

PARLIAMENT & GOVERNMENT

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INTRODUCTION

Three key introductory points

1. It is difficult to tell you what the purpose of Parliament is. Because (i) we have no codified written Constitution, nor organic fundamental law. I cannot show you a document called the British Constitution. We rely on conventions - customary practices that work. (ii) There is no agreement on the purpose of Parliament. Some observers are traditionalists, others are modernisers. Some want to strengthen the House of Commons against the Executive: some want to strengthen the House of Lords against the House of Commons. My method is to tell you what happens – reality. (iii) Since 1997 there have been major changes to Parliament and we will know the consequences only in 30 years time when a new generation unused to old ways is in a majority.

2. When people speak of Parliament they usually mean the House of Commons. But there are two Houses, the elected Commons of 650 MPs and the non-elected Lords with 846 peers. Take care when you hear the word “Parliament” to know what is being talked about.

3a. Sovereign power is often said to lie with Parliament, but it is not with just one House the Commons, nor with two - Commons and Lords - but with a trinity, Crown, Lords and Commons. All three have to agree for an Act to have legal force. Crown now means the Government. Once the monarch alone led the Government but over time the governing power of the monarch moved to reside in the Cabinet, which is now the political directorate of the UK, leaving the monarch personally as largely a ceremonial figurehead. Sovereign power now is the Crown in Parliament. Look at the opening words of a statute: “Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-”.

3b. Sovereignty has been undermined by the UK being a member of the European Union, whose laws on matters within its competence are superior to laws enacted by the British Parliament. An issue for the future is how far can Parliament defy European Union Law, or even International Law.

My talk focuses on the House of Commons since it is more important than the House of Lords, because it has legitimacy and authority that

comes from direct election by the people, which the House of Lords as a non-elected House lacks.

ROLES

The House of Lords carries out many functions also carried out by the Commons. It can ask questions of ministers, debate in its Chamber, and inquire in its committees, but it cannot veto legislation desired by the Commons. It can only delay. If it disagrees with a bill coming from the Commons it can delay its coming into law for one session, about 13 months, since if the Commons brings forward the same Bill in the same words in the next session, the Lords cannot stop it. They cannot even delay a money bill, dealing with taxing and spending. They accept what the Commons wants, as long as the Commons Speaker declares it is a money bill.

The House of Commons does NOT:

1) Govern – that is for the Government often called the Executive or Crown, headed by the Cabinet. UK has separation of functions: the government governs: parliament does not govern but supervises, watches over the Government. Note, the UK **separates functions**, not as in the USA **people**, since to be a minister in the executive a person needs to be in Parliament, either the Commons or Lords.

2) Legislate much, that is, make the laws of the land. That role is mainly for the Government. Look at the way most law is made: it is shaped inside the Government by civil servants and ministers in negotiations with interest groups; it then goes to Parliament; and comes out of parliamentary processes much the same as it went in, with little alteration, except where the Government has had second thoughts, often introducing amendments itself, usually on details not the main features of the bill. They remain intact. This outcome is not strange: the Government has a majority in the Commons – indeed it is the Government because it has a majority - so it controls the agenda of parliament, except for some minor aspects, and it controls the vote. In the UK the Executive performs the legislative role: Parliament is **not legislating**, rather it is **legitimising**, giving a mark of approval, conferring authority on the law and policy, showing the people that it is now the law that must be obeyed.

3) Control the nation's finances – That again is a role for the Government – especially the most important department in the executive – the Treasury. The Commons cannot initiate the expenditure of money or tax proposals – the financial initiative lies with the Government, as it has done since the seventeenth century. The Commons has no committee on expenditure and taxation – there is no estimates committee; but it has

a very important committee, its senior committee, the Public Accounts Committee, set up in the 1860s, which examines Government spending, to ensure it has spent the taxpayers' money as Parliament intended, effectively, economically and efficiently, and with propriety. But the money has already been spent when it comes on the scene – it is like locking the door of the stable after the horse has run away.

Parliament can influence Government but it does not itself govern.

The governing function is for the Executive: Parliament is doing something different.

Let me now be positive and tell you what the House of Commons does

1) Debate, i.e. hold a *parler*. The very name “Parliament” tells us its main function – to be a place for a *parler*, from the old Norman French *parler* to have a conversation. In its earliest days in medieval times the King would conduct a *parler*, hold a dialogue, with the great landowners, the feudal lords in their House of Lords, and representatives from the boroughs (urban areas) and shires (rural areas) in the Commons. Note Commons has nothing to do with Commoners: it refers to communes the places - the communities - they represented. The King wanted the Commons to vote him money from taxes for his policies, especially his wars; while they urged him to follow the policies they wanted and to redress their grievances. That is still the role today, the “mediaeval imprint” that Professor Loughlin talked about is apparent. The Government seeks Commons support for its policies and spending plans. Parliament means “talking shop”. The central carpet of the Commons has two lines down it, separating the Government from its opposition; the distance is two swords' length, and MPs must not step over the line. Jaw Jaw is better than War War: it is better to fight with words than with swords. It is supposed to be adversarial - it is not an academic seminar.

2) Support the Government, and opposition to that Government.

Most MPs are elected because of the party label they carry. They go to the Commons to support their parties: the majority to support the Government, and the rest to support opposition to that Government - that is why they have been elected. Usually the Government wins, but not always. The Commons can kill the Government by voting it has no confidence in the Government, as in 1924 and in 1979 when by one vote the Labour Government of James Callaghan was destroyed, a general election was called and Mrs Thatcher's party won, and Labour was out of government for 18 years. Parliament is the location for an adversarial confrontation between the parties with words. The power to end a Government is always there, in the background. The Government knows it, and so it does not act in a way that would provoke the MPs to vote

against it on vote of no-confidence. From that power to kill the Government flows the influence of the Commons over the Government.

3) Expose. It exposes the Government's actions and inactions, i.e. it calls the Government to give an account of what it has done or not done, making it answer questions and give statements. It is a pressure for open government. It makes Government accountable.

4) Educate. It educates the nation about political issues, great and small. It provides most of the political stories in the media. When Parliament is not sitting there is little political news, outside the party conference season. The House of Commons makes politics understandable and interesting. It does so by simplifying the issues, into a conflict between two opposing teams. It makes complex issues comprehensible for the people. It makes politics like a sport with teams to cheer or to boo. Most people do not understand or follow the complicated issues of policy and politics, and its odd language of abstract words like inflation and devolution, and percentages, but they do understand and appreciate a sporting event. They like the drama of theatre too, and the House of Commons presents politics as theatre, with MPs giving performances that are judged by those who follow the play. They have characters to applaud and others to hiss. The House of Commons informs, simplifies and dramatises. It helps to shape the views of the people.

5) Express. It expresses the nation's concerns, of localities, groups and individuals, on big issues that affect everyone and on small issues that affect only a few. It's the representative role of MPs, raising issues in parliamentary questions, debates, and in committees, and in letters to ministers. A high official of the House of Commons is the Parliamentary Commissioner for Administration, or the Ombudsman(1967), the grievance man/woman, to whom MPs can take the complaints of their constituents about maladministration by Government - not illegality which goes to the courts. It was set up in 1967.

6) Scrutinise. Parliament scrutinises the Government, its proposed legislation, policies, expenditure and administration through select and public bill committees. Public Bill Committees examine proposed legislation in detail clause by clause, in rooms arranged as mini-Houses of Commons with two groups of opposing MPs facing each other, and they debate. Select Committees inquire and investigate policy, administration and expenditure. They are arranged like a horseshoe and they cross-examine witnesses who appear before them. The current system of select committees that scrutinise departments was instituted by

Mrs Thatcher in 1979 – a reform welcomed and not condemned by leftwing parties today who want to expand the role of select committees. They would like to have at their disposal the kind of resources that the Public Accounts Committee can draw on – the Comptroller and Auditor General and his National Audit Office of over 800 auditors examining government spending

This parliamentary system of scrutiny has come to local government too, where councillors since the Local Government Act, 2000, are told to exercise scrutiny over their executives through overview and scrutiny committees like select committees. The Government's recent Localism Act 2011 withdrew the compulsion to adopt this model and allowed councils to revert to their traditional system of committees that enabled councillors to take executive decisions.

7) Recruit, train and assess ministers of the Government. The House of Commons is the **recruiting centre** for ministers. The UK draws its ministers overwhelmingly from the Commons, with a few from the Lords, but not from other walks of life, like business, banking, universities, and law firms. It is their **training college**, where they learn how to perform as ministers. New MPs watch how ministers behave in the House, and learn what to imitate and what to avoid. If they perform well in the Commons, they come to the notice of their party leaders and, if successful there, are promoted to ministerial jobs in the Government. Then the Commons becomes their **assessment centre**, since they have to speak in the House on behalf of the Government and their department. They face the opposition and its critical questioning, and they have to convince their own party supporters that they have a grip on their departments, can beat the opposition and raise the morale of their own MPs. Poor performances in the Commons can damage the career prospects of ministers, and they may be removed from the Government by the Prime Minister in a reshuffle.

A Worrying Concern

The reputation of MPs and Lords has been damaged in recent years by press/media revelations of their excessive claims for expenses, even cheating, and some have gone to jail. The people who should have been controlling the nation's spending were shown to have failed to control their own spending. Perhaps the recent introduction of greater regulation of the press was the revenge of the Commons. Some see the public becoming more disillusioned about the political class, and wonder if they will turn against the British system of representative democracy, or vote in independents and demagogues.

CONCLUSIONS

The British Parliament differs from the US Congress in that its House of Commons is an “arena” assembly and not a “transformative” assembly. This distinction was made by the American political scientist, Nelson Polsby, who divided legislative assemblies into two types.

“**Transformative**” assemblies like the US Congress take into the assembly in the persons of the members of Congress the pressures from society and then themselves shape and mould legislation. Bills are often named after the Congressmen and women who had really made the legislation.

“**Arena**” assemblies like the British House of Commons do not make laws themselves but are arenas where contending groups fight it out. They provide locations for a contest, like a sports arena or bull-ring. They are not corporate institutions or formal organisations with their own legal personalities. They hold ministers to account. They influence Government policy and legislation, exercising most influence by **the “rule of anticipated reactions”**. This law of political science is that Governments think ahead when making their policy and legislation, and try to anticipate the likely reactions of the MPs. So the Commons exerts considerable influence over the Government since the Government does not want to bring forward proposals that will incite strong opposition from MPs. They usually correctly anticipate the likely reactions of the MPs so that their proposals usually sail through the procedures of the Commons with little significant change being made. The House has had influence but it is not overt and explicit, but hidden. It is important and influential.

Its influence derives from its power to destroy a Government by a vote of no-confidence. It can make or break Government – if it wants to. It can be said to control the Government. But it has become harder to do so since the Fixed-term Parliaments Act 2011. It fixes the date of the next General Election at 7 May 2015, and provides for five-year fixed terms. It includes provisions to allow the Prime Minister to alter the date by up to two months by Order. There are two ways in which an election could be triggered before the end of the five-year term: (a) if a motion of no confidence is passed and within 14 days no alternative government is found in which the House has expressed confidence; (b) or if a motion for an early general election is agreed either by at least two-thirds of the House or without division.

But on August 22nd 2013 the Commons did defeat the Government’s plan to attack Syria. First time since 1782 that the Commons defeated a government on a peace and war issue – lost the US colonies.

The power of the Prime Minister has been reduced.

