South Africa is the richer for what the Executive has done (the Arms Deal)… SCOPA will come out of this a better Committee (Defence Minister MGP Lekota (in Committee Minutes, SCOPA, 26 February 2001, 8; and quoted in www.iol.co.za 26 February 2001)

In this study we examined the status and role of Parliamentary Committees vis-à-vis both democratic representation and the Executive branch of Government with a specific view to critically assessing the performance of the South African adaptation of the PAC, SCOPA. In this connection, we propose a theory of Popular Sovereignty as irreducibly *plural* not *monist*: plural both with respect to its *institutional sites* as well as the *modality* of its exercise. On this perspective Parliamentary Committees perform a function vital to the constitution of popular sovereignty itself. They are crucial to the formation, expression and realization of the Popular Will: enabling the People to acquire an accurate perception by it of what the Executive is doing in its name. Their investigative work is thus constitutive of the formation of a democratic will and subject. Parliamentary Committees are therefore central to the satisfaction of the conditions of the *deliberative* conception of democracy. On this dimension, PCs must themselves conform to the principles of deliberation in their own practice. The deliberative conception of democracy is then further delineated and distinguished from the aggregation - majoritarian perspective and defended against a variety of criticisms within the democratic theory and particularly within deliberative democracy itself.

Chapter 1 outlines the issues *supra* with which the thesis is concerned: the role of Parliamentary Committees in relation to democracy, with a particular focus on one such committee, SCOPA, the Standing Committee on Public Accounts, which belongs to the system of South African Parliamentary Committees. Attention is drawn to the shift that has occurred in the way the Committee itself functions and how this shift internal to SCOPA interacts with political interventions and tendencies external to the Committee, with serious implications for the quality of democracy in South Africa. The Chapter
elaborated the theoretical argument concerning the contribution of Parliamentary Committees to democracy. PCs, it is proposed, are constitutive of democracy, not optional decorative devices. A pluralist theory of popular sovereignty according to which there is no single institutional complex or site, which exclusively expresses the Will of the People is advanced. Parliamentary Committees perform the indispensable role of enabling the people to acquire an accurate perception of *itself*, i.e., of how “it” *qua* represented in the Executive branch, is carrying out the popular will. The perception it provides must be as accurate as possible and this requires impartiality and strict respect for the rules of evidence. Thus PCs like SCOPA must be encouraged in their investigative practices to conform to rules and principles impermeable to the influence of government or party. The argument is introduced that SCOPA succumbed to pressure from the Government in its treatment of the arms deal.

At the same time it is acknowledged that the investigative work of a committee and its decision to accept a report is not the same as reading a thermometer or a barometer. Space for disagreement must therefore be recognized and the status of decision-rules (consensus or majoritarian) adjusted accordingly. To the great credit of SCOPA, consensus was reached on all principal issues driving the first five years of its existence. Investigations into the arms deal resulted, however, in a deep fracture emerging within the Committee. It is contended that this was not however a reasonable disagreement. In the case of SCOPA, although the arms deal Report in question was endorsed by a majority vote in the Committee, the investigation itself and the Report based on it, fell palpably short of the threshold of “reasonable adequacy” and this notion (of a minimum threshold of reasonableness) is further explicated.

Parliamentary Committees are needed for the people to acquire knowledge and information concerning what the Executive is doing in its name. Committees enjoy powers of evidence gathering and analysis not available to the ordinary individual citizen and, although the organs of civil society can play some role in making available to the people the knowledge and information referred to above, Parliamentary Committees are indispensable in this regard. What is called the “oversight” function of PCs is really, therefore, a sight function *simpliciter*. When denied of Parliamentary Committees’ “apparatus of investigation” the people loses its “sight;” without this “apparatus of investigation” the people is deprived of a crucial feed-back loop able to provide information and considered judgment on how the government is carrying out its mandate, i.e., the mandate of the people. In other words, just as the fact that the people cannot
enunciate its will without being represented in the National Assembly or Parliament renders this latter ontologically constitutive of the people itself, so, too the Parliamentary Committee function is part of the very identity of the people – it determines the degree to which the people is deprived of, or possesses, adequate self-consciousness.

A Parliamentary Committee is, thus, just as is the National Assembly or Parliament, a site where the people is represented and exercises its sovereignty. Parliamentary Committees are thus one of several sites of expression and realization of the popular will. So Committees comprise a specific institutional site of the presence of the people, here the “sight-function,” the acquisition of self-consciousness occurs. It is argued, then, that the popular will exceeds its immediate expression via the National Assembly and the democratically elected Government – it subtends and is represented in other institutions, like PCs and the Judiciary. One implication of this argument is that popular sovereignty is either plural, i.e., exercised in a plurality of institutional sites and modalities, or cannot be said really to exist at all. This must be contrasted with monist theories of sovereignty, such as is found in Rousseau for example. In Rousseau the people is understood as a single unified substance, immediately transparent to itself, i.e., fully self-conscious right from the start: the people must simultaneously express, interpret, implement and realize its will via only its undivided self. It is argued here, on the other hand, that popular sovereignty can only be realized via a plurality of institutional sites and modalities. Weber’s notion of democracy is also identified as “monist” and its implications drawn out.

The focus then turns to Parliamentary Committees: it is argued that they exist to reflect on and deliberate over information concerning executive practice. In Committees as much impartiality as possible is necessary. Committees thus very frequently adopt institutions designed to counter the pull of party partisanship. These include the Committee Chair being a member of a minority, opposition party and striving to satisfy a consensus rule in Committee decision-making. These are intended to protect the Committee from being dictated to by the majority party. However, the space of Committee decision making must be able to accommodate political antagonism, as evaluating reports is not the same as reading the temperature or the time. Thus, although consensus is desirable, (as long as it is authentic, it must not be imposed), if it proves impossible the majoritarian rule must kick-in – consensus is, i.e., desirable but is not a necessary condition of legitimate collective decision-making. It is suggested thus that the
consensus decision rule might be termed a “quasi-decision rule” (because, if not attainable it gives way to majoritarian decision-making).

The concept of “deliberation” and “deliberative democracy” is then examined in more detail. This is done via a discussion of several theorists of deliberative democracy including Army Guttmann and Dennis Thompson, Seyla Benhabib, and Michael Walzer. It is stressed that a core feature of the deliberative conception is that it calls upon us qua citizens to treat one another as equals, not merely by according equal consideration to interests but by offering justifications couched in terms of considerations able to be acknowledged by all concerned as falling within the boundaries of what is reasonable. Chantal Mouffe’s critique of deliberative democracy as necessarily entailing a belief in consensus is then subjected to close examination. It is argued that Mouffe’s attribution of an identitarian ontology to deliberative democratic theory is arbitrary and that it fails to take into consideration the status of the consensus decision rule as a quasi-decision rule in deliberative theory.

Chapter 2 is an overview of the British and US legislative committee systems. These are respectively the oldest and the most powerful of committee systems and thus provide useful points of reference for an analysis of the South African parliamentary committee system (Ch 2, 21-2); the parliamentary committee system which is the particular focus of the thesis. It is argued that on the whole, and particularly prior to the 1979 Reform of the committee system, the British Parliament has not functioned through a strong committee system. Standing committees enjoy little independence and are at best the House of Commons itself at work, the only difference being a smaller quorum. Nonetheless, in committees fewer members are prepared to obey the party Whip without question and their proceedings are more deliberative. The Government’s “broader view” is thus more likely to receive critical attention in committees than in the House itself (30).

Select scrutiny committees, on the other hand, can be seen as the opposite of their standing committee counterparts. They have wide powers to investigate the administration of government policy and, although charged with the examination of the expenditure, administration and policy of the main government departments, are free to determine how best to interpret this remit. There exists in the select committees of scrutiny a tradition of being ready to put the committee first and party second and this, as we have seen, is what a deliberative conception of democracy demands (31-2). Although scholars continue to debate just what effect these committees have had on policy making
there is agreement that they have made a significant contribution to the growth of a
general culture of public appraisal and criticism of government. This is itself (partly) a
consequence of the fact that select scrutiny committees have over time become distinctly
bipartisan, seeking consensus via extensive deliberation. On the other hand, however,
they are only advisory bodies, which issue reports with recommendations without any
power to ensure they are acted upon. This, however, does not undermine the very
important contribution of the select scrutiny committees to the specifically deliberative
dimension of democracy.

This Chapter then goes on to discuss the committee system of the US Congress.
Committees in Congress are above all distinguished by their degree of
institutionalization, their specialization, agenda-setting and evidence-taking powers (42).
As is shown clearly in the literature, the US Congress committee system is the strongest,
most active and effective of any such system in the world. One of the main reasons
explaining the power enjoyed by the committees of Congress is the relative weakness of
political parties in the US and absence of party discipline in Congress. This, in turn, is to
be accounted for by the strength in the US of the separation of powers, federalism and a
general decentralization of power.

The standing committees of Congress enjoy an independence and autonomy that has been
steadily reinforced over time and this autonomy has been extended to subcommittees of
committees (46). These subcommittees of standing committees perform much of the day-
to-day lawmaking and oversight work of Congress itself. On the other hand, as noted in
the literature, an exaggerated stress on achieving consensus and avoiding conflict has had
a detrimental effect on the performance of the oversight function by committees of the
US Congress (50). As has been explained in Chapter 1 supra one of the theoretical
concerns of this thesis is to explore the extent to which conflict within committees
necessarily renders impossible the effective performance by them of their oversight role.

Be this as it may, standing committees in the US Congress are strong and energetic and
remain the centre of activity in the House and Senate; they are also vital in protecting
Congress against executive and bureaucratic domination. Finally, the emergence of
strong, more highly disciplined party caucuses in the Westminster parliamentary tradition
has weakened committee systems in the countries belonging to this tradition, whereas the
absence of this factor in the US has enabled its committee system to buck this trend.
Chapter 3 examines the current South African parliamentary committee system (i.e., the system of post 1994). It begins by pointing out that the new, powerful role for the parliamentary committee system, embodied in the Constitution, is one of the most profound changes to the South African political landscape since 1994. During the first (but not the second) Parliament, the committee system in many ways became as influential as that of the US Congress (53). When the democratic Parliament assumed power in 1994, it thoroughly overhauled the rules governing committees of Parliament and at the same time, increased their number. Under the pre-1994 government there were only 13 committees. Their hearings were always held in camera, their powers were extremely limited and their sole raison d’être was to “rubber stamp” legislation proposed by the National Party Government (Streek 1997, Calland 1999, Ch 3, 53, 59-60). The content of proposed legislation would only be revealed when the bills were published and debated in Parliament, and this often occurred only days before the bills were inacted into law. Parliamentary committees offered no means for the close examination of government policies and actions. The existence of committees was just to “legitimize” whatever government chose to do.

Post-1994 parliamentary committees became open to the public and press (for the first time in South Africa) and very rapidly became the “engine room” of the South African Parliament: parliamentary committees assumed responsibility for drafting legislation, examining and revising proposals submitted by the Executive, as well as holding cabinet ministers and their departmental chiefs responsible to Parliament. In terms of the new Constitution, apart from making laws, Parliament is also to hold government accountable and serve as a deliberating forum for matters of public concern. The South African Constitution thus embodies the deliberative conception of popular sovereignty and democracy defended in Chapter 1. A good deal of the most important work done in Parliament is conducted by (the new) parliamentary committees. Here, as S Heyns puts it “specialists bodies of MP play a key role in formulating laws and policies of specific government departments, and in overseeing what those departments and all other organs of state are doing” (Heyns 1996, 18; Ch 3, 60).

The legislative and oversight powers of Parliament and its committees are spelt out clearly in the Constitution and the rules of Parliament. They grant extensive powers to committees which are now empowered “to monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, policy formulation or any other matter…falling within the category of affairs consigned to the
committee concerned” (Calland 1999). In addition to the constitutional and statutory powers, most committees in Parliament are specialized “policy committees” which mirror the executive structure by having a committee for each government department. Commentators agree that this arrangement facilitates oversight and lawmaking and also contributes to the formation of “issue networks” involving legislative, administrative and interest-group specialists (Ch 3, 64).

Post-1994 an entirely new legal and institutional framework had to be established on a democratic basis. The new committee system played a very important role in this, with a total of 553 Acts being passed during the first term of Parliament. Of course, the actual powers committees exercise in law making and the oversight process depend not just on legal and constitutional provisions but on the capacity to utilized formal powers. The changes in the committee system that occurred in 1994 were unfortunately not accompanied by access to the staff and resources needed for committees properly to perform their role (73-7). With a strong constitutional and legal foundation in place for a vigorous oversight role but lacking the requisite resources properly to fulfill it, it is suggested that the South African committee system is located somewhere between the Westminster and US models (77). Of course it should not, in addition, be forgotten that South Africa has a strong party-based system and that this can hamper oversight because it means that MPs are caught in a tension between the pull of democracy and the pull of party.

Committees derive their powers from the Constitution and Acts of Parliament establishing them via the Rules and Joint Rules of Parliament. Committee size varies, but is usually between fifteen and 40 members. Parties are represented in committees substantially in proportion to the number of seats held in Parliament except that the smallest minority parties are entitled to at least one member per committee. The chairperson of a committee is elected by the committee although the parliamentary caucus of the majority party is in effect able to decide who will chair a committee. In practice then the majority party and the Executive control the selection of chairpersons. Of the twenty-seven Assembly Standing Committees, 25 had ANC chairpersons. Only the Standing Committee on Public Accounts and the Portfolio Committee on Public Works being chaired by opposition party MPs. Minority parties (who were earlier forced to relinquish their demand that the chairpersonships of committees be allotted proportionality to the votes each party received at the polls) vigorously oppose the arrangement concerning the appointment of parliamentary committee chairpersons,
which is an ongoing point of contention in South African politics. This Chapter also includes a discussion of how the shift in modern democracies to the Executive as the initiator of legislation (rather than Parliament) results in committees having an even more important role than ever if the people are to hold on to its remaining democratic right, *viz* to be able to scrutinize legislation emanating from the Executive. The slippery concept of ministerial responsibility is also discussed as a crucial aspect of parliamentary oversight and accountability (85-91). It is pointed out that although s 92 (2) of the South African Constitution gives ministerial responsibility the force of law, thereby removing it from the sphere of vague political convention, it remains unclear under exactly what conditions such responsibility entails the obligation for a minister to resign.

Chapter 4 examines the first five years of the South African parliamentary system. As we have already seen parliamentary committees were very active during the first session of the new South African Parliament. The general consensual atmosphere in South African politics at the time rubbed off onto the committee system of the South African Parliament and it was only very rarely the case that the ANC resorted to a majoritarian decision-rule in any of the parliamentary committees. In other words, a consensual approach prevailed in committee work during the period and committees distinguished themselves by their independence and their effective oversight of government. This changed, however, once the Arms Acquisition Package became the object of scrutiny in SCOPA. From this point on the ANC intervened in (and around) the JIT investigation into the Arms Deal as well as in the drawing up of the final Report. This subordination of democracy to party interest in the maintenance of power came to a head when SCOPA itself eventually endorsed (by majority vote) the final JIT Report.

The Chapter begins with an examination of two cases where committees of the new SA Parliament effectively exercised their oversight role *vis-à-vis* the Executive, *viz* the Portfolio Committee on Health in relation to the *Sarafina 2* case (95) and the Portfolio Committee on Welfare in relation to government policy on Child Maintenance Grants (117). The *Sarafina 2* case involved the alleged mismanagement of some R14 million of public money. Committed Artists Theatre Company on 10 August 1995 was awarded a tender for this amount to produce an HIV/AIDS awareness play for World AIDS Day, 1 December 1995. The Portfolio Committee on Health met with the Minister of Health and some of her departmental officials including DG Olive Shisana on 28 February 1996, to explain and justify the Health Department’s expenditure on *Sarafina 2*. This resulted in a probe into the matter by the Public Protector who found (see PP 1996 6.4.10, 6.5, 10.5,
Conclusion

10.13, 10.19; Ch 4, 97-100), *inter alia* that proper tender procedures had not been followed in awarding the contract to the Committed Artists and that the European Union funds used to finance *Sarafina 2* had not been properly handled, i.e., the terms of the contract with the EU signed by the Minister of Health and the European Commissioner on 28 December 1994 had been violated. The Protector found that an official of the Department, Chief Director Badenhost, signed a contract with Committed Artists Theatre Company on 10 August 1995 on behalf of the Department of Health without the approval of either the Departmental Tender Committee or the authority of the Director-General, who is the Accounting Officer of the Department.

Although there was no evidence that Minister Nkosazana Dlamini-Zuma influenced any official in this respect, the Public Protector made recommendations for the improvement of the Department’s financial management, capacity and efficiency. Minister Zuma, in her response to Parliament on the Public Protector’s Report on *Sarafina 2*, accepted the Protector’s criticisms of her Department’s tender procedures, financial management and legal capacities. She accepted that the errors emanating from her office would not have been committed had her Department been soundly managed.

Regarding the issue of whether or not the Minister was under an obligation to resign her portfolio under these circumstances, it is argued that, in light of the British tradition, which is quite normative in South African democracy, she ought to resign (A Venter 1999, 258; Ch 4, 105, 117). This is because not only is the Minister responsible for ensuring that her department possesses the requisite systems, procedures and staffing to ensure efficient management, but also because the Minister quite clearly misled the Portfolio Committee on Health when, on 28 February 1996, she stated that the EU had been informed about the conception and funding of *Sarafina 2*, although this was logically impossible (PP 1996 4.4.2, Ch 4, 107-8). It was impossible because the only communication between the Department and the EU over this time period with respect to the contract between the Department and the EU was found by the Public Protector not to contain any relevant reference to *Sarafina 2*. It is argued, then, that a negative precedent has been set by Minister Zuma’s holding on to office and by the support she received from the President and the Government.

Similarly, the will and determination shown by the Portfolio Committee on Welfare in challenging the Government’s policy on the Child Maintenance Grant in 1997 was a landmark achievement for the South African Parliament during its first five years. The
Lund Commission on Child and Family Support - established in February 1996 to examine the problem of the increasing number of South Africans relying on social security as the main means of support and ways of reducing this - made its recommendations without any consultations with the institutions and organizations of civil society (Lund Committee Report 1996 6, 104; Ch 4, 119). In the same way, the Minister of Welfare, Geraldine Fraser-Moleketi argued that consulting the Portfolio Committee on Welfare before the recommendations of the Lund Committee went to the Cabinet for approval was “unnecessary” (see The Star 28 April 1997; Mail & Guardian 25 April 1997; Calland 1999; Ch 4, 119, 121). She announced government’s decision to adopt a R75 flat monthly benefit per child within the age cohort of 0-6 years; overall a significant reduction on the existing R135 per child between the ages of 0-18. The Committee reacted by holding a series of public hearings (in Cape Town, Pietermaritzburg, and Umtata) and mobilizing public support for the counter proposals of civil society.

Although the Minister insisted that correct parliamentary procedures had been followed, it was clear they had not - unless a closed and centralized form of executive decision-making is deemed “correct parliamentary procedure.” In the event, the Minister was forced to climb down and agree to a compromise of R100 per child between 0-6 years (the Committee opted for R135 per child between 0-9 years). Here a Committee of Parliament rigorously questioned bills, but whether this positive example eventually turns out to be a “blip” or a “defining moment” is something to yet be determined.

Another Committee of Parliament that showed its resolve to subject government to rigorous scrutiny and interrogation during the first five years of the new South African Parliament was the Standing Committee on Public Accounts, SCOPA. In order to establish a background against which SCOPA, the South African variant of the PAC, can be better understood, the Chapter thus considers PACs in an international frame. The PAC, it is explained, is the oldest and most well established parliamentary committee and is from the point of view of oversight and accountability considered the most important (Ch 4, 123-46). The information which it requires to perform its function is traditionally provided by an independent body, i.e., a court or the Auditor-General. In almost all countries with parliamentary structures and institutions, the PAC is the principal audience of the Auditor-General. It is proposed that the composition of the PAC, whether its Chair is drawn from the ranks of the government or the opposition, its terms of reference (i.e., whether it has any policy remit), the openness and frequency of meetings, as well as the
quality of the audit information to which it has access, are all factors that influence the effectiveness of PACs worldwide. Generally, the PAC is a permanent piece of Parliament’s financial oversight machinery. As is the case with other committees too, in almost all Parliaments, government and opposition membership of the PAC is roughly proportional to party representation in Parliament. PACs in the Commonwealth vary in size between six and 17 members, with an average of 11. It is a well-established tradition across the world that the Chairperson of the PAC is chosen from the ranks of opposition party members, with over two thirds of PACs adhering to this tradition. Another very strong convention in a large number of Parliaments is that PAC decisions be reached unanimously, and, where this is not possible, a PAC report will record the views of the minority. Thus, although there is seldom a formal requirement that the PAC adopt its reports unanimously, most committees prefer to delay reports until consensus is reached. Of course, in parliamentary democracies organized along party lines, committees are never impervious to the pressures and pulls of party and there is no way of guaranteeing that a PAC will not capitulate in the face of pressure from the majority party.

As has been pointed out, the South African variant of the PAC is the Standing Committee on Public Accounts (SCOPA). The mandate of SCOPA is to ensure that proper financial management standards are upheld in the public sector and this is given expression in s 55 (2) of the Constitution. This requires the Assembly to institute mechanisms - including committees to ensure a) the accountability of all executive organs of state in the national sphere of government, and b) to oversee the exercise of national executive authority and all organs of state. Thus, in holding government accountable for the way it spends the resources of its citizens, SCOPA reviews, examines and evaluates the financial and administrative activities of government departments and the agencies under them. Like other committees of Parliament, SCOPA has the power of summons derived from s 56 of the Constitution and Assembly Rules 138. The Chapter then discusses the relationship between SCOPA and the Auditor-General’s office. This latter provides SCOPA with external audits on the financial statements’ records and transactions of government departments and public entities, and each year SCOPA handles between 160 and two hundred audit reports prepared by the office of the Auditor General. The composition of SCOPA - 17 permanent members - 10 from government and seven from opposition roughly reflects party seats in Parliament. And SCOPA, since 1994, has maintained the long established convention in the majority of Parliaments of choosing its chairperson from the opposition, underlying its non-partisanship. Another point stressed is that although SCOPA is not formally required to adopt its reports unanimously it has, or
rather it did before it tackled the arms deal, found it useful to hold reports back until consensus has been reached. During South Africa’s first five years of Parliament SCOPA developed into an efficient and internally co-operative committee of Parliament. Members of Parliament belonging to SCOPA worked across party political lines in ensuring that irregularities in public spending were properly dealt with. Some very controversial matters (involving senior members of government and government officials), which SCOPA handled in this way during the first five years of the new Parliament, are identified. This turned out however to have been something of a honeymoon period as far as relations within the Committee are concerned. Looming on the horizon was the SDP – the arms deal.

Chapter 5 examines the formation of the Joint Investigating Team (JIT), in particular the exclusion of the Heath Special Investigative Unit (HSIU) from the Team. Having outlined the relevant aspects of the South African Defence Review (adopted by Parliament in April 1998) which set out the requirements and constraints facing Defence Policy in South Africa, the Chapter goes on to identify the concerns expressed in the Auditor-General’s Special Review of the arms procurement process: the Special Review of the Auditor-General of the Selection Process of the Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence [RP 161-2000]. This Report recommended an independent expert forensic investigation into certain key issues, including the importance of settling once and for all claims, which may damage the Government. It was recommended that an exploratory meeting convened by SCOPA be held. This would include the Auditor General, the Heath Special Investigating Unit, the Public Prosecutor, the Investigating Directorate of Serious Economic Offences (IDSEO) and any other appropriate investigative body so as to achieve the best combination of skills and resources.

The exploratory meeting was held on 13 November 2000. Here it was decided that “the Directorate of Special Operation of the National Prosecuting Authority (DSO), the Offices of the Auditor General and the Public Prosecution and the Heath Special Investigating Unit would conduct a joint investigation in order to combine and thus maximize resources, skills and legal mandates.” The Chairperson of SCOPA in particular, made it very clear in several press releases that “the four agencies are in unanimity that the SIU, amongst others, should be involved in the investigation and the President was respectfully urged to take the resolution of the four agencies into account and issue a proclamation to that effect.” It was at this point that the ANC-in-Government
started to intervene in SCOPA and its investigation into the arms deal and the remainder of the Chapter is concerned with this.

It begins with the press statement made by the Speaker, the Honourable Frene Ginwala on 27 December 2000 in which she implied the Chairperson of SCOPA acted outside his powers by writing to the President to urge him to consider issuing a proclamation for the SIU to be involved in the probe into the SDP process, and that it was not within the power of Parliament “to instruct the Executive” to conduct an investigation or to “subcontract its work,” to any of the four agencies. According to Ginwala, the SCOPA Report itself did not explicitly recommend that any of the four investigative bodies must be included in the investigation. It was only a short step from here to the eventual exclusion of the SIU from JIT. ANC members of SCOPA were strongly criticised for letting the Committee’s 14th Report of 2000 - calling for a joint investigation - pass SCOPA at all. From this point on ANC members of SCOPA were instructed to “check with their principals” before taking any decisions on the arms deal. The Ministers of Defence, Finance, Public Enterprise and Trade and Industry joined the fray with their press statement of 12 January 2001 in which they sought to undermine SCOPA’s 14th Report. The Deputy President on 19 January 2001 then wrote a letter to the Chairperson of SCOPA endorsing the Speaker’s interpretation of the 14th Report and launching a bitter attack on SCOPA. Add to this the pressure exercised on the leader of the ANC component of SCOPA, Andrew Feinstein, to resign, the reconstitution of the make-up of SCOPA and the appointment of an ANC Chairperson to SCOPA and the pattern of ANC interference in SCOPA begins to emerge. Maintenance of power (even if based on majoritarian support) was then allowed systematically to trump the imperatives of deliberative democracy.

Chapter 6 examines both the procedures followed in the awarding of the main tenders in the arms procurement deal (beginning with the Advanced Light Fighter Aircraft (ALFA) and Lead-in-Fighter Trainer (LIFT) aircraft) and the way in which the issues raised in the above connection are dealt with in the JIT Report. As far as the LIFT programme is concerned, the minutes of the Armaments Acquisition Council (AAC) meeting of 16 July 1998 made it very clear that the South African Air Force preferred the Aermacchi MB 339 FD over the BAe Hawk 100 cluster, which was both more expensive, and had “limited operational capabilities” (cf. JIT 2001 4.1.14, 4.3.1.5, 4.5.1.9, 4.6.3.2, 4.6.4-5; Ch 6, 205). The decision to select the Hawk 100 was taken at a special ministerial briefing on 31 August 1998, against the advice given to the Ministers concerned by both
defence experts and military personnel. Minister of Defence, Joe Modise’s “visionary” approach to spending on armaments, in which acquisition cost and operational ability are trumped by “national strategic considerations,” including “strategically important industrial participation programmes,” apparently won the day. But when one examines the JIT Report (JIT 2001 4.5.5.2-5; Ch 6, 199) what one discovers is that the “NIP offer of BAe was not properly evaluated during the RFO phase (and that a Report was submitted to the Ministers’ Committee on the proposed package for the LIFT Programme which had a radically inflated Hawk NIP offer). Without these two projects BAe had virtually no NIP package.”

When the draft versions of the final JIT Report were eventually released it became clear that two sets of parallel minutes existed for the special ministerial meeting of 31 August 1998 (Ch 6, 209-211). The second set of minutes is not alluded to in the final Report. The second set of minutes recommended that Cabinet be presented with both BAe Hawk 100 and the Italian Aermacchi MB 339 FD options for a decision, while the first supposedly took a decision to recommend to Cabinet that the BAe Hawk 100 be selected. Be this as it may, the final JIT Report (JIT 2001 4.12.1, Ch 6, 210) found that although the Ministers’ Committee had decided to select the Hawk on the basis of an evaluation model that ignored costs, “this decision was neither unlawful nor irregular (even if) unusual in terms of normal procurement practice.” And it buttresses this with the view that “as the ultimate decision-maker, Cabinet was entitled to select the preferred bidder.” The conception of democracy upon which this view depends has been shown in Chapter 1 supra to contradict the premises of a deliberative conception in which Parliamentary Committees and their “oversight” of the Executive are integral to democracy. If the Cabinet has the democratic right (as the representative of the People responsible for the realization of the Popular Will) to spend public money according to its own criteria, and is not accountable to any body but itself for its decisions, as a certain “non-deliberative” and “Monist” (see Ch 1 supra) view of democracy holds, then the whole raison d’être of Parliamentary Committees is undermined. If, on the contrary, a deliberative conception is employed, and Parliamentary Committees are seen as themselves a site where the People exercises its sovereignty, then the Cabinet has to answer to the People via Parliamentary Committees, and has to account for the way it is exercising the People’s Will.

Concerning the ALFA acquisition, the first irregularity to be pointed out refers to the fact that although eliminated at the RFI stage, the BAe/Saab Jas 39 Gripen offer was permitted to proceed to the RFO stage (cf. JIT 2001 4.1.11-12, 4.1.14). At the final stage
it was preferred to DASA (Germany) and Dassault (France) on the grounds that “DASA and Dassault failed to offer financing (bids) notwithstanding repeated requests” (JIT 2001 4.6.3.1). When the draft versions of the final JIT Report became available, it became clear that matters were more complex. The failure of the French and German contenders for the preferred supplier of the ALFA to make available details of their financing bids during the SDP process meant that they were awarded a zero for the financing evaluation category, counting 33%. The final Report refers to a claim by officials of Government with established conflicts of interest that DASA and Dassault were “repeatedly requested” to make available this information. The draft report, however, contains evidence from officials of the Department of Finance, as well as a written statement from Dassault, to the effect that no follow-up information was ever asked for.

In addition, the final draft contains findings that were not included in the final Report itself. With reference to the choice of BAe/Saab for the supply of ALFA/LIFT, earlier findings in the draft documents (in Ch 6, 211; Ch 7, 285-9) later edited out in the final Report, include, *inter alia*

- “there were fundamental flaws in the selection of the BAe/Saab as the preferred bidder for the ALFA and LIFT programme.”

- “it became clear that during the NIP, DIP, financial, evaluation and the negotiating phase preference was given to BAe/Saab.”

- “decision of the Minister of Defence – could have influenced the process.”

In response to the RFO, four offers were received from suppliers for submarines a) DCN, France for the Scorpion submarines b) GSC, Germany for their 209 1400 Model c) Fincantieri, Italy for the S 1600 submarine and d) Kokums, Sweden for the 192 Type. The offer of the German Submarine Consortium (GSC, Germany) scored very highly with respect to the industrial participation offer. However, the investigators of the JIT found “significant error” when reviewing the NIP evaluation results. This resulted in an overstatement of the total score allocated to GSC by an amount of US $1 584 000 000. As the JIT Report notes, “the large value of the score attributable to GSC amounted to a significant percentage of the total score of GSC” (JIT 2001 6.4.2.1; Ch 6, 223). But, entering flagrantly into contradiction with itself at this point, the JIT Report covers up
this irregularity in the evaluation procedure by saying “in isolation (this error) did not have an impact on the final ranking.” The other “error” discovered when overall NIP evaluation results were examined by investigators, was an understatement of the total value attributable to Fincantieri by US$ 1 276 623 000. But the final JIT Report makes no finding to ascertain whether the understatement of Fincantieri NIP system was an error or “a conscious decision,” nor even any comment concerning the possibility that the latter might indeed have been the case. And once again the problem is glossed over with a “taken in isolation” way out.

Another serious problem with respect to the submarine acquisition process has to do with the fact that not all bidders had submitted business concepts for approval. The fact that not all business concepts were considered by DTI prior to the submission offers makes it possible that some bidders might have been prejudiced by not knowing, if submitted projects would have been approved or rejected before offers had been submitted, whereas others might have already been aware that their business concepts were acceptable for inclusion in final offers (JIT 2001 6.4.5.3; Ch 6, 226-7). Now all the JIT Report has to say about this is “[t]he aforementioned is not in accordance with good procurement practices.” The JIT Report identifies yet another significant issue with respect to the awarding of submarine contract to GSC, having this time to do with what the Report itself characterizes as an “arbitrary” decision by the moderator of the submarine offers. The decision “to allocate an additional 75% of the quoted logistic cost of the GSC, which was significantly less than the logistic costs offered by Fincantieri and DCN, was arbitrary” and secured the contract for GSC. But, again, the JIT Report just leaves matters thus, although the impropriety identified in the Report itself is enough to put the entire deal with GSC into question.

Requests for Information (RFIs) for the procurement of the Corvettes were distributed on 23 September 1997 and a shortlist of four was drawn up from the responses. This consisted of the German Frigate Consortium (GFC) of Germany, Bazan of Spain, GEC of the UK and DCN International of France. When bidders’ proposals were received they were adjudicated against the value system in the technical domain and “only Bazan of Spain complied with all the minimum technical performance criteria. Bazan provided the highest percentage of DIP and NIP in relation to the contract price. Bazan offered the lowest price of the four bidders. GFC was however, nominated the preferred bidder on the basis of their NIP offer. This is despite the fact that NIP is not ascertainable in terms of achievability” (cf. JIT 2001 7.4.5.4(h)(i), emphasis added). Now although the JIT was
unable to unearth any evidence of approval of the decision to allow offers into the second stage regardless of the degree of non-conformance, the Report remained totally silent about whose responsibility it was to take such a decision. Neither does it comment on the fact that GFC won the bid for the supply of the Corvettes on the basis of an NIP offer the value of which could not be ascertained. Nevertheless, JIT admits that: “[i]t is the decision to allow bidders who did not conform with the critical minimum criteria in respect of technical, financing and DIP evaluations was a deviation from the approved value systems. Had this decision not been taken … this could have resulted in Bazan being the preferred bidder…” (JIT 2001 7.4.5.4(h)(i); Ch 6, 247).

As in the LIFT/Gripen case the Staff Requirement document for the Light Utility Helicopters (LUH) contract - which details the performance and equipment requirements forming the basis for the replacement of the Alouette III fleet – was finalized between three and 13 months after the contact had been entered into with the preferred supplier, Agusta of Italy. There was therefore inadequate planning and establishment of needs and technical requirements prior to the request for tenders. Confirming that an impropriety took place, the JIT Report records “a formal staff requirement was not authorized for this project and (this) is a definite oversight” (JIT 2001 5.3.1.4; Ch 6, 218-9). Again, this vital flaw in the procurement process is just passed over as if it had not occurred at all. The JIT Report also refers to a “deviation report” which indicates the requirements of the user that have not been met and will only be addressed later (JIT 2001 5.3.2.3). This shows the extent to which Agusta’s A 109 LUH were unsuitable for the needs of the SAAF and this is itself a result of tenders having been requested and the contract signed with Agusta before adequate planning and determination of technical needs was undertaken. Again, this is just passed over.

Chapter 7 is concerned with the selection of subcontractors, conflicts of interest and the role of the Ministers’ Committee in the SDP process. As advised by both the Special Review of the Selection Process [RP161-2000] of the Auditor-General, and SCOPA’s 14th Report of 2000 to Parliament, the joint task team was to probe as closely as possible the extent of officials’ conflicts of interest, the degree to which they declared their conflicts of interests and whether or not officials’ conflicts of interests had any bearing on the recommendations for the preferred bidders and the ultimate decisions on the successful suppliers of armaments. The case of the Head of Procurement of the DoD, Shamin Chippy Shaik, was considered by the JIT from the point of view of a possible conflict of interest in view of the fact that his brother Schabir Shaik held interests in
companies involved in the SDP process (254-5). The first point to be noted is the confusion in the final JIT Report concerning just when Shamin Chippy Shaik did recuse himself and just how meaningful this “recusal” from PCB meetings was. He had to be physically present at PCB meetings because “he was the link between PCB, the Acquisition Division of the Department of Defence, the Secretary for Defence, the SOFCOM, the Minister of Defence and the Ministers’ Committee.” It was agreed that whenever the Corvettes Combat Suite came up for discussion he would hand over the Chair to Admiral Simpson-Anderson, Chief of the Navy. But this is irrelevant because even had SC Shaik not been allowed to attend the meetings he, as Chief of Acquisitions, would have been informed of the details of decisions taken with respect to the Corvettes Munitions Suite and would have been easily able to convey such information to his brother. Hence as the JIT Report acknowledges, there remains “the perception of improper influence created where Shamin Chippy Shaik played a key role in almost all aspects of the acquisition” (JIT 2001 11.10.10, 11.10.12, 11.11.8.3-4; Ch 7, 261-4).

According to the JIT Report ‘[i]t is clear that SC Shaik’s “recusal” from PCB meetings was no recusal at all.’ The JIT Report once again contradicts itself here because in addition to the above it also ‘“finds” no evidence to indicate that any individuals influenced the selection process’ (cf. JIT 2001 6.8.8).

The only visible audit trail vis-à-vis the categorization of subcontractors in either Risk B or C equipment (and the consequent imposition of a risk premium of some R42 million to the C212 IMS price) was created through the minutes of the PCB meetings of 8 June 1999 and 24 August 1999 – “all chaired by the Chief of Acquisitions, DoD, SC Shaik who, as the JIT Report points out, neither declared any conflict of interest nor recused himself” (JIT 2001 10.4.5.6(b)(e)(f), Ch 7, 295). Now another meeting apparently took place on 19 August 1999 where senior members of Government discussed and took a decision on the issue of categorization of sub-systems. As the JIT Report states “[t]his special meeting, if it took place, was one of the most crucial meetings of the PCB” (297-8). But JIT adds, “No agenda for a meting of 19 August 1999 could be found and in all probability no such meeting took place. Based on the above evidence, the only conclusion that can be drawn is that if a decision were taken regarding whether the IMS of C212 should be category C, doubt exists regarding the regularity and validity of such a decision and the process followed in arriving at such a decision” (cf. JIT 2001 11.6.8.16-7; Ch 7, 298, 299-300).
In addition “there is no evidence to indicate that a proper risk assessment of the IMS was made. No minutes of the Naval Board meetings (or any other board, organ, agency or body involved in the procurement process) reflecting a decision to opt for the Detexis bus and not C2I2’s IMS could be found. It is therefore not clear when and by whom the decision was taken not to award the contract to C2I2” (cf. JIT 2001 11.6.9.8, 11.11.4.14-5; Ch 7, 300-1). But Category B risk was ultimately imposed on C2I2’s data bus, and GFC/ADS consequently imposed a risk premium of R42 million on C2I2’s IMS’s offered price of R44 303 918 00, which doubled its value to R89 255 000 and priced it out of reckoning in favour of the Detexis Diacerto data bus. The Detexis data bus was offered at a price of R49 255 000.1 The JIT concluded that “the calculation of the risk premium (imposed on C2I2’s IMS’s offered value) cannot be evaluated without evidence from the GFC and the assistance of an expert witness and that from a cost and time point of view it was not feasible to pursue this matter” (JIT 2001 11.11.9.2; Ch 7, 309-310). In this matter, vital for the overall integrity of the arms deal, the JIT was content to leave things hanging in this highly inconclusive manner.

This Chapter also tackles the role of the Ministers’ Committee vis-à-vis the irregularities of the arms acquisition process and the way this is dealt with in the JIT Report. With respect to this the JIT found that “[n]o evidence was found of any improper or unlawful conduct by the Government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Ministers’ Committee or

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1 Officials of Government testified that C2I2 was not allowed to resubmit subsequent tenders in order to adjust their quotations as was allowed ADS on the SMS “because C2I2 was not the designated supplier” (JIT 2001 11.8.2.8). Could it be that ADS was awarded the contract for the System Management System solely on the grounds that it was the nominated supplier, notwithstanding evidence before JIT (JIT 2001 11.8.2.13) that C2I2 may have offered a cheaper proposal for the supply of the SMS? If ADS got the SMS contract regardless of its more expensive option, as evidence indicates, what then would have been the rationalization or justification for awarding of the contract - value for money? - given the potential harm to the State (JIT 2001 11.5.2.8) created by the idea of the nomination of a single supplier? The breadth and volume of the improprieties, irregularities, and cut-and-paste procedures which marked Government’s multibillion Rand weapons purchases programme immediately become much more apparent when the purported justification for the award of the submarine contract to the Germans and the preference of the Germans also for the supply of the Corvettes, is read side by side with the reasons purportedly justifying the passing over of the C2I2’s Data bus for the Corvettes Combat Suite, as well as the refusal to award the LIFT contract to the Italians who, by virtue of having offered the lowest cost of the LIFT in relation to their competing rivals, were the preferred bidder under both the costed and non-costed options of the equipment.
Cabinet. There are therefore no grounds to suggest that the Government’s contracting position is flawed” (JIT 2001 14.1.1). Not only is this distinction between Government and its officials nothing more than a forced and ad hoc attempt to get Government off the hook - as is the parallel distinction drawn in the JIT Report between “government” and “state” (see Ch 7, 276-7, 316) - but, in addition, it must not be overlooked that earlier, Government had conceded that Cabinet was the “ultimate checking mechanism” in the arms procurement process due to its “overall responsibility over Departments of Government” (cf. Committee Minutes, SCOPA, 29 May 2001, 7, and 26 February 2001, 3; Ch 7, 274). The Chapter ends with a discussion of the endorsement by the ANC majority component of SCOPA of the JIT Report - which was not deliberatively arrived at but instead rammed through the Committee - and a consideration of the overall significance, from the point of view of democratic theory, of both the JIT Report and its positive reception by SCOPA.

In theory, the main point stressed in this thesis is that for any people to claim to be living under conditions of democracy it is not enough for the Government of the day to have been democratically elected, i.e., to represent a majority. The critique of simple majoritarian democracy developed in this thesis (especially in Ch 1) is not the standard Millian critique of the Tyranny of the Majority. While what Mill has to say about the limits of majoritarianism, especially the importance of the institutions which protect individual freedom, is very important to any conception of democracy which takes the idea of freedom simpliciter seriously, the perspective adopted in this thesis concentrates on the idea of public deliberation as necessary for Popular Sovereignty. In other words, what is argued is that without adequate access to information and political knowledge, particularly concerning the manner in which Government is actually carrying out the Will of the electorate, no people can be said freely to have formed its Will. Now, although Parliamentary Committees are not the only institutional means whereby such deliberation can be practised, they constitute - for very specific reasons - a primary institutional site of such public deliberation. When, therefore, the Government of the day no matter that it be democratically elected, interferes with the proper, i.e., deliberative, functioning of its committees, it is thus undermining one of the crucial conditions of democracy per se.

One of the central aims of the thesis is, then, to track the emergence of the majoritarian stifling of SCOPA, the PAC of the South African Parliament, and therefore one of the most important committees in the South African parliamentary system. This crude majoritarianism vis-à-vis SCOPA first emerged with the notorious intervention of the
Speaker of the House, the Honourable Frene Ginwala. This was followed, *inter alia* by the removal of the SIU from the JIT responsible for investigating the arms acquisition deal. The importance of this is the negative impression it created that the investigation was deprived of crucial forensic and analytic resources and the negative impact this had on the very poor quality final Report. The majoritarian stifling of SCOPA came to a head when the Committee endorsed, by majority rule, the final JIT Report. What is wrong, it might be asked, if a Parliamentary Committee decides on the basis of a majority vote? Under conditions of political division is it not necessary that the will of the majority prevail over that of the minority if the principle of political equality is to be respected? And, it might be added, even though SCOPA does not deal with policy issues but only public accounting, is it not still the case that conflict ought to be expected in the Committee given the larger South African political environment? After all, the decisions taken in a PAC such as SCOPA are not quite the same as temperature readings; decisions *vis-à-vis* public accounts are different from “taking the temperature,” i.e., they are not “neutral” in the sense in which the latter certainly seem to be. Given all this why should SCOPA not vote on majoritarian lines?

As has been carefully argued in Chapter 1 *supra*, majoritarianism is not *per se* incompatible with democracy. Given the antagonistic nature of modern politics recourse to the majoritarian principle can hardly be ruled out. On the other hand, it must also be emphasized that the electorate or people must have adequate access to political knowledge and information concerning what is being done in its name by the Government, (the embodiment of the Popular Will), in order to be able to make a rational decision at the moment of the next elections: and this requires a robust debate and thorough public deliberation. Without this a decision by consensus is hardly better than one by majority. Whatever the case, a majority decision *not* rooted in public deliberation cannot be considered (fully) legitimate. The thesis defended here is that when SCOPA endorsed the final JIT Report, this decision, although reflecting the will of the majority of the members of SCOPA, violated a crucial principle of democratic decision-making, *viz* that any democratic decision must be taken in a context of the fullest possible awareness of the relevant facts of the matter. This in turn, as has been pointed out, is linked to pluralism in the sense that only if all relevant perspectives and interpretations (of the facts of the matter) are allowed equal opportunity for ventilation and consideration, will the best possible accounts of such facts of the matter become available. The JIT Report did not provide the members of SCOPA with anything like an adequate investigation into Government spending practices in the course of the arms deal. The Report failed, in other
words, to satisfy even the most minimal conditions of “reasonability” and so any decision based on it also fails to cross the threshold of acceptability.

But of course things do not end here. In failing to perform its investigative role - which is what the SCOPA vote endorsing the JIT Report amounts to - SCOPA failed to perform its proper role vis-à-vis South African democracy more generally. Just as the members of SCOPA needed access to the relevant information and political knowledge (the fullest possible awareness of the facts of the matter) in order to take a (fully) democratic decision, so, too, does the South African people (or electorate) need to be able to give “reflective consideration” to its various options before it takes a decision (at the moment of elections). This space of “collective reflection” is what is understood by the specifically deliberative dimension of democracy in this thesis. Although not the only way in which the electorate (or people) can access the knowledge and information it requires in order to take a “considered” decision, Parliamentary Committees are a privileged institutional means for the production of such information and knowledge. This is essentially because of their access to state resources and to the authority and power of the state. When SCOPA failed in its investigative function, in other words, what happened is that the South African people (or electorate) were deprived of the information and knowledge needed for it “reflectively” or “deliberatively” to compose its Will. How can it assess the claim of the ANC-in-Government to speak and act on its behalf (i.e., to express the Popular Will) when it does not have access to the relevant information concerning just what is done - and has been done - in its name? Here is where the importance of “transparent” government enters the democratic equation and, ultimately, as should already be clear, what is at stake here is the “transparency” of the people to itself:

In this sense, then “deliberation” is a “formal” or “procedural” criterion, independent of any content - that is, in order to satisfy the requirements of deliberation certain conditions have to be satisfied, but the satisfaction of these conditions is compatible with a wide range of decisions, that is to say, satisfying the conditions of deliberation does not predetermine the outcome/content of any decision. And precisely, because deliberation involves taking the views and perspectives of others seriously into account (see Ch 1) deliberative democracy is the one form of democracy that can generate “support” for majoritarian decisions on the part of the minority. Only under conditions of deliberative democracy, then, does democracy become something more than the sheer exercise of impulsive majoritarian interest. It should be obvious what the relevance of this is to SA
today. On the one hand, the society is still shot-through with antagonisms and inequalities, which need to be both ventilated and addressed; on the other hand, democracy is young and fragile in South Africa and, although it has become almost platitudinous to say so, it remains true that this society also needs unity. It is for this reason that deliberative democracy is so important; it needs to be defended and promoted - in the very public sphere that it aims at strengthening for the sake of South African democracy itself.

It cannot be gainsaid that deliberation, the procedure of open public deliberation, imposes standards on agents that go well beyond the requirement that the Will of the People be represented by the will of the majority. It needs to be recognized that in order for the conditions of deliberation to be satisfied agents need to go beyond the mere pursuit of power via elections. The interests of the majority in power, the Government of the day, in retaining power, cannot be allowed to trump the imperative of reaching out to others, taking their views seriously and exploring with them their interpretations of the relevant facts of the matter at hand. Just holding on to power, even if it has been won via elections based on equality, (i.e., one-person one-vote value) is the lowest possible form of “democracy.” If the people have been denied the possibility of deliberation, of thorough public debate based on maximum access to the relevant facts of the matter, is it even possible to say that its expressed Will is the same as the Will it would have formed under the (counterfactual) conditions of adequate deliberation?

All citizens, particularly those able, in a variety of ways, to influence the workings of Parliamentary Committees, need, therefore, to resist the temptation of allowing the imperatives of power to trump those of deliberation. Parliamentary Committees play a crucial role in terms of their input into deliberative will formation amongst the public at large and ought therefore to be as unconstrained as possible in their pursuit of the facts of the matter. All citizens, particularly elected representatives, are thus under a democratic obligation to promote the investigative practices of Parliamentary Committees.

It is the argument of this thesis that in the case of the South African PAC, SCOPA, this did not occur after the first democratic Parliament. As soon as the Government’s arms deal spending came under the spotlight the ANC closed ranks and started to prepare the way for the eventual whitewash of Government by SCOPA itself. As has been explained, the fact that the decision by SCOPA to endorse the JIT Report reflected the will of the majority of the members of SCOPA is beside the point. It is argued furthermore, that this
could mark a turning-point in the (short) history of South African democracy: prior to the arms deal investigation, the ANC-in-Government had not resorted to the majoritarian steamrolling of SCOPA, but had allowed the Committee to operate in as unconstrained a way as possible and to carry out as thoroughly as possible its investigations into Government practice. All this changed once the arms deal entered the domain of public political discourse. A vital component of deliberative democracy - the input of Parliamentary Committees (with all their powers of information acquisition) into the process of collective reflection and will-formation - was removed as soon as the ANC began mobilizing to “neutralize” SCOPA. So, a lack of deliberative democracy in the Committee repercusses negatively on South African democracy more generally: to the point where it might be said to undermine any claim that the South African people (electorate) is really in control – via its democratic institutions – of itself, of the laws and conditions under which its members live. Furthermore, it needs to be stressed that what has been termed a simple or crude majoritarian tendency vis-à-vis SCOPA, emerged well before the SCOPA decision on the JIT Report and, in fact, should be seen as having prepared the ground for it. A further twist is added when it is recognized that the SCOPA decision ended up reinforcing the very crude majoritarianism that made it (the SCOPA decision) possible. To conclude this discussion, then, a distinction has to be drawn between crude majoritarian pressure on the Committee and crude majoritarianism in the Committee, although these are mutually reinforcing.

Most of the conceptual analysis and argument undertaken in Chapter 1 with respect to democracy and the role of Parliamentary Committees have already been touched on in the Conclusion. It is important however not to overlook two further points made in Chapter 1. The first concerns the notion of democracy as a network of interconnected practices, none of which can be considered the self-sufficient essence or core of democracy. Thus democracy cannot be reduced to any single institutional complex, such as “elections/voting/national representation.” This, of course, is part of democracy but is drained of meaning if not combined with many other interconnected practices, such as the “oversight” functions of committees and Judicial review. The People, is, in other words, not to be considered as concentrated only in the practice of elections - this monist view of (Popular) Sovereignty has to be rejected if the dependence of democracy on a whole system of institutions and practices (including the contributions of Parliamentary Committees) is to be acknowledged. A pluralist conception of Popular Sovereignty as exercised (simultaneously) in several institutional sites is thus proposed: Parliamentary Committees being just such an institutional site, not secondary or “epiphenomenal” in
relation to some “essence” of democracy, but as central to the practice of democracy as elections/voting.

The second point concerns the issue of whether the move to deliberation somehow involves eclipsing, or at least not fully acknowledging, the antagonistic and conflictual dimension of modern politics. This is the criticism put forward by several critics of deliberative democracy, including Chantal Mouffe. On this view (discussed in Ch 1), deliberation, as we have defined it, i.e., as collective reflection on the basis of equality, is said to presuppose consensus. The error here is as follows: although deliberation involves the subject trying to transcend the narrow horizon of her self-interest and (to use Iris Marion Young’s expression) attempting to “think in the place of the other,” this does not have to be understood as involving any kind of self-forgetting or self-obliteration, just a consideration of one’s initial definition of one’s interests in the light of reflection and discussion over the facts (and values) of the matter. Deliberation does not depend on consensus, but may result in it, and uncoerced authentic consensus is surely the “first-prize” of democratic practice. Mouffe’s position involves an a priori rejection of the very possibility of consensus, which, it is argued, is just the flipside of an a priori rejection of antagonism and conflict as structuring principles of modern politics. The position developed and employed in this thesis attempts to steer a path between these two extremes. Consensus needs to be encouraged and acknowledged when authentic, at the same time, even if antagonism ultimately prevails, deliberation (as argued in Ch 1) ratchets up the coefficient of democracy.

The performance of SCOPA in the arms deal has been described supra as setting a very negative precedent for democracy both within Parliamentary Committees as well as outside them, i.e., within the parameters of the South African state more broadly. It is suggested here that this episode marks a “milestone” in South African democracy given both the importance of SCOPA within the system of South African parliamentary committees, and the arms deal itself. When a committee like SCOPA fails so dismally to discharge its proper function, viz to ensure government funds are spent in accordance with the Public Finance Management Act (PFMA), 1999, this sets off the alarm bells for South African democracy. What it really means, as has been argued supra, is that the South African people, as the collective subject of democracy, has been deprived of political knowledge and information without which the people cannot claim to be sovereign over itself, as access to the political knowledge and information in question may very well have resulted in a different formation of the Popular Will. The people’s
consciousness of itself has been truncated, in other words, and the people are, here, a “damaged subject,” and, by no means can it be reasonably said to be a sovereign democratic subject.