

INSTITUTIONALIZATION OF PARLIAMENTARY CONTROL OVER THE ADMINISTRATION

The House of Commons Select Committees in Comparative Perspective

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This study is inspired by the attempts undertaken in Britain to reverse the alleged decline of Parliaments by their institutional improvements and especially by introduction of parliamentary committees, authorized to exercise rigorous control over the executive. It does not assume that the weakness of parliaments vis-à-vis the executive is necessarily problematic, but is interested in the attempts to strengthen the legislature that were motivated by such assumption, and especially in the tools employed and the results achieved by the reforms with the intent 'to restore the balance'. Therefore it explores the theoretical possibilities and the actual attempts to improve the decision-making and oversight capacities of the parliaments and especially of the House of Commons by such institutional enhancements. It hypothesizes that by internal changes of the organization of the parliaments (i.e. the introduction of the British Departmental Select Committees in 1979) its capacities to control and influence governmental policy can be increased and its standing vis-à-vis the Cabinet can be redressed. The broader conclusion from a positive result of this hypothesis will be that by internal transformations within one of the branches of the government external changes in its constitutional context can be achieved. The method of testing this hypothesis is to identify, by theoretical speculations and empirical analysis of an existing strong legislature (US Congress), the factors that make a system of parliamentary committees stronger and to analyze the results of the implementation of these factors in weak legislatures (the British House of Commons and the Canadian Parliament), in deliberate attempts to improve them despite the unfavourable environmental factors.

For that purpose the study will focus on British departmental committees and the oversight of the administration they perform compared with the congressional committees in US and parliamentary committees in Canada. Hence amongst all institutions that may or were used by reformers to redress the balance it will analyze only the parliamentary committees. As British committees' powers are limited to 'scrutiny of the administration' the study will generally be limited to that function of the legislatures of the two countries. However it also will draw conclusions for the impact of the oversight committees to the overall strength of their parent chamber and its position vis-à-vis the executive. The American committees will be used only for the purpose of identifying the committee-enhancing factors and accordingly their analysis will be limited to these characteristics.

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Table of Contents

INTRODUCTION	1
1. Decline of Parliaments	1
Crisis Criticism	1
Reasons for the Crisis	2
2. The Subject of the Study	3
Significance of Parliamentary Control	4
Significance of Committees	5
3. The American Example	6
CHAPTER 1 INSTITUTIONALIZATION OF LEGISLATURES	8
1. Predictions of the Comparative Theories	8
The Virtues of Institutionalization	8
Factors for Committee Strength	9
Why Procedure Matters?	10
2. Neo-Institutionalist Perspectives	12
CHAPTER 2 AMERICAN CONGRESSIONAL COMMITTEES	17
I. Overview	17
II. Historical Development of the Congressional Committee System	18
III. Committee Structure	22
1. Normative Framework	22
2. Committee Types	22
3. Jurisdiction	23
4. Assignments onto Committees	24
Variable Size	24
Party Ratio	25
Seniority	25
Reforms and Demise of Seniority	27
Formal Nominations Procedure	28
Ballots for Committee Chairs	29
Substantive Factors for Assignment Decisions	30
5. Functions of the Chairperson	31
6. Subcommittees	33
7. Staff and Resources	35
8. Proceedings	36
9. Reports	39
10. Conclusion	40
CHAPTER 3 COMMITTEES OF THE HOUSE OF COMMONS	42
I. Standing Committees	42
II. Select Committees	44
Scrutiny Before 1979	45
Crosscutting Committees	45
III. Departmental Select Committees	47
History of the Reforms	48
Committees Characteristics	50
1. Permanence and Bureaucratic Parallelism	50
2. Appointment	53

Institutionalization of Parliamentary Control

3. Chairmanship	55
4. Subcommittees	56
5. Staff and Resources	56
7. Agenda Setting	57
8. Evidence Taking	58
9. Other powers	62
10. Proceedings and Reports	63
CHAPTER 4 CONCLUSION	69
1. Institutions and Environments	69
Disuse	70
Integration	71
Powerful committees	72
2. Transformative Capacities of the Reformed House	72
3. Verification of the Hypothesis in a New Analytical Framework	74
4. Success in Publicity Related Functions	75
Accountability to People	75
Debating Arenas	76
Access Channel	76
5. Conclusion	77
APPENDIX	78
REFERENCES	79

Introduction

However he acknowledges that this is natural development and the growth of the complexity of life itself had the effect “to confirm or to shift the onus for formulating ... public policy onto the government.”⁷ Some other observers, like Lord Nolan,⁸ do not find this development disquieting only as long as Parliament’s ultimate sovereignty remains intact as a matter of principle, while acknowledging that its influence has diminished due to the external development, and moreover they accept that this external development tends to diminish that influence even further. However, most of the observers still assume, explicitly or implicitly, assume that such development is bad *per se*, and that the balance between the Cabinet and the Parliament must be redressed.

Reasons for the Crisis

Rise of the Executive

The first and most obvious reason for this decline of parliament is the gradual rise of the regulatory state and accordingly the tremendous growth (both in terms of size and complexity) of the executive that manages it. This process, even in its very early stages in the end of 19 c., had obviously reshaped entirely the *balanced*⁹ government of the UK and prompted the early criticism. The immediate intuition is that the sheer size of the executive may be balanced by respective bureaucracy on the legislative side. Thus David Olson observes that, “legislative staff and permanent committees that parallel the structure of agencies are two common institutional devices for achieving that purpose.”¹⁰ This is indeed a matter of common sense, but as Olson himself further implies, parliaments cannot keep the pace with the increasing complexity of the executive. Nevertheless, the measures employed so far have been in that direction: “this was an unequal struggle; but in 1979 the appointment ... of committees to shadow individual government departments gave some hope of redressing the balance.”¹¹

Parliamentary System Constraint

While the rise of the regulatory state is common for all contemporary Western societies, and is a problem in the US congressional system as well¹², there is another constrain on legislatures in parliamentary countries and this is the rise of the party systems. Party discipline may be real constraint on the powers of a congress in a presidential system as well, but to a less significant degree in comparison with a parliamentary state. The constitutional dependence of the cabinet on the parliamentary majority necessarily means that the party that controls the parliament elects the cabinet with its leaders as ministers in it. Hence, the rank-and-file members sitting in parliament will be more or less ready to yield to these ministers’ policy decisions. John Huber suggests a more subtle explanation of this situation. According to him, the dependence of the government on the parliamentary confidence produces two

⁷ *ibid.*, p.2.

⁸ Lord Nolan and Sir Stephen Sedley, *The Making and Remaking of the British Constitution*, Blackstone Press Limited, London, 1997.

⁹ It is difficult to speak about separation of powers in British constitutional system, yet it is accepted amongst the British that they enjoy a ‘balanced government’. For example M.J.C. Vile in his *Constitutionalism and Separation of Powers*, London, 1967, describes the English Constitution as “an amalgam of the doctrine of separation of powers with the theory of mixed government to produce a *partial separation of functions*. ... this was a basic element in eighteenth century English constitutionalism, the theory of balanced government,” p. 18-19, emphasis of the author.

¹⁰ Olson, David, *Legislative Process A Comparative Approach*, NY: Harper & Row, 1980, p. 446.

¹¹ Liaison Committee First Report, par. 3.

¹² See Chapter Two, footnote 158 for some examples of similar concerns.

dimensions of policy preference for each MP: support or opposition for the particular legislation and support and opposition for the government.¹³ These also are the two dimensions of every single act of voting and indeed any activities members engage in. Accordingly, members of the governmental majority cannot vote against a proposed measure without expressing opposition to the government itself. This is sufficient reason for them to express support for the measure in most of the cases. When a major conflict between them arises, members may vote the ministers out of office, but only to succumb to new leaders elected as ministers. Therefore, the parliaments are certainly controlled by the cabinets instead of vice versa, as the theory of ministerial accountability requires. As a result it is the executive that sets the parliamentary agenda¹⁴ and it is the executive that drafts the essential amount of the legislation.

In these circumstances, even the case for parliamentary control of the executive actions is weak one, and any attempt to policy-making by parliament is virtually impossible. The members of the majority are expected “at one and the same time to be part of a scrutinizing parliament and to sustain the government in office,”¹⁵ which turn out to be contradictory tasks. To criticize or oppose their own leaders is behaviour far too risky for any MP, even if she can expect some other (i.e. constituency) rewards from it. Whenever some incentive for collective action of backbenchers may arise, it will be outweighed by the individual losses that they may suffer through the party disciplinary system. Thus they have enough incentives to comply with the incumbent leadership, trying to make their way towards the frontbenches, rather than to hold leaders to account.¹⁶ This model is common more or less for any European, that is parliamentary system of government, but as it will be expounded in the next chapters, it has its strongest version in UK, where it is exacerbated by the two strong and coherent parties.

2. The Subject of the Study

This study is inspired by the attempts undertaken in Britain to reverse the alleged decline by institutional improvements of the parliaments and especially by introduction of parliamentary committees, authorized to exercise rigorous control over the executive. It does not assume that the weakness of parliament vis-à-vis the executive is necessarily problematic. It is interested only in the attempts to strengthen the legislature that were motivated by such assumption, and especially in the tools employed and the results achieved by the reforms with the intent ‘to restore the balance’. Therefore it explores the theoretical possibilities and the actual attempts to improve the decision-making and oversight capacities of the parliaments and especially of the House of Commons by such institutional enhancements. It hypothesizes that by internal changes of the organization of the parliaments (i.e. the introduction of the British Departmental Select Committees in 1979) its capacities to control and influence governmental policy can be increased hence its standing vis-à-vis the Cabinet can be redressed. The broader conclusion drawn if the hypothesis is confirmed will be that by internal transformations within one of the branches of the government, external changes in its constitutional context can be achieved. The method of testing this hypothesis is to identify, by theoretical speculations and empirical analysis of an existing strong legislature (US

¹³ Huber, John D., *Restrictive Legislative Procedures in France and the United States in American in Political Science Review*, vol. 86, No.3, p. 677

¹⁴ In Britain the Government has formal authority to set the agenda, except for 20 ‘Opposition days’ per year.

¹⁵ Norton, *Parliaments*, p. 194.

¹⁶ This is the natural way also to advance own policy objectives rather than through dissents or cross-party incentives.

Congress), the factors that make a system of parliamentary committees stronger and to analyze the results of the implementation of these factors in a weak legislature (the British House of Commons), in deliberate attempts to improve them despite the unfavourable environmental factors.

For that purpose the study will focus on British departmental committees and the scrutiny of the administration they perform compared with the congressional committees in US. Amongst all institutions that may or were used by reformers to redress the balance it will analyze only the parliamentary committees. As British committees' powers are limited to oversight of the administration the study will generally be limited to that function of the legislatures of the two countries. However it also will draw conclusions for the impact of the oversight committees to the overall strength of their parent chamber and its position vis-à-vis the executive. The American committees will be used only for the purpose of identifying the committee-enhancing factors and accordingly their analysis will be limited to these characteristics. The study will focus on control by committees for two reasons.

Significance of Parliamentary Control

If the Parliament is not decision-maker, it has two other important functions remaining. The first is holding the executive to account i.e. scrutinizing its policies. Observers agree that the proper function of the parliament is oversight:

“the Commons cannot govern: it can only call to account those who do govern”¹⁷

“it was noted that the parliament does not govern, but there is a widespread belief that it ought to be able to put things right”¹⁸

Indeed the House of Commons dedicates most of its time to various oversight activities like Prime Minister Question Time, questions to Ministers, written questions to Ministers and the scrutiny through the Departmental Select Committees seems most comprehensive and profound form of these.

The second function is what David Olson terms ‘law-effecting,’¹⁹ which appears to be essentially the same type of activity – the proposed policy must be explained and justified before the adoption by the government majority: “parliaments provide the means by which the measures and actions of government are debated and *scrutinized* on behalf of the citizens, and through which the concerns of citizens – as individuals or organized in groups – may be voiced.”²⁰ Both of these functions arguably may be subjected under the heading parliamentary control.

There are two definitions of oversight suggested in American context by M. S. Ogul and by J. Aberbach. Formally, the activities of the British committees fit squarely in the limited definition suggested by Aberbach, that is “[legislative] review of the actions of ... departments, agencies, and commissions, and of the programs and policies they administer, including review that takes place during program and policy implementation as well as afterward.”²¹ The constitutional differences between the two countries however lead to differences in the substance of this review of the actions. In US it has been suggested that the

¹⁷ Peter G. Richards, p. 4 in Ryle, M. and Richards, P.G. *The Commons under Scrutiny*, 1988.

¹⁸ Griffith, J.A.G. and Ryle, M., *Parliament*, (hereafter Griffith), p.16.

¹⁹ Olson, D., *op. cit.*, p. 12. See also the discussion in Chapter One, p.8.

²⁰ Norton, *Parliaments*, p.1.

²¹ Aberbach, Joel D., *Keeping a Watchful Eye. The Politics of Congressional Oversight*, 1990, p. 2.

‘review’ means that “Congress ... would participate actively in administrative decision making [as] administration of a statute is ...an extension of the legislative process.”²² In British context oversight has not been defined but the doctrine of ministerial responsibility suggests that control means only analysis and questioning of the executive actions in Parliament or its committees. Such concept follows from Leo Amery’s seminal definition of the function of the Parliament that is “not to legislate or govern, but to *secure full discussion* and ventilation of all matters.”²³ This suggests that all of the activities of the House of Commons or its panels can be described as various forms of control. This makes the broader definition of M. Ogul, that is “Legislative oversight is behavior by legislators and their staffs, individually or collectively, which results in an impact [over the administration],”²⁴ more appropriate for the oversight in British context. A broad notion like this one motivated British reformers to introduce special ‘oversight’ committees as a way to strengthen the Parliament and to increase its overall policy-influencing capacity.

Indeed if the Commons central function is to control the government, enhancing the control is very suitable way ‘to restore the balance.’ Indeed the frequent attempts to do that have always been in the form of enhancing the oversight capacities of the House. Among the first attempts was the creation of the Public Accounts Committee in 1861 and among the recent – the introduction of the system of Departmental Select Committees in 1979. Related to oversight were many other reforms like the introduction of the Estimates days and the frequent reorganizations of question time.

Significance of Committees

Parliamentary committees are the certainly the most important institutional feature of the parliaments and are critical for the performance of the chamber itself – “if the national legislature is to be a significant political factor, then it must have a specialized committees of limited membership and considerable scope of power.”²⁵ Committees perform certain tasks on behalf of the chamber in different ways; they collect huge amounts of information, bring their observations to the attention of the whole parliament, provide expert advice and give opportunity to the members to specialize.

Certainly not only the committees are important, there are some other institutional factors that are deemed crucial for the strength of the parliaments (see the subsequent chapter and esp. footnote 42). Yet in Britain exactly the committees were expected to change the Parliament’s position vis-à-vis the Cabinet: “legislative independence through strong committees is the aim of the reformers in Great Britain.”²⁶ Indeed the importance of the committees themselves vis-à-vis the chamber rose in the preceding decades – arguably in the contemporary legislatures there is a “shift of emphasis from chamber deliberation to scrutiny by committees.”²⁷ Besides these benefits for the Chamber, committees have important publicity-related functions of their own right (see Chapter Five) and develop relationships directly with the executive departments in their remit. Hence, they might be deemed beneficial for the executive itself and certainly are for the public. They can also greatly increase the transparency of the government, provide career opportunities for the backbenchers, establish

²² Oleszek, Walter, *Congressional Procedures and the Policy Process*, 1996, p.302 quoting D. Truman, internal quotation marks omitted.

²³ Amery, Leo, *Thoughts on the Constitution*, London, 1947, p. 12, emphasis added.

²⁴ Ogul, Morris S., *Congress Oversees Bureaucracy: Studies in Legislative Supervision*, 1976, p. 11, quoted in Aberbach, *op. cit.*, p. 218.

²⁵ Norton, *Parliaments*, p 13, citing Joseph La Palombara.

²⁶ Loewenberg and Patterson, *Comparing Legislatures*, 1979, p. 134.

²⁷ Norton, *Parliaments*, p.9.

important subject-specific communication channels to the interested public and perhaps also provide some creative proposals. The last may seem to a great extent palliative, yet such are the most recent proposals for creating crosscutting policy area committees instead of departmental ones.²⁸

3. The American Example

It has been argued that no meaningful comparison can be made between the legislatures of the United States and Britain.²⁹ Nevertheless, such difficult exercise may be useful as obviously in the 1990s the strength of legislative committees grew, not only in the UK, but also throughout Europe,³⁰ and congressional committee system may serve as a yardstick for the achievements of the reforms elsewhere. Even though US congressional committees are stronger than any committee system in a parliamentary state and clearly stronger by far than committees of the House of Commons, certain features from the Congress may have been imported across the ocean. They were not model for the reforms in the Commons (or at least none of the reformers admitted that so far) yet certain similarities in the particular institutional features introduced in 1979 in the efforts to strengthen Parliament can be observed.

Therefore in the present study the new committee system in Britain and their new mode of operation will be evaluated against the most distinctive institutional features of the congressional committees. For instance, although the Departmental Select Committees in Britain are limited to oversight and therefore cannot “veto” a government bill, they can be similar in features like bureaucratic parallelism, powers to call witnesses, career opportunities for members, authority of the chairpersons or development of rules of seniority. Especially important are those features, which promote or restrain committee autonomy i.e. the independence of committee members from party caucuses and leaders. The research will be limited to congressional committees’ function to oversee the executive, because this is the only major occupation that they have in common with the Departmental Select Committees in Britain. A comparison between the congressional committees in their legislative capacity and British standing committees, which consider bills, is meaningless indeed, given the negligible impact of the latter on legislation. Furthermore, the main focus of the study is the effect of the institutional organization of the legislative committees, not their functions.

²⁸ For example the proposals from the Hansard Society Commission on the Scrutiny Role of Parliament, chaired by Lord Newton of Braintree (Philip Norton), see Brazier, A., *Systematic Scrutiny: Reforming the Select Committees*, Hansard Society, 2000, p. 2.

²⁹ Drewry, Gavin, *Select Committees and Back-bench Power*, in *The Changing Constitution*, Jowell, Jeffrey L., and Dawn Oliver (eds.), 1989, p. 142-43. He maintains that because of the constitutional differences and accordingly the different functions of the legislatures such comparison is useless. However he admits that the Departmental Select Committees “cut-across some deep-rooted traditions,” which implies that the functions of the House of the Commons might have been changed by committees.

³⁰ Longley and Ágh maintain that “in contrast with the false impression of a ‘decline of parliaments,’ which gave birth to an extensive scholarly literature in the 1960s and 1970s, parliaments have, in the past three decades, become more influential bodies globally, and this has been particularly due to their newly organized or revived committee systems.” See Ágh, A., and David Longley, *Political Harmonization in East Central European Parliaments: Parliamentary Committees as Central Sites of Policy Making* in Working Papers on Comparative Legislative Studies II: The Changing Roles of Parliamentary Committees, 1997, p. 4.

The subsequent chapter will discuss the general theoretical scholarship on the legislative organization and the possible effects of committee institutionalization on the constitutional context of the legislatures. Here the findings of classical comparative studies by Nelson Polsby, Michael Mezey, Philip Norton and David Olson will be related to the topic. Predictions on the basis of these classics will be made for the possible effect of institutional reforms in a given constitutional context. Also the contemporary American Neo-Institutionalist theories (B. Weingast, G. Cox and M. McCubbins, T. Gilligan and K. Krehbiel) and their predictions for the success of the committee reforms will be considered. The hypothesis suggested above (p. 3) will be further précised with regard to these theoretical suggestions.

In Chapter Two the congressional committees will be discussed with special attention to the characteristics that make them powerful and the conditions, both exogenous and endogenous, that is environmental and institutional, which increase their autonomy and in this way their impact upon the executive. These ‘empowering characteristics’ identified in Chapter Two will serve later in Chapter Three as a background upon which to assess the efforts for strengthening the British parliamentary committees, current reform proposals and the driving forces behind them and the conditions for success of these efforts. By comparison of the committee features, which were introduced by the reformers in Britain, with similar ones existing in Congress, the effect of these features for the overall strength of committees, hence of the whole legislature, can be evaluated. The conditions enabling the reform will be used to explain the deficiencies of the reforms in Britain. Finally, in Chapter Four, the effect of the institutional reforms in the different constitutional environment will be discussed and general conclusions will be made on the basis of this comparison. A new analytical framework will be proposed to explain the effects of legislative institutionalization and their dependence on the differences in the constitutional context.

For these limited purposes the congressional committees will not be dealt with comprehensively and from all possible aspects of their performance but only from those that are useful for the comparison. Therefore the study will not go further than identifying the conditions for committee autonomy and rigorous oversight. Hence, their legislative work will be largely ignored, together with the issues that are closely related to it such as bill referrals, conference committees or bill management tactics on the floor. For the same reasons, the constitutional and political context will be generally taken for granted to be one encouraging active legislature with active committees.

With the underlying principle that only similar features of the two systems will be compared the subpoena powers of the congressional committees will receive unduly limited treatment. Indeed, they are evidently important factor for the strength of the congressional committees in all aspects of their work and apparently compared with them the powers of British committees “to send for persons” decrease to the vanishing point. The subpoena powers enforceable by courts enable congressional committees to engage in far-reaching investigations in quasi-judicial manner. British committees may summon witnesses but their orders are not enforceable in courts. Thus their investigations depend on the *cooperation* of the parties and agencies they investigate. Therefore the extent of their actual ability to obtain evidence will be discussed comprehensively, while powers of the American committees will be largely taken for granted.³¹ The final limitation to be mentioned is that the study will rely only on secondary data provided by comprehensive empirical research. There is a wealth of these for US Congress and unfortunately only a few for the House of Commons.³²

³¹ See p. 39 and p. 58 for further discussion.

³² Thus the only currently available empirical survey of the Members of Parliament’s behaviour, of their preferences and attitudes is *Westminster’s World* by D.D. Searing (Cambridge, MA: Harvard University Press, 1994). It is based on data from the 1970s, that is before the creation of the British Departmental Select Committees. Accordingly it is used for the earliest history of reform only.

Chapter 1 Institutionalization of Legislatures

1. Predictions of the Comparative Theories

The Virtues of Institutionalization

In the seminal typology of legislatures suggested by Michael Mezey³³ British House of Commons ranks in the group of the ‘reactive legislatures’ characterized by modest policy-making power and still high public support.³⁴ 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.

Mezey’s categorization is suggested on the basis of an earlier classification of legislatures developed by Nelson Polsby,³⁵ who ranks legislatures according to their transformativeness, that is their capacity to reject or transform the proposals introduced by the governments, in a one-dimensional scale from ‘legislative arenas’ to ‘transformative legislatures.’ In the latter group are “the legislatures that possess independent capacity frequently exercised, to mould and transform proposals from whatever sources.”³⁶ These are contrasted to the parliaments in the former group, which “serve as formalized settings for the interplay of significant political forces in ... a political system; the more open the regime, the more varied and the more representative and accountable [these] forces are.” Further Polsby explains that the concept of ‘legislative arenas’ does not answer the question where the decision-making power actually resides and suggests that in the different systems it may be allocated in different external actors like parties, bureaucracies, etc. This classification in fact represents legislative arenas as weak legislatures in a one-dimensional scale and transformative capacity becomes synonym of decision-making capacity or strength. Various later classifications introduce second dimension in the classification of legislatures, but all of them accept that transformativeness is the first dimension³⁷ and interpret the ‘arena’ on the opposite end as weak. Nevertheless, they recognize that arenas have important legitimizing or, in the apt terminology of David Olson, law-effecting functions.³⁸ Olson’s term suggests that even the most omnipotent governments need public forum, where they can explain and justify their actions and this is the law-effecting function of the legislature. With regard to these

³³ Michael Mezey, *Comparative Legislatures*, Durham, Duke Univ. Press, 1979.

³⁴ The other groups of supported legislatures according to Mezey are the ‘active legislatures’ – with strong policy-making powers (where only US Congress qualifies) and the ‘minimal legislatures,’ still with support but with no policy influencing capacity (where parliaments of single-party states usually qualify). There are also two groups of less supported legislatures, which are the ‘vulnerable legislatures’ with strong policy-making power even though not highly cherished by the public (such as in the Fourth French Republic or in modern Italy) and the ‘marginal legislatures’ with no support and only modest policy-making power (such as in Brazil and Argentina).

³⁵ Polsby, N., *Legislatures*, 1975 in Norton, *Legislatures*, 1990, p. 129-148.

³⁶ *Ibid.*, p. 129.

³⁷ For example Mezey’s classification has policy-making capacity as the first dimension; also Jean Blondel suggests ‘viscosity’ which he defines as “the extent to which legislatures can modify ... outcomes” (J. Blondel et al., *Legislative Behaviour in Government and Opposition*, 1970, p. 67-85, and also in Norton, *Legislatures*, p. 186) and Polsby himself uses independent as synonymous to transformative and influential (in Norton, *op. cit.*, p. 142). Mezey suggests as second dimension the public support of the legislatures and David Olson (*op. cit.*) ‘the degree of stable existence.’

³⁸ David Olson, *op. cit.*, p.12.

classifications, the ‘decline’ theories discussed in the introduction can be described as decrying the limited transformative capacities of the modern legislature. Accordingly their advocacy ‘to restore the balance’ can be interpreted as advocacy for increase of the these capacities or in other words, for moving the respective legislature towards the transformative end of Polsby’s one-dimensional scale.

In his recent comprehensive study of the European legislatures³⁹ 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 ranking⁴⁰ within the category of the reactive legislatures (or of policy-influencing legislatures, which is his preferred term).⁴¹ 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, i.e. by endogenous factors, 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 transformativeness is. Legislatures’ “capacity to influence policy outcomes is greatest when it is highly institutionalized ... [and when it has] highly developed committee structure.”⁴² 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 a comprehensive comparative study of several European countries⁴³ he maintains that there is “apparent correlation between certain institutional features and the ranking of the legislatures within the family of the reactive legislatures.”⁴⁴

Factors for Committee Strength

These features are the permanence of the committees, the small number of their members, the fixed rules for committee nominations,⁴⁵ their agenda-setting and evidence-taking powers, the bureaucratic parallelism (i.e. shadowing of the governmental departments by the committees with predetermined jurisdictions over certain fields), the power to seek specialist advice and also their inner institutionalization – strong chairmanship, fixed committee rules and

³⁹ Philip Norton, *Introduction: The Institution of the Parliaments* in Philip Norton (ed.), *Parliaments and Governments in Western Europe*, (hereafter *Parliaments*), 1998, p.1-15.

⁴⁰ See Philip Norton, *The Legislative Powers of the Parliament* in *The Evolving Role of Parliaments in Europe*, C. Flinterman, A.W. Heringa and L. Waddington (Antwerp, 1994), p. 15-32.

⁴¹ The term ‘policy-influencing legislature’ is somewhat ambiguous; as will be discussed later in the present study, there are ways for a ‘law-effecting legislature’ to influence policy as well. Therefore Polsby’s term ‘transformative legislature’ will be preferred throughout the paper to keep the distinction between transformative and arena types clearer.

⁴² *Ibid*, p.4. Norton offers several other factors equally vital for the institutionalization and strength of the legislatures and not related to committees, such as the institutionalization of the floor itself (with predetermined rules of procedure and especially agenda-setting authority), the resources available to members, or the power associated with leadership positions and seniority. The current study is limited to committees, and these other institutions will receive attention only as long as they may have certain relations to committees.

⁴³ Norton, P., (ed.), *Parliaments in Contemporary Western Europe – Vol.1. Parliaments and Governments in Western Europe* (1998); Vol. 2. *Parliaments and Pressure Groups in Western Europe* 1998; Vol. 3. *Parliaments and Citizens in Western Europe*, (1999), London: Frank Cass.

⁴⁴ Norton, *Parliaments*, p.9

⁴⁵ The seniority system in US Congress in the best example of such rules, it is critical for insulation of committee assignments from party control.

subcommittees. The staff, the professional advice and the other resources available to the committees (as well as to the individual MPs) are also crucial to enable the members to question effectively and influence in any other way the governmental policy. According to Norton, these factors make a committee (and consequently the parent chamber) stronger and independent from governmental and party control. The significance of these theoretically suggested factors will be evaluated in the subsequent chapter in American context, where they make committees strong and independent. Next they will be analyzed as implemented in Britain and their contribution to the policy influencing capacity of the House of Commons discussed.

Why Procedure Matters?

In 1979 a major step for institutionalization of the British House of Commons was taken. This was the creation of the system of Departmental Select Committees (DSC), which more or less possessed the institutional characteristics deemed critical above. The introduction of the committees was applauded: “We are embarking upon a series of changes that could constitute the most important Parliamentary reform of the century.”⁴⁶ Ostensibly this was purely *internal and procedural* modification that cannot bring about any change outside the House of Commons itself, so the reform was met with a lot of scepticism. Norton’s observations of the virtues of institutionalization imply however, that committees may amount to overall increase of the powers of the Commons vis-à-vis the Cabinet i.e. to affect its external relations and to modify these relations. Therefore, the reforms could lead to a constitutional change. There are at least three ways for these internal changes to affect the external environment.

The first is expressed in the Madisonian rationale for the core of the American style separation of powers being “ambition must be made to counteract ambition.”⁴⁷ Committees may rise as separate fields for the individual MPs to pursue their own ambitions,⁴⁸ who are otherwise denied access to floor for trivial time constraints. Further, committees, being separate institutions, may appear as independent actors themselves. For such ambitions to emerge however, the committees must be sufficiently different from the Chamber, that is to be separated institutionally and their members’ behaviour to be different from that of the non-committee members. If a committee is highly institutionalized and provides certain new constraints and incentives (that converge with the traditional party and constituency influences) its members will modify their behaviour to comply with these new constraints and they will act differently from their colleagues, who are not members of the same institution.⁴⁹ However if parties retain same degree of control over members’ behaviour (for instance by controlling their assignments and removals from committees) as they have over their behaviour on the floor, committees will tend to promote the same ambitions (i.e. these of the leaders) as the whole chamber does. Ostensibly the former seems to be the case: select committees consist of opposition MPs and government backbenchers, but not party leaders and also they proceed under entirely different rules and in bipartisan mode. Accordingly, they

⁴⁶ Norman St John-Stevias, Leader of the House, upon the decision of the House to create the system of Departmental Select Committees. HC Debates, 25 June 1979.

⁴⁷ Federalist 51, para 3.

⁴⁸ Amongst everything committees were expected to provide an “alternative career path” for the backbenchers, see later, p. 71.

⁴⁹ The difference between standing and select committees is particularly instructive in this regard. The standing committees are microcosms of the floor, so their members cannot be expected to act any differently from it, while select committees operate on entirely different basis only because of the institutional differences between the two.

may be expected to develop new ambitions, and to check effectively government's ambitions, re-establishing the parliamentary control over the executive.

The second rationale is logistical – if the Parliament that controls the ever-growing executive cannot cope with this immense task, it may catch up by multiplying itself through committees. Such structural change may be much more than procedural matter if the Parliament delegates enough of its powers to a multitude of committees. Further, if committees add the benefits of specialization to their sheer number, the Parliament as a whole will be much better equipped both for control over the administration and for legislative scrutiny. If the House of Commons itself had become an inadequate check on the power of the Cabinet, a constellation of expert subunits may be such check to the respective Ministers. The new institutional bodies, with the relevant bureaucracy and lots of paperwork, will inevitably be factor that will have to be accounted for by the existing players; a bureaucracy churning out periodically certain amount of reports cannot be easily ignored. This theoretical assumption is proved by the empirical research of Joel Aberbach. He demonstrates that the decentralization of Congress (and especially the decentralization through subcommittees) increases immensely the oversight activity – not only by the mere increase of the overall activity of the Congress as result of the proliferation of its panels, but also as percentage of the total.⁵⁰ Multiplying the Parliament certainly increases all activities including oversight, but there is more profound effect of increasing the share of oversight as well.

The third rationale is that the more institutionalized the Parliament is, the more distinct from the Cabinet it will be. The weakness of the Commons comes from the fusion of the branches at Westminster. Hence a parliament with a lot of separate organizational units and with its own bureaucracy (with all the impulses and inertias it may give⁵¹) will tend to be more distinct from the executive, especially if the units develop their own identities, corporate spirit and the respective loyalties. This was observed by Walkland as early as 1976: “Strengthening its committees would entail a distancing of the House of Commons from the executive.”⁵² So far this seems not to be the British case especially with regard to the size of the bureaucracy at Westminster and all governments so far constantly have rejected the committees' demands for more staff and resources. Yet the distance of the select committees from the government is inevitably greater and may be expected to increase.

If it is true that in the US the strong separation of branches leads to stronger Congress, while the fusion of branches in the parliamentary systems leads to parliaments dominated by the executive, it might be expected that the creation of parliamentary committees one step further away from the government will increase the overall distance and hence the powers of the Parliament. Certainly, separation of powers in US is not because of the committees, yet it is observed that the strong committees there do increase that separation: “in the US powerful congressional committees contribute to the independence of the legislature from the executive.”⁵³ So notwithstanding the fundamental constitutional difference between the two systems distancing through institutionalization may be a move in the same direction.

For these reasons an increase of the powers of a legislature by its own internal institutionalization seems possible at least. The remaining question is how any reform to strengthen parliament could occur in a cabinet-dominated environment. How can a

⁵⁰ See Aberbach, *op. cit.*, p. 54.

⁵¹ According to Aberbach the committee bureaucracy is not only a vital resource for supporting committees, but is also a factor in its own right, as staffers have their own incentives to seek information, see *op. cit.*, p. 131.

⁵² Walkland, S.A., (ed.), *The House of Commons in the Twentieth Century*, Clarendon, 1976, p.196.

⁵³ Loewenberg, Patterson and Jewel, *Handbook of Legislative Research*, p. 134.

parliament embark on reforms undermining this cabinet? In 1970s in Britain there was a rare opportunity and such reforms were introduced, however there were no more such occasions and reforms remained quite limited. As David Judge neatly puts it, the history of the committees since 1979 reveals “both the fundamental limitations imposed by these initial restrictions, and the attempts by the committees to retrieve the initial losses.”⁵⁴ More precisely, that history reveals the strains from the external environment over the modest internal change and system pressures to integrate the novelties and force them into a traditional mode of operation. In the subsequent chapters the driving forces behind the changes in Britain and in US will be identified and the possibility of the British reforms in this period will be explained.

2. Neo-Institutionalist Perspectives

Contemporary American scholarship on legislatures assumes that legislatures, that is their members, are able to devise their own rules of procedure and internal structure and they form such institutions that further their own goals.⁵⁵ Accordingly, it is maintained that the existing institutions may be explained with the interests of the members. Based on the classical behavioural theories of Mayhew⁵⁶ and Fenno⁵⁷ that members are self-interested rational actors, this scholarship has developed three concurrent theories. Each of them emphasizes the crucial role of each one of the three actors interacting in the decision-making process in a legislature - committees, parties and parent chambers - and accordingly explains the reasons for the existence and the functions of legislative committees in three different ways. Committees are seen as autonomous and dictators by the distributive committee perspective, as instruments of party control by the party-dominance perspective, or as facilitators of informed floor decision-making by the chamber dominated, or informational committee perspective.⁵⁸

⁵⁴ Judge, David, *The Parliamentary State*, 1993.

⁵⁵ This assumption is problematic in the British context, as party structure is entrenched to the extent that the Cabinet determines even the internal structure of the Commons. Yet the Neo-Institutionalist theories are useful to identify the pressures of the existing framework over members and explain their resulting behaviour *within* this framework.

⁵⁶ Mayhew, David R., *Congress: The Electoral Connection*, 1974.

⁵⁷ Fenno, Richard, *Congressmen in Committees*, 1973. Fenno identified three goals motivating committee members' behaviour. These goals are re-election, good public policy and influence within the parent chamber. Based on their empirical survey Deering and Smith confirm this and argue further that for committee members' “policy interests are a close second [to the re-election goal] and influence or prestige a distant third”, p. 62.

⁵⁸ There is also a fourth perspective – the bicameral rivalry theory, recently developed by Diermeier D., and Myerson, R.B. (*Lobbying and Incentives for Legislation*, 1996), who maintain that committees (as all other possible veto points on the way of the legislation) are introduced by each chamber in its rivalry with the other chamber in soliciting rents from the pressure groups interested in various legislative actions. It is omitted here, as it is apparently inapplicable in British context, where there is no possible rivalry of the Commons with the superfluous upper chamber. Indeed, in a system as centralized as the British, there is no competitor to the Cabinet in receiving all the rents for any action. Hence the respective Minister is the only possible ‘hurdle,’ and introduction of more hurdles would lead to decentralization of the system and dispersion of the rents.

Distributive Benefits Perspective

The distributive benefits theory developed by Weingast and Marshall⁵⁹ suggests that legislatures consist of minorities of members who have special outlying preferences for particular policies and are relatively indifferent to the policies preferred by the rest of members. Policies that the legislatures decide on are assumed to be of such kind, that each of the minorities may derive high benefit from the one that it prefers if it is adopted by the whole legislature without substantially harming all the other members who are indifferent to it. In other words, all policies distribute concentrated benefits to a particular group of members, while the costs are dispersed to all of the relatively indifferent members. Apparently in the real world this is the case of most governmental distributive programs that benefit particular group of citizens while the costs are dispersed to all taxpayers. Accordingly members from the constituencies affected will have outlying preferences for the particular policy. Each such group of members with special preferences usually will be minority and will be unable to adopt the preferred policy as the decision-making rule in all legislatures is majority vote and the floor majority is indifferent to the policy. Therefore the minority groups must establish voting coalitions with other special interests. Then an omnibus bill may be adopted with by the coalition authorizing the preferred policies of all of the partners. Such *ad hoc* coalitions however are unstable and each minority group may renege from the coalition once its preferred policy is adopted and enter another coalition that may repeal the policy preferred by another partner from the former coalition. To avoid this instability, which is equally unfavourable to all outlying groups, all of them agree to establish permanent committees overseeing the respective special interest fields, which are *solely* authorized to control the implementation of the programs and propose amendments to the *status quo* in the respective field. That is, these committees must have negative power to block any proposed legislation in their subject matter that they do not prefer to the *status quo*. They may also have positive power to have privileges for the treatment of their proposals on the floor.

The distributive theory maintains that committee members self-select onto committees because of a keen constituency interest in the subject matter of the committee (or in case of oversight committees – in the departments and agencies in committees' jurisdiction) while non-committee members remain relatively indifferent to the same matter. This situation is crucial for the committee autonomy – in such case, committees would *independently* act within their jurisdiction, irrespective of the policy preferences of the floor or majority party. Weingast maintains that this is the case with the Congressional Committees. Indeed in US committees have certain negative power, ensured by the rules for mandatory referral of every bill to the respective committee and this is guaranteed by the difficulty to bypass a committee. So this theory expects legislative committees to be both strong and independent.

The constitutional fusion of powers in Britain makes this theory applicable for the Departmental Select Committees in the House of Commons only in a negative way. Committees there may consist of members with special preferences in the subject matter of the committees, but they cannot possibly enjoy any indifference from the floor as the Ministers who sit not in the committees but on the floor front benches cannot be expected to be indifferent to committee actions. Even if the committee members have their strong constituency based interest in the issues, which is not often the case in Britain, they cannot expect any deferentialism to their actions by an indifferent floor. This general prediction of the theory is confirmed empirically: neither the standing, nor the select committees have any negative powers. Select committees generally cannot consider legislation at all and therefore

⁵⁹ Weingast, Barry R and William Marshall, *The Industrial Organization of Congress* in *Journal of Political Economy*, 96:132-63 (1988).

no logrolls are even feasible. Standing committees that consider legislation (and where Ministers may sit) are not permanent and their varying membership cannot be expected to have any different preferences from the floor. In turn, Ministers must have majority support to remain in their office, hence as long as they do, they will always have support for their policy and no such logrolling coalitions are necessary. Hence, if legislative committees main function is to enforce distributive benefits coalitions as this theory suggest, committees are devoid of meaning and shall not develop at Westminster.⁶⁰ With regard to the attempted reform the prediction of this theory is that Departmental Select Committees will be redundant and will make no difference in the decision-making capacities in Britain.

Party Dominance Perspective

The Party Dominance Perspective developed by Cox and McCubbins⁶¹ perceives committees as tools for the parties to discipline their members and accordingly achieve certain policy objectives on the legislative agenda of the party. Indeed parties usually control committee assignments (and even may sometimes remove a member from committee) which is tool to discipline the rank-and-file committee members. They also may select a committee chair who is loyal supporter of the party (or simply same people may be leaders of the majority party and chairmen of the committees). Cox and McCubbins argue that this is sufficient to ensure party control over the agenda and the policy decisions of committees. Moreover party leadership also has effective control of floor agenda and respectively the access of committee proposals to the floor which is sufficient to prevent any independent committee action if it is not preferred by the party. Accordingly, committees (or members) cannot effectively enjoy the autonomy they may be granted by the formal rules of the chamber but will yield to the party pressures or even advance the party line without direct command. If this theory may be supported in American context, where party control of the assignments is constrained by variety of ways (see subsequent chapter) and the rules of seniority provide certain insulation of committee members from party pressure, it must be even more valid in Britain. Indeed assignments to Commons committee are fully controlled by the parties. Moreover, members' political future i.e. advancement in Parliament or to the government as well as their re-election chances, depends on parties to much greater extent than in US. Accordingly, the incentives of a British MP for independent action in a committee seem nonexistent while her incentive to advance party policies are overwhelming. Hence the reformed British committees may be expected to be entirely dependent on party, i.e. on the government and outright tools for stronger executive dominance of the Parliament.

This perspective means that committees certainly will not be autonomous but does not necessarily require powerless committees. The opposite may be true – the committees may appear to be autonomous, as it is the case in Congress, but this is only as long as parties prefer to have them as effective tools for dominance over the Chamber, that tends to be unruly. Whenever the Chamber is sufficiently controlled by parties, as often is the case in Britain, the value of such committees becomes highly questionable. Parties may dominate the committees but if it can equally effectively dominate the floor such committees become redundant. So if committees' main function is to advance the majority party agenda as Cox

⁶⁰ If we seek to identify coalitions of preference outliers in the Palace of Westminster these are the parties themselves. If we substitute party caucuses for congressional committees Weingast's theory may be perfectly applicable for a parliamentary system. However the two party system in Britain ensures that one of the parties will have majority and again no pork-barrel politics are necessary.

⁶¹ Cox, Gary W., and Matthew D. McCubbins, *Legislative Leviathan: Party Government in the House*, 1993.

and McCubbins maintain again the British reformed committees can be expected to be superfluous.

Chamber-Dominated (Informational) Perspective

According to this perspective, developed by Gilligan and Krehbiel,⁶² committees are seen as facilities enabling the floor to make informed decisions. They are organizational devices to supply specialized information to the floor and enable the floor to take advantage from the division of labour. The theory assumes that a committee may be better informed about the consequences of a particular policy than the floor and hence committees are granted certain powers and seemingly some independence but only as long as these are necessary to stimulate committee specialization (as developing expertise is costly) and as much as they are within certain limits tolerable by the floor. Especially important to motivate committees to specialize is the 'close rule,' that is the prohibition of floor amendments to committee proposals.

This theory suggests that the parent chamber is always in control of the decision-making as in the end of the day all proposals are adopted by majority vote on the floor. This is considered by Krehbiel and Gilligan to be sufficient for the floor to retain control over committees, and whatever the preferences of committees are, they constrain them and act upon their expectations for the preferences of the floor. Further, this account maintains that all formal autonomy committees may enjoy is only a strategy of the floor to attain to its goals. Committee powers are instrumental for the purpose of informed decision-making on the floor and accordingly are function of the need of the chamber for information in the respective areas. In a system of strong separation of powers like US strong committees are crucial for informed decision-making. On the contrary, in a parliamentary system with fusion of the branches, the executive provides information to the floor (both because it is much better equipped to do so and because it is itself the central locus of decision-making) which makes committees redundant as information-providers. Accordingly they are not likely to receive the appropriate information gathering authority, nor will have adequate incentives to use these, if they are granted. Yet if these committees can provide some special informational benefits for the floor that cannot be received through the respective Ministers, for example views of pressure groups or feedback from the general public for certain policy, they may be enhanced, but only for that limited purpose. Accordingly they may receive privileged access to floor, where they can present reports that majority party may want to see, but will not receive legislative proposal powers as such information is supplied by the drafters in the respective executive departments who are better informed and who are anyway preferred by the party majority on the floor.⁶³

⁶² Gilligan, Thomas and Keith Krehbiel, "Collective Decision-Making and Standing Committees: An Informational Rationale for Restrictive Amendment Procedures," in *Journal of Law, Economics and Organization*, 3:287-335 (1987) and also *Asymmetric Information and Legislative Rules with a Heterogeneous Committee* in *American Journal of Political Science* 33:459-90 (1989).

⁶³ Again, if the informational perspective is applied to ministries in lieu of committees, it seems to fit smoothly in British context. The executive is the one to develop expertise, therefore its bills are treated deferentially on the floor, amendments are rare and guillotine motion is available for the Minister to cut the debate and force immediate vote. Such application is suggested by Huber in French context. He maintains that the Government there can be described as single supercommittee, which has to pass its proposed legislation by majority vote on the floor and accordingly is granted certain privileges like package vote and the guillotine. See Huber, *op. cit.* However the original perspective of Gilligan and Krehbiel assumes that the deferentialism of the chamber is instrumental for its ultimate dominance, which can hardly be the case in Britain.

With regard to the theories introduced in this chapter the initial hypothesis of this study that was set out in the Introduction (see p. 3) 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 a more transformative type along 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 committee features that seem 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 of the remaining of this paper.

So in the subsequent chapter the factors that are vital for the independence and effectiveness of the legislative committees will be identified in the congressional committee system, which is accepted to be the strongest. These factors will be seen operating in the different constitutional environment in Britain in Chapter Three and from their effect there conclusions for the significance of the institutions for the overall constitutional position of the legislature will be drawn.

Chapter 2 American Congressional Committees

*“All politics is local”
Speaker T.P. “Tip” O’Neill*

I. Overview

The most obvious function of the Congressional Committees is to provide the benefits from division of labour to their parent chambers. However American committees apparently go much further to the mere enhancement of the chambers and exercise certain control over their overall activity. As Philip Laundy phrases what is universally acknowledged “[i]n most parliaments committees operate as component parts of the parent machine. By contrast, US congressional committees operate to a great extent as self-contained entities with a wide measure of independence.”⁶⁴ The latter actually amounts to some control of the committees over the issues within their jurisdictions and thus to certain influence over the final legislative outcome of the parent chamber. Indeed Tiefer starts his account of the congressional committees with such observation: “Congress divides up its work – and its power – by the committee system, *ceding control over each* subject to relatively few members on the committee of jurisdiction.”⁶⁵ This committee domination arguably goes even beyond their parent chambers and legislature and has at least some influence over the agencies of the executive branch through their routine oversight activities. As Nelson Polsby observed “committees ... take care that the laws are faithfully executed by undertaking intensive investigations of executive agencies.”⁶⁶ With respect to legislation, committees or their members control the bills in every stage, despite the fact that it is the majority vote of the floor that formally determines the ultimate outcome. Further to all this, committees have privileged access to floor, which adds critical agenda-making role to their functions.

Members entrusted with these huge powers are assigned onto committees through procedures, that differ according to chamber, party and period, but the general rule is selection by a party committee on committees, controlled to certain extent by party leadership and constrained by comparatively rigid rules and ‘folkways.’ Further factors for the selections are members’ own preferences, geographical balance, previous loyalty of members, and the support by powerful figures they may have.⁶⁷ Committee chairperson currently is determined by the party in the same manner, although until the reforms in 1970s he (as for that period it was only he) was determined by the iron seniority rule that the ranking majority member automatically becomes chair. Currently chairs are more dependent and accordingly responsive both to committee members and to their party. The committee-dominated legislature that the post-war Congress was ceded to a reformed one, characterized by “more hierarchical structure, stronger party leadership, and increased partisanship.”⁶⁸ Currently the seniority norm is weakened but not eliminated. It is more or less still abided to for selection of the committee chairs (with possibility for the thus selected chair to be

⁶⁴ Laundy, Philip, *Parliaments of the Modern World*, 1989, p. 110.

⁶⁵ Tiefer, Charles, *Congressional Practice and Procedure*. A reference, Research and Legislative Guide, Greenwood Press, 1989, (hereafter Tiefer), p. 57, emphasis added.

⁶⁶ Polsby, Nelson, *Congress and the Presidency*, 1964, p. 4.

⁶⁷ Factors listed by Tiefer, p. 59.

⁶⁸ Davidson, Roger H. in *The Postreform Congress*, R. H. Davidson (ed.), 1992, p. 14-15, quoted in Deering and Smith, p. 43.

defeated in ballot and with six years term limit) and only partially for members assignments, where senior members are paired with some freshmen.

II. Historical Development of the Congressional Committee System

Committees exist in the US Congress almost as early as the Congress itself. This is important for comparative purposes as in Britain the committee system as it is today is quite novel, which is quite noteworthy given the age of the House of Commons itself. Across the ocean, a system of standing committees started to develop from the very First Congress. As was already discussed, the different constitutional system makes committees indispensable in US, where the Congress is decision-making legislature, while they appear to be redundant in Britain, where Parliament relegates the actual decision-making to the Cabinet. Ironically, for the very virtues legislatures exist (e.g. representativeness, responsiveness, diversity, collegiality) they would make very inefficient policy makers.⁶⁹ Therefore they delegate their decision-making authority to a Cabinet in parliamentary systems and to committees in congressional ones.

It is important to emphasize that in Congress committee system exists before the party structure.⁷⁰ This makes parties in America the promoters of reforms as they – leaders and members acting jointly – try to reclaim power from committees and committee chairs (as it will be shown in the next chapter the opposite rivalry goes on in Britain). Hence, a historic account of the changes is useful to outline the measures advocated and employed to limit committee powers. In this section only the major reform trends are discussed, with brief comments on the driving forces behind them, while the specific measures proposed and implemented will be discussed later, within the account of the committee features.

Even in the period before Second World War, Congressional Committees already had identifiable internal structure, jurisdiction fixed by chamber rules, legislative authority, fixed modes of members' appointment, established leadership positions, logistical support. Committee system developed in its existing form in early 20c., with the rise of seniority, which had grown only after the demise of authoritative speakers from the earlier era.⁷¹ Before that, committees were created and members assigned largely at the discretion of the leaders of the parent chambers. The revolt against the Speaker Joseph "Czar" Cannon in 1911 sharply reduced the control of the Speaker over the House committees. The concentration of power among the top party leaders was also limited by denying the Speaker his position on the Rules Committee⁷² and, later, by denying the majority leader the chairmanship of Ways

⁶⁹ See for example M. Mezey, *The Legislature, the Executive, and Public Policy: The futile Quest for Congressional Power* in Thurber, James A. (ed.) *Divided Democracy*, pp. 99-123.

⁷⁰ Deering, Christopher J. and Steven S. Smith, *Committees in Congress*, 3rd ed., Congressional Quarterly Press, 1997, (hereafter Deering and Smith). They maintain that in US "because the committee structure was developed prior to the party structure, it has some precedence in the system ... only episodically has party strength in the United States been sufficient," p. 52.

⁷¹ Tiefer, p. 63.

⁷² Rules committee is in charge of scheduling the bills to enter the floor. From the very beginning it controlled the access of committee reports to the floor and presently it already has developed a system of sophisticated restrictive rules, that are used to shape the debate on the floor and limit members amending opportunities there. Accordingly, it consists of limited number of loyal members controlled by party leaders and especially by the Speaker. This is example of another method of control, through powerful supercommittee, loyal to or dominated by party leadership, that ensures the partisan control of the agenda.

and Means Committee.⁷³ From this moment, there is a clear trend towards decentralization in both chambers.

In the absence of strong leadership control the rules of seniority developed, essentially requiring that the member with longest service on a committee is automatically assigned to chair it and all competing claims for any other assignments or transfers from committee to another are automatically resolved in favour of the more senior candidate. There are two important consequences of this practice. First – only members who succeeded in several consecutive elections (i.e. those from ‘safe’ districts) will advance within the congressional hierarchy and second, that the advancement is automatic and does not depend on the decision of anyone.

The committee structure was reshaped by the Legislative Organization Act of 1946. The reform brought about three changes. The first was consolidation of committees by reducing their number and by “streamlining” and fixing their jurisdiction. Second, the Act committed the Congress to provide and maintain permanent committee staff. The third was that it consolidated Congress’s oversight powers within the respective committees⁷⁴ i.e. committees were authorized to exercise comprehensive oversight within the boundaries of their legislative jurisdiction. It is noteworthy that the Act did these three together – the general committee enhancement together with the staffing and oversight authority. Davidson and Oleszek emphasize that “[t]he reformers of 1946 believed that strengthening the committee system strengthened Congress itself. That was necessary because congressmen were concerned about the growing power of the executive branch and recognized the imperative of re-establishing Congress’ role as a co-equal branch of government.”⁷⁵ Even without prominent instances of ‘decline’ criticism, like those in Britain, and moreover in a system with strong and independent legislature, similar concerns for the role of the Congress in the age of regulatory state with ever-growing executive were common.

The seniority rules that developed even before the war and the reinforcement done by the Act lead to the era of the committee ‘barons’ in the post-war Congress: this is the period of the most independent committee chairmen and accordingly the most autonomous committees. It is remarkable that in a study of Congress from the period N. Polsby entitled his chapter on committees not ‘Congressional Committees’ for example, but “Committee Chairmen.”⁷⁶

Accordingly, in 1970s there already was strong bias for reforms in Congress, aimed particularly towards constraining the committee chairs and to providing opportunity for the junior senators and party leaders to take part in the decision-making. After a decade of reforms, the result was demise of ‘committee barons’ and the rise of ‘subcommittee government’ instead. This further decentralization was not welcomed by all and critics considered the reforms “to [have] exacerbate[d] the fragmented nature of congressional decision making” and complained from the lack of “*responsible* leadership.”⁷⁷ The powers were transferred from the senior members occupying the full committee leadership to more junior members, controlling the business of the parent chamber as subcommittee chairs – “it is now accepted view that subcommittee leaders are central players in most legislative

⁷³ Deering and Smith, p. 30.

⁷⁴ Deering and Smith, p. 31

⁷⁵ Davidson, Roger H. and Oleszek, W. J., *Congress Against Itself*, 1977, Indiana University Press, p.7.

⁷⁶ Polsby, *op. cit.*, 1964.

⁷⁷ Deering and Smith, p. 20, *emphasize added*. It is remarkable how *responsibility* is required by the doctrine of ministerial responsibility in Britain as well as by the individual Members in US, who strive for similar centralization of decision-making in completely different context.

battles.”⁷⁸ However, the latter never achieved the same degree of authority that the full committee chairmen used to have earlier. The rank-and-file members participation increased and the party leadership influence even more so. The increased importance of individual members seems to contribute to further decentralization of decision-making, but also to *potential* for party leadership control through pressure over the members. Hence claimants of the rise of ‘subcommittee government’ always bear in mind that “the independence of subcommittee chairs does not guarantee subcommittee autonomy”⁷⁹ as they have much less control over their subcommittees and over the full committees’ output than full committee chairs once had. This is not surprising as the reforms were introduced by joint action of junior members and party leaders against the incumbent senior chairs,⁸⁰ which certainly can be expected to result in gains for both groups. The rise of party leadership influence will be extremely important for the current chapter as it matched the decline of committee government. This trend to recentralization continued in the post-reform period and even accelerated in the 1990s.⁸¹

The general result of the reforms was that the rule of seniority was relaxed to provide opportunities for freshmen to receive assignments on important committees and to give party caucuses some control over committee assignments. At the end term limits and secret ballots for chairpersons were introduced so that their powers were limited and their behaviour become more responsive. As Deering and Smith put it “full committee chairs remain powerful players, but they now are more accountable and responsive to their committee colleagues, party caucuses, and parent chambers.”⁸²

In both Houses, these were long, incremental changes pushed by party reform committees and implemented through changes in parties own caucus rules, with the Democrats mirrored by the Republicans. Senate reforms were following the House, they had similar trend but were much more moderate and evolutionary although some more radical proposals were made infrequently. For example the reform plan, introduced by the Stevenson committee in 1977, “evolved from an innovative restructuring to a moderate, yet significant, realignment of the old committee system.”⁸³ Seniority rules there were weakened as well yet “Selection of committee and subcommittee leaders remained strictly dictated by seniority.”⁸⁴

⁷⁸ *Ibid.*, p. 142.

⁷⁹ *Ibid.*, p. 174.

⁸⁰ Loomis’ whole account of the reforms is entitled “The Squeeze Play: Leaders and Members Versus Committee Chairs.” See Loomis, Burdett A., *The Contemporary Congress*, 2nd ed. 1998, NY, p. 86.

⁸¹ The centralization of decision-making in Congress in the past decades was achieved not only through changes of committee institutions but also by other means, for example through increased powers of the Speaker. For instance Speaker T.P. O’Neill was known to “exploit the Rules Committee to structure floor debates to Democratic advantage” (see Deering and Smith, p. 44). The same was done by Newt Gingrich employing the Contract with America “in attempt to nationalize the notorious local character of congressional elections” (*Ibid.*, p. 48). Accordingly, after the Republican success in the 1994 elections there were proposals for a formal procedure for establishing a mandatory GOP legislative agenda, that were moderated later and finally lead to the introduction of a non-binding party agenda. Another device for centralization employed recently was the use of Summit meetings. These consist of committee and congressional leaders and top executive officials who gather to decide on impasses. This resembles a little to a meeting of a cabinet and “ha[s] the effect of shifting the proposal power to party leaders and administration officials and reducing the blocking power of committees” (Deering and Smith, p. 193).

⁸² Deering and Smith, p. 192

⁸³ *Ibid.*, p. 42.

⁸⁴ *Idem.*

The similarity of the trends of the reforms in both Houses suggest that they were often driven by environmental forces. Such were the influx of freshmen from urban and suburban districts after the ‘reapportionment revolution’ induced by the Supreme Court, the generation of ‘Watergate Babies’ elected in 1974, and the Republican takeover after 1994 in the ‘Contract Congress.’ Yet newcomers always face the dilemma to pursue changes in the system favouring their group, i.e. encroaching seniority system, and individual pursuance of appointment to important committees with the aid of the more senior party leaders. Thus, the great influx of new members in 1992 did not result in any reform. Even though they generally were not opposed to such, they “coveted positions on quality committees ... and membership on party committees.”⁸⁵ Same dilemma is constantly facing the British backbenchers, and in that context seemingly they always prefer the party advancement option. The trend to further recentralization in late 1990s seems to be again because of environmental changes: “[t]he legislative workload contracted, core budget decisions [at party level] constrained other policy decisions, and the parties were in a position to act more cohesively on key policy decisions.”⁸⁶

These environmental changes materialized by joint pressures, if not always by apparent coalition, from the party leadership and junior members – the two groups of actors that were disadvantaged by the status quo prevailing at Capitol Hill in the post war congresses. They had shared interest in changing the system and through incremental reforms managed to achieve it. B. Loomis describes this joint action as follows: “committees and chairs faced dual treats to their independent influence ... simultaneous efforts by party leaders and by junior members.”⁸⁷ They had however different interest in the results they attained to and hence the reformed Congress exhibits somewhat controversial trends. Loomis further observes that “the initial beneficiaries were clearly the junior Democrats, who gained both as individuals (and potential subcommittee chairs) and as members of the majority party caucus – which gained substantial authority. Democratic party leaders also obtained a great deal of potential power, which they slowly began to exercise during the late 1970s.”⁸⁸ Similar controversies observes Joel Aberbach: “members were trying at one and the same time to strengthen Congress as an institution while protecting and enhancing their personal prospects in regard to power and career.”⁸⁹

To summarize, there is a clear tendency in Congress over the time towards decentralization with the crux of decision-making authority transferred from the speakers (before 1911) to committee chairs (and especially during 1950s and 60s) and to subcommittees in the ‘post-reform’ era (after 70s). Recently there is also a trend towards increased influence of the parties, which provide centralized leadership, but this does not necessarily contradict to the first trend and does not reverse the fragmentation drift. The particular institutional means that were employed to implement these tendencies, their goals and effects, and the differences they made, will be emphasized along the survey of committee features in the subsequent section.

⁸⁵ *Ibid.*, p. 46.

⁸⁶ *Ibid.*, p. 21. In Deering and Smith’s own words, these were dramatic changes “in context in which committees operated” (*ibid.*).

⁸⁷ Loomis, Burdett A., *The Contemporary Congress*, 2nd ed. 1998, NY, p. 87.

⁸⁸ *Ibid.*, p. 87.

⁸⁹ Aberbach, *op. cit.*, p. 28.

III. Committee Structure

1. Normative Framework

Congressional committee system is framed by five sets of rules. Above all are the statutory regulations (like Legislative Reorganization Acts of 1946 and 1970 and for example Budget and Impoundment Control Act of 1974) and the formal Rules of the chambers. Besides these party rules matter especially with regard to procedures for committee assignments and selection of chairs. Party rules are certainly determined by the parties themselves however they still constrain party leaders when they make the individual assignments in the same way as the law does. The remaining norms are the individual committee rules and the ‘folkways’ i.e. norms like seniority rules and the property right norm.⁹⁰ The latter three sets are what makes crucial difference in the Congress when compared with the House of Commons – with no established rules for committee assignments, whips enjoy full discretion there. Formal committee rules that can be used at Capitol Hill by individual members and minorities are not available in British committees at all, and no seniority norms restrain party leaders in making assignments, nor even in reassigning or removing members from committees. In fact the opposite is true – the norm itself is that issues are to be settled through the ‘usual channels’ i.e. through consultation with party whips.

2. Committee Types

Committees at Capitol Hill vary according to two principle criteria – permanency and legislative capacity. According to the first one, there are standing committees that are permanent and special or select committees that are *ad hoc*.⁹¹ Select committees have no legislative capacity as well, although some of them⁹² evolved into permanent and legislative as they are re-established by special resolutions in the beginning of each Congress. Temporary committees are quite exceptional in Congress: “In 1975, after an absence of nearly a hundred years, the House amended its rules to permit the Speaker, on his or her own initiative but subject to House approval, to create *ad hoc* or select committees. But they are rarely used.”⁹³ There seems to be some aversion against temporary committees at Capitol Hill as they can be used by authoritative speakers to circumvent the permanent committees. Further, there are four joint committees, which are permanent but not legislative. These are Joint Taxation and Joint Trade committees with the function to analyze and publicize finding regarding current policy issues; Joint Taxation committee possesses important staff resources and supports the financial committees in both Houses;⁹⁴ there also are Joint Library and Joint Printing Committees. There are finally conference committees that resolve differences between the chambers after they adopt two different versions of a bill.⁹⁵ As a rule, the

⁹⁰ This is a rule meaning that both parties in both chambers must allow members to retain the seats once they were assigned to in previous Congresses as long as they desire them.

⁹¹ A confusing terminological difference must be emphasized – standing committees are permanent in US but are not in UK, select committees are usually not permanent in US, but they are permanent in UK. In the States, standing committees are by far the most significant and this study will deal with these primarily unless otherwise indicated; on the contrary standing committees are trivial in UK and the study will focus on select committees, especially Departmental Select Committees there.

⁹² These few committees, like House and Senate Intelligence Select Committees, are named so only for historical reasons, and posses all the features of standing committees.

⁹³ Deering and Smith, p. 13.

⁹⁴ *Ibid.*, p. 12.

⁹⁵ There are further the Committee of the Whole, which is not really committee, but a less formal sitting of the whole chamber, and also the so-called ‘task forces.’ The latter are in effect *ad hoc* committees, although not named so.

legislative committees are also oversight committees. It may look obvious that a committee may be responsible not only for legislation in a given subject matter but also for controlling the execution of the laws within this remit, but this is not the case in Britain. It was not so clear even in the US before the Legislative Reorganization Act of 1946 expressly charged permanent committees with oversight over the executive departments within their legislative jurisdiction.⁹⁶ Most of the select committees however are only oversight, but not legislative ones.

3. Jurisdiction

Deering and Smith maintain that the mandatory referral of bills together with the written jurisdiction and their permanent status are the features, which have provided a foundation for House committee power.⁹⁷ “In Congress there are detailed rules concerning committee jurisdiction, which leave little if any discretion to the presiding officer in the matter of referring bills to committee and thus protect the committees’ authority over particular categories of bills. The rules of jurisdiction that create and protect committees’ ‘turf’ are crucial for their so called negative or veto powers: every proposal within particular field is referred to the respective committee, which has powers to delay and kill the bill if it prefers the status quo.⁹⁸ The standing committees of both chambers have jurisdiction fixed in the rules of the chambers⁹⁹ and the referral of bills within jurisdiction is mandatory, which makes committees effectively ‘vetogates’ for any new legislation. However this immense power is undermined by the possibility of multiple referrals i.e. referral of a bill to several committees. In this way, a vetogate may be circumscribed and also the ability of Speaker to influence the reporting by choosing the committees increases. The task forces widely used by Speaker Gingrich¹⁰⁰ are another device for ‘short-circuiting’ the ‘turf-conscious’ committee system or enable *ad hoc* legislative coalitions.¹⁰¹ The institution of the task forces is somewhat similar to the standing committees in Britain. The latter are also *ad hoc*, appointed through the party whips, and operate under their, and ministers’, control. The similarity is emphasized even by the wording scholars of Congress use: “task forces represent *whip systems* specialized in both policy and political strategies.”¹⁰² The other constrain on the veto power of the committees is the discharge motion, which may force the bill out of the committee for discussion and vote on the floor, but it is used very rarely.¹⁰³ Despite these constraints observers agree that

⁹⁶ The Act of 1946, as Amended in 1970, mandates that committees “review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject of which is within the of that committee” (2 USCA s 190d).

⁹⁷ Deering and Smith, p. 7.

⁹⁸ The negative power of committees and the importance of it will be further discussed in Chapter Four.

⁹⁹ Senate Rule XXV and House Rule X define committee jurisdictions and there are some committees with clear-cut jurisdiction, but there are also overlapping ones and there are several committees with specialized jurisdiction, built around the needs of a particular constituency: small business community for example.

¹⁰⁰ Meanwhile minority parties have also used constantly task forces “to shadow and blunt their opponents’ messages”(Deering and Smith, p. 192). This is example of the publicity function of the committee activities; committees as little arenas are discussed in Chapter Four.

¹⁰¹ Deering and Smith, p. 191.

¹⁰² *Ibid.*, p. 191, emphasis added.

¹⁰³ See below, p. 37.

Congress “protect[s] the power and prerogatives of the ... committees ... by making it very difficult for a bill that does not have committee approval to come to floor.”¹⁰⁴

To summarize, the fixed jurisdiction is seen by scholars as crucial for committee power. If it is clear-cut exclusive committees tend to become dictators. Conversely when more bodies have concurrent jurisdiction, their influence is reduced and the decision-making authority is transferred to the leader who chooses between them. British Select committees do have written jurisdiction, yet this hardly matters there, as there are no bills to be referred to them. On the contrary, standing committees that have legislative capacity do not have any specific jurisdiction. Nevertheless, select committees have exclusive jurisdiction in oversight of the administration, that is bureaucratic parallelism, which might still be source of incentive for specialization of members and rigorous scrutiny of administration.

4. Assignments onto Committees

The process of determining committee composition is central for the whole future performance of the Congress. If it must be compared to something similar to it in Britain, this should be the election of a new government rather than the assignment of backbenchers to committees. The first step is to determine the size of the committees of the House (the size of Senate committees is determined in the Rules). The next is to determine the exact party ratio in the committees. Both are established by the party leadership, possibly with consultations with the minority. After size and ratio are settled the next phase begins, that is assignment of individual members, which is long and complex process during which additional adjustments of size and party ratio may occur.

Variable Size

The size of committees may vary from one Congress to another. The ultimate decision is in the hands of leadership and the general trend is to extend committee size to provide more and more slots to respond to members demand for assignments. This “flexibility” is required not only to meet the demand but also to provide leadership with further chips to reward loyal members. Accordingly, “the House ‘inflated’ the currency of committee membership.”¹⁰⁵ Deering and Smith provide data that “recent leaders have expanded the number of committee seats far more often than they have reduced them”¹⁰⁶ and the size of committees in this way reaches staggering figures. Hence, the variable size of committees must be regarded as source of weakness – apparently the party control of committees is facilitated in this way, and further the growing size may make committees ineffective. It is noteworthy that in the House all the attempts to restrain this growth is in the form of limiting the number of assignments a member can have, or providing for equal distribution of committee assignments,¹⁰⁷ but not to fix committee size by House Rules. In the Senate the size is fixed by Senate Rule XXV and also, more naturally, by the fewer Senators available for committee service. The party leadership apparently tries to confront the problem by limiting the demand instead of supply, in which it prefers to retain control. Britain, with the committee size fixed in the Standing Orders twenty years ago, seems better case in this feature. However the disadvantage of this is that there are numerous Members left with no committee assignment at all (though the low

¹⁰⁴ Oleszek, Walter, *Congressional Procedures and the Policy Process*, 1996, Congressional Quarterly Inc., Washington, p. 105, quoting Randall B. Ripley, *Congress: Process and Policy*, 1975, p.75.

¹⁰⁵ Tiefer, p. 87.

¹⁰⁶ Deering and Smith, p. 98.

¹⁰⁷ For example, Democratic Caucus Rules required that all Democrats should have minimum of two committee assignments and maximum five.

demand, not the limited supply, seems to be the real cause of this). The recent reform programs there include proposal that members “shall be expected” to serve on at least one committee.¹⁰⁸ This looks pathetic compared with the average of 17 committee and subcommittee assignments per Senator in US. In the House of Representatives the figures are (not surprisingly) smaller – the average number of full committee seats per majority member varies from 1.28 in the 86th Congress to 1.96 in the 105.¹⁰⁹ Since 1995, the maximum allowed is for two committee and four subcommittee assignments per Representative.

Party Ratio

As a general rule, the party balance in committees should roughly reflect that of the floor, but majority often has increased dominance in few critical committees. In 1975 Democrats increased their dominance in order to break the existing voting coalitions of conservative Southern Democrats and Republicans,¹¹⁰ but the great Democratic electoral success later closed the gap. Currently the prevailing rule is “2 to 1+1” (meaning two majority members for each minority one plus an additional one from the majority) that is designed “to create firm working majorities for each committee.”¹¹¹ Further majority party always outsized number of seats on the Rules Committee. This is clear attempt to provide overwhelming party governance in a system with not very disciplined party members.

With the committee slots determined in this way, the assignment of members begins. Assignments once were determined solely by seniority, but since the reforms of 1970s the importance of other factors was increased to constrain seniority and to promote certain party control, but these same factors constrain party leaders discretion in turn. These factors are important for the current study as they are critical for committee autonomy and committee structure vis-à-vis party structure.

Seniority

One of the most important factors, determining the final committee assignments is the seniority. Seniority was already mentioned several times and pertains to the preference given to members on the basis of the length of service in Congress, that is, the general norm that requires for any assignment decision in Congress the member with the longest prior service to be preferred to any other candidate. It applies to assignments of members to committees, bidding for subcommittee positions, selecting chairs and removing members when party slots in committees shrink. Negatively it also means that chairs, who have achieved their status through seniority, should not be removed by discontent parties or members. From this nature is also the so called property right norm, which mandates that members, once assigned to a committee, can retain their position in all the successive congresses as long they manage to be re-elected and unless they wish transfer. In the post-war Congresses seniority operated automatically, meaning that there were superfluous assignment decisions, almost entirely determined by the complex rules of seniority. One apt description from that time gives the clue for the rationale of this deep entrenchment of the seniority rule: “the formal institutions in both parties for choosing committee members are seniority-conscious groups, and it is

¹⁰⁸ See the recommendations of the Hansard Society Commission in Brazier, Alex, *Systematic Scrutiny. Reforming the Select Committees*, London, 2000, p. 2.

¹⁰⁹ Deering and Smith, p.99, table 3-8.

¹¹⁰ This imbalance was unsuccessfully challenged by Republicans in court, see *Vander Jagt v. O’Neill*, 699 F. 2nd 1166.

¹¹¹ Tiefer, p. 90, quoting House Democratic Caucus Rule 11.

natural that these groups give considerable weight to seniority in making assignments.”¹¹² Davidson and Oleszek provide the modern account of the virtues and vices of seniority:

“The majority party member with the most years of consecutive service on a committee automatically became the chairman. There were no other qualifications, such as ability or party loyalty. As a result, committee chairmen owed little or nothing to party leaders and much less to presidents. This automatic selection process produced experienced, independent chairmen, but many members chafed under a system that concentrated authority in so few hands The system promoted members from ‘safe’ one-party areas ... who could ignore party policies or national sentiments.”¹¹³

Accordingly, seniority insulates sufficiently committee chairs most importantly, but also to some extent the rank-and-file members, from any influence, that is any responsibility to party or colleagues. Moreover, it matters not only for the assignments to committees, but also for the stability later – chairs are irremovable and themselves become vetogates. The other side of the coin is that parties that have little if any control over the assignments, do not have any significant reward for the loyal members. Two additional features of seniority have to be noted here. The first is that it is demonstrated that the existence of seniority drastically reduces committee members’ turnover and provides strong incentive for members to develop expertise and to specialize. The second is that seniority reduces the direct personal conflict between rivals, and between the candidate and decision-making leaders.

The rules of seniority are crucial for the explanation of many differences in committees and members’ behaviour on the two sides of the ocean. The most obvious effect of seniority is the independence of assignments from parties, hence the autonomy of committees. The effect of the seniority for promotion of committee autonomy will be discussed later again, together with few other similar constraints of party influence and the countermeasures employed by parties to secure responsiveness if not compliance from members. There are further implications of this effect, related to the dynamics of the reforms of the legislative systems in the two countries. Seniority results in different situations of the British backbenchers and of the American freshmen. The former group may advance in the House of Commons only by adhering to party line and the loyalty is what is necessary for that. The latter have no gains even if they wish to toe party line, they depend much more on their being from safe districts. If they are from such, the only thing they need to advance in Congress is time; and they are in much better position to dissent. The opposite is even more striking – if they are not from safe districts however loyal they are they cannot advance to seniority for the mere lack of sufficient number of years in Congress.¹¹⁴ The relation of this system to committee independence is apparent; but there is the dynamic side of it as well. American freshmen, who find themselves in unfavourable position, have very strong incentive to pursue reforms and challenge the system, while British backbenchers face the dilemma to either revolt against the system and push through reforms that may improve their position or comply and pursue their own advancement within it. Of course the first of these choices is too costly for any individual MPs to be frequent one. Moreover, in such revolt members have to confront their leaders which further slashes the probability for such behaviour. Accordingly, the *status quo* at Westminster is very likely to remain unchallenged. In the same time an American member may revolt at a lower cost and moreover, she will confront a senior colleague and

¹¹² Jewell and Patterson, *The Legislative Process in the US*, p. 214.

¹¹³ Roger Davidson and W. Oleszek, *Congress and Its Members*, 4th ed., Washington, p.207.

¹¹⁴ This situation is even exacerbated by the fact, that if a member loses his seat and latter regains it, he cannot add the time from the previous term, as only continuous service counts.

committee chair, but not the party leadership. In fact, the history of the reforms as outlined above shows that freshmen and leaders often acted together against the senior irresponsible chairs.

The difference is essentially between three types of actors in US – freshmen, senior members (that is committee chairs) and party leadership and two groups in UK – Ministers and backbenchers. Accordingly, in US reform coalitions are likely and do happen, while in Britain only constant domineering can be expected.¹¹⁵ The effect of seniority in this case is that it provides alternative source of authority, which is outside party leadership. Advancement within party is the only one source of authority in Britain, or any other system with no seniority. In Congress the rules of seniority may promote a few mavericks, or a whole group (as the conservative Southern Democrats were in the 1960s) unrelated, and even hostile to party leadership. Certainly party leaders themselves are senior members at the same time, so they have competing motivations to maintain the iron seniority rules to protect their own positions, but also to undermine it in order to make their senior colleagues go along with the party.¹¹⁶ So seniority in effect splits apart the leadership and two new actors emerge – seniors and leaders that make the status quo at Capitol Hill subjected to changes.

Reforms and Demise of Seniority

So in both chambers assignments were initially determined only by seniority and property right norms. Accordingly, in both chambers junior members chafed under this system and more importantly party policy line were largely ignored. The conservative Southern Democrats who occupied the key committees in post-war Congress by virtue of seniority were notorious for frustrating the equal rights legislation on the Democratic Party agenda. However, under the pressure of the freshmen in late 1960s and 70s, dramatic changes took place in the Congress, leading to weakened seniority rule and the little fiefdoms that committees used to be, were weakened to become more responsive to members and leaders. The newcomers were too frustrated to “be seen, but not heard” as were expected by the seniority tradition and in joined efforts with the equally frustrated leadership could find a way to change the status quo.

After decades of reforms in both houses, the general rule in the Senate currently is that party leaders and caucuses in making nominations for Senate committee chairs must make decision “whether there is any good reason to violate seniority.”¹¹⁷ In the House, where the changes were more revolutionary and more deep, the seniority is weaker and the norm is that seniority cannot be the sole reason for assignments.¹¹⁸

The first change was the ‘Johnson Rule’ that originated through alliance of young members with the Senate Majority Leader Lyndon B. Johnson, which required that all Democrats must

¹¹⁵ Certainly, this analysis is oversimplification, for it excludes the opposition members in Britain and the possibility for cross-party coalitions. This will be further developed in the subsequent chapter. The force behind reforms at Westminster can be the small size of the governmental majority. This condition makes backbenchers critical for survival of the Government and it becomes very responsive to pressures from them. However this is quite rare; for the time being only the Reports of the Liaison committee advocate for reforms and they are constantly declined by the leadership.

¹¹⁶ Certainly as long as party leaders and committee chairs determine party policy together no conflict arises, but there will be sufficient number of cases when they will not agree. Leaders will be often tempted to undermine the seniority as this will empower them to determine the party line alone, without need to go along with their fellow chairs.

¹¹⁷ Deering and Smith, p. 126.

¹¹⁸ See Deering and Smith, p. 127.

receive one major committee assignment before the senior members receive second one. Further in this direction went the Legislative Reorganization Act of 1970, which provided four exclusive committees (Appropriations, Armed Services, Finance and Foreign Affairs) whose members could not have any additional assignments. The Republicans in Senate followed in 1965 by adopting version of Johnson Rule designed ‘to guarantee choice position to junior Republicans’ and as a result of this and with the influx of freshmen in 70s and 80s they were even overrepresented in some exclusive committees .

Formal Nominations Procedure

Another tool employed to undermine seniority and to open committees to pressures was the change of the formal procedure for nomination of members. Back in the 1960s, the assignments were formally made by party’s committee on committees. They were “composed of senior and not very accountable members”¹¹⁹ that made nominations strictly by seniority. The Democratic Committee on Committees consisted of all Democrats from the Ways and Means Committee, who were the most senior Democrats in the House i.e. the most seniority sensitive and irresponsible group. Apparently, this was the finest way for the system to perpetuate itself.

The way out of this circle was, on the Democratic side in the House, to create new, leadership dominated committee in charge of nominations. This was the Steering and Policy Committee introduced within the Caucus in 1973 to substitute the former Committee on Committees. This is a “leadership influenced committee,”¹²⁰ which originated with the goal to ensure that members have fair share of the assignments. It consisted of 30 members – 10 *ex officio* members (i.e. from party leadership and chairs of the top 4 committees), 8 Speaker’s appointees and 12 chosen by regional delegations. This is apparent centralization crosscutting any seniority-based authorities. Certainly, this did not discard seniority immediately – party leaders are usually senior and their competing incentives were described in the previous section. Freshmen also have somewhat ambiguous incentives and are not eager to gain the powers from the senior chairs only to relegate it to the party leaders. Nevertheless, in selection decisions of the new committee, seniority became only one of the considerations¹²¹ and apparently this was a *leadership sensitive* committee supplanting the previous *seniority sensitive* Committee on Committees.

Similar changes underwent on the Republican side of the House. Republican nominations are now made through Executive committee of their Committee on Committees with the first deciding and the second formally ratifying nominations. The Executive Committee consists of a leadership group, committee chair group (senior members of the top four committees), regional group (with the bigger Republican states favoured) and class group (one sophomore and three freshmen).¹²²

Currently the same situation is established in the Senate. Actual decisions for assignments of both parties are made by special party-dominated committees on committees. On the Democratic side the floor leader appoints members of the steering committee and on the Republican side this is done by the Conference Chairman. Apparently in both cases party leadership will master significant control in the decisions of such committees. “The

¹¹⁹ Tiefer, p. 67.

¹²⁰ Deering and Smith observe, “Steering and Policy Committee placed the Speaker, acting also as Democratic floor leader, at the vortex of party politics and organization,” p. 39.

¹²¹ For an account of the other factors behind assignment decisions see below.

¹²² See Deering and Smith, p. 102.

Democratic leader in the Senate has the authority to appoint all of the members of the Steering Committee, who in turn feel some obligation to anticipate the leaders desires.”¹²³

Ballots for Committee Chairs

The further step in the pursuit of responsive committees was a change in the method the Steering and Policy committees nominations were presented for confirmation by the party caucuses. The earlier practice was a single vote for the whole roster, which linked the nominations that a member may object to those that she supports, making negative votes extremely unlikely. Under the pressure of the rank-and-file members in 1971, a new House Democratic Caucus rule was adopted requiring nominations to be confirmed one by one. In addition, any 10 caucus members could initiate debate on a single nomination and 20 members could ask for secret vote in which the proposal can be defeated. Later similar rules were introduced on the Republican side and presently all full committee chairpersons and even the ranking minority members (as well as all Democratic chairs of the subcommittees of the Appropriations committee) are forced to face the party caucus for election ballot.¹²⁴

These reforms had immediate and dramatic consequences. In 1974, the new rules were successfully utilized by group of discontent junior members to overthrow three senior committee chairs. Although this was not repeated in the decades that followed, it was the critical turning point – aware of this possibility now chairs appear to be much more responsive. Finally “chairs yielded to pressures from junior members or from the leadership.”¹²⁵ Apparently the ballot is the device, which constrains chairpersons’ independence and makes them responsive. However it may work both ways – to make them toe the party line or to respond to rank-and-file members demands. Again this ambiguity is hardly surprising as all of these reforms were designed by the joint pressure described earlier.

Another major reform that further constrained senior committee chairs was implemented with the Republican takeover in 1995. This was the introduction of term limits in chamber Rules for chairs of Senate committees and of House committees and subcommittees (up to three Congresses i.e. six years). The long run effect of the reform is to undermine further the value of seniority as it reduces sharply the incentive to pursue seniority status on a single committee. It is noteworthy that in Britain the same constraining technique was employed even before any seniority norms had developed. Nevertheless, the Conservative Members may hold the same committee slot for up to three parliamentary terms. Similar is the effect of the House Republicans’ rule allowing only one committee or subcommittee chairmanship for a Representative.

To summarize, currently both parties in both houses have steering committees, appointed in Senate directly by the party leaders, and in House by a more complex but still party-dominated procedure. These committees after long deliberations make the nominations for committee assignments that are presented to the caucuses, where they are subjected to possible challenges and ratified in the end. The final party rosters are presented to the full chamber that formally ratifies them by resolution. Procedure is clearly within party control, but this control is constrained in variety of ways. They become especially evident when compared with the unfettered discretion over nominations the whips have in Britain. There are neither substantive constraints like seniority, nor any formal procedure mandated by the parties own rules to restrain the leadership control over assignments. Therefore total dependence of the Commons committees can be expected there.

¹²³ *Ibid.*, p. 109.

¹²⁴ *Ibid.*, p. 40.

¹²⁵ Tiefer, p. 103.

Substantive Factors for Assignment Decisions

The leadership dominated Steering and Policy committees introduced by the reformers suggests clear case for party domination of the assignments and therefore of the committees. Indeed, “in 80s Democratic leadership made party loyalty ... a critical consideration rewarding with choice assignments those who had voted with the leadership on key votes.”¹²⁶ Nevertheless, several other factors are considered in the decision-making process. These are the weakened, but still important seniority rules, the ‘federalism-based constraints’ such as the power of the state delegations and the need for geographical balance on committees, also members’ personal qualifications and favourable lobbying on behalf of the candidates.

Deering and Smith provide a survey of the factors that influenced the assignment decisions of the Democratic Steering and Policy Committee in the 97 Congress. They provide empirical evidence that ‘consideration of the electoral need of the member’ and ‘state committee slot’ are the two most important factors for the decisions. The factor “Team player” (i.e. supporter of party or leadership) is a fairly distant third. Seniority, together with member’s policy views or leadership’s failure to satisfy another request of the member are the next three factors with considerable weight.¹²⁷ Apparently, federalism is a major constrain on party governance, and seniority, weakened since the reforms, is likely to yield to the party loyalty concern. Usually the leaders exert great influence and this raises member’s incentive for loyalty. Speaker O’Neill is known for providing “leadership support scores” for non-freshmen seeking transfers and announced that for the top four committees members must satisfy higher standard of support.

Deering and Smith also maintain that decisions are responsive to member’s wishes and conclude that the actual situation is between self-selection and party leaders choice: “as a practical matter, leaders must pick and choose. They need not accommodate each member assignments requests. But they need to be sufficiently responsive to ensure that the bulk of their colleagues continue to support them.”¹²⁸ What is even more important conclusion with regard to committees’ autonomy is that despite the recentralization trends and certain demise of seniority there are various constraints, so “[the power of party leader is exercised] with a light rather than a heavy hand.”¹²⁹

The heavy battle for assignments, besides all the constraints to member’s behaviour it may pose, has the additional effect to make members evaluate the assignments they receive in the end much higher. Hence, they will be less willing to relegate easily their autonomous decision-making in a committee for unquestioned support of party line. Of course, they have to strike the balance between some loyalty that is crucial for subsequent assignments and making independent use of these assignments.

To summarize, the rules of seniority appear to be critical factor for committees’ autonomy. In the course of the reforms seniority was weakened and currently assignments are heavily dominated by the party, but it is still important factor. Also some factors constraining party influence emerged. These were the need for balance of senior and junior members, also geographical balance (although that presumably always mattered) and other substantive requirements. Similar effect have the formal procedure that the special selection committees follow, the secret ballots for individual nominations and the term limits for committee chairs.

¹²⁶ Tiefer, p. 96.

¹²⁷ Deering and Smith, p. 106, table 3-9.

¹²⁸ *Ibid.*, p. 60.

¹²⁹ Jewell and Patterson, *op. cit.*, p 215, quoting Charles L. Clapp.

Finally members own preferences matter significantly so assignments are to certain extent matter of self-selection as well.

5. Functions of the Chairperson

Presently full committee chairpersons are selected through the process described above – they are nominated by party committees, but with regard to their seniority status and other considerations, and are subjected to committee approval and term limit. The importance of this process for the independence of the committee chairs was discussed at length in the previous section and here their functions within committees will be discussed only, and the relation of the chairmanship powers to committee strength will be emphasized.

Full committee chair is powerful figure as she has considerable control over agenda, generally she schedules committee meetings and hearings, controls referrals of legislation to subcommittees and masters considerable influence over subcommittees' schedule, normally assigns members to conference committees, manages bills on the floor (or appoints the floor manager), controls committee budget and supervises its staff. Additionally, she “often serves as spokesperson for the committee and party on issues that fall within committee’s jurisdiction.”¹³⁰ She presides the committee meetings and has the appropriate powers to maintain order and decide questions of procedure.¹³¹

Reforms of the 1970s targeted not only the seniority and chair selection mechanism, which was rightly seen at the time as the major source of his power,¹³² but also against his discretionary authority within committee. The insulation of chair through seniority allowed him to enjoy these powers with no responsibility to pressures from party or from committee members. The reforms in the assignment system discussed above had made chairs responsive and changed the content of these powers dramatically. Tiefer provides vivid comparison between the pre-reform period when “[i]n many respects, House and Senate leadership resembled confederations of committee chairs, each acting as the sovereign over a committee’s jurisdiction” and the period of 1980s, when “[f]ew Senate Chairs seem to dominate their committee.”¹³³ This change was brought about by several formal changes of chairpersons’ powers, further to the mere responsiveness, ensured by the selection mechanism.

Chairs in 1960s are notorious for refusing to call meetings to consider legislation they disliked. Thus the power to schedule meetings vested solely in them and with no way to be circumvented by few party loyalists is another major source of committee autonomy. Accordingly, this was the first power that they were stripped of in the course of the reforms as early as 1970 with the Legislative Reorganization Act. It allowed majority of members to call a meeting. Similar provisions in other chairmanship powers were introduced later and presently there are rules enabling members to circumvent most of the chair’s decisions. They are rarely used, but again their mere presence makes chairs quite responsive to committee members.

Further source of powers associated with chairmanship was chairs’ function to create and appoint subcommittees and refer bills to them according to his own preference. This power

¹³⁰ Deering and Smith, p. 131.

¹³¹ See Tiefer, p. 136.

¹³² Jewell and Patterson, *op. cit.*, p. 228, maintain that, “[t]he strength of congressional committee chairmen rests largely on the rigid seniority system.” This still is true to a great extent, despite the weakening of seniority.

¹³³ See Tiefer, p. 137, footnote 5, quoting Smith and Deering, *Committees in Congress*, 1st ed., p. 30 and p. 188.

was cut in 1973 with the so called Subcommittee Bill of Rights, which provided fixed subcommittee jurisdictions and assignment procedures. The rise of ‘subcommittee government’ will be discussed later at length, here it is mentioned only as part of the process of constraining committee chairmanship authority by formal rules. The Subcommittee Bill of Rights in fact was part of the broad change towards formal regulation of committee procedure instead of the wide discretion those in power used to have. Instead of this now all committees have and are required to publish their own rules of procedure.

Another source of chairs power was the proxy voting. Under the severe time pressures upon members there was practice to authorize their colleagues to vote on their behalf in committee and subcommittee proceedings. Again this again favoured chairs and ranking minority members as they were the most immediate agents the member is supposed to authorize and more importantly they were the only members that certainly would attend the particular meeting. Hence the strong pressures from the rank-and-file members to limit proxy voting, even though they are usually overburdened and find it useful way to avoid rushing from a committee to another to vote in person. Despite this strong individual incentive for members to support it, proxy voting has been gradually limited for the last decades, starting with the Legislative Reorganization Act of 1970 and finally prohibited in the House committees and subcommittees entirely and allowed only on subcommittee level in Senate.

There are also several informal sources of committee chairperson’s power that enable him to influence the junior members. These are the subject matter expertise that they usually posse, their friendships with the leaders and associations with interest groups, and also better relations with the staff and vast personal resources. Simply the chairperson is better informed than the others on most of the issues and is often “privy to the leadership’s plans and policies.”¹³⁴ Jewel and Patterson observe that “In the committees, knowledge is power, and the chairman often has more information ... [because] he has been on the committee longer.”¹³⁵ This was the case in 1960s because of the sheer number of years the member must have spent on the committee to become a chair. Despite the demise of seniority chairs still are likely to have much more expertise on the subject matter than other members. The virtues of this experience becomes apparent when compared to British committee chairs. The tendency there is that the members with highest expertise in committee subject matter are promoted to ministerial positions.¹³⁶ This flow of the experienced members to the Executive keeps committees with little expertise and no leadership capacity; committee members and even chairs are very likely to be freshmen and inexperienced.

Finally, after the discussion of the factors for strong chairmanship and the ways to constrain it, the relation of the chairs authority with committee autonomy must be considered. Apparently if the chair is independent she will be factor of committee independence and the stronger she is the more autonomous committee will be and conversely, if she is sufficiently influenced by party line the same powers will undermine committee autonomy. The first was the case in the post-war congresses – when matched with independence through the rigid seniority norms in 1960s the powers of committee chairs were crucial factor for committee independence. Parties could not attempt to influence committees by few members who might have been individually motivated to advance party line. Hence the historical account so far demonstrates that powers of the chair are positively related to committee independence. However the more recent history suggests the opposite relation. The chair, who is more

¹³⁴ Oleszek, *op. cit.*, p. 106.

¹³⁵ Jewell and Patterson, *op. cit.*, 1966, p. 224.

¹³⁶ See Chapter Three, p. 53 and the willingness of members to abandon their committee assignments for any junior position in the government.

carefully selected by party nowadays, is source of party control of the committee. Interestingly, the demise of the autonomy of the chairs that went together with the demise of their powers resulted in preserving considerable committee autonomy. The more party influenced the chairs became the less their influence within committee was and accordingly they did not become outright tools for party control. Again this is explained by the coalition of party leaders and junior members against chairs that was driving reforms which necessarily advanced the competing interests of the two groups. Both of these interests have influenced the mode of operation of Congressional committees today.

6. Subcommittees

Subcommittees traditionally were created and members assigned to them by the chairmen of the full committee. Thus committee chairs could retain the control they had over the full committee also in subcommittees. In fact, subcommittees of the post-war Congresses seem merely tools employed by him whenever he needed them: he could also set their jurisdictions at will and subsequently refer bills to them arbitrarily. Furthermore some full committee chairs simply refused to create subcommittees, preferring to keep all the issues discussed in full committee and within their direct control. The other technique employed was “[to] restrain subcommittee chairs ...by keeping subcommittees in the minimal status of being ‘special’ and ‘numbered.’”¹³⁷ The use of numbered subcommittees with no specified jurisdiction which “prevents subcommittees from developing any independent proprietary interest in particular subjects within the committee jurisdiction”¹³⁸ is strikingly similar to the current practice at Westminster to appoint numbered and *ad hoc* standing committees to consider legislation.¹³⁹

Again the first achievement of the reformers was through a Democratic Caucus rule of 1971 for wider spread of sub-committee chairs. It mandated that chairs shall not be determined by committee or subcommittee seniority only as was the practice before, but required balance of the number of senior chairs with newcomers, like the previous requirement for balance of full committee assignments. The subsequent change came in 1973 with the ‘Subcommittee Bill of Rights,’ which required that members of each committee shall establish the number of subcommittees, shall fix the jurisdiction of each subcommittee and shall determine the size of each subcommittee and also introduced mandatory referral of legislation to the respective subcommittee and the bidding procedure for subcommittee seats. The third major change came in 1974 when “the House purged three committee chairs, partly for failing to implement subcommittee rights”¹⁴⁰ and this was important precedent that kept chairmen responsive (See above p. 29).

Some similar changes took place in the organization in subcommittees in Senate but it is still more flexible i.e. allowing far more discretionary politics from the chairmanship. There are few fixed rules and they vary from committee to committee, sometimes subcommittees are established by majority vote, sometimes by chair, subjected either to committee approval or to consultations with the ranking minority member only. Subcommittees in Senate are much less powerful also because members there have too many assignments and most of the majority senators are chairs of a subcommittee. Therefore the decentralization trend common for the whole Congress means transfer of decision-making powers towards the rank-and-file members.

¹³⁷ Tiefer, p. 64.

¹³⁸ Jewell and Patterson, *op. cit.* p. 226.

¹³⁹ See Chapter Three, p. 42.

¹⁴⁰ Tiefer, p. 66.

Institutionalization of Parliamentary Control

The procedure for subcommittee assignments now is bidding in order of seniority. This is mandated by the Senate Rules,¹⁴¹ and in House by the General rule of the Democratic Caucus (130). Only for the House Republicans the selection procedure is still determined by the chair, giving “leeway for party and committee leaders.”¹⁴² The bidding mechanism provides that slots are filled by members of previous Congresses in the first round, and by newcomers in a second round and in “[f]urther rounds of selection in order of members’ rank on the full committee¹⁴³ until remaining subcommittee vacancies are filled.”¹⁴⁴ This procedure is in fact further sophistication of the initial rule of balancing senior and junior members. As Tiefer observes: “[t]he system neatly balances the claims of senior members’ for priority and the availability to junior members of some choices.”¹⁴⁵ Certainly the result of the bidding procedure is subcommittee autonomy: “consequently, committee members are no longer dependent on the full committee chair for desirable subcommittee assignments and generally may act without fear of putting subcommittee assignments in jeopardy.”¹⁴⁶ However bids may be rejected by secret vote by the Democratic members of the committee.

The changes introduced in the course of reforms of committees – subcommittees relations were similar to those designed to redress the relations of the full committees with their parent chambers. The rule of balancing the assignments of senior members with freshmen now applied at both levels is just one example. Another such example is the secret ballot on which these assignments can be subjected to ensure responsiveness to committee and respectively to subcommittee members. The guaranteed referrals of bills to subcommittees has more limited effect but is of same nature as the mandatory jurisdiction of committees that had turned them into vetogates. The extent of the negative power of subcommittees is certainly much limited, but for some of them, for instance those of the House Appropriations Committee, cannot be ignored. Currently the authority of subcommittees varies largely from subcommittee to another. The amendments made in some subcommittees are overwhelming and their subsequent ratification in the full committee trivial, while others are quite limited and do not enjoy any deference by the parent committee.

These changes brought about the rise of ‘Subcommittee government’ on the place of the receding Committee government. The two most outstanding features of the transition were the decentralization (in terms of decision-making moving down to subcommittee level) and higher party control in the same time. This may appear to be paradoxical, but from the party dominance perspective (see above p. 14) it is natural – as long as parties retain control of assignments and can reward and punish members the latter will have incentive to toe the party line and accordingly the decentralized decision-making system will produce results in harmony with party agenda even without hierarchical control. Hence, the smaller units, responsive to members and leaders, that characterize the post-reform period are less autonomous than the committee barons of the post-war Congress who were responsible to no one.¹⁴⁷

¹⁴¹ Section 201(f) of S. Reg, 95 Congress, currently 1st sess.

¹⁴² Deering and Smith, p.130.

¹⁴³ For the selection of Democratic subcommittee chairs only subcommittee seniority matters, not full committee seniority.

¹⁴⁴ Tiefer, 106-107, quoting Democratic Caucus rules.

¹⁴⁵ Tiefer, p. 107.

¹⁴⁶ Deering and Smith, p. 153.

¹⁴⁷ The findings of Deering and Smith, p. 146, table 4-3, suggests that subcommittee chairs since the reforms of 70s tend to be a little less supportive to party line than the full committee chairs in the same period which seems puzzling with regard to everything said above. However the support of the full committee chairs for the party line was apparently lower in the early 70s. It increased after the

On the other hand, even though subcommittee government can and does coexist with increased party dominance, Deering and Smith observe that it lead to overall decentralization of American congressional politics. They emphasize that clientelism and parochialism increased as the “interests that were blocked before by autocratic chairs ... now have several venues of access to committees.”¹⁴⁸ It seems that committees are very well suited to perform this function. In fact so they were as early as 1966 when Jewell and Patterson observed that “[t]hey provide convenient channels of access for both pressure groups and governmental agencies.”¹⁴⁹ In the next chapters this will be identified to be one of their main functions in Britain as well.

Another result that the democratization of committee procedures in the 1970s brought about was that the subcommittee assignment became to a great extent matter of self-selection.¹⁵⁰ The bidding mechanism for subcommittee assignments in both chambers guarantees first (or second) subcommittee of choice to everyone before anyone can get a second (or third). In addition any committee member may participate in subcommittee hearings and ask questions. This allows the committees to consist of members with outlying preferences in the respective subject matters.

7. Staff and Resources

The formal commitment of US Congress to committee support through extensive staffing started with the Legislative Organization Act of 1946 that assigned ten full time staffers to each committee, four of them ‘professionals’ and six clerks. The Act of 1970 enabled committees to ask for additional staff (termed now ‘investigative staff’) beyond the statutory number, subjected to authorization on a yearly basis. Today House Rules assign minimum 30 professional staffers to each committee. In 1995 there was a little reduction of these partly for fiscal reasons, but also because of “heightened criticisms of excessive decentralization”¹⁵¹ to which this staffing had contributed significantly. This is instructive for the importance of the staff and of members’ awareness of that importance. Clearly staffing policy is another tool for regulating committee power. The pre-reform era provides other examples of this policy, when one method for subcommittees to be kept trivial and dominated by full committee chairmen was denial of own staff. With the reforms of 1970s committee chairs were forced “to tolerate independent subcommittees with professional staff.”¹⁵²

The first staff decentralization measure was the Rule adopted in 1971, requiring at least one staffer for a subcommittee. Presently 38% of the whole staff committees have in the House and 26% of it in Senate is allocated to subcommittees.¹⁵³ Later in the 1970s, certain committee staff assistance was specially committed to junior members, and also one third of the House staffers were dedicated to the minority members. This noticeably decentralized form of staff organization, which appears to be another strengthening strategy, again is not

reforms to a little higher than that of the subcommittee chairs. The suggestion that subcommittee chairs are more loyal might be wrong, yet the support exhibited by both groups increased dramatically – from 54% (for subcommittee chairs) and 47% (for committee chairs) in 71-72 to 88% and 89% respectively in 95-96. Apparently there is huge increase in the party domination despite of the institutional decentralization in post-reform Congress.

¹⁴⁸ *Ibid.*, p. 162.

¹⁴⁹ Jewell and Patterson, *op. cit.*, p.226.

¹⁵⁰ Deering and Smith, p. 153.

¹⁵¹ *Ibid.*, p. 164.

¹⁵² *Ibid.*, p. 133.

¹⁵³ Deering and Smith, p.167, Table 4-7.

employed in the House of Commons. There is a central office there, which temporarily allocates its employees to various select committees.

Besides the committee staff, members have personal staff assistance as well. The average senator's personal staff grew from 10 in the 1960s to more than 40 in 1980s. Further, there are number of congressional support agencies such as Congressional Budget Office, Congressional Research Service, General Accounting Office etc. that provide information, expert advice and support in various other ways. The Joint Taxation committee also masters great research staff and the information accumulated there is used extensively by all of the other committees. Additionally great contribution to the committees' expertise is generated through hearings with renowned specialists. Lastly, "rank-and-file members benefited from the organized groups that proliferated in Washington and are willing to provide additional expertise and assistance."¹⁵⁴ To make the picture complete a consideration of the quality of the staff must be added to the mere numbers. Deering and Smith maintain that "they are among the top policy specialists in their fields, in or out of government."¹⁵⁵

While the staff support of both houses of Congress is great, there is a difference in the extent of their reliance on this support. Representatives usually are devoted subject-matter experts to a degree quite unusual in the Senate. While Senators rely on their staff, Representatives dig into subject matter themselves. The latter may appear to correspond to the strong Westminster preference for "member-driven" instead of "staff-driven committees."¹⁵⁶ However any comparison between the few officers assigned to select committees there and the huge armies of bureaucrats both houses of Congress have makes such analogy meaningless. The function of committee resources is observed by Deering and Smith: "Committee staffs, along with personal staff and support agencies, help Congress to compete with the expertise of the executive branch and scrutinize the claims of special interests"¹⁵⁷ and they believe that exactly *to compete* with the executive was the goal.¹⁵⁸ Having in mind that the Departmental Select Committees in Britain were introduced for similar competitive purposes, they appear to be doomed to remain trivial as long as their staff is small and tends to be young and inexperienced.

8. Proceedings

All committees have formal rules of proceedings since the 1970s: the Legislative Reorganization Act of 1970 requires the committees to publish their rules of procedure in order to "give public access to committee rules and to make members accountable for the fairness of the rules."¹⁵⁹ Formal rules also limit the discretion of the chair and the powers of the majority. In Britain, absence of formal rules is likely to promote discretionary rule of the chairs or the governmental majority. However, select committees there take consensual stance of proceeding that makes this problem less acute.

Currently proceedings are more open as the reforms limited the use of closed executive sessions in favour of open meetings and also mandated that verbatim transcripts of hearings

¹⁵⁴ *Ibid.*, p.136. This can be expected to be very important source of information for the British committees and members because of the scarcity of their resources.

¹⁵⁵ *Ibid.*, p. 162.

¹⁵⁶ For this preference see Chapter Four, p. 70.

¹⁵⁷ *Ibid.*, p. 162, emphasis added. The last point they make for the scrutiny of pressure groups claims, may be a case for stronger committees in Britain, charged with the task to evaluate the proposals coming to Parliament from lobbyists instead of scrutinizing executive departments.

¹⁵⁸ "Congress sought to bolster its capacity to compete with the executive branch," *ibid.*, p. 166.

¹⁵⁹ Tiefer, p 139.

and meetings are to be made and published. Similarly, the votes in committees are recorded and published, apparently to make members responsible. Compared with the secret ballots for selection of chairs that encourage members to challenge their authorities, this appears to be another way to enable party control. On the other hand, such transparency opens the Congress to public and encourages members to shape their behaviour with regard to their constituencies. Both the virtues and deficiencies of this openness are available from the very beginning in British committees.

Committees have the power to set their own agenda within the limits of their jurisdiction. The parent chamber controls it only as long as it retains considerable influence over the referral of bills to committees, but once it is referred to one or more committees, it is entirely up to them to start consideration of it or leave it. There are formal ways to circumscribe committee jurisdiction, one of this is the discharge motion i.e. floor order to a committee to report a bill, but they are difficult to pass and rarely used. In 1995 the Speaker received authority to refer a bill to several committees and assign a leading one with duty to report within deadline. Both of these are measures that restrain committees' negative powers to veto unwanted legislation by refusing to consider it. Therefore committees retain control over their agenda and for the time being parent chambers have very limited opportunities to influence it in these ways. Bills referred to committees do not automatically constitute their agenda as will be seen to be the case with British standing committees and this is the source of committees' negative powers.

Committee chairs are the principal agenda setters and schedule makers.¹⁶⁰ However since the reforms of the 1970s, committees have regular meeting days listed in committee rules and also certain number of members may call for special meeting without chairpersons' approval. The significance of this was discussed together with the powers of the chair for it was only he, who could call a meeting before the reforms.

Hearings are scheduled with formal notice one week in advance and maybe press release to alert the media. Here chair still has great influence as she has considerable leeway in the timing of hearings and with order and choice of witnesses. She may also ask witnesses favouring her proposal to appear in person while those likely to oppose it to submit written statements only.¹⁶¹ However Senate Rule XXVI(4)(d) and House Rule XI(2)(j)(1) entitle the minority¹⁶² to call formally for other witnesses if they disagree with the selection of the chair. Tiefer provides account of the consensual way this is done:

“In practice, the minority rarely makes formal invocation of that rule, due to factors such as limited time and staff to prepare, basic acceptance of the majority's choice of witnesses, and minority's ability to informally negotiate the addition of witnesses when necessary. The majority party's power does not lie so much in excluding the witnesses with whose position it disagrees, particularly since important witnesses who have been unfairly excluded may get sympathetic coverage in the press. Rather, it lies in the majority's control over timing of hearings, the topic, and the sequence of witnesses.”¹⁶³

¹⁶⁰ See Oleszek, *op. cit.*, p. 107.

¹⁶¹ *Idem.*, p. 107.

¹⁶² House Rule XI.2.(j)(1) entitles “the minority members of a committee ... upon request ... by majority of them ... to call witnesses” so calling witnesses by minority is not only possible but is not necessarily done through the ranking minority member but also by discontent rank-and-file members.

¹⁶³ Tiefer, p. 160.

Hearings start with opening statement by the chair and perhaps by some members (in order of seniority and rotating between parties,¹⁶⁴ with five minutes in House and ten minutes in Senate allocated for questioning by every one of them). However if the hearings are not “exciting” only the chair may be present, with the members who are absent submitting written statements only. Oleszek provides several examples how the formal rules frustrate dialogue and witnesses complain about it. Yet he claims that lately this is changing:

“numerous committees today structure their hearings to ensure that conflicting viewpoints are heard. Committees often hold panel sessions where members and witnesses of different persuasions sit in roundtable fashion to discuss the merits of particular policies.”¹⁶⁵

British Departmental Select Committees operate in this informal and bipartisan mode from the very beginning.

The ‘Sunshine Rules’ of 1970s provided that the hearings are open and may be closed only for matters related to national defence or involving possible personal defamation. In all cases, affirmative vote by the committee is required to hold a close hearing. The decision to broadcast the hearings however is discretionary. Committees also can keep a list of ‘must-contact’ reporters to invite to the hearing.¹⁶⁶ Publicity related functions of congressional committees have always been important: as early as 1966 Jewel and Patterson observe that “[hearings] resemble a large verbal orchestration, as a ‘record’ is carefully shaped under the vigilant gavel of the chairman”¹⁶⁷ and “[they] are usually *pro forma* affairs, serving only the purpose of permitting interest groups to be heard and to put their views on record.”¹⁶⁸ The hearings may be used to generate public support for a bill or conversely to kill it. That committees can be and indeed have become such *arenas* is demonstrated by the examples Oleszek provides of movie stars invited to hearings to raise the awareness or build up committee’s case with regard to certain proposal. With the committee hearings making the case Wilson’s famous observation that “Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work.”¹⁶⁹ must be corrected in a sense that Congress in committee hearings is also Congress on exhibition. Committees are just different kind of exhibition, for more specialised matters and audience with more particular interests. Indeed Senator Albert Gore (later Vice-President) maintains that hearing is ‘making the case’ in the most literal sense: “Legislation need not always be the answer, in many areas, the most important missing ingredient is attention and an elevated awareness of the problem can be a very successful outcome of hearings.”¹⁷⁰ All these publicity related functions of committee proceedings *per se* are important for comparative purposes as British committees’ importance seems to be of similar nature. It should be emphasized here, that committees may be arenas themselves and may have law-effecting functions.

Oleszek also emphasizes the relation of the hearings with the administrative oversight: “although excessive use of hearings and investigations can bog down governmental processes, judicious use of such tools helps to maintain a more responsive bureaucracy while

¹⁶⁴ Sometimes the so called “early bird” principle is applied, meaning the members may ask in order of their coming to the hearing. This is a way to allow the freshman to take active part in the hearing.

¹⁶⁵ Oleszek, *op. cit.*, p. 110.

¹⁶⁶ R. C. Sachs, quoted in Tiefer, p. 152.

¹⁶⁷ Jewell and Patterson, *op. cit.*, p. 455, quoting a congressman.

¹⁶⁸ Jewell and Patterson, *op. cit.*, p. 460, quoting a Representative.

¹⁶⁹ Wilson, W., *Congressional Government: A Study in American Politics*, 1981 [1886], p. 69.

¹⁷⁰ Oleszek, *op. cit.*, p. 109, quoting Albert Gore.

supplying Congress with information needed to formulate new legislation.”¹⁷¹ Indeed the greatest majority of witnesses come from the executive branch (with respect to oversight or to new legislation). In a survey of 8500 witnesses in Senate during 1975 quoted by Tiefer,¹⁷² 2500 were from the executive, 1800 from the business, 700 from the state governments, 500 from unions, NGO’s and pressure groups, 600 academics and the 2400 remaining are qualified as ‘citizen witnesses’. The great precedence of the executive officers to any other group is instructive for the intensity of interbranch relations. Accordingly, agencies have their own congressional liaison officers. Quite different channels between the branches exist in Britain. Ministers there have their Parliamentary Private Secretaries, but instead of being employees of the executive agency as in US, they are front bench members and their function is not simply as liaison officers to provide information but rather to control parliamentary activity related to their ministries. This “liaison” is established in such a way that it benefits the governmental side only.

Subpoena Power

Most of the witnesses invited for a hearing cooperate willingly, but in order to provide committees with effective oversight and investigatory powers the Legislative Reorganization Act of 1946¹⁷³ “confirm[ed] and strengthen[ed] oversight jurisdiction of standing committees within their legislative jurisdiction, by conferring subpoena authority on all standing Senate committees and duly authorized subcommittees, a step which the House ultimately took in 1975.”¹⁷⁴

The hearings are followed by executive meetings, which are closed, although non-committee members may be allowed. There are stricter quorum requirements i.e. one third of the members to be present while on hearings only one senator or two representatives are enough. Discussion there is informal, but transcripts are made and votes on the proposed amendments may be recorded. Proxy votes that once strengthened committee chairs have been gradually limited to total prohibition in all House committees and subcommittees recently.¹⁷⁵

9. Reports

Concerning the reports, the rules of proceedings are stricter. The House rules require the presence of a majority of the committee to report the bill. Voting by proxies in such meetings is prohibited even in Senate committees and was forbidden entirely in the House much earlier than for the common meetings. This stricter procedure for a bill to be ‘ordered reported’ gives committee members the important power against the chair to boycott the quorum and delay or avoid reporting. Upon successful vote the staff is ordered to prepare a formal written description of the bill – the report, which is accompanied by the bill itself and possibly with amendments, is filed at the desk on the parent chamber.¹⁷⁶ No vote is taken over the report after it is prepared which gives the chair considerable leeway to shape its content. Reports consist of hundreds of pages and include the views of the Executive branch, minority

¹⁷¹ Oleszek, *op. cit.*, p.305.

¹⁷² Tiefer, p. 156.

¹⁷³ Section 133 of Legislative Reorganization Act, now Senate Rule XXVI(1); House Rules XI(2)(m)(1)(B).

¹⁷⁴ Tiefer, p. 85-86 Prior to these reforms, the House and the Senate conferred subpoena power on standing committees by adopting resolutions providing that power.” Currently the refusal of a person who is summoned as a witness to appear or to testify is criminal offence (2 USCA s 192).

¹⁷⁵ House Rule XI(2)(f).

¹⁷⁶ Committee reports have privileged access to floor and these powers of committees to file their reports at the desk shape the actual agenda of the parent chambers.

supplemental or additional views. House and Senate rules require reports to contain five-year cost estimates, oversight findings¹⁷⁷ and regulatory impact statements. Tiefer provides some insights for the way the text of the report is drafted:

“Staff may look to outsiders in writing the report. The interested executive agencies may draft part of the report, unless they oppose the bill, in which case they may draft separate views.”¹⁷⁸

“Committee staff may carefully use reports in an ongoing dialogue with expert audiences.”¹⁷⁹

“Staff members use the language in a report as a significant bargaining tool. An interest group is sometimes content to get its language into the report, knowing that somewhere down the line it can point to the language in a court challenge or in an agency proceedings.”¹⁸⁰

Because of the abundant possibilities for such strategies there are the ‘Sunshine’ requirements protecting minority right to file ‘supplemental, minority, or additional views’ and providing transparency on committee processes in reports.

Reports are apparently another source of power of the chair, who can control the staff and accordingly the language of the report. However, the chairs must act upon members’ expectations as in a longer run they need their maximum support. A divided committee is likely to doom the bill: “Members may take unanimous or near unanimous votes in committees as a signal they can accept the bill without extensive study”¹⁸¹ while “a sharply divided committee vote presages an equally sharp dispute on the floor.”¹⁸² Furthermore, the tradition developed at Capitol Hill makes it a matter of pride with committee chairpersons to bring their minority along with them. This appears to be the case in Britain as well – the bipartisan mode of operation is important condition for committees in both systems to have any influence over their parent chamber.

10. Conclusion

For the purposes of the current study it is important to emphasize that after book-long description of internal changes in Congressional committee system, Deering and Smith conclude that the decline of committee government and the shift to subcommittee government was driven by changes in national legislative agenda and other external developments: “a more consolidated and interconnected policy agenda had combined with more partisan political alignments to dramatically alter the context in which committees operated.”¹⁸³ That transfer of powers is quite unique, as for most of the time in the twentieth century “the US Congress has allowed agenda control to rest with the committees rather than with the parties.”¹⁸⁴ The Contract Congress was apparently radical change compared to any

177 This requirement for oversight findings in a report for legislative proposals is instructive for the link between the two. This will be discussed in the subsequent section. However it is worth to observe the language Tiefer uses to describe the same “Various *flotsam* largely ignored, such as regulatory impact statements and oversight findings, also go in,” p. 186, emphasis added.

178 Tiefer, p. 187.

179 *Ibid.*, p. 183.

180 *Ibid.*, p. 182, quoting Mikva in Mikva J. and P. B. Sarris, *The American Congress*, 1983.

181 *Ibid.*, p. 177.

182 Oleszek, *op. cit.*, p. 119.

183 Deering and Smith, p. 184.

184 *Idem.*

Institutionalization of Parliamentary Control

of the post-war Congresses, but it was no revolution, as most of the institutional changes already had taken place in 1970s.

The most important change was the weakening of seniority system that used to insulate committees from party influence. Presently parties have considerable control over the committee assignment which makes them influenced by the parties to a certain extent. However weakened seniority still prevails in great number of assignment decisions. In fact seniority turned from a automatic system for determination of committee assignments into normative system constraining the assignment decision-maker, which is now a party-dominated committee. On the other hand several other concurrent constraints emerged, which further limit seniority, but in turn limit severely party decision-making choices. Among these are the formal procedures of nominations, the secret ballot on individual nominations, the term limits, the rules requiring balancing of the demands from senior and junior members, the need for geographical balance, and also the attempts to satisfy members constituency needs. Nevertheless, one of the most important factors for decision making is party loyalty, accordingly certain degree of party governance in committees can be observed.

The other factors for committee independence and autonomy identified in American context are the fixed committee jurisdiction and shadowing the respective executive departments (that is bureaucratic parallelism), fixed rules of proceedings, availability of permanent staff (and decentralized staff organization), committees power to set their own agenda, privileged access to the floor (and accordingly certain control over its agenda), development of strong system of specialized subcommittees. It was also demonstrated that developing expertise in the subject matter of the committees and bipartisan agreement in their reports are also critical for their authority.

Chapter 3 Committees of the House of Commons

This study of the British Parliamentary committees will focus only on the committee system of the House of Commons. The upper chamber may be easily ignored for two reasons. The first is that the overall impact of the House of Lords on the British politics is negligible and if we rank the chambers separately in the Mezey's classification, it will rank somewhere between minimal and marginal legislature. For that reason most of the scholars leave it out or give it very limited treatment. Kaare Strøm neatly justifies this: "[the British Parliament is] extremely asymmetrical legislature [and] the powers of the upper house are sufficiently insignificant [so] it poses no serious constraint on legislative decisions. The powerful chamber, [the House of Commons] is for all practical purposes a dictator."¹⁸⁵ The second reason is equally important, and it is the lower level of institutionalization of that House. This is what makes it irrelevant for the present study, which is concerned with the internal structure of a legislature in relation to its overall strength. It might be argued that the House of Lords now debates more than ever, and its survival even after the sweeping Labour reforms, is sign of everlasting importance, but still in terms of institutionalization it is lagging too far behind the House of Commons to offer many things interesting for this study.

I. Standing Committees

There are two major types of parliamentary committees that are regularly used in the House of Commons – these are the standing committees and the select committees.¹⁸⁶ The standing committees are appointed either *ad hoc* or for the current session only, to consider the public bills referred to them or sometimes pieces of delegated or European legislation. Standing committees are examples of nascent institutionalization: they are not permanent bodies; they are not specialized in any measure and they are not even named but are identified by consecutive letters of the alphabet.¹⁸⁷ They have no control of the agenda whatsoever – the bills referred to them automatically constitute their agenda. Bills are usually referred to a standing committee after their second reading in the Chamber. In the committee they are considered line by line and are returned to the floor with a Report and perhaps amendments proposed by the committee. Standing committees do not draft bills themselves, nor can ever initiate legislation. As they consider the bill only after its second reading they are the last to receive it and only after the bill is already accepted in principle. In fact, the committee itself may originate after the bill, as it may be appointed by the same reference order that charges it with its consideration. Except for the powers to propose amendments and to report to the floor, standing committees do not have any other powers – they cannot appoint expert

¹⁸⁵ Strøm, K. *Parliamentary Government and Legislative Organisation* in Doering, H., (ed.), *Parliaments and Majority Rule in Western Europe*, p.65.

¹⁸⁶ A full account of the committees known at Westminster includes also the Committee of the Whole House, the Westminster Hall, Business Committees, Committees to draw up reasons, Hybrid Bill Committees, Private Bill Committees, Ecclesiastical Committee, Unofficial Committees and the Grand Committees. With the exception of the first two (that are not really committees but special modes of operation of the full chamber) these are rarely used, and generally on *ad hoc* basis. There is also one statutory committee (under the Intelligence Service Act of 1994) that consists of 9 non-ministerial members of both Houses, appointed by the Prime Minister in consultation with the Leader of the Opposition for oversight of the intelligence services, but this is not a parliamentary committee.

¹⁸⁷ Compare with the American numbered subcommittees that were used by powerful chairs to undermine the subcommittees in post-war Congresses.

advisors, hear a witness or collect any evidence. The Modernisation Committee¹⁸⁸ complained recently that in this way there is no formal channel for committees to receive any representations from interested parties.¹⁸⁹

Standing committees operate on highly partisan basis and are in fact designed as substitutes of the Chamber. They even sit in halls that are similar to the Chamber – with benches for the Government and for the Opposition facing each other. They have usually more than 50 members who are selected on the basis of lists supplied by the party whips, and one or more Ministers together with their opposition shadows are automatically assigned. Their big size and the random selection by whips ensure that their members' preferences will correspond to these of the floor. Indeed, they are microcosms of the House itself, "complete with front and back benches, whips and division bells."¹⁹⁰ The standing committee chairpersons are as neutral as the Speaker is.

Accordingly, the proceedings of the standing committees are entirely controlled by the Government. Usually a junior minister sponsoring the bill attends the sittings and has the power to control its movement; variety of rules provide that the Government will get its business with no delay. If the minister is not satisfied with the speed or performance of the committee, she can easily move to a guillotine motion on the floor and cut the committee stage. The members' attendance and voting are controlled by the party whips in the usual way.

Sometimes a government with tiny majority may suffer defeat in a standing committee and in 1976-79 the Labour government suffered more than 100 defeats in standing committees. However, this was rare situation. The Electricity Bill in 1988/89 Session is notorious example – from the 114 amendments made in the respective standing committee, 113 were moved by ministers and one by a majority backbencher. The opposition moved for amendment 227 times, none of which was successful. The Water Bill in the same session showed another aspect of the standing committees' inadequacy. After 27 hours of debate on the first clause of the Bill, and other 48 hours on the next 8 clauses the government moved a guillotine motion and the remaining 171 clauses were untouched (it would take some 1400 hours for the committee to debate them with the same speed).¹⁹¹ The tradition makes it is a matter of prestige for the Ministers not to have any detail of their bills changed in the standing committees: "There has been a distinct culture prevalent throughout Whitehall that the standing and reputation of Ministers have been dependent on their Bills getting through largely unchanged."¹⁹² This political culture constraint comes in addition to the various institutional ones described in the preceding paragraphs.

Although standing committees operate as the floor itself, they share none of its public esteem and accordingly none of its law-effecting features. Serving on such committees provides no benefit to the MPs, nor do they make any significant contribution to government's business. This makes the standing committees by far less important than the select committees as contributors to Parliament's transformative capacity, even though they may be entrusted with a significant bill to consider, while select committees do not consider any legislation. There is a widespread demand for some degree of institutionalization (with the Departmental Select

¹⁸⁸ Modernisation committees are select committees, appointed occasionally to reconsider procedures of the House of Commons and to propose reforms.

¹⁸⁹ *Select Committee on Modernisation of the House of Commons First Report: The Legislative Process*, 1997-98, HC 190, par. 6.

¹⁹⁰ Adonis, A., *Parliament Today*, p.153.

¹⁹¹ *Ibid*, p. 155.

¹⁹² Modernisation Committee, *op. cit.*, par. 7, emphasis added.

Committees often pointed as a model). There are also suggestions for specialized and permanent legislative committees (i.e. the existing standing committees or introduction of some brand new type) coming from various research groups.¹⁹³ In 1981 the *special standing committees* were created, which are empowered to take evidence but for the first two decades of their existence only seven bills were referred to such committees.

With regard to the discussion on the environmental constraints in the first chapter, it seems very unlikely for these committees to be further institutionalized. Any strengthening (or any measure that can be seen as such) will be considered as hostile by the government and rejected. This is why reform attempts have always been focused in oversight – it can be seen as less threatening to the governmental decision-making power and furthermore it is more difficult to object publicly to creation of controlling committees than to legislative ones.

II. Select Committees

The other major type of committees of the Commons is the select committees. They are appointed permanently for the whole mandate of the Parliament (and are recreated in the new one as well) “to perform certain tasks on behalf of the Chamber.”¹⁹⁴ Their main task is to scrutinize the policies of the Government. This is never done by standing committees and conversely select committees generally do not consider drafting of bills. The main function of the Select Committees is to *assist* the House by taking evidence and collecting expert advice; after elaborate deliberation and sometimes intense debating they prepare Reports that are presented and often debated in the Chamber.

There are five types of select committees, which are

- The Departmental Select Committees
- Scrutiny committees, that advice the House on some other crosscutting issues and examine the proposed Statutory Instruments and European Legislation.
- Two committees that “examine the reports of independent statutory officers on standards in government financial management and administration,”¹⁹⁵ that is the Public Accounts Committee and the Committee on Public Administration
- Internal (such as the Liaison, Procedure, Modernisation, Selection etc.) committees
- Domestic committees dealing with the services of the House.

Several other select committees may be also appointed permanently or *ad hoc* for various other matters.

The first three groups are the “narrow gauge” committees, scrutinizing particular Government departments or actions “in almost judicial capacity.”¹⁹⁶ The most important select committees are the departmental select committees – charged with oversight of the executive, designed to shadow the respective departments. The second and the third groups also scrutinize the executive on certain narrow issues (such as the public accounts or environmental protection) without being limited to a single department. They supplement the Departmental Select

¹⁹³ See for example *Making the Law: The Report of the Hansard Society Commission on the Legislative Process*, London, 1993, and also the Committee on Modernisation Report, *op. cit.*

¹⁹⁴ Adonis, *op. cit.*, p.153.

¹⁹⁵ Erskine May, p. 630.

¹⁹⁶ Silk, Paul and Walters, R. H., *How Parliament Works*, 1993, 2nd ed. Longman, p.215.

Committees in holding the executive to account and sometimes they are extremely powerful in their limited subject matter. The remaining two groups all perform certain functions of organization or internal administration and accordingly they have little to do with the relations of the Parliament with the administration and they will not receive special treatment here.

Scrutiny Before 1979

There have always been some select committees “used by the House of Commons for centuries to investigate, judge, assess and advise,”¹⁹⁷ but they really evolved during the 1960s and 70s. During that period several select committees were in charge of oversight of the administration, specialized in different subjects such as Agriculture, Race Relations and Immigration, Overseas Development etc. Also the Public Accounts Committee and Estimates Committee (operating through six subject-specific subcommittees) proved to be very important and had considerable reputation for effective scrutiny of the government for decades; the old Science and Technology Committee and the Committee on Nationalized Industries also achieved certain fame in that respect. Yet the following judgment by A. King for the overall performance of the committee system at Westminster before 1979 is very appropriate: “Since the committees function on a non-party basis, and since most of the important questions in British public life are dealt with on a highly partisan basis, the committees do not deal, on the whole, with important questions.”¹⁹⁸ Due to the external constraints described above the parliamentary institutions and especially select committees were not effectively used even where and to the degree that they existed. Government did not need them and they had few responsibilities and still less resources. For Norton this used to be true in the past only, indeed this verdict was written before the current Departmental Select Committees came into being and changed the landscape. Yet the present study finds that largely this still is the case. The fate of the Agriculture committee is particularly instructive – it was created in 1966 and was abolished in 1969 “having been opposed bitterly by government departments.” In the constitutional, political and cultural environment British committees operate, they cannot be too strong – they either have limited powers, or make limited use of them, or both. The strong Agricultural committee apparently was occasional exception and therefore short lived. The external factors either inhibit committees’ powers or lead to their abolition.

Crosscutting Committees

The non-departmental select committees are very similar to Departmental Select Committees in terms of functions, powers and operation. However, they deserve some special consideration here because they possess some of the particular characteristics, identified in the previous chapter as leading to higher committee autonomy and accordingly higher influence.¹⁹⁹

Public Accounts Committee (PAC)

The Public Accounts Committee was created in 1861. Currently it is appointed under Standing Order 148 “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.” This select committee does not shadow

¹⁹⁷ Liaison Committee First Report, *Shifting the Balance: Select Committees and the Executive*, 2000

¹⁹⁸ King, A., *Legal Studies Quarterly*, vol. 1, 1976, p. 11-36, quoted in Norton, *Legislatures*, p.29.

¹⁹⁹ See above, p. 9.

any single department, but may investigate any of them; unlike the departmental committees, it cannot consider policy matters but only the narrow issue “whether public money has been spent for the purposes intended by Parliament.”²⁰⁰ It publishes wide range and great number of reports (41 for the 1995-95 session,²⁰¹ which is impressive amount especially compared with the average of 3-4 of the other select committees).

Public Accounts Committee is not only the oldest committee but it is by far the strongest. This is due not to the mere tradition but to several institutional advantages that make it especially valuable as an example of characteristics that make a committee stronger. The committee has the power to choose independently its topic of inquiry, it is chaired as a rule by senior opposition member and there is one special day in each session allocated for debates of its reports. Further, although “PAC represents the party-political strength of the House, [it] functions in a non-partisan manner.”²⁰²

Another institutional advantage, and probably the most significant one, is that PAC is very well staffed as it draws upon the resources of National Audit Office (NAO) and the reports of Comptroller and Auditor General (C&AG). The NAO is a statutory agency with some 750 officers, and is headed by the Comptroller and Auditor General who is truly independent, removable only for misbehaviour and only on the successful moving of an address to both Houses. Under National Audit Act (1985), the chairperson of the PAC has the power to approve the appointment of C&AG (and so does the House of Commons afterwards). This cooperation provides the resources PAC needs and enables it to exercise rigorous and truly critical scrutiny over the executive.

Besides these empowering institutional features however the difference comes from the nature of its remit and the way its activities are perceived in the Commons – scrutinizing governmental spending for certain policy is much better accepted than questioning of the policy itself, which is the task of the other committees. British political tradition seems hostile to committees, which may interfere with the policies chosen by a responsible Government. As a result, PAC has better standing vis-à-vis the Government, and its demands for resources or powers are more welcome.

Public Administration Committee (PCA)

Initially this committee was called simply Parliamentary Commissioner of Administration Committee (PCA) and its role was limited to comments on the ombudsman activities. Since 1997 the Committee has a broader remit, considering not only the reports of the ombudsman but all issues concerning the quality and standards of administration provided by civil service departments and any matter related to it.²⁰³

Some of the empowering characteristics exhibited by PAC are also available in the Public Administration Committee: it works drawing on the reports and findings of the Parliamentary Commissioner of Administration (and his Health and regional counterparts), who although named ‘parliamentary’ is again sufficiently independent statutory officer, with some 90 staffers at his disposal.

Several others crosscutting committees are worth mentioning. The ‘scrutiny’ committees that review European Union documents and statutory instruments laid before Parliament not

²⁰⁰ Walker, Clive, Prof. of Law, Leeds University, *Scrutiny by Select Committees*, (www.leeds.ac.uk/law/teaching/law6cw/min-1.htm)

²⁰¹ Silk, *op. cit.*, 4ed, p. 210.

²⁰² Barnett, *Constitutional and Administrative Law*, London 2000, p. 631.

²⁰³ See Standing Order 146.

exercise scrutiny over the Executive in the strict sense. These are documents originating from outside Whitehall and the committees perform advisory function without overseeing directly the Ministers. The European Scrutiny Committee is “to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected.”²⁰⁴ It merely alerts the government or the public for variety of issues related to EU with the air of cooperation rather than of control of the Government. Accordingly (and it is particularly remarkable) this Committee reports to the House *weekly* while some of the committees scrutinizing the executive departments may never reach the floor for a whole session.

Further, there are two crosscutting committees on very particular issues: the Environmental Audit Committee²⁰⁵ and also Deregulation and Regulatory Reform Committee, which are designed to cooperate with the departmental select committees. They may use the reports of the former; their Standing orders expressly charge them “to communicate ... evidence and any other documents relating to matters of common interest to any committee.” Lastly, there is the Standards and Privileges Committee that does not review governmental activities but is in charge of the register of Members’ interests and also considers matters relating to the conduct of Members. Actually, it belongs to the group of internal committees but it is worth mentioning here because of its exemplary power to summon Members of the House.²⁰⁶ Again within its very narrow remit it could safely receive some more powers, which the Departmental committees generally do not have (see the subsequent section). It is noteworthy that in its First Report (with the instructive subtitle ‘Shifting the Balance’) the Liaison Committee demanded, “all select committees should be given the powers ... the Committee on Standards and Privileges [has] ... [i.e.] that all Members are bound to give evidence to [it].”²⁰⁷ The Government constantly rejects such proposals.

The study of these committees proves several important conclusions. Above all, there are several narrow topics where more rigorous oversight is tolerated. These are public finance, the operations of the lower level administration and European Legislation. In such cases governmental majority is willing to allow stronger committees exercising effective oversight. This is especially the case with Public Accounts Committee and Public Administration Committee. Furthermore this better acceptance in turn allows them to receive the appropriate institutional support, that is bigger staff and support of external agencies (PAC and PCA), some degree of independent leadership (PAC), privileged access to floor (PAC and European Scrutiny Committee) or subpoena powers (Standards and Privileges Committee).

III. Departmental Select Committees

Departmental Select committees are permanent committees of inquiry, which mostly proceed by taking evidence, deliberating in private and making Reports to the Chamber on their

²⁰⁴ Standing Order 143 (1)(a).

²⁰⁵ It is “to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development,” Standing Order 152A.

²⁰⁶ Standing Order 149 (6): “The committee shall have power to order the attendance of any Member before the committee or any sub-committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of a sub-committee or of the Commissioner, be laid before the committee or any sub-committee.”

²⁰⁷ Liaison Committee First Report, 1997, par. 12. It also explained, “...we doubt whether use of the power will be necessary. Its availability should be sufficient encouragement.”

findings. Thus, they are the tools for control over the administrative departments. For the virtue of their higher degree of institutionalization, they are far more important for the performance of the House of Commons and therefore for the present study. Each of the Departmental Select Committees corresponds to a governmental department and is charged with constant oversight over it.²⁰⁸

History of the Reforms

The system of the Departmental Select Committees was introduced in 1979 after long debates on a prospective reform and many reports from various research groups²⁰⁹ on the matter in the late 1960s and 70s. It is noteworthy that this was by no means single party invention. There was bipartisan support indeed: “in a debate on the Report ... there was general support from MPs on both sides of the House.”²¹⁰ The reform proposals and all the preparatory researches were initiated by the Labour Party, then in power. Most naturally, they received hearty support of the Conservative opposition and lukewarm acceptance by the Labour leaders themselves. Finally, the DSC system was implemented after the Labour government fell and the Conservatives took over. In fact, the new government (lead by M. Thatcher) had no incentive to implement the reforms proposed by the previous one, nor any government in Britain will ever be fond of creating scrutiny committees and opening itself to criticism by the opposition and by its own backbenchers. Nevertheless, it had to yield to the backbench pressure and the strong advocacy of the Leader of the House Norman St John-Stevas. The vote of 248 to 12 that established the system is noteworthy. This bipartisan creation also has symbolic meaning as the committees themselves are designed to work in a bipartisan mode.

The bipartisan approach is rare in British politics. Elsewhere the legislative reforms are often non-partisan because the MPs from all sides may be expected to have shared interest to shift power from the executive. However, this is rarely the case in Westminster, where the branches are effectively fused and the principal controversies are Government – Opposition instead of Legislature – Executive.²¹¹ This is why the circumstances of the 1979 reforms appear to be quite unique, certainly they have not occurred again and no further committee reforms followed.

Besides the momentary opportunity, there were two deeper causes that drove the reform. These were the growth of backbenchers’ ambitions and the weakening of the party discipline. The first was due to the rise of the professional, full-time politician. Griffith and Ryle observe:

“decline in the number of old-style Conservative and trade union Labour members who were largely content to give loyal backing to their party. In both parties ... those recently elected looked upon their Membership of Parliament as being their principal career, the House of Commons now provides the procedure and structures within which such backbench activity can be more vigorously pursued.”²¹²

²⁰⁸ See Standing Order 152.

²⁰⁹ But especially the Select Committee on Procedure created in 1976, whose Report (HC 588 (1977-78)) laid the foundational principles of the reform that subsequently followed.

²¹⁰ Patricia M. Leopold in Alessandro Pizzorusso (ed.), *Developing Trends of Parliamentarism* (14th Int’l Congress of Comparative Law), 1996 Kluwer, p. 231 (hereafter Leopold).

²¹¹ See A. King, *Modes of Executive-Legislative Relations*, in Norton, *Legislatures*, p. 208-236.

²¹² Griffith, p. 130.

This was empirically verified in a comprehensive study of the behaviour of MPs in the early 1970s by Donald Searing.²¹³ He discovered a great number of MPs who were predominantly ‘*policy advocates*’ that wanted to have some influence on public policy. The professionalization of the legislatures had already happened in the rest of the world; it also came to Westminster and brought about the institutional change. A more recent study by the Top Salaries Review Board finds this attitudinal transformation to be due to

“the nature of the pressures and demands upon MPs [that] have altered significantly. This is due to a variety of factors, chief of which is the increased awareness on the part of the public of the role of the MP and how the MP may be approached for help or support. TV coverage of Parliament, the impact of local radio and increasingly sophisticated lobbying techniques by interest groups, have all been elements in this development as has the use of diverse forms of media presentation by MPs to publicize their activities or promote causes.”²¹⁴

This made the MPs likely to seek ways for deeper *engagement* in the government policy-making if not challenging it (which is still not the case). This attitudinal change was met by the creation of the Departmental Select Committees as terrain of the individual members – “at the same time, the trend [was] towards heavier involvement in Select committee work, requiring more research and greater commitment of time.”²¹⁵ Cynics can say that backbenchers simply had to have something to do.

The second deeper cause of the reform was the size of the majorities in the 1970s (and the especially tiny margin in 1979-82). The fluctuations of the size of the majority made backbenchers more significant individually for the sustaining of the Government. That is why when “the decade of the 1970s saw the unprecedented defeat of the government in the division lobbies because of the government backbenchers voting with the opposition”²¹⁶ the members “gained in status [and this] have lead them to be more willing to criticize their leaders.”²¹⁷ The effect of this was the governmental willingness to change the institutional *status quo*, which had been so favourable to it.

Philip Norton, in a comprehensive study of these political circumstances, maintains that this increased likelihood of the MPs to vote against their own side “served to make the House a more significant *policy-influencing body* (although the extent of that influence has varied from Parliament to Parliament, depending upon MPs willingness and ability to deny the government a majority in the division lobbies), and [has] served to *generate parliamentary structures* for subjecting government to more regular and sustained scrutiny.”²¹⁸ There are two consequences of this identified by him. First, the House as a whole increased its strength and moved upwards in the category of reactive legislatures. The second is that this gave the impetus for the internal change (i.e. the introduction of the departmental committees) that in turn had to contribute to the increase of the Commons’ strength. However, as will be demonstrated later in this study, the impact of the institutions was quite limited, and did not bring about great change in the transformative capacity of the Parliament. In addition, the thin majorities in the following decades were succeeded by larger ones, which ensured governmental stability and diminished the importance of the individual backbenchers again.

²¹³ D.D. Searing, *Westminster’s World*, Harvard University Press, 1994.

²¹⁴ Top Salaries Review Board – 32nd report, Cm. 1943, July 1992, par. 10, quoted in Leopold, p. 222.

²¹⁵ *Ibid.*

²¹⁶ Norton, *Parliaments*, p. 30.

²¹⁷ Leopold, p. 227.

²¹⁸ Norton, *Dissent in the House of Commons 1974-79*, 1990, p. 43, emphasis added.

Unfortunately, the attitudinal changes of members towards policy advocacy that were witnessed by Searing were not measured again since the 1970s. Anyway, in these circumstances even if the ambitious backbencher attitude remains, it is more likely to motivate members to abide to party line and pursue advancement within the system, rather than engage into risky attempts to change it.

To sum up, the reform of 1979 was permitted and even required by external factors. Their pressure however was not sufficient as the changes were limited and, as it will be demonstrated later, by no means revolutionary. The unique circumstances did not reoccur for new changes to follow.²¹⁹ It is noteworthy that even the recent most sweeping Labour reforms left the Select committee system virtually untouched,²²⁰ despite the numerous demands for further institutionalization by the Liaison committee as well as several outside research groups.²²¹

Committees Characteristics

1. Permanence and Bureaucratic Parallelism

Specialization

There were two apparent novelties in the committee system that was introduced in 1979. These are the principle of single select committee shadowing each executive department (i.e. bureaucratic parallelism) and the permanence of committees. Currently there are 16 departmentally related select committees appointed under Standing order 152 that operate on the general principle that each department should be shadowed by a select committee. The well-established practice is that whenever the structure of the government changes so do the Departmental Select Committees (accordingly they increased to 16 from the original 12). Shadowing the Government was one of the core principles behind the introduction of Departmental Select Committees. Their jurisdiction is clearly defined and there are neither gaps nor overlaps amongst the committees. Committees have powers to interpret their own terms of reference and they do it broadly enough to allow themselves far reaching remit. The Liaison committee, which consists of the Chairpersons of all of the departmental committees is in charge of the generalities in the work of the other select committees and provides certain coordination between them. Some tensions with the cross-cutting committees can possibly arise, but "where there are potential problems of overlap with the PAC, it has been the practice that the Chairman of the Liaison Committee should seek to resolve the matter in conjunction with the two Chairmen concerned; this procedure has rarely had to be resorted to and has not failed."²²² In very much the same way were organized the US Congressional

²¹⁹ The conservative majority in 1992-97 was also thin and this was reflected in Government's behaviour: "with a smaller majority, John Major's government is more polite, at least," Adonis, *op. cit.* p. 168. Yet this did not led to any further institutionalization.

²²⁰ Ann Taylor (Lab), while Shadow Leader of the House, had made specific proposals for strengthening the select committees, starting with traditional proposals like increased floor time for discussion of their reports, to such novelties like requiring certain public appointment to be subject to ratification by the appropriate committee or requiring every agency and national quango to report annually to relevant committee. However when in power, the Labours diverted their attention elsewhere and the House of Commons procedure reform faltered (see Ryle, *Constitutional Reform*, London, 2000, p.134).

²²¹ Liaison Committee Reports from 1997, 2000, 2001, Norton Commission, Hansard Society Commission.

²²² Liaison Committee First Report, 1997, par. 25.

committees by the Legislative Reorganization Act of 1946: “the entire *legislative* domain ... was set forth and divided into categories, each assigned to a separate *standing* committee”²²³ and in this way the “responsibility for the programs was focused.”

The well-defined jurisdiction was one of the features identified in the preceding chapter to lead to strong committees. This is achieved by the select committees. As they are departmental they are “more likely to become sources of expertise for the Legislature and the activities of the bureaucracy are likely to be subjected to more careful scrutiny.”²²⁴ Besides this value, the high specialization also increases committees’ public esteem and recognition and compels the Government to regard their reports more responsively. Further, the specialized committees may attract various interest groups active in the respective areas. Such result in turn increases the incentive for specialization as their attention (as well as some other benefits) may be highly valued by the committee members. If the floor values the committee expertise enough, it may delegate some further powers to them. Finally, the Members of a specialized committee may develop a sense of appropriation and identification with the respective field. On the other hand, if no relationship to the structure of administration exists, policy expertise and accordingly oversight of administration tend to be reduced and, it follows that the policy-influencing role of the committees and of the whole chamber is likely to be smaller.

The well-defined jurisdiction is one of the few ways British committees are clearly advantaged if compared with the American ones. Only some of the congressional committees have clear-cut jurisdiction; the statutory rules defining their ‘turf’ are complicated with various “precedent-setting referrals.”²²⁵ This “jurisdictional fragmentation” promotes disputes that are decided by floor leaders and their staff, which is a way to undermine the committee autonomy. Nevertheless, departmental committees in UK cannot make use of this advantage, as they are not legislative and cannot develop negative powers within their jurisdiction. Still parallelism is very important and encourages committees to develop expertise. This becomes apparent when comparisons with British standing committees are made.

Permanence

The Departmental Select Committees are permanently appointed by each new parliament for its entire mandate. They are also reappointed in each successive legislature, with some members serving in the same committee in several consecutive legislatures and some small permanent staff remaining in office from one parliament to another. This is the other factor necessary to allow the committees to gather expertise in their subject matter and their members to professionalize. Permanence also ensures a continuous mechanism for inquiry and certain degree of comprehensiveness of that inquiry. Therefore the argument for the need of permanent committees dates as back as the end of 19 c.

Besides its direct link with committee specialization, permanence has the virtue to allow a *corporate* spirit to develop. A corporate spirit may help offset the influence of party, which indeed is the case in Departmental Select Committees, and again the comparison with the standing committees is instructive. Scholars deem these two critical for the performance of the whole legislature: “when the factors of permanence and bureaucratic parallelism are

²²³ *The Advent of the Modern Congress: The Legislative Reorganization Act of 1946*, Roger H. Davidson, *Legislative Studies Quarterly*, XV,357; p. 365.

²²⁴ Olson and Mezey, *Legislatures in Policy Process*, p.15.

²²⁵ See King, David, *Turf Wars*, CUP, 1997, p. 7.

combined, the conditions for strong committee systems with strong policy-making roles are established.”²²⁶

Another crucial condition for the corporate spirit to develop, as well as for the very efficiency of committee work, is the limited number of committee members and yet smaller quorums. In the Departmental Select Committees this condition is met – they usually consist of 11 members and can operate with quorum of four. This allows intimacy of deliberation and collegial relationships (i.e. cross-party cooperation) as well as separate institutional identity to develop. However, the influence of this factor is offset by the relatively high member turnover.

Griffith observes that the turnover of the members is significant, only half of them stay for the whole mandate of a single Parliament and very few remain in the same committee for several subsequent legislatures. Silk also observes that for one single session (85-86) the turnover in one committee (Agriculture) amounted to 54% of the membership. More recent commentaries maintain that the turnover ranges from 0-27% *per annum*, which the Barnett finds sufficiently low and considers the committee membership stable.²²⁷ However, this is not even comparable to the turnover in the US congressional committees that is reduced to the vanishing point by the seniority system. There are few examples of members serving for a decade in the same committee, especially Bruce George (Lab) who has been in the Defence Committee since its foundation in 1979 and was reappointed to chair it in the latest Parliament. Most of the 1997 Labour committee chairs retained their positions in the subsequent 2001 Parliament – nine are still presiding same committees (or the corresponding new ones), one was promoted to junior minister and the remaining three Labour committee chairs are novices. Conservatives currently have only new chairmen but from the three chairs they had in the previous Parliament none was re-elected.

The unsteady willingness of MPs to stay in the same committees and specialize accordingly is frustrated deliberately by the parties, which do not need too strong committees or too expert members. The Conservatives adopted in 1992 a rule that prevents appointments of their members in one and the same committee for more than three consecutive parliaments. Clive Walker provides enlightening details:

“The Government said that this would allow for opportunity for new MPs and for fresh thinking. However, observers alleged that it was a way of disbarring MPs who, through their committee work, had become too expert at criticizing the Government, especially Nicholas Winterton, the Conservative MP who had been the chair of the Social Services Committee and a noted critic of Government. This shows however the possibility for certain appropriation of the subject area by the committees is a very Congressional committees’ style.”²²⁸

This is but one example of steps taken intentionally to limit the committee strength. For the time being Labours seem to be more favourable to specialization and stronger committees and do not have similar rule.

²²⁶ Olson and Mezey, *op. cit.*, p.16. Such were also the expectations of the committee proponents, however the present study demonstrates that these are necessary but insufficient conditions.

²²⁷ Barnett, p. 622.

²²⁸ Walker, Clive, *op. cit.*

Career Opportunity

The original reform proposal that led to the creation of DSC, insisted that committee chairs shall be paid additionally²²⁹ and committees were expected to “provide some element of career opportunity in the House not wholly in the gift of the party leaders.”²³⁰ Committee service was also expected to be beneficial for the members’ public image, and to give them floor and ‘speaking opportunity.’ However, none of this happened: committee positions are insignificant compared even to the humblest governmental office. Consequently, instead of using the committee work for any kind of political entrepreneurship to gain political capital, members use the committee service to prepare for ministerial promotion. Hence, they are likely to seek their leaders’ attention instead of the one of the public.

Committees do provide career paths in a way completely opposite to the one expected. Instead of alternative career path they seemingly serve as apprenticeship position and recruitment pool for ministerial promotions. During the 1979 Parliament 53 out of 148 committee members were appointed to the front benches (ministerial or opposition).²³¹ The highest ministerial appointments of a committee chairs so far were that of Frank Field (Lab) from the Social Security Committee as respective Minister of State (1997) and that of Margaret Hodge (Lab), former Education Committee chair and later Minister for Universities. Yet Norton claims, “some former ministers have achieved greater visibility through chairing a select committee than through holding ministerial office.”²³² On the contrary the Liaison committee observed in its 2000 Report “careers have generally been shaped by party service and the floor of the House rather than by work on select committees”²³³ denying any alternative career impact of committees. This is one fine example how institutional novelties, which were intended to change the existing framework, instead were integrated within it and even reinvigorated it. Further in the present study will be identified several other examples when reforms integrate and enhance the system rather than revolutionarize it.

2. Appointment

Formally any member of the House may nominate committee members on the floor. In practice, only party whips make such proposals. In 1979 “special” procedure was envisaged for the assignments onto the Departmental Select Committees – it was accepted that members should not be selected by whips, instead applications for membership has to be made to a special Committee for Selection. The Committee had to determine independently a list of nominations to be offered to the House. The intent was the assignments onto the DSC to be made differently and so it was initially. Griffith relates some examples of successful resistance to partisan nominations in the beginning, but only to conclude that later whips “re-established their usual control over nominations.”²³⁴ Norton also admits, “though the whips are not formally involved in the nomination of the committee members yet they are

²²⁹ Similarly do the contemporary reform proposals. For example the Norton Commission (a Conservative Party commission set up under the leadership of P. Norton) in 2000 again insisted that “Select Committee Chairmen [must] have salaries and staff equivalent to Minister of State,” (Norton Report: The report of the Commission to Strengthen Parliament, July 2000).

²³⁰ Procedure Committee Report of 1978, HC 588.

²³¹ Griffith, p. 421; by the way such promotions additionally increase the member turnover.

²³² Norton, *Parliaments*, p.34.

²³³ Liaison Committee First Report (2000), par. 9.

²³⁴ Griffith, p. 418. He also makes another noteworthy observation for the party influence – that there is “heavy lobbying within the principal parties for membership as this is seen to reflect the influence of different groups within the parties.”

influencing all of the nominations.²³⁵ That is why currently “meetings of the Committee of Selection are usually very short and amount to little more than the receiving of names.”²³⁶ Even the negotiations between parties for the number of seats and chairs, that sometimes proved to be difficult, are held outside the committee, which merely rubber-stamps the party lists.

This deviation from the original intent is hostile to the principle of non-partisan operation of the DSC and raised bitter criticism. The Liaison Committee in its First Report of 2000 observed that “members [are nominated] *in the same way* as Members to serve on standing committees ... on the basis of lists supplied by the Whips”²³⁷ and recommended once again that this control should be ended. It proposed that appointments should be placed in the hands of a special panel of Members of Parliament. The government rejected this proposal, as usual.

This process clearly ensures governmental control of the assignments, accordingly the committees can be packed with sufficient amount of party loyalist and certainly the staunchest critics will never get a place in the oversight committees. Worse, there are few critics who have been subsequently removed from committees: “members have undoubtedly been kept off committees, or removed from them, on account of their views.”²³⁸ If Departmental Select Committees were ever meant to be system for accountability²³⁹ this method of assignments renders the whole of it trivial. Moreover, the history of reestablishment of the control of the whips is an instructive example of integration of institutional novelty within the existing framework to reinforce instead of change it. The external, system constraints force the reformed institution into the traditional mode of operation.

The additional effect of the party dominated selection process is that committee assignments became a reward in the hands of the leadership to promote party discipline. In this way the two of the classical three member goals suggested by Fenno and Mayhew²⁴⁰ seem to collapse into one. Indeed, given the centralized decision-making by single Cabinet, advancement of members’ own policy objectives can be achieved only through members own advancement to the front benches. Accordingly, the appropriate behaviour of rational and self-interested member is to adhere loyally to the party line. As assignments in committees are fully controlled by the party, advancement within the legislature also can be achieved by the same behaviour. Unlike the case with the congressmen, who may act motivated by varying sets of policy preferences or advancement strategies, the Members of Commons are likely to share the same loyal behaviour even when they have different ultimate goals.

Another result is that “committees are in many ways microcosms of the larger legislature ... Committee members are a more or less *random* sample of parliamentarians who may have no

²³⁵ Norton, *Parliaments*, p.35.

²³⁶ Griffith, p. 418, see also the discussion of the process in the HC Votes and proceedings from 14 July 1997.

²³⁷ Liaison Committee First Report (2000), par. 11.

²³⁸ *ibid*, par. 11.

²³⁹ Bruce Ackerman advocates the need for “credible construction of a separate ‘integrity branch’ ... armed with powers and incentives to engage in ongoing oversight,” *The New Separation of Powers*, 113 Harvard Law Review 633, 694. He depicts an abstract model but implies that the Public Account Committee has such function, “which is particularly enlightening given the Westminster’s instinctive aversion to most forms of separationism” *ibid.*, p. 696. Apparently the PAC is an exception and this ‘aversion’ does not allow any degree of independence of the DSC.

²⁴⁰ See p. 12 and footnote 57 above.

particular expertise or interest in the policy area in which they may deliberate.”²⁴¹ This applies more to the standing committees but is to a significant extent true for the select committees as well, only moderately mitigated by the willingness of party leaders to accommodate Members choices or attempts to “balance experienced members with newcomers.” Yet Nevil Johnson maintains that there is “qualified independence from the influence of party and government.”²⁴² This is true only to the extent that there are certainly no frontbenchers sitting on the select committees²⁴³ and there are no *institutionalized* channels for ongoing party control of committees. This is may seem quite weak independence to be worth its name, but is quite exceptional in Britain indeed.

3. Chairmanship

The select committees formally have the power to choose their own chairmen – “the chairman of a select committee is chosen by the committee itself except in the rare cases when the House otherwise orders.”²⁴⁴ However usually he is determined by prior party decision: “usually the outcome will be decided outside the committee room by the party members, so avoiding a vote in committee in which the other party participates.”²⁴⁵ There are several very rare examples, when the committee really has chosen its chairman.

Chairmen are for the most part senior backbenchers: besides the case of Bruce George mentioned above Adonis provides data²⁴⁶ that in 1993 all committee chairs have had 10-15 years as members of the House and 5 (out of 16) are former ministers. The chairman has no formal powers and votes only in a tie, however he plays the central role in all proceedings: “unlike ... the chairman of a standing committee, the chairman of a select committee takes a full part in the proceedings, and in practice, normally exercises a substantial measure of authority in the conduct of the committee’s affairs.”²⁴⁷ Despite his party appointment, he is acting more or less in non-partisan manner.

However the chairman has no special powers outside the committee and especially cannot table a motion in the House on behalf of the Committee. The DSC may only hope that a motion related to their business will ever be introduced in the House through the usual channels. The Liaison committee in its ambitious First Report of 1997 demanded “that Standing Orders be amended to provide that if the Chairman of a DSC tables a motion on behalf of the committee that a specific document be laid before the committee the motion should be debated on the floor of the House within ten sitting days and brought to a conclusion after one hour. Again the government denied such powers.

For the two decades since 1979 committee chairmen have acquired some prestige: “MPs who chair select committees are increasingly asked to speak on radio and TV on topical issues within their committees’ terms of reference, *whether or not a formal enquiry* is being undertaken.”²⁴⁸ Chairs’ growing importance as public figures may provide incentive for specialisation and creates some possibility for extra-party ambitions. It also indicates certain appropriation of the respective subject matter by the committee. Yet committee leadership is

²⁴¹ Strøm, *op. cit.*, p.65; emphasis added.

²⁴² Johnson, Nevil, *Departmental Select Committees*, in Ryle, M. and Richards, P.G., in *The Commons Under Scrutiny*, 1988.

²⁴³ See Erskine May, p.631.

²⁴⁴ Erskine May, p 637.

²⁴⁵ Griffith, p. 420.

²⁴⁶ Adonis, *op. cit.*, p. 161, table 7.1.

²⁴⁷ Erskine May, p. 638.

²⁴⁸ Silk, *op. cit.*, 4th ed., How Parliament Works, p.220, emphasis added.

not sufficiently attractive to present any independent career path and is being willingly deserted for any kind of ministerial promotion.

4. Subcommittees

Most of the Departmental Select Committees have the power to appoint one or two subcommittees, but they rarely do so. The Education and Employment Committee and the Environment, Transport & Regional Affairs Committee used to have subcommittees, and currently only Transport, Local Government and Regions Committee have one subcommittee each – on Transport and on Urban Affairs. The Liaison committee once noted (in 1982) that some of the committees had set up informal subcommittees, each acting in the name of the full committee, and with the quorum of the full committee.

The subcommittees generally have the same powers as the parent committee, save the power to report to the House – they always report to the parent committee, which in turn reports to the House. The full committee is “in the majority of cases content to report the subcommittee report to the House with or without amendment as its own report; it may amend it substantially or refer it back to the subcommittee.”²⁴⁹ However, the evidence taken by subcommittees may be presented and published directly.

The scarcity of the subcommittees is another, particularly instructive example of disuse of powers and institutions even whenever they are available. In this case the disuse may be explained with the limited incentive for members to specialize through committees and subcommittees.

5. Staff and Resources

Besides the limited powers committees are limited in resources as well. The Liaison committee First Report provides the following description:

“A typical staff consists of a Clerk (who has overall responsibility for the support of a Committee and the advice it receives), normally also a Second Clerk, a Committee Assistant (responsible for administration, travel, printing and so on), a Committee Specialist (an expert, usually in *early career, on short-term contract*) and a Secretary. The permanent staff is supplemented in most cases by one or more part-time Specialist Advisers paid at a daily rate. In all the Committee Office has 107 permanent staff (some of whom have duties in other parts of the House) serving 25 permanent committees and subcommittees. They are assisted part-time by some 145 specialist advisers.”²⁵⁰

Further to the scarcity of the staff, which is incomparable with the huge armies of bureaucrats any other modern legislature has, the committees have no power to employ their own permanent staff. They are staffed by officers from the department of the Clerk of the House, and although the latter tend to serve to the same committees, committees cannot rely on longer term career staffers.²⁵¹ Elsewhere besides the legislature’s own civil servants there are number of other research and support agencies that committees may recourse to. With the important exception of NAO and the Parliamentary Commissioner for the Administration that were discussed separately the House of Commons has “nothing to compare to the powerful research agencies which provide information to the US congressional committees ... even the

²⁴⁹ Erskine May, p. 665.

²⁵⁰ Liaison Committee First Report, 1997, par. 71, emphasis added.

²⁵¹ It has been observed that committee clerks are in their early career stage and on short or middle term contracts.

EU Parliament has more extensive research facilities than Westminster.”²⁵² The Norton Commission²⁵³ condemned the inadequate resources as one of the gravest problems of the select committees.

The National Audit Office is a unique agency that proved to be extremely valuable. As was discussed above, its close cooperation with the Public Accounts Committee is the essential difference that makes PAC the strongest committee. Its example is followed by the other departmental committees: “there has been steadily increasing cooperation and liaison with the National Audit Office in an informal way. All departmentally related committee Clerks maintain a link with the appropriate staff in the NAO.”²⁵⁴ In its 2001 Report the Liaison committee again stressed on the importance of this relationship suggesting that NAO’s head should have the resources to brief departmental select committees on key financial issues.²⁵⁵

The lack of staff is to be compensated by the power to seek specialist assistance. All of the Departmental Select Committees have the power “to appoint specialist advisers to supply information which is not readily available or to elucidate matters of complexity.”²⁵⁶ Any expert might be called as a witness, but they are also regularly appointed as advisors and take active part in committee work. They are present during hearings, ask questions and participate in the debates: “advisers normally attend not only meetings of the committee at which oral evidence is taken but also meetings at which the committee deliberates.”²⁵⁷ The expert assistance may take the form of powers to employ qualified professionals who should conduct their own investigations and report to the committee.²⁵⁸ Yet again committees make extremely limited use of these, the Liaison Committee observed in 2000 that for the preceding financial year 145 specialist advisers were employed and the expenditure on them was so low that it would have provided for only *three full-time equivalents*.²⁵⁹

The lack of research resources raises two problems. The first is the information is insufficient and the second is that it is biased. Due to the lack of own information committees cannot help being “heavily reliant on the government itself”²⁶⁰ or on various pressure groups. Thus the lack of resources for commissioning of independent research poses one of the highest constraints to committee powers.

7. Agenda Setting

The Departmental Select Committees determine their agenda themselves: “it is entirely a matter for the committee to determine, within the confines of the work of the department, what subject matter to examine and what evidence the committee needs.”²⁶¹ This is free of party influence not only in theory. Observers agree that the agenda setting is a matter of members choice: “select committees set their own agendas and decide their own programs,

²⁵² Adonis, *op. cit.*, p 165.

²⁵³ See footnote 229 above.

²⁵⁴ Liaison Committee First Report, 1997, par. 25. The Liaison committee however praising that cooperation further insisted on its remaining informal only because of “fear that if Departments knew that everything disclosed to the NAO might be passed to other committees, which, unlike the PAC, looked into policy matters, they might be less forthcoming,” par. 26. This is just another example of the limits on the committee powers, which are in this case self-inflicted.

²⁵⁵ Liaison Committee First Report, 2001, par. 44.

²⁵⁶ Standing Order 152(4)(b).

²⁵⁷ Erskine May, p. 662.

²⁵⁸ See Erskine May, p. 662, fn 1.

²⁵⁹ Second Report of the Liaison Committee, 2000, par. 68, emphasis added.

²⁶⁰ Adonis, *op. cit.*, p. 165.

²⁶¹ Barnett, p. 620.

based primarily on the sense of priorities which each member brings to the deliberations of a committee.”²⁶² So does the Liaison committee: “it is a fundamental principle that it is for each committee to determine its own work programme.”²⁶³ It also noted that “most inquiries deal with matters already on the political agenda; but committees can also create an agenda of their own.”²⁶⁴ There is no evidence for any party control and not a single case when a committee was influenced to take up or abandon an issue by party pressure. DSC do not draft bills, nor propose amendments to such, hence cannot interfere with the governmental agenda, therefore they could safely be left alone to do their business freely. Again an instructive comparison may be made with standing committees, which consider bills and accordingly have no control over their own agenda. Thus their “powerlessness” is source of the strength to choose their topics of interest, their target of inquiry and evidence that they collect. Again with regard to the initiatives members have to comply with the party line, they are likely to make limited use of this freedom. Another self-inflicted constraint is that they prefer divisive issues and prefer topics where bipartisan consensus may be reached.²⁶⁵

8. Evidence Taking

Amongst the very limited number of powers assigned to Select committees is the power “to send for persons, documents and records” (Standing Order 152(4)(1)). It is a potent power if compared with the standing committees that have no evidence or advice-taking capabilities and may debate only.²⁶⁶ Most of the time of the Departmental Select Committees is devoted to evidence taking; each committee has once a week an evidence taking session²⁶⁷ and they receive great number of written submissions as well. Committees’ orders are formally binding but unlike the subpoenas of the Congressional committees they are not enforceable by the courts. A frustrated select committee may only move for order of the House. The latter is enforceable, but all but impossible to obtain.

The personal scope of the power to call witnesses includes ministers, civil servants as well as any private individuals.

²⁶² David Natzler and Paul Silk, *Departmental Select Committees and the Next Steps Programme* in Giddings, P.J., ed., *Parliamentary Accountability: A study of Parliament and Executive Agencies*, 1995, p. 77, emphasis added. Similarly Nevil Johnson emphasizes that there is “procedural freedom possessed by all select committees, especially in deciding what subjects to investigate, also when and how,” *op. cit.*

²⁶³ Liaison Committee First Report, 1997, par. 30.

²⁶⁴ Liaison Committee First Report, 2001, par. 68.

²⁶⁵ This constraint will be discussed in the next section, see p. 65.

²⁶⁶ They may propose amendments indeed but with no expert support they must rely only on common knowledge or on the personal expertise of individual Members.

²⁶⁷ Norton, *Parliaments*, p.32.

Ministers

The committees cannot order the attendance of Members of the House, which means that all of the Ministers are formally exempted from the scope of this power.²⁶⁸ While a committee cannot compel them, Ministers normally accept the invitations to give evidence. The Government has frequently *reaffirmed*²⁶⁹ that ministers and civil servants will attend committees when requested and provide committees with the information necessary to their inquiries. There is a great controversy to the extent committees may force their ministerial witnesses to appear and how helpful the latter are required to be. If a minister refuses to appear the committee might report to the House and move for a House order to summon her. However such motion is treated in the same way like any other member's motion. The latter means that it will never be tabled to be discussed on the floor. Certainly committees complain that "the lack of opportunities for private members to move motions in the House means that they cannot in practice protest to the House [about withholding information]."²⁷⁰ Governments have always opposed the requests for a formal procedure to ensure Ministerial attendance, but have instead made two important undertakings.

The first was upon the introduction of the Departmental Select Committees in 1979 – that ministers would do everything in their power to cooperate with the committees. The second was in 1981 – that a floor debate (and not necessary positive decision) would be held in the government time if "there is evidence of widespread general concern in the House regarding an alleged refusal to disclose information to a select committee."²⁷¹ The second undertaking was obviously designed to resolve the violations of the first and was made two years later when already there were cases of ministerial unwillingness to cooperate. In its 1997 Report, the Liaison Committee maintained that "these undertakings have been amplified in the intervening period,"²⁷² and acknowledged that the general case is one of government cooperation with the committee inquiry but it also highlighted some frustrating exceptions when it refused to. Indeed government usually cooperates because its refusal may be brought to the attention of the House and more importantly to the public, so they can make their own conclusions on the matter. Griffith observes that "the real power of select committees to secure the evidence they require from ministers and civil servants lies in publicity."²⁷³ Nevertheless, the government reserves the right to withdraw information whenever it prefers a probably obnoxious refusal in the face of the House and the public to a voluntary disclosure. Again this possibility means that the Departmental Select Committees cannot be genuine integrity branch in the way the Public Accounts Committee is seen to be.²⁷⁴ The lack of integrity of the committee oversight is expressed in the carefully worded complaint of the Liaison committee: "there remains concern that the lack of specific powers leaves committees at a disadvantage in obtaining the fullest cooperation from Government."²⁷⁵ Such oversight,

²⁶⁸ The Select Committee on Standards and Privileges is exceptionally authorized to order the attendance of MPs, as described above.

²⁶⁹ This is the common form of the governmental acquiescence with the claims for committee power – by informal promises, 'undertakings' for cooperation instead of conceding to formal authorization through the Standing Orders. Thus government retains its control and the ability to constitutionally refuse to cooperate in limited but important cases.

²⁷⁰ Erskine May, p.650.

²⁷¹ Silk, *op. cit.* 4th ed. , p. 217.

²⁷² Liaison Committee First Report, 1997.

²⁷³ Griffith, p. 451.

²⁷⁴ See footnote 239 above.

²⁷⁵ Liaison Committee First Report, 1997.

dependent on Government's will to cooperate, makes committees its aides rather than as its check.

Committees frequently ask for the formal powers to summon ministers, but observers note that there always will be the problem with enforceability of the summons – even if committees formally have the power, if ministers ignore the order only the House may discipline them, and the normal measure is to ask for their resignation. Certainly authorizing committees with the power to summon ministers that is enforceable by courts could be solution but it is so alien to the British traditions that was never even proposed.

The practice so far proved that more power makes committees more vulnerable. When the Defence committee in the Westland affair asserted some power and made several civil servants disclose embarrassing information the Government's response was to propose that the powers of the committees to send for persons should be curtailed. There is also the notorious example from the 1960s when the Agriculture committee asserted certain investigatory powers and was consecutively abolished.

Civil Servants

Similarly limited is the committees' authority to summon civil servants. The same limits of the powers apply for civil servants with few other restrictions. As a principle they have to attend but may refuse to disclose certain information (and the committee order is again unenforceable by courts). They also may be ordered by their minister not to attend or may be exchanged by him for another more "appropriate" civil servant. The practice as restated by Erskine May is:

“Civil servants frequently give evidence to select committee, although successive governments have taken the view that they do so on behalf of their Ministers and under their direction, and that it is therefore customary for Ministers to decide which official should represent them for that purpose.”²⁷⁶

Similar is the description of Silk:

“the government will send a minister when requested, but it is ultimately the prime minister who decides which minister should attend, not the committee.”²⁷⁷

There were number of documents attempting to structure and limit the ministerial discretion to withhold information. Currently there is a Guidance to civil servants giving evidence to select committees (known as the Osmotherly Rules) issued by the Government that has not been approved by Parliament. The Rules require that civil servants must give as full explanations to Parliament as possible and the exceptions are narrowly defined: “any withholding of information should be limited to reservations that are necessary in the public interest; this should be decided in accordance with the law and the exemptions as set in the Code [of Practice on Access to Government Information].”²⁷⁸ Hence a Minister may still refuse to disclose whatever she is determined to, and so she may instruct the civil service in her control. At the same time the Guidance asserts that civil servants are not parliamentary, but Crown Servants and that they are under an obligation not to disclose confidences or other materials without authorization. It also says “it has been agreed that it is not the role of Select

²⁷⁶ Barnett, p.649.

²⁷⁷ Silk, *op. cit.*, 2nd ed., p. 216, emphasis of the original.

²⁷⁸ Osmotherly Rules, par. 46.

Committees to act as disciplinary tribunals.”²⁷⁹ The last is worth emphasizing here as it is instructive for the ambiguous role of the Departmental Select Committees – not only their investigatory power is limited but they are not even accepted by all as legitimate investigatory bodies.

The bare minimum that is guaranteed to committees is that the minister cannot knowingly mislead the Parliament and its committees and if he does he is required to offer his resignation.²⁸⁰ Since 1997 new rules apply and persons giving evidence are taking formal oath and accordingly may be persecuted for perjury. To give false evidence with or without oath would be contempt to House as well, but of course if the witnesses are members of the Parliament, the committee may only ask the House to remove their immunity before reporting this to the Crown Prosecution Service.

Other Witnesses

Committees may summon also private persons and they are required to appear and cooperate. These orders are not subjected to the limitations regarding ministers and civil servants discussed above but again they are not enforceable by the courts. If the summoned refuse to appear, committees may ask the House to order the Serjeant at Arms to enforce the order. Again the cooperation of the whole House is necessary, so occasionally even private parties may refuse to cooperate. Thus in 1992 the Maxwell brothers refused to appear in front of the social Services Committee on its inquiry of the collapse of Maxwell Pension Fund. The committee chairman wanted them to be charged with contempt of Parliament but no action was taken. However this is not the general case; there are several prominent examples of very successful use of the power to send for private parties. The Trade and Industry Committee in 1984 and in 1993 forced first a reluctant British Shipbuilders and than an equally reluctant British Coal to show the committee their corporate plans.²⁸¹ Usually parties affected by the inquiry are willing to appear; often they may be allowed by their own request, and they may be allowed to call witnesses or (with permission of the House) to be presented by counsel. Bodies that have certain interest in the subject also willingly submit written evidence. This makes Departmental Select Committees official channel for lobbies and all kind of interested groups: “the Departmental Select Committees have proved to be magnets for representations from organized interests. One survey of more than 250 organized interests in 1986 found that 495 times they had presented oral evidence to select committees and 65,5% of them had submitted written evidence.”²⁸²

Although most of the committee deliberations are in private, the evidence is taken in public, usually televised and records are published: “If the topic under investigation is in any way

²⁷⁹ Osmotherly Rules, par. 41(b). Further they say: “A Minister will therefore wish to consider carefully a Committee's request to take evidence from a named official where this is likely to expose the individual concerned to questioning about their personal responsibility or the allocation of blame as between them and others This will be particularly so where the official concerned has been subject to, or may be subject to, an internal departmental inquiry or disciplinary proceedings.”

²⁸⁰ This is established by convention. In the upper chamber it is expressly stated in a special Parliamentary Resolution On Ministerial Accountability (Lords Hansard, 20 Mar 1997): “It is of paramount importance that Ministers should give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.”

²⁸¹ Silk, *op. cit.*, 2nd ed., p. 216.

²⁸² M. Rush (ed.), *Parliament and Pressure Politics*, Oxford, 1990, p.282-3, quoted by Norton, *Parliaments*, p. 32.

politically exiting, lobby correspondents will be present, the relevant pressure groups will all be represented, [also] officials from Government departments.”²⁸³

Minutes of Evidence

After the hearings, the minutes of evidence may be published separately. Thus they have value and meaning of their own, independent of the later Report of the committee that still may be divided along party lines or blunted to secure unanimity. Sometimes the committee may not reach to the report or it “may do that deliberately as it may find that the evidence-taking itself was sufficient.”²⁸⁴ It may also publish separately its minutes of proceeding: “when a committee has made no report, the minutes of proceedings have been ordered to be laid before the House.”²⁸⁵ This happens also when it is unable to agree on the report, it may lay before the House only its minutes of proceedings with the draft report including, thus making public even the rejected text. Under Standing Order 152(4)(c) it can “report from time to time the minutes of evidence taken before sub-committees, [or their] minutes of the proceedings.” In all these ways “the committees put a lot of material on the public record that would not otherwise be available – they contribute greatly to the transparency of government departments.”²⁸⁶

9. Other powers

The special powers of Departmental Select Committees to sit when the House is adjourned and especially the power “to adjourn from place to place” (Standing Order 152(4)(a)) are more important in symbolic rather than in practical sense. The only reason to mention this here is that Congressional Committees possess similar power to conduct “field” hearings away from Capitol Hill. Oleszek provides an example of the importance of these hearings when the House Judiciary Subcommittee on Constitution conducted field hearings “to receive testimony and generate public support” for a Constitutional amendment for school prayer.”²⁸⁷ Field hearings in US are also used for oversight purposes: “committee members and staff may conduct oversight hearings around the country.”²⁸⁸ The power to travel throughout the country and abroad enables committees to conduct such investigations and research on the spot, and possibly within the investigated executive agency. And committees do travel: “committees also frequently sit and hear evidence outside the precincts of the House ...it is now the regular practice for the select committees ...to adjourn from place to place... to make informal visits outside the precincts of the House for a variety of purposes relevant to their inquiries.”²⁸⁹ For the overseas visits initially committees needed the leave of the House, currently the Liaison committee authorizes them and also committees may make visits to certain EU institutions without requiring prior approval by the Liaison committee. Again the reasons for this power can be easily identified in the weakness of the committees – as they do not consider legislation and especially cannot employ it to delay governmental agenda their field researches can be only beneficial for it.

²⁸³ Griffith, 284.

²⁸⁴ Erskine May, p.666.

²⁸⁵ Erskine May, p. 641.

²⁸⁶ See Judge, *Parliament and Industry*, 1990, p.167, quoted by Norton, *Parliaments*, p.35.

²⁸⁷ Oleszek, p. 110.

²⁸⁸ Oleszek, p. 305.

²⁸⁹ Barnett, p. 642-643.

The power of the departmental select committees to exchange documents and to meet concurrently²⁹⁰ raises more problems than it solves. The possibility of exchanging papers amongst departmental committees makes the departments less willing to cooperate: the Foreign Office is even more reluctant to disclose papers to the Foreign Affairs Committee if it knows that they may end up in the Work and Pensions Committee.

10. Proceedings and Reports

The normal process for a committee inquiry starts as the committee chooses its subjects of inquiry and announces it in a press notice. Next, committee seeks written evidence from interested parties and oral evidence from key witnesses. Further study visits may be conducted at home and abroad. Upon completion of these, the Chairman presents a draft report that is considered, amended, adopted and published. It is presented to the House where it might be debated or “tagged” as relevant for some other matter under discussion. Government replies in writing within 60 days.

During the proceedings, the committee is free to use its limited powers as it think fit. It is not subjected to any party guidance for the proceedings of investigations. “While any general advice emanating from the Liaison Committee ... or from the Procedure committee may have some influence, committees jealously guard their independence of action.”²⁹¹

The Departmental select committees were designed to operate on a cross-party basis and so their sittings are conducted. The places in their halls are allocated in a horseshoe manner with the witnesses in front of them, not in the common way with government members and opposition member facing each other (this is the mode of proceeding of the standing committees as described above). Unlike the case with the assignments of committee members, this did not remain mere intention – there is indeed entirely different mode of operation in the committees:

“[committee member] is not simply free from formal party direction; he is subject to the pressure of *committee* loyalties, with inertia and undecided opinions... pulling an MP towards committee consensus, and not (as elsewhere in the House) toward the party line.”²⁹²

And also:

“The committees have for the most part recognized that partisan politics have as a rule to be held in check if they are to achieve anything. This is apparent at virtually every stage of their work: in the choice of topics for inquiry, in the conduct of inquiries by chairman, in the efforts normally made to allow all members a fair share of questioning ..., in the deliberative sessions when draft reports are discussed and finally voted on, and more generally in the style and tone which committee members seek to maintain before the public.”²⁹³

The reasons for this rather unique for Westminster situation are two. The first is purely formal – the party leaders are not presented and whips have no formal means to ensure that their recommendations are observed and do not have the ‘usual channels’ to communicate all the positions required by party line. The second reason is the advisory nature of the reports:

²⁹⁰ Standing Order 152(4) (d): “to communicate to any other such committee ... their evidence and any other documents relating to matters of common interest; and (e) to meet concurrently with any other such committee for the purposes of deliberating, taking evidence, or considering draft reports.”

²⁹¹ Natzler and Silk, *op. cit.*, p.78.

²⁹² Adonis, *op. cit.*, p. 172, emphasis of the author.

²⁹³ Nevil Johnson in *op. cit.*, p. 166.

this freedom was easily granted because in the end of the day committee can be simply ignored by the Government and the Chamber. The heavy price of the members' freedom from party control is the marginal influence of the committees. Norton himself observes that "committees operate within too narrow a scope, with too limited resources, to have had any transformative impact on the relationship between MPs and parties or between Parliament and Government."²⁹⁴

The Chair normally prepares a draft report that she presents to the committee at a closed sitting and informal discussion of the conclusions follows. If the committee accepts the draft there is a second reading paragraph by paragraph and amendments by the members may be proposed; also every member may submit her own draft report. Officially there are no minority reports allowed but some minority opinions and proposed paragraphs may find their way out to the public – any member may propose alternative report that is voted upon, and even when it is defeated it is included in the minutes of proceeding. Reports are formally addressed to the House but they are also intended to reach the general public and everyone interested.

When finally the committee agrees on its Report it presents it to the House under Standing Order 133. The sole function of Departmental Select Committees is informative: "the main purpose of these Reports ... is to provide arguments and information for the Commons to aid it in its task of scrutinizing [the Government]."²⁹⁵ The main purpose of the inquiries seems to be to produce a unanimous report on the matter thus bringing uncontested elucidation of the facts and the whole subject. The Reports are obviously much more persuasive when they present a cross-party agreement on the issue. Certainly when an agreement cannot be reached, the proceedings become more formalized and votes are taken. Yet the consensus is usually the case and some committees, for example, "the Defence committee hardly ever divides."²⁹⁶ Unfortunately, there are no empirical surveys of the differences between the committees with regard to the frequency of this consensus and the possible reasons behind the members' behaviour.

All committees need unanimity to be persuasive. Accordingly, as Griffith observes, if a "committee shows itself to be divided over a report, especially if the division is on party lines, its general impact is lessened. Ministers are most embarrassed when a report is strongly critical of government and agreed to unanimously." Ironically, the highly partisan environment that they attempt to influence moves them into non-partisan mode of operation. The virtue of the cross-party consensus is observed in US as well. For example the 'committee barons' from the 1960s usually had bipartisan majority support²⁹⁷ in committee and also "close working relationship with their minority counterpart."²⁹⁸ This support made chairs so independent, and in turn, the independence of the chair from the party leadership made the overall committee behaviour autonomous.

On the other hand, this bipartisan approach presents another constraint on the sharpness of committee scrutiny: the broader the consensus, the less sharp the criticism is likely to be. As Griffith further observes "compromises are often come to, with Opposition members

²⁹⁴ Norton, *Parliaments*, p.35.

²⁹⁵ Clive Walker, *op. cit.*

²⁹⁶ Griffith, p. 430.

²⁹⁷ The match of the conservative Southern Democrats in committees with the Republicans resulting in committee autonomy is a nice demonstration of the effect of bipartisan cooperation for committee strength. This will be the reason for the next chapter to emphasize the value of bipartisan mode of operation in British select committees.

²⁹⁸ *op. cit.*, p. 33.

accepting words less critical of the Government than they would have preferred in order to achieve unanimity.”²⁹⁹

Furthermore, the pursuit of unanimity encourages the committees to avoid controversial matters when selecting their agenda because such matters are likely to be too divisive. Gavin Drewry made harsh comment: “[the consensus] is secured at the high price of blandness and marginality as committees cast around for subjects that will not be too divisive.”³⁰⁰ Similarly Adonis observes that “the impotence of several of the select committees is primarily self-inflicted [especially] Foreign Affairs Committee which ... has proved notoriously reluctant to scrutinize the salient foreign policy issues.”³⁰¹ Certainly such relationship between salience and conflict is observable everywhere: “as issues become more important, or rise near the top of public agenda, some level of controversy is likely to emerge.”³⁰² However, the influence of the committees there does not depend only on the consensus therefore salience is sought as it raises the publicity value of the investigation. In Britain as long as the only source of influence of committee reports is their persuasiveness, i.e. their unanimity, the opposite is often the case.

With regard to the objective of the 1979 Reform to enable the Parliament through the new committees to call the government to account such diverting from the most outstanding issues and accepting restrained language is a disastrous failure. Yet the awareness of the potential scrutiny increases the accountability of Ministers even if committee reports are not too intense or too critical. Yet it may turn out to be success in another way – the committees may focus the governmental attention to a neglected subject, bring it out to public notice and provide the Chamber with impetus (together with the relevant information and expert advice) to take steps.

Floor debate

Above all, each committee report is published and launched into public domain at a press conference held by the chairman, printed in an inexpensive hard copy in due time, and made available through the Internet soon afterwards. All of the reports reach the interested public in this way while only some 25% of them reach the floor. For this reason, as will be discussed further in Chapter Four, the main role of the committees of the House of Commons should be seen in such publicity related functions and their performance will be evaluated in terms of law-effecting rather than transforming directly the governmental policy. Recently the Reports of the committees gradually receive increasing time to be debated on the floor as well. Since 1995 there are three Wednesday mornings per session allocated for such debates. In addition, few other reports are debated at the *Westminster Hall*³⁰³ sittings once every two weeks on a Thursday afternoon. The reports to be debated are chosen not by the Government or through the ‘usual channels’ but by the Liaison committee.

²⁹⁹ The general absence of minority reports is another way to save the government from the most acerbic words.

³⁰⁰ Drewry, G., ed., *The New Select Committees – A study of the 1979 Reforms*, Clarendon, 1989.

³⁰¹ Adonis, *op. cit.*, p. 169.

³⁰² Deering and Smith speaking about the Congress, p. 147.

³⁰³ Westminster Hall is similar to a grand committee where all Members may sit and it is treated procedurally as sitting of the House. Its main occupation is backbench debates that take place upon an adjournment motion.

Select committee reports can find their way to the floor also on the three Estimates days³⁰⁴ where the discussions are based mainly on their findings and where the estimates chosen for debates are again effectively determined by the Liaison committee.³⁰⁵ Sometimes the estimates are used just as a “handle for debate.”³⁰⁶ Silk provides examples where the committees clearly “did not actually wish the government to forfeit money but [to discuss] the adequacy of its work.” He asserts that the Estimates days are “to all intents and purposes simply days when the select committees decide the agenda.”³⁰⁷ The committees succeeded to occupy so thoroughly these days that they ousted out the substantially financial matters. This made the Liaison committee suggest: “if more time were available for debate of committee reports, the Estimates Days could be devoted to debate of reports particularly related to expenditure.”³⁰⁸

Another avenue for committee reports to the floor is by “tagging” a report as relevant to the bill that is tabled to be debated there. This happens quite often and “most of the committees find that at least one of their reports is each year “tagged” on the Order Paper as relevant to the House business that day.”³⁰⁹ However, the tags are made not by the committees but by the Government. The Liaison committee complained, “at present the italic tag below a motion on the Order Paper is under control of the “owner” of the motion - the government, an opposition party or a private Member.”³¹⁰ It proposed to be entitled to make the tags itself but this was rejected by the government.

Further to the floor debates, Barnett suggests that there is significant indirect influence of reports³¹¹ that partly make up for the insufficient floor time allocated to committee reports. First governments undertook to respond to reports and indeed they do. The respective ministers must publish a reply to every committee report within two month and they usually comply with that. Even when they reject the proposals they *react* in some way to criticism and proposals as their silence will be more embarrassing than explicit argument with the committee. If a minister refuses cooperation she will face the media attention and must provide sufficient reasons for that behaviour, and indeed there is “evidence suggest[ing] that there is a high degree of ministerial cooperation with committees.”³¹²

Impact on the Governmental Policy

The overall impression of the observers is that the 1979 committees were successful. Nevil Johnson contends that the committees gained “a satisfactory degree of cooperation of the government.”³¹³ However trivial the departmental select committees’ influence on the government may seem, Silk observes that often “the government ... admits that select committees’ pressure has contributed to an important change of the policy, as the Energy

³⁰⁴ The Estimates give the government’s detailed breakdown of expenditure department by department, and are the formal basis for the granting of money by the Commons. However Estimates are not appropriation bills; there is separate budget procedure, where select committees have no participation at all and standing committees only nominal one.

³⁰⁵ Standing Order 145. (2) The [Liaison] committee shall report its recommendations as to the allocation of time for consideration by the House of the estimates on any day.

³⁰⁶ Silk, *op. cit.*, 4th ed., p. 170.

³⁰⁷ *idem.*

³⁰⁸ Liaison Committee First Report, 1997, par. 37.

³⁰⁹ Silk, *op. cit.* 4th ed., p.224.

³¹⁰ Liaison Committee First Report, 2000, par. 44.

³¹¹ Barnett, p. 628.

³¹² Barnett, p. 629.

³¹³ Johnson in Ryle and Richards, *The Commons under Scrutiny*, p.166.

Minister did when he announced the abolition of the British National Oil Corporation in March 1985 after two critical select committee reports had been published. ... In June 1986 the Prime Minister listed around 150 select committee recommendations which had been accepted by the government between March 1985 and March 1986.”³¹⁴ There is no doubt that “the government has undertaken policies – or modified or abandoned policies – that otherwise it would not have done.”³¹⁵ Silk asserts that “ultimately [the Ministers] could be forced to change their policies by a vote in the Chamber on one of the three days a year when select committees effectively control the agenda.”³¹⁶ This is what gives Norton the grounds to classify the House of Commons as policy influencer, but the more accurate description is government *aide*. Indeed, most of the committees make modest claims, “more in the way of contributions to departmental policy-making than of changing policy.”³¹⁷ As a rule, committees cannot prevent a policy decision that the government resolutely pursues. They have impact on the governmental policies only when government agrees with their proposals.³¹⁸ This is the reason for Adonis to maintain that the Departmental Select Committees did not meet neither the expectations, nor the fears ... and the scrutiny and investigative work of the committees has had only an occasional impact on government policy.”³¹⁹

There were few exceptional cases however, e.g. in 1980 the Home Affairs Select Committee reported on the detrimental effect of the “Sus” law³²⁰ on race relations and threatened to introduce a Private Member’s Bill³²¹ if the Government did not pay attention to its report. The Tory chairman of the committee also voted with the Opposition. The reluctant Government was forced to acquiesce to the committee demands and on the following session the Act was repealed and the new one was referred to special standing committee (i.e. with evidence-taking power) that was presided by the chairman of the Home Affairs Select Committee; this in turn resulted in significant amendments to the new bill. Yet sceptics say that the “Sus” law was so odious that the government would repeal it even without the committee pressure. Such triumphant stories are rare, usually committees claim more modest victories like the Education, Science and Art Committee proudly announcing that “our British Library report was immediately followed by a government decision to build it.”³²²

Observers believe that besides such apparent cases of policy influence that are not too many there is a more indirect effect of the committee scrutiny. Ministers even when not scrutinized must be prepared that they may have to give explanation: “[they] make their policy decisions in the knowledge that they may be cross-examined about them by the select committees”³²³ and because of the agenda-setting freedom, every aspect of government administration is

³¹⁴ Silk, *op. cit.* 2nd ed., p.226.

³¹⁵ Norton, *Parliaments*, p. 198.

³¹⁶ Silk, *op. cit.*, 4th ed, p. 220.

³¹⁷ Griffith, p. 432.

³¹⁸ This does not mean that their impact is trivial but that they are not important ‘check’ of the executive decisions. Further arguments will be made that this type of persuasive impact has very limited transformative effect but great law-effecting one.

³¹⁹ Adonis, *op. cit.*, p.163

³²⁰ That is the Vagrancy Act of 1824 that was used to arrest persons suspected of loitering with criminal intent and had harmful consequences for the race relations.

³²¹ Every Member of the House can introduce Private Member Bill (if it does not concern financial matters) but this is only in theory – such bills generally cannot reach the floor, except when Government is benevolent to it and provides part of its own time for its consideration.

³²² HC 607 of 1979-80; Cmnd. 8237.

³²³ Silk, *op. cit.* 2nd ed., p. 226.

Institutionalization of Parliamentary Control

potentially susceptible to inquiry. This effect will be further discussed in Chapter Four. For the Ministers themselves, as well as for the public, committee *performance* has the effect to “strengthen the sense of accountability.”³²⁴

³²⁴ Johnson in Ryle, *Constitutional Reform*, p. 166-70.

Chapter 4 Conclusion

1. Institutions and Environments

The comparison between the American congressional committees and the Parliamentary committees in Britain reveals both the virtues of certain institutional factors for the autonomy and authority of committees and the constraints that political environments presents to these institutions. The constitutionally determined stronger position of the Congress itself helped to the development of certain internal features that ensure the independence of its committees. In turn, the autonomous committees themselves help their parent legislature maintain its overall transformative capacities despite the growth of the executive. The same internal features could be expected to guarantee certain limited degree of committee independence in different constitutional environment, not so favourable to the autonomy of legislature and committees. Hence the assumption that if implemented elsewhere, these features could increase committee autonomy despite the external environment and perhaps even changing this environment. With such assumption, this study identified several of these factors in Congress and compared them, and their effect to similar ones, available in Britain.

Indeed the comparison between the two countries identified several common institutional features despite the major constitutional differences. Some of these features have comparable effect, but some operate in the different environment differently or are simply disused. The result is that committees in Britain perform below the expectations even when properly empowered. On the other hand, there are even more institutional features that were not introduced at all.

Amongst the features that congressional committee system and the Departmental Select Committees in Britain have in common, are the small committee size, the defined jurisdiction and bureaucratic parallelism, the availability of permanent staff, the absence of direct party control on committee work. Committees in both places can choose their own topics of investigation and set their schedule, operate in bipartisan mode that allows cross-party coalitions, and have the power to specialize further through subcommittees. Most of these features are very well developed in congressional committees and only nascent in Britain but few are even more robust in Britain: committee size there is smaller and fixed, and the jurisdiction is clearly cut (with special mechanism devised to resolve the conflicts) which is usually not the case in US. However, the difference in the staffing is hugely in favour of the congressional committees, similarly the power to specialize through subcommittees seem to be only nominal in Britain. The subpoena power enforceable by the courts is another crucial factor enabling independent committee investigations that has very limited presence in Britain. The power to 'send for persons' there is far more limited and almost completely depend on the governmental cooperation. Some other factors are not available in the House of Commons at all. This is above all the seniority system for committee assignments, which is perhaps critical for the insulation of committee members from external influence. The other factor with crucial significance that is not available in any form in Britain, is the privileged access to the parent chamber. British committees cannot initiate debate on the floor except for a few days of the year and certainly cannot influence the agenda of the parent chamber in any way.

One possible hypothesis would be that the group of factors that were not implemented at all are the critical and the effect of all the rest is entirely dependent on them.³²⁵ However, the fact that these features were not implemented is no accident; they were not introduced precisely because this was precluded by the external factors (like in the case of seniority) or bluntly because of the unwillingness of the governmental majorities to change the favourable *status quo* (like the subpoena powers). Indeed, there were numerous reform proposals that were rejected. If this is so, that is if environmental constraints successfully prevent any institutional changes that may amount to changes in that environment, the question whether these factors could bring about the coveted change becomes moot. For this reason any changes of the transformative capacity of a legislature (i.e. of the environmentally determined balance of powers) through internal reforms appears to be practically impossible. There shall be little doubt that the environment in Britain *a priori* precludes comprehensive institutional change and evades the possible transformations. Further, there is ample evidence that even the factors that were implemented by the reformers were forced in quite different mode of operation, integrated in the environment, or simply were disused.

Disuse

In the previous chapter several cases were emphasized, where insufficient use was made from the institutional powers even when these were implemented and their use was within committee control. Committees do not use adequately specialist advisers, do not demand any more staff, tend to decrease their spending, and do not appoint subcommittees.³²⁶ The explanation given for each case was that members have sufficient incentives only to adhere to the party line and accordingly do not need these institutional devices. That committees empowered through institutional reform was also the prediction of the Neo-Institutionalist theories discussed in the first chapter.

For example, it is true that committees have very limited resources, which limits their capacities severely and occasional claims for increase of committee staff are voiced. Yet Adonis provides data³²⁷ that the committees expenditure since their establishment tends to decrease, with Departmental Select Committees spending less and less instead of vice versa! It is even more puzzling that the Liaison Committee 1997 Report (which made many other demands) observed that committees are understaffed, but did not recommend increase in funding.³²⁸ The Report maintained instead, that the real constraint was not financial, “but lack of time on the part of MPs to make use of any information put before them.”³²⁹ The committee also reiterated that “we support without reservation the view that much of the value of reports is that they are essentially Member-driven, not staff-driven, and they should remain so.”³³⁰ However the alleged lack of time is largely self-inflicted: committees meet once a week, perhaps three times a fortnight and very seldom more than twice a week.³³¹ Obviously, there is no great enthusiasm amongst MPs to spend more effort on this type of work: “on average, they can probably devote five or six hours a week to the select committee.”³³² This is puzzling as committee members are always backbenchers who have no

³²⁵ This is intuitively very appealing especially in the case of seniority.

³²⁶ Examples of such disuse were abundant before the 1979 reforms as well.

³²⁷ Adonis, *op. cit.*, p.165, figure 7.1.

³²⁸ Liaison Committee First Report, 1997. Nor did the Departmental Select Committee chairs on whose reports this conclusion of the Liaison Committee was based on.

³²⁹ *Ibid.*, par. 21, emphasis added.

³³⁰ *idem.*

³³¹ Silk, *op. cit.* 4th ed., p.215.

³³² Silk, *op. cit.*, 2nd ed., p.221.

other major parliamentary responsibilities. Certainly they could devote more than five hours a week of their time to committee work if they wished, or more accurately, if they had adequate incentive to. Committee work is obviously neglected a little, despite their possible contributions to floor debates and members careers and this can be explained with the influence of the external constraints. As was previously discussed, classical members' goals seemingly collapse into a single one – advancement in party hierarchy, because this is the sole condition for achieving influence in Chamber and advancing own policy objectives in the same time.³³³ Accordingly, members have sufficient incentive to adhere to the party line and oversight over their own government is not likely to be among the party priorities. Further Krehbiel's informational theory³³⁴ suggests that in order to motivate committees to specialize and provide information necessary to the floor, certain deference by the floor to committee decisions is necessary, like the one provided with the 'close rule' in US. However in House of Commons the information the floor may need is supplied by the Ministers (who enjoy such deference by the floor, and who effectively have a 'close rule' at their disposal – the guillotine motion) and this makes committees redundant from such perspective.³³⁵ The rare use of the special standing committees (that are party domineered but have evidence taking capacity) is instructive for this.

Integration

Besides the *disuse* of the institutional advantages available for the committees, the external pressures force the integration of the novelties into the existing system. The history of the "whip-free" member assignments is particularly instructive with this regard. A special procedure was devised in order to limit party control over the assignments, but instead asserting some independence, the Committee on Selection yielded to whip's pressure and now is merely rubber stamping the rosters provided by parties.

The agenda-setting independence is another example – it is strong power indeed, but there is a tendency for the committees to choose distant and blunt topics to avoid partisan divisions on them. The inadequate staffing that might be expected to foster demands for more resources instead was matched with the concept of *member-driven committees* and accordingly spending and research resources decreased instead of increased. Probably the best example of this integration is the 'alternative career path' that the committees were expected to provide. Instead, they provide opportunities for advancement along the traditional (i.e. party) career route. Committee leadership is willingly abandoned even for the most junior governmental promotions. Numerous such examples of ministerial promotions were given above; and they are hardly surprising. The prospect for committees to become an 'alternative career path' for the backbenchers is so far a complete failure and committees appear to be good position for apprenticeship for those aspiring to the ministerial position. In this case the integration is extremely counterproductive as if committee members may hope to receive the respective ministerial position they will be very much likely to promote the governmental agenda even without any directions from the whips.

³³³ And in Britain this is also important for their re-election chances as well.

³³⁴ See above, p. 15.

³³⁵ Alternative information supplied by parliamentary committees could be valuable for the floor as well, but in the highly partisan environment of the Commons it will be less preferred by the floor. Alternative information received through committees in Britain can be more valuable for the government however and this will be discussed in the subsequent section.

Powerful committees

The other line of arguments proving that the impact of the institutionalization is effectively constrained by the externalities is that there are few committees that are stronger although they do not have very different institutional powers. It is the nature of their subject matter that is different and both the floor and the government majority may be expected to prefer strong committees in this few cases.

The first exemplary strong committee is the European Scrutiny. It does not have any different characteristics than other select committees; it has virtually the same powers and the same staff. The only difference is that it reports to the House weekly. The only possible explanation is that it is not departmental and does not check the Government. It scrutinizes the policies proposed by the European administration in Brussels instead and this is welcomed by the governmental majority. Accordingly, the government is much more responsive to its reports and generously provides it with the necessary time on the floor.

The other powerful committee is the Public Accounts Committee. It has better institutional features indeed (such are provided when they are found necessary by the Government); but it is the nature of its functions that make it so important.³³⁶ An instructive comparison of PAC with the other select committees was made by the Liaison Committee in its 1997 Report. It acknowledged that the resources available to PAC make it stronger: “[Departmental Select Committees] cannot be compared to the Public Accounts Committee in terms of effectiveness since the PAC is supported by the full might of the National Audit Office while other committees have to rely on insufficient staff. ... a substantial increase in effectiveness could only be achieved by a substantial increase in staff numbers.” However it maintained that PAC’s specific tasks justify this, while the functions of the Departmental Select Committees do not: “PAC performs a different ... role from the departmentally-related select committees” and accordingly “there is no demand ... for a massive increase in staff, nor would such an increase improve the output of committees either quantitatively or qualitatively.” This is the clearest indication that more powerful committees and more effective scrutiny are not appreciated by the Commons.

These examples of *disuse* of institutional devices that promote committee autonomy, of *integration* of the features implemented to change the committee system but instead reinvigorated the *status quo* and the existence of few relatively more *authoritative committees* in this environment, when this may be expected to be preferred by the environment, support the claim that the environment determines essentially the behaviour of the committees and their members and accordingly gives different meanings of the institutional arrangements. Certainly, similar institutions operate in different constitutional contexts differently.

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 outcome. 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 depends 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

³³⁶ See the full discussion above, p. 45.

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.³³⁷ 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. Consequently, in almost all cases of direct confrontation with the government, committees are defeated and governmental proposal unmodified.

The studies referred to here provide sufficient evidence for the dependency of the committees on Government of the day. Apparently the transformative capacities of DSC and respectively the post-reform Commons are modest, especially with regard to their initial goal to make them *check* the Government and to redress the constitutional balance. Despite the evidence presented in Chapter Three for some more subtle ways in which DSC 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.³³⁸ According to Polsby's definition,³³⁹ 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"³⁴⁰ 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."³⁴¹

Therefore, 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 interaction 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

³³⁷ See for example Barnett, p. 625-26. There were several notorious examples that had major importance and that attracted great public attention – the Westland affair, the case of Salmonella in Eggs and the Arms to Iraq affair – in all of which committees failed to receive some information that they wanted, even though the salience of the cases and the public interest in it gave great weight to their claims. In the face of the public, the Government could refuse disclosure. Committees produced bitter reports that were simply ignored by it.

³³⁸ And they certainly cannot be Ackerman's integrity branch. See above p. 54, footnote 239.

³³⁹ See above, p. 8.

³⁴⁰ Ryle, p. 111.

³⁴¹ Adonis, p.174.

government, aiding government 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 are 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 investigating and controlling system developed as debating and co-operating body and it enhances the law-effecting function of the Parliament rather than its transformative capacity. The hypothesis formulated in the beginning,³⁴² that by institutional reform the transformative capacity of a legislature may be increased appears to be wrong. 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 the one-dimensional scale suggested by Polsby and widely accepted by the students of legislatures 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 also 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 Analytical Framework

The initial hypothesis is disproved when legislatures are viewed as one-dimensional – significant institutional change cannot increase significantly the transformative capacities of the legislature, or at least it does not in British context. Nevertheless, it is proven if legislatures are understood as having two *distinct* capacities – law-effecting as well as transformative one – which are independent of each other. Accordingly, if legislatures are ranked according to two separate dimensions *independent* from each other, the hypothesis turns out to be true: institutional changes increase both capacities without changing the ratio between them. This is certainly so in British context at least – institutionalization of a highly supported legislature, with predominantly arena features and limited transformativeness, increases significantly its law-effecting capacity and modestly its transformative potential. The ratio between the changes along each of the two dimensions depends on the initial ratio between them, which is determined by the environmental factors alone (See Fig. 1 in the Appendix). Accordingly, the effect of institutionalization of a legislature with different initial ratio between arena and transformative features will be different. For example, for the American Congress it might be expected that further institutionalization will increase more its

³⁴² See above p. 3 and also p. 16.

transformative capacity (that is, it will further reinvigorate the checks and balances) with less substantial change in its arena features.

The proposed two-dimensional scale seems to explain better the recent development of the House of Commons while the unidimensional one cannot account for it adequately. It has one obvious disadvantage - it supposes that the more transformative a legislature is, the less its law-effecting capacities are. This is apparently untrue - the Congress is highly transformative legislature, but it has strong law-effecting significance as well.³⁴³ It might be argued that its transformative capacities are more important, but even if they overshadow the law-effecting ones they do not limit them. More transformativeness does not necessarily mean less law-effecting, the opposite is true. Moreover, even though the law-effecting capacity of a legislature relative to its transformative capacity may be low, it still can be higher than that of many other legislatures, where percentagewise the law-effecting is the higher.³⁴⁴

The second dimension of legislatures' 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.³⁴⁵ The substantial difference in the suggested model is that Mezey's model does not suggest any explanation of the dynamics of a parliamentary reform. Norton's hypothesis³⁴⁶ suggested dynamics within this classification, but along one dimension only, that is its policy-influencing capacity. Thus, his claim that institutionalization may increase the transformative capacity of a legislature is unsubstantiated. Nevertheless, a claim that institutionalisation increases the overall influence of the legislature by moving it along the publicity dimension is correct. The proposed two dimensional taxonomy seems to be helpful for the study of legislatures in general and seems to be the most important contribution of the whole paper.

4. Success in Publicity Related Functions

With regard to the findings made above, the function, and respectively the importance of the British Departmental Select Committees must be redefined, and they might be seen as law-effecting bodies and not as checking ones as they were expected to be. In the words of Leo Amery quoted above, the role of the Departmental Select Committees is to provide full elucidation and ventilation of all matters of public interest. From this perspective, the committees are undisputed success as they ensure transparency, provide fora for the actions of the Government to be explained and justified or to be challenged, develop public awareness of certain issue and provide channels to the public and interest groups to be heard.

Accountability to People

Despite their failure to bring about the power-shift and their failure to be true integrity branch, committees still have an important function to enhance the Chamber in its traditional function to hold the executive to account. This is done by providing transparency – committees simply open the Government in a way that could not happen before, “nowhere else are Ministers questioned so clearly and thoroughly.”³⁴⁷ In turn this greatly increases the

³⁴³ See Jewel and Patterson quoted in Chapter Two, p. 38, and the discussion there.

³⁴⁴ In the representation in the Appendix, Fig. 1, the point C, representing the Congress, may rank on the vertical axis as high as the Parliament does. It may rank even higher, if it is moved sufficiently up along the line it is constrained to by the environmental factors, even though its slope is smaller and the ratio between its own law-effecting and transformative capacities generally remains the same.

³⁴⁵ See Chapter One above, p. 8.

³⁴⁶ See Chapter One above, p. 9.

³⁴⁷ Walker, Clive, *op. cit.*

responsibility of Ministers to electorate. Recently the Liaison Committee made a claim that “their establishment was a major step in making the Executive accountable to Parliament, and so *to the citizen* and the taxpayer.”³⁴⁸ With this regard, committees are windows, rather than the workshops as they were expected to be, allowing the public to see what otherwise would be even if not necessarily secret, still behind doors. Johnson maintains that committees add “a new dimension to the traditional procedures on the floor of the House for asserting the accountability of the government.”³⁴⁹ Definitely the committees have “increased the flow of information out of Whitehall and ... the debates [are] better informed both inside and outside the Parliament.”³⁵⁰

Debating Arenas

This informational channel is not one way only. Departmental Select Committees developed as small arenas themselves. They enhance the traditional role of the Parliament to be *debating* place by providing more and subject-specific debating spaces. Ryle, speaking about the House, asserted the value of “a forum within which the powers of the government are exercised; this is where the policies of ministers have to be publicly announced and scrutinized.”³⁵¹ This is what happens also in committees nowadays – they provide more opportunities for the government to explain and justify its policies. In its effect, this is again more cooperating with rather than checking the Government.³⁵² This enhances the Chamber without contributing significantly to its transformativeness, as no governmental measure can be defeated in a select committee, but with great contribution to its law-effecting capacity, as committees provide government with more opportunities to publicly effect its policies.

The other side of the policy-effecting function is that committees focus the public attention and *develop public awareness* of certain issues. A recent survey ascertained that “‘contributing to the debate on current issues’ (together with ‘informing the House of current issues’) was given by two-thirds of the MPs who have served on committees as their most important functions.”³⁵³ The value of such debate in committees is in the “the catalytic effect [that] can be produced by taking evidence in public on a subject where it is topical.”³⁵⁴

Access Channel

Another aspect of committees as subject specific fora is that they had made the political process more accessible for the outside public. Drewry observes that “committees attract evidence from numerous pressure groups, anxious to exploit a useful medium of publicity and often able to offer in return the benefit of considerable experience and expertise.” Thus in the 88-89 Session 1300 witnesses were heard and 2400 memoranda were received; in the 1995-96 Session, over 1800 witnesses were examined by departmental select committees, with over 4200 memoranda received by them.³⁵⁵ Thus committees provide channel for the

³⁴⁸ Liaison Committee First Report, 2000, par. 106, emphasis added. Olson, who suggested that parliaments are law-effecting rather than law making institutions, also suggests that for this reason “the study of these functions shifts the focus away from that of the relations of legislature to executive to that of legislature to the citizenry.” *op. cit.*, p. 12.

³⁴⁹ Johnson in Ryle and Richards, *The Commons under Scrutiny*, p. 166.

³⁵⁰ Griffith, p. 433.

³⁵¹ Ryle, p. 197.

³⁵² It has been even observed that sometimes the ministers who are much more experienced and better briefed by their departments may embarrass the committee members instead of vice versa.

³⁵³ Silk, *op. cit.* 4th ed., p. 220.

³⁵⁴ Education Committee chairman, HC 92 of 82-83, quoted by Griffith, p. 425.

³⁵⁵ Silk, *op. cit.* 4th ed., p.221.

outsiders to Westminster, they increased the access of pressure groups and other interested parties. Thus committees realize the right of the public to be consulted on each issue that affects it.

Adonis observes that more than two-fifth of the evidence to committees came from outside organizations³⁵⁶ and also that “it is a two-way process: pressure groups use committees to amplify their voice; committees use groups as sources of information.”³⁵⁷ Indeed these channels work in both ways – providing information out from Whitehall to the interested parties and enabling such parties to bring forward their word to government: “government, politicians, lobbyists and public speak to the committees and the committees’ recommendations are addressed back to these groups.”³⁵⁸ These groups are also the major consumers of the committees’ published outputs.³⁵⁹

5. Conclusion

The overall evaluation of the select committees is that “for all their imperfections, Select Committees enjoy a degree of respect from the informed public at large as well as from those who have direct dealings with them.”³⁶⁰ The significant part of their contribution should be explained in terms of information supply to the public debate and accordingly to the law-effecting function of the Commons but not in terms of power-shift and increase of the transformative capacities. As Adonis observes it: “Few deny that the select committees have strengthened the Commons in its performance of its *expressive* role, giving pressure groups and outside organizations a direct entrée to Westminster and non-government MPs a louder voice.”³⁶¹ What was designed to be controlling system developed as debating and cooperating body and it enhances the law-effecting function of the Parliament. Becoming a forum is the true success point of the committees.

³⁵⁶ Adonis, *op. cit.*, p. 170.

³⁵⁷ Adonis, *op. cit.*, p. 170.

³⁵⁸ Silk, *op. cit.*, 4th, p. 220.

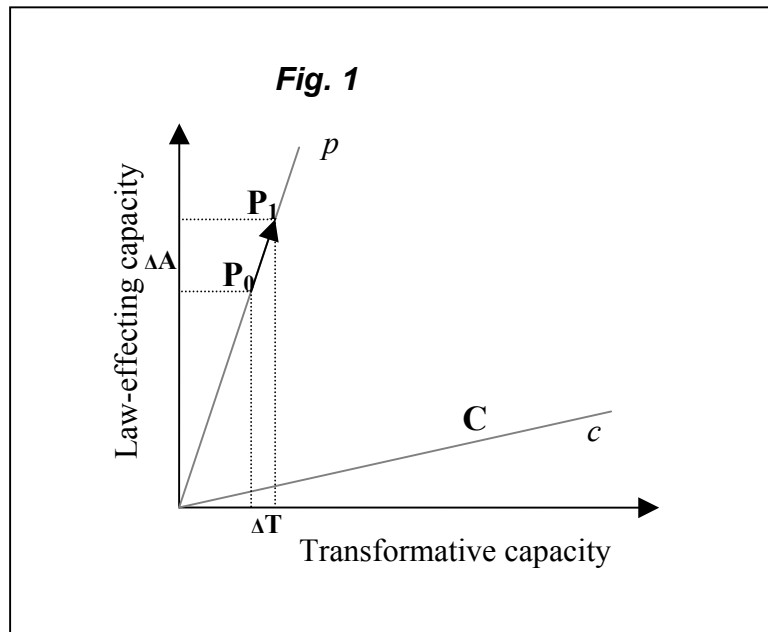
³⁵⁹ I. Marsh, *Policy-Making in a Three-Party System*, London, 1986, quoted by Norton, *Parliaments*, p. 32.

³⁶⁰ Liaison Committee First Report (1997), par. 41.

³⁶¹ Adonis, *op. cit.*, p.171, emphasis added.

Appendix

Dynamics of Legislative Reform in a Two-Dimensional Space



In the suggested two-dimensional representational space legislatures can be denoted by points, with their transformative capacity varying along the horizontal axis and their law-effecting capacity along the vertical axis. The arena type legislatures will be represented with points in the upper left half of the space, while the transformative legislatures will be in the space down to the right. The effect of institutional development depends on the starting point and accordingly legislatures may move along lines originating from the centre. The slope of these lines depends on the constitutional, political and cultural environment. Internal institutionalization cannot rotate the lines (i.e. cannot change the constitutionally determined interbranch balance of powers), but moves the legislature along the lines (the distance from the origin denotes the level of institutionalisation). The effect of the institutionalization on the respective dimensions depends on the slope of these lines.

The British Parliament is arena type legislature i.e. with high law-effecting capacity and relatively little transformative capacities. Accordingly, it can be represented in the model with a point which is high and to the left (P_0). The American Congress is legislature with high transformative capacity and lower (percentagewise) law-effecting potential. Accordingly it can be represented with a point very far to the right (C). The overall influence of a legislature shall not be seen as the distance from the origin, though this can be intuitive, but only with its two coordinates.

The effect of the internal institutionalization of the British Parliament moved it along the line p where points with the same ratio between law-effecting and transformative capacities lie (as the institutional reform cannot change the external environment and the nature of the legislature) to point P_1 . This results in bigger increase of its law-effecting capacity (ΔA), making the Parliament better arena, and modest change of its transformative capacity (ΔT).

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