Part 2

Parliament: Select Committees and Internal Arrangements

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The Governance of Parliament

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I. INTRODUCTION

GOVERNING PARLIAMENT HAS always brought challenges, but this has not always been recognised because of the focus on Parliament's relationships with the other branches of government. In *Mid-Victorian Masterpiece*,[1] Sir Barnett Cocks, a former Clerk of the House, described the dawning realisation of a 1950s Commons select committee charged with examining accommodation:

> They were beginning to learn that in a true parliamentary democracy such as that at Westminster, there was no official with absolute authority, nobody wholly in charge and nothing to single out for condemnation except perhaps the inability of Members themselves to achieve what they wanted simply by acting collectively. They were not required themselves to do the work. All that was needed from them was an authorization of perhaps four lines on a piece of paper to be tabled and voted on. It was something which, year after year, remained beyond the capacity of Members of all parties.[2]

Cocks' book is ostensibly about the long process of designing and building the Palace of Westminster, and its management following construction. But the subtitle of the book—'the story of an institution unable to put its own House in order'—is both literal and metaphoric. What Cocks was pointing to was the absence of leadership within Parliament; and the difficulty parliamentarians had—and continue to have—in acting collectively to protect 'Parliament' (a term we must treat with some caution) and its long-term corporate interests.

This chapter is about the governance of the Westminster Parliament. Governance is about the structures through which the Houses of Parliament are each directed, controlled and led.[3] It is about leadership and administration: the

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[1] B Cocks, *Mid-Victorian Masterpiece: The Story of an Institution unable to put its own House in order* (London, Hutchinson, 1977).

[2] ibid, 140.

[3] House of Commons Governance Committee, 'House of Commons Governance', HC 297, 2014, 5 ('the Straw Review').

internal control of each House, and (indirectly) how this affects the provision of resources and services to parliamentarians. Issues of parliamentary procedure are thus excluded. For similar reasons, we do not discuss select committees and the Backbench Business Committee.[4] Finally, the chapter does not deal specifically with members' pay, allowances and staffing: this has been dealt with, to some extent, in an earlier edition of this book.[5]

House governance is a subject rarely covered in detail, because it appears to lack the raw excitement of law-making[6] and scrutiny of executive action.[7] Examining how the Houses of Parliament govern themselves is important, because it can tell us about the weakness of the legislature as an institution, relative to the other branches of government. Managing a unique, structurally complex institution like Parliament is a form of public law. Moreover, looking at how Parliament organises and governs itself is a constitutional matter because the support and services to Parliament and its organisation is a necessary, but not sufficient, condition to ensure it carries out its more obvious constitutional functions—legislating, scrutinising, authorising, representing, deliberating—in an effective manner.

The argument of this chapter is that governing Parliament is not easily achievable—and that it is not necessarily or only the executive which hampers the effective working of a legislature. In the language of public choice, Parliament is a deeply complex organisation which has severe problems engaging in collective action.[8] The governance structures of both Houses reflect this. They might be best understood as arrangements of key veto players, where each has the power of initiative but also the power to veto the decisions of the others. The result is, as one might expect, a situation in which the status quo is favoured and change, when it comes, is sporadic, driven by 'exogenous' causes. The long-term corporate interests of Parliament—such as the capacity to organise itself to ensure a well-supported legislature—are haphazardly addressed.

This chapter will proceed in the following fashion. Section II briefly examines the framework through which the Westminster legislature has been viewed: the separation of powers. For the most part, Parliament has been viewed in terms of its relationships with the other branches—in particular, the Executive. In this

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[4] The Backbench Business Committee is discussed in R Kelly and L Maer, 'Parliamentary Reform and the accountability of Government in the House of Commons' in A Horne and A Le Sueur (eds), *Parliament: Legislation and Accountability* (Oxford, Hart Publishing, 2016) 139, 144–148.

[5] See R Kelly and M Hamlyn, 'The Law and Conduct of Members of Parliament' in A Horne, G Drewry and D Oliver (eds), *Parliament and the Law* (Oxford, Hart Publishing, 2013) 89 and B Worthy 'Freedom of Information and Parliament' in Horne, Drewry and Oliver (ibid) 139.

[6] Contrast with L Thompson, *Making British Law: Committees in Action* (Basingstoke, Palgrave Macmillan, 2015).

[7] For exceptions, see B Winetrobe, 'The Autonomy of Parliament' in D Oliver and G Drewry (eds), *The Law and Parliament* (London, Butterworths, 1998) 14; and M Russell and A Paun, *House Rules? International Lessons for Enhancing the Autonomy of the House of Commons* (London, Constitution Unit, 2007).

[8] T Moe and S Wilson, 'Presidents and Political Structure' (1994) 57 *Law and Contemporary Problems* 1; G Loewenberg, *On Legislatures: the Puzzle of Representation* (Boulder, Paradigm Publishers, 2011).

context, Parliament is regarded as a unitary entity; questions about its internal dynamics are marginalised or obscured.

Section III broadly sets out the peculiarity of Parliament as a public institution: it is expected to represent the polity, and as such members are nominal equals. This makes disagreement almost inevitable, and therefore collective action is particularly difficult. Sections IV and V—the bulk of this chapter—elaborate on this. These set out the governance arrangements in each House of Parliament, and then examine their history. This is followed by details of the dynamics of the key officers and governance units of the two Houses, and the ways in which their organisation creates serious problems of collective action. Section VI returns to the present and looks at the Restoration and Renewal of the Palace of Westminster: a matter currently being debated in Parliament.

As Winetrobe has noted, the 'closer one approaches the apex of the British political system, the more strict law gives way to "non-legal" forms'.[9] The chapter's primary sources are therefore the reports of the two Houses' governance bodies and various domestic committees. As the matters discussed in the various reports are sometimes opaque, and do not explain the political context and institutional dynamics of the issues raised, the chapter also draws on a small number of confidential interviews and discussions carried out in 2016–17 with 15 individuals: five who sat on the House of Commons Commission or on a domestic committee; five who sat on the equivalent bodies in the House of Lords and five senior clerks (three from the Commons; two from the Lords) on House governance. Interviewees were chosen on the basis of their previous or current role in House governance.

II. THE SEPARATION OF POWERS AND THE INTERNAL COMPLEXITY OF THE BRANCHES OF GOVERNMENT

The doctrine of the separation of powers sits explicitly or implicitly behind most discussions of the legislature. But in various ways it obscures some vital truths about how the legislature works. There are at least three conceptions of the doctrine: there is the 'pure' separation of powers; the checks and balances conception; and the efficiency conception. Most versions of the pure conception insist upon a strict connection between function, personnel and branch, and that functions and personnel in one branch should not overlap with another. Organising institutional power in this way avoids the concentration (and potential for abuse) of power. The checks and balances conception, on the other hand, does not require a rigid connection of functions and personnel to each branch—indeed, to some extent functions can be shared between branches. Its focus is on how each branch can check and balance the others.[10] The 'efficiency' conception allocates function

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9 Winetrobe, 'The Autonomy of Parliament' (n 7) 14.
10 E Barendt, 'Separation of Powers and Constitutional Government' [1995] *Public Law* 599; and R Masterman, *The Separation of Powers in the Contemporary Constitution* (Cambridge, Cambridge University Press, 2011).

on the basis of institutional competence.[11] On this view, the importance of the doctrine lies more in ensuring effective government.

Yet, despite the dominance of the separation of powers as a framework to understand the branches of government, the general view of legal scholarship is that it has serious flaws.[12] There are various objections. First, some conceptions are too stringent in insisting on a link between institution and function—that is, it is impossible to separate functions or even assign a core function to a particular branch of government. Second, it is difficult to reconcile a separation of powers with checks and balances, because the checking function would involve interference with the other branches. Third, the doctrine ignores the modern administrative state, in which some institutions exercise all three 'core' functions of government. Finally, there are conceptual issues in defining the executive, judicial and legislative functions, and what values inform the doctrine.[13]

Yet the doctrine remains, and its persistence means that discussions of Parliament tend to be prefaced by the fusion of executive and legislature—and (what usually follows) various ways in which the executive dominates the legislature (or, at least, the House of Commons).[14] That is, the fusion of executive and legislature is said to hinder the latter in carrying out its proper constitutional functions. There is much truth in this, but it is not the entire story.[15] The doctrine, in most forms, is highly normative. In a recent survey of the separation of powers, for instance, Kavanagh argues that a philosophically justifiable conception of the doctrine must satisfy three criteria. The first criterion is the desideratum of distinctness: it must show the distinctness of the branches without relying on essentialism of function. The second criterion is the desideratum of interaction: it must be able to account for the interaction and interdependence of branches. Finally, these desiderata must be underpinned by the joint enterprise of good government—'coordinated institutional effort between branches of government in the service of good government.'[16]

Thus we can see that the doctrine asks what would be desirable, and not what 'is'—it marginalises the socio-political factors which may animate the action of a particular branch. It also looks outward to explain weakness. The emphasis on the

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[11] NW Barber, 'Prelude to the Separation of Powers' (2001) 60 *Cambridge Law Journal* 59. In more recent work, Barber has shifted from the term 'efficiency' to 'suitability': NW Barber, 'Self-Defence for Institutions' (2013) 72 *Cambridge Law Journal* 558.

[12] eg E Carolan, *The New Separation of Powers: A Theory for the Modern St*ate (Oxford, Oxford University Press, 2009) and A Kavanagh, 'The Constitutional Separation of Powers' in D Dyzenhaus and M Thorburn (eds), *Philosophical Foundations of Constitutional Law* (Oxford, Oxford University Press, 2016) 221.

[13] Kavanagh, 'The Constitutional Separation of Powers' (n 12) 222–223.

[14] eg Winetrobe (n 7).

[15] This view of Parliament is now being challenged: M Benton and M Russell, 'Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons' (2013) 66 *Parliamentary Affairs* 772; M Russell and P Cowley, 'The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence' (2016) 29 *Governance* 121; and M Russell, D Gover and K Wollter, 'Does the Executive Dominate the Westminster Legislative Process? Six Reasons for Doubt' (2016) 69 *Parliamentary Affairs* 286.

[16] Kavanagh (n 12) 235.

appropriate relationship between branches tends to treat them as if they were unified and coherent actors.[17] *Inter*-branch relationships are the focus: *intra*-branch relationships are ignored. Moreover, the emphasis on interaction emphasises the operation of immunities (such as parliamentary privilege or judicial independence) or the exercise of power (legislative control over the budget, for instance, or judicial review).[18] But the internal coherence of the branch and its capacity to exercise these mechanisms or powers remains largely unexplored.

The importance of recognising internal complexity is better recognised in relation to the executive. Daintith and Page, for instance, noted long ago that at least one reason that the executive acts as it does, and is only weakly accountable to Parliament, is because of its institutional fragmentation.[19] In 'core executive studies' the executive is often characterised as a set of actors operating in a context of resource scarcity. So, for instance, the Prime Minister is in some respects very weak, lacking a large staff or a department of their own, and must cooperate with Cabinet colleagues with far more impressive resources.[20] There is also the long-standing issue about the appropriate relationship between political and administrative staff, and the extent of the latter's duty to the former.[21] In such a context, clear, consistent and coherent development and implementation of policy become far more problematic. In short, we cannot take institutional unity for granted; and this potential lack of unity has implications for institutional action.

This chapter, then, is an attempt to apply this insight to the workings to the legislature. It is a study, not of privileges, immunities and powers, and their exercise against external actors, but of administrative processes, and the interaction between political and administrative actors within the legislative branch. Looked at this way, a different picture of the legislature emerges: one in which the legislature is also hindered by its own internal organisation and dynamics.

III. THE PECULIAR NATURE OF PARLIAMENT

The 2014 Straw Review of the governance arrangements in the House of Commons stated:

> Governance arrangements … must enable an organisation to meet its primary purposes … They must deliver clear decision-making, with a high degree of transparency

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[17] eg, R Masterman and S Wheatle, 'Unpacking Separation of Powers: Judicial Independence, Sovereignty and Conceptual Flexibility in the UK Constitution' [2017] *Public Law* 469.

[18] Barber, 'Self-Defence for Institutions' (n 11).

[19] T Daintith and A Page, *The Executive in the Constitution* (Oxford, Oxford University Press, 1999); and more recently see T Prosser, *The Economic Constitution* (Oxford, Oxford University Press, 2014).

[20] R Elgie, 'Core Executive Studies Two Decades on' (2011) 89 *Public Administration* 64.

[21] For two excellent discussions in an executive context, see W West, 'Neutral Competence and Political Responsiveness: An Uneasy Relationship' (2005) 33 *Policy Studies Journal* 131; and H Kaufman, 'Ruminations on the Study of American Public Bureaucracies' (2008) 38 *American Review of Public Administration* 256.

and clarity, whilst incorporating appropriate levels of oversight, challenge and effective personal accountability … a clear governance structure would have at its apex a single governing body, containing both executive and non-executive roles, with a remit which defines what it is responsible for, and what it has delegated and to whom.[22]

As we shall see, little of this has been present in Parliament. There are very good reasons for this. Jennings' observation that Parliament is a fiction is a useful starting point.[23] The term 'Parliament' presumes that a legal entity with an autonomous and coherent personality, but this is constitutional shorthand, disguising considerable institutional complexity.[24] This stems from particular features of Parliament as a legislature, each of which require some explanation.

First, each House consists of members who are nominally equal: this makes it difficult to impose any kind of hierarchy.[25] This problem of 'the legislative state of nature'[26] has been answered, for the most part, by the evolution of political parties (and to a lesser extent, by committees), but the focus of their collective action remains primarily on short-term, partisan goals. As Tony Wright noted of the House of Commons,

'there is no Parliament, in that collective sense, to insist on anything. There are simply members of Parliament who have preoccupations and inhabit a career structure in which sustained strengthening of the institution is not a central priority.'[27]

Second, there is the obvious institutional fact that in a Westminster parliamentary system, the executive comes from, and exercises significant influence over, the legislature. This is particularly clear in the House of Commons, where usually the Executive commands a majority. Executive influence penetrates almost every facet of parliamentary life: through formal means such as control over the agenda in the Commons;[28] and less formal but equally important means such as whipping and the promise of ministerial office.

Third, 'Parliament' is bicameral: it consists of the House of Commons and the House of Lords.[29] These are quite dissimilar institutions. The House of Commons has 650 elected MPs, who are more driven by immediate political concerns such as re-election, constituency interests, the party and the possibility of ministerial promotion than scrutinising legislation and executive action. By contrast, the Lords currently consists of over 800 peers, mostly appointed, with a rump of

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[22] Straw Review (n 3) 8–10.

[23] I Jennings, *Parliament*, 2nd ed (Cambridge, Cambridge University Press, 1957) 2.

[24] Winetrobe (n 7) 19.

[25] Loewenberg, *On Legislatures* (n 8) 49.

[26] G Cox, 'The Organization of Democratic Legislatures' in B Weingast and D Wittman (eds), *The Oxford Handbook of Political* Economy (Oxford, Oxford University Press, 2009) 141.

[27] T Wright, 'Prospects for Parliamentary Reform' (2004) 57 *Parliamentary Affairs* 867, 874, quoted in M Russell and A Paun, *House Rules?* (n 7) 13.

[28] eg, House of Commons Standing Order 14(1): 'Government business shall have precedence at every sitting'.

[29] In respect of legislation, there are usually three institutions constituting 'Parliament': the monarch, the House of Commons and the House of Lords. Here we leave the monarch aside.

hereditary peers and bishops. Appointment, coupled with a much higher average age for peers (69, compared with 51 for MPs) means that not only are peers often individuals of expertise, but are also relatively immune to ambition.[30] Moreover, in the Lords, no one party or group has an overall majority. These two features diminish the influence of the Executive. In short, the two Houses do not speak with one voice; their respective members prioritise goals differently.

Fourth, and linked to the previous feature, each House is fiercely protective of its own interests and privileges; and wary of changes which might affect its own autonomy and status. This stance was bolstered by the legal doctrine of exclusive cognisance, which gave each House the exclusive jurisdiction to regulate its own internal affairs without external interference.[31] In practice, however, the possibility that a House might act collectively means that successive administrations and governments in both Houses have been wary of acting on their behalf without first seeking House consent.

Finally, and most importantly, the essence of legislatures is that they represent and contain disagreement.[32] They are riven by partisanship; disagreement is inevitable. Unlike almost any other organisation, there is no 'common purpose' shared by those who work in Parliament. And in Parliament's intensely political environment, and (in Westminster systems) because of its entanglement with the Executive, it is particularly difficult to divorce the corporate concerns of Parliament from partisan concerns. Parliament is the most political of all institutions, but the result is that its administration must act in a non-political way in order to respect all political allegiances.[33]

These features reflect the nature of Parliament as a legislature. The result of them is an institution that has found it very difficult to act in a coordinated, coherent manner where the issue is corporate—such as governance matters. These features also suggest that it is not a simple matter to import private and public sector arrangements into the two Houses.

At Westminster, the governance arrangements in each House reflect the institutional features just discussed. Broadly speaking, in each House, there is a political governance body, a Commission, consisting of key actors in the House (the presiding officer, who usually chairs; the House Leaders of the parties; representation from the backbenches; and more recently, non-executive and staff members) which in principle provides strategic direction for services and administration in the House. It is in turn supported by the House Administration—permanent

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[30] House of Commons Library, 'Social background of MPs 1979–2015' (CBP 7483, 2016), 5; and 'Membership and principal office holders' at www.parliament.uk/about/faqs/house-of-lords-faqs/lords-members.

[31] L Lawrence Smyth, 'Privilege, Exclusive Cognisance and the Law' in Horne, Drewry and Oliver, *Parliament and the Law* (n 5) 3.

[32] See generally J Waldron, *The Dignity of Legislation* (Oxford, Oxford University Press, 1999).

[33] C Leston-Bandeira, 'The Pursuit of Legitimacy as a Key Driver for Public Engagement: the European Parliament Case' (2014) 67 *Parliamentary Affairs* 415, 421.

House staff. The apex of House Administration is a board, which consists of House staff, and is chaired by the Clerk, the Accounting Officer of the House.[34] The board implements the policies set by the governance body. The governance body is also supported by a set of domestic committees (so called because they deal with internal matters of house governance rather than matters external to the House), who advise on finances, services and administration.[35] These are composed mostly of parliamentarians, and are a means through which the 'customers' or 'clients' (parliamentarians) of services are connected to the administrative (ie the management board) and political leadership (the Commission). And behind all of these arrangements lies the House itself.

But this formal (and oversimplified) governance structure is inadequate if we wish to know how the Houses are governed, for underneath the formalities lies great ambiguity. Even the titles of key actors suggest conflicting jurisdictional claims: in the Commons, for instance, there is both a Speaker and a Leader of the Commons—who is leading or speaking for the House? In practice, what matters are the relationships between actors: in particular, those between the House, government and the presiding officer (or the absence of a presiding officer, in the case of the Lords); the relationships within the Commission; and that between the Commission and Management Board. These relationships have been rarely expressed in the form of 'law'—at best they may be found in instruments of delegation or memorandums of understanding,[36] but more often than not they take the form of sometimes stable, sometimes shifting practices or understandings, governed by personality.

IV. THE HOUSE OF COMMONS

To some extent, Parliament's governance structures and the way in which responsibilities are allocated is the result of its relatively recent detachment from the executive. The 'modern' history of House governance may be said to begin with the decision in 1965 to pass control over the Palace of Westminster to the two Houses.[37] In fact, the executive continued to play a significant role in the management of the Houses. While day-to-day management of the Palace was

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[34] Note that as a result of the Straw Review, the administrative structure in the Commons is now different, with a Board which operates under a small Executive Committee: see Part IV below.

[35] There are also domestic committees for procedure, privilege and conduct, but we are here only concerned with governance matters, not proceedings.

[36] See, for instance, the current 'Instrument of Delegation made by the House of Commons Commission on 15 June 2015', available at: www.parliament.uk/documents/commons-commission/delegation.pdf. This was then amended in 2016: see www.parliament.uk/mps-lords-and-offices/offices/commons/executive-committee/instrument-of-delegation.

[37] There are useful discussions of early Commons governance in M Rush and M Shaw (ed), *The House of Commons: Services and Facilities* (London, George Allen & Unwin, 1983) and more recently, the excellent but as yet unpublished paper of P Baines, 'House of Commons Governance: A Suitable Case for Treatment?' (2017).

transferred to the two Houses' authorities, control over the upkeep of the Palace remained with the Department of the Environment. Control over staffing in the Commons remained formally lodged with the Commission for Regulating the Offices of the House of Commons, which consisted of the Speaker, the Secretary or Secretaries of State, the Chancellor of the Exchequer, the Master of the Rolls, the Attorney and Solicitor General.[38]

Thus, the governance of the Commons remained under the Executive's control, although in practice much was delegated to the Speaker and the Clerk of the House. The Speaker was advised on services in the Commons by the Services Select Committee, a domestic committee set up in 1965 and consisting of 20 members. It had no executive responsibility, but in practice, it assumed a number of executive functions.[39]

Increasing dissatisfaction with the arrangements for House governance in the Commons led to a review by Sir Edward Compton ('the Compton Review'),[40] followed by the Bottomley Committee,[41] which reviewed and modified the recommendations made by Compton. Both reviews noted that the governance arrangements for the House of Commons was unsatisfactory in various ways. The Compton Review had two primary recommendations: the abolition of the Commission appointed under the House of Commons (Offices) Act 1812 (with no replacement body); and the unification of House administration—that is, permanent staff—under the Clerk of the House, following a civil service departmental model (primarily under the supervision of the Chancellor of the Exchequer). The Bottomley Committee agreed to the first in a qualified manner, but not to the second: it was felt that the Compton Review's key recommendations would 'detract from the "self-governing" role of the House'.[42] In relation to the first recommendation, the Bottomley Committee recommended the replacement of the earlier Commission with a new House of Commons Commission ('the Commons Commission'). The Committee stated that:

> [W]e are convinced of the need, in the House of Commons, for an ultimate authority which can express the will of the House in respect of its own services, organisation and staff; which can provide a central thrust for the development of those services; and which can oversee and care for the interests of Members of all parties and where necessary represent those interests to the Executive.[43]

This remains the objective of House governance today. The key (although not immediate) outcome of the Bottomley Committee was the establishment of the

[38] House of Commons (Offices) Act 1812, s 2.

[39] Baines, 'House of Commons Governance' (n 37).

[40] 'Review of the Administrative Services of the House of Commons: report to Mr Speaker by Sir Edmund Compton' HC 254, 1974.

[41] House of Commons (Administration), 'Report to Mr Speaker by Committee under Chairmanship of Mr Arthur Bottomley MP', HC 624, 1974–75 ('the Bottomley Report').

[42] ibid, 9.

[43] ibid, 15.

Commons Commission by statute.[44] The Commission consisted of a broader mixture of parliamentary interests: the Speaker; the Leader; and Shadow Leader of the House, and backbenchers. The lack of an inbuilt majority would, in principle anyway, serve to insulate the Commission from the executive. It was primarily responsible for the recruitment, appointment and pay conditions of House staff, and for the preparation of financial estimates for the House.[45] In terms of House administration, a Board of Management was established, but on the whole its organisation remained very much as before, on the basis that it was not delivering a singular policy but rather services to a set of actors.

These changes did not result in a more coherent, strategic approach to governance.[46] Following the Bottomley Committee there were a series of reviews of House governance carried out at relatively regular intervals, all done by external consultants: Sir Robin Ibbs (1990); Michael Braithwaite (1999); and Sir Kevin Tebbit (2007).[47] The first of these, the Ibbs Review, is perhaps the most significant, because later reviews built on its objectives. The Ibbs Review described an organisation in which the governing political body (the Commons Commission) rarely made decisions, and when it did, did so in a non-transparent manner. Moreover, it remained unclear who determined policy for services, or for implementation of policy. This was partly because the Services Select Committee presumed it had an executive role in producing policy, and yet its formal remit was advisory—and that it advised the Speaker, not the Commission.

The Ibbs Review also described an administration which was highly unsatisfactory: it had very limited capacity to monitor—let alone control—financial matters. So, for instance, spending was covered by seven different votes, of which only two were within the remit of Commons authorities. There was simply no readily usable financial information or comprehensive budgets; and no professional financial advice available. The Review concluded: 'A complete overhaul of financial systems is an inescapable necessity'.[48] It was only through establishing financial control over the administration of the Commons (including estates and works) that it could function as a modern public sector organisation.

The Ibbs Review led to a number of changes.[49] On the political side, the key domestic committee, the Services Committee was abolished and replaced with

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[44]   House of Commons (Administration) Act 1978, s 1.

[45]   House of Commons (Administration) Act 1978, ss 2–3.

[46]   Baines, 'House of Commons Governance' (n 37).

[47]   The House of Commons Commission, 'House of Commons Services', HC 38, 1990/91 ('the Ibbs Review'); the House of Commons Commission, 'Review of Management and Services', HC 745, 1998/99 ('the Braithwaite Review'), and the House of Commons Commission, 'Review of Management and Services of the House of Commons', HC 685, 2007 ('the Tebbit Review'). There was a fourth review, which evaluated the implementation of the Tebbit Review recommendations in 2010: A Jablonowski, *Report on the Implementation of the Tebbit Review Recommendations* (2010). This was also carried by an external consultant, Alex Jablonowski. Unlike the first three, however, this was commissioned by the Commons' Management Board.

[48]   Ibbs Review (n 47) 6.

[49]   Many of these are set out in the Braithwaite Review (n 47).

a smaller Finance and Services Committee to reduce ambiguity of roles. On the administrative side, various reforms were put in place: a clearer remit was set for the Management Board; greater financial management mechanisms and resources were provided. The Review also led to the enactment of the Parliamentary Corporate Bodies Act 1992, which established the Clerks as the corporate officers of the two Houses. This allowed the Clerk of each House to enter into private sector arrangements; and was a necessary condition for full control over the Palace and the surrounding parliamentary estate to be transferred to the two Houses' authorities. That this only happened at the end of the twentieth century is testament to the lack of interest in House governance issues on the part of parliamentarians.

Both the Braithwaite (1999) and Tebbit (2007) Reviews were primarily taken up with modernising and streamlining the management of House administration. The Braithwaite Review recommended the establishment of an Audit Committee and the creation of an Office of the Clerk to support the Clerk's increasing managerial role. The Tebbit Review recommended a streamlined Board of Management (later Management Board), a strengthened Office of the Clerk, and the sharing of Estates and Works.

All three reviews identified perennial problems in both the political and administrative wings of Commons governance. Each review repeated the same criticisms: the Commons Commission lacked transparency, and generally failed to provide strategic direction on House services and administration; its relationships with both the Management Board and the domestic committees were ambiguous; and there was a lack of clarity about who was responsible for determining policy and implementation. In spite of this, the Commons Commission remained unchanged in shape, function and approach.

By contrast, House administration underwent several reforms, in order to meet the manifold and multiplying service demands of members. In time, the reviews resulted in the modernisation and centralisation of House administration; and in doing so consolidated administrative and managerial power in the Commons in the office of the Clerk of the House, effectively making the officeholder the chief executive of all House staff. This was perhaps an inevitable development, given the rise in number of staff working for the House of Commons. In 1979, House staff numbered 550 full time staff; by 2014 well over 1700.[50]

The 2014 Straw Review was significant in being the first review of Commons governance arrangements by members themselves in 40 years (since the 1975 Bottomley Review), which just illustrates the difficulty in getting parliamentarians to think about governance issues. As one MP stated to the Straw Committee, 'People do not become Members of Parliament because they want to run the House of Commons'.[51] Indeed, the establishment of the Review came about, not because of a desire to reform House governance, but from an elixir of particular, contingent events.

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[50] Straw Review (n 3) 15. Neither figure includes staff employed by MPs, a number which has also increased.

[51] ibid, 15.

In early 2014, Sir Robert Rogers, then Clerk of the House, announced his retirement. The post of Clerk is a Crown appointment—a measure of protection for the independence of the office, since the Clerk is the chief procedural adviser to the Speaker and the House. In theory, then, the Clerk is appointed by the monarch on the advice of the Prime Minister. In practice, however, this has been done following a selection process determined mostly by the Speaker, with the Commission having a much less defined role. This informal division of labour has taken place because the Speaker operationally relies very heavily upon the Clerk, and therefore has a necessary and more immediate interest in the appointment.

Carol Mills, then an Australian parliamentary official, was announced as Sir Robert's successor. It was, however, later revealed that Mills lacked procedural experience, and was under investigation for misleading an Australian parliamentary committee over a possible breach of parliamentary privilege. The selection process was also criticised as procedurally flawed.[52] This allowed some members to launch an attack on the incumbent Speaker, John Bercow MP, who was seen as having increased the power of the Commons relative to the Government. The appointment process was 'paused' (and ultimately an internal candidate was appointed), and an ad hoc committee chaired by Jack Straw MP was established to consider 'the governance of the House of Commons, including the future allocation of the responsibilities for House services currently exercised by the Clerk of the House and Chief Executive'.[53]

It is unclear why the terms of reference were drafted so broadly, given the particular political context from which it emerged. It meant, however, that the Committee was able to examine and address various long-standing issues of House governance—in particular, the lack of strategic direction; and poor relationships between the political and administrative wings of the House.[54] The Review noted, in a passage redolent of any description of most aspects of the UK's constitution:

> The governance arrangements for the House have developed over time often in response to particular issues or events. This has resulted in a situation where the complexities which are inherent in the character of the House as a legislature have been compounded by layers of interventions which have built on and adapted what went before rather than rationalising or restructuring it.[55]

Two external members, an additional backbench representative and two official members (the Clerk and a Director General) were added to the Commission; and the Commission now had a specific statutory duty to set strategic priorities for House services.[56] The rationalisation of House administration continued apace.

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[52] Some of the public details of this are set out in the Straw Review (n 3) 25–26.

[53] HC Deb 10 September 2014, col 1014.

[54] Details of the implementation of many of the Straw Review's recommendations can be found here: House of Commons Director General's Review, 'Report' (London, 2016).

[55] Straw Review (n 3) 13.

[56] These changes required new legislation: see House of Commons Commission Act 2015, which amended the 1978 Act.

A Director General ('DG') responsible for delivery of services, working under the Clerk, was appointed.[57] An Executive Committee ('ExCo'), consisting of the Clerk, DG and Head of Corporate Services was established. ExCo provides support to the Commission and is an intermediary level body between the Commission and a Board far more operational than the previous management board. Finally, the appointment process for the Clerk was clarified, to some extent: the Straw Review recommended it follow modern recruitment practices for public appointments— that is, it should be open and competitive; and the full selection process should be agreed to and overseen by the Commission.[58]

The key changes brought about by the Straw Review are too recent to evaluate. On the 'political' side, the non-executive and official members have no vote, but the external perspective which they provide may prompt action. The additional backbench member will increase representativeness, and reduce the likelihood of the government enjoying a majority on the Commission (as it had under the coalition Government).[59] But this additional member only reinforces the Commission's fundamental decision-making rule: consensus.

In terms of clarifying the selection process for the Clerk, it seems unlikely to remove the tension between the Clerk's responsibility to the incumbent Speaker and to the House as a whole. On the administrative side, the division of labour between the Clerk of the House and the new DG may alleviate pressures on the Clerk, but this will depend greatly on the relationship between the two office-holders. This relationship will also determine whether ExCo will be effective or not.

More generally, however, the Straw Review and its provenance illustrate the classic problems of House governance: grey and undocumented arrangements; ambiguous relationships between political and administrative staff; struggles for institutional power entangled with partisan politics; and ultimately, change to governance arrangements sparked not by the need for rationalisation or efficiency, but by sometimes quite personal conflict.

A. Key Actors in House of Commons Governance

It is useful at this point to step back and examine more closely the key actors involved in House governance, and their dynamics. This will allow us to see the ways in which governance is 'in fact' exercised, and under what conditions.

The House of Commons Commission is the most important governance body within the Commons, responsible for both the management of House finances

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[57] The division of labour between the Clerk and the DG are set out in House of Commons Director General's Review, Report (n 54) 34–36.

[58] Straw Review (n 3) 67–68.

[59] ibid, 53.

and personnel.[60] For most of its existence the Commons Commission consisted primarily of politicians: the Speaker; the Leader of the House; a member nominated by the Opposition Leader (usually the Shadow Leader of the House); and three senior backbench members—one from each of the main parties (and since 2015 another to represent the remaining membership). It has, then, been broadly representative of the House, with the government enjoying no inbuilt majority. This has provided the Commission with insulation from the executive, but it also draws the Commission closer to the 'legislative state of nature'. It operates by consensus,[61] which in practice has been difficult to achieve. Inertia is the default position.

The Speaker is the most important actor within the Commission. Within the House, he has a dual role: he is the presiding officer in the Commons, and so resolves issues of procedure; but he is also responsible for the day-to-day administration of the House.[62] The authority that the Speaker derives from being presiding officer bleeds into his administrative role. As Chair of the Commons Commission, the Speaker sets the agenda; he is the actor who spends the longest time in post on the Commission (between 1979 and 2015, Speakers spent an average of eight years in post)[63] and who deals with senior House staff on a day-to-day basis. Many of the Commission's functions have devolved or been delegated to him—in particular, the power of appointment.[64]

Speakers, however, tend to lack the temperament, expertise and time for management and strategic direction of how the House is run. Like most MPs, Speakers have rarely had managerial experience, so they face similar difficulties to parliamentarians thrust into a ministerial role;[65] they also have their procedural responsibilities, and constituency duties as all MPs do. Thus, Speakers can be enormously influential in House governance, but like many ministers, have a tendency to focus on the short term. They are also constrained by other key actors within the governance structure of the House; and tempered by the need to maintain their own neutrality. Thus, the Straw Review noted that the Speaker has 'a position of leadership within the House, without being fully in charge'.[66]

The Leader of the House can be a powerful actor in terms of House administration: the Ibbs Review, for instance, was established in the wake of Sir Geoffrey

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[60] A useful statement of the Commission's membership, functions and practice can be found at www.parliament.uk/documents/commons-commission/membership-functions-practice.pdf. We do not here deal with the Commission's other corporate role as the Members' Estimate Committee, responsible for oversight over certain aspects of Members' expenditure.

[61] Straw Review (n 3) 52.

[62] There is, in fact, no formal list of the Speaker's administrative powers: see Straw Review (n 3) 16.

[63] Analysis derived using data from D Butler and G Butler, *British Political Facts*, 10th edn (Basingstoke, Palgrave Macmillan, 2010); www.parliament.uk; and House Commission reports 1979–2017.

[64] Instrument of Delegation made by the House of Commons Commission on 15 June 2015, available at www.parliament.uk/documents/commons-commission/delegation.pdf. The Speaker has also always had the power to appoint certain senior staff, including a small retinue of personal staff.

[65] On this, see P Riddell, Z Gruhn and L Carolan, *The Challenge of being a Minister* (London, Institute for Government, 2011).

[66] Straw Review (n 3) 16.

Howe's brief tenure as Leader on the Commission;[67] and modernisation of the Commons (mostly in terms of procedure) took place under Robin Cook. However, Leaders have a dual role: they are expected to ensure that the legislative agenda of the Government is met in the Commons, as well as representing the House where appropriate. Almost inevitably, the former role dominates over the latter. The rare Leader committed to reform faces formidable challenges, not least from their own whips and an indifferent to hostile Prime Minister.[68] Leaders tend to be members on their way down, rather than up, which can restrict their influence. The Leader's Office has very small resources (with a staff in the twenties, compared to the thousands who staff the large Whitehall departments).[69] Tenure for Leaders of the House is low: between 1979 and 2017, the average time in office was two years.[70]

A similar analysis applies to the Shadow Leader of the House, whose average time in post is even shorter: 1.5 years in the same period.[71] To a large extent, then, the Leader (and the opposition's counterpart) acts as a veto player, and only rarely exercises any power of initiative. Backbench members of the Commission— chosen by the Whips—have tended to support the status quo. Although one member is Chair of the Finance Committee, backbench members as a group have lacked the institutional authority of the Speaker or the Leaders.[72] Finally, we need note that the Leader and Shadow Leader are part of another set of key actors— the 'usual channels', who prefer—all things considered—the status quo. The usual channels are also responsible for the appointment of the backbench members of the Commission, and those who sit on the domestic committees.[73]

Broadly, then, the Commons Commission, composed primarily of politicians with multiple, conflicting priorities, and having a high turnover, is predisposed towards inaction on issues with long-term implications. This is compounded by members' fear of negative publicity, which prompts them against action. At the same time, however, being composed of politicians, the Commission has the tendency to be reactive, focusing on routine matters and the short term. In this respect, it is often the Speaker who dominates, because of a lack of focused engagement from the other actors.

The domestic committees were established as a means by which concerns about administration and governance could be 'fed up' to permanent House staff and to the Commission. Chairs and members of the domestic committees remain chosen via party whips and the usual channels.[74] There has long been confusion over

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[67] Baines, 'House of Commons governance' (n 37).

[68] On the Leader of the House, see G Power, 'The Politics of Parliamentary Reform: Lessons from the House of Commons (2001–2005)' (2007) 60 *Parliamentary Affairs* 492.

[69] J Straw, *Last Man Standing: Memoirs of a Political Survivor* (London, Macmillan, 2012), 469.

[70] Analysis derived using data from Butler and Butler *British Political Facts* (n 63); www.parliament. uk; and House Commission reports 1979–2017.

[71] ibid.

[72] John Thurso MP was perhaps an exception.

[73] M Rush, C Ettinghausen, I Campbell and A George, *Opening up the Usual Channels* (London, Hansard Society, 2002).

[74] Membership of these committees is not subject to the Wright reforms. eg, House of Commons Standing Order 122B.

the jurisdictional boundaries between the domestic committees, the Commons Commission and the Management Board. Committees have often thought of their role as executive in nature, whereas committee terms of reference have long stated that their function is advisory. Moreover, absenteeism and turnover in these committees has traditionally been high.

Thus, House governance have often fallen by default on the shoulders of the administrative wing—that is to say, on House staff and the Management Board. The board has traditionally supported the Commons Commission and implemented its decisions. However, the relationship between the Commission and the Board (and House staff) is complicated, for two key reasons. These complications are inherent in all public bureaucracies, although the legislative context adds a unique twist.

The first is the tendency towards compartmentalisation (like 'siloism' in the executive), which plagues all organisations.[75] House administrative organisation has, for much of its existence, lacked unity because of the functional specialisation of House staff: for decades House services had a federal structure with the Clerk of the House operating as *primus inter pares*, but who shared administrative control with powerful department heads such as the Serjeant-at-Arms. Thus, until the late 1990s we have seen that the Board acted as 'a forum for discussion and compromise, rather than for strategy and decision.'[76] It was not a 'supra-departmental' body that acted collectively. The various consolidations brought about by successive reviews, however, have now made the Board and House administration far more cohesive, but concerns about coordination persist.[77]

But there is a more fundamental tension lying at the heart of the relationship between the political wing and the permanent House administration: the constitutional (and prudent) necessities for permanent staff to be *both* responsive *and* politically impartial. House staff must be responsive to each and every member, but balance this with their responsibility to the House as a corporate entity which exists across time. So, for instance, the Clerk of the House is responsible to the Speaker and the Commission, but he is also Accounting Officer for the House, responsible for the proper use of public money.[78] Navigating between the twin necessities of responsiveness and impartiality can be difficult: in the intensely political environment of the Commons, 'acts undertaken as impartial management initiatives can quickly assume unintended political significance'.[79]

Indeed, this duty of political impartiality, or perhaps constrained responsiveness, takes on a special importance in a legislative context: it is not always clear who the legitimate representative of 'the House' is. Ultimately, civil servants in a

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[75] See generally B Guy Peters, *Pursuing Horizontal Management* (Kansas, University Press of Kansas, 2015).

[76] Braithwaite Review (n 47) 41.

[77] Straw Review (n 3) 22–24.

[78] The Clerk is appointed as accounting officer by the Commons Commission under the House of Commons (Administration) Act 1978, s 3(2).

[79] Braithwaite Review (n 47) 9.

department can turn to their Secretary of State as representative of the department to resolve a thorny issue. Not so for House staff. As we have seen, they generally have no identifiable 'leader' in the way that civil servants have. The Commission is legally their employer (although management is delegated to the Board), but in practice, political authority is not often forthcoming, or comes from a some-what imperfect representative, the Speaker. House staff are expected to be politi-cal impartial and loyal to the vague entity that is 'the House' (and noticeably, not Parliament).[80] For all these reasons, permanent staff are less wont to act, or act in a manner which can frustrate those on the Commission, the domestic committees and members generally. What Kaufman said of politico-administrative relations in an executive context is equally true in a legislative context:

> [T]he system is so loaded with ambiguity that what looks like wilful insubordination and evasion from one standpoint may seem like defensible and even dutiful behavior from another. It is difficult to be sure which is which because of the plethora of commands.[81]

Political impartiality acts as a necessary shield for staff in the face of competing and conflicting partisan demands, but it can result in apparent inaction or a stud-ied passivity. It may be no surprise, therefore, that relations between the political and administrative wings of House government are not always sweetness and light.

This brings us on to the House itself, which all key actors recognise as 'sovereign'. It rarely intervenes in governance matters in a decisive way. This is partly because its composition is constantly changing, but at every election: between 1979 and 2015 the average turnover following each general election was roughly a quarter of the House.[82] With such a turnover, 'its' institutional memory and willingness to address long-term governance issues is very limited.[83] That said, the history of Commons governance illustrates that successive Commissions and governments have been wary of acting without first seeking the House's views and consent.

The result of this tangled state of affairs is that changes in governance have come about slowly; or abruptly changed following an exogenous 'shock' to the system.

V. THE HOUSE OF LORDS

Limited space allows for only a brief examination of the governance structure in the Lords, but it provides a useful comparator for the Commons.[84] For the most

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[80] House of Commons, *Staff Handbook*, 6th edn (2013), paras 5.1–5.2.

[81] Kaufman 'Ruminations' (n 21) 261.

[82] Statistics drawn from House of Commons Library, 'Research Paper: UK Election Statistics: 1918–2012', 12/43, 2012 and House of Commons Library, 'Social background of MPs 1979–2015', CBP 7483, 2016.

[83] This turnover obviously also affects the composition of the House Commission and domestic committees.

[84] There is an excellent standard note from the House of Lords Library which covers many of these matters: House of Lords Library, 'The Governance and Administration of the House of Lords', LLN 2015/004, 2015.

part, the dynamics in the Lords replicate those in the House of Commons, but the Lords' arrangements have been much less formal in nature, and far slower to change. This has been primarily due to the Lords' unelected, subordinate status within Parliament—for most of the twentieth century there was little internal or external pressure to reform governance arrangements.[85] The focus of political and public attention has been primarily on reforming the composition of the Lords, not its inner workings. The result was that for decades House services in the Lords were run in a semi-autonomous fashion by permanent staff, with limited over-sight by members.

The primary catalysts for change in House governance in the Lords have been exogenous—that is to say, sparked by factors external to the House: changes to governance arrangements in the 'other place'; and the removal of most hereditary peers in 1999, shifting the composition of the House towards appointed peers; and increasing numbers of life and working peers appointed by successive Prime Ministers. The last catalyst in particular has put pressure on scarce resources in the House, encouraging greater rationalization of governance structures.[86]

The 'modern' governing arrangements for the Lords begins with the 2002 Tordoff Review.[87] The Review had been established in the wake of the Commons' 1999 Braithwaite Review. A major reason for the Tordoff Review was to evaluate the administrative financial mechanisms put in place in the Lords following Ibbs, but equally as important was the dissatisfaction of peers with the then current governance arrangements—'there was a prevailing sense that the system [had] failed … [and] a widespread distrust of the existing system'.[88]

The Tordoff Review was scathing. It bluntly stated the Select Committee on the House of Lords Offices (then the functional equivalent of the Commons Commission) was dysfunctional. It consisted of an extraordinary 28 members, including the Chairman of Committees; the Leaders, Deputy Leaders, Chief Whips of the three main parties, the Convenor of the Crossbenchers; and the chairs of all the 'domestic' subcommittees.[89] The lack of clearly defined responsibilities, and the size and organisation of the Offices Committee meant that it acted as a 'post box' for decisions made by its various subcommittees (the equivalent of

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[85] The Lords have had far less pressure in terms of resource and staff: resource and capital costs of the Lords at present, for instance, are just over half that of the Commons; and if MPs' salaries and expenses are included, the cost of the Lords is less than a third of that of the Commons: R Walters and R Rogers, *How Parliament Works*, 7th edn (Abingdon, Routledge, 2015) 73.

[86] eg, M Russell, *House Full: Time to get a Grip on Lords Appointments* (London, UCL, 2011).

[87] Named after the chair of the committee carrying out the review, the then Chairman of Committees, Lord Tordoff: see Select Committee on the House of Lords' Offices, Fifth Report, HL 105, 2002 ('the Tordoff Review'). The Lords' governing arrangements had already been reformed once in order to conform with changes to financial management in the Commons following the 1991 Commons Ibbs Review, but there is limited documentation on this change, and indeed governance of the Lords prior to 2000.

[88] ibid, App 2, para 10.

[89] In fact, the Offices Committee numbered *twice* this size prior to the Ibbs Review. See ibid, App 2, para 13.

domestic committees). The Review's evaluation of the political wing of the Lords' governance arrangements strikes a familiar note:

> The size of the Offices Committee, the infrequency of its meetings, and the way issues reach it, all mean that it is incapable of providing leadership for the domestic administration of the House. It does not develop a coherent strategy or set an agenda for the more specialised Sub-Committees and for the administration as a whole. In the absence of such leadership the Sub-Committees are reactive—they respond to proposals put before them and rarely take a strategic view of the requirements of the House and how to meet them. This has a knock-on effect on staff: without political guidance from the Committee structure, the staff prepare papers for Sub-Committee meetings which concentrate on specific proposals or particular complaints, rather than medium or long-term policies for improving the administration of the House as a whole.[90]

In short, the need to ensure representation (and therefore the requirement of consensus) replicated the legislative state of nature and paralysed effective governance. Moreover, the lack of leadership and clearly defined responsibilities within the Lords meant that the Lords could neither assert itself in relation to the Commons, nor engage in meaningful discussion about shared services. Thus we can see that organisation and institutional arrangements matter: the absence of a clear, hierarchical governance structure meant that the Lords was hampered in its capacity to carry out its basic constitutional functions—or even seek clarity on what these functions might be.

On the administrative side, there was again a familiar refrain. The Tordoff Review pointed out that there was no centralised management board to provide support to the Offices Committee on strategy or a business plan—there were 15 administrative offices (compared with the five departments in the Commons). Given this fragmentation it was difficult for the administration to provide focused support to the Offices Committee.

The Tordoff Review made a number of recommendations which were mostly implemented. The Offices Committee was replaced with a relatively smaller House Committee of 12 peers, which was expected to provide leadership and policy direction for House administration. The subcommittees were reconstituted as domestic committees. Their primary role was to advise the House Committee; and to act as 'user groups' to allow peers to discuss House services. An Audit Committee with external members and a management board were established. Thus, governance arrangements were rationalised, with power explicitly centralised within the House Committee.

Between the 2002 Tordoff Review and the 2016 Shephard Review (see below), there were a series of reviews. The 2007 Parker Review[91] mostly focused on House administration: the Management Board was regarded as reactive and responding to the short-term and the routine. It recommended the appointment of non-executive

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[90] ibid, App 2, para 15.
[91] Sir J Parker and H Mahy, 'Review of the Management Board of the House of Lords' (2007).

members to the Board.[92] The 2007 Tordoff-Hunt Review,[93] on the other hand, focused primarily on the political side of governance. It concluded that the governance structures needed only incremental tweaking—in particular, tighter terms of reference and better relationships between the House Committee, management board and the domestic committees. The 2011 Thomas and Makower Review[94] returned to issues of administration, recommending a smaller Management Board, a non-executive element, rationalisation and reduction in the number of free-standing administrative offices, and greater support to the Office of the Clerk of the Parliaments.

Reading all reviews more closely, however, it is clear that while the 'excesses' of the pre-Tordoff years had ended, fundamental problems remained. The political wing failed to provide leadership, remained unable to decide, or focused on routine matters at the expense of thinking more long term; while the House administration remained mostly reactive, limited by the passivity of the political wing and the continued fragmentation of its services, which were organised along both functional and task lines.

By far the most public change to House governance in this period was the establishment of the Lord Speaker in 2005, which resulted from Prime Minister Blair's decision to 'reform' the post of Lord Chancellor. Here was an opportunity to address the absence of a Commons-style Speaker, a figure to whom administrative concerns could also be directed. The House, however, was concerned that a Commons-style Speaker would upset the principle of self-regulation. Thus, what was created only served to blur the lines of accountability within the Lords, with the Lord Speaker's functions and duties carved out from the existing duties of the Lord Chancellor and the Chairman of Committees.[95] The Lord Speaker was an elected post, the public face of the Lords, and Chair of the House Committee; but at the same time the Lord Speaker had little connection with the administrative staff of the House, except in matters of security. The Chairman of Committees (on whom, see more below) remained the key link between peers and the administration. Thus, there is now a triumvirate of officers with vested roles in administration and governance: the Lord Speaker, the Chairman of Committees and (to a lesser extent) the Leader of the Lords. This diffusion of functions has meant a lack of clarity over responsibility for governance.[96]

In 2016 the Leader's Group on Governance published a report (the 'Shephard Review', named after the Group's chair) recommending various changes to

[92] This was rejected by the Tordoff-Hunt Review: House of Lords House Committee, 'Internal Governance' H/07-08/1, 2007. This was chaired by Lord Tordoff and Lord Hunt of Wirral.

[93] ibid.

[94] M Thomas and A Makower, 'Report of a Review of the Structure of the House of Lords Administration and the Operation of the Management Board' (2011).

[95] Select Committee on the Speakership of the House, 'The Speakership of the House of Lords', HL 92, 2005.

[96] Thus, when Lord Sewell (then Chairman of Committees, 2012–15) abruptly left the House of Lords following a scandal, it was initially unclear who was responsible for managing the aftermath.

governance.[97] The Review stems from various incidents demonstrating that the current arrangements had become unsustainable; the 2014 Straw Review; and more broadly, because of anxiety about increasing public and media scrutiny, the pressures on resources brought about by increasing numbers of appointed peers; and the impending Restoration and Renewal programme of the Palace of Westminster (see below).

The Shephard Review's recommendations were mostly accepted by the House.[98] The House Committee—renamed the House of Lords Commission ('the Lords Commission')—was now explicitly responsible for the strategic direction of House services. The Lords Commission remained 12 in number, but two backbench members were replaced by two non-executive members to provide an external challenge. The key domestic committees were reduced in number, with new Finance and Services Committees advising the Commission. Clearer terms of reference for all committees and the Commission were set down. The Chairman of Committees would no longer sit as *ex officio* chair of either the new Finances or Services Committees. As a result, the Lords' governance structure—particularly the House Commission and domestic committees—now neatly mirrors the arrangements in the Commons. This was deliberate, and may allow the two Houses to work together in a more coherent fashion, particularly given Restoration and Renewal.

A. Key Actors in House of Lords Governance

If we once again step back to examine the dynamics between the key actors, we see a similar picture to the Commons. The primary difference is that underlying House governance is the absence of a government majority: this makes the criterion of consensus even more critical.

The Lords Commission is the key political body in relation to governance matters. It suffers from the same defects as its Commons counterpart: it is a body of limited capacity and effectiveness because of its composition and decision-making process. It is almost twice as large as the Commons Commission, consisting of 12 members: the Lords Speaker (and prior to 2005, the Lord Chancellor); the Chairman of Committees; the leaders of the Conservatives, Labour and the Liberal Democrats; the Convenor of the Crossbench Peers; four backbench peers; and, as of 2016, two non-executive members. Unlike its Commons counterpart, however, the Lords Commission and its predecessors have had no statutory basis; its existence has depended on the will of the House.

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[97] Leader's Group on Governance, 'Governance of Domestic Committees in the House of Lords', HL 81, 2016 ('the Shephard Report').
[98] Details can be found here: House Committee, 'Implementing the Recommendations of the Leader's Group on Governance' HL 19, 2016; and see HL Deb 21 July 2016, col 743.

Within the Commission itself, the key actors are the Lord Speaker, the Leaders and the Chairman of Committees, and more broadly, the usual channels. Prior to the establishment of the Lord Speaker, it was the Lord Chancellor who had a quasi-presiding officer function, who sat by dint of that role in the Offices Committee (later the House Committee). However, the Lord Chancellor was notorious for the number of hats held—as titular head of the judiciary, Cabinet minister and quasi-presiding officer of the Lords. Although the average time in post between 1979 and 2007 was five and a half years,[99] the burdens of this office (primarily judicial work prior to the Constitution Reform Act 2005) meant that the administration of the House was a low priority for successive Lord Chancellors.

We have already discussed the Lord Speaker. Although office-holders are elected, and would seem to have an independent source of authority, it is a new office, and its functions are primarily directed outwards rather than internally. Office-holders have had limited connection with the administrative staff of the House, except in matters of security.

Instead, it has been the Chairman of Committees[100] who has been the key link between peers and the administration. Chosen via the Committee of Selection (that is, by the usual channels), and expected to maintain a non-partisan stance, the Chairman exercises the effective equivalent of the Speaker's administrative role by dint of his role as *ex officio* chair of key domestic committees,[101] his office's physical proximity to key House staff and long periods of tenure.[102] It was for these reasons that the 2002 Tordoff Review recommended the Chairman should provide leadership as the chair of the Lords Commission's predecessor, the House Committee.[103]

Leaders of the Lords suffer from similar problems to their Commons counterparts. They have divided responsibilities, and historically they have not stayed for long in office: they have had a tenure similar to their Commons counterparts (2.3 years in the period 1979–2017).[104] Moreover, in the past they shared the authority of government with another government minister, the Lord Chancellor. To the extent, then, that there is leadership in the Lords, it is exercised unevenly, mediated through several veto players. The Leaders (and formerly the

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[99] Figures calculated using Butler and Butler, *British Political Facts* (n 63); and www.parliament.uk. The period ends with the establishment of the office of Lord Speaker in 2005.

[100] Following the implementation of the Shephard Report, the Chairman of Committees is now known as the Senior Deputy Speaker, but he remains formally appointed as the Chairman of Committees to avoid the need to amend relevant legislation.

[101] However, as already noted, since 2016 the Chairman's institutional power has now been weakened because he no longer sits as chair of the two key domestic committees dealing with finance and services.

[102] If we exclude those who died in office (Lord Mackay of Ardbrecknish), left because of scandal (Sewell) or served as temporary replacements (Tordoff, Laming), Lord Aberdare served for 16 years (1976–92) and Lord Brabazon for 10 (2002–12).

[103] Tordoff Review (n 87) App 2, para 27. The Chairman did so until the establishment of the Lords Speaker in 2005.

[104] Figures calculated using Butler and Butler, *British Political Facts* (n 63); and www.parliament.uk.

Lord Chancellor) are all members of the usual channels, and along with the party Whips are mostly likely to exercise their influence in favour of the status quo. The Lord Speaker, Chairman of Committees and the Convenor of the Crossbenchers are expected to be non-partisan and must therefore tread carefully. And, as in the Commons, all key political actors are constrained by the fear of negative publicity.

From our brief historical overview, we have seen that House administration in the Lords have gone through similar changes to those in the Commons (indeed, much of it driven by those changes): a slow process of rationalisation, with a particular emphasis on financial management. House staff in the Lords are also in a similar invidious position to staff in the Commons: they are expected to be politically neutral, and yet they may be understood as the 'stewards' of the House (and again, not to the notional entity, 'Parliament').[105] The result has been a mixture of deferential behaviour and frustrated attempts to press peers towards greater modernisation.[106] Noting the absence of direction from the political wing—a 'strategic vacuum'—one review of House administration commented that

> officers will usually attempt to plug critical gaps of thinking. But the relationship is fragile, and extends only to certain topics. This is one of the reasons why parliaments have tended to lag behind even the broader public sector in their adoption of new working methods.[107]

Finally, there is the House itself. In the Lords the influence of the House is subtly stronger—this is particularly so in the twenty-first century, as the government enjoys no majority in the Lords. The corollary of this, however, is that a cross-party consensus is necessary to achieve change. The quasi-constitutional status of the principle of 'self-regulation', which underlies the everyday operations of the Lords, is testament to this.[108] Self-regulation, however, tends to translate into a fear that new structures or reforms will interfere with or undermine that much-vaunted principle—as was the case with the establishment of the Lord Speaker.

The governance landscape in the Lords is therefore what the Commons governance arrangements would have been, but for the far more intense public and political pressures put on the Commons, and the presence of a government majority. In the Lords, there is an even greater dispersal of accountability—for instance, the equivalent functions of the Commons Speaker are shared between three different actors in the Lords. The reforms adopted have usually mirrored those in the Commons, but have taken longer to be accepted by the House.

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[105] House of Lords, *Staff Handbook* (2012), para 12.1.

[106] Emma Crewe argues that many of the recommendations of the Tordoff Committee were the work of clerks: E Crewe, *Lords of Parliament* (Manchester, Manchester University Press, 2005), 175.

[107] Thomas and Makower, *House of Lords* (n 94) 22.

[108] eg, House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 25th edn (2017), 47.

The House itself has been somewhat more interventionist in governance matters, but not necessarily in a positive fashion.[109]

VI. RESTORATION AND RENEWAL

In this final section we return, full circle, to the subject matter and themes of *Mid-Victorian Masterpiece*, with the recent debate over the restoration and renewal ('R&R') of the Palace of Westminster.[110] We shall not delve into all the details of R&R here, given its complexity, but also because at the time of writing, the issue remains live. It does, however, illustrate the difficulties Parliament has in engaging in collective action on corporate issues.

The Palace of Westminster was designed in the 1830s but construction was only completed in the 1860s.[111] It was damaged during World War Two and rebuilt in the period 1945–50. Since then there has been no general renovation of the Palace, although there have been many incremental upgrades. Over time, the parliamentary estate expanded to include a number of properties in and around Westminster. As noted earlier, control over the Palace shifted to Parliament over a period of 30 years. The Palace is now an iconic building, classed as a World Heritage site, under the control of the two Houses' authorities. It continues to accommodate many MPs and peers.

From the beginning of the twenty-first century, there were increasing concerns about the deteriorating physical state of the Palace.[112] In 2012, a study group established by the two Houses' management boards published a pre-feasibility study and business case for the long-term maintenance of the Palace of Westminster.[113] It stated bluntly that 'If the Palace were not a listed building of the highest heritage value, its owners would probably be advised to demolish and rebuild [it],'[114] and 'it is remarkable that it continues to function.'[115]

In spite of this, two initial assumptions were made, which remain fundamental to this day. The first was that the Palace had to remain as a central site for the work of Parliament. The second was that in carrying out R&R, the legislative and

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[109] The Lords has been less amenable to the work of external consultants, for instance. The House rejected with the Office Committees' recommendation to allow Michael Braithwaite to review their governance arrangements in 2002: see Tordoff Review (n 87) App 2, para 2. The recommendations of Sir John Parker and Helen Mahy were rejected by members in the Tordoff-Hunt Review: contrast this with Parker and Mahy, *Review of the Management Board* (n 91).

[110] Key reports on the R&R project can be found on the Houses of Parliament Restoration and Renewal website: www.restorationandrenewal.parliament.uk.

[111] This is discussed in Cocks, *Mid-Victorian Masterpiece* (n 1).

[112] Much of the history is laid out in the Pre-Feasibility Study: House of Commons, House of Lords Study Group, *Restoration and Renewal of the Palace of Westminster: Pre-Feasibility Study and Preliminary Strategic Business Case* (2012), Annex 1.

[113] ibid.

[114] ibid, 5. This was because the cost of refurbishment alone (not renewal) was far in excess of the insurance reinstatement value of £1.8 billion.

[115] ibid, 27.

political work of the two Houses should not be impeded, or as little as possible. With these in mind, the study set out a number of initial options, including continuing repairs and replacement over an indefinite period of time; a rolling programme over a defined period of time; repairs and replacement in a shorter period of time, and with parliamentary activity shifted elsewhere.

Successive reports confirmed the initial study's findings of a looming crisis. Following the pre-feasibility study, the Commons Commission and Lords' House Committee agreed to have an external review of the various options for the restoration and renewal of the Palace. An Independent Options Appraisal (IOA) Report was published in mid-2015.[116] The IOA Report set out the costs of a rolling programme (minimal work, with Parliament occupied); a partial decant (the Commons then the Lords moving to temporary accommodation); and full decant (with both Houses vacating). Broad details of each are set out in Table 1 below.

Table 4.1: The options for Restoration and Renewal of the Palace of Westminster

	Projected time (years)	Projected cost (£ billion)
Rolling programme	32	5.7
Partial decant	11	3.9–4.4
Full decant	6	3.5–3.9

Source: Deloitte, AECON and H&K, 'Palace of Westminster Restoration and Renewal Programme Independent Options Appraisal'—Final Report (2014) 10.

A Joint Committee was then appointed in late 2015 to consider the IOA and R&R project. It reported back in late 2016.[117] The Committee recommended that there was a 'clear and pressing need' to carry out R&R, and that of the three options, a full decant was seen as the least disruptive and most cost-effective option overall.[118] It also recommended the establishment of an arm's length delivery authority, overseen by a sponsor board, to test the options and produce the final detailed designs and business case. The Committee exhorted both Houses to make a decision on this as soon as possible. The Public Accounts Committee published a report supporting the recommendations of the Joint Committee,[119] but the Treasury Committee announced in early 2017 it would carry out an inquiry into the options examined by the Joint Committee.[120] And at the time of the announcement and

[116] Deloitte, AECON and H&K, 'Palace of Westminster Restoration and Renewal Programme Independent Options Appraisal—Final Report' (2014).

[117] Joint Committee on the Palace of Westminster, *Restoration and Renewal of the Palace of Westminster*, HC 659, 2016–17.

[118] ibid, 10.

[119] House of Commons Committee of Public Accounts, *Delivering Restoration and Renewal*, HC 1005, 2017.

[120] www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/inquiries1/parliament-2015/restoration-and-renewal-palace-of-westminster-16-17.

confirmation of the general election in late April 2017, there had been no debate the Joint Committee's report. Thus, there will be no consideration of R&R in the immediate future.[121]

Two points emerge. First, the role of the Executive in this (and indeed in the history of House governance) is fundamental, but lacks transparency. So, for instance, the Treasury Committee's queries on the costs of R&R were addressed to David Lidlington, the incumbent Leader of the Commons—not to the respective House Commissions.[122] It is unthinkable that the Government's backing would not be required for such a major capital investment; and yet there is very little explicit public acknowledgement of this role.

The second point is that there is a history of parliamentary indecision over estates and accommodation: the construction of the Palace of Westminster; the acquisition of surrounding property for parliamentary use. It is no different here. Concerns over the Palace's deteriorating state and its effect on the operations of Parliament have been voiced since at least 2000. The Commissions of the Houses have been slow in responding to this impending crisis over parliamentary infrastructure; and, in spite of two independent reports and two separate select committee reports urging immediate action, the Houses and their governance bodies have so far failed to make any collective decision. At the very least, this failure to make a decision will increase the overall cost of implementation; but at its worst may result in a serious accident.

There is a common denominator linking both points together: the fear of negative publicity. No one wants to be seen to be taking the decision to spend so much money on essentially themselves. Although this chapter has eschewed the matter of members' pay, allowances and staffing, the parallels between the 2008 expenses crisis and R&R are too marked to be ignored. The expenses crisis came about because of a long-term failure on the part of successive House of Commons administrations and the executive to address the cost of democratic governance in a transparent way for fear of how this would be interpreted by the media and the public.[123] Even when it became clear that the Freedom of Information Act applied to the Commons, there was great difficulty securing collective agreement from key actors—the Commission (and particularly the Speaker), the Management Board, the Executive, and MPs themselves. It was only following the *Telegraph's* reportage on the non-redacted data on MPs' expenses that their hands were forced; and in fact the proposed 'solution' (the establishment of the Independent Parliamentary Standards Authority) came not from the Commons, but the Executive. The reactive nature of parliamentary governance—and in particular the unwillingness

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[121] Indeed, *the Times* suggests R&R will not be dealt with in the new Parliament: 'MPs delay Westminster repairs to shore up May', *The Times* (15 June 2017).

[122] ibid.

[123] See A Kelso, 'Parliament on its Knees: MPs' Expenses and the Crisis of Transparency at Westminster' (2009) 80 *Political Quarterly* 329 and Worthy 'Freedom of Information and Parliament' (n 5) 155–56.

or inability of parliamentarians and key governance bodies to press the issue to resolution—threatens to cause yet another crisis in democratic governance.

VII. CONCLUSION

Our claim in this chapter has been that to understand how 'Parliament' works, we should examine not just its external relationships with the other branches, but also its internal administrative structures and processes. We do not deny that the executive plays an important, even dominating, role in determining the scope and limits of legislative action. The argument is rather that even if there was no fusion between the executive and the legislature, the latter would still have serious issues in ensuring collective action. The need for consensus, the requirement of impartiality, the intensely political environment of both Houses and concern about media scrutiny and public disapproval have been a recipe for inertia and inaction.

Of course, it is clear that in some respects 'Parliament' *has* been able to act 'collectively'. But we have to treat some examples of these with caution. In the passing of legislation, for instance, Parliament acts collectively, but this occurs primarily because of political parties, which aggregate political preferences.[124] Select committees and procedural matters have not been addressed in this chapter, but there has clearly been an increase in what the late Anthony King called the 'cross-party mode' in the growth and increasing sophistication of select committees; and in the establishment of the Backbench Business Committee.[125] It is at least arguable, however, that much of this has occurred because of highly specific, exogenous circumstances. There are at least three conditions for successful 'efficiency' reforms (ie, reforms which benefit the legislature rather than the executive):[126] a window of opportunity, usually at the beginning of a Parliament; a reform agenda; and leadership.[127] These may be necessary, but not sufficient conditions.[128] This was certainly the case with the Wright reforms, which were a response to the 2008 expenses scandal.

Our examination of intra-branch relationships suggests that a significant reason for Parliament's sluggish nature is the lack of an accepted hierarchy or an identifiable, active leadership. The executive, in spite of its own endemic coordination problems, can rely on party cohesion and collective cabinet responsibility in the political context, and individual ministerial responsibility (which requires civil service loyalty) in the administrative context, to ensure a

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[124] Cox, 'The Organization of Democratic Legislatures' (n 26).
[125] A King, 'Modes of Executive-Legislative Relations: Great Britain, France and Germany' (1976) 1 *Legislative Studies Quarterly* 11.
[126] A Kelso, *Parliamentary Reform at Westminster* (Manchester, Manchester University Press, 2009).
[127] P Norton, 'Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament' (2000) 6 *Journal of Legislative Studies* 1.
[128] M Russell, '"Never Allow a Crisis Go To Waste": The Wright Committee Reforms to Strengthen the House of Commons' (2011) 64 *Parliamentary Affairs* 612, 631–32.

unified stance. The judiciary, too, has its own sources of cohesion and coordination resolution mechanisms: long immersion in the law; a very clear judicial hierarchy; and most recently, a strong judicial administrative organisation.[129] To put it another way: the executive and judiciary are strong relative to the legislature because they are unified institutionally in a way that the legislature can only rarely be.[130]

Rather than focusing on conflict between branches, examining the 'mundanity' of administration and internal issues of capacity may be an equally important way for us to evaluate the strengths and/or autonomy of each branch. What is striking, in examining the various governance reports of the Houses of Parliament, is the extent to which a driver of Parliament's growing autonomy has been the need to work through everyday matters such as accommodation, estates and services. It is in responding these issues that the Houses have been forced to bolster their financial and management capacity, and to some extent work together in a more unified manner.[131] These changes, as Winetrobe perceptively noted, 'have not generally been motivated by questions of constitutional principle and propriety'.[132] The ground-breaking Ibbs Review, for instance, did not justify its recommendations in terms of the Commons' constitutional functions or roles; this was simply a matter of ensuring a public sector organisation followed standard business practice. It was only later that those tasked with governance reforms began to recognise the constitutional significance of administrative issues.[133] Future students may wish to turn to issues such as estates security and the R&R programme to understand the weaknesses and strengths of the legislature rather than look to legislative clashes with the judiciary or the executive.

None of this suggests what the 'proper' role or capacity of Parliament should be, or what is desirable. That question is far too complex to be dealt with in one chapter, for there are various competing values which underlie the governance of the legislature that require careful evaluation. The most obvious set of values is that between supporting the government (governing), and scrutinising its action and legislative proposals (accountability). But there is also a tension between the democratic value of representation—the need to accommodate and support the representatives of the constituencies and interests of the UK, and the value of organisational efficiency—the administrative drive towards the provision of coordinated, coherent institutional action. These values are not easily reconciled.[134] But we should expect no less: conflict is the central characteristic of all legislatures.

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[129] G Gee, R Hazell, K Malleson and P O'Brien, *The Politics of Judicial Independence in the UK's Changing Constitution* (Cambridge, Cambridge University Press, 2015).

[130] Moe and Wilson 'Presidents and Political Structure' (n 8).

[131] Winetrobe (n 7) 31.

[132] ibid, 18.

[133] See Braithwaite Review (n 47) 9; Tebbit Review (n 47) 10; Straw Review (n 3) 13.

[134] That said, redundancy caused by representation is not necessarily a negative characteristic. Having particular problems examined by different and overlapping 'constituencies' or organisational units may be wise—not least because it is entirely possible one of these may miss the problem entirely. See generally B Guy Peters, *Pursuing Horizontal Management* (n 75).