

Shifting the Balance? Parliament, the Executive and the British Constitution

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This article examines the paradoxes of parliamentary reform. Focusing mainly on the House of Commons, the first section highlights the contradictory roles of parliament and utilizes a distinction between the 'Whig' and 'Peelite' conceptions of the Whitehall-Westminster model to demonstrate the ambiguities and tensions that exist. This framework is then applied to a case study of parliamentary reform under Labour governments since 1997 in the second section. The third section emphasizes that parliament cannot be studied in isolation. It suggests that the British constitution is at a critical historical, political and institutional juncture in which a number of inter-linked emerging agendas are altering the relationship between parliament and the executive. The significance of these emerging agendas is that, unlike internal reform of parliament, they are largely beyond the executive's control. The combined influence of these factors is likely to impel the executive, at some point, to support a coherent and far-reaching reappraisal of the structure, role and powers of parliament. Consequently the degree to which Britain (*de facto*) remains a parliamentary state will be subject to intense and increasing debate.

In the run up to the 1997 general election a survey of MPs indicated a high degree of support for far-reaching parliamentary reform (Weir and Wright, 1996). This support was fuelled by speeches by senior shadow ministers in which they committed themselves to 're-establish the proper balance between parliament and the executive' (Taylor, 1996). However, progress to-date has been limited. Although there is much concern regarding the current constitutional equilibrium in general and the capacity of the House of Commons to scrutinize the executive in particular, the issues raised are not particularly new.

The Relationship between Parliament and the Executive: a Historical Perspective

The relationship between parliament and the executive is dynamic. As a result calls for reform are constantly made to adjust the relationship depending on how those proposing reform view the main functions and roles of parliament. The history of parliament and the history of parliamentary reform are therefore synonymous. Fundamentally, parliament has two inherently contradictory roles – first, to sustain the executive, which it would appear to do well, and second, to hold the executive to account between elections, which it does rather less well. Lord Nolan (1996) noted, 'The role of sustaining the government does not sit well with the task of challenging it and holding it to task'.

This tension stems from a critical period in British political history between the mid and late nineteenth century. Bagehot famously referred to the convention of ministerial responsibility as the 'buckle' of the British constitution – the lynch-pin in the Whitehall-Westminster model. The convention of ministerial responsibility antedates the modern party system and was designed in a period when the role of government was limited and it was reasonable to assume that a competent minister would have personal control over a small department. The mid-Victorian state was modest in both size and ambition. There was no pretence that government could do much on its own to remedy or compensate for social ills. Departments of state were small and vicarious responsibility was accepted as ministers had no excuse for not knowing everything that was happening in their department. As Young (1961) noted: 'The most striking feature of British administration in the first quarter of the nineteenth century was the extent to which the work of government departments was performed by ministers'. Even when departments were small the utility of ministerial responsibility was widely doubted. In 1823 Cobbett wrote: 'Socks that pinch a pair of ankles are like ministerial responsibility; a thing to talk about, but for no other use; a mere mockery; a thing laughed at by those whom it is intended to keep in check'.

Doubts were being expressed long before most academics acknowledge, certainly long before Cichel Down or Finer's seminal 1956 article. By the 1850s, due to the progressive extension of the franchise, departments began to evolve as parties developed and acted in an increasingly interventionist manner. From being little more than private offices, the departments were quickly becoming administrative entities of increasing size and complexity (Willson, 1955). With the increased size of departments, it seemed obvious that new forms of accountability would have to be introduced. Parliament resisted any such reforms due to its strong faith in and commitment to ministerial responsibility, a belief fostered during the crucial period between the two Reform Acts of 1832 and 1867. The Reform Act of 1832 enlarged the electorate by 50 percent. The House of Commons was liberated from the discipline of Crown influence and, with parties in an embryonic stage, the House entered into more than three decades of making and unmaking governments. As late as 1893 Lord Hartington noted:

Parliament makes or unmakes our ministries, it revises their actions. Ministries may make peace and war, but they do so at pain of instant dismissal by parliament from office; and in affairs of internal administration the power of parliament is equally direct. It can dismiss a Ministry if it is too extravagant or too economical ... It does actually and practically in every way directly govern England, Scotland and Ireland (Hansard (HL), 5/9/1893).

The House was free of Crown influence, not yet constrained by strict party discipline; departments were still small enough for ministerial responsibility to be strictly applied without dispute; and MPs felt empowered to play a more active role in government due to their popular support in the country. Parliament demonstrated a determined ability to hold ministers to account and '... exercised a constant supervision of all governmental affairs' (Maitland, 1908). It was expected that ministers would have to work to maintain the confidence of the House. Forced

resignations were common. MPs collaborated in shaping government measures as well as heavily amending and rejecting legislation, see Table 1.

The mid-nineteenth century can be interpreted as the zenith for parliamentary control over the executive. After the second Reform Act the relationship between parliament and the executive shifted in the latter's favour. Within and beyond parliament, party control of its members became much tighter. In 1867, for example, the National Union of Conservative and Constitutional Associations was formed in order to organize the party outside of Westminster. Three years later Conservative Central Office was established to provide a central base. Moreover, the procedural reforms within parliament in the early 1880s considerably strengthened the position of the executive and restricted the opportunities for backbenchers to table amendments (as indicated by Table 1). Constitutional writers may well have overstated the success of the convention of ministerial responsibility at the time. Bagehot, Dicey and Maitland needed to demonstrate a workable theory of accountability to accommodate a constitution in which parliament was supreme, both as a legislature and check on the executive (Schaffer, 1957). A constitution based on convention as a method for ensuring accountability also reassured the ruling elite that the government of the country would remain in its hands – for the essence of conventions is that they are developed and controlled by those who operate the system and are not imposed externally.

Crucially, this period convinced parliament that ministerial responsibility was a workable convention on which to base the relationship between parliament and the executive. Parliament severely underestimated the subsequent effect that the evolving state and mass parties would have on the convention and so it became the political rationale and procedural logic around which an expanding system of government was structured. Woodhouse (1994, p. 12) notes:

Table 1: Government Defeats and Amendments Tabled to Government Bills 1851–1903

Parliamentary session	Number of government defeats	Number of amendments to government bills
1851–55	59	29
1856–61	52	24
1862–67	60	26
1868–73	50	27
1874–79	8	1
1880–85	26	11
1886–91	13	5
1892–97	9	2
1898–1903	2	1

Note: from Birch (1964), p. 75.

... so while on the continent administrative courts were being established to police the administrative functions of the state, and in the USA the foundations of a regulatory system centring on agencies were being laid, in Britain ministerial departments were established and began to absorb the responsibility.

It is this British exceptionalism which explains the organization of departments in this period. The period 1832–67 is crucial to an understanding of the contemporary situation. It was during this period that, due to a number of short-lived factors, ministerial responsibility became entrenched as the primary constitutional link between parliament and the executive (Flinders, 2000a). The effect of the growth of parties and the state was seriously miscalculated. By the time the problems associated with the convention were apparent the dominant position of the executive had been established (Fraser, 1960). The convention of ministerial responsibility provided the critical link in the Westminster/Whitehall model, and yet the executive's majority within the House insulated ministers from effective scrutiny. Moreover, the position of the executive allowed it to dictate the rules, resources and information flows through which it would be held to account. It is clear that throughout the twentieth century the balance of power has shifted to the executive.

However, debates about the relationship between parliament and the executive and the need for reform depends on the view taken on what the British constitution should ensure and deliver – *representative* or *responsible* government. This was a distinction made by Birch (1964, pp. 65–81) in respect to his 'liberal' and 'Whitehall' views of the constitution. Beattie (1995, pp. 158–81) offers a more precise framework with his historical analysis of two distinct views of the role of the convention of ministerial responsibility. Beattie distinguishes two views – a more representative 'Whig' view which stressed the need for political control to be paramount and for the government to be held responsible for state actions; and the 'Peelite' view, which defines ministerial responsibility as a way of limiting democratic control to ensure strong, coherent and stable government (see Table 2). In practice, the two views have combined to elevate the role of ministers and justify the unlimited notion of parliamentary sovereignty.

Table 2: Comparing the Whig and Peelite Strands of Ministerial Responsibility

<i>Whig</i>	<i>Peelite</i>
Parliamentary Government	Strong Government
Representative	Responsible
Inclusion	Exclusion
Responsiveness	Distance
Participation	Stability
Accountability	Realism
Direction	Control
Exposure of Ministers	Insulation of Ministers

The 'Whig' perspective views ministerial responsibility as a mechanism through which the House can control ministers in accordance with the will of the House and, if necessary, force them from office. It stresses representation, responsiveness and participation. The virtue of the convention of ministerial responsibility within the constitution from this perspective is that responsibility is focused on the minister and the line of accountability is clear. In contrast, the 'Peelite' view emphasizes responsible government; favouring executive control and stability. The decline of the monarch and the rise of parliament in the nineteenth century were interpreted as a threat to representative politics. The challenge, as perceived by Sir Robert Peel in the 1830s, was how to ensure a degree of stability. In this context ministerial responsibility, supported by a loyal parliamentary majority, insulated ministers and prevented parliament from interfering in the routine workings of government. Bagehot (1867, p. 191) noted that the convention allowed ministers to stand between their departments and '... the busy-bodies and the crotchet-makers of the House' and prevent '... the incessant tyranny of parliament over public offices'.

The British constitution was moulded around the concept of ministerial responsibility because a strong case could be made that it ensured both the responsibility and responsiveness of ministers (Whig strand), while at the same time producing strong and stable government (Peelite strand). However, it is possible to trace a distinguished lineage of key constitutional texts that have sought to stress the dominance of the Peelite view and shift the balance back towards the Whig view through a range of reform proposals. In 1904 Sidney Low observed the growth of cabinet power and the diminishing role of parliament; a theme taken on by Lowell in 1908. In 1929 Lord Hewart wrote of 'the new despotism' in which he suggested that the power of the executive had undermined the constitution. The authoritative texts of Muir (1930), Jennings (1934), Fell (1935), Ross (1943), Hollis (1949), Benamy (1965), Wiseman (1966), Crick (1968) and Butt (1969), to name but a few, all charted the shifting of power from parliament to the executive. However, the reforms advocated within these works are addressed almost solely to the problems and values of the 'Whig' view of the constitution. Thus much of the reform literature contains a naïveté which ignores the normative claims and practical influence of the Peelite view. The attraction to successive governments is that the current constitutional structure provides both flexibility and a strong platform from which to implement their policies. In this context the executive mentality has inverted the logic of ministerial responsibility and employs the convention as a tool of 'strong' government with which to eviscerate the participatory claims of reformers (Flinders, 2001a; Judge, 1993). The paradox is that reforms to increase the Whig view of the constitution (parliamentary reform, freedom of information, etc.) are weak exactly because they would be inimical to the Peelite strand (Beattie, 1998; Tant, 1990).

The movement from opposition to government (and vice versa) generally produces a swing from one view to the other. New governments frequently renege upon their commitments to wholesale parliamentary reform and embrace the strong government Peelite view while outgoing governments often develop a new found zeal for the Whig view. For example, in the late 1980s and early 1990s the Conservative government was largely unsympathetic to demands for parliamentary reform.

Since losing office the Conservative Party have become vigorous proponents of parliamentary reform. It established a Commission to Strengthen Parliament and accepted several of its reform proposals (Norton 2000a, b). William Hague has stated that 'the House of Commons is the key-stone of democratic accountability in this country ... it is in renewing the House of Commons that we must concentrate our efforts'. In opposition the Labour party was similarly committed to the Whig/Liberal view of the constitution and promised meaningful parliamentary reform.

Shifting the Balance? Labour and Reform of Parliament

Things are not going to change under Labour. You can change the machine but you cannot change the culture of parliament, the ambience of the House and the ambitions of its members. Parliament is a balance between the lazy and the idle – the lazy don't do anything and the idle don't believe that anything needs to be done (Labour MP, interview with the author, April 1998).

In the run up to the 1997 general election the Labour party made parliamentary reform a central part of their platform. In May 1996 the then shadow Leader of the House, Ann Taylor, made a far reaching 'New Labour, New Parliament' speech to Charter 88. Echoing the damning report on the state of parliamentary democracy published 20 years earlier by the Procedure Committee, she committed the Labour party to '... re-establish the proper balance between parliament and the executive'. Yet, to date, substantial reform of the House of Commons has been notably absent from the government's constitutional reform programme. A Modernization of the House select committee was established with a remit to '... look at the means by which the House holds ministers to account'. The work of this committee has led to some practical reforms, for example minor changes in the parliamentary timetable. And yet although the achievements of the Modernization Committee might have made the House of Commons a slightly more convenient place to work it has not tackled the fundamental issue of the balance of power between the executive and the legislature.

The Leader of the House between July 1998 and June 2001, Margaret Beckett, described herself as a small 'c' conservative on these matters – an admission that did little to assuage concern both within and outside Westminster. Accordingly, a number of commentators have raised concerns that the minor reforms are more to do with style than substance and that, in reality, the changes will not improve parliament's ability to hold the executive to account. Derek Foster MP stated, 'I said that this place [parliament] must never become the Prime Minister's poodle. Unfortunately, it has become so' (Hansard, 13/1/99). Robert Hazell (2001) laments, 'Parliamentary reform started with a bang but has ended with a whimper. With no support from Downing Street, the initial momentum quickly dissipated'. Gregory (1999, p. 47) concludes '... the government, despite its pre-election promises, appears to have no appetite for any tangible "modernization" of parliament which will alter the balance of power'.

The most critical exposition of this issue was the Liaison Committee report (HC 300, 1999/2000) 'Shifting the Balance: Select Committees and the Executive'. The

report states, '... in practice governmental power has always outstripped parliamentary control' and calls for further modernization and reform of the House of Commons. Two key recommendations are made. First, that a new Select Committee Panel be established to replace the current Committee of Selection due to concerns that the latter is too heavily influenced by the whips. Second, those chairmen of select committees should be paid an additional salary in order to create an alternative career structure to ministerial office. The government's response (Cm 4737, 1999/2000) to these recommendations underlines the complexity and paradoxes of the politics of parliamentary reform. 'The Government are not convinced that a change to the current system is needed (p. 2)'. The government's response suggests that the Liberal view of the constitution is in fact reality, pointing out that the House may, in theory, refuse to accept the Committee of Selection's proposals. Moreover, reform is not necessary as no government would attempt to 'control' parliament via tight party management:

The Liaison Committee Report characterizes the current system as one in which there is a danger that unfettered party management will exercise subversive control of select committee memberships to ensure, on the Government's part, a docile set of select committees. This Government does not accept that any government would desire such a state of affairs let alone manage to achieve it if it ever did (Cm 4737, p. 2).

The paragon of the Liberal view of the constitution is held up as reality long after most observers have dispelled it as constitutional fiction. And yet the issue of selecting MPs to serve on select committees must also be set against the reality, rather than the theory, of power within parliament. The role of the whips in the selection (and deselection) of MPs from select committees has frequently been a topic of complaint (HC 19, 1989/1990; Cremin, 1993). The Liaison Committee's recommendation of a new Select Committee Panel reflects disquiet within the House that the whips have played a key role in designing the memberships of the committees under the Labour government. One MP who had served on a select committee between 1992 and 1997 and had requested to remain on the committee during this parliament noted:

There is a planned lack of continuity that means that the build up of expertise has been wasted. They have put on members who either have no experience or who are safe. They put on people who are ambitious and are not going to rock the boat and they have kept the nasties and the hard hitters away. They took off the old lags like me who would give ministers a hard time (interview with the author, April 1998).

Another MP noted:

The whips have vast control over the membership of these committees and will decide the members in consultation with the departmental ministers. They will not appoint people who they know will be extremely troublesome; this has always been the case but sometimes people who think they will be safe will go native (interview with the author, May 1998).

However, the executive's management of the Liaison Committee's report exemplifies the balance of power within the House. The report was discussed at an opposition day debate in the Commons on 13 July 2000. In the debate the Prime Minister gave an unequivocal commitment that the 'Shifting the Balance' report would be time-tabled for debate and with the reform proposals put to a free vote. Despite the fact that the report had been published unanimously by the Liaison Committee and an Early Day Motion supporting its recommendations had been signed by over 250 MPs the government reneged on its commitment to hold a free vote on the report's recommendations. The government preferred to debate the report during an adjournment debate, involving no votes, on 9 November 2000 and refused to timetable future parliamentary time for the issue. Margaret Beckett defended the government's position by emphasizing the great implications of the recommendations and the need for caution in deciding upon them. Critics pointed out that the report had been published for over eight months and the government's reply for over six months. Moreover, the parliamentary interest fuelled by the report had been intense and MPs could hardly be accused of rushing to a judgement on the recommendations.

The government is also not convinced that paying select committee chairs would be a positive reform (Cm 4737, p. 5). Judge (1993, p. 215) is correct to state that internal reform of the House of Commons is thwarted by the fact that the '... normative system of the House, as with any other dominant value system, reflects the predilections of the most powerful actors'. Any internal reforms risk being eviscerated by an executive who is unwilling to fetter their dominant position. The faith in strong opposition to strong government, as outlined famously by Crick (1968), is flawed by the very political configuration to which reform is a response and the normative values of the executive mentality cannot be ignored. A wide range of commentators has recommended paying select committee chairmen, to stimulate parliamentary independence. However, semi-structured interviews with 32 MPs, conducted between January 1998 and December 1999, suggests that MPs are largely critical of this proposal, fearing that paying chairmen would reduce rather than increase the independent capacity of the committees. The majority of MPs surveyed thought that the executive mentality combined with the power of patronage would ensure that the government appointed compliant MPs and would use the positions as rewards for service to the party. One committee chairman noted (April 1998), 'It would achieve little more than the imposition of party hacks'. Therefore the *paradoxes* of the constitution have to be addressed, and cannot be resolved simply by asserting the *principles* of the parliamentary state (Judge, 1993, p. 215).

Using the Liaison Committee as a conduit for its anxieties, most recently in its caustic report *Shifting the Balance: Unfinished Business* (HC 301 2000/2001), the House of Commons has indicated its concern regarding the current balance of power between the executive and the legislature. Although needing further refinement, the Committee has put forward reforms that it believes would go some way towards allaying those concerns. These recommendations have received the support of the House through subsequent debates and early day motions. Contrary to constitutional theory, the supremacy of parliament over the executive is thwarted by the latter's tight party management and procedural control of the

House's timetable. In the face of executive obduracy the impotence of the House is unequivocal. Moreover, the government refuses to accept the issues that the Liaison Committee's recommendations are designed to address – 'The Government are not convinced that a change to the current system is needed' (Cm 4737, 2000). The Leader of the House noted, 'I do not accept that the House is as diminished, nor that it is as subservient, as it has become fashionable to allege' (Hansard, 9/11/00). Several observers are confused by the Labour government's approach to parliamentary reform. Hazell (2001) noted, 'It is a puzzle why a government so committed to modernization and reform has been so feeble when it comes to the House of Commons'. There is no puzzle. Despite a wealth of largely prosaic literature lamenting its demise, parliament remains the central locus of legitimate state power in Britain.

The executive's solicitous management of its majority within the House therefore restricts internal parliamentary reform. The 'Norton view', that parliamentary control of the executive can be achieved through attitudinal change on the part of MPs, therefore flounders because parliament is largely a creature of the executive (see Norton, 1983). Reforms that could be implemented to change the balance of power do not happen because of this fact. But it is quite clear that a degree of modernization has taken place within parliament since 1997. It is, however, crucial to comprehend the difference between 'modernizing parliament' and 'parliamentary reform'. In December 1966 Richard Crossman explained that 'there is a difference between modernization and parliamentary reform' (Hansard, 14/12/66). For Crossman modernization of the House involved practical and procedural changes to the day-to-day business of the House whereas parliamentary reform involved a conscious decision by the executive and legislature regarding the proper balance and distribution of power. Wright (2000) has outlined how the reforms implemented by Labour – more sensible hours, experiments with Westminster Hall, etc. – may be examples of modernization but they do not amount to real parliamentary reform. Indeed, the utility of such modernization will be minimal and in many ways undermined by the lack of concomitant parliamentary reform. Moreover, without a change in the balance of power within the House many of the reforms introduced under the guise of 'modernization' may well undermine the scrutiny capacity of the House. As one suspicious MP noted, 'We all know what modernization means ... It is a euphemism for streamlining the House so that a quantity of legislation can be got through as quickly as possible' (Hansard, 9/11/00). Modernization and parliamentary reform are, therefore, quite different processes, undertaken for quite different reasons and with quite different outcomes.

And yet there is a clear paradox in the Labour government's constitutional reform programme. Although the principle of parliamentary sovereignty has been retained in theory, in practice a range of initiatives (devolution, incorporation of the European Convention on Human Rights, etc.) have undermined parliament's position in the constitution. A government with a clear majority in the House has voluntarily ceded power and surrounded itself with a complex new framework of checks and balances. It is suggested that the British constitution is at a critical historical and political conjuncture. A range of emerging agendas can be identified which are likely to affect the relationship between the executive, parliament and the public. Moreover, these issues are critical as they are likely to intensify in

significance in the future while also being predominantly beyond the executive's control. Their combined effect will ensure that, at some point, a formal and far-reaching process of parliamentary reform will be necessary.

Emerging Agendas for the Relationship between Parliament and the Executive

More often than not the convention of ministerial responsibility, as the fulcrum of the relationship between the executive and parliament, facilitates the distribution of blame rather than credit in the British political system. This has important ramifications for the outlook of ministers and officials towards parliament. Credit is rare while minor mistakes may well create major parliamentary and public disquiet. 'We live in an age when the media and parliament are not very tolerant of people who make mistakes, and when the cry "who was to blame!" goes up in seconds when something goes wrong' (Wilson, 2000). Hence, officials place more emphasis on avoiding mistakes and protecting their minister than adopting innovative and potentially efficient practices. This defensive disposition is preserved through civil service training, formalized in codes of conduct and reinforced by the adversarial nature of the House. As the 1999 'Modernizing Government' white paper (Cm 4310) states:

Risk Aversion: the cultures of parliament, ministers and civil servants create a situation in which the rewards for success are limited and penalties for failure can be severe. The system is too often risk averse. As a result, ministers and civil servants can be too slow to take advantage of new opportunities (para.11).

In order to maximize the efficiency of the public sector the Labour government has indicated that it intends to address this issue. Sir Richard Wilson (1999), the Head of the Civil Service, has stated his intention to

... look at our concepts of accountability and make sure that they do not reward too highly the 'safe' way of doing things, at the expense of improving our services ... we need to introduce a more professional approach to risk management.

Yet creating a less risk averse civil service would not seem to sit comfortably within the contemporary framework of ministerial responsibility. It assumes a degree of political maturity which is, as yet, absent from the Whitehall–Westminster relationship. The procedures and mechanisms through which parliament enforces ministerial responsibility are seen to discourage sensible risk taking. The issue of risk and the relationship between parliament and the executive take on added emphasis in light of the government's drive towards 'joined up' government. As the Performance and Innovation Unit (2000) stressed 'Joined up policy making is innovative and complex. It is therefore relatively risky'. Initiatives to foster cross-departmental working are likely to eviscerate ministerial responsibility by increasing institutional hybridity within the central state and blurring departmental boundaries. For example, in July 2000 Home Office minister Paul Boateng was appointed as the Minister for Young People. He reported to a Cabinet Committee on Children and Young People's Services and was supported by a Young People's

Unit. However, the Young People's Unit was not based in the Home Office but in the Department for Education and Employment. The 2000 Comprehensive Spending Review made it clear that the Home Office minister was responsible for the day-to-day running of the Unit. Moreover, teams of ministers are now responsible for cross-departmental objectives. The danger is that within this coalition of ministerial effort responsibility can become even more opaque. Strategic cross-departmental government also creates a need to reconsider the methods through which ministers and officials are held to account as parliamentary accountability complicates joined-up government by reflecting and reinforcing Whitehall's 'silo' structure. In light of this tension the Prime Minister established a unit within the Cabinet Office to examine the accountability and incentives for joined up government. The unit's report ('Wiring It Up') notes that although governments may set over-arching objectives and budgets which cross departmental boundaries, if they fail to alter the main levers of behaviour – budgetary and accountability systems, relations with parliament and so on – cross-cutting objectives will remain notional. Thus emphasizing that joined-up policy making is a far more complex reform agenda than is readily appreciated. It cannot be contained purely within Whitehall but necessitates a complete reappraisal of the relationship between the executive and parliament (Flinders, 2001b).

Select committees have launched joint inquiries to examine cross-departmental policies. But joint working between committees has proved problematic (HC 300, paras. 64–7). A role of the Select Committee Panel, proposed by the Liaison Committee, would have been to address these problems by approving the creation of ad hoc committees to scrutinize inter-departmental policies. The government rejected this proposal; suggesting that the Liaison committee should highlight the need for ad hoc committees and make the case to the government. 'The Government would have to retain the right to choose whether to put such proposals before the House' (Cm 4737, p. 10). This response underlines the reality of power within the House, it is the executive that decides the manner and form through which it is held to account. And yet as the notions of risk taking and joined-up government take on priority it is clear they will have an impact upon the relationship between parliament and the executive.

Within the modernization agenda for central government, alongside issues of risk and cross-departmentalism, is an appreciation of the opportunities and challenges of information technology (IT). While this debate has largely centred on operational aspects of service delivery it may increasingly challenge traditional models of representative government and political accountability. Although the benefits accruing to a digitally empowered citizenry are currently the topic of a burgeoning literature it is clear that in future years the relationship between the executive and parliament will take place in a different technological environment (Blood, 2000; Coleman, 1999). The relationship between the governors and the governed will be more complex, direct and immediate. Indeed, all public services – from tax returns to job vacancies – aim to be on-line by 2005. Tony Blair has demonstrated his commitment to realizing the potential of IT through the appointment of an 'e-minister' and an e-envoy within the Cabinet Office. Moreover he has repeatedly stressed his belief in the importance of his weekly webcast to the nation from No.10 as it provides a direct form of communication with the public.

All government departments now have internet sites that provide a mass of information. Technological developments will create new conduits and information flows. Hansard can be examined 24 hours a day. Electronic mail facilitates a direct form of communication between the public and ministerial offices. The creation of electronic information libraries allows the public greater access to government information while reducing the possibly exacting negative impacts of those demands. This, in turn, weakens ministerial arguments regarding the resource implications of greater disclosure. The dangers of too much information are reduced by the development of sophisticated search engines. IT not only supports increased public accountability but may also reinforce parliamentary accountability. MPs could use the internet to locate up-to-date and relevant information with which to enforce a greater and more exacting level of ministerial responsibility. Technological advancement also creates the potential for a range of innovative forms of communication between the public and government. These innovations in political machinery are crucial as they challenge the position of ministerial responsibility as the source of political legitimacy for ministerial action between elections. The concept of a 'teleocracy' in which the public can express their opinions on an issue *en masse* without leaving their homes is increasingly feasible. For example, American senators often receive over a million emails a day on specific topics. Such direct citizen involvement questions the role of, and potentially undermines, representative institutions like parliament. Ministerial action may be legitimated via electronically communicated public instruction rather than parliamentary approval through ministerial responsibility. While this situation would appear to be some way off there are some notable examples of a more direct and complex relationship evolving between the public and the executive.

For example, in January 1998 the Cabinet Office established the People's Panel. The Panel consists of 5000 members of the public who are regularly consulted to discover their views and opinions on government services and specific issues. Developments in IT facilitate consultation on this scale. However, the People's Panel represents a refining of the concept of accountability in the modern state. It seeks to ensure the views of the public are taken into account before decisions are taken. In recent years a range of innovations have been employed, on varying scales, to increase the legitimacy of political decisions between elections. For example, citizens' juries, user panels, local referendums and public meetings. Technological advancement is likely to widen the scope and capacity of these mechanisms. In this environment decisions will carry a direct legitimacy which could well frustrate the relationship between the executive and parliament.

Although parliament fulfils a range of functions, perhaps its most important task is that of ensuring the legitimacy of government action. However, a critique can be proposed that focuses on the government's creation of alternative arenas of legitimate governance while failing to address the obvious impact this will have on parliamentary government. As a result a sweeping programme of constitutional reform, which clearly challenges parliamentary sovereignty, has been introduced within a weak and confusing framework of ministerial responsibility. This tension can be seen in many areas. For example, incorporation of the European Convention of Human Rights will transfer significant powers to the judiciary and yet ministerial responsibility is maintained by the courts only being able to issue 'dec-

larations of incompatibility' (Flinders, 2001c). The tension has arguably been seen at its crudest in relation to freedom of information (Flinders, 2000b). The Freedom of Information Act is significantly weaker than the original proposals due to the government's belief that this is necessary to protect ministerial responsibility and the conventions that underpin it. And yet at the same time the government has devolved power to institutions, like the Scottish parliament, that are likely to introduce more liberal freedom of information regimes within their own framework of ministerial responsibility.

Devolution also challenges the relationship between government and parliament while also increasing the likelihood of jurisdictional conflicts over spheres of ministerial responsibility. Most obviously, the creation of new institutions in Scotland, Wales and London creates anomalies for Westminster. The fact that they have entirely different procedures and ways of working from Westminster is likely to highlight the flaws in the House of Commons over both legislative scrutiny and government accountability. The role of a reformed second chamber may also have important implications for the constitutional equilibrium. This may alter the balance of power within parliament and introduce a greater degree of independence in the scrutiny of the executive. The Royal Commission on House of Lords reform suggested an elected component whose role would be to scrutinize the work of the executive. 'Our ambition for the reformed second chamber is that it should enhance the overall ability of parliament as a whole to hold the government to account' (Cm 4534, 2000). There are already clear indications of a changing balance of power within the Palace of Westminster. Since the 1999 House of Lords Reform Act the second chamber has displayed a new and increasingly combative confidence. The government suffered 36 defeats in the Lords in the 1999–2000 session and in February 2000 the Lords rejected a piece of delegated legislation for the first time since 1968. Before 1997 the Lords were constrained into passivity precisely because their composition was so irrational. The 'transitional' House of Lords, however, clearly feels it enjoys a greater constitutional legitimacy than its predecessor. However, the Prime Minister's control of the numbers and party balance is likely to mellow the House of Lords' independence. In June 2000 the government announced the creation of a joint committee of both houses to examine the Royal Commission's recommendations, but its members have yet to be appointed. In October 2000 a new sub-committee of the Consultative Committee between Labour and the Liberal Democrats was created to examine the issue. The two parties appear a long way apart in their views on the future composition of the Lords and press reports in February 2001 disclosed that discussions between the parties had collapsed in chaos.

The breakdown of the sub-committee on Lords reform was no doubt fuelled by numerous reports suggesting that the Prime Minister and senior members of the Cabinet have decided that the reformed chamber will have only 80 elected members. The suggested preference of the government for the 'minimalist' option has disappointed reformers and opposition parties. Mr Blair is well aware that a strengthened second chamber would threaten the executive's dominance within parliament and create more obstacles for the government in getting its legislation onto the statute book. An electoral mandate would empower those members of the second chamber with a legitimacy to play a greater role. Once more it is

possible to identify a tension arising from the Labour government's commitment to 'Whig' principles of representative government and its reluctance to undermine the powerful position that the current constitutional configuration provides the executive.

There is, however, one constitutional reform that may remove the dominant position of the executive within the House and, some commentators believe, shift the balance of power in favour of parliament. The Jenkins Commission (Cm 4090, 1998) on elections to the House of Commons has rekindled the debate on the desirability of a system of proportional representation which would better equate votes cast with seats in the House. Electoral reform to reduce the size of government majorities within the House has been a frequent reform proposal for decades (Muir, 1930; Walkland, 1983). Electoral reform has been adopted elsewhere in direct response to concerns regarding the dominance of the executive in its relationship with parliament. Against a context of growing disillusionment with the unaccountability of single-party government, in 1993 New Zealand replaced single-member simple-plurality voting with a mixed-member proportional model based on the German system (Mulgan, 1995). Electoral reform and coalition government were seen as a ways of restoring a degree of democratic accountability. Although proportional representation may alter the balance of power within the House it is not clear whether such a reform would necessarily increase parliament's capacity to scrutinize the executive. Political accountability often becomes more opaque in multi-party states with coalition governments (Strom, 1997; Narud, 1996). The benefit of strong majority governments bound by collective and individual ministerial responsibility is that they afford clarity at elections, which enables the public to enforce electoral accountability for past performance. A coalition government is rarely a homogenous entity, this breaks the transparent link between responsibility and action. Coalition bargaining undermines the connection between votes cast and policy preferences. Ministers may deflect responsibility on to other coalition members while the public's capacity to ascribe responsibility at elections becomes clouded.

It is clear, however, that on assuming office the Labour party has become markedly less enthusiastic about introducing electoral reform for Westminster. The Deputy Prime Minister, has said that plans for voting reform should be sent out to sea on a viking-style funeral barge. Labour's National Policy Forum has effectively ruled out adopting the 'AV-plus' system proposed by the Jenkins Commission. While Labour remains committed to a referendum on reform, the vote is expected to be on whether to adopt the Australian-style 'AV' system, which is not proportional, and will only be held at some undecided point in the future when the new voting systems in Scotland and Wales have been 'thoroughly examined'.

The British State is a parliamentary state. The actions of the executive are conceived of, executed and bounded within a parliamentary framework. Paradoxically, a Westminster government with a secure majority has legislated to surround itself with a new constitutional framework of checks and balances, while upholding the centrality of a convention that will become increasingly untenable. If the constitutional reform programme is viewed as straining the convention from above it is

probable that equal or greater challenges to the executive/parliament relationship will emerge from below as a result of the evolving state.

Ministerial responsibility was designed to reflect the departmental structure of central government in light of concerns regarding the accountability of appointed administrative boards (Willson, 1955). The degree to which ministerial responsibility adequately reflected the structure of the state in reality is questionable. However, the increasing complexity of the state, a process that has accelerated markedly since the mid-1980s, has been increasingly difficult to reconcile with a coherent and credible model of ministerial responsibility. Devolved management has exhausted the flexibility of the convention. Consequently, the disparity between the *theory* and *practice* of the convention has become stark, thus increasing disquiet surrounding the continuing validity of the convention. It is likely that the evolving state will deviate further away from the departmental form. In this context the convention of ministerial responsibility will become over-stretched to the point where it is no longer possible to devise even the most tenuous framework of ministerial responsibility to legitimate the structure of the state and form the basis of the relationship between executive and parliament.

For example, the privatization of the public utilities is based on the transfer of power from ministers to independent regulators to insulate the markets from political manipulation. This immediately reduces the scope of ministerial action and thereby fetters ministers' responsibility to parliament for vital public services. In addition the government's utilization of public/private partnerships to secure private sector funding and management may further complicate the convention. As the state and society evolve, new challenges and responsibilities are placed at the door of ministers, for example genetic modification and human embryology. However, these issues combined with the public expectations that accompany them place further pressure on the realistic scope of ministerial responsibility. The response is often to create new quasi-independent bodies to which ministers delegate responsibility for certain regulatory or monitoring functions. Recent examples include the Commission for Health Improvement, the local government Standards Board, the Strategic Railway Authority, the Agriculture and Environment Biotechnology Commission, and the Electoral Commission. Consequently in many spheres of public policy it is regulators and not ministers who decide (Mather, 2000).

Moreover, the creation of these quasi-autonomous bodies is often a response to concerns regarding the operation of ministerial responsibility after incidents that have brought into question the adequacy of political accountability. Examples include, the transfer of responsibility for investigating miscarriages of justice from the Home Office to the Criminal Cases Review Commission and the establishment of the Food Standards Agency to take over functions previously conducted by the Ministry of Agriculture, Fisheries and Food. Although constitutional theory tightly binds legitimacy and power with parliamentary accountability, accountability and impartiality are considered to be increased by excluding certain functions from the constraints and influence of ministerial responsibility (Flinders and Smith, 1998). Depoliticization, in terms of moving functions beyond the direct control of minis-

ters, does not necessarily lead to a diminution of accountability or a clouding of the relationship between parliament and the executive. Accountability is a complex concept that can be attained via a range of mechanisms (judicial, managerial, audit, ombudsmen etc.), several of which can be used to substitute for or complement ministerial accountability. The problem lies in the incoherent and patchy structures of accountability that apply to these bodies (see HC 209, 1998/1999; HC 367 2000/2001). Moreover, the associated accountability mechanisms operate within a broader framework of ministerial responsibility which undermines and complicates their utility (Flinders, 2001a). Parliament was designed to oversee a relatively simple and stable organizational model and is ill equipped to scrutinize a fragmented and fluid organizational structure. As the institutional hybridity within the state increases the ability of ministerial responsibility to legitimate action will decrease. New links and direct relationships, which acknowledge that it is not only ministers (and has not been so for some time) who make, and rightly make, final decisions, will be needed between these quasi-autonomous bodies and parliament.

Implications

Parliament matters. Despite long-standing concerns regarding the balance of power between the executive and parliament it has always remained the primary institution of the British polity. Those who suggest that the government is the real primary institution fail to appreciate parliament's enduring centrality within the constitution – its stature and procedures provide the framework for legitimate state action in the United Kingdom. The executive's internal control of parliament is linked to its broader ability to remould the constitutional infrastructure; its external control of the British state. Ministerial memoirs demonstrate that, despite parliament's vaunted impotence, ministers do take parliament seriously. Careers are still won and lost at the despatch box. The executive must treat parliament with respect to retain the support of their parliamentary party – there is no such thing as a 'government majority' within the House as the government is a maximum of 95 MPs out of a total of 658. The Prime Minister's blanket refusal to appear before the Public Administration Select Committee as part of its inquiry into the Ministerial Code (June 2000) illustrates the true balance of power. The executive defines reform proposals that threaten the dominant position of the executive as constitutionally illegitimate as they would undermine ministerial responsibility and its underpinning conventions. The fact that the reforms have been proposed due to widespread concerns about the appropriateness and effectiveness of ministerial responsibility are concealed beneath the liberal view of the constitution.

Thus highlighting two critical issues: parliament is charged with fulfilling two core functions: supporting and scrutinizing the executive. Whether or how parliament actually needs reforming depends largely on which of these roles is ascribed primacy. Clearly an incoming government which is keen to fulfil its manifesto commitments is unlikely to introduce reforms that will empower or make it easier for parliament to frustrate its plans. Accordingly the pendulum swings (as demonstrated in the case study of the Labour governments since 1997) from Whig to Peelite view on the move from government to opposition, and vice versa. Second, it is critical to understand that discussions on the topic of parliamentary reform are

essentially discussing the location of power in the British political system. Demands for parliamentary reform are fundamentally concerned with the (re)distribution of power. The contemporary paradox lies in the fact that this government has been unwilling to implement reforms to the House that would alter the balance of power while implementing a range of external reform processes that are likely to profoundly change its relationship with parliament. (Indeed, one of the few unifying themes surrounding all these processes is that they have been implemented without any formal or coherent appreciation of their impact upon parliament.) Power is clearly shifting within the British constitution – upwards to supra-national institutions, outwards to the courts and the judiciary and downwards via devolution – but the future role of parliament and the nature of its relationship with the executive is uncertain. However, the constitutional elasticity of ministerial responsibility has arguably been exhausted. As the emerging agendas outlined above augment in significance the demand for parliamentary reform, as opposed to ‘modernization’, will become more acute to the point where the executive will be forced to respond.

It is possible to suggest that this point may have arrived. On 11 July 2001 the Committee of Selection announced the select committee memberships for the current parliament. The composition of the proposed committees, particularly the removal of Gwyneth Dunwoody and Donald Anderson and the appointment of Chris Smith, aroused controversy. The following week in a calculated display of defiance over 100 Labour MPs voted against the government to reject the proposed memberships of the Transport and Foreign Affairs Committees. This incident exemplified the power of the executive, via the whips, in appointing members to parliament’s scrutiny committees. At the same time it highlighted the facile and impotent role of the Committee of Selection and consequently fuelled demands for severing the link between the executive and appointments to select committees. The new Leader of the House, Robin Cook, distanced himself from any involvement in the affair but quickly announced a raft of reforms and reviews. Standing Orders were amended to give every select committee the freedom to decide for itself whether to appoint a sub-committee and the right to appoint a joint committee with other select committees. He also signalled his willingness to consider the proposal put forward by the Liaison Committee, Norton Commission and the Newton Commission (Hansard, 2001) to pay select committee chairs an additional salary in order to create an alternative career path to ministerial office within the House (Cook, 2001). (However, as noted above, the latter reform would be of little value without concomitant reforms to remove the executive’s power of patronage over those posts.)

Norton (2000, p. 13) has outlined how significant parliamentary reform demands a ‘window of opportunity’. For such an opportunity to arise three conditions must usually be fulfilled: a general election must recently have been held; a clear reform agenda must have been published providing a coherent set of proposals for MPs to unite behind; and, there has to be political leadership and commitment. In 1979 all these conditions were met. A new parliament had recently been established, the work of the Procedure Committee had provided a coherent reform agenda and Norman St John-Stevas provided the political leadership as a reform minded Leader of the House. In theory, 2001 provides another confluence of the three key factors.

A new parliament, a great degree of overlap and complementarity between the reform proposals of the Liaison Committee, Norton Commission and the Newton Commission and, finally, the appointment of a senior and reform minded government figure, Robin Cook, as Leader of the House. Robin Cook has declared his mission for the second term as bringing 'radical reform to the House of Commons'. However, whether the government is prepared to respond to the anxieties arising from the current position of parliament, both in relation to the executive and in relation to wider constitutional reforms, is uncertain. The failure of parliament and the executive to embrace the potential of this window of opportunity could have dire consequences for the public's faith in British representative democracy while also making the description of the United Kingdom as a parliamentary state the topic of increasing debate.

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