

Privilege and Gendered Violence in the Canadian and British Houses of Commons: A Feminist Institutional Analysis

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The Canadian and British Houses of Commons have both recently adopted formal rules to address the problem of sexual misconduct in their parliaments. Using Feminist Institutionalism, we examine how these rules have been constrained or enabled by parliamentary privilege in both countries. As a result of their divergent historical approaches to privilege, we argue that the British House of Commons' new rules are better suited to address this issue relative to its Canadian counterpart. This outcome has differential consequences for women and minorities who are the most vulnerable to abuse in each parliament.

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Recent sexual misconduct scandals have been reported in numerous countries around the world. In Canada, allegations were made public in 2014 that two women Members of Parliament (MP) had been sexually harassed or assaulted by two men MPs from another party. In fall 2017, the 'Pestminster' scandal emerged in the UK revealing that several male politicians had bullied, sexually harassed or assaulted (mostly women) MPs and staffers for years.¹ In both countries, parliamentary and political staffers report being shouted at, verbally demeaned and inappropriately touched, while others have reported being sexually assaulted (Bryden, 2018; Cook and Day, 2018).

As these disturbing incidents reveal, neither House has been particularly effective in addressing violence in the parliamentary workplace. In part, this is because

¹In the UK: Ministers Michael Fallon and Damian Green; Under Secretary Mark Garnier, and MPs Ivan Lewis, Andrew Griffiths and Charlie Elphicke. In Canada, Minister Kent Hehr and MPs Tony Clement, Darshan Kang, and Aaron Weir.

unlike non-parliamentary workplaces, MPs are not employees and therefore cannot be 'fired' from their elected jobs.² MPs also have wide discretion over who they employ, resulting in 650 (or in the case of Canada, 338) individual 'small businesses' with the freedom to operate as they see fit (White, 2019). Compounding the problem is that neither House is guided by best practices on employment standards, leaving such things to the discretion of individual MPs, many of whom have little relevant management experience or training.

In response to this problem, both Houses of Commons have recently adopted rules to prevent non-criminal violence and abuse in the parliamentary workplace. In Canada, a harassment policy covering staff and an MP-to-MP Code of Conduct on Sexual Harassment were adopted in 2014 and 2015, respectively. In the UK, a new independent complaints and grievance scheme (ICGS) was created in 2018 that covers harassment, bullying and sexual misconduct across the parliamentary precinct.³ In this article, we analyse these new rules using Feminist Institutionalism (FI), an approach that seeks to explain institutions through a gendered lens. Although violence is not always perpetrated by men against women, a gendered framework is useful as it can help illuminate the underlying gendered (and other) power dynamics that contribute to abusive behaviour within institutions. For simplicity, we refer to both countries' rules as 'gendered' as they deal largely with sexual harassment/misconduct, which is usually targeted at women.

We further link FI research to Historical Institutionalism (HI), highlighting the importance of institutional path dependencies and trajectories upon which newly created rules are layered or 'nested'. As an old Westminster rule, parliamentary privilege ensures the fundamental rights and immunities of parliaments to exercise their legislative duties free from external influence (e.g. the Crown). Parliaments' authority to adopt rules that govern their members' behaviours thus derives from this privilege. Given its historical importance to the functioning of Westminster systems, we hypothesise that the historical development of privilege is relevant to the design of recent gender reforms, which in part seek to prevent non-criminal abusive behaviour and to punish MPs (and others) who perpetrate it. We ask two research questions: first, how has parliamentary privilege adapted in both lower Houses over time and second, how do these historical trajectories shape the gendered rules adopted in both parliaments, in either enabling or constraining ways?

²The UK 2015 Recall Act allows parliament to recommend sanctions against an MP which could trigger a re-election in their constituency. Canada does not have a recall mechanism. This does not preclude their removal for criminal acts.

³Neither rules prohibit civil (e.g. employment tribunal) or criminal proceedings.

In both countries, we uncover evidence of path dependent processes. Despite sharing similar Westminster-style foundations,⁴ we find that the Canadian Parliament has developed a less independent ethical machinery with more self-regulation compared with the British Parliament, which has been more open to external oversight in recent history. These contrasting approaches to parliamentary privilege are relevant to recently adopted gendered rules, we suggest, as they circumscribe the range of policy options available to institutional actors today. While other factors are also relevant, we argue that the evolution of privilege helps explain why the UK's rules appear as more substantive change compared to Canada. Crucially, these unique institutional legacies have produced divergent gendered consequences, as the Canadian sexual harassment rules are less likely to protect women from this behaviour compared with the British ICGS rules. Although not perfect, the new British rules offer greater promise to 'unsettle' unequal power relations within the House of Commons.

The article contributes to comparative understandings of parliaments in several ways. Previous FI research shows how informal rules (such as norms) can hinder new formal rule changes that promote gender equality (e.g. Chappell, 2006; Mackay, 2014). Here, we analyse the relationship between two sets of *formal* rules (privilege and gender reforms) in two similar-case institutions, looking at how new gendered rules are nested on top of a broadly similar, shared, old parliamentary rule. Our comparative results reveal how new gender reforms can be hindered (Canada) and helped (UK) by existing (ethics) rules within parliaments. The reconstitution or 'modernization' of older institutional rules can thus aid efforts to create more gender-equal, inclusive parliaments.

The article proceeds as follows. The first two sections lay out our theoretical framework and comparative approach. Next, we trace the historical development of parliamentary privilege in each country, focusing on how each parliament has used its collective privileges to regulate MPs' conduct. We then situate the new gendered rules within each historical-institutional context, focusing on how and whether parliamentary privilege has enabled or constrained progressive change. Finally, we offer recommendations on how both legislatures can better address this vexing problem.

1. Theoretical framework

FI conceptualises the formal and informal aspects of institutions as gendered and as producing gendered effects in ways that reproduce male-dominated power. Together, these interlocking institutional rules operate to create a 'gendered logic

⁴The Canadian constitution's preamble includes the phrase "similar in principle to that in the United Kingdom".

of appropriateness' that reinforces male hegemonic power within institutions (Chappell, 2006). For example, research shows how dominant masculine norms (adversarial-style politics, long and irregular work hours and aggressive forms of debate) are embedded within Westminster systems in ways that disadvantage women (Lovenduski, 2014; Collier and Raney, 2018a). Gender bias is further reinforced by aggressive/violent behaviour, which we suggest is also part of the gendered logic of appropriateness of most political institutions. Although not always directed at women, *violence against women in politics* (VAWIP) specifically is a serious global problem: in 2016 the Inter-Parliamentary Union (IPU) reported that 44.4% of women politicians worldwide had received rape, death, beating or abduction threats. Only a handful of legislatures have responded with action to address this pressing problem to date (Inter-Parliamentary Union, 2016; Krook and Restrepo Sanín, 2019; Krook, 2018, 2020).

We apply FI to two legislatures that have recently adopted rules to address non-criminal violence. We first draw on the idea of 'nestedness', which looks at how new gendered rules can be thwarted by pre-existing formal and informal institutions. For Mackay, historical processes have relevance to newly adopted gender rules, which are construed as 'bounded innovations', created within an existing institutional context (2014, p. 553). Older masculine or gender-blind legacies can further undermine new gendered rules that are 'nested' on top of them, rendering the latter ineffective, diluted or distorted (Chappell, 2014; Mackay, 2014). This strand of FI research borrows heavily from HI, which emphasises how historical processes can help 'lock-in' subsequent institutional arrangements (Saint-Martin, 2005). Importantly, neither FI nor HI asserts the irrelevance of actors to institutional change. Rather, as new rules are instantiated, structural constraints and institutional legacies 'weigh' upon actors' strategies and goals and must be considered alongside processes borne of path dependency (Waylen, 2009, p. 250).

FI also draws attention to the interplay between older, formal rules (which might appear as 'non-gendered') and new rules explicitly designed to address gender inequities (gendered rules). To date, most research has examined how gender reforms are 'nested' on top of pre-existing *informal* rules (norms and conventions), limiting their capacity to fundamentally alter gendered (and other) power imbalances. Chappell and Waylen (2013) find that despite formal gender equality in the UK civil service, men remained in more senior positions than women due to informal workplace norms of long, irregular hours. Krook (2006) finds that legislative quota reforms can be undermined by gendered 'masculine' leadership norms. While new formal rules may appear to end officially sanctioned gender discrimination, gender biases within informal institutions can undermine new rule efficacy (Mackay, 2014).

We consider how gendered rules are also nested on top of older, *formal* institutions in ways that can constrain or facilitate substantive gendered change. Formal institutions (or rules) are those that are ‘created, communicated and enforced through channels widely accepted as official’ and often include constitutions, statutes or written codes of behaviour (Chappell and Waylen, 2013, p. 604). As a set of formal rules, parliamentary privilege applies to the immunities and exemptions afforded to either House (upper and lower) and to their members individually or collectively (Natzler and Hutton, 2019). Whilst some privileges are constitutionally embedded in both parliaments (i.e. the *Bill of Rights from 1689*, Section 18 of Canada’s *Constitution Act of 1867* and Section 4 of the Parliament of *Canada Act, 1985*), others can be found elsewhere (e.g. in Standing Orders, Codes of Conduct, Speakers’ rulings, etc.). Parliamentary privilege covers a wide array of individual and collective rights and immunities, yet we focus on those aspects that seek to regulate members’ conduct specifically.⁵ These derive from parliament’s right to regulate its own internal affairs (‘exclusive cognisance’) and to discipline its members (‘penal’ powers). Together, these collective privileges give parliaments the authority to create and control their own ethical regulatory machineries (Saint-Martin, 2005, p. 138).⁶

Interpretations of the scope of parliamentary privilege are also found in jurisprudence, where courts have established that privilege exempts neither MPs nor parliaments from ordinary laws. In *R v Chaytor* (and others), the British Supreme Court ruled that MPs’ expense claims are not protected by privilege and that when deciding whether a matter fell within the ‘proceedings of parliament’, it must closely relate to the core or essential business of parliament. In 2005, the Supreme Court of Canada ruled that the scope of parliamentary privilege can be established by a ‘necessity test’, and may be asserted only insofar as it protects parliamentarians in the ‘discharge of their legislative and deliberative functions’ (*R v Vaid*, para 41).⁷ In the 2018 *Chagnon case*, the Supreme Court of Canada applied the ‘necessity test’, ruling that privilege does not permit parliamentary employees to be fired without access to labour arbitration.

The ongoing role of the courts in determining the scope of privilege reminds us that although this rule is historically embedded within Westminster systems, it is neither absolute nor immutable. Rather than treating this formal rule as static

⁵This would exclude, for example, oversight over various parliamentary functions, such as government audits and parliamentary spending.

⁶A focus on parliamentary privilege is further driven by the fact that former and current staffers in both legislatures specifically cited it as problematic to the development of the new rules (see Cox, 2018, p.80; McCluskey and Read, 2018).

⁷*Canada (House of Commons) v Vaid*, 2005 SCC 30, [2005], 1 SCR 667.

and fixed, we consider how its evolution within each parliament has influenced the development of new gender rules, in ways that either facilitate or undermine them. Our results have relevance to FI research, revealing first how a shared formal rule changes over time in two institutions and second, how these diachronic and cross-national variations can influence future gender innovations.

2. Comparative methodology

Comparative approaches are common in both HI and FI fields with a particular attention to ‘process over time and the use of systematic and contextualised comparison’ (Mahoney and Rueschemeyer, 2003, p. 6). The UK and Canada provide two good cases for this study as both are Westminster parliaments that follow similar constitutional rules of operation. Both also have similar numbers of women inside of their legislative assemblies (the UK at 32% and Canada at 29%) with neither reaching gender parity. Additionally, each has experienced similar VAWIP scandals over the past six years, pre- and post-#MeToo, precipitating the introduction of new rules to address these issues.

Over the last several decades, both parliaments have also expanded their rules regulating the conduct of MPs. Applying a ‘policy feedback’ approach to the Canadian and British Parliaments, Saint-Martin finds that ethics rules are particularly self-reinforcing over time, with past decisions ‘feeding back’ into present decisions, constraining the policy options available to political actors today (2005, p. 139). These historical processes follow a logic of ‘increasing returns’; once parliaments adopt partial or full external regulations, ‘the probability of further steps along the same path increases with each move down that path’ (Saint-Martin, 2005, p. 143).

Drawing on both FI and HI research, we begin by tracking the historical evolution of parliamentary privilege in both lower Houses, starting with the last few decades when their ethical infrastructures began to develop (Saint-Martin, 2005). We additionally evaluate the timing and sequencing of events that shape path processes, as often ethics rules are created in response to political scandals, when media and public attention are heightened. We then turn to the new gendered rules and examine how they have been layered on top of this formal rule, paying close attention to the gendered effects of formal-to-formal rules configurations in each case.

3. Parliamentary privilege in historical comparative context

3.1 *Parliamentary privilege in the Canadian House of Commons*

The history of parliamentary privilege in Canada is one of incremental change. Consideration of the ethical conduct of cabinet ministers was first introduced in

Canada by Prime Minister Pearson in 1964, with new conflict of interest guidelines created by his successor, Pierre Elliott Trudeau, in 1973. In 1974, the Assistant Deputy Registrar General office was created to administer the guidelines and to advise the Prime Minister and Cabinet as well as to ensure compliance. However, the office was not independent of government. The 1984 Starr and Sharp Task Force later suggested that an ethics code of conduct for all MPs be legislated and placed under a new administrative office (Stedman, 2019, pp. 141–143). Unlike the British House, the Canadian House of Commons has not created a general code of conduct governing the behaviours of MPs. Instead, in 1986 it adopted a non-legislated *Conflict of Interest and Post Employment Code for Public Office Holders*, but without any independent oversight provisions.

Despite several expense scandals, numerous attempts to codify conflict of interest legislation in Canada were ultimately unsuccessful between 1988 and 1993. After a change of government, the Ethics Counsellor position was adopted in 1994; however, the occupant of the office would continue to ‘serve at the pleasure of the Prime Minister’, formally under the Clerk of the Privy Council (Stedman, 2019, pp. 145–146). After another finance scandal involving Prime Minister Chrétien in 1997, serious questions were raised about the independence of the Ethics Counsellor’s Office, laying the groundwork for eventual improvements by Chrétien’s successor (Saint-Martin, in Stedman, 2019, pp. 147–148).

In 2004, *Bill C-4* was passed creating an independent Office of the Ethics Commissioner. The Ethics Commissioner is appointed by the Prime Minister (in consultation with other recognized party leaders) for a five-year term as a separate parliamentary entity outside of the public service (Stedman, 2019, p. 149). The Commissioner is responsible for overseeing the 1985 *Conflict of Interest and Post Employment Code for Public Office Holders* and a newer, 2004 *Conflict of Interest Code for Members of the House of Commons*, appended to the Standing Orders of the House.

In its most recent sweep of ethical reforms, in 2006, the incoming Conservative government passed the *Federal Accountability Act* which created a new *Conflict of Interest Act* to replace the previous public office holders’ code and amended the *Parliament of Canada Act*. It also created the new position of the Conflict of Interest and Ethics Commissioner, whose office would oversee the new *Conflict Act* as well as the existing *Members’ Code*. The new position, enshrined in legislation, ensures the Commissioner sits ‘at arm’s length from government’. However, the actual conflict of interest rules for MPs were kept inside of the Standing Orders of the House and under the purview of politicians themselves.

Despite the independence of his office, the Commissioner has very limited disciplinary powers over politicians. Outside of the Commissioner’s authority to assign small monetary penalties against offending Ministers, it is the Prime

Minister who decides ‘when a violation of the *Act* ought to result in some sort of discipline’ (Stedman, p. 155). The Commissioner also has no authority to issue penalties or compliance orders when members are found to have violated the *Conflict of Interest Code for Members*. This situation prompted the current Commissioner to speak publicly about the need for stronger disciplinary measures to dissuade MPs from violating the Code (Wright, 2018).

The historical trajectory of privilege in Canada is thus one of slow evolution. While co-regulation exists in some areas, Canadian MPs continue to retain considerable self-regulatory powers, and the rules that do exist offer few disincentives by way of punishment. This approach stands in contrast to that of the UK, which has embraced a more modern interpretation of privilege to which we now turn.

3.2 *Parliamentary Privilege in the British House of Commons*

By comparison, the British House of Commons has a more developed set of rules governing members’ conduct, moving away from self- to co- and external oversight, albeit while still maintaining its exclusive cognizance authority.⁸ Responding to the ‘cash-for-questions’ scandal in the mid-1990s (and before that, the 1992 ‘Matrix Churchill Affair’), parliamentary actors undertook a number of measures in an attempt to counteract the perception that British politics was permeated by ‘sleaze’ (Kelly et al., 2018, p. 1543). These events triggered significant changes to the British ‘standards’ system, including the creation of several new oversight committees and bodies.

In 1994, the Committee on Standards in Public Life (CSPL) was established as an independent standing body to advise the Prime Minister on ethical standards. In its first report, the CSPL laid out the ‘Seven Principles of Public Life’ (the Nolan Principles) that would apply to all areas of public life; most of its 28 recommendations for MPs were implemented shortly thereafter. In 1995, an independent (non-statutory) Parliamentary Commissioner for Standards (PCS) position was created. The PCS provides confidential advice to members, advises the Committee on Standards on the Code of Conduct (first adopted in 1996), maintains and monitors the Register of Members’ Financial Interests and investigates matters related to members’ adherence to the Code of Conduct. When the PCS upholds a complaint against a member, she also has the authority to resolve less serious cases. In more serious cases, she submits a formal report to the Committee on Standards where a sanction is considered.

The British self-regulatory system would come under further strain in 2008 when the ‘expenses’ scandal broke involving three MPs who claimed the protection of privilege to prevent a criminal trial for falsifying their expenses (Evans,

⁸We thank a reviewer for drawing this point to our attention.

2018, p. 562). The fall-out marked another watershed moment in the shift away from full external regulation. In 2009, the *Parliamentary Standards Act* created an independent statutory body—the Independent Parliamentary Standards Authority—with the authority to regulate MPs’ expenses (and later, the determination of their salaries and pensions). There is no equivalent independent authority in Canada. The Compliance Officer for the IPSA was further remitted to conduct investigations into potential unallowed payments to MPs. In 2012, Westminster became the first Parliament in the world to appoint lay members (non-MPs) to the Committee on Standards; the Canadian House has no lay members serving on parliamentary committees. These events precipitated broader discussions about the role of parliamentary privilege in Westminster, with a 2013 Joint Committee report recommending the continuation of a non-codified approach towards privilege moving forward, which would allow for future flexibility in order to adapt and evolve in accordance with the changing ‘working practices of Parliament’ (UK Parliament 2013, para 25). No similar debates or discussions have been had in Canada’s lower House.

Although the British House retains its exclusive cognisance authority, it has adopted a more flexible interpretation of privilege compared to the Canadian House historically, allowing for more independent bodies and external oversight. Next, we examine how the new gendered rules have been layered on top of existing institutional legacies, producing divergent gendered outcomes. To support this claim, we examine three aspects of the new rules: (i) the independence of their grievance processes; (ii) the impartiality of their appeals bodies and (iii) the independence of their sanctioning procedures.

4. Comparing formal gendered rules: Canada and the UK

4.1 *The Canadian Sexual Harassment Rules*

In 2015, the Canadian House of Commons became the first legislature in the world to adopt an MP-to-MP Code of Conduct on Sexual Harassment, which was amended to the Standing Orders of the House of Commons ([Canada House of Commons, 2015](#)). A year earlier, it adopted a policy to protect staffers (*House of Commons Policy on Preventing and Addressing Harassment*), which applies to all MPs and House Officers as *employers* as well as their staff and the staff of Research Offices ([Canada House of Commons, 2014](#)). Before 2014, it had no provisions in place to protect political staffers.⁹ In 2018—and in response to the

⁹New Democratic Party staff are unionized and formally protected under the anti-harassment provisions of UFCW Local 232. Mapsa and Unite Parliamentary Staff Branch represent MPs’ staff in the UK.

#MeToo movement—the Canadian Parliament subsequently passed Bill C-65, which will bring sexual harassment protections to all federally employed workers across the country, including on Parliament Hill.¹⁰ The new legislation will cover staff members in the House of Commons by incorporating (and potentially amending) the 2014 Staffing Policy.¹¹

Following its past practices related to privilege, Canada's sexual harassment rules offer limited, or non-existent, independence and external oversight. Both the Staffing Policy and MP Code include grievance procedures that allow for informal resolutions, mediation or, if needed, an independent, third-party investigation. However, the staff-based policy requires that a staffer who has been sexually harassed first report the behaviour to their immediate manager *when that person is an MP*.¹² Should a resolution not be found at this initial stage, a complainant may then choose to file a formal complaint with either his or her MP, with their relevant party whip, or with the Chief Human Resources Officer (CHRO).

Although the policy gives staffers the right to raise a formal complaint with someone other than their employing MP, this provision ignores the internal power dynamics within individual MP offices, where staffers' employment situations are precarious and almost entirely reliant upon the good will of the MP, who is their boss.¹³ The MP Code similarly allows for an independent investigation should a formal claim be filed, but it prioritizes informal resolution first, with a complainant 'encouraged' to contact their party whip or the CHRO, to facilitate a resolution. The lack of fully independent grievance processes is thus highly problematic and reduces the chances of complainants coming forward.

Appeals processes are also not impartial and reflect the self-reinforcing properties of the Canadian House's broader approach to discipline. The staffing policy specifies that should a case be appealed by either a respondent or complainant, a panel is to be struck consisting of one politician appointed by each, with a third external 'expert' to serve as chair. In the MP Code, appeals are made directly to the Procedures (PROC) committee—comprised of solely MPs—which can

¹⁰An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1.

¹¹At time of writing Bill C-65 is not fully implemented. Amendments to existing aspects of the Canada Labour Code as well as to the 2014 Staffing policy are to be rolled out over the next few years (some estimates suggest full implementation will take up to ten years).

¹²If required, an external resource can be made available to facilitate/mediate beyond the informal phase.

¹³In a highly partisan context it is unlikely that a political staffer would not report to their MP as party whips (and the MP) are to be informed of the claim at a subsequent stage anyway.

launch its own, separate investigation, whereupon its findings are tabled in a motion to be voted on by the House. No limits have been placed on floor debates, where members' speech is protected by individual parliamentary privilege.

Past policy decisions related to sanctions are also embedded within Canada's sexual harassment rules, with MPs retaining the power to mete out discipline as they see fit. The staffing policy allows party whips to take any 'corrective action' as a result of an investigation, while the MP Code similarly grants wide authority to party whips to impose discipline. The Code further provides for no disciplinary guidelines, allowing the whips considerable latitude to determine an appropriate sanction. Further problematic is that both the staffing policy and MP code enable the whips to punish any *complainant* who files a sexual harassment claim if that claim is found to be in bad faith or 'vexatious'. These provisions propagate a harmful myth that victims (mostly women) are prone to falsely report sexual misconduct, reducing their willingness to report a claim out of fear of not being believed. They also do little to alter the underlying power imbalances between MPs and staff.

Overall, the Canadian case demonstrates how path-dependent processes can constrain substantive gendered change. Although the Canadian House was the first in the world to adopt formal rules to MP sexual harassment, these new rules have been 'nested' on top of existing ethics regulations in ways that will enable politicians to largely self-police sexual harassment in parliament. As most MPs are men, self-regulation of these cases is likely to further reinforce men's institutional advantages over women, allowing (mostly men) to interpret the new rules in ways that will discourage complainants from coming forward and/or enforce discipline against their (mostly male) colleagues as they see fit. Echoing these concerns, many women MPs and staffers have expressed scepticism that the new rules will ensure positive change for women and minorities, who are most often the target of violence.¹⁴

4.2 *The British Independent Complaints and Grievance Scheme*

In keeping with its own historical institutional legacy, the British ICGS rules demonstrate a more serious commitment to addressing violence. In 2018, Westminster adopted a parliament-wide behaviour code embedded within the existing Code of Conduct for MPs and an ICGS to respond to and manage complaints of bullying, harassment and sexual misconduct ([United Kingdom Parliament, 2018](#)). The ICGS applies to the entire 'Parliamentary Community' (including parliamentary and political staffers, MPs, Peers, interns, paid or unpaid staff, and visitors to Westminster). Bullying and harassment are supported

¹⁴See [Beaumont, 2018](#).

by an Independent Reporting Helpline and an Independent Investigation Service, whereas sexual misconduct cases are supported by an Independent Sexual Misconduct Advisory Service.

The ICGS grievance process is entirely independent and includes an informal resolution process and, if required (and in cases involving MPs), an independent investigation overseen by the Parliamentary Commissioner for Standards (an independent officer of parliament). It also expands the powers of the Parliamentary Commissioner for Standards (PCS) to investigate ICGS cases, on top of her existing investigatory powers over other aspects of the Code of Conduct. Unlike the Canadian House, party whips are not involved in ICGS grievance processes.

The ICGS also allows for impartial appeals, with media and feminist actors (both within and outside the institution) playing key roles in pressing for this development.¹⁵ When the ICGS was first adopted, the Committee on Standards was initially to serve as an appeals body over ICGS cases. Following allegations of rampant sexual misconduct in Westminster that aired in a BBC Newsnight documentary in March 2018, the House initiated two independent inquiries (the Cox and White Inquiries); both reporting publicly on the scope and depth of the problem.¹⁶ Against a backdrop of growing public scrutiny, in June 2019, the House agreed to amend the ICGS to reflect the Cox report's three key recommendations, including the need for an 'entirely independent process, in which [m]embers of Parliament will play no part' (Cox 2018, p. 6).

In June 2020, the House fulfilled this promise and established an Independent Expert Panel (IEP), set to be entirely independent of MPs. Unlike Canada's decision-making bodies which involve politicians, the IEP's eight independent panelists are to have expertise in employment law, bullying and harassment cases and on sexual harassment (United Kingdom Parliament, 2020). The IEP will have similar powers to the Committee on Standards, and can order a members' attendance, require the production of papers and appoint legal advisors. The IEP will also play a role in any serious sanctions to be imposed upon members who are found to have violated the ICGS, including recommending to the House that a member be suspended or expelled.¹⁷ The Committee on Standards' role in ICGS cases was further limited to assessing non-compliance with imposed

¹⁵See for example, Parliamentary Debates on June 18 2019; and in June 2020 a public statement signed by 62 women's rights activists successfully urging the House to limit MPs' abilities to debate ICGS cases.

¹⁶Unlike the Canadian House, these inquiries documented abuse in Westminster through extensive interviews with politicians and staffers, giving feminist actors the opportunity to use their findings to advocate for a fully independent process.

¹⁷The Parliamentary Commissioner for Standards retains the authority to impose sanctions up to a lower level of severity.

sanctions only.¹⁸ Once established, the panel will be the first of its kind in any Westminster system to consider cases against MPs (Kelly, 2020, p.3).

In cases where the IEP recommends serious sanctions, such as suspension or expulsion, the House retains its authority to approve the recommendation via a motion in the chamber. However, after feminist actors pointed out the power imbalance of allowing MPs to debate such cases with the protection of parliamentary privilege over (silenced) complainants, the House agreed on division (by a 243–238 vote) that ICGS sanctions motions would be taken in the House without debate. In contrast, there are no similar debate restrictions for Canadian MPs. Although British MPs could theoretically vote against a proposed sanction, the existence of the IEP will make it politically difficult for them to do so as they would in effect be ‘re-politicizing’ these cases which would inevitably draw public scorn.

The British ICGS rules reveal how past practices related to privilege helped facilitate stronger gendered reforms compared to the Canadian rules. The UK’s more adaptable interpretation of privilege gave British actors (within and outside of parliament) leverage to advocate for similar treatment in ICGS cases alongside existing external oversight mechanisms. As a consequence, the British rules are more likely to protect those who work in Westminster from abuse, and ultimately, have a stronger chance to ‘unsettle’ existing gender (and other) power relations compared to the Canadian staffing policy and MP Code.

There is early evidence to suggest that the ICGS rules may additionally ‘feed-back’ into Westminster’s broader standards system. In July 2020, the Committee on Standards recommended greater ‘consistency’ in how ICGS and non-ICGS cases are handled, proposing a suite of new sanctions against MPs along with expanded sanctioning powers for the PSC. If adopted, these measures would further move the British Parliament along the pathway of greater public accountability, widening the gulf between its own ethical machinery and that of its Canadian counterpart. To date, there is no similar discussion unfolding in Canada’s parliamentary committees, despite on-going conflict-of-interest scandals resulting in the Minister of Finance’s resignation in August 2020.

5. Concluding thoughts and recommendations

The results in this article demonstrate how older, formal rules have consequences for new gendered rules. The historical–institutional trajectory of privilege in the

¹⁸Two additional, broader changes were made to the Standing Orders. First, the House agreed to give the Committee on Standards’ lay members full voting rights. Second, the Code of Conduct was amended such that non-compliance of a sanction imposed by the IEP against a member shall now be treated as a breach of the Code and referred to the Committee on Standards. Unlike in Canada, the committee is not permitted to reopen cases.

Canadian House of Commons has resulted in less independent sexual harassment rules, reducing the willingness of complainants to come forward and allowing the problem of violence to remain hidden within the institution. Consequently, it is unlikely that these rules will alter the existing male-dominated logic of the institution in a significant way. Facilitated by Westminster's modernization of privilege prior to 2018, the British ICGS appears as more serious change. Its greater independence and external oversight are more likely to instill confidence in complainants to come forward, which in turn will dissuade others from perpetrating violence. The British interlocking, formal rule dynamics have greater potential to uproot the underlying gendered logic of Westminster, which has enabled aggressive and violent behaviour in the past.

The timing and sequence of sexual misconduct scandals in both countries also matter. The initial scandals that precipitated the Canadian rule changes became public knowledge in 2014, predating the wider and more significant events of the #MeToo movement in fall 2017. Having recently adopted its new sexual harassment rules (however weak), Canadian actors were able to claim that they had already addressed this problem when the #MeToo movement occurred (Collier and Raney, 2018b). In contrast, the British 'Pestminster' scandal emerged alongside the #MeToo movement, making it challenging for politicians to argue against external oversight in ICGS cases, while under intense media/public scrutiny.

Despite their differences, it is important to point out existing weaknesses in both sets of rules. To date, neither parliament has made training mandatory for all politicians.¹⁹ Neither house has created an external HR office with expertise in gender-based violence issues to which staffers can turn for impartial advice.²⁰ Two recent cases highlight the importance of other formal rules in dealing with sexual misconduct in politics. In spring 2020, Canadian Liberal MP Tabbara was criminally charged with stalking, assault and break and enter. After the charges were made public, it emerged that sexual harassment complaints had been previously filed against him within the party; yet the party failed to act and allowed him to run as a Liberal candidate in the 2019 election. In August 2020, an unnamed British Conservative MP was arrested on suspicion of raping a parliamentary worker; at the time of writing, the party had yet to remove the whip from him. Future FI researchers should consider how political parties' candidate

¹⁹In 2020, only newly elected British MPs were mandated to attend training. In 2018, all three main party caucuses in Canada required MPs to attend training, but mandatory training is not required by the staffing policy or MP Code.

²⁰In February 2020, the British House Commission agreed to establish a Members' Services Team to help tackle feelings of isolation felt by MP staffers and to coordinate existing service provisions for MPs/staff. It is not clear whether members of such a team would have expertise on gender-based violence.

rules (and other formal and informal rules) can undermine legislative efforts to address violence.

FI also reminds us that even when adopted, new gender reforms can be resisted by actors in various ways, such as by ‘remembering the old’ and ‘forgetting the new’ (Mackay, 2014). Feminists actors will need to watch carefully to protect any progress gained. Within the institution, they might also consider using older formal rules to their own advantage. For example, parliamentary privilege could potentially be used as a strategy to *combat* sexism during debates.²¹ Individual privilege protects MPs with ‘freedom from intimidation’ and could in theory help positively shift institutional gendered power dynamics. Speakers could apply these rules more consistently to prohibit sexist, racist and homophobic gestures and words within debates as breaches of women (and minority) MPs’ individual privileges. To our knowledge, privilege has seldom been asserted in these ways. Finally, greater consideration is needed within FI of how pre-existing formal rules change over time and of their gendered implications. As our results suggest, on-going modernization efforts within parliaments can help lay important groundwork for gender reforms to come.

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²¹We thank a reviewer for identifying this possibility to us.

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