

Parliament: Hunting for votes

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ABSTRACT:

The Government's main difficulty in the Commons in 2004 came over the passage of the Higher Education Bill. Their eventual (narrow) success was due to four factors: a desire amongst Labour MPs not to damage the Government, the inability of the rebels to concentrate their forces, the extensive consultation between front- and backbenchers, and the changes made to the Bill to meet the concerns of would-be rebels. Backbench rebellions over a range of other issues meant that the PLP maintained its record as one of the most rebellious parliamentary parties in post-war history. The Government also suffered a string of defeats in the Lords, where opposition over hunting was only overcome through the use of the Parliament Act. Although widely seen as an example of executive arrogance, this was in reality yet another example of an increasingly assertive Parliament. Also widely misunderstood were the various internal reforms of the Commons.

The year began with the Government facing the realistic possibility of defeat in the Commons for the first time since it came to power in 1997. The Government's original intention had been to hold the Second Reading of the Higher Education Bill, which allowed universities to charge so-called 'top-up fees', before Christmas, but the whips calculated that they could not win the vote, and so had postponed it until the New Year. Unfortunately for the Government, things did not look much better in the New Year either. Even by mid-January the Whips' Office were still predicting a government defeat by almost 80. Indeed, right up to the Second Reading vote itself, on 27 January 2004, there was no confidence within government ranks that they were going to win: the Whips' Office were still predicting a defeat with an hour to go.

The tallies kept by the Whips' Office only 'went positive' 30 minutes before the vote, and the Bill scraped through its Second Reading by 316 votes to 311. In the largest rebellion on domestic legislation since Labour had come to power in 1997 more than 90 Labour MPs refused to back the Government's proposals. A majority of five was the lowest on a whipped vote since Labour came to power in 1997. For a

Government with a nominal majority of over 160, it was a remarkable state of affairs.

One purpose of this article is to explain how the Government got themselves out of a very large hole over top-up fees. But the passage of the Higher Education Bill was not the only major event in Parliament during 2004 – even if it sometimes felt like it – and so we also examine the other issues that caused difficulties for the Government, as well as the (largely misunderstood) battle between the Lords and the Commons over the Hunting Bill and the (largely overlooked) internal reforms to the Commons.

Top-up fees

The rebellion at the Second Reading of the Higher Education Bill saw 72 Labour MPs vote against the Government.¹ Another 19 Labour MPs did not participate in the vote, most (if not all) deliberately abstaining. This constituted the largest revolt by Government MPs on domestic legislation since 1997 and the joint-largest revolt against the Second Reading of a Bill since 1945.² The Government's majority was cut to just five. Had the Conservatives all voted against, the majority would have been just one.³ But given the depth of opposition to top-up fees amongst Labour backbenchers - by the time had its Second Reading vote, almost 200 Labour MPs had signed one or more of the various anti-top-up fees EDMs publicly indicating their oppositions - the remarkable feature about the top-up fees revolt was not how big the rebellion was, but how small. And, concomitantly, it was not the narrowness of the Government's majority that surprised most people, but that they got a majority at all.

How had a potential defeat of almost 80 a few weeks before been transformed into a victory, albeit a slim victory? The simplistic response – based on the folklore of the Whips' Office and the (remarkably still prevalent) myth that British MPs are gutless and servile – is that Labour's MPs were threatened and bullied into supporting the Government. But what was striking about the issue of top-up fees was the general lack of such strong-arm tactics to bring the rebels into line. One MP described all the attention he received from ministers and whips as not arm-twisting 'so much as handshaking'. The second – equally simplistic – explanation was that the

Government owed their victory to the dramatic last minute conversion of Nick Brown, the former Chief Whip, who had been one of the proposal's leading opponents, and who had switched sides at 10.30am on the day of the vote, describing the modified Bill as 'not perfect', but saying that it was 'the best we are going to do'. Brown's extremely close association with the Chancellor had led to widespread suspicion that he was as interested in the defenestration of the Prime Minister as in the intricacies of student finance – and his sudden change of heart was thus widely attributed to the Chancellor 'calling off the dogs'. But whatever its cause, Brown's change of heart had remarkably little effect on the rebellion. One of the other leading rebels estimated that only eight or so Labour MPs followed Nick Brown's lead. Of course, given the scale of the Government's victory, those eight could be said to have been the difference between victory and defeat, but in a vote that tight, so too could almost every factor. Moreover, Brown's last-minute switch does nothing to explain why the vote was that tight in the first place; or, how the Government had transformed a potential defeat by almost 80 to a situation where eight or so MPs could make a difference. Rather, the key to the Government's victory lay in four separate factors.

First, the most common threat made by the whips was the threat of victory. Once they had realised that they were heading for a defeat, the Government Whips' Office did not keep this information to themselves. Threatening the rebels with victory was (perhaps paradoxically) an effective way of dampening down the rebellion. The pressure on MPs to stick to the party line increased as the prospect of defeat became more likely, and as it became more likely that their vote would be the one that made the difference. Had defeat been very unlikely, MPs would have found it easier to vote against the party line; and, once defeat becomes certain, the pressure to stick to the party line becomes less pronounced. But when a government defeat seems possible, the pressure not to be the swing voter, the one who made the difference between victory and defeat, is very strong.

This was all the more so since the consequences of a Government defeat were discussed in (deliberately) exaggerated terms. Prior to Second Reading, a potential Government defeat was routinely compared to looking into the abyss – and other suitably apocalyptic metaphors – and there was much talk about the potential votes of confidence that would follow any defeat. Constitutionally, there was no need for

any such vote of confidence – the twentieth century saw just three Government Bills defeated at Second Reading and none of them triggered a vote of confidence – but many Labour MPs feared that there was a realistic prospect of a vote of confidence, and were keen to avoid the damage that that might do to the Government. This was especially so, given that the issue of top-up fees had become associated with Blair's leadership, with claims that the Prime Minister had put his authority on the line over the issue. This was a tactic that had been previously used over both Iraq and foundation hospitals and one Labour left-winger felt that the 'vote-for-the PM-or-he'll go' trick was wearing thin after its previous use: 'It's like spraying for weeds. If you spray sparingly, the effectiveness of the spray is maximised. If you over-spray, you just build up the resistance of the most weeds'. But the threat presented those who wanted the Prime Minister to remain but had objections to his education policy with a real dilemma.

The dilemma was exacerbated both by the apparent rebirth of the Conservative Opposition and by the forthcoming Hutton Report. Michael Howard's appointment as Conservative leader in October 2003 appeared to have re-energised the Conservative Party, boosting morale (if not actually their poll ratings), making them appear a more credible electoral threat, and thus making Labour MPs far more wary of presenting the Conservatives with victories. Labour MPs were therefore highly susceptible to the argument deployed by the whips: 'Are you really going to go into the lobbies with the Tories?' Similarly, although the publication of Lord Hutton's report into the death of Dr David Kelly the day after the Second Reading vote appeared to raise the stakes for Blair's chances of survival – triggering lots of discussion of the '24 hours that will decide Blair's fate' - ministers and whips were able to turn it to the Government's advantage, arguing that a defeat on top-up fees combined with a savaging from Hutton might be enough to bring Blair down. What was crucial was not just that the two events were so close together, but that the top-up fees vote came before Hutton. Had their places been reversed, with the vote coming the day after Hutton – which in the event was widely seen as being overwhelmingly, if not excessively, positive towards the Government – then some Labour MPs would have felt more free to vote against the Government. For example, the night before the Second Reading vote, Derek Wyatt described the Bill as 'a dog's breakfast', but said that he would be voting for it, to 'save the Government', adding that he would have voted against had it not been for the forthcoming Hutton report.

Had Lord Hutton decided to publish his report on 26 January instead of 28 January, Wyatt would probably have been in the opposite division lobby. He would not have been the only Labour MP to do so.

Second, the Government were also helped by the inability of rebel MPs to concentrate their forces. After the Bill emerged from Committee – where the Government had closed down potential dissent by ensuring that few rebels were selected to scrutinise the Bill – Labour rebels planned what they hoped would be another big rebellion at the Bill's Report stage – this time focussing on their opposition to variability, but leaving the rest of the Bill intact. But Ian Gibson's amendment, which would have removed the clauses permitting universities to vary their fees became embroiled in claims both that it was inadequately worded and that he had been liaising too closely with the Conservatives in the run-up to the vote. Charles Clarke threatened to withdraw the whole Bill if Gibson's amendment was passed, and accused him of preferring to 'deal with the Tories than to deal with the Bill seriously', adding that the effect of the amendment would be to allow universities to charge whatever they liked, removing the £3,000 cap. Gibson's amendment therefore split the opponents of top-up fees, and 57 Labour MPs (including the two tellers) supported Gibson's amendment, fifteen fewer than the 72 who voted against Second Reading. Instead of five, the Government's majority was a more comfortable (although still small) 28. The Bill's Third Reading, later that day, saw just 18 Labour MPs vote against their whip, together with a mass abstention by most of the other rebels, with the Government winning much more comfortably. By the time the Bill returned from the Lords in June, even fewer Labour MPs had an appetite for more rebellion, and the largest rebellion consisted of just ten MPs.

A total of 82 Labour MPs voted against their Government over top-up fees in the three major rebellions during the Bill's passage through the Commons. Some of these were prepared to vote against the Government only when there was no chance of defeating it – as at Third Reading and (to a lesser extent) Report Stage. 'They were', said one very experienced MP, 'voting in safety'. They'll be able to go back to their constituency party and say, "I opposed top-up fees", and most of their party members won't have a clue about what all the votes mean'. 'We're sharp bastards', said another. The arithmetic of this, though, was staggeringly simple. Without any extra Labour MPs being prepared to vote against their whips, and any abstentions at

all, 82 cross-voting MPs would have been sufficient to wipe out the Government's nominal majority. If all of those who were prepared to vote against their whips over the issue at any point had done so together, then the Government would almost certainly have been defeated. But they did not, and the end result of this switching was that instead of a rebellion of 82, and an almost certain Government defeat, the number of cross-votes in any one rebellion never exceeded 72, and the legislation passed.⁴ It is easy to blame the failure of these rebellions on the gargantuan size of the Government's majority. But it is as much to do with the inability of Labour rebels to muster their forces at the right time. Even when there were enough backbench rebels to defeat the Government, they did not do it.

Third, although many Labour MPs complained that they were not consulted sufficiently before the legislation was introduced into Parliament, few made that complaint once the Higher Education Bill began its passage through the Commons. Rather, they faced a blizzard of meetings with Ministers and whips, to discuss the Bill. In particular, Alan Johnson, the then Minister for Higher Education, was widely praised for the way he engaged with MPs. As well as his talents, Johnson had one other important, symbolic, quality. He could justifiably describe himself as 'someone of working-class background, foreground and hinterland'. Having left school at 15, he was the first Higher Education Minister not to have gone to University, and he was the embodiment of exactly the sort of bright, talented, working class kid that Labour backbenchers claimed to want to help. He was therefore especially able to sell the message that by reintroducing grants and scrapping up front fees the Bill would help working class university applicants.

The extent of the contacts between front and backbenchers is well demonstrated by Gwyn Prosser, the MP for Dover, who was brought back into the fold after almost a dozen different meetings with the Prime Minister, ministers and whips in just four days.⁵ On the Monday, the week before the vote, Prosser had three *ad hoc* meetings with the Deputy Chief Whip, setting out his concerns about the Bill. On the Tuesday, he had face-to-face talks with Alan Johnson, met with his regional whip, and chatted with another whip. He then attended a seminar on top-up fees hosted by Charles Clarke, after which Clarke stayed behind to have a further chat with him. On the Wednesday, a second session with Clarke was followed by a 15-minute one-to-one with the Prime Minister. On the Thursday he had another meeting with his regional

whip and more talks with another whip. He then agreed to support the bill, but was still contacted twice by anxious whips to see if he wanted another meeting with Alan Johnson. Another MP described it thus: 'In the run-up to the vote, *everybody* wanted to see me. I felt I was walking around like in an 18th Century ball, with my dance card. If you didn't have your full set of ministers, something was wrong'.

And, fourth – and perhaps more importantly - as a result of these contacts the Government changed policy. The Government initially faced a problem in trying to negotiate the revolt away. The key rebel objection to the bill, the totemic issue of variability, had to remain in place – otherwise there would essentially be no bill. The rebels' main demand was therefore the one bit of the Bill that the Government were not prepared to negotiate on. As Robin Cook pointed out: 'The Government's attempts to defuse the rebellion are therefore fundamentally flawed as they rely on concessions at the margins, while preserving intact the very issue of principle that has provoked the rebellion'.⁶ The Government's response was two-fold. First, to give as many concessions as it could on other parts of the Bill (those dismissed by Cook as 'at the margins'), and to make it clear that if the Bill was lost these would be lost too. And then, second, it tried to address concerns about the *future* amount of variability, without giving way on the issue itself.

In early January, to coincide with the publication of the Bill, the Education Secretary outlined a number of compromises designed to placate backbench critics. He promised that the £3,000 cap would be fixed throughout the next Parliament, and that it could only be increased beyond inflation if approved by both Houses of Parliament. He also promised an independent review to examine the impact of variability of fees after the first three years, to be conducted by the newly-appointed access regulator. He then increased the proposed maintenance grant from £1,000 in £2004 to £1,500 from 2006, said that student loans would be increased to match the median cost of students' basic living costs, and that student debts would be written off altogether after 25 years. Clarke argued that the measures stood together: 'I can tell the House that this is a coherent package to be taken as a whole or not at all. If not supported by this House, none of those benefits will arise. It is not a pick-and-mix menu. Stressing that the Bill stood or fell as a whole was essential to the Government. It wanted would-be rebels to know that they voted down the Bill they would lose the reintroduction of grants *and* the access regulator *and* the abolition of

up-front fees. As Second Reading approached the Government gave yet further ground. The day before Second Reading, Clarke gave further reassurance on the £3,000 cap and spelled out the details of the 2009 review into the impact of fees. He also promised an interim review into the impact that debt would have on students from modest incomes who wanted to go into public sector professions, which was a concern of some Labour MPs. And, importantly, the Government also agreed to convert the remission of fees for poorer students after graduation into an extra grant of £1,200 upfront, meaning that the poorest students effectively got £3,000 in grant. Two further concessions were then produced in the run-up to the Report stage. Clarke accepted a backbench amendment which ensured that a debate, as well as a vote, would have to be held in the Commons and the Lords before any future government could raise the maximum cap on fees after 2010. A second backbench amendment – also accepted by the Government – conferred a duty, rather than a power, on the Secretary of State to maintain the cap if a university attempted to raise it in the future. Both concessions were designed – yet again – to placate those worried about the future extent of variability.

Taken together, these concessions were enough to persuade many Labour MPs that they had ended up with a very different measure from the one that they had started with. One Labour MP described it as a ‘radically different Bill from the one I believe ministers originally envisaged’. ‘I make no pretence about variability. A free market in higher education would indeed entrench privilege – that is why I originally opposed the concept’. However, what was now on offer was ‘a firmly regulated market, if it is a market at all’. The abolition of up-front fees and the return of the maintenance grant had resulted in a Bill was ‘radically different from the White Paper, which was rightly roundly criticised until more or less the new year’. Equally importantly, Labour MPs had accepted Clarke’s argument that the Bill was a package. As one said: ‘There were some really good things in that Bill’. She added: ‘Mind you, I used to say to my whip: ‘Why are these wonderful things in the Bill? To buy us off, that’s why’’. She was not wrong.

For those 90-or-so Labour MPs who did not vote with the Government, these concessions were not sufficient. They remained unconvinced that any of the concessions would have any lasting impact, and saw the Bill as a half-way house to a free market in Higher Education. But others – and crucially for the Government,

enough - were persuaded. Of course, some MPs were looking for reasons not to vote against the Government and the concessions provided (consciously or unconsciously) a justification for switching sides; they were an escape route rather than the real motivation. Others, however, were genuinely persuaded. What is clear is that the Government went out of their way to provide rebel MPs with plenty of justifications. There were plenty of escape routes for those who wanted them.

Opposition from within

To make things even more difficult for the Government, backbench opposition to the Government in 2004 was not confined to the issue of Higher Education funding. In total, the third session of the Parliament produced 55 separate rebellions by Labour MPs. In addition to those over the Higher Education Bill, there were sizeable revolts over six other issues.⁷ The passage of the Children Bill produced three backbench rebellions, the largest seeing 49 Labour backbenchers defy the whip to vote in favour of a total ban on smacking. The Asylum and Immigration (Treatment of Claimants etc) Bill caused nine separate rebellions – more than any other single measure during the session – with the largest seeing 34 Labour MPs vote against the Government's plans to remove the right of failed asylum seekers to appeal to the High Court. Although there were no rebellions to match the record-breaking rebellion of the previous session,⁸ concern about Iraq manifested itself periodically in votes, with the largest revolt seeing 32 Labour MPs vote in favour of a closure motion at the end of an adjournment debate on the Butler Report in July. A total of 30 Labour MPs voted against the Second Reading of the Gambling Bill in November, along with an unspecified number of abstentions. The largest of the two rebellions against the Housing Bill saw 26 Labour MPs vote against the Government over energy efficiency targets for residential property, and during the passage of the Human Tissue Bill some 19 Labour MPs defied their frontbench over the issue of 'presumed consent' for organ donation.

The 55 revolts represented a backbench revolt in about 16% of divisions (roughly one in every six votes) during the third session. This was a very slight diminution in the rate of rebellion compared to the earlier sessions (the comparable figure for the first two sessions was 19%) – with a similar drop in the absolute number of revolts, down from 76 in the first session, to 67 in the second, to 55 in the third - but in

historic terms both the absolute number and the rate of rebellion remained relatively heavy. Table 1 shows the equivalent totals for the first three sessions of other post-war parliaments. A total of 198 revolts is more than in every post-war Parliament (by this point of its life). Seen as a percentage of the total number of divisions to take place, a rebellion in 18.1% of divisions is more than in all but one post-war Parliament by the end of the third session. Despite the slight reduction in the frequency of rebellion over the last year, therefore, this still remains one of the most rebellious Parliaments of the post-war era.

1: Frequency of rebellion by Government backbenchers in the first three sessions of post-war Parliaments (sorted by revolts as % of divisions)

<i>Parliament</i>	<i>Number of rebellions in first three sessions</i>	<i>Rebellions as % of all divisions</i>
1970	193	18.3
2001	198	18.1
1983	184	16.8
19740	173	16.2
1992	138	14.1
1979	151	13.1
1987	162	13.0
1959	79	11.5
1966	98	8.4
1997	83	7.8
1945	62	6.5
1955	10	1.5
1951	8	1.1

Note: For obvious reasons, the table excludes those Parliaments which had fewer than three sessions.

As in previous sessions, one of the crumbs of comfort for the government was that most of the rebellions were small and could therefore be easily brushed aside. The majority (71%) consisted of fewer than 10 MPs, with just six involving 30 or more MPs. In addition, most of the rebellions involved those who had previously rebelled. The rebellions during the third session of the 2001 Parliament involved a total of 145 different Labour MPs, 130 of whom had rebelled earlier during the Parliament. For the most part, therefore, rebellions in the third session involved pretty much the

same people rebelling again – and in roughly the same quantities. Excluding those who have never voted against their party whip so far this Parliament, the correlation between the number of dissenting votes cast in the first two sessions and the number cast in the third is astonishingly high: +0.994 ($p < 0.000$). As a result, the overall league table of the most rebellious MPs contained many of the same names as it has in previous years. The most rebellious ten MPs by the end of the third session were exactly the same as the top ten at the end of the second session - albeit in a slightly different order. Jeremy Corbyn remained the most rebellious (his 24 rebellious votes in the 2003-4 session bringing his total for the Parliament to 111), closely followed by John McDonnell (21 votes in the session, 100 overall). There was then a drop down to Lynne Jones (15 over the session, 72 in total), closely followed by Bob Marshall-Andrews (16, 67), Brian Sedgemore (14, 67), Robert Wareing (17, 64) and Alan Simpson (15, 63). There were then three MPs tied on 59: Dennis Skinner (16 of which were in the 2003-4 session), Harry Barnes and Kelvin Hopkins (12 each in the session).

Hunting

Yet for all that, the Government still managed (albeit only just) to avoid a defeat in the Commons. Blair's remained the only Government since Wilson's elected in 1966 to survive undefeated on a whipped vote in the Commons. Every other Parliament since 1970 – even those in which the Government enjoyed landslide majorities - saw at least one Government defeat as a result of backbench rebellion. But by the end of 2004 Blair had been Prime Minister for almost eight years, without suffering a single defeat in the Commons. The same, however, was most assuredly not true in the Lords, which continued to act as a significant thorn in the Government's side.

2. Lords defeats during 2003-4.

Bill	Number of Government defeats
Energy Bill	11
Planning and Compulsory Purchase Bill	11
European Parliamentary and Local Elections (Pilots) Bill	7
Pensions Bill	7
Civil Contingencies Bill	4
Domestic Violence, Crime and Victims Bill	4
Higher Education Bill	4
Armed Forces (Pensions and Compensation) Bill	3
Housing Bill	3
Asylum and Immigration (Treatment of Claimants) Bill	2
Constitutional Reform Bill	2
Children Bill	1
Civil Partnership Bill	1
Human Tissue Bill	1
Justice (Northern Ireland) Bill	1
Traffic Management Bill	1

During the 2003-4 session, the Lords inflicted a grand total of 64 defeats on the Government. As Table 2 shows, these defeats ranged across 16 different Government Bills, including 11 defeats on both the Energy Bill and the Planning and Compulsory Purchase Bill, with seven defeats each on the European Parliamentary and Local Elections Bill and the Pensions Bill. The latter saw another example of the 'ping pong' between the Commons and Lords that is now becoming common at the end of each session. The Lords had voted to scrap rules that force private pension holders to buy an annuity by the age of 75. The Commons overturned the Lords' amendment, and so, undeterred, the Lords then voted to raise the age at which annuities had to be bought from 75 to 85. MPs in turn then voted to reverse that amendment. At this point, the Lords gave in and allowed the Bill through - but only after the Pensions Minister, Malcolm Wicks, had promised a review of annuities in 2005.

Although a reduction from the total of 88 defeats in the preceding session, 64 defeats was almost five times the number of defeats seen on average in the period of Conservative government from 1979-1997. The first defeat of the session, however, was not on a Bill. By 188 to 108, the Lords successfully moved an

amendment to the Motion for an Humble Address, regretting 'the decision of Your Majesty's Government to abandon the search for cross-party consensus on constitutional matters and to launch unilateral proposals for changes to this House'. This was only the second time since 1945 that the Opposition had tabled a motion to against the Queen's Speech, and was believed to be the first time since 1914 that the Government had been defeated on such a vote. It therefore marked another qualitative increase in their willingness to take on, and defeat, the Government. The cause of their Lordships' discontent lay in two bills in the Queen's Speech: the House of Lords Bill, which *inter alia* removed the remaining 92 hereditary peers, and the Constitutional Reform Bill, which involved the creation of a Supreme Court. In March, however, it was announced that the former Bill would not be introduced until the next Parliament. The latter Bill ran into difficulties in the Lords – suffering two defeats, including one on a Conservative amendment to retain the historic post of Lord Chancellor – and the Government agreed to carry the Bill over to the fourth session of the Parliament, where within days of the session beginning, the Government suffered yet another defeat; in December 2004, peers supported an amendment that insisted on any future Lord Chancellor being a member of the Lords.

Even more significantly, these data also exclude the most high profile issue on which the Lords stood up to the Commons. Because it was the subject of free votes in both Houses, the issue of fox hunting does not count as a government defeat – but the Lords repeatedly refused to accede to the wishes of the Commons, eventually resulting in the use of the Parliament Act to enact the Hunting Bill.

The issue of fox hunting has been a little like Groundhog Day for both MPs and peers, appearing on the parliamentary timetable with monotonous regularity throughout Labour's time in office. The most recent iteration of the policy had been thrown out by the Lords in 2003, despite having received overwhelming support from the Commons.⁹ In September 2004, the Government re-introduced the Bill, which was overwhelmingly carried at Second Reading. During the Bill's Report stage (which took place on the same day), the House of Commons accepted a Government amendment delaying the implementation of the ban for eighteen months until July 2006 to allow hunts to adapt to the change in the law, a move supporting by the Rural Affairs Minister, Alun Michael. The Bill then went to the Lords, where a series

of pro-hunting amendments were made, with the Lords then giving the heavily changed Bill a Third Reading. In turn, the Commons then predictably voted down these Lords amendments.

In a last-minute attempt to avoid a showdown with the Lords, the Welsh Labour MP Huw Irranca-Davies moved a compromise that hunting would be licensed for pest control, where it could be shown that no other reasonable method would cause less suffering. This too was heavily voted down by the Commons, by 321 votes to 204. Alun Michael then asked the Lords to accept the Government's original proposal to delay a ban until July 2006, but pro-hunt peers preferred the so-called 'kamikaze' option of rejecting any delay so that MPs would have to vote for a ban to come into force next February in the run-up to a general election. By rejecting the Government's proposal to delay a ban until July 2006, the House of Lords forced the Government into a corner. Under the 1949 Parliament Act, an amended Bill can only have the Parliament Act applied to it if the amendment in question is agreed by both Houses of Parliament, and so MPs chose to vote for the original Bill introduced in the previous session, and therefore for an immediate ban. No agreement having been reached, Michael Martin, the Speaker of the House of Commons, ruled that the conditions of the Parliament Act had been met, and the Hunting Bill received Royal Assent on 18 November 2004.

Both because of a widespread sense of *ennui* at the issue, as well as the levels of passion it still excites from those most involved, several aspects of the vote were largely ignored – or, if they were not ignored, they were widely misunderstood. The first remarkable feature of the votes in 2004 was that they took place at all. It has long been clear that many at the top levels of government – especially the Prime Minister and both his Home Secretaries – did not want to see a total ban reach the statute book. But ever since they voted in such overwhelming numbers for Michael Foster's Private Members' Bill in November 1997, Labour MPs have refused to allow their government to wriggle away from the issue. When he was Home Secretary Jack Straw attended a packed meeting of Labour's backbench committee on Home Affairs, at which nearly all of the 100 or so MPs in attendance made it clear that they wanted to see a ban - and as he left the meeting Straw was heard to say that he could see no point 'lying in front of a tank'. Every time that the Government tried to offer a compromise, or a delay, or some other concession to the hunting lobby, their

backbenchers have refused to concede the issue. This is a policy which is on the Statute Book because Labour MPs refused to let it go. As one anti-hunting Labour MP remarked after the vote: 'I'm quite proud of the PLP for getting us here – shows what one can achieve by polite persistence'. Whatever one's views about the policy, and whether one thinks hunting should continue or not, that aspect of the process is striking.

The second aspect of the vote was the remarkable isolation of the Prime Minister from his parliamentary party. Having absented himself from previous votes on the issue, Blair voted on Huw Irranca-Davies's amendment. Just 25 Labour MPs supported his preferred option. They included five members of the Cabinet – Beckett, Blair, Blunkett, Reid and Straw – plus the minister responsible, Alun Michael, along with two other ministers of state. They were joined by five whips, led by the Chief Whip, Hilary Armstrong.¹⁰ This left just 11 Labour backbenchers. On the other side were six Cabinet ministers as part of the broad mass of 297 Labour MPs. The Prime Minister therefore voted along with just 8% of the Labour MPs to have voted. Facing him were the remaining 92%. Some of the discussion of the vote noted the (admittedly unusual) fact that the three main party leaders had all voted in the losing lobby (Charles Kennedy doing so with just half his MPs; the other half voting for a ban), but few noted that the reason for this was the remarkable isolation of the Prime Minister. We cannot think of (or find) an occasion in the post-war period when any PM has been so detached from his or her parliamentary party.

And lastly, there was the debate over the use of the Parliament Act to enact the legislation. The pro-hunt Countryside Alliance propose challenging the legality of the Parliament Act, claiming that it was illegal because it was itself passed into law using the 1911 Parliament Act, and was therefore never approved by the House of Lords.¹¹ The legality of the action aside – which will be for the courts to decide – it was also widely alleged that the Government was somehow morally wrong to 'force' legislation through like this, especially on a so-called 'conscience' issue, and one that did not require urgent implementation. Simon Hart of the Countryside Alliance railed against what he saw as an example of the Government's 'abuse of power' and the 'political thuggery' of MPs. Whatever one's views on hunting, these seem spurious objections. The three previous occasions on which the 1949 Parliament Act had been used were the 1991 War Crimes Act, the 1999 European Parliamentary Elections Act,

introducing a system of proportional representation for European Parliamentary Elections and the 2000 Sexual Offences Amendment Act, reducing the age of consent for homosexual sex from eighteen to sixteen. It is difficult to argue that it is wrong to use the Parliament Act on a so-called moral issue when two of the three previous uses of it have been on just such issues. And it is equally difficult to argue that the Hunting Bill was any or more any less urgent an issue than, say, the Sexual Offences Amendment Act.

Moreover, such discussion misses what is surely the most important aspect of the whole issue, which is that MPs had repeatedly voted in favour of a complete ban, and by huge majorities. There was a curious paradox – as there often is – between those who perpetually complained about the weakness of Parliament and the over-bearing dominance of the executive but who then complained when the lower House – after a repeated series of votes, and quite clearly against the wishes of the executive – insisted on getting its way. For all the talk about executive dominance, and the weakness of Parliament, this was a victory for the latter over the former.

Can't spy strangers

A similar paradox was clear over the issue of parliamentary reform, where there is an inverse relationship between the importance of any reform and the amount of coverage it receives in the media.

This was true at the beginning of the process of 'modernisation' – when more attention was paid to the ending of the relatively trivial practice of wearing a top-hat when making a point of order during a division than to the introduction of programming of Government Bills – and it was seen again in October 2004, when the Commons voted in favour of a further series of procedural reforms. The least important of these (but the one that got most media attention) was that the terms 'stranger' or 'strangers' be replaced with 'the public' or 'member of the public' when referring to visitors to the House of Commons.¹² This entirely symbolic reform attracted widespread discussion on phone-in programmes and in the newspapers.

But at the same time – and completely unnoticed by the outside world – the House voted to make permanent many of the reforms introduced since Labour came into

power, including the automatic programming of Government bills, deferred divisions, and the carry-over of Government bills. (The House had previously voted annually to renew these reforms.) The Commons also agreed to increase the Speaker's discretion over the application of the short speeches rule (Standing Order 47), following representations from the Liaison Committee.¹³ These other reforms were far more important than any change in nomenclature used for visitors to the Palace of Westminster. For 'modernisers', this was the cementing of important changes to the procedures of the Commons, bringing it into the modern era. For opponents, this was yet another move by Labour to increase its hegemony over the Commons, making it even easier for the Government to expedite its legislative programme.

3. Voting on key 'modernisation' proposals, 2004

	Lab		LD		Con		Total (all parties)	
	Aye	No	Aye	No	Aye	No	Aye	No
'Strangers'	196	57	31	4	7	97	242	167
Programming	260	8	0	35	0	113	261	173
Deferred divisions	261	6	36	2	1	105	300	130
Carry over	263	5	31	4	0	111	296	137

Note: Figures exclude tellers.

Moreover, it was striking how none of the reforms had all-party support. Table 3 shows the voting of MPs from the three major parties over each of these issues. None attracted support from the majority of all three parties. The majority of Labour MPs backed all four proposals, although just over a quarter opposed abolishing the term 'strangers'. The overwhelming majority of Conservative MPs rejected all four proposals, whilst the bulk of the Lib Dems objected to automatic programming. The reform that is widely accepted to have had most impact on the passage of Government Bills – that of programming – was objected to by every Conservative and Lib Dem MP to have voted.¹⁴

The two other reforms to have attracted attention during the year concerned MPs' expenses. In October 2004, and anticipating the coming into force of the Freedom of Information Act in January 2005, the House of Commons authorities published details of the expenditure claims made by each MP. It revealed that MPs claimed a total of just over £78 million in allowances and expenses between April 2003 and

March 2004, an average of £118,000 per MP. This was up £5 million on the previous year, and a rise of almost 50 per cent on the £57.5 million claimed in 2001/2.

Entirely predictably, the media worked themselves up into a lather of contrived moral indignation, with newspapers depicting MPs as a 'bunch of thieving, fiddling, wasteful, good for nothing, feather bedded spongers', languishing in the Palace of 'Wasteminster'.¹⁵ Most headlines talked of MPs getting an extra £118,000 on top of their salary of just over £54,000. But anyone giving the figures even a cursory glance could see that most of the expenditure was not 'expenses' in the way that the phrase was normally understood. Most of the money went on staff costs (around £72,000 on average), on allowances for second homes if the MP lived outside London (up to £20,000 on average), and office space (again, about £20,000), plus stationery and travel expenses. As Stephen Pound, Labour MP for Ealing North, said: 'This is not about filling our boots. This is not about trousering a lot of money. This is about the money it takes to do the job'.

The majority of the 'expenses' were being spent on the ever increasing constituency work of MPs. As Archy Kirkwood put it: '[MPs] now deal with issues, and communicate in ways unheard of a few years ago. They require more back-up staff, more computer resources and more allowances to enable them to travel back and forth to Parliament, living away from home for days at a time, while keeping in touch with the problems and issues of their constituents'. Although the growth of the constituency role of MPs dates back to the 1960s, there is little doubt that the large influx of (largely Labour) MPs elected since 1997 have been especially constituency-focussed. Seen from this perspective, therefore, it becomes a moot point whether an MP who runs up large expenses may be deemed to be working hardest for their constituents. When Claire Curtis-Thomas was identified as 'the most expensive MP', she said that she didn't 'know whether to be worried or honoured'.¹⁶ However, the consequence of this growth in constituency work is also just as interesting as its cause. The state is now providing around £100,000 per year for MPs to interact with their constituents. Few challengers can afford to cough up £100,000 working the constituency— let alone each year – and there is therefore now the potential of a real incumbency advantage opening up at the next election. It remains at the moment merely a potential, but many Labour MPs believe that they will benefit electorally from their constituency work.

Public scepticism about the probity of these expenses was however not reduced in November, when MPs from all parties rejected a recommendation from the Senior Salaries Review Body (SSRB), and defied the advice of the Leader of the House, on the level of their staffing allowance. The pay review body had proposed capping the staffing allowance of MPs outside London at £72,000 a year, rising to a maximum of £80,460 for London MPs employing three full-time staff. Instead, MPs voted to raise the allowance to £80,460 for all MPs. The majority of Lib Dem and Conservative MPs voted in favour of the higher amount, with Labour MPs splitting 85/98 against. At the same time, however, MPs voted to cut their car mileage rates, widely seen as excessively generous.¹⁷ Sir Nicholas Winterton, who protested that MPs were already underpaid compared with people doing equivalent jobs outside Parliament, described the proposed new mileage rates as 'grotesquely unfair' and moved an amendment that would have frozen them at the rate of 57.7 pence per mile until the Inland Revenue rate – currently at 40 pence per mile – had caught up. However, his amendment was defeated by 118 to 193. The Conservatives split 63/28 in favour of Winterton's amendment, with five Lib Dems and 44 Labour MPs supporting these generous mileage rates.

Conclusion

The Conservative MP and diarist 'Chips' Channon once noted what he called the 'odour of dissolution'. An approaching general election can make even the most unhappy of MPs hold their tongues and there is usually less serious legislation in the last session to trigger discontent anyway. As a result, the fagends of Parliaments rarely see much backbench dissent.

This will probably not be true of the final session of the 2001 Parliament. The Queen's Speech on 23 November 2004 contained several measures with the potential to cause backbench unrest amongst the PLP. The most obvious of these was the proposal for an identity card, but several other measures emanating from the Home Office also had the potential to cause rebellions as the bills pass through Parliament.¹⁸ None of these are likely to be serious enough to defeat the Government, but if as is widely believed, one of the purposes of these bills is to

'smoke out' the Lib Dems (and the Conservatives), then they may end up smoking out divisions within Labour's own ranks just as obviously.

Still, disasters notwithstanding, the Government will reach the next election undefeated in the Commons. The issue of student finance presented the clearest challenge to that record. And the Government's eventual victory – however narrow – can be seen as proof that however rebellious Labour MPs are becoming when it doesn't matter, they still lack the necessary will to inflict defeat when it does. There is no doubt that there is some truth in this criticism. As described above, over student funding, there were enough Labour rebels to have defeated the Government, but too many chose to abstain. There were even enough Labour MPs prepared actually to vote against the Government to have defeated the Government, but they were not prepared to do so at the same time. And it is clear that part of the reason for this is that many Labour MPs are still not prepared to vote against their leadership if they think they will defeat it.

Indeed, the Government have been helped to remain undefeated by the very fact that (slightly tautologically) they have remained undefeated. This has enabled them to get away with exaggerating the risks of a defeat. Only a microscopic handful of Labour MPs (those elected before 1979) have any experience of defeating their own Government in the division lobbies. As a result, whenever defeat looks likely, the Government are able to produce a range of scare stories about the consequences of a defeat. This makes Labour MPs particularly susceptible to the sort of intense lobbying which inevitably takes place in the run up to a vote. But at some point, after the next election (assuming both that there is a Labour Government after the next election and that the Government enjoys a smaller majority), a defeat will happen. And once it has happened for the first time, and once MPs realise that the sky does not fall in when it does, the Government will no longer be able to rely on these sorts of threats.

In an interview with the *Spectator* in late 2004, Lord Butler, the former Cabinet Secretary, complained about the weakness of Parliament. 'We should', he said, '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'.¹⁹ He also criticised the use of the Parliament Act to enact the Hunting Bill. Partly because his interview also contained headline-grabbing criticisms of the Blair style of governing, these comments on Parliament went largely unchallenged.

It is at least plausible, however, to argue that the events in Parliament in 2004 contradicted Butler's argument. It is, of course, true that Parliament does not have the influence that many people – including the authors – think it should have, and that Governments today are able to introduce 'a huge number of extremely bad Bills', whenever they think it will get them positive headlines. But this is hardly new. Moreover, much of the evidence is that things are getting better, not worse. As the events of 2004 made clear, the Lords remain a much more serious obstacle to Government than they ever used to. Moreover, MPs are now increasingly 'breaking away from the party whip', with consequences for the Government's legislative programme. The Government may have won the votes over student funding but that did not mean that it got things all its own way. The Bill was significantly amended in order to get it through the Commons, and what reached the statute book was very different to the legislation first proposed by the Government. Top-up fees can clearly be chalked down as an example of backbench influence. The same – with knobs on – applies to hunting, with the eventually successful struggle by Labour backbenchers to secure a ban on hunting likely to go down as one of the clearest examples of backbench power in the post-war period. Whatever else it was, 2004 was hardly an example of parliamentary impotence.

¹ In addition, David Taylor, voted in both the aye and the no lobbies, in order to register a *de facto* abstention.

² Tying for first place with the revolt against the Second Reading of the National Service Bill in April 1947 and that against the Second Reading of the Shops Bill in April 1986.

³ Two Conservative MPs also defied their whip. Robert Jackson, a former Minister for Higher Education voted against, whilst Ian Taylor, abstained. They were joined by the one Conservative Scottish MP, Peter Duncan, who abstained as part of his self-denying ordinance on votes on devolved matters.

⁴ Exactly the same thing had happened with Foundation Hospitals in 2003. See P. Cowley and M. Stuart, 'Parliament: More Bleak House than Great Expectations', *Parliamentary Affairs*, 57 (2004), p. 310.

⁵ 'Marathon charm offensive wins over rebel', *The Times*, 27 January 2004.

⁶ Robin Cook, 'Top-up fees are a gamble which can only harm the party and the Prime Minister', *The Independent*, 9 January 2004.

⁷ Much of this article draws on a research project funded by the ESRC. More detailed information on any of these revolts is available from the project's website (www.revolts.co.uk).

⁸ See Cowley and Stuart, 'Parliament', pp. 304-308.

⁹ Cowley and Stuart, 'Parliament', p. 304.

¹⁰ Of these, two were merely acting as tellers to ensure that the business was expedited through the Commons.

¹¹ They also aim to take their case to the European Court of Human Rights on the grounds that a ban unfairly denies people trade.

¹² The reform came from the Modernisation Committee, who (naively) believed that the threat of Catholic spies has subsided somewhat since the sixteenth century.

¹³ It will provide for a two-Session experiment to allow an hour of short speeches before the wind-ups, introducing a minimum time limit of three minutes. Select Committee Chairman may not be subject to strict time limits at the discretion of the Speaker if the debate in question concerns a Committee report.

¹⁴ Both deferred divisions and carry over are used only sporadically, but programming is now widespread. The 2003-4 session saw 40 contested programming motions utilised, covering 26 Bills.

¹⁵ From, respectively, the *News of the World* and the *Mirror*. We are grateful to Nicola Mathews for her assistance with this section of the article.

¹⁶ She claimed expenses and allowances of £168,889.

¹⁷ From 57.7 pence per miles for the first 20,000 miles, and 26.6 pence thereafter. The rate will now be 40 pence per mile for the first 10,000 miles and 25 pence thereafter.

¹⁸ The issue of identity cards has the potential to cause divisions within Conservative ranks as well as within the PLP.

¹⁹ 'How not to run a country', *Spectator*, 11 December 2004.