

A. Letting MPs be Independent

*"Some men change their party for the sake of their principles;
others their principles for the sake of their party"*

~ Winston Churchill

1. History of Parliamentary Development

In Chapter 2B the development of Parliament and Government was described. The battles fought by the British people over the centuries were to bring the monarchs and their Privy Councils under the scrutiny of Parliament. Following the Glorious Revolution of 1688, by the time of the accession of George III in 1760 this principle had been largely won.

Parliament was designed to debate and as appropriate agree or disagree with the proposals of the monarch and his or her ministers. The ministers then oversaw the implementation of the agreed legislation by collecting taxes, organizing collective activities such as armies or construction projects and ensuring the administration of the law.

Parliament was based on individuals in the legislature being representatives of their constituencies who could challenge and determine the correctness of the proposals of the monarch and ministers. MPs had the freedom to vote as they saw best in all the circumstances. In his 1774 Letter to the Electors of Bristol, Edmund Burke stated about MPs:

"His unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you or to any set of men living."

2. The Contrasting Current Position

Nowadays of course Members of Parliament almost entirely do sacrifice their judgment to "*any set of men living*", they being the party to which they belong. It is very rare for any Government to suffer any defeat in the House of Commons and indeed the current Labour Government suffered no such policy defeat throughout its first two terms from 1997-2005 when it enacted much contentious legislation. MPs were characterised as early as 1946 by the Conservative MP Christopher Hollis:

"On most votes it would be simpler and more economic to keep a flock of tame sheep and from time to time to drive them through the division lobbies in the appropriate numbers".

MPs are corralled, with the graphic word "whipped" being used to describe the process, to vote in line with the wishes of their party leadership. They often vote for a motion with only the very slightest idea of what it entails. This is evidenced from those MPs who are not attending a debate, usually over 80% of the total, but are at another meeting within the Division Bell area who have to rush to vote. They will often admit that they have little idea about the substance of the motion on which they are voting. Almost all of what is approved by Parliament is now just a rubber stamp of what has been decided by a Government department.

In November 2005, Roy Hattersley, the former Labour Party Deputy Leader, wrote in The Times:

"Labour backbenchers — the most supine Members of Parliament in British history — must decide where their loyalty lies."

In 2007 the Labour MP Alan Simpson announced that he would be resigning at the next general election. In his resignation letter to his Nottingham South constituency he said:

"I never went into Parliament to have a career. I went in to change the world. I'm leaving because I still want to change the world, and I don't think you can do that in this Parliament. My worry is that it has become a comfort zone in which MPs are paid more and more to stand for less and less. There are good people in the Parliamentary Labour Party; just not enough of them. Many MPs complain of a Government that no longer listens to the party, but they dutifully walk through the division lobbies to vote for whatever regressive measures Downing Street asks for. At times I feel that colleagues would vote for the slaughter of the first-born if asked to."

In October 2008, Simon Jenkins wrote in The Sunday Times:

"In all my years of writing this column, from which I am standing down, I have been amazed at the spinelessness of Britain's elected representatives in defending liberty and protesting against state arrogance. They appear as parties to the conspiracy of power. There have been outspoken judges, outspoken peers, even outspoken journalists. There have been few outspoken MPs. Those supposedly defending freedom are whipped into obedience."

3. The Effect of Unfettered Government Legislation

One of the key advantages of the concept of independent MPs is that it would ensure better scrutiny of legislation and regulation.

The volume of legislation has grown hugely with there now being about 8 new laws or regulations a day. According to Sweet & Maxwell, the legal publishers, in Margaret Thatcher's time as Prime Minister there were an average of 1,724 pieces of legislation per year. Under Tony Blair this increased by over a half to 2,663 laws per year. Gordon Brown's first year saw a further 6% increase to 2,823 new laws (64% more than the figure for Thatcher) despite his repeated pledges to cut down on the amount of red tape with which businesses and other organisations have to comply.

The "bible" for tax experts is Tolley's Yellow Tax Handbook. This contained 4,555 pages in 1997 but this has now more than doubled to 9,841 pages. A similar example of massive legislative activity is in the area of the Home Office where in the five years since 2003 there have been five new Criminal Justice Acts, a total of 910 sections and 104 schedules. Across all departments, 1,036 new criminal offences have been enacted since 1997.

In February 2009, Richard Thomas, the Information Commissioner, was reported in The Times as criticising proposals going through parliament to allow mass data sharing between government departments and the private sector. He said that other key government surveillance measures had been "pushed through" without proper scrutiny or parliamentary debate.

In the same month, Sir Ken Macdonald, Director of Public Prosecutions from 2003-08, wrote in The Times:

"In Britain we had an additional burden: legislators who preferred criminal justice to be an auction of fake toughness, so long as the toughness was not too tough to design. So no one likes terrorists? Let's bring in lots of terror laws, the tougher the better. Let's lock up nasty people longer, and for longer before they are charged. Let's stop medieval clerics winding up the tabloids. Let's stop off-colour comedians outraging homophobic preachers. Let's pretend that outlawing offensiveness makes the world less offensive."

This frequently made useful headlines. But it didn't make our country or any other country a better or safer place to live. It didn't respect our way of life. It brought us the War on Terror and it didn't make it any easier for us to progress into the future with comfort and security.

Our legislators faltered because they seemed to ignore the fact that what makes good politics doesn't always make good policy. And they didn't want to tackle the more complex issues that really affect safety in people's lives. It was easier to throw increasingly illiberal sound bites at a shadowy and fearsome enemy."

The Sixth Report on *The British Regulatory System* published by the British Chambers of Commerce stated:

"Despite expressed concern with the total volume of regulation, their pace of introduction, as measured by (R)IAs, has continued to increase. About 130 regulations per annum were generated in the first four years of this Government. The number has increased progressively to about 350 in the year covered by this report, the year to 30th June 2007. The cumulative burden on British business since 1998 is, according to the (R)IAs themselves, £66bn., of which 70 per cent arises from EU sourced regulation (73 per cent last year). In terms of the number of regulations, the EU accounts for only about 35 per cent."

The Association of Chartered Certified Accountants has stated that: *"The cost of complying with red tape can be proportionally up to 30 times higher for SMEs (small and medium sized enterprises) than for larger firms"*

Jeremy Clarkson expressed a popular resentment about the tide of regulation when he wrote in The Sunday Times in June 2008:

"The machine needs to be fed. When you have 650 members of parliament elected to make laws, and an army of 500,000 civil servants whose job is to make sure that those laws work, and more legions in Brussels making more laws, there is never going to be any respite. The machine can never rest until absolutely everything is illegal.

Whenever I let my mind wander, I become quivery-lipped and frightened thinking about all the things I could do 10 years ago that I cannot do now. I may not smack my children, for instance, or talk on a mobile telephone while driving or put too much salt on my mashed potato or smoke at home if my cleaning lady objects or give my donkey a tender burial or encourage my dogs to kill rats. And if I put the wrong thing in the wrong-coloured dustbin, I'm likely to spend the next five years digging tunnels."

Governments since the 1980s have said how they want to reduce regulatory burdens but they have clearly failed. Businesses, charities, national and local public authorities and other employers are somehow supposed to read, assimilate and implement a barrage of new regulations, which may have some individual validity, but which the current system of minimal Parliamentary scrutiny allows to be introduced at far too great a rate. Employer related regulations are now normally implemented at specific times such as the beginning of the tax year which means that the magnitude of the new employer requirements can be clearly seen. In the first week of April 2008, the Government implemented 128 new statutes and statutory instruments affecting employers, covering thousands of pages, a 58% increase on the 81 that came into force on the same date in 2007. The April 2008 ones included significant pieces of legislation requiring detailed study and often substantial management time such as:

- The introduction of the Corporate Manslaughter Act
- Changes to the Sex Discrimination Act in relation to pregnancy, maternity leave and harassment
- The extension of the Occupational Pensions Schemes regulations: organisations with more than 50 employees must consult with members of pension schemes before making changes to future pensions arrangements
- New Employment Equality regulations relating to employee benefits based on the length of service
- New provisions for employment agencies to protect the rights of agency workers

These provisions, possibly valid individually, nevertheless swamp organisations with bureaucracy which leads to fewer jobs. Government has produced no cost/benefit analysis of the total effect of the new regulations that are annually or more frequently introduced.

4. The Effects of the Party Political System

In Westminster the reputation and effectiveness of the "Mother of Parliaments" have become perverted by the reinforcing effect of strong political parties and the power of Prime Ministers. Parliament no longer satisfies the electorate nor oversees a system of Government which allows the UK to be competitive in the 21st century.

George Washington foresaw the problems which would arise if parties were allowed to develop when he wrote in his Farewell Address in 1796:

"I have already intimated to you the danger of parties in the state ... The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism.

The common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it."

Ray Mallon, elected independent Mayor of Middlesborough, has said:

"I do feel the party system is detrimental if it results in politicians paying more attention to the whip than the real needs of the people they represent"

Political parties have nevertheless grown and now prevail in our political system. Consequently the voting choices of MPs are dominated by their being just delegates of their political party, often described as "lobby fodder". Parliament is in disrepute because its traditional scrutiny role has been taken away and it only rarely provides any serious challenge to the authority of the executive. The growth in:

- the strength of the central political party organisations and whipping system
- the number of Westminster Village MPs whose career depends on party patronage, and
- the power of the party leaders to dominate policy development

have all led to individual MPs having almost no opportunity to make their views count through their primary functions of scrutiny and voting.

5. The Political Class

Historically most MPs had had a successful previous occupation before coming into Parliament and even a generation ago MPs represented a wide range of backgrounds and skills. However nowadays they are often career politicians who, from after leaving college, have lived and worked in the Westminster Village.

As they have to select a political party when they set out on their career their entire success is dependent on promotion by their chosen party. Getting to the "*top of the greasy pole*" as described by Disraeli. They therefore have to be obedient and find themselves not allowed to express their true feelings if they wish to progress. The benefit for them is that if they are loyal they will be promoted and the party label will help to protect them from personal responsibility.

Peter Osborne now estimates that the Political Class comprises about 5,000 people across the whole of the UK including elected members, party officials and political correspondents.

A survey undertaken as part of the international RACATEL project (Raising Civil Awareness Through English language), conducted in the UK by the Workers Educational Association of Sheffield found:

"Whilst no-one in the UK group felt that politicians (local or national) were corrupt, they did feel that politics attracted the worst sort of person: egotistical, opportunistic and morally light weight. They felt that high office often led to self aggrandisement and felt offended by the casual picking up of additional payments from the media and advisory roles with corporations."

6. The Party Policy Agenda

This regimentation of MPs is completely contrary to the principles of Parliament whose very name means (from the French *parler*) a place to speak and discuss. In normal life a group of people will find themselves agreeing about some matters and disagreeing about others. Nobody would ever normally accept all of the views of another person or entity.

The main political parties have had to become wide coalitions. The Conservative Party includes those who are for economic and personal freedom (Libertarians), those for economic freedom but with clear moral views (Thatcherites) and those who wish the state both to intervene and to restrict moral choices (One-Nation in the Macmillan heritage). Similarly Labour has been torn between Old Labour and New Labour with different views about the effectiveness of markets and how strong should be the "nanny state". The Liberal Democrats have supported policies from allowing prisoners to vote to greater state intervention to tax cuts.

Even many party members therefore agree with only some of the policies of their party at any one time and will often vociferously disagree on others. This richness of view is entirely proper in a democracy. US President Herbert Hoover recognised that real life issues need discussion as widely as possible when he said:

"Honest differences of views and honest debate are not disunity. They are the vital process of policymaking among free men."

7. Free Votes

Party leaderships used to give their members more opportunities for free votes. In 1971 Edward Heath initially insisted that the vote on the paving motion on the principle of entry to the EEC should be subject to a three-line whip. This had the effect of provoking Conservative dissidents to press for a free vote so that they could oppose entry without being disloyal to the party. Just before the First Reading vote on the Bill in October 1971 the Government declared that there was to be a free vote as the issue was a matter of conscience. Most Conservatives voted for membership, but 39 voted against and two abstained. There was a Labour three-line whip instructing Members to oppose UK entry, but 69 pro-European Labour MPs voted in favour of entry and 20 abstained.

Free votes are now very much restricted. The only key area where MPs are still allowed to make their own decisions, other than on matters of conscience, is on the very limited number of private members' bills. These have dropped from an average of 17 successful ones per year in the 1960s to just 3 in 2005-6 and 4 in 2006-7, another erosion of the discretion of backbench MPs.

Conscience issues include areas such as embryo research, sexual orientation, euthanasia and capital punishment. These are very difficult societal issues which none of the political parties wishes formally to address but it is instructive to see how by allowing a free vote a decision can be reached which is accepted by the population at large.

There are nevertheless continual party leadership attempts to try to reduce even this freedom for MPs as evidenced by the Government's attitude to whipping and Parliamentary procedure for the 2008 Human Fertilisation and Embryology Bill. MPs on both sides of the issue accused the Government of "*bringing Parliament into disrepute*" for allowing only four three-hour debates. The Government also initially insisted on a whipped vote at Second Reading and only backed down when faced by the pressure of resignation from three Roman Catholic ministers. It did however continue to insist on a whipped vote at Third Reading and as a result Ruth Kelly, the Transport Secretary, was visibly absent for the vote.

There is clearly no democratic justification for matters of equal or greater significance to the British population being whipped when some directly of interest to only a minority of people can be given a free vote.

Legislation about going to war, establishing major new Government agencies, increasing Government intervention in the economy or in an individual's private life, deciding on how personal or corporate income should be redistributed through the taxation system and a vast number of other legislative and regulatory proposals are also ones which directly impact on the lives of UK citizens as much as or indeed more than those on which a free vote is allowed.

In contrast to the current whipped, and therefore minimal, legislative process, all of these matters would benefit from a free and fair discussion in the House of Commons. There is a strong argument for less but better legislation. Unfortunately the whipping system does not allow any substantive or effective debate.

8. The Effectiveness of the Opposition Party

It is sometimes said that the Government is held to account by the Opposition. However although the Opposition does have access to the media and can express its views there, by definition it does not have the votes in the Commons either to cause Government actually to change its policies or to win a censure motion. The increasingly partisan nature of Parliament, not least in the yah-boo politics of Prime Minister's Questions, means that the opportunities for compromise have also become less. Much of the Parliamentary and other political debate is staged largely for the benefit of the television cameras.

The practical problems that this brings were discussed in July 2008 in an article by Sean O'Neill, Crime Editor of The Times. He described comments made by Deputy Assistant Commissioner Alf Hitchcock who was chosen by Jacqui Smith, the Home Secretary, to develop a plan for fighting knife crime in eight hotspot areas of the country:

"As the Home Secretary's ideas were derided as "half-baked" and "piecemeal" by opposition spokesmen, Mr Hitchcock called for a united front by politicians to tackle the problem. He said: "One of the worries I have is the way that this issue is being used politically at the moment. This is a time for the parties to stop using it as a political argument and to start working together. I'm sure there are good ideas in Government and good ideas in the Opposition and drawing these ideas together would be better than fighting over the issue"

In 1895, Robert Wallace MP said:

"The actual Government of this country is properly neither a Monarchy nor a Democracy, but mainly an alternation of two traditional Oligarchies...managing the members of its Parliamentary following through a dexterous blending of menace, cajolery and reward."

The wife of a senior Conservative politician has more recently described the system as being "two party oligarchies propping each other up".

Peter Osborne has stated:

"Though the public is always told that Tory and Labour are in opposition, that is not really the case. They are led to believe that the Liberal Democrats are an insurgent third party, but that is not the case either. It has come to seem to me that their strongest loyalties are to each other. For the greatest part of my time as a political reporter the most bitter rivalries at Westminster have involved factional conflicts within individual parties rather than collisions of ideology and belief."

9. The Operation of an Independent Legislature

These issues with parliament are further highlighted by comparing them with other assemblies. The City of London Corporation forms the oldest government in the UK and one of the oldest local governments in the world with over one thousand years of municipal autonomy. Its proceedings have been called the "Grandmother of Parliaments".

Its Court of Common Council continues to operate its proceedings without any political parties. Each representative is elected on the basis of the preferences of the electorate and is then free, without any party pressure or whipping, to act and vote in line with his or her best judgment. Membership of committees can be decided by votes of all members. Individual members are as free to put forward their own questions and resolutions as are the City administration. No Councilman or Alderman receives any salary for their contribution.

It is sometimes said that party or collective responsibility is necessary for decisions to be made. However, as with the City of London, places like the Isle of Man operate very effectively with a majority of Independent MPs and no preponderant political parties. Similarly some councils such as Shetland and Orkney are entirely composed of Independent councillors and many councils now operate with no overall control.

In other countries, such as the US, the whipping system is much weaker, as the whips cannot bargain with a congressman by denying promotion or through other sanctions. The legislatures nevertheless operate effectively.

The only real challenge to the UK Government is now through the crossbenchers in the House of Lords who are individuals acting on the basis that they have a free vote which is not whipped by any party. The success of the Lords' crossbenchers in enforcing better discussion of Government proposals in recent years provides very strong support in favour of allowing similar discussions and votes, unfettered by party whipping, to take place in the House of Commons. It should also be noted that the crossbenchers act as a formal group, even electing their own chair, but these structures confine themselves to administrative matters and do not direct any political policy, exactly as envisaged for the Jury Team.

Writing in The Times in January 2009, Vernon Bogdanor, Professor of Government at Oxford University, said:

"In the Commons, a government can generally rely on the whips. In the Lords, it has to win the argument."

There are also specific successful examples of when MPs have been allowed to campaign separately from their party. In the 1975 referendum on continuing membership of the EEC, Government ministers were allowed to campaign as they wished. Similarly there have been free votes on issues such as abortion or fertilisation, as described above, and on others such as Sunday trading or foxhunting (although in the latter case the strong views of many Labour MPs were already well known and a whip would have added little).

The absence of the party whip does not bring chaos and in contrast leads to perfectly acceptable Parliamentary decisions which indeed usually have more credibility because it is known that MPs have exercised their own judgment rather than just being lobby fodder.

10. The Wisdom of Crowds

The philosophy of the wisdom of crowds, well described in James Surowiecki's 2004 book, endorses the concepts of the Jury Team especially by demonstrating how larger groups of independently acting individuals are likely to make decisions better than either individuals or small groups. Surowiecki shows that the three elements required to get the best decisions are that the large group should have:

- Diversity of Opinion
Each person should have private information even if it is just their own interpretation of the known facts.
- Independence
People's opinions should be individual and not determined by the opinions of those around them.
- Decentralisation
People should be able to use their own specialisation and local knowledge.

These three factors form a key basis of the philosophy of the Jury Team. In contrast, the current party political system in Parliament negates any "Diversity of Opinion" or "Independence" and fights any "Decentralisation". It is the exact opposite of what is required to make the best decisions.

The Jury Team will therefore consist of high-quality individuals, selected by the electorate directly rather than through the existing political parties. They will be dedicated to the needs of the electors and free to use their own judgment. There is no doubt that this is more consistent with the principles of democracy.

In this way a wide group of independent people will be able to review all Government proposals and only vote for them if they believe them to be sensible. The Jury Team candidates will therefore have as the first of the Jury Team Governance Proposals:

MPs should be free to vote in line with their best judgment and not be required to obey any party whips.