

CHAPTER 3

Institutional Norms and the Cost of Doing Politics

Abstract Women entering non-traditional workplaces commonly experience hostility in the form of sexual harassment. The parliamentary workplace has additional features that make reform difficult, despite feminist standard-setting in transnational bodies. Difficulties include applying employment law to MPs who are not employees in any real sense themselves but have almost complete power over their staff. Adversarial traditions normalise aggressive conduct rather than a respectful workplace and also make it likely that any complaint will be weaponised politically. Many are silenced by fear that to complain will damage their party as well as their own career. Another obstacle to reform has been the tradition of parliamentary privilege, the right of parliaments to regulate their own affairs free from external interference. This has held back the introduction of professional employment standards, on the grounds that the best form of accountability for parliamentarians is at the ballot box.

Keywords Parliamentary workplace • Misogyny • Sexual harassment • Adversarialism • Gender card • Parliamentary privilege

In many western parliaments, including our Westminster sample, women have now achieved the parliamentary presence ('critical mass') expected to trigger institutional change. However, longstanding parliamentary norms, including those that assumed the existence of wives to take care of family responsibilities, proved difficult to budge. Quite apart from the lack of family-friendly working conditions, increased presence also raised questions of whether women found themselves in a work environment that was actively hostile to them.

In entering a workplace that was traditionally masculine, women faced forms of resistance also experienced by women entering, for example, the construction or mining industries. This chapter starts with the more generic forms of resistance to women entering male domains before moving on to the unique nature of the parliamentary workplace and specific elements posing obstacles to reform.

The unique nature of the parliamentary workplace relates to the unusual nature of the employment relationship between parliamentarians and their publicly funded staff—where extreme power imbalance can contribute to patterns of misconduct. The relationship is further complicated by party loyalties that bind politicians and staff and may make complaining of misconduct difficult. Yet, to comply with the new international norms promulgated by the Inter-Parliamentary Union, political offices should not be regarded as private fiefdoms but rather as an important part of democratic machinery, managed in accordance with democratic values of diversity and inclusion.

After identifying the nature and problems of the parliamentary workplace, the chapter then analyses the formal and informal norms that create resistance to independent oversight of members' conduct, in particular the role of parliamentary privilege and of Westminster adversarialism. While originally intended to protect parliamentarians from the interference of monarchs and enable freedom of speech, the tradition of parliamentary privilege has resulted in long-standing resistance to regulatory oversight of the conduct of elected representatives, including their conduct as employers.

THE PARLIAMENTARY WORKPLACE

There is a long history of resistance to women entering workplaces and kinds of work particularly associated with masculine identity. Indeed, a recent study has compared how such resistance created a hostile environment for women in both the Australian construction industry and the Australian parliament.² As in other non-traditional workplaces, resistance in the parliamentary workplace often takes sexualised forms such as sexual harassment. There is also a privileging of masculine performance such as aggressive and combative debate.

While similar forms of resistance to women may be found across non-traditional industries and employment sectors, the parliamentary work-place has been distinguished by the unique nature of its employment relationships. In most countries, elected representatives are not covered by anti-discrimination legislation because they are not considered employees.³ The relationship between parliamentarians and their staff also has unique characteristics.

In principle, parliamentarians hold their tenure from voters and do not have an employer themselves. Unless they are found guilty of an indictable offence it is very difficult to remove them. They are provided with funding for staff to assist them in their representative duties and have traditionally had complete hire and fire power over such staff. This power over staff is justified in terms of the independence of elected members and their right to recruit on the basis of political affinity or trust.

The role of parliamentarians as employers has become increasingly important as the number of political staff has grown, paid for from the public purse. While researchers are now paying increased attention to parliament as a workplace for parliamentarians, so far there has been less attention paid to parliamentarians as employers. In the Australian Parliament, every parliamentarian is now entitled to five electorate staff but on top of that some have so-called 'personal employees'. In May 2023 the government had around 470 of these personal employees, the Opposition 102, the Australian Greens 20, cross-benchers one or two (reduced from four under the previous government). Employment as a political staffer is an increasingly important route to a career in elected office and this route can be made hazardous by a lack of the protections applying to other workplaces.⁴

Reluctance to interfere with the hire and fire power of parliamentarians, even where staffers are employed centrally as in New Zealand, creates a huge power imbalance between parliamentarians and their staff. There has often been a lack of the kinds of protection from misconduct found in other workplaces. For example, it was only in 2021 that the Australian Sex Discrimination Act was amended to make it clear that parliamentarians were protected from sexual or sex-based harassment in their workplace. The NSW Anti-Discrimination Act had been amended in 1997 to ensure Ministers and MPs were 'liable for their acts of sexual harassment', while the South Australian Equal Opportunity Act was similarly amended in 2020.

When the Pestminster scandal was breaking in the United Kingdom (UK) in 2017, the *New Statesman* magazine suggested that the main victims were staffers, directly employed by their MP and at the 'bottom of the food chain', relying on contacts and references to move up it.⁵ Sexual misconduct was explained by the unique power imbalances in parliamentary employment, lack of effective complaints mechanisms and the silencing effects of party loyalty.

Both the formal issues and informal issues (such as long working hours, high pressure and the blurring of personal and professional boundaries) have contributed to patterns of sexist misconduct. The 24-hour news cycle enabled by the Internet and constant media scrutiny further adds to the pressure on politicians and their staff.

The norm of providing alcohol for work-related events has also been singled out as contributing to the blurring of personal and professional boundaries and vulnerability to predatory behaviour. Such events are particularly numerous for politicians in western countries and there is high expectation that staff will also attend these events for purposes of networking and intelligence gathering. Diane Abbott, the first black woman elected to the UK parliament, summed up the relationship of alcohol to sexual harassment in the following way:

It was partly due to do with [the] idea of all these men away from home, it was partly to do with the fact there were eight bars and the very long hours and the bars were open for as long as we're sitting, and partly with the notion that what happens in Westminster stays in Westminster.⁷

It may be argued, however, that alcohol, long hours and being away from home are more of an excuse for poor behaviour than an explanation and that the power imbalance, lack of accountability and general tolerance of aggression and microaggression is more important.

Exacerbating workplace problems has been the fact that many newly elected MPs with hire and fire powers have little or no previous experience as an employer. The New Zealand parliamentary survey of bullying and harassment found that, in the perception of many respondents, the power imbalance is not only between parliamentarians and their staff but also between parliamentarians and the legal employer of these staff, in that country the Parliamentary Service. For example, one staffer commented: 'HR said to me, "at the end of the day, MPs don't change. We can't tell them how to treat their staff because they're elected". § In Australia, a

2021 union survey found staffers had similar beliefs about the reluctance of HR in the Department of Finance to stand up to MPs guilty of misbehaviour.⁹

Adversarial Political Culture

Feminist institutionalism has drawn attention to the gendered 'logic of appropriateness' shaping expectations of behaviour within institutions. The adversarial political culture of Westminster parliaments is a good example of the gendered logic underpinning institutional norms. As we saw in Chap. 1, these parliaments are organised around a contest between government and Opposition, rather than consensus-seeking among a wider group of players. Politicians are judged by their capacity to dominate the chamber but such aggressive and combative performance is not regarded as gender-appropriate for women.

If women engage in the more consensus-seeking styles expected of them, this can be regarded as weak in terms of parliamentary performance and judged adversely. Collaboration across party lines on policy issues can also cast doubt on the strength of party loyalty. Such policy work can be devalued because it does not result in a 'win' for the particular party. Cross-party collaboration among women on issues such as access to abortion has been treated with particular suspicion.¹⁰

It has been argued that the shared Westminster tradition of adversarial politics not only favours normative masculinity but also contributes to a culture of bullying and sexual harassment.¹¹ The gender performance expected in an adversarial political culture is one associated with alpha males, achieving dominance over those on the other side of the chamber and 'destroying' them. The Opposition is expected to fulfil its role by 'muscling up' against the government. Jacinda Ardern, later an acclaimed prime minister, was given a poor rating in Opposition for 'failing to claim scalps'.

In 2001, the Commonwealth Parliamentary Association led the way in observing the problems posed for women by the highly adversarial political culture associated with Westminster majoritarianism. As Australian Minister Steve Ciobo was to say:

...the entire nature of politics, our Westminster system is an adversarial system. Now, the table is broad enough to avoid two swords from touching. I mean, that's the history and the political culture, not only of Australia, Canada, the UK.¹²

This defence of adversarial conduct was in response to accusations of bullying and intimidation of female colleagues during a leadership contest in the Liberal Party; it was an attempt to frame such conduct as genderneutral rather than as part of a highly gendered institutional legacy made up of both written and unwritten rules.

As seen in this example, an adversarial political culture reinforces a behavioural norm associated with masculinity, to the detriment of women or the norms of a respectful workplace. It normalises both aggressive conduct and the partisanship entrenched in Westminster architecture, the supposed two swords length separating government and Opposition.

In relation to hostile interjections, the 1989 edition of Australia's House of Representatives Practice commented that: 'Modern thinking is that, as the House is a place of thrust and parry, the Chair should not necessarily intervene in the ordinary course of debate when an interjection is made'. In New South Wales, a government minister proclaimed that he was mystified at the complaint by an Opposition front bencher about barking and growling noises made whenever she was speaking in the chamber. His spokesman said, 'it's all part of the rough and tumble of political life'. In relation to hostile sotto voce commentary, such as that experienced by Australian Prime Minister Julia Gillard, the presiding officer may not even be able to hear the interjections.

The political culture associated with the 'robust debate' or 'cut and thrust' of Westminster parliaments extends beyond the chamber and can create unsafe committee hearings, where witnesses are subjected to bullying as though they are political opponents rather than civil society participants in a representative process. The norms and practices of the chamber can also 'inadvertently seep out into other areas of the parliamentary workplace'. As a participant told the Jenkins Review of Commonwealth Parliamentary Workplaces:

You're constantly in that adversarial environment...in Estimates or at Question Time, or whatever, just constantly arguing and yelling and screaming across the Chamber at people, as that's how we get our job done. So if it's acceptable here when the public is watching, it must be acceptable in my office when the door's closed.¹⁶

In this way, the political dynamics of majoritarian systems, clearly visible in Question Time, contribute to misconduct in the parliamentary

workplace. They also inhibit dealing with such behaviour in other than party political terms. A complaint may be construed as a political problem to be hushed up or as political ammunition to be used against opponents. Those who wish to complain are likely to find that protecting the party against criticism from political opponents trumps commitment to any kind of equality in the workplace. It is important to note that most perpetrators are members of the woman's own party.¹⁷

These political dynamics apply to power struggles within political parties as well as between them. In trying to explain the silence that had prevailed over sexual harassment of staffers in the UK, the *New Statesman* wrote in 2017 about how such internal political struggles exacerbated the party loyalty issue. In the Labor Party, staffers did not want to risk handing a seat to another faction, while among the Conservatives there was a similar dynamic: 'better a groper than a Remainer. And for Remainers, better a sleaze than a Brexiteer'.¹⁸

The issue of partisanship is not just a matter of parties (or party factions) regarding harassment complaints as a political problem or something to be weaponised rather than resolved. It is also a matter of party loyalty on the part of the staffer. In New Zealand, the Francis Report found that personal party affiliation and the risk of a complaint being used against their party often provided 'a disincentive to disclose'.¹⁹

The UK inquiry by Gemma White QC into bullying and harassment of MPs' staff found that even after the adoption of a new independent complaints procedure, staffers believed that making a complaint would damage the staffer's political party, their MP's chance of re-election or their own career prospects. A young male intern gave evidence that he would never lodge a formal complaint about the men who had sexually harassed him because he wanted a career in politics and as a young working-class person with no connections 'networking in Parliamentary bars is our only route'.²⁰

The Australian Jenkins Review found widespread fears about reporting due to the 'win-at-all costs culture'. It is notable that special legislation had to be passed making submissions to the inquiry exempt from Freedom of Information (FOI) requests before staffers felt comfortable participating. The general belief was that if a sexual harassment complaint became public it would be weaponised against the party and 'threaten the whole war effort'.²¹

ADVERSARIALISM AND THE 'GENDER CARD'

The sexual vilification of Australia's first woman prime minister, Julia Gillard, became notorious around the world thanks to her powerful 'misogyny speech' in 2012. The YouTube video of the speech went viral and was watched by two million viewers within the first ten days and millions more in subsequent years as it became a hit on TikTok. Many adaptations, memes, music, dance and eventually a stage play followed, inspiring young women to express their own righteous anger about sexism they had experienced.

However, when the misogyny speech was delivered, it was interpreted by the parliamentary press gallery almost solely in instrumental terms as a tactic in partisan warfare over the speakership of the House of Representatives. In Australia, media companies have traditionally been given accommodation in parliament house. It has been suggested that the physical location of the media organisations cheek by jowl with each other in the gallery contributes to common thinking and an entrenched uniformity in coverage.²² Although there was a growing number of women in the parliamentary press gallery, they accepted the kind of framing of partisan politics adopted by their male colleagues.²³

The misogyny speech was framed by both the Opposition and the press gallery as playing the 'gender card' or engaging in a gender war in order to distract attention from the political problems of the government. In other words it was framed as an example of the so-called 'Australian political strategy' of throwing a dead cat on the table so that everybody would discuss that rather than the issue causing grief. The actual subject of the speech, sexism in politics and the Prime Minister's anger over it, was dismissed, in favour of a more familiar narrative of adversarial politics. There were, of course, honourable exceptions, such as the editorial cartoonist Cathy Wilcox (see Fig. 3.1).

The tut-tutting in the mainstream media about reference to sexism in politics ('We expected more of Gillard') was despite the obscene depictions of Gillard that had been appearing in social media and the cartoons of her naked, wearing a strap-on dildo that had been emailed to federal parliamentarians. The Opposition Leader had famously spoken to carbon tax protesters in 2011 in front of banners reading 'Juliar...Bob Brown's Bitch' and 'Ditch the Witch'. Other violent and sexualised language used to describe Gillard, for example in the Facebook page devoted to the 'Worst PM in Australian History', was even more explicit and included



Fig. 3.1 Wilcox, The Gender Card, Sun-Herald, 14 October 2012. (Courtesy Cathy Wilcox)

references to her genitals and menstruation. Nonetheless, some Opposition women suggested that by drawing attention to such sexist vilification the Prime Minister was presenting herself as a victim and therefore was automatically a loser in the political contest.²⁴

When she became Australia's first woman prime minister, Gillard had studiously avoided reference to gender, claiming instead that it was a 'great day for redheads'. Following the 2010 federal election she forgot to allocate the status of women portfolio in the new administrative arrangements and it had to be hastily added the next day after an outcry.²⁵ Her caution in drawing attention to gender issues was to prove well justified.

Within the dominant narrative of the parliamentary press gallery and the Opposition, in delivering the misogyny speech, Gillard was responsible for beginning a gender war that then rebounded on her leadership. The Leader of the Opposition accused her of playing the victim card. Women Cabinet ministers who defended her were described by Opposition members as the 'handbag hit squad', suggesting it was illegitimate for senior ministers to openly discuss sexism in politics and confirming received wisdom that women in public life will be penalised for doing so.²⁶

Ten years later, Gillard was to say that with the benefit of hindsight she should have called out sexism and misogyny earlier, rather than relying on her performance as Prime Minister to allay doubts about having a woman in the lead role.²⁷ The attempt to avoid being defined by gender rather than policy achievements may have contributed to the uncontested build-up of sexist campaigning during her prime ministership. This was certainly suggested by Senator Sarah Hanson-Young, who later said that the Prime Minister 'not standing up, not calling it out, sent a message to everyone "if this is happening to you keep mum". ²⁸

As we shall see, women ministers from the Gillard government have expressed the same regret that they didn't speak out sooner. According to Labor political adviser, Bruce Hawker, the Opposition Leader's sexist comments had already been tested on focus groups but rather than using them in parliamentary debates: 'the response of many female ministers was to stand back'.²⁹

It is remarkable in hindsight that the sexism to which Julia Gillard was subjected did not result in the kind of political mobilisation that occurred later, after the arrival of #MeToo. Partly this was to do with the role of mainstream media. At the time, women political journalists were influenced by the association of a gender perspective with less serious 'women's issues' journalism. Serious political journalists adopted a style detached from their own lived experience as women.³⁰

However, some were already bringing a gender perspective to bear on the treatment of Gillard in the months before the misogyny speech. Dr. Anne Summers, herself a former president of the parliamentary press gallery as well as a former head of the Office of the Status of Women, delivered a powerful public lecture that reached tens of thousands online. She argued that gender-based vilification of Gillard infringed 'her rights at work'. Unlike other workplaces complying with anti-discrimination legislation, the Australian Parliament had failed to take any action over this discriminatory treatment.³¹

At the same time an online feminist campaign called 'Destroy the Joint', co-founded by journalist Jenna Price, had sprung into life on Twitter and Facebook. The Prime Minister had announced funding for a women's leadership program in the Pacific region, saying that societies could only reach their full potential if women were participating politically. A prominent talkback radio host had taken offence at this, saying that women in leadership positions in Australia were 'destroying the joint'.

The DestroyTheJoint Facebook page, created by union secretary Sally McManus, later national secretary of the Australian Council of Trade Unions, was dedicated to people 'who are sick of the sexism dished out to women in public life in Australia, whether they be our Prime Minister or any other woman'. Its witty images of women destroying the joint 'using only their gender' attracted a large following. When the talkback radio host further suggested that the Prime Minister's recently deceased father had 'died of shame' because of the 'lies' told by his daughter, Destroy the Joint promptly ran a successful online campaign to persuade companies to stop advertising on his program.³²

Although such online campaigning over sexism in politics was a fore-runner of #MeToo it didn't result in the same kind of movement mobilisation and electoral agenda-setting as came ten years later. A book published soon after the demise of the Gillard government raised the question of why such mobilisation had not occurred despite Anne Summers 'galloping over the hill' and despite 'the magnificently anarchic destroy the joint crew'. The suggested answer related to policy disappointments with Gillard over single parents and asylum seekers. The revelations of 2020–2021 did not have the same conflictual policy dimension for feminist activists. And, as we shall see in the next chapter, this time senior women journalists in the parliamentary press gallery were to help turn sexual misconduct in politics into a serious political issue.

PARLIAMENTARY PRIVILEGE

Westminster adversarialism and its taken-for-granted status as the fulcrum of politics meant that gendered mistreatment could be rendered invisible or at least not an appropriate subject for public commentary. In the mainstream media, Prime Minister Gillard was accused of a misstep in presenting as a gender issue what was just part of the cut and thrust of politics.

Another major obstacle to reform of the parliamentary workplace in the Westminster parliaments has been the formal and informal institutionalising of the principle of parliamentary privilege. Over time this has contributed not only to the protection of parliamentarians but also, it is often said, to a sense of entitlement. The elected status of parliamentarians has been seen as elevating them well above the 'unelected bureaucrats' who serve them. The power of parliamentarians as employers and democratic

traditions that emphasise parliamentary privilege have combined to create 'a toxic environment of deference and impunity, which some Members have exploited'.³⁴

The principle of parliamentary privilege developed in the course of the struggle between crown and parliament in seventeenth-century England. Article 9 of the 1689 Bill of Rights said: 'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. In the Westminster tradition, parliamentary privilege has been understood to protect both freedom of speech and the right of each house of parliament to regulate their own affairs and the conduct of members without external interference—the principle of 'exclusive cognisance'. As the 2nd edition of the Procedure and Practice of the Canadian House of Commons put it: 'the House of Commons retains the right to regulate its own internal affairs and procedures, free from any interference from the courts...'.³⁵

In Australia, Article 9 of the Bill of Rights has applied to the Commonwealth Parliament thanks to Section 49 of the Australian Constitution, which states that the 'powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and committees of each House' shall be such as declared by the new parliament and until then shall be those of the UK House of Commons. The 'powers, privileges and immunities' of each house, its members and committees were eventually given partial legislative form in the *Parliamentary Privileges Act* of 1987, while in other respects immunities derived from the UK House of Commons continued in force. New Zealand followed Australia with a *Parliament Privileges Act* in 2014, also intended to clarify the meaning of the Bill of Rights provisions.

As we shall see in the next chapter, despite the increased diversity found in Westminster parliaments, they have been slow to proscribe sexist or exclusionary language as unparliamentary—because of fears it would be contrary to the freedom of speech guaranteed by parliamentary privilege. The tradition of parliamentary privilege and immunity from outside interference is a tradition extending well beyond legislative provisions and has contributed to long delays in the adoption of codes of conduct similar to those adopted in other professions. In New Zealand, a previous Speaker noted with sadness the shouting matches in the House and the difficulty of achieving agreement to a code of conduct enabling all voices to be

heard, due to 'the long tradition of resisting regulatory intrusions into matters that govern the working of Parliament and the conduct of members'.³⁶

The idea that the best form of scrutiny of parliamentarians is free and fair elections is longstanding in Westminster parliaments and frequently used to defend the right of parliament to manage its own affairs. However, a lack of professional standards means the lack of a basis against which to measure the conduct of parliamentarians and it is commonly found that there is a gap between the views of the public and those of politicians regarding the importance of ethical conduct.³⁷

In 1995 the UK was the first to move from self-regulation to a more developed set of rules and independent oversight. Dame Laura Cox suggested there had been a 'gradual dawning' that the ballot box was not a sufficient mechanism for holding members to account. She said: 'Over the centuries the two Houses of Parliament have assumed the responsibility and right to define and maintain their own standards of conduct. However, after serious public concerns about a decline in standards of behaviour, the Nolan Committee considered that a significant independent element would bolster public confidence in the ability of the House to regulate itself effectively'. 38

This important step taken by the UK, took the form of a code of conduct and an independent Parliamentary Commissioner for Standards. It has been described by Canadian political scientists Tracey Raney and Cheryl Collier as establishing a regulatory path dependence.³⁹ In other words, after centuries of self-regulation and fending off any intrusion a precedent had been established for independent oversight of parliamentary conduct. The Canadian House of Commons eventually followed suit in 2004 with a code of conduct and an Ethics Commissioner but provided reassurance that its code was 'a manifestation of the House's right to regulate its internal affairs'. In general, in the Westminster parliaments it has been regarded as of paramount importance that any code of conduct be incorporated in standing orders rather than being legislated, which would transfer jurisdiction over parliamentarians' behaviour to the courts.

While new rules and oversight were being established in the UK and Canada, they were concerned with financial probity—as a result of the 'cash for questions' scandal in the UK and the sponsorship scandal in Canada. They were silent about misconduct such as sexual harassment of employees.

Australia and New Zealand continued for longest to use an appeal to parliamentary privilege against proposals for a parliamentary code of conduct.

In Australia, proposals were made from the 1970s onwards for a code of conduct dealing with conflicts of interest but were always rejected. Registers of pecuniary interests were established from 1984 but no parliamentarian was ever found guilty of non-compliance as long they issued an apology for failing to register an interest. In 2010 a code of conduct for Members and Senators was an item in the Agreement ensuring the support of Independents for a minority government but in the end 'the anticode of conduct mob won the war'. 40 As late as August 2020 a Senate committee again drew on the tradition of parliamentary privilege to reject a proposal for a parliamentary code of conduct: 'The best scrutiny mechanism for the conduct of parliamentarians is regular, free and fair elections. Parliamentarians are ultimately answerable to their constituents, not each other'. 41 Both government and Opposition members agreed that circumstances had not changed since previous rejections of a code of conduct such that there was now a strong argument for introducing one. As we shall see in the next chapter, less than six months later circumstances had changed, due to the explosion of anger over women's safety in the parliamentary workplace.

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