

## **Strengthening the role of the backbencher**

### **Written submission to the Select Committee on Modernisation of the House of Commons**

The purpose of this paper is not to offer a series of detailed proposals to 'strengthen' the role of the backbencher – you will doubtless get plenty of those – but rather to place current debates in some broad context, and (in passing) to be mildly sceptical about one or two often-cited proposals. In particular, by placing today's debates in some historical perspective, it is intended to be an antidote against any outbreaks of excessive historical romanticism on the part of the Committee.

#### **The constituency**

The press note that accompanied the launch of the Committee's enquiries talked of an MP's 'primary' role being at Westminster. The Leader of the House said: 'Now we intend to spend some time looking at the central part of the work of a Member of Parliament—in Westminster—how the role of backbenchers in the work of the House can be strengthened and how the quality and topicality of debates can be improved'.

Whilst many of us might wish that to be true, it is no longer clear that all MPs do see their 'central' or 'primary' role as being at Westminster. The recent study by the Hansard Society into the 2005 intake of MPs found that they reported spending a full 49% of their time on constituency work. For one MP the figure was an eye-watering 97%.<sup>1</sup> Factor in some of the time the Hansard Society allocated to 'other' tasks – which included constituency-facing work – and the most recently-elected batch of MPs spend more than half of their time and energy looking away from Westminster. Their central or primary role – or at least the main draw on their time and energies – is not at Westminster.

Whilst it is possible that this figure will decline over time, as MPs become established, the Hansard Society in fact found evidence that the importance of the constituency grew over the first year that most MPs spent at Westminster. It is possible simultaneously to value the constituency link (and it is valued by both MPs and constituents) and still think that this has grown out of all proportion. There must now be a real concern that MPs are so focussed on the parochial they have no time for the national, let alone the international, picture. It is axiomatic that MPs would automatically be strengthened in their role at Westminster if they were able to spend longer there, if they were able, for example, to prepare properly for committee meetings, to do more independent policy research, or to read and scrutinise legislation thoroughly.

This is, of course, not something over which the Modernisation Committee has any power – but there must be a strong suspicion that acquiring a pledge from the Liberal Democrats that they will never again campaign on the basis of potholes and drainpipes would probably do more to strengthen the role of the backbencher at Westminster than any other single proposal you will be able to produce.

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<sup>1</sup> G. Rosenblatt, *A Year in the Life: From Member of Public to Member of Parliament*, Hansard Society, 2006, pp. 31-32.

## The rise of backbench independence

Conventional wisdom amongst many commentators is that one reason that the role of the backbencher needs strengthening is because of an increasing lack of independence of its MPs.

For example, writing in the *Observer* in December last year, Henry Porter argued that he wanted to see MPs who were willing to 'defy the party whipping system that is crushing the life out of Parliament and the spirit of MPs'.<sup>2</sup> Andrew Gimson in the *Daily Telegraph* recently argued that it has 'never even occurred to most of these so-called legislators that they were under a duty sometimes to express an independent opinion and register an independent vote'.<sup>3</sup> And the well-publicised *Power Inquiry* went so far as to claim that: 'the Executive in Britain is now more powerful in relation to Parliament than it has been probably since the time of Walpole... The whips have enforced party discipline more forcefully and fully than they did in the past'.<sup>4</sup>

Yet there is simply no evidence that party cohesion today is higher than it was in the past. Rather the opposite: there is plenty of evidence that MPs today are in fact more independent-minded and willing to defy their whips now than they used to be.

In absolute terms, high levels of party cohesion have been a fundamental part of parliamentary behaviour in the UK for over 100 years. Party votes – those in which 90 per cent or more of the members of one party vote one way, facing 90 per cent or more of the members of the other principal party – were the norm by the end of the nineteenth century.<sup>5</sup> In this, the British House of Commons is similar to most other parliaments in Western Europe; indeed many have much higher levels of party discipline than those seen at Westminster.<sup>6</sup>

In relative terms, party discipline in the past was far higher than it is today, not lower. There were, for example, two sessions in the 1950s during which not a single government MP defied their whip. Today's whips would be green with envy at the thought of such behaviour. Similarly, between 1945 and 1970, there was not a single government defeat in the House of Commons as a result of backbench dissent.<sup>7</sup> Party discipline within Parliament began to weaken in the late-1960s and 1970s.<sup>8</sup> MPs have since become more of a problem to the executive than they were then.

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<sup>2</sup> Henry Porter, 'My radical manifesto to revitalise Britain', *Observer*, Sunday December 17, 2006.

<sup>3</sup> Andrew Gimson, 'Long may the Lords give MPs lessons in democracy', *Daily Telegraph*, 22 September 2006.

<sup>4</sup> *Power to the People*, London, The Power Inquiry, 2006, pp. 128, 133. You will, however, search the list of experts who gave evidence to the Inquiry in vain for anyone who actually knew anything about Parliament at the time of Walpole.

<sup>5</sup> See A. L. Lowell, *The Government of England* (Volume 2), Macmillan, 1926.

<sup>6</sup> See, for example, the selection of essays edited by John E. Owens, 'Cohesion and Discipline in Legislatures' in the *Journal of Legislative Studies*, 2003. Nor is it just in Western Europe. In Australia, the Government recently experienced the largest backbench revolt in the House of Representatives since John Howard became Prime Minister: it consisted of three MPs voting against the party whip, and one abstention.

<sup>7</sup> The handful of defeats that did occur were caused by poor organisation on the part of the whips and/or as a result of tactical manoeuvres by the Opposition.

<sup>8</sup> See P. Norton, *Dissension in the British House of Commons*, Macmillan, 1975.

The Parliament between 2001 and 2005 was (depending on how you measure it) either one of the most rebellious parliaments of the post-war era or *the* most rebellious.<sup>9</sup> In those four years, the Parliamentary Labour Party (PLP) set a series of records which the whips would much rather they had left well alone, including a higher rate of rebellion than in any other post-war Parliament, and more rebellions than in all but the (longer) 1974-79 Parliament; the revolts over Foundation Hospitals were the largest rebellion by Labour MPs over a Labour Government's health policy; top-up fees produced the largest rebellion by Labour MPs over a Labour Government's education policy; top-up fees also produced the (joint) largest rebellion at Second Reading since 1945, and over Iraq, we witnessed the two largest rebellions against the whip by MPs of any party for over 150 years.

Such behaviour has continued since the 2005 election. Within the first year of its third term, the current Government were defeated four times in the House of Commons as a result of backbench dissent. No other post-war government with a majority of over 60 in the House of Commons suffered that many defeats in so short a time.<sup>10</sup> Labour backbench dissent in the 2005-06 session ran at the rate of a rebellion in 28 per cent of divisions, making it the most rebellious first session of any post-war parliament, topping even the Maastricht session of 1992-93 (a rebellion in 23% of divisions) which had so crippled the government of John Major.

As well as the four defeats, the government won another vote with a majority of just one – being saved by a handful of inattentive Opposition MPs – and managed to pass the Education and Inspections Bill, a key plank of its legislative programme, only as a result of Opposition support. The Commons has also forced concessions from the government on a range of other legislation, including on the issue of smoking, where the government abandoned one of its manifesto commitments in the face of backbench and Cabinet splits. I can think of no other post-war government forced to allow a free vote within a year of winning an election on something which had previously been an explicit manifesto commitment.

It really is difficult, with any intellectual credibility, to reconcile such behaviour with claims about the *decline* of backbench independence. Rather, all the evidence is that backbenchers are themselves 'strengthening' their role.

### **The whip**

Usually concomitant with any discussion on the role of the backbencher is a discussion on the power of the whips. One of the Power Inquiry's 30 recommendations, for example, was that the power of the whips should be limited (although they were extremely vague about how this could be achieved).<sup>11</sup> A recent article in the *Guardian* by Quentin Letts advocated abolishing the whips altogether – or at the very least their salaries – and anyone who has ever spoken to audiences on the subject of parliament almost always faces a question on the sickening evils of the whipping system.<sup>12</sup>

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<sup>9</sup> P. Cowley, *The Rebels: How Blair Misled His Majority*, Politico's, 2005.

<sup>10</sup> Indeed, no post-war government with a majority of over 60 suffered four defeats in an entire parliament.

<sup>11</sup> Aside from some (perfectly sensible) recommendation about strengthening select committees, the Report contained almost no concrete suggestions as to *how* to weaken the power of the whips.

<sup>12</sup> Quentin Letts, 'The obscene cost of a good whipping', *Guardian*, 10 December 2006. Take, for example, this comment from the dozen or so of people who commented online on Letts' article: 'Put plainly, whips are the enemy of

Whips have long been the pantomime villains of Westminster politics, yet much of the antipathy towards them is merely a combination of ignorance about their role (what they really do as opposed to the considerable mythology) combined with a sense of antagonism towards the very idea of political parties, an antagonism that is not some creation of the last twenty or so years but rather has much longer antecedents. Writing at the beginning of the twentieth century Sidney Low noted that the easiest way to get a round of applause at a public meeting was to claim that something was non-partisan. 'No sentiment', he said, 'is likely to elicit more applause at a public meeting, than the sentiment that "this, Mr Chairman, is not a party question, and I do not propose to treat it from a party standpoint"'.<sup>13</sup> Not much has changed over the last century.

Rather than a corruption of democracy, whips are an essential and unavoidable part of party politics. Enoch Powell's description of the whips as a prerequisite for civilization 'like a sewer' is often quoted approvingly by opponents of the whipping system, without realising that Powell's point was exactly the opposite. Even if we were – in some fairytale political land – to abolish whips, informal arrangements to convey the views of the party leadership to the backbenches (and *vice versa*) would merely spring up to replace them. The key reason that it would be impossible to 'abolish' the whips (and one reason it is also very hard to weaken their influence) is because they have, as many writers on the subject have noted, relatively few formal powers anyway. They certainly have fewer powers than in many other parliaments. British whips cannot, for example, cast votes on behalf of the entire party grouping as happens elsewhere (New Zealand, for example).<sup>14</sup> And British MPs are free to defect from one party group to another should they wish, without being expelled from the Commons (as would happen, for example, in the Indian Lok Sabha). Many of the powers that the whips do have are rarely used, not least because they merely prove to be ineffectual or counter-productive. The events of 1994-5 demonstrated the self-defeating nature of withdrawing the whip from rebellious MPs – and it is notable that, despite all the rebellions since 1997, not a single Labour MP has had the whip withdrawn as a result of their voting.

It is in fact quite possible to argue that the whips today are less powerful than they were in the past. For one thing, they have to deal with a more activist backbench than in the past – the rise of the career politician bringing with it MPs more concerned with making an impact on policy than MPs of 40 or 50 years ago – and at the same time some of the patronage formally available to them has diminished, as a result of both privatisation and (more significantly) the Nolan reforms of the 1990s, which opened up quango appointments to greater public scrutiny. Whipping is certainly less physically aggressive now than in the past, a change that was first noted more than 20 years ago.<sup>15</sup> Today's whips are

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democracy, of free speech, of independent thought, and of accountability to the electorate. Were there any justice in the world, their nefarious activities (which ultimately amount to blackmail, bribery and intimidation) would be seen for what they are - illegal acts which undermine our whole political [sic] structure'.

<sup>13</sup> S. Low, *The Governance of England*, Unwin, 1904 [1927 ed], p. 119.

<sup>14</sup> New Zealand's MPs are able to request what is known as a personal vote – in which they vote individually – but the default position is that party whips will cast votes on behalf of their party *en masse*. The New Zealand Standing Orders also allow MPs to cast their votes by proxy – with proxies allowed for up to a quarter of the parliamentary party. Again, think how much easier that would make things for British party whips.

<sup>15</sup> See D. Searing's *Westminster's Worlds*, Cambridge, Harvard, 1994, p. 255.

pussycats compared to, say, David Margesson, the Conservative Chief Whip between 1931 and 1940, who was frequently brutal towards his MPs.<sup>16</sup>

Given the membership of the Committee on Modernisation, it might be useful to recount an example of particularly aggressive whipping. It comes from the former Conservative Chief Whip, Lord Renton, in his excellent book *Chief Whip* and it concerns an encounter between the then Labour Chief Whip, Michael Cocks and a young backbench Labour MP. The MP was said to be thinking of rebelling, and so Cocks explained the party's position to him. The MP – who happened to represent the constituency of Blackburn – replied that he didn't find it a particularly convincing argument. 'At this point, Michael Cocks seized Jack by the genitals, held on to them tight while Jack turned white in the face and finally released him with the comment, 'Are you convinced now?''<sup>17</sup> Renton admits that the story is probably apocryphal; he provides it as an example of a *style* of whipping that simply would not work today.

It is, of course, important not to be naive about this. The whips do have more at their disposal than simply the power to persuade. But because their formal powers are relatively limited, it is harder than many critics realise to clip their wings yet further. If the committee has a desire to cause a right stink it could revisit the issue of nominations for select committees; and if it is looking for real trouble, then there is always the control of office space. Both would impinge on the whips' patronage, although in both cases the impact would be relatively minor (and the political costs involved in achieving the changes probably too high). An easier route might be the issue of induction programmes for new MPs, which the committee has already indicated it intends to investigate. Any expansion of House-provided induction will lessen the early reliance that some MPs develop on their party whips.<sup>18</sup> Again, however, I suspect any impact in terms of their future behaviour will be relatively minor.

### **Free votes**

Another favourite of critics of the whipping system is the possibility of allowing more free votes, which to critics conjures up the idea of normally chained MPs set free from the malevolent whip in some temporary act of liberation, like 'so many heirs of Spartacus' in Peter Jones's lovely phrase.<sup>19</sup> When the Government allowed a free vote on the issue of smoking in February 2006, the *Guardian* made 'free votes' the subject of its 'In praise of...' leader, arguing that they 'allow MPs to show individual responsibility and to rise above their role as lobby fodder - and that can only be good for parliamentary democracy'.<sup>20</sup>

There is certainly scope for free votes to be more frequent. Recent years have seen the whip (at least on the Government side) applied to several issues where there was at least a *prime facie* case justifying a free vote on grounds of conscience, including (but not limited to) the Civil Partnership Bill, the Gender Recognition Bill, the Children Bill, the Human Reproductive Cloning Bill, the Human Tissue Bill, the Gambling Bill and the Mental Capacity Bill. There is no systematic evidence that I am aware of that there are fewer free votes today

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<sup>16</sup> The former Conservative Chief Whip, Lord Renton, describes Margesson as the 'total whip'; even on holiday, the first question to his daughter in the morning would be 'what is the programme for today?' (T. Renton, *Chief Whip*, Politico's, Ch.11).

<sup>17</sup> Renton, *Chief Whip*, pp. 20-21.

<sup>18</sup> Rosenblatt, *A Year in the Life*, p. 26

<sup>19</sup> Peter Jones, 'Members of Parliament and Issues of Conscience', in P. Jones (ed), *Party, Parliament and Personality*, Routledge, 1995, p. 141.

<sup>20</sup> *Guardian*, 12 January 2006.

than in the past, and the definition of what is and is not to be the subject of a free vote is both notoriously fuzzy and constantly evolving: capital punishment, for example, was the subject of a whipped vote in both 1948 and 1956 and issues relating to homosexuality and Sunday trading have been both whipped and free over the last couple of decades. What is and is not a free vote tends to owe more to calculations of party advantage than to any hard and fast constitutional rules.

Moreover, whilst allowing a free vote is frequently sensible politics – not least because it avoids media coverage of splits and division – free votes bring with them questions of accountability. Take, for example, the smoking vote referred to above. The free votes resulted in the overturning of part of the election manifesto on which Labour had fought – and won – an election less than a year before. That manifesto was explicit: pubs and bars not serving food ‘will be free to choose whether to allow smoking or to be smoke-free’.<sup>21</sup> When Labour broke its manifesto commitment on university fees during the preceding Parliament, there was an outcry; in this case, it got applauded.

Even when they are not on issues that were covered in the manifesto, free votes can be a problem in a system of party government, in which voters overwhelmingly vote for parties and not MPs, and where the personal vote of any MP is relatively small (and what personal vote there is owes almost nothing to policy positions, but to constituency work and visibility). Free votes allow controversial issues to become detached from the electoral process; however controversial they are, free vote issues vanish from the political radar at election time. Manifestos rarely contain more than a passing mention of them (if that); they are largely absent from the national campaign and from media coverage of the election.<sup>22</sup> This would be problematic enough if they were – as they are usually described – somehow ‘cross-party’ or ‘non-party’. But in reality the party battle-lines are almost as entrenched on free votes as they are when the whip is applied – most free votes see the majority of one party in one lobby facing the majority of the other main party in the other lobby – and the outcome of most free votes owes almost everything to the party composition of the Commons.<sup>23</sup> As in both the 1960s and more recently, free votes effectively allow the party in government to enact controversial legislation whilst simultaneously denying all responsibility for that legislation.

Free votes may well be good for Parliament – ‘When the whips are off, wrote Peter Richards, ‘Parliament has a new vitality’ – but it is less obvious that they are always good for democracy.<sup>24</sup>

## Conclusion

None of this is to argue that things couldn’t, or shouldn’t, be different. Perhaps in an absolute sense we should have weaker party cohesion. Perhaps MPs should deviate more from the party whip more. The public certainly say they value independence from their MPs, although they simultaneously dislike the consequences of independence – split and divided parties – and there is no

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<sup>21</sup> *Britain forward not back*, The Labour Party, 2005, p. 66.

<sup>22</sup> P. Cowley, ‘Morality policy without politics: the case of Britain’, in C. Z. Mooney (ed) *The Public Clash of Private Values*, Chatham, NJ, Chatham House, 2001.

<sup>23</sup> P. Cowley, ‘Dealing with moral issues’, in J. Fisher et al (eds), *Central Debates in British Politics*, Pearson, 2003, pp. 360-362.

<sup>24</sup> Peter G Richards, *Parliament and Conscience*, George Allen and Unwin, 1970, p. 215. A similar example would be the idea of secret voting for MPs. At a stroke, this would empower the individual MP and make Parliament considerably stronger vis a vis the executive – but only at an unacceptable cost in terms of representation and accountability.

evidence that they differentiate between MPs based on whether or not they are independent when it comes to the ballot box.

But any such debates need to be placed in their historical context – in that we currently have better resourced, and more independent-minded, MPs than at any point in the post-war period. Concomitantly, the whips are less dominant and powerful than they used to be. Attempts to somehow attack the role played by the whips is likely to be a pointless and self-defeating exercise; even the free vote – so beloved of many outsiders – brings with it some potential downsides. What would do more than anything else to strengthen MPs at Westminster would be to relieve them of some of their (ever-growing) constituency duties – and yet voters also say that they want MPs to prioritise the constituency. Even those MPs who agree that Westminster is their primary role often find themselves forced to spend an unreasonable amount of time on constituency casework or else risk losing their seat to those who promise to do so.

One ray of hope is that the committee's work this Parliament has already made considerable advances. It is a standard rule of parliamentary reform that there is an inverse relationship between the importance of any reform and the amount of media coverage it attracts. The decision to allow MPs to make a point of order during a division without wearing a hat attracted considerable media coverage; the introduction of automatic programming of legislation – which has had real consequences for the scrutiny of bills – came into being without almost any external discussion. Ditto for the more recent reforms to the legislative process and to members' allowances. The changes to the procedure for the consideration of Government bills, a reform which could do more to improve the quality of parliamentary scrutiny of bills than any other reform in the last twenty (or more) years, went almost without comment inside or outside of the House.

Yet if implemented properly – and it is easy enough to see how they could yet be scuppered – that reform has the potential to strength the role of the backbencher at Westminster considerably. The most important thing the committee could do over the next three years is to ensure that the new procedure is utilised to its full, and that it becomes properly embedded in the parliamentary soil, in the way that departmental select committees did after 1979.

PHILIP COWLEY\*

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\* Professor of Parliamentary Government at the University of Nottingham.