

Chapter D - Strengthening Parliament

The third set of Jury Team Proposals is designed to encourage more MPs with experience of the world outside the “Westminster Village” into the House of Commons by providing the opportunity for proper debate, rather than being “lobby fodder”, in the same way as is achieved by the non-party crossbench members of the House of Lords. The expenses scandal has accelerated the idea of a new style of politician going into Parliament. The Jury Team Proposals will base MPs pay and expenses on civil service guidelines, introduce term limits for MPs, make deception by elected representatives a criminal offence, set up an independent Politicians Complaints Commission, cap political donations, improve the operation of Select Committees, restrict gold-plating of EU directives and provide a fixed Parliamentary term.

*“If the turkeys won’t vote for our Christmas,
we need to change the turkeys.”*

The Loss of Parliamentary Power

For 500 years after Magna Carta, Parliament had no political parties. Each MP voted according to their own conscience. Even during the 19th Century, many of the most important initiatives, such as the abolition of the slave trade or the development of the railway system, were the result of private members’ bills. However as the electoral franchise was extended in the last two centuries, and the secret ballot introduced, the central party political organisations became more powerful. They now have a stranglehold not only on the selection of Members of Parliament but also through the whipping system on the way in which they must vote once elected.

Graham Allen, the Labour MP, says in his book *The Last Prime Minister*:

“Political legitimacy became synonymous with directly elected representation and as the franchise got wider electoral legitimacy was monopolised by the Commons, who in order to execute their parties’ objectives, in turn ceded their political sovereignty to their leaderships. The more the MP’s electability depended upon the public perception of the Prime Minister, the more exclusive became his power. Thus was completed the vacuous circle which characterizes British politics today.”

In his speech at the Haltemprice & Howden by-election in July 2008, Bob Geldof identified that Parliament is no longer standing up to the executive:

“Let us be grand for once then, for we talk of great subjects. Let us ask ‘what is the point of England’ now that Parliament, whose primary purpose is to defend the liberties of the people, have so gratuitously, so wantonly, so casually betrayed that trust and taken from us that same liberty which above all else defines this country and its constitution, and that which has been its greatest gift to the world: its freedom, its tolerances, its civilisation which William Wilberforce so forcefully argued from this town so many centuries ago.”

Bill Cash, the Conservative MP, wrote in October 2008 about the 150th anniversary of the launch by John Bright of his historic campaign for working men to get the vote. Cash said:

“Bright, with Richard Cobden, his fellow believer in free trade, had in 1846 saved the masses from starvation by forcing Peel to repeal the Corn Laws. So if Bright were alive today what would he be fighting for? His absolute priority would be to restore respect and authority to the Commons. The man who coined the phrase “the Mother of Parliaments” believed that the most precious thing that a person possessed was the right to vote for the laws that governed him and his country. Bright’s first allegiance was to his conscience. He would have no truck with the modern whips system and the surrender of parliamentary business to the executive, nor the fixing of timetables to prevent debate - such as the mere nine minutes given to the third reading of the Embryology Bill last week.”

At an October 2008 conference, Martin Bell, the former Independent MP, spoke about the growing need for people who are free of political sway, and “only want to serve the people who voted them in”. He said:

“Negative ‘Punch and Judy’ politics are not working anymore. Independents practice a different kind of politics, gentler and closer to the people, and we need that now more than ever before.”

The Lack of Scrutiny of the Executive

The strident “yah-boo” party political nature of modern UK politics has led to the country facing serious problems. The unchecked and unscrutinised concentration of party political power results in decisions

being made for the benefit of a political party rather than in the national interest throughout Parliament and Government in areas including:

- the approval of legislation
- taxation, spending and investment
- public services such as health, education and transport
- departmental announcements and use of statistics
- regulation and enforcement
- appointments

The Better Government Initiative, chaired by Sir Christopher Foster, includes current and former senior civil servants and other interested participants in government and has stated in its report *Governing Well*:

"The capacity of Parliament to scrutinise the proposals of the Executive and to hold it to account for its decisions should be strengthened. Parliament should provide for more rigorous initial analysis of policy proposals and retrospective review, after a suitable period of time has elapsed, of the costs and outcomes of policy and legislation actually achieved against those in the initial proposals."

In particular the Commons has minimal input to the crucial issue of public spending which is negotiated between the Treasury and individual departments without any real Parliamentary scrutiny. Nevil Johnson referred to this lack of scrutiny of expenditure by Parliament when he said in 1980:

"Its influence over proposals for expenditure is virtually nil and has been for decades. It has a marginal post-facto influence on spending procedures through the Public Accounts Committee, but all attempts to strengthen its position before financial commitments are given statutory force have failed."

The Need for Individual Judgements

The philosophy of the "wisdom of crowds", well described in James Surowiecki's 2004 book, endorses the concept of a Parliament as a place for discussion by demonstrating how large groups of independently acting individuals are likely to make decisions better than either small groups or individuals on their own. 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.

In contrast, the current party political system in Parliament negates any "Diversity of Opinion" or "Independence" and fights any "Decentralisation" and is therefore the exact opposite of what is required to make the best decisions.

Indeed there is also clear evidence that party politics is positively harmful to achieving balanced decisions: people who are not independent tend to converge on an extremist position. This has been shown in the book *Going to Extremes* by Cass Sunstein, the renowned legal scholar and author of *Nudges* who has been appointed by President Obama as Director of Information and Regulatory Affairs.

Sunstein set out to answer three questions: Why do people become extremists? What makes people become so dismissive of opposing views? What leads groups to take extreme positions or unnecessary risks? He marshaled an abundance of evidence that shows that when like-minded people talk to one another, they tend to become more extreme in their views than they were before. This point applies to such diverse groups as religious organizations, corporate boards, investment clubs and political officials. He showed through original research, for instance, that when liberals are brought together to debate affirmative action, they end up more supportive of it, while conservatives brought together to discuss same-sex unions become more sceptical about them. Without any knowing reference to the UK Parliament he states that a good way to create an extremist group, or a cult of any kind, is to separate members from the rest of society, either physically or psychologically.

The Career Politicians

"A political party is now a sort of glorified employment bureau for political careerists"
~ Jan Marijnissen

People believe in democracy and expect their elected representatives to demonstrate its ideals. Unfortunately politicians are not now generally seen as sufficiently experienced or competent for the offices which they hold, as operating in a trustworthy manner or as being in the job for the benefit of their constituents rather than for themselves. Voters feel let down by pronouncements which turn out to be spin, by a quest for publicity rather than for real change, by pledges which are not kept and by personal issues such as corruption and seemingly extravagant expenses. Many of these issues result from the generally little proper prior career experience which MPs have had before entering the House of Commons.

Joan Bakewell wrote in The Times in January 2009:

"It is the Commons that cries out for change. The electoral process is now so honed to serve the interests of political careers that MPs are growing more and more like each other. Learning the trade in university debating clubs, a year or two in a think-tank, then as political advisers, or rising through the grinding ranks of local councils, the political careerist is a clear type: focused and ambitious, fluent in the jargon of procedure and points of order, glib with amendments and early day motions."

The current system of political parties does not allow MPs much opportunity to make known their individual judgments and one consequence of this reduction in the role of an MP is that the job now attracts less prestigious candidates. Historically many people decided to become an MP after a successful first career as a way of involving themselves in the life of the country and of giving back some of their experience. Nowadays such people tend to choose to move into the charity world or into retirement.

An Editorial in The Times in August 2009 stated;

"Where the party machine has the whip hand, too few independent-minded candidates are selected. If selection becomes, as in all parties it has, a conspiracy for the benefit of the mediocre party hack at the behest of a tiny band of activists, then the wider public interest is being neglected".

The Image of Parliament

The particularly serious issues with the UK Parliament were confirmed by the *Eurobarometer* survey published by the European Commission in June 2008 (even before the 2009 expenses scandal). This was based on over 30,000 interviews across the EU with a minimum of 1,000 interviewees in each country, including 1,306 in the UK. One of the sections was: *"I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it."* Only 27% of UK citizens said that they trusted the UK Parliament. This result was the lowest of any country in the EU and demonstrates that the UK electorate has a much deeper suspicion about its political system than in other broadly comparable countries. This is a very sad position and should be a wake-up call for all of those who believe that the UK deserves a better system of Government and that the *"Mother of Parliaments"* should be reformed in order to gain greater respect.

Not surprisingly, UK surveys in 2000 and 2004 showed that 54% and 55% of voters thought that *"this country is getting less democratic"* with only 22% and 24% having the opposite view. 63% of people polled in 2004 said they thought *"the present system of governing Britain"* *"could be improved quite a lot"* or *"needs a great deal of improvement"*. Respect for politicians has however deteriorated even further following the revelations about MPs expenses from April 2009. There is now little confidence at all in the political class and politicians are even less trusted than they were previously.

18. MPs should be free to vote in line with their best judgment and should not be sanctioned for not obeying any party whip on issues not in their party manifesto.

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.

For 500 years after Magna Carta, Parliament had no political parties. 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 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."*

Nowadays of course current 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 a Division in the House of Commons and indeed the Labour Government suffered no such policy defeat throughout its first two terms from 1997-2005.

In 2007-8 there were 341 Divisions. 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"*.

Lord (Robin) Butler, who served as Cabinet Secretary from 1988 to 1998 with Margaret Thatcher, John Major and Tony Blair, and who therefore observed the modern process as closely as anyone, stated in a 2004 interview in The Spectator: *"I think we are a country where we suffer very badly from Parliament not having sufficient control over the executive and that is a very grave flaw. We should be breaking away from the party whip. The executive is much too free to bring in a huge number of extremely bad Bills, a huge amount of regulation and to do whatever it likes — and whatever it likes is what will get the best headlines tomorrow. All that is part of what is bad Government in this country."*

In a January 2010 interview on the BBC Today programme, Sir John Major said that politics needed to reassert the *"independence of mind of the backbencher"* so the whole House of Commons was not governed by the executive and whipping system. It was *"degrading"* for MPs to have to respond to the party line with the *"parrot slogan of the day"*, he added.

A January 2009 YouGov poll graphically demonstrated that the public believe that politicians currently act overwhelmingly in the interests of their political party and themselves rather than of the country or their constituents: *When acting in a political capacity which ONE of the following BEST describes whose interests you think politicians generally put first?*

	<u>Total</u>	<u>Male</u>	<u>Female</u>
Their party's	44%	42%	45%
Their own	42%	44%	41%
The country's	8%	8%	8%
Their constituents'	5%	5%	4%
Other	2%	1%	2%

44% of all respondents therefore stated that politicians generally put their party's interests first. 86% of all respondents, and of both male and female respondents, stated that politicians generally put either their party's or their own interests first. Only 13% of respondents stated that politicians generally put first the interest of the country (8%) or their constituents (5%).

This policy will apply to all Jury Team MPs other than on the policies set out in this document, to which they will have agreed on nomination. In this way the electorate will know that the Jury Team MPs will back the identified Jury Team policies, all of which will anyway be subject to a referendum, but will be able to use their best judgment on other policy issues.

19. MPs, ministers and their political staff should be paid according to civil service pay scales, should have any expenses approved only in line with established civil service guidelines and must act according to the Nolan Principles that apply to all public bodies.

The legitimacy of Parliament depends on the trust which the public has in individual MPs and in the way in which all MPs conduct their personal and political lives.

An MP currently has an annual salary of £64,766. In addition London MPs also receive a London Weighting Allowance of £7,500 which was increased by 157% from the previous figure of £2,916 in a Commons vote on the 3rd July 2008. A review of MPs remuneration needs to:

- define how many days per year are required to be a good constituency MP who is not a member of any Select Committee or other Commons organization or a minister or a PPS (taking into account the little time which most ministers spend each week on constituency business as a marker for the time required for these duties)
- decide appropriate flexing of this basic amount to take into account the currently different constituency responsibilities for backbench English MPs compared with MPs who are from one of the devolved nations
- determine additional remuneration for backbench MPs who serve on or chair Select or Standing Committees or other Commons organisations
- determine additional remuneration for the four different tiers of ministers

A review will then link each of these salary levels to the appropriate one in the civil service.

The issue of expenses is a particularly sensitive one for many voters and has become even more so since the revelations in April 2009. It has become clear that MPs have become used to using taxpayers money, even within the rules, in a way which would never be sanctioned in any other charitable, commercial or public organisation. This includes housing expenses when other housing is available, relatively excessive personal purchases (the John Lewis list) and the employment of relatives without any proper independent selection procedure or appraisal. The expenses scandal that broke in April 2009 had a further massive effect on public confidence. The Daily Telegraph summarised it as follows: *"When this newspaper began its series of revelations about MPs' allowances earlier this year, the immediate response of the House of Commons authorities was to ask the police to investigate how the details came to be in the public domain. It was a confirmation, if one were needed, that Parliament simply failed to understand the deep anger felt in the country about the rapacious goings-on at the Palace of Westminster. They were soon left in no doubt. The disclosures about house "flipping", moat cleaning and duck islands appalled the nation, brought down a Speaker and led a number of MPs to announce they were leaving Parliament."*

In addition to their £64,766 salary, Members can claim the following annual allowances:

	£
Staffing Allowance	100,205
Pension Provision for Members' staff	10,020
Additional Costs Allowance	24,006
Incidental Expenses Allowance	22,193
Communications Allowance	10,400
IT equipment	5,000
Total	<u>171,824</u>

The seven Nolan Principles of Public Life are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Despite the expenses scandal, many MPs with doubtful expenses are still in the House of Commons and do not meet the Nolan Principles. MPs must be seen as operating under the same constraints as apply to their electorate in terms of their salaries and expenses, especially as public money is involved. The civil service has a clear policy on salaries and expenses.

The Jury Team therefore proposes that all MPs should be subject to the same regime as senior civil servants. An independent review will consider expenses and determine which grade of civil servant is currently equivalent to an MP. Expenses for MPs should then be based on the well established principles and practices of the civil service which often has people who have to spend part of the year away from their home.

20. MPs should normally serve for no more than three full terms of five years.

Parliament should limit the power of the executive but should not be the vehicle for Government. J. S. Mill wrote that: *"There is a radical distinction between controlling the business of Government and actually doing it"*.

Government departments and agencies implement the framework of legislation. It is Parliament which is responsible for holding the Government to account. Unfortunately Parliament has ignored all of the corporate governance improvements it has required for other institutions in the country.

Parliament should act in a similar way to the trustees of a charity or the non-executive directors of a major company. The Government is equivalent to the management of a charity or company which undertakes the detailed implementation of the agreed strategy. A key role of the trustees or non-executive directors is to review this implementation to see whether it is being done ethically, effectively, efficiently and economically and to do this they must maintain sufficient independence to be able properly to review the proposals and actions of management.

Term limits for MPs would be a way of ensuring that MPs do not become too comfortable with their lifestyle and too separate from the rest of the population. Most US states now have such term limit legislation which also applies to the US President and the equivalent in many other countries. Without such term limits MPs are less likely to give priority to legislation or scrutiny as the job of being an MP becomes a career in itself.

The principles of independence are well established in the charitable and private sector. Trustees are not allowed to have any conflict of interest with their organisation or to receive any benefits from it. Similarly all major company boards should now have a majority of non-executive directors who, although paid a fixed fee, are not allowed to receive any other benefits from the company.

In particular it has been recognised that trustees and directors can lose their independence if they serve on the board for too long. The Charity Commission sets out clear guidelines on this. Similarly for public companies directors are normally elected for a period of three years and are not normally re-elected for more than three periods of three years. If there are special reasons why a company wants a particular director to continue on the Board for more than nine years then that person is subject to a vote by shareholders every year instead of every three years.

At the 2005 election the Labour MP Tam Dalyell retired after 43 years and the Conservative Sir Teddy Taylor retired after 40 years. Two other MPs had been elected in the 1960s, 37 in the 1970s and 104 in the 1980s.

At the Dissolution of Parliament in 2010, 68% of MPs will have been first elected more than 9 years ago, 39% more than 13 years ago, and 25% more than 18 years ago, hugely longer than is allowed under any other permitted UK independent scrutiny model. Since 1979, the Member with the longest service as an MP was Sir Edward Heath with 51.7 years. The current MP with the longest continuous service, 45 years, is Alan Williams, Labour MP for Swansea West. Sir Peter Tapsell is the Conservative MP for Louth and Horncastle and has been in the House of Commons since 1959, 50 years ago, but had a short break from 1964 to 1966. The longest continuous service and longest total service for a female MP were by Gwyneth Dunwoody (who died while still an MP in 2008) at over 34 years and 38 years respectively.

The total profile of the current 646 MPs by the Parliament in which they were elected may be summarised as follows:

<u>Elected</u>	<u>Con.</u>	<u>Lab.</u>	<u>LD</u>	<u>Other</u>	<u>Total</u>	<u>%</u>
Pre-1979	17	13	1	1	32	5.0%
1979-91	50	67	6	7	130	20.1%
1992-96	27	59	2	1	89	13.8%
1997-00	29	137	20	2	188	29.1%
2001-4	24	39	13	12	88	13.6%
2005	51	40	20	8	119	18.4%
Total	198	355	62	31	646	100.0%

The Jury Team therefore proposes that no MP should serve for more than 15 years. If there are any particular people whose time as an MP consequently comes to an end but the Prime Minister still wants them to serve in the Government then they could be appointed temporarily to the House of Lords.

21. The "Elected Representatives (Prevention of Deception) Bill" should become law to make it illegal for elected representatives to publish false or misleading statements.

The Companies Act 2006 requires all company directors "to exercise reasonable care, skill and diligence in the performance of their duties". The UK Listing Rules for public companies require that directors ensure that any information they give to the stock market and other stakeholders "is complete and not misleading, false or deceptive". Similarly the Charity Commission requires that Trustees "exercise reasonable care and skill" and provide an accurate report of their charity's activities.

However there is no similar legal requirement either for MPs to exercise reasonable care or to provide information which is not misleading, false or deceptive. There is no law that makes it an offence for MPs to deceive the electorate. Rather as with expenses, it seems to have been assumed that "Honourable Members" will act honourably but regrettably there are many examples where this is not the case. For instance the current Iraq enquiry appears to be concluding that Tony Blair was not fully open about the situation in Iraq immediately before the start of the 2003 invasion.

This deception issue was explored by the "Ministry of Truth", a film-making company with a mission to improve political governance. Their film, with Dom Joly as presenter, was shown on BBC2 and is now available as a DVD. During the making of the film over 50 MPs and Ministers were asked if they believed in honesty, transparency and accountability and were then asked to support a law enforcing these. This led to the drafting of the Elected Representatives (Prohibition of Deception) Bill which was introduced into the House of Commons in 2007 but ran out of time on second hearing as it did not get any support from the Labour or Conservative leadership. The Bill was sponsored in the Commons by Adam Price MP and supported by the MPs Lynne Jones, Dai Davies, Peter Kilfoyle, David Taylor, Dr Richard Taylor, Angus MacNeil, Elfyn Llwyd, Hywel Williams and Andrew George. Other supporters include Sir Alastair Graham (Chairman, Committee on Standards in Public Life 2003-7), journalist turned politician Martin Bell, political writer Peter Osborne and Baroness Helena Kennedy.

The purpose of the Bill is that MPs caught deliberately deceiving the public will be fined and banned from standing for election for up to 10 years. Paragraph 1 sets out the "Offence of deception" with four subsections:

- (1) It shall be an offence for an elected representative acting in this capacity, or an agent acting on his behalf, to make or publish a statement which he knows to be misleading, false or deceptive in a material particular.
- (2) In this Act, "elected representative" includes (a) a Member of Parliament, (b) a Member of the Scottish Parliament, (c) a Member of the National Assembly for Wales, (d) a Member of the Northern Ireland Assembly, (e) a Member of the European Parliament, and (f) an elected mayor.
- (3) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale [currently £5,000] and disqualification from standing for election to the organisations and positions listed in subsection (2) for a period of up to 10 years.
- (4) It shall be a defence for any person charged with an offence under subsection (1) to show that at the time of the offence he (a) did not know, or could not reasonably have been expected to know that the statement was misleading, false or deceptive in a material particular; (b) had no part in causing or permitting the statement to be published; (c) took all reasonable care to ensure that the statement was accurate; or (d) acted in the interests of national security.

In order to help to prevent any frivolous prosecutions, Paragraph 2 of the Bill states under the title "Offence of making a false allegation":

- (1) It shall be an offence for a person knowingly to make a false, trivial or frivolous complaint or allegation that an offence under section 1 has been committed.
- (2) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to a fine not exceeding level 3 [currently £1,000] on the standard scale.

The Ministry of Truth website shows 94% of those responding in favour of the Bill.

22. An Independent Politicians Complaints Commission, modeled on the Independent Police Complaints Commission, with its Board appointed by a panel of designated charitable or professional bodies, should be established to investigate accusations about national and local politicians, basing its judgments on the Nolan Principles that apply to all public bodies.

As a result of public concern with certain activities of the police force, the Independent Police Complaints Commission was set up. It is properly independent and has helped to investigate and determine the validity of various actions by the police.

Unfortunately the politicians have not seen fit to set up an equivalent body to investigate their own behaviour:

- Any sanctions against MPs or Lords for their activities are decided by other MPs or Lords who may well have, or at least be seen to have, a vested interest in maintaining generous arrangements and flexibility for their colleagues.
- Similarly the appointment and resignation of ministers is solely in the hands of the Prime Minister who is inevitably biased towards protecting the reputation of the minister concerned in order to try to prevent this from rebounding on the reputation of his or her party

Following the various scandals about MPs, there is now a Parliamentary Commissioner for Standards. However in relation to any accusations of misconduct this role only involves being a collector of evidence which is then presented to the House of Commons Privileges Committee. (Previous holders of the office have indicated that they have often had a difficult time in getting evidence from MPs.) It is then the Committee which decides on any sanctions but it wields limited powers which normally relate just to the suspension of the MP for a matter of days.

Ministers are subject to The Ministerial Code of Conduct which is set out in a booklet that is required reading for all ministers. However any ministers who violate the Code are only subject to whatever investigation the Prime Minister feels is suitable. Typically the Prime Minister, who is the sole judge and jury of any breaches, will try to defend his or her ministers for as long as possible, often leading to further damaging revelations becoming public.

The Prime Minister now has an independent adviser to ascertain the facts when the Ministerial Code may have been breached. The first holder of this post was Sir John Bourn, appointed in 2006, but he was not asked to carry out any investigations of ministers although he did investigate a number of the returns that ministers had made under Section 5 (Ministers and Civil Servants) of the Ministerial Code. In accordance with the terms of his appointment, his advice was private and confidential. The current incumbent is Sir Philip Mawer. The Government is still resisting allowing the independent adviser to decide what to investigate or to report publicly.

Lord Hutton held an enquiry into the case of Dr David Kelly who committed suicide in relation to reports of "sexing up" the Iraq Dossier. Ipsos/MORI commented on the Hutton Report: *"The public's lack of faith in politicians is highlighted in reaction to the Hutton Report on the circumstances leading to the death of Dr Kelly. The eminence of the judge did not stop 48% still believing that the Prime Minister lied about his role in Dr Kelly's exposure (according to ICM for The Guardian) and 56% believing that 'Lord Hutton as a member of the establishment was too ready to sympathise with the Government' (YouGov for The Telegraph)."*

In other areas of public service, and indeed in the private sector, any employee found guilty of corruption or fiddling expenses is likely to be heavily disciplined and probably reported to the police. It is quite clear that the criminal law applies to all such incidents outside Parliament and there is no reason why it should not also do so for MPs and Lords. It is vital if respect for Parliament is to be increased that the public has faith that MPs and Lords are subject to the same sanctions as themselves if they go against the agreed rules and mispend public money or act in any other improper way.

It is clearly unacceptable for MPs, Lords or Ministers not to be subject to proper independent investigation and, if necessary, sanction if they have violated the agreed rules. It has become quite clear that self policing either by the Privileges Committee or by the Prime Minister is not only ineffective but undermines public confidence.

23. The Hayden Phillips Report recommendations on capping donations to political parties which receive government funding should be accepted and enforced.

The problems of funding political parties are a symptom of the problems which parties have in modern society. The great majority of people do not want to give money to a political party. They may support it at an election but they are not even prepared to give it annually the cash equivalent of the cost of a DVD (for instance the Conservative Party annual subscription is normally £15). If political parties cannot get money from a wide proportion of the population then they are forced to go to specific funders.

Party political funding is a major concern of voters. There is a huge suspicion that those donating large sums are able to influence party policies. This thesis has credibility given the concentration of power in the party oligarchies with few checks or balances. The lack of any independence among MPs and any proper independent scrutiny by either Select Committees or Departments leads to the suspicion that party leaders can have their view of an issue changed by a donor and that it will then become law.

Examples of controversial high value donations have included the affair of Bernie Ecclestone, head of Formula 1, where it emerged that he and Max Mosley met Tony Blair on the 16th October 1997 to argue for a proposed ban on cigarette advertising on racing cars to be lifted which it subsequently was. This appeared to be linked to a £1 million donation to the Labour Party. In March 2006, it was reported that the House of Lords Appointments Commission had blocked three Labour Party nominations for peerages (Dr Chai Patel, Barry Townsley and Sir David Garrard). In April 2006 Tony Blair became involved in the "Cash for Peerages" police investigation. In November 2007 it surfaced that Labour had received £650,000 from businessman David Abrahams who used "friends and colleagues" to donate the money to protect his privacy. The Electoral Commission announced a formal investigation and the Labour General Secretary Peter Watt resigned.

The Conservative Party has been embroiled in similar scandals. In January 2006 it emerged that Boris Johnson had not declared donations to his campaign for Mayor of London to the Registrar of Members Interests, although they had been declared to the Electoral Commission. George Osborne, the Shadow Chancellor, admitted that he made a "mistake" in his dealings in Corfu on the yacht of Oleg Deripaska, the Russian billionaire, who was also visited at the same time by Peter Mandelson. The House of Lords Appointments Commission investigated Robert Edmiston, a Conservative Party donor and chairman of the Midlands Industrial Council, who was nominated for a peerage.

Lord Hameed was nominated for membership of the House of Lords by the Liberal Democrats after sitting on the boards of companies associated with Alpha Healthcare, which had given them £400,000 in donations. The Liberal Democrats were also tainted by the £2.4 million they received from the financier Michael Brown whose company was ruled by the High Court to be fraudulent.

As a result of the furore surrounding the "Cash for Peerages" scandal, in March 2006 Tony Blair announced that there would be a review of the funding of political parties to be conducted by Sir Hayden Phillips, a retired civil servant. The key provision of the Hayden Phillips Report in relation to donations was that donations to political parties from any individual or organisation should be capped at £50,000 by 2012. Any amount donated over that limit would have to be returned to the donor, or forfeited to the Electoral Commission if this was not possible.

The Hayden Phillips Report also addressed the issue of trade union donations. It saw it as legitimate for unions to make donations on behalf of their members as long as those members were aware of this and had the right not to pay. The Hayden Phillips report therefore recommended that for the 3.5 million union members who currently pay into a political fund, the Affiliation Fees paid by trade unions will be treated for the purposes of the cap as individual donations of the members. The Hayden Phillips Report also noted that with this increased transparency and choice for trade union members the ten-year review ballot on the existence of the political fund, which trade unions currently have to conduct, will no longer be necessary and should be removed. These provisions seem eminently sensible and the three major political parties, if motivated by the national rather than partisan interest, would have accepted them.

24. Members of Select Committees, which hold the executive to account, should be elected by all MPs and not appointed by party whips and should scrutinise all departmental proposals for legislation.

Parliament should scrutinise Government actions and proposals, cause amendments as appropriate, and, in extremis, change the composition of the Government. John Stuart Mill said: *"Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the Government to throw the light of publicity on it; to compel a full exposition and justification of all of them which anyone considers questionable; to censor them if found condemnable, and, if the men who compose the Government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors."*

When the Crown was separate from Parliament and appointed its own ministers then every line of their proposals was scrutinised and debated by Parliament. Now that the executive and legislative functions have for all practicality merged, there is nothing like the same scrutiny as there was in those days. The evidence shows that the Commons' guillotined debates and enfeebled committees do not cause the executive to change its stance on any major issues.

Parliamentary time is often used not to hold the Government to account but rather with its own MPs making political points for the Government. Such supposed questions as *"May I congratulate my Right Honourable friend on ..."* are clearly sycophantic rather than designed for scrutiny. Indeed these questions are often planted by the whips with backbench MPs who wish to impress the party hierarchy. The weakness of Parliamentary scrutiny of Government is often cited by the UK media as a justification for the vigour with which they question and challenge the Government. For instance, the last time the House of Commons annulled a Statutory Instrument was 30 years ago in 1979 when it rejected the Paraffin (Maximum Retail Prices) (Revocation) Order 1979 (SI 1979/797) since which time over 80,000 Statutory Instruments have been passed. In 2006, 11,422 pages of Statutory Instruments became law (plus 4,609 pages of Acts).

Legislation can be proposed by the executive in over twenty different areas of Government responsibility represented by the various Whitehall departments. No individual MP can be expert on all of the areas and able to scrutinise each of them. A system of Select Committees therefore exists to monitor each of the departments of state. During 2008/09, there were 1,123 Select Committee meetings (broadly the same as in 2007/08) and 229 reports were published by the Departmental Select Committees.

Unfortunately the structural intent of the Select Committees (other than the Select Committee on Public Accounts which does retain independence) has been perverted by the party political system. The Members of the Committees and particularly the Chairs are now appointed by the whips of the respective parties. This means that the primary scrutiny system in the House of Commons has largely been neutralised as normally on every Committee the Government has a majority of MPs who are most unlikely to support any report which is critical of the Government.

The Select Committees clearly need to be given more influence and independence. The Power Inquiry report published in February 2006 recognised the urgent need to strengthen scrutiny: *"Select Committees should be given independence and enhanced powers including the power to subpoena witnesses to appear and testify before them. This should include proper resourcing so that committees can fulfil their remit effectively."* The Better Government Initiative recommended: *"Better opportunities should be developed for Select Committee reports to be presented in the Commons, including provision for committees to propose substantive motions to the House. Select committees should have more effective powers to call for government papers, for example business cases and risk assessments."*

The Select Committees should also review proposed Government legislation prior to its coming before the full House of Commons for its first reading in order to improve the drafting and to identify the potential areas of contention (as is the practice in the Scottish Parliament). A further proper role for the Select Committees is to review all legislation after a period of, say, five years in order to see if the original justification for the legislation remains valid and whether there are any adjustments required.

25. No European directive should be enacted or enforced by secondary legislation in a stricter way than is the practice in any other European country deemed compliant for that directive by the European Commission.

It is estimated that over two thirds of new laws and regulations are linked to European Union directives. British people and businesses are fairly long suffering and will accept most regulations as part of the burden of living in a democratic society. However the area that most arouses their fury is when they perceive that under the cloak of European requirements the British Government legislates in a way that is significantly more onerous than is the case in other member states. This is encapsulated in the phrase "the level playing field". Whether it is a much publicised prosecution of a cheese producer, the selling of apples by pounds or the regulations on road transport, it is the inequity of the British approach which generates the headlines.

EU directives typically set out a minimum level of standards on the particular issue in a directive of a few pages. However the responsibility for citizen and consumer protection is that of individual Governments and therefore European directives have to be translated into national legislation. A particular UK concern is that of "gold-plating" which is where the UK goes beyond the minimum required by a European directive in promulgating a UK regulation whose basis is that directive. In the UK the authority for making such regulations derives from Section 2(2) of the European Communities Act 1972. This Section authorises regulations to be made for the purpose of

- "implementing any Community obligation of the United Kingdom", or
- "dealing with matters arising out of or related to any such obligation".

This very broad power can be used to over-ride or amend existing Acts of Parliament and this machinery to amend the law is very attractive to officials since the Statutory Instrument procedure is subject to much less Parliamentary scrutiny than a Bill. Therefore the use of regulations under Section 2(2) of the 1972 Act has ballooned enormously over the years and many important or controversial changes to the law are made by this route.

These regulations and other EU matters are meant to be reviewed in the Commons by a special Select Committee called the European Scrutiny Committee. However the Committee does not have the power to take any substantive votes. The Committee itself described its role as solely "sifting EU documents on behalf of the House". It deliberates in secret, except when interviewing ministers and other non-members, which makes it harder for other MPs and the general public to know what is happening. Even if a proposed document is referred to one of the three European Standing Committees then this is likely to have little EU expertise and usually a low attendance.

In a 2004 Review, the then Leader of the House Peter Hain admitted, "The European Standing Committees have not worked out as it was hoped. It is hard to persuade Members to serve on them. Few other Members think them worth attending. Their proceedings have a ritualistic quality, and are largely devoid of much political interest; yet they consume a lot of time and effort. There is a very strong case for reform." However there has been no significant reform.

The inadequate nature of Parliamentary scrutiny of EU documents is shown in the following table where it can be seen that in 2008-9 there were 941 EU documents received at Westminster of which 443 were deemed to be important but only 32 were debated in a European Standing Committee and only 5 on the floor of the House:

	<u>2004-5</u>	<u>2005-6</u>	<u>2006-7</u>	<u>2007-8</u>	<u>2008-9</u>
EU Documents scrutinised	898	883	1,045	1,044	941
Reported as legally or politically important	431	437	484	472	443
Debates in European Standing Committee	38	32	42	34	32
Debates on the floor of the House	2	1	6	3	5

It is therefore proposed that the European Scrutiny Committee be reformed. In addition each departmental Select Committee will be given the power to review each Statutory Instrument to ensure that it is not being used for any purpose not required by the original EU directive.

26. General elections should take place every five years unless a resolution of the House of Commons decides otherwise to reduce this period.

In 1715 as part of the readjustment of responsibility between the monarch and the politicians the House of Commons negotiated that the maximum length of a Parliament would be extended to seven years. Although that was reduced to five years in 1911 as part of the Parliament Act, the power of the Prime Minister, acting by use of the Royal Prerogative, to dissolve Parliament within this maximum period has never been addressed by statute.

This leads to the strange situation that it is the House of Commons who recommends the Prime Minister to the monarch but it is that same Prime Minister who has the power to dissolve the body that appointed him or her.

Noting this, the 1992 Labour Manifesto pledged "*Although an earlier election will sometimes be necessary, we will introduce in general a fixed Parliamentary term.*" However it did not make any such pledge in its 1997, 2001 or 2005 Manifestos when it could sense power or was in power.

Parliament is limited to five years but elections are typically held every four to five years. The power of the Prime Minister, based on the Royal Prerogative, to decide when within the five years the election should be held is a very powerful one, especially now that opinion polls tend to be broadly correct. It is exercised when the incumbent sees the maximum advantage for their own political party rather than for the country as a whole.

The agreed maximum length of a UK Parliament of five years is a good planning period during which a Government should be able to implement a substantial proportion of its policies. This is slightly more than the four year US Presidential cycle but less than the seven year French Presidential term.

As well as giving a political advantage to the incumbent Prime Minister, the uncertainty about when a general election may occur means that a lot of Parliamentary activity can be wasted as bills which have not completed all of their stages have to start again from the beginning in the new Parliament. In addition enquiries by committees stop and their reports are not published.

The uncertainty about the length of a Parliament also affects the management of all of the departments of state. Senior civil servants do not know how much effort to put into a particular policy if at an uncertain date a new Government may be elected with a different policy. This leads to inefficiency.

The Independent commented in July 2008: "*The prospect of an election means a desperate expediency will prevail – imprudence for a purpose. The Chancellor plays a reluctant Santa Claus in order to keep his fearful MPs in marginal seats happy, or less frightened. He buys a very short-term happiness.*"

For these reasons other Westminster style Parliaments such as those in Australia, Canada, India and New Zealand all have fixed terms as does the United States. In Germany the Bundestag may only be dissolved prematurely in exceptional circumstances. Similarly the Scottish Parliament, the National Assembly in Wales, the Northern Ireland Assembly and all other elected bodies in the UK have fixed terms of office.

The only reason why elections have been called at a time not of the choosing of the Prime Minister has been when the governing party has lost a vote of confidence in the House of Commons. This is however very unusual and last happened in 1979.

This should clearly remain as a sanction on the Government but other than this there is no reason for the benefit of the country, rather than for his or her political party, why the Prime Minister unilaterally should be able to dissolve Parliament using the Royal Prerogative to call an election at the best time for their party.

Currently a motion of "No Confidence" passed by the House of Commons will lead to a general election. However the House of Commons conversely has no way of stopping a Prime Minister from calling an election. This position should be reversed with there being a presumption that a Parliament will last for five years unless there is a House of Commons motion reducing this.

According to a ComRes survey of 154 MPs conducted in October 2007, 44% of MPs support fixed-term parliaments and 49% oppose them (support from 88% of Liberal Democrat MPs, 41% of Labour MPs and 25% of Conservative MPs).