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Administrative Review and Oversight: The Experience of Westminster

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Parliament has been left behind by far-reaching changes to the constitution, government and society in the past two decades. Despite recent innovations, particularly in the handling of legislation, the central question of Westminster's scrutiny of the executive has not been addressed. (Report of the Hansard Society Commission on Parliamentary Scrutiny, 2001: x)

Prior to the Labour Party's election victory in 1997, Labour's manifesto promised an 'effective House of Commons' to be realised in large part through the creation of a special Select Committee with remit to review procedures in light of the 'need for modernisation'. Shortly after victory, Labour established a 'Modernisation Committee' chaired by the Leader of the Commons and with a remit to review four key areas: the legislative process; ministerial accountability; working practices (such as sitting hours); and the style and forms of proceedings. Between 1997 and 2003 the Committee published 19 reports starting with a report on the legislative process. However, to date, most of the reports have focused on the modernisation of working practices and the style and form of proceedings. Reports that deal with improving the effectiveness of ministerial accountability have been notably lacking. Consequently, the view of the Hansard Society that 'parliamentary reform has been one of improving the efficiency of Parliament, but not its effectiveness' appears just as valid three years on.

There are of course serious contextual hurdles to reforming the effectiveness of Parliament. The nature of, and possibilities for administrative oversight at Westminster are largely bounded by constitutional arrangements such as the fusion of the executive and legislative branches in Parliament and the First-Past-the-Post electoral system that is conducive predominantly to one-party majority government maintained through strong party discipline. Compounding the systemic strength of the executive in Parliament is the growth of careerism and an emphasis on the ministerial career ladder with rewards for partisan loyalty. In turn, Parliament is primarily considered as a body that reacts to executive measures⁸². This context of a strong executive and a reactive Parliament lacking independent powers and associated alternative career structures ultimately limits how far modernisation can go without 'seismic constitutional change'⁸³. A prime example of the salience of context as a hurdle to the realisation of reform is the May 2002 defeat of the Modernisation Committee's proposal to move select committee appointment power from the party whips to a Committee of Nomination⁸⁴. Alexandra Kelso argues that the context of partisan and patronage interests best explains why Parliament failed to make appointment to select committees a process independent of the whips' offices⁸⁵.

⁸¹ Hansard Society, *The Challenge for Parliament: Making Government Accountable*. Report of the

Hansard Society Commission on Parliamentary Scrutiny, London, Hansard Society, 2001, p. 13.

⁸² Philip Norton, *Does Parliament Matter?*, Hemel Hempstead, Harvester Wheatsheaf, 1993; Robert Rogers and Rhodri Walters, *How Parliament Works* (5th Edition), London, Pearson Longman, 2004.

⁸³ Robert Rogers and Rhodri Walters, *How Parliament Works*, cit., p. 369.

⁸⁴ Modernisation Select Committee, *Select Committees*, HC 224, 2001-2002 Session, 2002.

⁸⁵ Alexandra Kelso, "Where were the Massed ranks of Parliamentary Reformers? - 'Attitudinal' and 'Contextual'

Approaches to Parliamentary Reform", *The Journal of Legislative Studies*, vol. 9, n.1, 2003.

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As well as context, the behaviour of parliamentarians can be a factor in determining the effectiveness of Parliament in executive oversight. Philip Norton stresses the importance of attitudinal and behavioral changes occurring alongside any institutional reforms⁸⁶: “There is no point strengthening the House of Commons if MPs are unable or unwilling to exploit the opportunities afforded by such change”⁸⁷.

However, David Judge challenges the Norton view on the basis that the normative system of the House reflects the preferences of those with the most power and so attitudinal change and internal procedural reform will invariably fail unless key constitutional arrangements are addressed⁸⁸.

Oversight and Effectiveness in the Westminster Parliament

The primary means of oversight in the Westminster Parliament are through debates, questions, and committees⁸⁹. What follows is a discussion of key aspects of these means in the House of Commons as well as an attempt to assess their effectiveness.

The salience of debates in the House of Commons as a means of oversight are constrained from the outset as the government controls not only the timetable but much of the ground on which it will debate⁹⁰. However, even on its own ground, government does not dominate entirely. Rogers and Walters use the example of the 2003 government debate and vote on war with Iraq to illustrate the government's unprecedented decision to seek Parliament's approval for military action despite it being a prerogative power of the executive. As well as Parliament possibly having captured a prerogative power of the executive, Rogers and Walters argue that this decision has set a precedent that future governments may have to uphold if they wish to be seen as acting legitimately⁹¹. In addition, while the government may control the timetable, there are 20 Opposition Days (or 120 hours) in which the opposition parties can debate and vote on a substantive motion of their choosing. Recent subjects chosen by the opposition have included advocating a referendum on the EU constitution and, questioning the military situation in Iraq, and the security of the electricity supply.

Opposition Days provide a means for the opposition parties to scrutinise the actions and policies of the Government and selected subjects typically reflect domains where the opposition parties feel that the Government is particularly exposed to criticism.

As to the effectiveness of Opposition Day debates, the evidence depends on whom you consult and what you measure. When the Hansard Society surveyed parliamentarians in June 2000, one of the questions they asked was 'How effective are Opposition Day debates in securing information and explanation from Government?'⁹². Of the 179 responses they received, less than one in four replied that they were effective. The Hansard Society Commission concluded that the predictable defeat of opposition motions during debates combined with the 'low quality of debate in general', the 'little

⁸⁶ Philip Norton, *Parliament in the 1980s*, Oxford, Basil Blackwell, 1985; Philip Norton, *Strengthening Parliament*:

The Report of the Commission to Strengthen Parliament, London, The Conservative Party, 2000.

⁸⁷ Philip Norton, *Strengthening Parliament*, op. cit., p. 21.

⁸⁸ David Judge, *The Parliamentary State*, London, Sage, 1993, p. 215.

⁸⁹ Philip Norton, *Does Parliament Matter?*, op. cit., p. 89.

⁹⁰ Hansard, *The Challenge for Parliament*, op. cit.

⁹¹ Robert Rogers and Rhodri Walters, *How Parliament Works*, op. cit., p. 374.

⁹² Hansard Society, *The Challenge for Parliament*, op. cit., p. 131-132.

public interest' and the usage of the procedure 'to identify which MPs deserve promotion' meant that 'debates may no longer be suitable for today's politics'⁹³.

However, the effectiveness of Opposition Days is hard to measure and the conclusions of the Hansard Society Commission may be a little harsh given the evidence. While opposition motions are routinely defeated, they can have indirect effects such as capturing and/or perpetuating media coverage and pressure on the Government.

One such example was the October 2001 Opposition Day debate deploring spin tactics in the Department of Transport, Local Government and the Regions. The debate focused on the call for special adviser Jo Moore to resign over an email instructing colleagues to 'bury' bad news in the wake of the September 11th attacks. Jo Moore eventually resigned in February 2002 after constant media pressure and additional allegations of inappropriate behaviour. While the Opposition Day debate was not immediately or entirely instrumental in Moore's resignation, it is conceivable that it played some part. Another more recent example concerns the government's April 2004 u-turn over the possibility of holding a referendum on the EU constitution.

As well as Opposition Days, there are half-hour adjournment debates, very occasional emergency adjournment debates, Early Day Motions and since 1999, parallel sittings in Westminster Hall for debates on less contentious business such as committee reports and adjournment debates. The half-hour adjournment debates occur at the end of each day and allow back-benchers to raise an issue with the government that typically reflects a specific constituency concern that an MP wants the relevant minister to respond to. Early Day Motions are rarely debated but are used by MPs to express opinions on subjects and provide governments with indicators of levels of back-bench support and opposition on issues.

Arguably more important than debates, parliamentary questions (PQs) provide back-benchers an opportunity to call ministers to account. PQs include written questions and oral questions (departmental Question Time, inter-departmental Question Time, Prime Minister's Questions, Private Notice Questions, and questions following ministerial statements).

Departmental Question Time lasts roughly an hour each Monday through Thursday while the Parliament is sitting. While the government decides the departmental rota for Question Time, on balance each department faces scrutiny from the Parliament approximately once every four weeks.

Inter-departmental Question Time in the parallel chamber is a recent innovation (2003-) that reflects attempts at 'joined-up' government for those issues such as crime that straddle departmental briefs.

The format of Prime Minister's Questions changed under Tony Blair from twice-weekly question periods on Tuesdays and Thursdays to one 30-minute question period on Wednesdays. While the overall duration of PMQs remains the same, and although time-wasting introductions and reiteration of replies have been removed from the procedure under Blair, there is still some criticism of the change, particularly the loss of twice-weekly questioning. The Report of the Commission to Strengthen Parliament (aka the Norton Commission) favours a return to twice-weekly question periods on Tuesdays and Thursdays, each of 30 minutes. The rationale behind this recommendation is

⁹³ Hansard, *ivi*, pp. 50-51.

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that it would help restore the importance of Thursdays as a major business day and that it would connect the PM more with the Parliament⁹⁴.

Private Notice Questions (PNQs) are questions of an urgent nature on key issues of national importance and are granted at the discretion of the Speaker. Once granted, ministers are given short notice to appear before Parliament and can be questioned as long as the Speaker permits. Unlike PNQs, statements by ministers are more common, are prompted by the executive, and provide the government with a chance to inform the House (pre-empting PNQs) on key issues that arise. However,

statements by ministers are generally followed by questions, again at the discretion of the Speaker.

Again, effectiveness of questions depends on whom you consult and what you measure. Out of the various types of questions, the Hansard Society found that just over half of MPs surveyed rated written questions as effective in securing information and explanation from government⁹⁵. By comparison, oral questions were rated as less effective (effectiveness ranging from 45% for ministerial statements; 43% for Private Notice Questions; 25% for Question Time, to a low 8% for Prime Minister's Questions).

One of the reasons why written questions are generally perceived as being more effective than oral questions is that whereas oral questions perform other legislative functions such as political point scoring and tension release, written questions permit a more focused and persistent means of oversight. As an example of this distinction, Walters and Rogers note how Labour MP Tam Dalyell's determined usage of written questions led to the uncovering of misinformation during the Falkland's conflict⁹⁶.

Of the oral questions, PNQs and ministerial statements are regularly singled out as procedures that the government should give more time to by curtailing other less effective procedures such as debates⁹⁷. Responding primarily to a different recommendation in the Procedures Committee Report (2002), the government opted to reduce the period of notice for questions to ministers from ten to three sitting days arguing that this would encourage 'more topical and relevant' questioning⁹⁸. The government rejected calls for extensions of departmental Question Time on a single subject due to time pressures. However, the government did consent to a once a week, hour-long session of questioning in Westminster Hall.

Since the mid-1990s, the Public Administration Select Committee and its predecessor (Public Services Committee) have produced six reports on ministerial accountability and parliamentary questions. In their latest report, the Public Administration Select Committee continue to lament the evasive nature of many government replies to questions: "...the government's approach to answering

⁹⁴ Philip Norton, *Strengthening Parliament*, cit., p. 20-21.

⁹⁵ Hansard Society, *The Challenge for Parliament*, op. cit., p.131-132.

⁹⁶ Robert Rogers and Rhodri Walters, *How Parliament*, cit., p.303.

⁹⁷ Philip Norton, *Strengthening Parliament*, op. cit. ; Hansard Society, *The Challenge for Parliament: Making*

Government Accountable, cit. ; Procedure Committee, *Government Response to the Procedure Committee Report on Parliamentary Questions (HC 622)*, Cm 5628, 2002.

⁹⁸ Procedure Committee, *ivi* , p. 4.

questions has, at times, been characterised as minimising the opportunity for scrutiny of its actions through careful and skilful crafting of answers."⁹⁹

The Committee acknowledges that the 1990s publication of codes of conduct, codes for access, and guidance on answering PQs have increased the duty on government to account for its actions. However, it criticises the government for treating public inquiries like the Hutton Inquiry more seriously ('committed to co-operating fully') than either PQs or Select Committees ('information provided... as appropriate')¹⁰⁰.

Of particular concern to the Committee are the issues of quality of replies and unanswered questions (often due to either prohibitive costs, future promises of replies, or exemption in the *Code of Access to Government Information*). In response to the concerns, the government has agreed to answer 'reasonable requests' about refusals to answer questions within 20 days, and has also agreed to specify the source of any exemption in its replies¹⁰¹. However, the Committee is sceptical about the government's level of commitment to its promises and has reacted by strengthening recommendations¹⁰². More important than either debates or questions are the oversight roles performed systematically by select committees since 1979. While acknowledging that the comparative effectiveness of the select

committee system is constrained by the constitutional framework (primarily no separation of powers), single-party governments, and strong party loyalties, the Liaison Committee reported that the 'select committee system has been a success' and it has 'provided independent scrutiny of the government'¹⁰³. Findings from the Hansard Society survey of MPs support this perspective as 84 per cent rated select committee hearings as effective in securing information and explanation from government¹⁰⁴.

There are several types of select committee. First, departmental select committees shadow each government department and are responsible for the detailed oversight of government and public body expenditure, administration and policy. Second, inter-departmental select committees primarily oversee activities that cross-cut government departments, for example, the Environmental Audit Committee, the European Scrutiny Committee, the Public Accounts Committee, and the Public Administration Committee. Third are select committees that deal with the procedures and administration of the House, for example, the Liaison Committee (which largely comprises select committee chairs and considers matters relating to the work of select committees), the Procedures Committee and the Modernisation of the House of Commons Committee.

Interest in reforming the select committee system has strengthened in recent years. Recommendations for reform have been wide-ranging (from increased resources to the establishment of independent appointment committees) and successes to date have been mixed.

⁹⁹ Public Administration Select Committee, *Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee's Ninth Report of Session 2001-2002*, HC 136, 2002-2003 Session, 2002, p. 5.

¹⁰⁰ Public Administration Select Committee, *ivi*, p. 6.

¹⁰¹ Public Administration Select Committee, *ivi*, p. 5.

¹⁰² Public Administration Select Committee, *ivi*, p. 20.

¹⁰³ Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, HC 300, 1999-2000 Session, 2000, p. 2.

¹⁰⁴ Hansard Society, *The Challenge for Parliament*, cit., pp. 131-133.
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One of the most contentious issues surrounding select committees is the independence of membership. In 2001, when the government attempted to remove two of its most ardent critics from select committee chair positions, the House of Commons voted against the motion and the critics were reinstated. Current selection procedures are still highly influenced by the party whips and the composition of each committee is generally proportionate to the balance of the parties on the floor of the House of Commons. The Liaison Committee (2000), the Norton Commission (2000), and the Modernisation Committee (2002) all favoured removing powers of selection from the whips. Proposing a more independent Committee of Nomination, the proposal of the Modernisation Committee was defeated in a 2002 vote in the House of Commons.

Other recommendations for reform have met with more success. Arguably the most important government concession to select committee scrutiny has been the Prime Minister's agreement to be questioned by the Liaison Committee. Although initially the PM had rejected a 2001 Public Administration Committee recommendation to appear before it on a yearly basis to discuss the then Government's Annual Report, in April 2002, the PM offered the Liaison Committee a twice yearly questioning period of some two to two and a half hours on domestic and international affairs. To date, the PM has been questioned on a variety of subjects including the Iraq war. Rogers and Walters perceive this as a further executive concession to Parliament that will be difficult for future

PMs to withdraw from¹⁰⁵.

A further advance for the select committee system is the 2003 recommendation to reward departmental and most inter-departmental select committee chairs with £12,500 on top of their MPs salaries (Review Body on Senior Salaries, 2003). One of the recommendations of the Norton Commission was that select committees should offer an alternative career path to that of ministerial office¹⁰⁶. While not universally popular both inside and outside the House, this move toward variable parliamentary salaries is arguably an important first step in any attempt to alter the current imbalances in career incentives between the legislative and executive branches.

Another recent advance for select committees has been the creation and extension of staffing resources for the Scrutiny Unit - a body that provides select committees with advice on expenditures and draft legislation. This development reflects the recent emphasis that the Modernisation and Liaison Committees have placed on supporting a more systematic and less ad hoc approach to the exercise of scrutiny. In June 2002, the Liaison Committee established guidance on four objectives and ten core tasks for departmental select committees:

Objective A: To examine and comment on the policy of the department.

Task 1: To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc., and to inquire further where the Committee considers

it appropriate.

Task 2: To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.

Task 3: To conduct scrutiny of any published draft bill within the Committee's responsibilities.

¹⁰⁵ Robert Rogers and Rhodri Walters, *How Parliament Works*, cit., p. 375

¹⁰⁶ Philip Norton, *Strengthening Parliament*, cit., p. 69.

Task 4: To examine specific output from the department expressed in documents or other decisions.

Objective B: To examine the expenditure of the department.

Task 5: To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.

Objective C: To examine the administration of the department.

Task 6: To examine the department's Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.

Task 7: To monitor the work of the department's Executive Agencies, NDPBs, regulators and other associated public bodies.

Task 8: To scrutinise major appointments made by the department.

Task 9: To examine the implementation of legislation and major policy initiatives.

Objective D: To assist the House in debate and decision.

Task 10: To produce reports which are suitable for debate in the House, including Westminster Hall, or debating committees¹⁰⁷.

However, despite some recent advances (both own initiative and executive concessions), the select committee system continues to attract calls for reform, most notably in relation to access to papers and people, and on improving committee impact on the work and policies of government¹⁰⁸. Key hurdles to effective oversight of government departments remain, for example, lack of prime time in Parliament to

consider major select committee reports, lack of power to require the attendance of ministers and civil servants, and lack of power to force them to answer questions. Walters and Rogers argue that focus on these lack of powers is unlikely to go away, but that any attempt to address them 'would require a fundamental change in the relationship between government and Parliament'

¹⁰⁹.

Administrative review and oversight by Parliament, although in flux, and with some recent advancements for Parliament, remains constrained by the constitutional arrangements, one-party majority governments and strong partisanship, that ensure that without fundamental change, the executive is invariably able to dominate.

¹⁰⁷ Liaison Committee, *Annual Report for 2002*, HC 558, 2002-2003 Session, 2003, p. 9.

¹⁰⁸ Hansard Society Conference Proposals, *The Future of Select Committees: Issues, Challenges, and Proposals*

for Reform, Westminster, 2004.

¹⁰⁹ Robert Rogers and Rhodri Walters, *How Parliament Works*, op. cit., p. 385.