker *ex officio*.

The rationale for the Commission is to underpin the independence of the Parliament. In the case of the Republic of Ireland, for example, the Minister for Finance said in the second reading of the Houses of Oireachtas Commission Bill 2002:

The Bill envisages the transfer of various functions from the Ceann Comhairle (Speaker of the House/Dail Eireann) and the Cathaoirleach (Chairman of the Senate/Seanad Eirann) and the Minister for Finance to the commission. In this way the commission shall determine the funding, staffing and organisation of the Houses of the Oireachtas.¹⁰

... The Commission is not a 'creature' of the Houses under the Constitution as, for example, are Oireachtas Committees — it is an independent corporate body, established by law.¹¹

The Minister for Finance retains powers for pay and pension matters affecting Members and staff, in parallel with those of the civil service.

Another defining characteristic of the Commission model is the adoption of a corporate management framework. This involves delegation of the management and delivery of services to the Clerk, the Chief Accounting Officer, who is at the apex of a strong corporate and professional machinery for administration and accountability responsible to the Clerk and, through him, to the Commission. In the latest review of the House of Commons administration, for example, Sir Kevin Tebbit's recommendations included greater control over strategy for the Commission without being drawn into micro-management, strengthening the role of independent audit for this self-governing institution which votes its own budget, and strengthening corporate management by enlarging the Office of the Clerk:

At a political level, the challenge for the Commission is to find a way of preserving the necessary independence of a self-governing Parliament, while demonstrating robust controls over the use of public resources in delivering the House Service's three primary objectives of serving the House, its Members and the wider public.¹²

The Commission charter, as for example spelt out in that of Scotland, is the provision of strategic direction and priority setting. In the House of Commons, it is

Liberal Democratic representative, acts as spokesman for the Commission and answers oral and written parliamentary questions on its behalf.

¹⁰ Dail Eireann, Vol. 553, 26 June 2002, p. 6.

¹¹ Annual Report of the Houses of the Oireachtas Commission, 1 January 2005, 31 December 2005, p. 5.

¹² 'Review of Management and Services of the House of Commons', Report by Sir Kevin Tebbit KCB CMG, published on 25 June 2007 by authority of the House of Commons London, The Stationary Office, p. 69.

assisted by a Finance and Services Committee, also composed of MPs, which prepares estimates for House administration, monitors financial performance and reports on the financial implications to the Commission. Both are serviced by a Board of the heads of the different departments of the Parliament, who take responsibility for the professional management of their departments, chaired by the Clerk of the House. The Commission meets regularly, puts its business on the public record and, as required, acts as spokesman and advocate for the parliament and conduit for members of parliament about the services provided to the parliament. It also makes an annual report to parliament providing the opportunity for public debate.

The Commission model of parliamentary administration has taken to Members of Parliament the decision making powers of the parliamentary administration, including for the formulation of its budget, strategic direction and priority setting and advocacy for the Parliament. It is characterized by a parliamentary service separate from the mainstream public/civil service, has introduced an accountable corporate governance structure with appropriate delegations to the professionals for the management of their departments, and placed an appropriately accountable Clerk firmly at the apex of the structure as CEO.

Most contemporary reviews of parliamentary administration result in the establishment of the Commission model.¹³ Although they have all developed in different ways, the primary examples of effective Commission models are Canada, the UK, the Republic of Ireland, the regional parliaments of Northern Ireland, Scotland, Ireland, and Wales. Queensland between 1988–96 and New Zealand from 1996–2000 were characterized by the Commission model but these can now more accurately be described as fitting into the Corporate Model category.

The Corporate Model

It is difficult to find a coherent or meaningful — or even an agreed — definition of corporate governance *per se*.¹⁴ According to the Queensland Parliament, corporate governance is ‘...the manner in which an organisation is controlled and governed in order to achieve its goals. Generally, it incorporates a number of dimensions including management structure, management systems and management

¹³ In his paper submitted to the Meeting of Society of Clerks-at-the-Table in Commonwealth Parliaments, New Delhi, India, September 2007, p. 22, Paul C. Belisle, Clerk of the Senate and Clerk of the Parliaments, Senate of Canada, makes the point that Kenya and Uganda have both recently transformed their traditional, informal arrangements into robust governance structures.

¹⁴ So said the authors of the Review of the Corporate Governance of Statutory Authorities and Office Holders, June 2003, in using this definition for their purposes. ‘Corporate governance encompasses the arrangements by which the power of those in control of the strategy and direction of an entity is both delegated and limited to enhance prospects for the entity’s long-term success, taking into account risk and the environment in which it is operating.’

standards.’¹⁵ This definition presents corporate governance as *description* of how a parliament is administered.

In its Report on ‘The Administering and Financing of Parliament’¹⁶ recommending the introduction of corporate governance, and making a specific link between this achievement and the capacity of a parliament to hold its government to account, the Commonwealth Parliamentary Association/World Bank Institute, however, uses the term *prescriptively*. It concluded that the experience of the UK and other Commonwealth countries supports the view that administrative independence of a parliament is best achieved through the establishment of parliamentary corporate bodies. By this it means corporate bodies of parliamentarians and not of parliamentary public servants.

In the Corporate model of parliamentary administration, the roles of Clerk/Secretary General and Chief Executive/Accounting Officer have been separated, the latter a CEO more likely to have a generalist management background than to be a product of the parliament. Statutory power for the administration of the parliament is vested in this CEO such that he can make decisions on the services and supports available to the parliament with minimal — or ineffective — opportunity for input from the stakeholders, the MPs.

The CEO of (usually) a Department of Parliamentary Service(s), is accountable solely to the Speaker. He has co-equal power/status with the Clerk(s) but in practice has control over at least some of the resources the Chamber(s) require to do their job. There may be advisory committees of members of parliament on different aspects of the parliament’s administration, and even a Commission or Commission equivalent as in New Zealand, but in the Corporate model these do not have decision making power. Because they are fragmented, nor do they have the capacity — or authority — to assist set priorities or determine strategic direction for parliamentary administration as a whole.

In the Corporate Model, Members of Parliament are not in control of their own governance arrangements, have no decision making authority over the resources and services to be provided to support the business of the parliament and most often learn about decisions on these only after they have been made. And transparency appears to be a major casualty: the only publicly available information on the administration of these parliamentary administrations appears to be that of the after-the-fact annual report.

In these circumstances, separate appropriations arrangements for the Parliament make little difference to a parliament’s capacity to determine its own budget. Unsurprisingly, parliaments which do not have control over their own budgets have

¹⁵ Queensland Parliamentary Service Annual Report 2005–06, p. 11.

¹⁶ CPA/WBI Report, *op. cit.*

fewer resources available to them.¹⁷ Also unsurprisingly members even of a separate parliamentary service will be constrained — and naturally guided — by the budgetary and other policies of the government of the day.

The expectation is that without compromising autonomy, the corporate body should keep its policies in step with broad government objectives, e.g. budget restraint, employment equity etc.¹⁸

As in the Organic and the Commission models, members of the separate parliamentary service, by definition, cannot be advocates for the Parliament or protect its autonomies when these are challenged by a government of whom they are, ultimately, the employees. As public (albeit parliamentary) servants they cannot, either, challenge the Speaker, their Minister equivalent, just as the Speaker, in turn, as a member of the Government, inevitably playing a ‘highly politicized’¹⁹ role, is heavily handicapped as defender of the interests of the Parliament.

In the Corporate model, then, corporate governance determinants drive decision-making, potentially at the expense of the needs of its members and the supports they require to assist them hold the government to account.²⁰ If the corporate approach means the shift from the traditional, often archaic or inefficient practices of parliamentary administration to more contemporary and efficient business practices, including of placing the business management of parliaments in the hands of those appropriately qualified to manage them, this is likely to be all to the good if, but only if, it is designed to be properly accountable to its political masters, the Members of Parliament. For this reason, in the most recent *Review of the Management and Services of the House of Commons*, the Tebbit Report,²¹ the importance of strengthening corporate governance is recognized and recommendations made accordingly.

Interestingly, in this latest review of the House of Commons’ administration, however, there is continued resistance to the introduction of the corporate model *per se*, and a strong preference instead for a strengthened corporate management structure subordinate to the Clerk as CEO and, through him, to the House of Commons and its members through a decision-making Commission. Thus, though strengthening the corporate function has been a core theme of each of the House of

¹⁷ John Power, ‘An Overview of the Statutory Bases to the Administration of Legislatures’, Research and Library Services of the Northern Ireland Assembly, prepared as a supporting document to the CPA Africa Regional Workshop on the Administering and Financing of Parliament (2006) and specifically for the workshops concerning statutory regulation, p. 4.

¹⁸ ‘Corporate Governance Executive Summary’, paper presented to the Society of Clerks at the Table Annual meeting in New Delhi in September 2007.

¹⁹ This is a conclusion drawn in ‘Towards the Development of International Standards for Democratic Legislatures: A Discussion Document for Review of Interested Legislatures, Donors and International Organizations’, January 2007, p. 24.

²⁰ The fact that democracy costs and may not lend itself to usual cost-effective assessment was debated in June Verrier, ‘Benchmarking Parliamentary Administration...’, *op. cit.*

²¹ *Op. cit.*

Commons' three administrative reviews, the separation between Clerk and CEO which characterizes the Corporate model has been rejected on all three occasions. This is because the result is to elevate the corporate function to a status equal or more equal to the business of the chamber(s) and creates the potential for a conflict of interest between them.

The Corporate model was introduced into New Zealand in 2000, Australia 2003 and the state of Victoria also in 2003.

3. Inherent Problems of Parliamentary Administration Reform

The record clearly shows that parliamentary administrative reform is difficult — and different in each parliament which considers it. It is now, however, an issue firmly on the agenda as one which is relevant to a democratic parliament's capacity to perform. Much is made of the obstacles confronting parliamentary administrative reform, of which the following represents perhaps the most significant for the purpose of this review. A number of parliaments have demonstrated, however, that where there is a will to do so, these obstacles or difficulties can be managed.

(i) Relevance, priority, critical mass, time and focus

It is typically notoriously difficult to stimulate any sustained interest among Members of Parliament, or indeed anyone else, in what the Speaker of the Parliament of New Zealand, for example, recently described as 'this arcane business of parliamentary administration',²² and Sir Kevin Tebbit as 'the prosaic issue of how the services to support the institution of the House of Commons and Members of Parliament are governed, managed and delivered'. However, this, he said, was 'vital in itself, given the importance of a well-functioning Parliament in the affairs of the nation'.²³

Tebbit went on to add that parliamentary administration encompassed a set of issues separate from the concurrent debate in the United Kingdom about Parliamentary process and procedure,²⁴ and from constitutional policy prescriptions. However, it is this distinction: that parliamentary administration has nothing to do with the business of the chamber *per se*, which is perhaps the single most significant reason why parliamentary governance attracts little interest and has traditionally been considered to be of less account.

²² Private correspondence with the author.

²³ Tebbit, *op.cit.* p. 3.

²⁴ The final report from the Constitutional Unit's research project on 'The Governance of Parliament': The House Rules? International lessons for enhancing the autonomy of the House of Commons', by Meg Russell and Akash Paun, was released on 16 October 2007, three months after the Tebbit Report. As its title suggests, this report is about the House agenda, its internal appointment processes and its rules and procedures and how these can be improved to give more power to the backbench.

Why should MPs be required to take an interest and a role in parliamentary administration when, particularly in small parliaments, coverage of chamber committees is difficult enough, and when parliamentary and constituency business is increasingly demanding, when there is an option — delegation to a trusted Clerk or to a CEO, Department of Parliamentary Services?

Appreciation of the fact that parliamentary administration has evolved to include the development and support of those services featured in Robinson and Mico's typology of parliaments which push a parliament to the high performance end of the democratic spectrum,²⁵ and appreciation, too, of the logic of the Latimer House Declaration and all that flowed from it in terms of recommendations about the relations between legislatures and executives, including the relevance of the style and the nature of a parliamentary administration for the independence of the parliament from the executive, could change this situation. But this is only likely to happen if there is leadership from the top, perhaps in the context of a new government with a commitment to parliamentary reform, which delegates responsibility for the issues arising to a cross party group of senior Members of Parliament.

(ii) Provider Capture/ the Democratic 'Efficiency' Paradox

Parliamentary administrative reform can be confounded by the argument that the usual rules cannot apply. This is because, as Sir Kevin Tebbit put it in his Report, the Parliament is a unique institution, where the application of modern management and planning would be inappropriate, given the difficulty of quantifying 'outputs' and performance, and that to try to do so would, in any case, be frustrated by the all-pervasive influence of politics ...²⁶. But Tebbit seeks to strike a balance between those who would argue on the one hand that democracy is inherently inefficient, the parliament is different, and a place where the same rules do not apply and, on the other, those for whom the management focus of efficiency, effectiveness and savings are the primary or the only determinants relevant for an administrative structure. He states that the objective of this latest review has been 'to respect the status and character of the House and preserve the special qualities of the House Service, while seeking to build organisational and executive capacity and promote effectiveness, accountability and value for money'. The House of Commons experience demonstrates that this job can be done.

(iii) Clerks/CEOs and Conflicts of Interest

There is an inevitably unequal power relationship between MPs and even the most senior officials who serve them which doubtless contributes to the reluctance — or natural reserve — of officials to challenge the (elected) Speaker or to take the lead in proposing arrangements/reforms for parliamentary administration. There may also be a vested interest in the status quo. That review of parliamentary

²⁵ Robinson and Mico, *op. cit.*

²⁶ Tebbit, *op. cit.* p. 3.

administration has, until recently, not been put on the agenda by Clerks²⁷ could be a result of what in one view could be seen as protection of their privileges and prerogatives, for Clerks/Secretaries General have traditionally enjoyed a unique autonomy. Accountable only to a Presiding Officer and this often more often in the breach because parliamentary administration is not their priority, and as the experts with the institutional memory and the networks to consolidate their position, their advice will almost invariably be taken. This situation has generally worked well for parliaments and it is not surprising that Clerks are unlikely to generate the kind of change which recommends either an alternative administrative head of power or an overlay of accountability to a cross party committee of MPs which, by definition, will be out of their control.

There is another dimension to potential conflict of interest which Scotland understood and reflected in the administrative arrangements agreed for its new Parliament. The first task for the CEO Scottish Parliamentary Services was to put into effect the intent of the legislation creating the Scottish Parliament from an administrative point of view. This included establishing the institutional and accountability machinery which would scrutinize its administration. To guarantee the integrity of these arrangements, responsibility for their establishment was vested in an implementing CEO on a three year contract. His task was to put the legislative intent for the parliamentary administration in place before a permanent CEO was appointed.

(iv) Combined services

Parliamentary administrative reform has often been more about savings and efficiencies and modern management style than it has been about creating or strengthening the means to assist the parliament's independence from the government. In this context combined services in bicameral parliaments come into focus as target for 'rationalisation'. Common sense efficiencies suggest the development of joint facilities across a parliament, its departments and chambers. This, naturally, should not be at the expense of the autonomy of the parliament or its chambers. That the development of common services is often resisted, however, suggests a failure to draw a clear line between parliamentary administration and the business of the parliament, or to provide safeguards which satisfy chamber concerns. The issue then is how this is to be done.

²⁷ The Latimer House Principles and the studies which followed it stimulated an interest not apparent in the previous thirty five plus years of meetings of the Society of Clerks at the Table for example. A Clerks Conference in Nigeria in 2006 addressed the issues as did the 38th annual meeting in New Delhi in September 2007, when Paul C Belisle, Clerk of the Senate and Clerk of the Parliaments Senate of Canada, presented a paper on 'Corporate Governance in the Parliamentary Setting'. This usefully canvases the issues arising for parliaments and was accompanied by a questionnaire to be filled in by parliaments. When completed and analysed, this will further the information available on governance arrangements in a many more parliaments than is currently the case.

The UK provides a model, as does Victoria, on paper at least, with its short lived 'One Parliament' project. In the UK, a *Parliament (Joint Departments) Bill* (HL), Bill 94 of 2006–07²⁸ has been introduced to approve the establishment by the corporate officers of the two houses, the Clerks, of a joint department, the Parliamentary Information and Communication Technology (PICT), and other such joint departments in the future. This is a significant change to the way the two Houses have previously overseen the provision of joint services.²⁹

The debate on the Bill in the House of Lords reflected typical fears: would there be disagreement between the corporate officers, the Clerks? Would priority of service be given to one House over the other? And so on. But reassurance came from extant governance arrangements. The critical point about this department, and others which may follow in the future, is that the Clerks' powers to establish and to divide, amalgamate or abolish joint departments, and to make alterations which change 'the overall character of the services provided by the joint department' can only be exercised if the House of Commons Commission and the House Committee of the House of Lords, its Commission equivalent, approve.³⁰ This allows the 'joint-ness' developments to remain firmly under the control of the Parliament and its separate chambers, such that no more cooperation will be determined, or such 'efficiencies' made, than are consistent with the identity and autonomy of the separate chambers, or are 'compatible with the distinctive cultures of the two Houses and their inclination to be self-reliant'.³¹

(v) *De jure* intent and *de facto* effect

One result of the lack of sustained interest in parliamentary administration by Members of Parliament and indeed others, is the accretion of disproportionate power by the Clerk in the Organic Model and by the CEO in the Corporate model. Another is the often wide margin between the intention of the legislation about the administration of a parliament and its effect. Examples can be found in the cases of Australia and New Zealand. This may be the result of the delegation of too much power and authority to that CEO, particularly at the implementation stage of new arrangements, and failure to establish effective machinery for follow up, including for independent scrutiny, evaluation and review.

In his recent comparative analysis of the statutory bases of the administration of the legislatures of the UK (including Scotland and Wales), Canada, the Republic of Ireland, New Zealand and Australia, John Power concluded that the Australian

²⁸ The parliament (Joint Departments) Bill (HL Bill 29 2006–07) was passed by the House of Lords in April 2007.

²⁹ See 'The *Parliament (Joint Departments) Bill* (HL) Bill 94 of 2006–07, House of Commons Library Research Paper 07/44 17 May 2007 by Richard Kelly and Oonagh Gaye, Parliament and Constitution Centre, House of Commons Library, p 7. Examples of other joint services provided outside the framework of a joint department are the Parliamentary Records Office, the Education Unit, The Parliamentary Estates and the Works Services Directorates.

³⁰ *Ibid* p. 8.

³¹ *Ibid* p. 15.

Parliamentary Services Act 1999 is one of the most detailed statutory regulatory instruments of its kind.³² In the Act much is made of the independence of the parliamentary administration. In the amendments associated with the creation of a Department of Parliamentary Services combining three former service departments of the Australian Parliament which came into effect in January 2004, however, this independence emerges as independence for the CEO of this new department rather than for the Parliament or its Members who have no statutory right to challenge the decisions of this CEO. A great deal was also made of the independence of the Parliamentary Library, for example. In the new arrangements, however, the guarantee of that independence — which is for the Parliamentary Librarian and not the Parliamentary Library — has meant little in practice because the machinery is not in place to underwrite it.

Analyses of the legislation underpinning parliamentary administration is thus only a first step in assessing the nature of a parliament's administration. More important is independent assessment of what is happening in effect.

(vi) The status of Parliamentary Libraries

In his eloquent description of the dramatic changes for the better resulting in a more active, independent and influential House of Commons than existed when he joined its service fifty years before, a former Clerk pinpoints the significance of access to information in this development. Accepting that parliament does not govern but is the forum for public debate and criticism of the policies and acts of government, he argues that three things are required: 'adequate opportunities for the participants on both sides of the House to initiate debate on matters of their own choosing; appropriate procedures for different types of business; and access to relevant information'³³ to assist them play their parliamentary and representational roles, and to hold the government to account.

The issue is the role parliamentary libraries and research services play in providing services essential for the quality of a democratic parliament. These are independent, impartial, timely, accurate, relevant quality information, analysis and advice to all Members of Parliament across the political spectrum, a small counter to the huge resource base available to government from Departments of State. A statutory position for the Parliamentary Librarian is a necessary, but not a sufficient guarantee of the provision of these services to all MPs effectively. The machinery

³² John Power, *op. cit.* This is an extremely valuable piece of work in this sparse field. It includes a comparative tabulation for the seven parliaments considered under fifteen headings: defining statute; corporate body; purpose/function; chair; membership; Clerk's position on body; budget; employer of staff; role of Clerk (administrative); accounts; related committees; other service/administrative statutory offices/officers; non-statutory administrative groups; and miscellaneous.

³³ Michael Ryle, 'Forty Years On and a Future Agenda', chapter one of *The Future of Parliament: Issues for a New Century*, edited for the Study of Parliament Group by Philip Giddings, Palgrave Macmillan 2005, p. 5.

must be in place for the Parliamentary Librarian to be accountable directly to a Commission of its clients, the Members of Parliament. The status of the Parliamentary Library, also, must be recognised in statute.

The need for access to information is why the independence of parliamentary libraries has been an issue in some cases of parliamentary administrative reform. In this context, parliamentary libraries and research services take their place as building blocks of effective democratic parliaments distinct from other administrative essentials such as buildings management and maintenance, cars, catering and security and IT. In Australia, this issue confounded at least two attempts at parliamentary department amalgamation. In Sweden, an amalgamation arrangement which included the Parliamentary Library in a department of parliamentary services was subsequently reversed.³⁴

4. An Optimum Model and an Australian Optimum model

In a perfect world, then, the style of parliamentary administration most likely to contribute to the independence of a parliament from the executive and its capacity to hold the government to account would be one in which the parliament determines its own administrative budget; parliamentary administrative arrangements are grounded in a sound legislative base with specific accountabilities, controls and delegations, clear lines of authority, and all these operationalised by a short term implementing CEO; the administration is headed by a body made up of a cross section of senior Members of Parliament experienced enough to separate the whole-of-parliament responsibilities vested in them in this role from their party interests; this Commission equivalent is commensurate with the size of the parliament, has the stature to be the advocate for the parliament as a whole and acts as a conduit for its Members; decision-making, including determination of strategic direction and priority setting, is in the hands of the Commission with appropriate delegations to professional, impartial, non-political permanent officials; and the parliamentary administration is cost-effective in democratic parliamentary terms, and transparent in its business.

More specifically, an optimum parliamentary administration would have Scotland's budgetary arrangements which are entirely determined by the Parliament. In the absence of *de jure* control over its own funding, an optimum parliamentary administrations would be supported by a consensus, such as that which exists in the UK, that the Parliament will have the resources needed to do its job.

An optimum parliamentary administration would, in bicameral circumstances, have the Republic of Ireland's single Commission for its two chambers (60 Senators and 166 Members), and unicameral (108 Members) Northern Ireland's Commission's

³⁴ A CEO driven by Corporate model imperatives appointed in 1999 was replaced following a review of Sweden's parliamentary administration which resulted in the elevation of the library/information/knowledge service and came into effect in 2003.

determination to place its stamp on the parliamentary administrative machinery at Stormont.³⁵ It would also have the United Kingdom's (646 Members of Parliament; 741 Lords) Commission and Board model of operation, with decision making authority residing with the Commission made up of a cross section of senior members of Parliament, the Speaker as *ex officio* chair, delegation of management to the professionals, and its corporate arm accountable to the Clerk. The business of its Commission would be transparent, as for example in the Scotland, Ireland, the United Kingdom and Canada (308 Members of the House of Commons and 105 Senators), and include an Annual Report debated on the floor of the House as in the UK. As in the UK too, one of its Members would be nominated to be spokesperson both inside and outside the House.

The arrangements for the parliamentary administration would be written into legislation and reflected in effective independent administrative, accountability and evaluation machinery. It would have a bureaucracy independent of the mainstream public/civil service which in practice as well as in principle understood that it was accountable to the parliament, that the parliament was not a part of executive government and that they were not a part of the executive or the executive public service.

In Scotland, a unicameral Parliament of 129 Members (MSPs) which has adopted the Commission model of parliamentary administration, the very real problem of critical mass — and interest — is resolved by the appointment of a small Commission of five, each of whom is allocated specific portfolio responsibilities and is accountable for these in the House. In Scotland, too, to remove the prospect of a conflict of interest, the CEO appointed to implement the legislation to establish the parliamentary administration, was appointed on a fixed term contract. A permanent CEO was appointed only when the new arrangements had been independently bedded down. In New Zealand, the endemic lack of MP interest in parliamentary administration, a factor more likely to be a characteristic of smaller parliaments (there are 120 Members of the New Zealand unicameral Parliament), has been resolved by the introduction of a high level independent, external triennial review to examine all aspects of spending in the parliament and make recommendations on the appropriations accordingly.

An Australia Optimum Model

An Australian Parliamentary Delegation which reported in August 2006 included the issue of the involvement of Members of Parliament in the administration of parliaments as one of the major themes for the delegation's pursuit.³⁶ Following its visit to five parliaments, it concluded that this was considerable 'compared with our

³⁵ A 2007 review resulted in the replacement of the entire top executive of the parliamentary administration. See Northern Ireland Secretariat: Review Report, 2007.

³⁶ *Learning from Other Parliaments: Study Program 2006*, House of Representatives Standing Committee on Procedure, Parliament of the Commonwealth of Australia, August 2006, p. 3.

own experience', and that 'there appears to be real influence by Members in all parliaments visited compared with the situation in our own parliament'.³⁷ This observation matches the findings in 'Benchmarking Parliamentary Administration ...', which concluded that Australian parliamentary administrative performance is the poorest of four assessed parliaments (UK, Canada, New Zealand and Australia) on five key indicators, including its governance and the involvement of Members of Parliament in it.³⁸ This conclusion is drawn in spite of the role of the Australian Senate's Appropriations and Staffing Committee and its Estimates Committees which make for robust scrutiny of parliamentary administration, but this, essentially, after the fact.³⁹

A first step to bring Australia up to international best practice in parliamentary administration is to adopt the Commission model which gives Members of Parliament decision-making powers in the parliament's governance, including in proposing the budget for the Parliament. It should also develop strategies to manage the inherent inefficiencies in its bicameral status and balance the interests of chamber autonomy with those of efficiency in the best interests of both chambers and of the budget bottom line.

The foregoing suggests that the optimum model of parliamentary administration for bicameral parliaments is one with a single Commission for the two chambers. Ireland has achieved this obviously as the product of its own unique circumstances which include recognition of the primacy of the lower house reflected, for example, in the status of the Clerks. In the combined Commission the more senior Dail Clerk is the sole non parliamentary member. Given the long and strong history of chamber independence and even competition in Australia's case,⁴⁰ it is highly unlikely that this could — or indeed should — be pursued given its own unique parliamentary evolution and the more prominent role the Senate had come to play by the end of the twentieth century.

The best outcome for Australia's bicameral parliament of 76 Senators and 150 Members would therefore be something comparable to the Canadian model where each chamber has a Commission with decision-making powers, regular public meetings and a healthy transparency about its business. Canada's Parliamentary Commissions, the Board of Internal Economy for its House of Commons and

³⁷ *Ibid* p. 28. The delegation visited the parliaments at Westminster, Edinburgh, Cardiff, Douglas (Isle of Man) and Paris.

³⁸ Verrier *op. cit.*

³⁹ In comments on this paper, Senate Clerk, Harry Evans, suggested that the Senate's Appropriations and Staffing Committee could be considered a *de facto* Commission for the Senate and that this, along with the Senate Estimates processes was all the scrutiny — and MP involvement — that was needed. In the position presented here, however, the powers and effectiveness of those committees are seriously handicapped by being after the fact. This point is developed more fully in June Verrier, 'Benchmarking Parliamentary Administration ...', *op. cit.*

⁴⁰ John Power, *op. cit.* p. 2, concludes that the Senate 'has guarded its separation of services from those of the House of Representatives — the latter being considered (by the Senate) as a tool of executive power' ... since the Government is in the majority in the House of Representatives.

Standing Committee on Internal Economy for the Senate, are chaired by a Presiding Officer, but not a Presiding Officer with decision-making powers. In Australia's case, each Chamber Commission would be serviced by a Board, chaired by the Clerk, on which all the heads of parliamentary departments are represented.

To make for inter-chamber efficiencies in Australia, the Commissions of each Chamber would appoint from their number a Combined Chamber Sub-Commission for Joint Services, CCSC (JS), including incorporating the role of the current Senate Appropriations and Staffing Committee. This would be chaired by the Deputy President or the Deputy Speaker in rotation. A joint servicing corporate facility would be accountable to the CCSC (JS) as would, separately and independently, the Parliamentary Library. This joint facility would be formed from relevant elements of the Department of Parliamentary Services, renamed Corporate Services, and be a fully joint service provider of all the physical, electronic, security and maintenance functions of the Parliament of Australia. This would include Hansard production — but not policy, staffing recruitment, training and facilitation — but not policy which would remain the responsibility of heads of department and Board members. It would, as well, both be represented on and report to both Boards (see chart).

The need for the independence of the Parliamentary Library would be recognised and, like its counterpart in Sweden, it would be taken back out of the combined corporate structure and re-established as an independent facility answerable directly to the stakeholders, in Australia's case the Sub-Commission made up of representatives from both the House of Representatives and of the Senate Commissions. The position of the Parliamentary Librarian would be upgraded to be comparable to the status of its counterparts in the United Kingdom and in Canada.

The Commissions of both Houses would be small and number no more than seven, including the relevant PO. It would be comprised of the leaders of each House on both sides of politics (or their representative) and other senior representatives from the major parties. One of these would undertake to represent the interests of small parties and independents. Commission business would appear regularly on the agenda of party meetings to enable Commission members to act as conduit for the views of MPs on parliamentary service provision. There would be annual reports from the Commissions to the House and to the Senate respectively.

Commission members would be allocated 'portfolio' responsibilities in order to acquire particular familiarity with specific aspects of the administration of parliament. The Commission would meet monthly, be serviced by the Office of the Clerk in each case, advertise its agendas publicly ten days before meetings took place and would publish minutes on the Parliament's internet site.

To ensure that Members of Parliament took responsibility for making decision on strategic direction and priority setting, and without burdening the Commission with the minutiae of administrative decision-making, the Boards would make submissions to the Commissions on major new policy directions or proposals with

the potential to affect the quality of service to Members of Parliament — that is the capacity of the Parliament to perform its representational, legislative or monitoring role of holding the government to account

The Parliamentary Service Act 1999 would be amended to reflect the powers and responsibilities of the Senate and the House of Representatives Commissions and Boards, including for oversight of routine external independent audit, evaluation and review. It would also include guarantees of the independence of the Parliamentary Library and its accountability directly to the Commissions through the Combined Chamber Sub Commission (Joint Services). Following the Scottish example, interpretation of the Act would be the responsibility of an implementing CEO, who would be offered a fixed three year contract prior to calling for applications for the permanent position. The Parliamentary Precincts Act 1988, which gives very significant powers to the Presiding Officers for the control and management of the parliamentary precincts, would also need to be amended to reflect the role of the Commissions.

6. Some Conclusions

In the (Commonwealth/Westminster) ideal, parliamentary administrations will be independent; transparent; accountable to their stakeholders, the Members of Parliament; protective of the instrumentalities which enhance the democratic quality of the parliament; and manage for the whole of parliament such that appropriate efficiencies can be made across departments and chambers to make for optimum cost-effectiveness. Interestingly, both advocates of the Commission and of the Corporate models of parliamentary administration would lay claim to these results.

The major strength of the Commission model, however, is that the stakeholders, the Members of Parliament, are the decision-makers, replacing the role of the Speaker, a member of the government, or the officials acting in his name. These stakeholders can also act as advocate for the parliament where in the Corporate model there is none. What may be seen as the advantages of the Corporate model, however, include less involvement of MPs, and a streamlined administrative machinery accountable to an, albeit handicapped, non-intrusive Speaker.

No model of parliamentary administration is perfect; none will work in the interests of optimizing the capacity of a parliament to perform its democratic role unless the government of the day wants it to work — and unless parliamentarians themselves become engaged. This means cultural change. Drawing on the undoubted commitment of Members of Parliament across party lines to the Parliament and its processes, MPs need to be made aware of the implications of the issues arising in styles of parliamentary administration. These include the potential for there to be discontinuities between their interests and those of an administrative machinery not accountable to them. The choice for Members of Parliament is to take responsibility

for the governance of the parliament or to leave this to the parliamentary bureaucrats. If the latter, who is guarding the guardians? ▲

Parliamentary Administration: An Optimum Model for Australia

