

https://dspace.org/

# Legislative Committees and Deliberative Democracy: the Committee System of the South African Parliament with Specific Reference to the Standing Committee on Public Accounts (SCOPA).

**Obiyo, Robert Egwim**

**2007-03-02T11:26:11Z**
http://hdl.handle.net/10539/2197

Downloaded from a DSpace repository. https://dspace.org/

# 2. Committees in Legislatures: an Overview

*The "best" form of legislatures is one composed of men of independence, both in thought and means, able to deliberate free of vested interests and restrictive demands of an uninformed mass (P Norton 1990, 2)*

*The influence of committees…varies inversely with the strength and influence of political parties...; generally, the stronger and more disciplined the party caucuses…the less powerful the role of committees… Conversely, the less cohesive the party caucuses, the more powerful the role of committees (CC Campbell and RH Davidson, in LD Longley and RH Davidson 1998, 124-5)*

Legislatures are formally designated bodies that meet in set places – usually dedicated buildings – in order to carry out particular tasks, hence scholars' designation of legislatures as institutions (P Norton 1990, 1998, SC Patterson 1995). Beyond their "decisional" functions of making public policy, parliaments variously fulfill significant "regime-support" functions, e.g., legitimation, recruitment, socialization and training. Known for the committees they keep, it is a cliché in the literature on legislatures that strong committee systems mean strong legislatures. Committees also refine legislative products say RH Davidson and WJ Olleszek (1996). According to them, committees are the means by which parliaments sift through an otherwise impossible jumble of bills, proposals, and issues. In broad terms, committees serve two purposes: individual and institutional. Intellectual stimulation, constituency and career reasons, on the individual level yet, committees are also the centers of policy-making, oversight of government agencies and public education (largely through the hearings they hold). They act as "safety-valves," or outlets for national frustrations and challenges. As forums for public debates and deliberation, parliamentary committees vent, absorb, and resolve problems that place enormous strains on the political system. The individual and institutional purposes of the committee system have had sometimes to conflict where members who gravitate to committees to "bring home the bacon" (public goods and services) to their constituents have not been the most impartial judges of the policies they authorize (Davidson and Olleszek 1996, 195-6).

KC Wheare's (1955) definition of a committee is a body to which some other body has referred or committed a task, and to which the committee is, in a sense, subordinate (Wheare 1955, 5-7); and for CC Campbell and RH Davidson's (1998) committees are small groups of lawmakers who are assigned, on either a temporary or a permanent basis, to examine matters more closely than could the full chamber (Longley and Davidson 1998, 126). It cannot thus be overemphasized that committees and subcommittees of legislatures are the crucial sites of legislative and other decisions, as well as oversight of the executive. Members of US Congress have, back in 1959, called committees "the eye, the ear, the hand, and very often the brain" of the Senate and House of Representatives (*Canon's Procedures in the House of Representatives,* House Document 122, 80th Congress, 1st session, 1959, 83). This view of Congress committee system is not new. 200 years ago, Woodrow Wilson wrote of Congress committees, *viz* "Congressional government is committee government…Congress in its committee rooms is Congress at work" (W Wilson 1885). George Goodwin, in 1970, entitled his work on Congress committees, "The Little Legislatures" (G Goodwin 1970). Both KC Wheare in his *Government by Committees* and Woodrow Wilson had, at different times, referred to legislative committees as "Little Legislatures" long before 1970 (W Wilson 1885, KC Wheare 1955). Further testimony to the importance of committees in legislatures is provided, according to JD Lees, by the extensive range of research work done exclusively on congressional committees (Lees and Shaw 1979). As C Kilpatrick observes, statistics indicate that in 1964 alone there were 560 inter-agency committees in American national government (Kilpatrick 1965).

TW Madron reminds us that "much of what politics is, takes place in small groups" (Madron 1969) and while not all small groups are committees, the vast majority of committees are small groups. S Verba earlier expressed the view that "the bulk of significant political decisions … are made neither by individual, autonomous decision-makers … nor by all the members of the political system, by the electorate, or by the rank and file of a political party. It is to the face-to-face group that one must look if one is to find the locus of decision-making in political systems" (S Verba 1961, 19). If the small, face-to-face group is where the vital decisional and deliberative interactions occur within organisations, then, in legislatures, these interactions occur in the official committees. Yet, when one searches for published material on committees in legislatures outside the US and Europe, one quickly becomes all too painfully aware of a gross imbalance in the literature. This deficiency provides the theme of an article by Garrison Nelson (1974) in

which he decries "the Washington bias" in legislative studies that has led to an assumption that "Congress, and Congress alone, … (is) the only legislature worthy of study." Garrison Nelson is not alone in noting the offensive imbalance in the literature on legislatures, as other scholars such as Philip Norton (1990) decry it too,

> Just as legislatures are remarkable, so too is the study of them. It is remarkable for being skewed. There is a mass of literature on particular legislatures. We know a great deal, though not as much as some observers appear to believe, about legislatures in Western countries. The US Congress is especially well served by the literature. So too, though to a lesser extent, is the British Parliament and the assemblies of other Western European nations. Yet we know relatively little about legislatures as a particular species of institution. Country-specific knowledge has not yet been assimilated on any comprehensive and systematic basis to allow a substantial body of generalizations to be drawn. Few truly comparative studies have been published. Of journals that encourage comparative legislative studies, such as *Legislative Studies Quarterly* in the USA and *Parliamentary Affairs* in Britain, the bulk of material submitted is country-specific and, indeed, insular; that is, it is not offered within a broader comparative framework. Indeed, in the case of *Legislative Studies Quarterly*, it is usually specific to the USA, accounting for almost 60 per cent of all articles published, a product of supply rather than editorial demand (Philip Norton 1990, 1-2).

Systematic studies of the role of legislative committees have very largely been hitherto confined to the committee systems of the American Congress and certain European Parliaments. More than a dozen committees of the American Senate and House of Representatives have been individually subjected to detailed scrutiny in books and articles, and at least four book-length studies are devoted entirely to congressional committees. Moreover, in the three most recent such studies, there is only one reference to committee system in other national legislatures. What literature there is on Africa and other regions of the developing world is concerned with exclusively legal issues and can, unfortunately, best be characterised as formalistic. There is, thus, a very pressing need for this study. It will contribute not only to our understanding of committees in the *developing* world, but will in our view, also illustrate the importance of theoretical and conceptual analysis to any attempted elucidation of actual political processes.

The British and US legislative committee systems are, respectively, the oldest and the most powerful and a broad investigation is thus undertaken in what follows into the legislative committees of the British Parliament and the United States' Congress, with

special attention to committees' structure, membership, procedures as well as their decision rules, so as to locate the committee system of the South African Parliament within a broad spectrum. The history of Parliament in the UK (the Mother Parliament) spans eight centuries, and, as NW Polsby (1968), G Loewenberg and SC Patterson (1979), as well as P Norton (1990), argue, is characterized by the extent to which it established a degree of autonomy and developed effective procedures in the early periods of its existence, but has arguably lagged behind other legislatures with respect to the degree of its institutionalization in the twentieth century. It has, in recent times, witnessed an unusual degree of "organizational articulation," with a shift of emphasis from "chamber deliberation" to scrutiny by committee. In contrast, the US Congress has a shorter and remarkably different history to that of the Mother Parliament, but is a highly institutionalized body, with an emphasis on committees that exceeds and predates the shift to committee work in the Commons.

## 2.1 Committees in the British Parliament

The committee structure of the British House of Commons is complex and not amenable to easy understanding or explanation and this is, in the main, rooted in the informal or, rather, *ad hoc* nature of its growth. These committees have been around and acquired their role since the late sixteenth century, in response to standards and patterns of the special, and intimate interrelationship between the executive and Parliament which is uniquely British. As SA Walkland (1979) says, the political and cultural factors that have broadly determined the styles of the committee system in Britain, make them unresponsive to certain types of explanatory theory, while the separate treatment of the main categories of committees is made necessary by their individual development (SA Walkland, in Lees and Shaw 1979, 242).

Britain operates a parliamentary form of government with a unique degree of stability. Political analysts regard this stability as the outcome of the interaction of cultural and structural factors within British society. Harry Eckstein (1962) points to the British attitude toward political leadership that emphasizes government before representation and consent, and a high degree of respect within the British social and political systems

(Harry Eckstein, in SH Beer and AB Ulam 1962, 73). Other students of the British Parliament are in agreement. Almond and Verba, in their survey analysis, classified Britain as a country in which the "deferential subject role" is "strongly developed and wide spread" (Almond and Verba 1963, 456). Structurally, scholars point to the disciplined two-party system that has developed since the nineteenth century and which is the means of providing and renewing strong political leadership, backed by cohesive and controllable majorities in the House of Commons. The strengthening and intensification of an old-time cultural pattern of authority by structural political factors, according to Walkland, created in Britain a special dependence of the representative assembly on the executive, and resulted in the structuring of the activities and procedures of the House of Commons into the business of government to a degree that produced a strong organic relationship between them – an almost symbiotic relationship that came to define the cardinal attributes of the modern Parliament of Britain. This close connection between parliamentary procedures and administrative practice is one in which Parliament independently criticizes government only in ways that largely support and facilitate government administration and control.

Lees and Shaw (1979) turn to the two main areas of parliamentary interest, *viz* public legislation and expenditure, to explain this peculiar characteristic of the British Parliament. For them, the legislative procedures of the House of Commons developed and stabilized in the last quarter of the nineteenth century, though they recognize the growth of control of the legislature by the executive accorded the House a much diminished independent investigatory and deliberative role compared to what had been customary in the earlier periods of the political and administrative development of Britain (Lees and Shaw 1979, 244). Slowly but surely public bill procedures in the House of Commons were tailored down to where the initiative in the legislative process passed almost entirely to the executive. Likewise, Parliament was drawn into contributing to a coherent plan of public and financial management in which parliamentary budget control was designed mainly to support government's aim of bringing its own spending procedures under orderly treasury administration (Lees and Shaw 1979).

The British Parliament has not performed its main duties through a strong committee system and both government and the House have thus far been markedly reluctant to increase and strengthen parliamentary committees for the kind of debates, deliberations and oversight typical of a strong committee system. The committee structure of the British Parliament is sketchy and subordinated to the executive whose desire for a total

political control of the House disinclines it from multiplying committees and expanding the scope of their remit. The restricted, circumscribed, conception by government of the proper role of committees had, until 1979, discouraged the assumption by parliamentary committees of wide investigatory and deliberative roles. Although the Commons' committees on *legislation* were carefully created in the 1880s, like their *select* committees counterparts, and accorded the requisite broad inquisitorial and deliberative powers (but were *standing*, i.e., they were embodied in standing orders and hence were automatically renewed each session), they were increasingly accommodated to a very limited and reduced role in relation to Government-sponsored legislation. The growth of more controversial legislative measures reinforced the desire of government for political control of committee proceedings and led to increased emphasis on partisan considerations in decisions about memberships of committees (SA Walkland, in Lees and Shaw 1979, 245). The procedure of committees, SA Walkland argues, lost its investigatory character and was rapidly modelled on that of a committee of the whole House in which effective leadership was assumed by representatives of Government. In the same vein, the oversight work of the Public Account Committee (the main financial select committee of the Commons, put in place to oversee an independent audit of public spending while adhering to laid down principles) was defined by treasury regulations in which provision was made for ministerial representation to safeguard the treasury's interest in a committee of predominantly private membership (Lees and Shaw 1979).

Buttressing and reinforcing the executive in shaping the basic structure of the committees of the Commons and its narrow attitude toward any experimentation with committees, was the strong belief of MPs that Parliament as a whole - or the more informal parliamentary parties - was *the forum* where government should answer for and explain its business and be criticized if need be. Guarding against administrative mismanagement and waste was the only role seen as necessarily requiring the (limited) use of parliamentary committees. The stronger MPs hold party political views, the more anxious they are to seek publicity for them and to avoid consensual and deliberative decision procedures. In response to the proposal in 1965 concerning an extension and specialization of committees, came the following comments from two MPs, Michael Foot and Sir Martin Redmayne,

more and more committees sitting while the House of Commons itself is in session can only mean that fewer and fewer Members will be available to attend its cloistered rites. Moreover, more "committees upstairs" are likely to nurture the miserable deception that

more and more issues can profitably be "taken out of politics." On the contrary, the purpose of parliamentary reform should be to take more issues into politics, and, above all, into Parliament's principal place of debate (Select Committee on Procedure, 1964-5).

JP Mackintosh (MP) (1970) bemoans the coincidence of the attitude of some MPs with that of Ministers of Government toward committee work. For him, the majority of MPs "are loyal supporters of their front benches and they see the Commons as an extension of the struggle for power which takes place at elections … the idea of select committees of the specialist investigatory kind seems a foreign intrusion into the set-piece confrontation which, for them, is the life of politics."

As necessary consequences of this essential conservatism of both the Commons and Government towards the use of committees, the general style of committee proceedings has been marked by a reluctance to specialization in the organization of the standing committees, and also in the organization of the select committees that held the field in the House of Commons until the recent 1979 reform of committees (see Gavin Drewry 1985). Select committees lack the degree of professionalism that is often associated with investigatory committees in other legislative settings. "Investigatory," scholars argue, is an improper term in describing the committees of the British Parliament, whose function is more interlocutory than investigatory, in that they initiate and conduct lengthy exploratory dialogues between an essentially lay, amateurish, part-time, committee membership and representatives of the executive. This finds expression in the late afternoon sittings, poor compensation for members, and minimal facilities, all devised to exclude representation by full-time or professional membership. When committees employ the services of specialist advisers it has been more to suggest the lines on which a committee enquiry might be structured, than to undertake independent research on the committee's behalf. Within the British parliamentary system the committees, according to Lees and Shaw (1979), relate closely to the functions of their parent assembly, either continuing a process (legislation) within political situations that have been closely defined for them elsewhere, or they engage in cross-bench pursuits (sometimes of constitutional importance) which end up being sanctioned by the plenary House and by the procedures of Parliament as a whole. According to Philip Norton (1998) membership and chairpersonship of a committee has an inferior status compared to the positions of a junior minister and parliamentary private secretary, which are generally perceived as a first step towards ministerial appointments (Norton, in LD Longley and RH Davidson 1998, 145-6). As a road to political power, service on committees ranks by and large low.

## Standing *Legislative* Committees

Subsequent to the electoral defeat and resignation of Disraeli in 1868, the practice of sending bills to *ad hoc* committees (standing committees) was reformed. Philip Norton (1998) points out that the only opportunity for MPs to scrutinise and question government in detail away from the chamber has been in standing committees (Norton, in P Norton 1998). Yet, standing committees, within the British Parliamentary system, are firmly structured and fused into the business of the parent assembly to the point where they barely exercise any independent role of their own beyond the political articulations of the plenary House of Commons. According to SA Walkland (1979), they have not been able to develop as discrete, autonomous, political subsystems with attributes of independent action. Standing committees easily adapt to the parent House. They lack permanence as most of them, as groups of individual legislators, only last in that form for the duration of the committee stage of one particular bill and this, on average, is only a few weeks. The internal relationships of standing committees are marked by formalized political conflict in their membership, organization, and procedure, and their continued operation in this form, as bodies having specific tasks, depends on the support they receive from the wider system of which they are part (Lees and Shaw 1979). As SA Walkland observes, there is a very close working relationship with the parent House and control of the committees by a process of structural absorption into it (SA Walkland, in Lees and Shaw 1979, 250). At best, they are the House of Commons at work with a smaller quorum. It is only in a very exceptional case that standing committees unite in a single opinion over some issue before them that goes against the expectations of parliamentary parties and Government, which, after all appoint their members and chairpersons respectively. Committees fail to avail members of independent leadership positions, hence Philip Norton sees “no opportunity for backbench Members to use committee service for the purpose of subject specialisation or career advancement” (Norton, in LD Longley and RH Davidson 1998, 144). Service on committees, for MPs, is, in the main, an extension in a particular area of their wider role as party members, hence they respond strongly to the political needs of their parties, which is of vital importance in their view of their role in Parliament.

Because lawmaking in the British Parliament is almost the exclusive reserve of the executive, the contribution of legislative committees in this regard *via* the desirable strong debates and deliberations on policy issues, is circumscribed and very limited. As students of the British legislature put it,

> With no deliberative or inquisitorial powers they work to a legal draft, whose principles have been confirmed at the second reading stage in the House of Commons. The stage for which they are responsible is only one of numerous stages in the legislative process. Widespread consultation with interests, leading often to irrevocable commitment, has already occurred in the relevant executive department. Further legislative stages – report, third reading, and the Lords' stages – provide opportunities for reconsideration of committee decisions. These opportunities for revision provide a framework of control within the committee work. In addition, control of committee proceedings by the party whips normally assumes an alignment of attitudes that is acceptable to the wider party organisation of the House, while the availability of Allocation of Time Orders enables the Government to restrict and focus committee proceedings when necessary (Lees and Shaw 1979, 250).

In light of these forums of control what role is left for legislative committees is very difficult clearly to distinguish. Government rarely accepts committee amendments to a bill. The proceedings of legislative committees are, in the main, a continuation of the dialogue of the plenary of the Commons between Government and Opposition. Ordinarily, it is the essence of work in committees to allow Parliament, *inter alia* to increase the amount of work done, ensure more in-depth deliberations on issues, and provide a forum for public influence on policies and issues. However committees' decisions on Government issues and policies often remain as ambiguous and vague as such decisions are in the plenary session of the Commons, before any referral to committees. Up until very recently, in fact 1945, Parliament's standing committees (with permanent status since the late nineteenth century) were not accepted by the Commons as the critical stage of legislation in the House. The standing committees before 1945 were regarded as "minor conveniences," put in place to more quickly deal with and dispense of trivial legislation.

Attempts to rationalize the committee stage in terms of legislative efficiency have usually failed. However things have changed in respect of these committees and, as Herbert Morrison observes, the committee system has been strengthened since 1945 with the

removal of the various limitations on them and the application of "guillotine" resolutions to committees' proceedings (Morrison 1964). Even the most important bills can now go to standing committees. In broad terms, only some bills of major importance, financial measures, bills that need to be passed quickly, and "one-clause" bills unworthy of work in standing committees, are left for the floor of the plenary of Parliament. But in spite of changes, scholars still doubt the effectiveness of standing committees in the legislative process. The purpose of the committee is, in the words of Sir Thomas Erskine May, to render a bill "more acceptable," but what actually takes place is essentially an extension of the partisan battle on the floor of the House. According to Neil McNaughton (1996), consideration of possible amendments to legislations is the key role of the standing committees, but, in practice, Government's majority of loyal MPs on each committee ensures that only those amendments of which Government approves are adopted (Neil McNaughton 1996, 173). Similarly, JAG Griffith tells us

> If the value of the proceedings in standing committee on government bill is judged by the extent to which Members, other than Ministers, successfully move amendments, then the value is small. It has been as rare for ministerial amendments to be rejected as for other Members' amendments to be successfully moved against government opposition (JAG Griffith, in SA Walkland and M Ryle 1981, 130).

Whereas the conflict between the parties ensures government is subject to critical debate, the dominance of a single party in the House ensures, as Philip Norton puts it, that the government gets its way.

By the end of 1945 parliamentary committees had an upper membership of fifty, excluding the chairperson, and, as part of Richard HS Crossman's "streamlining" of 1967, a lower membership of sixteen, as provided for by the relevant standing order of Parliament. Within these limits, the size and membership of a committee for a particular bill, is determined, with the political composition of the House borne in mind, by the usual channels of the Whips on both sides of Parliament in conjunction with the Whips of all parties, acting through the Committee of Selection, with larger committees being appointed for important bills (Lees and Shaw 1979, Walkland and Ryle 1981, G Drewry 1985, P Norton 1998). MPs who spoke in the second reading debates on a bill, members who approach the Committee of Selection for appointment for personal or constituency reasons, as well as representations from individual MPs of the Whips on both sides, are

selected. In the case of a Government measure, the concerned department's short list will include the minister, the parliamentary secretary, the minister's parliamentary private secretary, and any other ministers whose membership is necessary. An additional list of backbenchers with similar interests and suitable to the minister, is also proposed to the Whips. Members who want to get on a particular committee usually do so; only rarely are there more volunteers than places (Lees and Shaw 1979, 254; Walkland and Ryle 1981, 128-9). All the same, as the size of committees is increasingly reduced, efforts are sometimes made by the Whips to keep MPs of whom they disapprove off particular committees.

Though as large as between sixty and eighty percent members of the House are appointed to serve on standing committees in normal sessions, work in them, as B Crick observes, is unpopular amongst MPs, hence the very poor attendance of members to committees' work (B Crick 1968), the progressive reduction in their size since 1945, and the difficulty of the Selection Committee to man them. By any definition, standing committees are unspecialized, even by subject matter. In short, specialisation in the context of standing committee membership is a fairly casual concept. According to JAG Griffith (1981, 127) as well as HV Wiseman (1970, 168), as many committees as are necessary are appointed for the consideration of bills, nine being the maximum number at any one time. Nomination of separate committees for each bill, and the turnover of members between bills encourage little or no continuity on the committees from bill to bill, either in members, chairmen, or clerks. The effect, in the observation of SA Walkland, has been to produce in any one session a multiplicity of anything up to seventy separate legislative committees, each with a group-life that can vary from a single day's sitting to a few months' continuous association. Built-in discontinuity militates against the standing committees of the Commons achieving any corporate sense, as is developed in other legislatures through a continuous experience of common association (Lees and Shaw 1979, 256).

The structure of discipline within which the committees operate – i.e., decisions taken at second reading, the potential use of the guillotine when obstruction is threatened, and the opportunities given by the report stage, the third reading and Lords' stages, to reverse committee decisions – detracts from the role of committees as purely legislative instruments and emphasizes their role as responsible for the tidying up, clarifying and modifying of proposed bills to accommodate various demands for change by interest groups. Consultations, debates and deliberations on bills occur before and after, rather

than at, the committee stage. However, committee proceedings, where there is more cross cutting voting by members after hearing the arguments on the divergent sides of a bill, are more deliberative (and rational) than proceedings in the plenary House. Only in committees does the "broader view" chosen by the Government on behalf of the citizens receives critical attention as fewer members are ready to obey the Whip without question. The Government concedes more to the strength of arguments and less to the power of its Whip. Both Jennings (1957, 271) and Finer (1961, 491) agree that generally Government will give way to "the sense of committee" more often than it would have had to, if it had only the docile majority of the House as a whole with which to deal.

## Select *Scrutiny* Committees

The environment and remarkable degree of autonomy within which the select committees of scrutiny of the Commons operate, particularly in the case of the more traditional, long established, select committees, which were retained after the 1979 reforms (the Public Accounts Committee, the Select Committee on the Parliamentary Commissioner for Administration (the Ombudsman), the Joint Committee on Statutory Instruments, the Commons Select Committee on Statutory Instruments and the European Legislation Committee) are in several ways the opposite of their standing committees counterparts. Though they follow a familiar model of committee work, each was set up in response to a specific need, as in sharp contrast with even the recently created (departmentally-related) specialist committees, which suffer from the lack of a specific definition of their role.[1] The long-established select scrutiny committees embody constitutional functions that the House as a whole approves of and surrenders to them (Lees and Shaw 1979, G Drewry 1985, Ryle and Richards 1988). St John Bates as well as Nevil Johnson both concur that

[1] The specialist committees are the exception to the rule that committees of the Commons (complex and not easily amenable to understanding or explanation as is mainly rooted in their informal, *ad hoc* growth) do not respond to a general theory of committee structure. They resulted from an attempt to define a generalised role for a category of committees in relation to a particular assessment of parliamentary government in Britain, which contrasts markedly with the definition of the tasks of the other select committees. Specialist committees were accorded strong interrogatory powers but often vaguely defined functions of supervision and criticism of Government policy and administration.

these traditional select committees of scrutiny were retained after the 1979 reforms because of their unique function of scrutinizing the overall activities of government. The functions of these committees of scrutiny are set out in the constitution and Parliament both approves of and submits to this. The constitutional imperativeness of committees, taken together with the attitude and expectations of the parent assembly regarding them, informs and explains MPs' readiness to undertake the arduous work that membership entails (see SA Walkland, in Lees and Shaw 1979). The embarrassment that the findings of their reports might create, is a potential major source of role conflict for members of committees who participate in and endorse investigations, which could have adverse political consequences for their own party. The common perception by the parties and committees of the legitimacy of committees' work of this kind has, Lees and Shaw argue, usually been sufficient to override other perceptions of committee members as "party men." Members of select scrutiny committees, in performance of their duties, respond to a conviction, that they share with Parliament, concerning the importance of the role of these committees, which Parliament almost always underscores in its debates on committees' reports. This supports committees' members' own view of their role and helps to integrate them in their tasks (SA Walkland, in Lees and Shaw 1979, 251). These committees differ from the departmental (specialised) select committees in that they are concerned with matters which are not simply associated with a single department and, in the main, although always within their terms of reference, they are more comprehensive and more systematic in their scrutiny.

The 1979 reforms changed the previous map of a randomly constructed collection of select committees, and ushered in an enduring "system" of select committees (N Johnson, in Ryle and Richards 1988, 158). Now there exists a system of well-established departmentally-related committees, covering all important departments of state with the exception of the Northern Ireland and the Lord Chancellor's Departments.[2] Select committees have wide powers to penetrate the administration of Government policy, and submit government performance to precise analysis. They are charged with the

[2] Nevil Johnson is of the opinion that Government initially deliberately refused to set up a committee for the Lords Chancellor's department presumably to preserve judicial independence: an interesting application of the separation of powers (see Nevil Johnson, in Ryle Michael and Peter G Richards 1988, Ch 9). The pressure to increase the number of select committees which continued since 1979 led to the creation of among others the select committee on Northern Ireland in 1994 and the extension of the remit of the Home Affairs Committee to include the Lord Chancellor's Department. By 1997, as P Norton records, the departmental committees, seventeen in number, from its initial fourteen in 1979, were comprehensive in their coverage of government departments (LD Longley and RH Davidson 1998, 147).

examination of the expenditure, administration and policy, of the principal government departments and associated bodies, but each is free to determine how best to interpret that remit and to report to the plenary of the Commons (Ryle and Richards 1988, G Drewry 1985). The select committees of scrutiny are permanent structures of parliament, being anchored in standing orders and their members enjoy security of tenure for the duration of a parliament. They are necessarily accepted by departments as regular interlocutors, and can build on their accumulated experience of the sector of government allocated to them (Ryle and Richards 1988, 167). They share with the House a strong conception of their role as corporate guardians of the constitutional values of accountability and responsibility of Governments to Parliament. The readiness to put the committee first and party second, which captures the essence of the deliberative conception of parliamentary committees, is most evident in the long established and prestigious committees such as the Public Account Committee, whose impartiality has been settled over a considerable period and whose motives cannot be impugned.[3] These older forms of discipline,

[3] PAC is the oldest of the long-established select committees of the British Parliament with the relevant standing order of the Commons dating back to 1861/2 by which it is, since then, automatically set up at the beginning of every parliamentary session "for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the Committee may think fit" (see B Chubb 1952; EL Normanton 1966; JD Lees and M Shaw 1979, 266; SA Walkland 1979, 427; M Ryle and PG Richards 1988, 159; LD Longley and RH Davidson 1998, 145, 238-9). PAC imposes *ex post facto* discipline over expenditure: initially, from 1866, concerned primarily with accounting regularity and with assuring that public funds were spent with proper statutory and treasury authority, the committee, since the turn of the century, has been concerned with the elimination of waste and extravagance, the encouragement of sound practices in estimating and contracting and in departmental financial administration in general, and the need for value for money. Its characteristic inductive methodology, to this end, of moving from an examination in depth of particular instances of financial maladministration to a recommendation of general principles, lends its reports (typically short, factual, and understated) a certitude and authority resulting from their grounding in particular transactions. Its reports are formally addressed to the Commons but, in reality, are aimed directly at Government, which, in the form of a treasury minute, replies, usually tersely, to the points and recommendations made in the reports. The select committees of the 1966-1979 reforms significantly widened the range of their scrutiny of the activities of government departments and strengthened the sense of accountability to parliament of the executive. They added a new dimension to the traditional procedures on the floor of the Commons for asserting the accountability of government and reports for the 1985-6 parliamentary session ranged from one to 7 per committee. In terms of productivity however the new committees have their rivals, as the PAC published fifty-two reports in the same period (see *First Special Report from the Liaison Committee, 1985*-6 The government's reply to the committee's first report, House Commons 225, 1984-5; "The select committee system," Philip Norton 1993, 99-100; and Norton, in LD Longley and RH Davidson 1998, 150, as well as Ryle and Richards 1988, 167 and note seventeen). The discipline that PAC imposes depends entirely on its standing with Government and the quality of its observations. The committee's reports get one day out of the three days a session set aside for debating the reports of the financial

originally sought by the new select committees, were in a much fuller form completely accepted by the executive. This latter nevertheless feels unease and reacts defensively when faced with unaccustomed constraints (SA Walkland, in Lees and Shaw 1979, 252). The House of Commons, ministers, and the departments, all see the committees as regular elements in the process of discussion, debate, and exchange of information, through which public decisions are implemented. Such a systematic scrutiny on a continuing basis of public activity is certain to embrace policy and may, of course, extend to financial aspects and administrative methods if the committee wishes. This means that government departments have to inform and explain if committees' work in scrutinizing their activities is to be meaningful (N Johnson, in Ryle and Richards 1988, 167-9). Committees are not confined to long- and medium-term aspects and administrative methods, and, thus, may react to issues of current interests and controversy and by so doing subject ministers and their officials to an *immediate* need to justify what has been done or is proposed. In this way, inquisition in committees supplements interrogation on the floor of the House. These two types of inquiry - the policy and administration inquiry and the attempt to ensure ministerial accountability for specific decisions - have sometimes been able to put a question mark on the government's capacity for survival.

Students of legislatures and practitioners alike have found it difficult to quantify the influence of the new specialist committees, appointed to parallel the main departments or sectors of government responsibility, a major, successful, parliamentary reform. For some, whereas the practical achievements of the committees have been slight in comparison with the effort expended, their main role seems to have been to provide information and to provoke discussion. Arthur Bothomley (MP) concurs that the specialist committees "provide valuable channels for improving communication between

---

committees of Parliament. The choice of reports to be debated is made by the committee chairperson. Lack of follow-up on their reports has however limited the impact of select committees on departments. Aware of this problem, select committees have, in recent times, had to address enquiries to various departments asking what had been done to implement committees' recommendations. PAC has not had a particularly stable membership with its high annual rate of membership turnover, which averages about 30 per cent. In any case, the committee operates as a collegiate body; its quorum – five out of 15 – is low, and the tendency has been for most of the work of the committee to be done by the chairperson and a small core of experienced members, which it never lacks. The relationship between the Comptroller and Auditor General, loosely described as an officer of Parliament, and PAC is a special one. The chairperson of PAC, traditionally a senior member of the opposition and former minister of the Treasury, also chairs the Liaison Committee of chairmen of select committees, basically a supervisory, advisory, committee of chairpersons which, *inter alia* oversees the select committee system, administers their overseas travel fund, prevents an overlap of membership, and coordinates select committees' activities (Lees and Shaw 1979, 265-6; Ryle and Richards 1988, 159).

Parliament and the people … in both directions." In similar vein, Sir George Sinclair (MP) comments, "at the lowest estimation, they preserve the principle that public policy and administrative action are accountable and open to discussion and that information on the workings of government can, and should, be made available not only to Members but to the wider public of the governed" (Morris 1970, 53). For others, the specialist committees have so far exerted only the most minor influence on policymaking and administration. Nevil Johnson criticised their addiction to information for its own sake, unrelated to any specific parliamentary role. He characterizes the degree of accountability to Parliament of the executive (which the new select committees exert on the government) "in cautious and qualified terms," as it has not been a matter of ministers and their departmental officials "trembling" before committees since 1979 but, rather, of government's acceptance of committees' continuous systematic, though selective, examination of every major sector of public activity (Ryle and Richards 1988, 167). Overall, the value of these committees lies more in their success in contributing steadily to the general environment of public appraisal and criticism in which government operates in Britain, than in their substantive achievements.

***Table 1.0:*** Select Committees of Scrutiny of the House of Commons (1997 - Date Parliament[4])

| Committee | Size and Party Ratio | Number of Subcommittees |
|---|---|---|
| Departmental select committees | | |
| Agriculture | 11 | - |
| Culture, Media & Sports | 11 (L 7/C 3/LDem 1) | - |
| Defence | 11 (L 7/C 3/LDem 1) | - |
| Education & Skills | 11 (L 6/C 4/LDem 1) | - |
| Environment, Food & Rural Affairs | 17 (L 11/C 4/LDem 1/ | |

[4] This list has excluded a range of other (non-departmental) committees mainly concerned with domestic affairs and with procedural question. The list also excludes the Lords' committees, being not a strong legislative force in the British Parliament. But importantly, features of the excluded committees may differ from those of the new and the long-established select scrutiny committees. Of the 17 departmentally related select scrutiny committees below thirteen have 11 members with two having 17 members. A committee of 11 in 1997-2001 had seven Labour and 3 Conservative Members and one Member for a smaller party. An informal agreement between the parties usually provides for some committees to be chaired by an opposition MP otherwise each committee chooses its own chairman from among its members. All departmental committees have the power to appoint a sub-committee and the two larger committees with 17 members may appoint two, whether to allow separate enquiries to be pursued simultaneously or to facilitate the gathering of evidence for a main enquiry (*Departmental Select Committees*, HC Factsheets – Procedure No 2, http://www.parliament.uk/commons/selcom/witguide.htm).

| | | |
|---|---|---|
| | UU 1) | 1 |
| Foreign Affairs | 11 (L 7/C 3/LDem 1) | - |
| Health | 11 (L 7/C 2/LDem 1/ IND 1) | - |
| Home Affairs | 11 (L 7/C 3/LDem 1) | - |
| International Development | 11 (L 7/C 3/LDem 1) | - |
| Northern Ireland Affairs | 13 (L 7/C 2/SDLP 1/ UU 2/DU 1) | - |
| Science and Technology | 11 (L 7/C 3/LDem 1) | - |
| Scottish Affairs | 11 (L 7/C 2/LDem 1/ SNP 1) | - |
| Trade and Industry | 11 (L 7/C 3/LDem 1) | - |
| Transport, Local Government & the Regions | 17 (L 11/C 4/LDem 1/ DU 1) | 2 |
| Treasury | 11 (L 7/C 3/LDem 1) | - |
| Welsh Affairs | 11 (L 7/C 2/LDem 1/ PC 1) | - |
| Works and Pensions | 11 (L 7/C 3/LDem 1) | - |
| Non-departmental select scrutiny committees | | |
| Consolidation Bills | 12 - | - |
| Deregulation and Regulatory Reform | 17 (L 12/C 3/LDem 1/ UU 1) | - |
| Environmental Audit | 15 (L 10/C 4/PC 1) | - |
| European Scrutiny/Legislation | 15 (L 10/C 3/LDem 1/ SNP 1) | - |
| Public Administration | 11 (L 7/C 3/LDem 1) | - |
| Public Accounts | 13 (L 8/C 4/LDem 1) | - |
| Statutory Instruments | 7 (L 4/C 2/UU 1) | - |

*Source:*
*http://www.parliament.uk/commons/lib/selmen.htm*
*http://www.parliament.uk/commons/selcom/ctteesys.htm*
*Figure 1, Departmental Select Committees, in Longley LD and RH Davidson (eds) 1998 The New Roles of Parliamentary Committees, London: Frank Cass.*

Unlike the standing legislative committees, membership of the select scrutiny committees is attractive and normally sought after and MPs' commitment to work on committees is evidenced by their levels of attendance. The importance of leadership positions has been given some recognition and political significance, and several committee chairmen have been appointed ministers of state. According to Longley and Davidson (1998), the activities of the committees have attracted the interest of outside bodies and the committees have effectively become "magnets" for organised interests. Appointments of members to select committees of scrutiny have been removed from the unrestrained discretion of the party Whips and entrusted to the Committee of Selection. Composition is based on party strengths, with a chairperson who may be from the Government or main

Opposition (the chairperson of PAC is traditionally from the Opposition and former Minister of the Treasury). Though the views of party Whips are unlikely to be entirely disregarded in committee membership selection, this arrangement, according to Nevil Johnson, means that select committees of scrutiny have been given independence from influence of party and government. This factor, taken in combination with the procedural freedom (in deciding what subjects to investigate, how to set about such work, how to present the work to the House) possessed by all select committees, enables them to operate with considerable autonomy.[5] However, this autonomy is in practice naturally qualified by many constraints. The executive controls the House through its majority and, therefore, determines how an effective system of parliamentary scrutiny of the executive can be reconciled with executive management of Parliament (Philip Norton, in Longley and Davidson 1998, 152; Nevil Johnson, in Ryle and Richards 1988, 158; SA Walkland, in Lees and Shaw 1979, 263). Motions to establish committees, nominate members to them, and motions relating to their powers or terms of reference, SA Walkland observes, are the exclusive reserves of Government without Parliament's consultation. Nevertheless, select committees of scrutiny posses individuality and independence: they are microcosms of the back-benchers of the House of Commons and entitled, within the conventions governing select committees, to proceed as they see fit. In most cases, membership is self-selecting. Members are chosen largely for their interests and qualifications in the subject matter of the committee to which they are nominated.[6]

---

[5] According to SA Walkland, chairpersons of committees and subcommittees, committees clerks and the Comptroller and Auditor General, in the case of the PAC, make the most contribution in determining the committees' agendas. These committees are considered autonomous agencies as far as the choice of their specific subjects of investigation is concerned.

[6] According to Lees and Shaw, selectivity in the membership of select committees, whereby members are chosen on the basis of their special interests and/or qualifications in the subject under consideration, leads to some distortion in the degree of representativeness: even though balance of party opinion is retained on a committee, quality of opinion may be lost. Similarly, Nevil Johnson (1998) argues against independent, permanent, specialist staff on select scrutiny committees as he contends that the role of lay members might recede as investigations increasingly became a dialogue between expert committee assistants and Government officials, or that, more probably, as a result of the very wide range of such committees' interests, specialists would find their expertise of little value in limited fields. CC Campbell and RH Davidson's (1998) insistence on committees representing "diverse of interests and perspectives…heterogeneity…a microcosm of the chamber," endorses the well-expressed perceptions of representative committees proposed by Hall and Grofman (1990) as well as Londregan and Snyder Jr (1994). Members should be better informed and their opinion more carefully considered to encourage the independence of thought and expressions amongst members, ensure that committees' reports are ideologically balanced and that the legislature as a whole has satisfactory information on the implementation of committees' measures. Scrutiny committees require a life of their own, and given a brief, their output and the rate at which they

Although the Whips at times attempt to avoid nominating MPs likely to pursue too independent or critical a line, Walkland argues that membership of the new committees reveals a wider spread of opinion than the Whips probably wished to offer (G Drewry 1985; Lees and Shaw 1979, 265). Each committee is serviced by a senior clerk, assisted by an additional staff of between two and five, depending on the breadth of a committee's remit and the quantity of investigative (investigation and scrutiny of executive action) and informative (collection of evidence and skilled assistance in evaluating it) work it is likely to undertake.

As it dawned on select committees that partisan politics has as a rule got to be held in check if they are to achieve anything, they have become notably bipartisan and have, as Norton (1998, 150) observes, proceeded as far as possible by consensus. Members seek to produce unanimous reports as cross-party agreement, they believe, enhances the political force of reports, which however no formal powers commit government to implement. According Nevil Johnson, this is apparent at virtually every stage of their work: in the choice of topics of inquiry, in the conduct of inquiries by the chairman, in the efforts normally made to allow all members a fair share of questioning (provided they want it), in the deliberative sessions when draft reports are discussed and finally voted on,[7] and, more generally, in the style and tone which committee members seek to maintain before the public. Arguments and differences of opinion in respect of party feelings, party commitments and disagreements about the conclusions on particular inquiries, naturally do occur, and are then usually resolved by a vote and recorded in the minutes of committees' proceedings. Disputes within committees are however restrained by the presence of government majorities as well as committees' members' chief focus on matters of agreement and their reports to the House reflect *this*, rather than their disagreements.[8] In the words of S Jacobs

---

pursue their goal largely depend on the competences and skills of members and their chairpersons. The influence of evidence from experts and interested parties, different from those that affect the House as a whole, couch the work and reports, of committees, as "they embody a search for rationality and evidence rather than a political appeal to the public imagination." Their virtue inheres in the lay control of experts, aided by discrete and professional assistance, and a deliberative process that matches this.

[7] Rarely do select scrutiny committees vote when agreeing on their reports and they do not necessarily do so on party partisan basis on the scarce occasions they do vote. In Gavin Drewry (1985), the topics considered in the first and second parliaments of the committees' life show the extent to which members try to ensure bi-partisanship by steering clear of issues divisive of parties.

[8] The procedural rules governing committees in the British Parliament do not permit minority reports, however, the voices of the dissenting minorities are noted in the committees' minutes and

For the most part the select committees at the Westminster work effectively on a cross-party basis. Their reports carry most political force when they have the backing of all members and therefore the chairpersons of these committees make great efforts to ensure cross-party support for their findings (S Jacobs 2001, 18).

Being ready to eschew partisan commitments, committees conform fully to long-established traditions of select committee behaviour: this imposes limits on the changes which they can effect in the work of the House of Commons and in the relations between the Chambers and the Government, and, at the same time, lays the basis of their own consolidation and powers of persuasion (Ryle and Richards 1988, 169).

Some critics view the new select committees, whose powers are not anchored in the constitution, as an irrelevance bound to produce some irritation. In the words of Enoch Powell, (MP), "the increased influence of the Government over the House will not be lessened by any procedural committee or other arrangements that might be constructed. That influence derives from causes which are inaccessible to even the most profound alterations in procedure" (G Drewry 1985, 18). Philip Norton underlines that the departmental select committees were, and remain, advisory bodies only issuing reports embodying recommendations but with no sanctions to ensure they are acted upon. The work of departmental committees, according to Nevil Johnson, has been the pursuit of "exploratory dialogue" – a discursive scrutiny adopted in the oversight of administration, which neither decisively changes policy, nor causes ministers to resign, or officials to be disciplined. The relative neglect of the select committees' findings is, Johnson concludes, an expression of the ruling preoccupations of the House: the rationale of select committee work lies in the process of inquiry itself and its impact on departments, and is not to be found in regular follow-up action by the House as a whole (Ryle and Richards 1988, 180-84). Yet, as deliberative democrats will argue, this does not render superfluous the inquisitorial and informative functions performed by select committees, nor does it weaken the case for maintaining, as a vital element in the parliamentary control of the executive, the kind of critical dialogue, free expression and exchange, that is possible only in the interaction between the members of select committees and their witnesses.

---

Parliament's rules do work in favour of consensus (see Nevil Johnson, *Departmental Select Committees*, in Ryle and Richards, *The House of Commons Under Scrutiny* 1988, 169 and footnote number eighteen).

The House of Lords, the Upper House of Britain, is, of all democratic institutions, a remarkable Second Chamber. Its present 1207 members (law lords, certain bishops and archbishops of the Church of England, hereditary and life peers) are not elected. Excluding those who have leave of absence, almost thirty per cent of its members (the cross-bench peers) are avowedly apolitical, rarely in attendance at the Lords proceedings and rarely voting. The majority of peers who express a political allegiance are Conservatives and on most occasions a Conservative majority is normally assured. Lacking any real political power, Gavin Drewry (1985), Neil McNaughton (1996) and Philip Norton (1998) concur, the House of Lords does not constitute a political force, as a determined government with a solid majority has always been able to defy the Lords whatever it may try to do. Debates and votes in the Lords are not as critical as in the Commons. But, as in the House of Commons, each bill requires a stage at which amendments are considered in the Upper House. According to McNaughton, unlike the Commons, the Lords does not form committees as such, but instead the whole House (in practice a relatively small number of interested members) sits as one large committee to consider changes. The fact that all peers may sit in committee makes it difficult for the Government Whips to maintain unity, so that small defeats for the Government are not uncommon (McNaughton 1996, 177-181). Usually, however, these defeats are all later reversed in the Commons. The Lords leverage for significant action is, then, strictly constricted and circumscribed.

As it became difficult, with the growth of the democratic principle, for an unelected House of Lords to maintain a claim to coequal status with the elected Commons, the Upper House was compelled to accept its politically inferior position with the passage of the Parliament Acts of *1911* and *1949* (see Philip Norton, in Longley and Davidson 1998, 156). The first removed entirely the Lords power to veto money bills and restricted its power to delay any other bill to two parliamentary sessions, and thereafter amendments proposed by the Lords require the approval of the Commons. The second further limited its veto power over non-money bills to one parliamentary session. Under the Salisbury-Addison agreement in the Lords of the 1945-1950 Parliament, the Upper House could not block any measure contained in the governing party's manifesto or in the government's legislative programme. Hence the confinement of the Lords primarily to the (inferior) role of deliberating matters, particularly non-partisan issues that otherwise may not have been debated in the Commons for lack of time. In its revising (delaying, amending, debating) role, the Lords does not seek to challenge, but complement, the Commons and

"make Government think again" as it takes up legislative scrutiny that MPs may have been short of time to adequately finalise. The Lords, unlike the Commons, does not employ timetable (guillotine) motions and all amendments to bills are deliberated upon. Like the US Senate, the British Second Chamber is self-regulating. As Neil McNaughton puts it, "the House of Lords is nothing if not well behaved, unlike the Commons!"

The extent to which the Lords utilises committees is circumscribed. Because the House of Lords is not considered the proper place for close scrutiny of government, its system of select committees is very much less developed. Only three committees of the Lords are permanent and have political significance (G Drewry 1985, 37-54; Neil McNaughton 1996, 179; P Norton 1998, 38). These committees have no exact equivalent in the House of Commons, which gives them greater authority. Here the most committed and experienced peers undertake significant work of scrutiny. When compared with the House of Commons, the composition of the Lords select committees has a number of distinctive features. There is no rule to the maximum number of peers who may be appointed members of select committees - usually sixty peers compose a committee – and these committees work through subject-specific subcommittees whose members are, in most cases, experts in the field. The Science and Technology Committee had fifteen members in 1997-2001, and the European Communities Committee had nineteen members, with members chosen by the Committee of Selection. Following a rotation rule, members are required to retire after serving for four years, and after three years for the chairmanship, but are again eligible for selection after one year. In the case of committees with essentially apolitical functions, the membership reflects the broad spectrum of party allegiance and the crossbenchers, but it is not strictly proportional to the size of these groups in the House. In choosing co-opted members, in particular, there is far more emphasis on expertise and interest than on political allegiance. Committees have powers to appoint subcommittees strictly on the basis of expertise and their size allows them to use this power in a structured way (G Drewry 1985, 39).

In other aspects the composition and infrastructure of the select committees is similar to that of the Commons. These three committees have used specialist advisers on an *ad hoc* basis and clerks assigned to committees are assisted by additional clerks who service the subcommittees. An important difference between the two Houses is the number of select committee reports debated in the House of the Lords (G Drewry 1985, 46). The European Communities Committee is, of course, in a privileged procedural position because, as a result of a government undertaking, its reports will normally be debated where it is so

recommended. The Science and Technology committee has not benefited from such a government undertaking. Nevertheless, its reports have not only been debated, they have generally been debated promptly. The reports of these select committees have been influential, in part, for their apolitical nature (G Drewry 1985, 47-51). The newly inaugurated Delegated Legislation and Deregulation Committee scrutinises measures at the point of their introduction to check whether they include provision to delegate legislative powers and the appropriateness of the powers to be so delegated. One of the strengths of the House of Lords resides, then, in the quality (and quantity) of the reports of its permanent committees, which very effectively showcase the expertise of its members in specific spheres. A generalist, or amateur, apolitical, body whose members are neither elected politicians nor receive a salary, with most having, away from the House, careers that they pursue, work in the Chamber and accept to serve on committees because they are motivated by an honest desire to perform a public service and to learn and offer advice to policy makers.

## 2.2 Committees in the United States Congress

Since 1789, it has been a privilege of the Congress to legislate and take other decisions, and this is done through its committees and subcommittees. With the passage of time, and the growing responsibilities of the national government, the executive became the major policy innovator. Yet the crucial decisions as to the viability and legitimacy of such policy, and the necessary resources required to implement them, are made "by Congress, mainly in its committee rooms." This, in the view of many scholars, makes the legislative role of Congress much more than the mere "mobilization of consent" (see Beer and Huitt, in Frank 1966; Orfield 1975; JD Lees, in Less and Shaw 1979). These writings on the committee system of Congress as well as those of Woodrow Wilson (1885), and George Goodwin (1970), underline the centrality of committees to the work of Congress. In fact, as RD Brown puts it, "more than any other legislative body in the world, the Congress relies on an extensive committee system to process its voluminous workload" (RD Brown 1997, 70-1). It is worth remembering too, (see Michael Mezey 1979) that Congress constitutes "one of the few legislative institutions in the world able and capable of saying no to a popularly elected president and making it stick." According to Philip Norton, the

power of legislatures just *is* the capacity of legislatures to constrain governments in what they do.

Now, the extent to which parliaments can constrain governments (the viscosity of legislatures, in Jean Blondel's (1970) terms) is greater where they are specialized. And, as Philip Norton (1998) emphasizes, "specialization takes place principally through committees." The committees of Congress possesses the features crucial to the institutionalization of committee systems – including specialization, permanence, agenda-setting and evidence-taking powers, as well as jurisdictions which are exclusive and parallel existing government agencies, extensive resources, and small and informed memberships. These enable committees to say "no" to the principal measures of government, bearing in mind that "saying no" to something requires an alternative proposal being brought forward in substitution. Besides, more scholarly work has been undertaken on the committees of Congress than on any other committee system in the world. And the literature overwhelmingly shows the United States' Congress committee system as the strongest, most active and effective of all committee systems in legislatures worldwide (JD Lees, in Lees and Shaw 1979; LD Longley and RH Davidson 1998; P Norton 1990, 1998). The viscosity of legislatures (and their committees) is determined essentially by variables external to parliaments, the most important of which P Norton lists as cultural, constitutional and political. Lees and Shaw are in agreement with Norton: the committees of Congress are mainly a product of the constitutional and historical position of Congress as a decision making body, the attitudes and expectations of its members, and the nature of the national party system, as well as a product of the historical development of Congress as a political institution, and the internal changes that have taken place over time within it.

The powers and responsibilities of Congress, which the committee system serves, are defined by a written constitution. Its two principles are separation of powers (between the executive, legislative and judiciary branches of government) and checks and balances among these branches. In combination with the federalism, decentralization and diffusion characteristic of the (American) political system, these principles explain the relative weakness of political parties in the US and the absence of party discipline in Congress. The extent to which states affect the attitudes of congressmen, together with the relatively small influence of parties in legislative decision-making, have made committees and their work important in both personal and institutional terms as vehicles for the satisfying of particular demands and for the making of certain types of decisions (JD Lees, in Lees and

Shaw 1979). While party factors affect the composition of committees and their activities, committee decisions are, according to John D Lees, determined more by the attitudes and norms of individual legislators and the nature of legislative responsibilities, than by the demands of the party (Lees and Shaw 1979, 13). The fragmentation of party influence in Congress has, according to Lees, also been a consequence of the need to establish a source of information separate from that of the executive, and a method whereby the merits of bills could be considered in an independent manner.[9]

Congress is bicameral and its two chambers operate on different principles of representation and constitutional powers, where each is to check the other. The importance and independence of the Senate has not, as a branch of the legislature, diminished over time; rather it has, in many respects, become more powerful and prestigious than the Representatives (Matthews 1960, Ripley 1969). Senate's committees have a similar structure to those of the House, however the composition and the individual influence of senators on committee activities are markedly different. Senate has a smaller size than the Representatives, and senators work on more committees than representatives do, hence the less specialized influence of senators; on the other hand, they have greater overall power in committee decision-making. The activities and statements of senators enjoy greater prestige and publicity than those of representatives and, have, according to Lees, led to the prolific use of senate committees to conduct investigations (Lees and Shaw 1979, 14-5). Senate and Representatives committees continue to play a very significant role in legislative decision-making - shaping policy, creating parliamentary strategy, disentangling complexity and, most importantly, as Colton C Campbell and Roger H Davidson (1998) say, partitioning the institution's workload into more manageable portions – bearing in mind that lawmaking in Congress requires similar function and roles from both chambers. Congress exhibits five major kinds of formal committees, *viz* standing committees, select or special committees, joint committees, conference, and committees of the whole.

[9] The professional staff of committees of Congress are the most important formal sources of information, as they help to obtain and assess information for committees. As John Lees argues, adequate staff resources were necessary if committees were to perform their growing oversight as well as legislative functions (Lees and Shaw 1979). The provision of information, analysed according to objective criteria and available to all committee members, could alter the basic structure of decision-making. The more information available, the more difficult it may be to make it available only to committee members. Committee members' mastery of particular areas of substantive policy will reflect the wider concern of how and what decisions committees adopt and, *a fortiori* the quality of decisions committees reach.

## Standing Committees

Standing committees, central to Congress' committee system, are permanent entities created by House and Senate rules, which determine their sizes, jurisdictions, powers and duties.[10] Almost all bills are first referred to, and approved by, the appropriate committees before they are debated on the floor of the House or Senate. Though the Legislative Reorganization Act of 1945 reduced the number of standing committees in

[10] According to RH Davidson and WJ Oleszek (1996, 199-201), early Congress committees were *ad hoc* panels, tightly controlled by the parent chamber, which work out the details of proposals after they have been duly considered first on the House and Senate floor. Over time, the Senate, around 1816 and the House a little later, developed a system of permanent, or standing committees to: better cope with the larger membership and wider scope of congressional business, counter presidential influence in setting legislative agenda, and encourage greater oversight of executive performance, among other reasons. JD Lees and M Shaw (1979, 15) say the modern pattern of "institutionalised independent, sovereign" (NW Polsby 1968, 156) standing committees began with the revolt against Speaker Joseph G Cannon (Republican) in 1910-11, when his authority to make appointments was taken away from him and given to the committee chairman whose authority members rarely challenge. Lees and Shaw as well as Davidson and Oleszek concur: the automatic operation of the seniority system hand in hand with the rise of congressional careerism buttressed the chairman's authority and strengthened the independence and autonomy of committees. As the majority party member with the most years of continuous service on a committee automatically became its chairman, committee chairmen began to owe little or nothing to party leaders, much less to presidents. In the observation of Davidson and Oleszek, this automatic selection process produced experienced, independent, chairmen but concentrated authority in few hands. The late 1960s and 1970s saw a rapid influx of mainstream national Democrats vehemently opposed to this conservative status quo allied with more senior members seeking for recognition in Congress, pushing through changes that diffused power and shattered seniority as an absolute criterion for leadership posts and, thus, weakened the standing committee system. The 1994 midterm elections culminated in the "Republican Revolution" of Speaker Newt Gingrich that completely reversed the seniority system, overthrew old committee barons of the pre-1970s, and dispersed power and influence from a few committee leaders to a broader range of members and thus made the committee system more accountable to both the Speaker and the majority party and it centralised the House. Today House and Senate committee chairmen (and ranking minority members) must be, RH Davidson and WJ Oleszek observe, elected by their party colleagues. No longer free to wield arbitrary authority, they must abide by committee and party rules and be sensitive to majority sentiment within their party's caucus or conference. Yet, in spite of this elevated authority of party leaders and the autonomy of individual members, committee decisions and committee leadership dictate the larger portion of the pace and content of legislation and public policy. Committees' enormous capacity enables Congress to participate actively in the nation's governance and locates Congress' committees at the very heart of its legislative process reforms or no reforms.

the House from 48 to nineteen, and in the Senate from 33 to fifteen, both chambers have since pushed those sizes upward, and in 1975 the House dropped from its rules any reference to committee size (see RH Davidson and WJ Oleszek 1996, JD Less and M Shaw 1979). Committee sizes and ratios are set in the House by the majority leadership and are negotiated in the Senate by the majority and minority leaders. According to Davidson and Oleszek (1996), for every new Congress, each chamber adopts two separate resolutions, one offered by the Democrats and the other by the Republicans, that elect members to the committees and thus set their sizes and ratios – i.e., the number of majority *vis-à-vis* minority members on a committee (Davidson and Oleszek 1996, 202). Committee size and party ratio both influence its work. Ratios, usually, reflecting party strength in the House and Senate, frame the bargaining between majority and minority leaders, and shape the committees' policy outlook and internal organization.

***Table 2.0:*** Standing Committees of the House and Senate, 107th Congress (2001-Date)

| Committee | Size and Party Ratio | Number of Subcommittees |
|---|---|---|
| | House | |
| Agriculture | 50 (R 26/D 24) | 5 |
| Appropriations | 65 (R 36/D 29) | 13 |
| Armed Services | 59 (R 31/D 28) | 5 |
| Budget | 43 (R 24/D 19) | - |
| Education and Workforce | 49 (R 27/D 22) | 5 |
| Energy and Commerce | 58 (R 31/D 27) | 6 |
| Financial Services | 70 (R 37/D 33) | 6 |
| Government Reform | 44 (R 24/D 19/IND 1) | 7 |
| House Administration | 9 (R 6/D 3) | - |
| Intelligence (Permanent Select Committee) | 21 (R 11/D 10) | 4 |
| International Relations | 49 (R 26/D 23) | 6 |
| Judiciary | 34 (R 18/D 16) | 5 |
| Resources | 52 (R 28/D 24) | 5 |
| Rules | 13 (R 9/D 4) | 2 |
| Science | 47 (R 25/D 22) | 4 |
| Small Business | 33 (R 19/D 17) | 4 |
| Standards of Official Conduct | 10 (R 5/D 5) | - |
| Transportation and Infrastructure | 76 (R 42/D 34) | 6 |
| Veterans' Affairs | 31 (R 17/D 14) | 3 |
| Ways and Means | 41 (R 24/D 17) | 6 |
| | Senate | |
| Agriculture, Nutrition, and Forestry | 21 (R 10/D 11) | 4 |
| Appropriations | 29 (R 14/D 15) | 13 |
| Armed Services | 25 (R 12/D 13) | 6 |
| Banking, Housing, and Urban Affairs | 21 (R 10/D 11) | 5 |
| Budget | 23 (R 11/D 12) | - |

| | | |
|---|---|---|
| Commerce, Science, and Transportation | 23 (R 11/D 12) | 6 |
| Energy and Natural Resources | 23 (R 11/D 12) | 4 |
| Environment and Public Works | 19 (R 9/D 10) | 4 |
| Finance | 21 (R 10/D 11) | 5 |
| Foreign Relations | 19 (R 9/D 10) | 8 |
| Governmental Affairs | 17 (R 8/D 9) | 3 |
| Health, Education, Labour, and Pensions | 21 (R 10/D 11) | 4 |
| Judiciary | 19 (R 9/D 10) | 6 |
| Rules and Administration | 19 (R 9/D 10) | - |
| Small Business | 19 (R 9/D 10) | - |
| Veterans' Affairs | 15 (R 7/D 8) | - |

*Source:*
*http://www.house.gov/house/committeeWWW.htm*
*http://www.senate.gov/legislative/legis_act_committee_membership.htm*

Integral to the internal organization of the standing committees are subcommittees, which in performing much of the day-to-day lawmaking and oversight work of Congress, also serve to subdivide labour into manageable pieces, to shape legislative agenda, to encourage specialization, and to maximize attention to detail. Congress has both progressively reduced its subcommittees in recent times as well as stipulated the number of subcommittees on which House members can serve, all "to make both Member and committee work more deliberative, participatory and manageable by reducing scheduling conflicts and jurisdiction overlap." Senate rules establish subcommittee assignment limits for senators, and bar congressmen from chairing more than one subcommittee on any one committee. According to a Republican Conference rule, effective since 1997, most standing committee chairmen are barred from chairing any subcommittee, so as "to open more chairmanship (or ranking minority) opportunities for junior senators" (Mary Jacoby (1995), in RH Davidson and WJ Oleszek 1996, 204).

It is possible to sort standing committees according to their jurisdiction. John D Lees (Lees and Shaw 1979, 21) has simply distinguished between authorizing or legislative committees, the appropriating committees, and the procedural, administrative, and *quasi*-investigatory committees. Donald R Matthews (1960, 154), adopting a more practical approach for Senate committees, distinguishes between "top," "interests," "pork," and "duty" committees. George Goodwin (1970, 101-105) further classified committees in terms of the scope of the issues they deal with and the groups with which they are concerned. Goodwin makes a distinction between national issues committees, clientele-oriented committees, and housekeeping committees. The kinds of issues committees deal with can also be used to demarcate them, hence Theodore Lowi suggests three domestic

categories, *viz* distributive, regulatory, and redistributory. Richard F Fenno Jr's (1973) more intensive comparative analysis understands the identification of committee similarities and differences on the basis of five variables: member goals, environmental constraints, strategic premises, decision-making processes, and decisions. Fenno distinguishes between two broad categories or sorts of House committees, *viz* the corporate and the permeable, the former being more influential but less responsive than the latter. For him, all Senate committees could be sorted into the permeable group.

## Select, or Special Committees

Select, or special committees are usually non-permanent panels that go out of business after the two-year life of the Congress in which they were created. Some select committees have had to acquire attributes of permanent committees and develop important responsibilities (Vardys 1962, Vinyard 1966, 1968, Lees and Shaw 1979, Davidson and Oleszek 1996). Select committees normally do not have legislative power, as they only study, investigate, and make recommendations. These committees, together with investigating subcommittees of standing committees, among other purposes, add opportunities for Congress' scrutiny and oversight of the executive.

## Joint Committees

Joint committees comprise equal members from Senate and the Representatives. They have been used throughout the history of Congress for study, investigation, oversight, and routine activities (Davidson and Oleszek 1996, 205). Representatives' members of joint committees are appointed by the Speaker and senators are appointed by Senate's presiding officer. The chairmanship of joint committees (held by the majority party) rotates each congressional session between representatives and senators.

## Conference Committees

Conference committees, sometimes called "the third house of Congress," reconcile differences between House and Senate on a bill, which does not pass both houses in identical form. They aim at producing an agreed report (a product of hard bargaining and compromise) that will receive the approval of the full Congress. Conference committees are composed of members from House and Senate appointed by the presiding officers of each house. They are temporary, vary in size, and do not always have an equal number of senators and representatives (AC McCown 1927, GY Steiner 1951, LA Froman Jr 1967, DJ Vogler 1971). Conferees are sometimes senior members of the standing committee who initially considered the measure in question. On several occasions, these committees have become very important arenas of legislative decision-making and conflict between senators and the representatives. Davidson and Oleszek roughly classify conference bargaining in four ways: *traditional, offer-counteroffer, sub-conference, and pro forma* (Davidson and Oleszek 1996, 205-6).

Richard F Fenno, Jr. (1973) found that the basic goals of lawmaking – reelection (or constituency), influence within the House (or power), and good public policy – influence the committee assignments that members seek. Members with similar goals find themselves on the same committees, he concluded. This homogeneity of perspective results in harmonious but biased committees (Fenno 1973, Eulau *et al* 1984). In their *Committees in Congress* (1990) Steven S Smith and Christopher J Deering concur that "some mix of the three goals motivate" most activity on the committees. They argue that members' goals "are less easily characterized in the Senate than in the House" (Smith and Deering 1990, 85, 100). Senators and representatives, as well as students of Congress committees, express the view that, except for some committees, members generally receive the assignments they request. Both parties try to accommodate the assignment preferences of their partisans. Each party in each house has its own panel to review members' committee requests and hand out assignments. The assignment to committees of members' requests is followed by approval of the assignment lists by each party's caucus, and then a pro forma election by the full House or Senate, ratifying the decisions - normally, quickly by voice vote (Lees and Shaw 1979, 24-7; Davidson and Oleszek 1996, 209). Formal and informal criteria are designed to ensure that each member is

treated equitably, however Democrats and Republicans operate "in essentially the same way, (with) length of service (seniority)[11] in the House being a primary factor in determining assignment" (Lees and Shaw 1979).

Although scholars have found it hard to make general, sweeping, statements about the full range of variables influencing leadership patterns of standing committees, the internal patterns of committees' decision-making reflects the steady reinforcement of the independence and autonomy allowed standing committees by House and Senate: a transfer of authority and influence sometimes furthered by permitting to subcommittees (whose decisions are rarely challenged and, in most cases accepted, by the whole House) of committees considerable autonomy in their own right. The attainment of positions of power by automatic mechanisms, subject largely to self-restraints, combined with an excessive reliance on the decisions of small groups of legislators, largely unrepresentative of the whole House, are matters that are of concern to reform-oriented congressmen anxious about Congress' role (Lees and Shaw 1979, 30). Preoccupation with the

[11] The seniority system can be loosely defined as a device by which decisions are made on procedural matters on the basis of the principle of length of service. It is a decision process with a heavy reliance on experience and specialisation in a context where decision-making is decentralised and party discipline weak. It is defended as a system that avoids internal conflict by providing an automatic process for deciding committee assignments and leadership positions amongst members and hence stabilizes membership of committees. The seniority system has, since 1970, faced the continuous attacks of reformers for whom the system, which is applied strictly only for the appointment of committee chairmen, does not necessarily provide the most effective results. Opponents of seniority being the critical determinant of committee membership and position charge that previous assignments have reflected the opinions of chairmen and hence the recruitment of members whose views are compatible with those of senior members. Consequent upon this charge emerged the impression of "a stereotype chairmen as senile, conservative, and dictatorial," who "used their position, their seniority, and their procedural and other expertise to thwart important legislation, to challenge party leadership, and to reward committee members sharing their views" while simultaneously refusing to evenly distribute positions of influence and deny more opportunities to junior members. At any rate legislative students argue that the powers and patterns of internal committee process are in continuous variation. Of importance though are the attitudes and authority of the chair in running any committee given that this authority exists only with the *consensus* of the committee as a whole. His abilities to a) reconcile conflicting interests within his committee b) use the prerogatives of the chair in a responsible way and c) his superior knowledge of the subject matter of the committee notwithstanding, "practically, the role of the chairman is increasingly determined by what the House or Senate expects and what his committee will allow," Lees and Shaw (1979, 29) conclude. According to Davidson and Oleszek (1996, 212), committees have continuously rebelled against their chairmen, and evidence show that some of the prerogatives of chairmen have had to be denied them.

difficulties in achieving *consensus* and the desirability of avoiding excessive conflict and factionalism in Congress are the feelings that both sustain the seniority system, induce support for party, rather than committee, party control over the selection of chairmen and impede attempts to "democratize" the committee system. We suspect that the practical importance of the norms of compromise, integration, bipartisanship, and the avoidance of conflict in the activities of committees may be exaggerated and that Congress as a whole overemphasizes the necessity and desirability of these norms in producing decisions. Although Henderson's (1970) point that "committee norms are a product of the demands of committee members, the committee's terms of reference, and external limitations and expectations imposed by the House" is valid, emphasis on these norms, we also suspect, may fail to recognize that a committee's lack of success in the performance of its duties (particularly the oversight function) may in part be due to its desire to avoid conflict within the committee and with other committees. But conflict of some sort is the essence of politics. It is one of the concerns of this thesis as has been explained to investigate whether conflict within committees necessarily undermines their role *vis-à-vis* effective parliamentary oversight.

Just as particular types of policies may be treated differently by legislatures so, according to Lees and Shaw, different responsibilities tend to produce different types of role-playing (Lees and Shaw 1979, 42-3). Whereas the particular demands and expectations surrounding certain committees in the performance of their tasks may *explain their* particular "internal" patterns and norms, similar norms may not *affect* the activities of other committees. For some committees, party and constituency factors may conflict with, and make redundant, internal pressures for compromise and integration. Some committees provide outlets and opportunities for "generalists" rather than "specialists." The specialized, complex, nature of the work of certain specific committees, as part of a wider pattern of governmental activity, may explain the type of decision-making patterns that typify these committees, though personality and leadership factors also play a part. But such norms and patterns may be less relevant or necessary for committees whose responsibilities involve different types of political skills, leadership, and expertise, and where party or special interests, or other distinctive factors, may have a dominant influence over internal patterns. Lees and Shaw's conclusion that generalizations about the nature of decision-making by committees, are, at best, superficial, cannot be easily dismissed although the decision-rule adopted by committees should, we suggest, reflect on the nature and subject matter of the committee concerned. The specific needs for which the parent house has crafted a committee and the substantive requirements of its

jurisdictions, beyond and above parochial interests, should inform and explain the committee's decision-rule. While taking Forrest Maltzman *et al's* (1995, 677) point that a "panel is most likely to be a faithful agent of (its) principals" where the chamber and parent parties share a high interest in the committee's work, this thesis defends the view that a committee with a life of its own and *willing* to chart its own course - a committee *sui generis* - should be able to decipher and distinguish genuine interest from the ' "principals" high interest.'

Committees with a reputation of partisanship and faced with contentious measures necessitating division on party lines, could still make concerted efforts to reach a *deliberative* disagreement (if not agreement), as the respect for citizens as free and equal, demands. The importance of reaching deliberative decisions in committees is not new. In the views of Gerald Gamm and Kenneth Shepsle (1989), Roger H Davidson and Walter J Oleszek (1996) as well as Colton C Campbell and Roger H Davidson (1998), committees in early Congresses were "spot drafting" committees, tasked only to mould into a bill the general principles arrived at through the deliberation of the Whole; the fact that they ceased to exist afterwards was not accidental but a conscious choice to employ a more explicitly deliberative arrangement. The initial absence of standing committees from the Congress was the political preference of both Jeffersonians and Hamiltonians. As Copper (1970), Robinson (1954), and Swanstrom (1962) report, Jeffersonian Republicans abhorred the notion of a small group of legislators disproportionately influential at the pre-legislative stage. The principles of a bill, in the Jeffersonian view, should emerge from deliberation and debate in Committee of the Whole (Gamm and Shepsle 1989, 45), rather than from a committee consisting of a group committed to some already established principles (e.g., majoritarianism), as in standing committees.

Despite criticism of the committee system of Congress including a) Congress' inability to effectively oversee executive performance *via* its committees b) the unavailability to committees of the proper kind of information and the problems of effectively organizing information obtained and c) the failure of Congress and its committees to adapt to the realism of executive-centered government, the broad consensus of students of congressional committees confirms the vital importance and permanence of standing committees as the center of activity in the House and Senate (see Longley and Davidson 1998, Deering and Smith 1997, Davidson and Oleszek 1996, Lees and Shaw 1979). Congress committees primarily direct attention to the activity, and influence, of legislators on the work of Congress. Congress' autonomy and independence, its defense

and protection against executive domination and bureaucratic control are all anchored in its effective committee system. Even when the trend, globally, dictates executive monopoly of the initiation of legislative proposals, Congress committees have provided a window for the deliberation of whatever new measures individual congressmen initiate. In fact, other legislatures and their committee systems have not been so lucky. JD Lees and M Shaw (1979), P Norton (1998), as well as CC Campbell and RH Davidson (1998) make the important point that parliaments in "the Westminster tradition rarely have strong and energetic standing committees because their governments do not want committees to become centres of decision-making or competing sources of power." Stronger and more disciplined party caucuses in these parliaments have led their committee systems to a less powerful role, wherein party leaders assume decision-making responsibilities that otherwise would fall to committees.