

PARLIAMENTARY COMMITTEES: SCRUTINY OF THE ADMINISTRATION

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(Footnotes and references omitted)

Chapter 1 Institutionalization of Legislatures

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In the seminal typology of legislatures suggested by Michael Mezey British House of Commons ranks in the group of the 'reactive legislatures' characterized by modest policy-making power and still high public support. Currently most of the European democracies with parliamentary systems, qualify in the same group – it is inherent feature of the parliamentary government that the Cabinet effectively dominates the parliament through the very same majority that sustains it.

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In his latest comprehensive study of the European legislatures Philip Norton suggests that the overall ranking of the parliaments in Mezey's taxonomy is determined by exogenous factors, i.e. factors that are external to them – (1) constitutional, (2) political and (3) cultural. He calls them environmental variables as they are generally beyond the control of the legislature itself. However, he identifies a finer ranking within the category of the reactive legislatures (or of policy-influencing legislatures, which is his preferred term). These legislatures can be classified as strong (as most Nordic parliaments are), middle ranking (like the German one) and weak (as the French one). This ranking he believes to be determined by the level of institutionalization of the legislature, that is by several endogenous factors i.e. which are within the control of the legislatures. The more developed institutionally the legislature is, the more independent of the governmental majority it will be and the higher its capacity to transform the policy proposed by the government. Legislatures' "capacity to influence policy outcomes is greatest when it is highly institutionalized ... [and when it has] highly developed committee structure." Further Norton identifies several characteristics of the legislative committees that are deemed critical for the overall strength of the committee system and the legislature itself. On the basis of his comprehensive comparative research of several European countries he maintains that there is "apparent correlation between certain institutional features and the ranking of the legislatures within the family of the reactive legislatures."

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With regard to the theories introduced in this chapter the initial hypothesis of this study that was set out in the Introduction must be rephrased. The study assumes that the overall transformative capacities of a legislature and its relative position to the executive are determined by constitutional, political and cultural factors, which are external for the legislature. Nevertheless, it maintains that some internal features of the legislature are also important for its transformative capacity (within certain scope which is determined by the external factors) and accordingly the institutional reform within a legislature may

change its position vis-à-vis the executive. In other words the internal change may amount to a modest constitutional one. Thus the introduction of the British Departmental Select Committees, which is institutional reform, is expected to increase the policy-influencing capacity of the reformed legislature and to move it towards transformative type on the Polsby's scale.

This hypothesis is supported by Norton's claim that the parliaments from the group of reactive legislatures differ in their strength and this depends on the level of their institutionalization. Accordingly, a system of strong committees can be expected to increase significantly the strength of the parent legislature as discussed in the first section of this chapter. Certainly, by introducing committees (and some particular features that are discovered to guarantee committee strength in American context) some of the environmental constraints that keep the policy-influencing capacity of the House of Commons near the minimum may be constrained and counterbalanced. This is the prediction based on the claims of the comparative students discussed above and also this were the expectations of the reformers. Conversely, the environmental factors that constrain the transformative capacity of the Westminster Parliament may prevent any institutional changes, may offset the effect of these that were implemented, or may force them to operate in a quite different mode. This is the prediction of all of the Neo-Institutionalist theories set out above. To test which of these two ways the reforms took is the purpose in the remaining of this paper.

So in the subsequent chapter the factors that are vital for the independence and effectiveness of the parliamentary committees will be identified in the US congressional committee system, which is taken for granted to be the strongest. These factors will be seen operating in different constitutional environment in Britain in the Chapter Three and from their effect there conclusions for the significance of these institutions for the constitutional standing of the legislature will be made.

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Chapter 5 Conclusion

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2. Transformative Capacities of the Reformed House

Departmental Select Committees nowadays are considered to be success. As was discussed in Chapter Three above they have some influence on the government and certainly improve the performance of the House of the Commons. Nevertheless there is discrepancy between the initial goal of the reform and the final result. Despite the positive results the direct impact of the committees on the government decision-making must be described as modest for several reasons. Above all this is because committees' influence depend on governmental willingness to cooperate with them. This puts them in position of government aides rather than scrutinizers. Moreover there is plenty of evidence that they often see themselves as such. Further, any report from select committee may be ignored without any effect over the governmental policy. Indeed only 25% of their reports reach the floor. Committees have no privileged access to floor and cannot make proposals – neither can they initiate legislation nor any debate on issue chosen by them. Committees suffer from self-restraint and avoid certain salient issues of the day. With regard to their investigative powers, they have too limited powers to obtain the necessary testimony. Government can withhold information and render their investigation superfluous. In practice, all committee inquiries depend on governmental cooperation. These problems are exacerbated by the lack of sufficient staff and other research resources. This reduces their expertise and makes them entirely dependent on

the government or on interest groups for information. Members' high turnover and their little incentive for committee work further decrease their expertise. In addition, in all cases of direct confrontation with the government, committees are defeated and governmental proposal unmodified. This evidence for the dependency of the committees on government of the day determines their transformative capacities as modest, especially when judged by their initial goal to be check on the government and redress the constitutional balance. Despite the evidence presented in Chapter Three for some more subtle ways in which departmental select committees influence the governmental policy, the overall position of the House of Commons vis-à-vis the government remains intact. The transformative capacity of the Parliament did not change as result of the institutional reform designed to move it to the stronger end of Polsby's scale.

Committees have impact on governmental policy-making but do not create any madisonian tensions as their proponents expected and their critics feared. According to Polsby's definition, transformative legislature *frequently* moulds and transforms policy proposals, which is not the case with the House of Commons, as enhanced by the departmental committees. From such perspective committees were disappointing and this disappointment is frequently expressed by British scholars: "Despite [committees'] success, disillusion began to set in about the value of internal procedural changes and the case for procedural reform waned in favour of arguments for wider constitutional changes" and also "committees operate within too narrow scope, and with too limited resources, to have had any transformative impact on the relationship between MPs and parties, or between Parliament and government."

So despite the theoretical arguments set out in the first chapter for the possibility of strong and independent committees, the Departmental Select Committees certainly did not become significant actors in their own right. However they have significant contribution to the modern decision-making process as facilitators of the interactions of other actors: the government, the opposition, variety of interest groups and civic actors and the public in general. That is, committees became separate arenas for these actors and especially for the government, aiding it to defend and justify its policies as the doctrine of ministerial responsibility requires in very much the same way as the floor arena does.

After the introduction of the Departmental Select Committees the Cabinet makes its decision with awareness that they may have to be defended. But it is not cautious of the reaction of a committee in the same way, as an executive department in US may be cautious of a congressional committee. Cabinets is cautious for the public reaction that is facilitated through committees. This does not mean that this is trivial, but it is no different from the way the House of Commons worked before the reforms and with no departmental committees. That is why here is maintained that the institutional reform does not move the legislature towards the transformative end of Polsby's one-dimensional scale.

Although this mode of operation of the committees is successful its very success is sign of failure of the institutional reform to change the way Commons work: what was designed to be deliberative and controlling system developed as debating and co-operating body and it enhances the law-effecting function of the parliament rather than its transformativeness. So the hypothesis formulated in the beginning that by institutional reform the transformative capacity of the legislature may be increased is disproved. The internal reforms cannot amount to such constitutional change. Nevertheless, institutional reforms matter – they may have modest impact on the transformative capacities of the legislature but have significant impact on its law-effecting capacity. In other words

internal reforms certainly enhance the legislature and improve its performance without changing the nature of this performance.

This may seem trivial observation however it has one important implication and it is that apparently the one-dimensional scale suggested by Polsby's is insufficient for ranking of the legislatures. **The history of the British reforms suggests that the Parliament's significance increased through the institutional transformation without substantial increase of its transformative capacity. Instead its law effecting capacity increased. Hence law-effecting and transformative legislatures should not be seen as opposite ends, but two different dimensions according to which modern legislature may be ranked.** The history of the reforms in Britain suggests the dynamics of the model: the effect of the institutional reforms depend on the initial position of the legislature in the two dimensional space. (See Fig. 1 in Appendix).

3. Verification of the Hypothesis in a New Model

So the initial hypothesis is false if legislatures are viewed as one-dimensional – a significant institutional change cannot increase significantly the transformative capacities of the legislature, or at least does not in British context. Nevertheless it is true for a two dimensional model. If legislatures are assumed to vary independently according to their transformative capacities and also according to their law-effecting capacities it is true: Institutional changes increase both capacities of the legislature and the ratio depends on the starting point. It is proven in British context at least – institutionalization of a highly supported legislature, with predominantly arena features and modest transformativeness, increases significantly its law-effecting capacity and modestly its transformative potential. It may be suggested that the ratio between the change along each of the two dimensions depend on the initial ratio between them, which is in turn determined by the environmental factors (See Fig. 1 in the Appendix). Accordingly, the effect of institutionalization of a legislature with different ratio between arena and transformative features will be different. For the American Congress for example it might be expected that further institutionalization will increase more its transformative capacity (i.e. it will further reinvigorate the checks and balances) with less substantial change in its arena features.

The second dimension of parliamentary authority that is added here – law-effecting capacity, is essentially close to the public support dimension in Mezey's classical classification discussed in the beginning. The essential difference in the suggested model is that Mezey did not suggest explanation of the dynamics of the change. Norton's hypothesis suggested dynamics within this classification, but along one dimension only, that is its policy-influencing capacity. The present study claims to make theoretical contribution to the study of legislature by proposing this explanation of the dynamics of legislative authority development.

4. Success in Publicity Related Functions

With regard to the findings made above, the importance of the British Departmental Select Committees must be redefined as law-effecting bodies and not checking ones as they were expected to be. That is, in the above quoted words of Leo Amery that once applied to the Chamber only, Departmental Select Committees' role is to provide full elucidation and ventilation of all matters of public interest. From this perspective Departmental Select Committees are undisputed success as they provide transparency of the government, provide forums for its actions to be explained and justified or challenged, develop public awareness of certain issue and provide channels to the public and interest groups to be heard.