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Submission to Procedure Committee's Inquiry into the Effectiveness of the House Committees

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Summary

- The potential of parliamentary committees to improve the oversight and accountability of government and scrutiny of legislation is widely recognised.
- In particular, committees have been argued to be important because of:
 - they increase the volume of work parliament can get through;
 - their potential to enhance their parliament's expertise and thus its oversight capacity;
 - the link they can provide between the political process and wider society;
 - their capacity to encourage more consensual and less adversarial politics.
- The House of Representatives Standing Committees have weak powers in comparison parliaments in most advanced democracies.
- Modest changes will go some way towards redressing the relative weakness in formal powers. However, changes to Committee powers will have little impact if the Committees do not utilise them to the full.

Background

In a number of jurisdictions, committees have been seen as an increasingly important aspect of parliamentary activity. For example, in the UK, in contrast to much other parliamentary activity, the House of Commons' Select Committee system has been lauded as an example of 'the House of Commons at its best: working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement'¹ and its legislative Public Bill Committees remodelled to replicate them to some extent. And the Scottish parliament was designed around a particularly prominent committee system, by

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Westminster tradition standards at least, because committees were seen as being better able to hold the government to account and to operate in a more collegial and consensual manner than the main chamber.

The House of Representative's committee system seems something of a contrast in this respect. Recently at least, the work of the House committees has evidently been ignored and has often been overshadowed by the Senate committees. Given this, this review of the effectiveness of the House Standing Committees is a timely one. The submission is primarily directed towards the fourth and fifth terms of the reference.

It is certainly true that the House committees' powers – both formal and as utilised in practice – are weak in comparison with similar parliaments. Some of these are outlined in this submission, along with some of the factors that affect their work in practice. Some of the reasons for parliamentary committees are also reviewed.

Before that, it is worth noting the lack of agreed benchmarks against which to judge the effectiveness of parliamentary committees (or parliaments more generally). There have been attempts to measure the impact that committees have had on legislation through the amendments to bills introduced. But judging the impact of non-legislative committees is rather more problematic.ⁱⁱ Moreover, even if this can be accurately captured, there remains the question of 'how much is enough?': how much impact should committees have? How much scrutiny is enough? These are questions about which there is no agreement in the abstract and one is left comparing the performance of other parliaments to try to establish some relative standards.

Why committees?

Committee systems are common features in parliaments throughout the world and, in the words of two political scientists reviewing committee systems in European parliaments, '[s]trong committees, it appears are at least a necessary condition for effective parliamentary influence in the policy-making process'.ⁱⁱⁱ But before considering in any detail how a

committee system ought to be reformed, it is worth briefly considering a few of the reasons for the existence of parliamentary committees in the first place.

Division of labour

In simple terms, committees allow parliaments to deal with more business. By allowing several bills to be considered by different committees simultaneously, more can be processed than would be the case if each bill was dealt with in its entirety in turn by the main chamber. In the case of the House of Representatives however, this is not a particularly relevant factor. House Standing Committees have historically considered little in the way of legislation. A recent survey revealed that House committees accounted for just 13 of the 622 reports on bills produced by parliament between 1900 and 2004. Nine of those were produced in the 1990s, meaning that many decades saw none at all. The Senate accounted for 570 and Joint Committees 39.^{iv}

Expertise

Committees tend to specialise either according to a particular policy area defined, for instance, by the remit of a particular government department or agency, or by function, considering, for instance, a particular type of legislation. Specialisation along these lines allows committees to develop the expertise to better scrutinise the government and hold it to account. Of course, this is reliant on a number of factors. First, that there is a reasonable stability of membership: if there is a rapid turnover of membership and they have only a short tenure, they will be unable to develop this expertise. Second, members need to regard the work of the committee as sufficiently important to devote the time both to developing this expertise and to allowing the committee to work effectively. Third, the committee needs to operate with sufficient independence from government (and to a lesser extent, the Opposition leadership) to allow this expertise to develop: if the committee is subject to control by the executive, then this expertise function will go undeveloped. This control might be a reflection of weak formal powers but it can equally be a product of informal domination. For this reason, the process for appointment of members and chairs to committees is important. And finally, the committee needs an adequately large and skilled support staff to facilitate this and allow it to work effectively. Staff resources for the Commons Select Committees in the

UK have been increased in the last decade as their prominence has increased. However, it is worth noting that there has been some concern that too large an increase in staff would risk the committees becoming too staff-driven rather than member driven.

Linkage

In a climate where parliament is seen as removed or disengaged from wider society, the capacity of parliamentary committees to provide an antidote to this has been highlighted. It is the focus of Prof Ian Marsh's submission and a theme he has developed extensively in his academic work so I shall mention only that the committee's capacity to incorporate outside groups or individuals into the accountability process through calling for submissions or holding hearings has been identified as a beneficial aspect of their work. The degree of transparency that committees can bring to the policy process is also noteworthy: by allowing the government and outside groups to state their position and to then be interrogated on them can 'open up' the political process.

Consensus politics

An aspect of committees and their work that has proved appealing has been their capacity to break with the adversarial politics associated with Westminster tradition politics. To the extent that this is true, it can be attributable to a number of factors. The small size of committees is supposed to encourage members from different parties to work constructively together. This can be enhanced by the way in which committees do their work, with their informal, face-to-face, deliberative nature in marked contrast to the antagonistic opposing camps that dominate the business of the main chamber. In the UK, it was argued that this is further enhanced by committees' reliance on the evidence provided to it rather than on established party positions. This was one of the reasons for the reform of the Commons legislative Standing Committees which, unlike the Select Committees, were dominated by the clash between government and opposition and were, as a consequence, widely unpopular.^v It is for these reasons the famous political scientist Giovanni Sartori emphasised the importance of parliamentary committees proceeding through unanimous rather than majority decision making: where a committee works through majority rule too often it could be said to not be a functioning committee at all.^{vi}

So, in addition to making the legislative process faster, committees are seen as positive because of the ways in which they differ from the main chamber in important respects. However, it should be noted that, whilst institutional reforms can encourage certain types of behaviour amongst members, they clearly operate within the broader context of the chamber of which they are a part. They will inevitably reflect the predominant culture of the chamber.

House Committees compared

To get some perspective on the House of Representatives' committee system it is worth considering how committees perform in some broadly similar parliaments. With that in mind, I compare the House committees with the House of Commons in Westminster, the Canadian House of Commons and the parliaments of Scotland and New Zealand in a few of the areas that have been argued to impact on their relative strength.

Jurisdictions

The House Standing Committees' specialisation by policy area is mirrored in the other parliaments considered here, with the committees established at the beginning of the parliament for its duration and jurisdictions to a greater or lesser extent reflecting the government departments and ministerial portfolios. The UK parliament provides something of a contrast with its distinction between Select Committees, which scrutinise the policy, finance and administration of a single government department each,^{vii} and the Public Bill Committees, which are *ad hoc* committees established to consider a single bill and which cease to exist having done so.

Committee numbers

It has been argued that a greater number of committees will increase the independence of parliament from the executive first, because a large number of small groups are harder to control than a small number of large ones and second, other things being equal, the greater the volume of work parliament can do. The total number of committees is clearly going to be affected by the size of the main chamber so it is the relative number of committees that is significant and, in this respect, the House of Representatives is comparable with the

unicameral parliaments of New Zealand and Scotland and with the Canadian House of Commons. The other committees have both the accountability role and the legislative role. However, in practice the distinction is less clear. It was noted above that the House committees consider little legislation, whilst the New Zealand committees' work is heavily dominated by their legislative role, carrying out little in the way of this accountability function. The Scottish committees manage to do both.

Membership

Unlike the House Standing Committees where party numbers are set out in the Standing Orders, in the other parliaments considered here, the membership of committees reflects the parties' relative strength in the main chamber: if the opposition reduces the government's majority, then its committee membership increases. Given that New Zealand and Scotland have delivered minority administrations in recent elections, both have committees on which governments do not have a majority. But the allocation of specific members to particular committees is something managed internally within the political parties. In Scotland this lead to a very high turnover of committee members, including the removal of ill-disciplined members before a contentious bill comes before a committee.^{viii} this will clearly constrain both the development of expertise and committee independence and consensus. In the UK, the selection process has remained a disputed issue. At the moment, Select Committee membership is decided by the Committee of Selection (largely comprising the party whips). Its selection requires the approval of the House but this is ordinarily something of a formality.^{ix} There has been concern about the role of the whips in the appointment of members to these committees that are supposed to operate outside of party control: Nick Brown, the British government's chief whip, recently threatened to remove Labour backbenchers who have voted against the government from Select Committee assignments.^x The Liaison Committee (the committee comprising the chairs of the Select Committees) suggested measures to increase the independence of parliament by removing the power from the Committee of Selection to a new Chairman of Committees and two Deputy Chairs, chosen by the House, who would accept nominations and allocate members accordingly, essentially by-passing the whips altogether. This was rejected by government. The government proposed its own reforms with the committee of selection being chaired by the Chairman of Ways and Means

(a position held by one of the Deputy Speaker) and chosen by the Speaker rather than the party whips. However, this was defeated in a vote in the House.

The allocation of committee chairs is perhaps potentially even more politically charged than the allocation of committee members. Part of this potential is moderated in the House of Representatives by the fact that the committee chairs are all allocated to the governing party. Consequently, any controversy over the allocation of chairs is contained within the party. This has not, however, removed all the controversy from the process elsewhere. The chairs of the UK Select Committees are allocated between the parties roughly proportionate to their parliamentary representation and the detail negotiated between the business managers of the respective parties. However, the controversy that emerged over the reappointment of the Labour chairs of the Transport, Local Government and the Regions and the Foreign Affairs committees in 2001 demonstrates that this is not always the case: in this case, the Labour backbenches revolted against their party leadership's attempt to remove the controversial chairs from these committees and forced their reinstatement. Given this, the failure of the government's proposals for reform was surprising. In Canada, the government has generally sought to control the appointment of committee chairs.^{xi} The frequent lack of a government majority on committees in New Zealand means that when they come to choose their chairs, the government cannot guarantee its preferred candidate succeeds.^{xii} The convenorship of the Scots committees is distributed between the parties according to the number of seats in the parliament.

Agenda control

In relying on references from the main chamber or a minister, House of Representatives' Standing Committees are unusual in not having control over the issues they examine or the timescale of any inquiry. Committees are more usually free to choose the topic and timing of their inquiries. This has allowed committees to conduct inquiries into issues that ministers might have preferred they did not. With a government majority, this will require the government members of the committee to be prepared to do this in opposition to their government. However, it has also seen committees launch inquiries into areas that are still outside the bipartisan battles of so much parliamentary business. In focussing on areas

where a degree of cross-party consensus might be feasible, committees do hold at least the potential to break this pattern to an extent.

Legislation

The exception to this agenda control relates to legislation: clearly the majority of legislation will be generated by government and consequently committees examining that legislation will have their agenda and timetable dictated to them to some extent. House Standing Committees play little role in legislative scrutiny. This is a significant contrast not only with the parliaments compared here, but with parliaments in developed democracies more generally, where consideration of legislation could be seen as the main business of committees.^{xiii} In the other parliaments discussed here, the automatic referral of bills for consideration by committees is the norm. In Scotland, committees are even established to initiate legislation. It has not been a particularly frequent occurrence – to date only five of these committee bills have been passed and they have struggled for parliamentary time. But it does serve as an example of the ways in which committee roles have been extended in significant ways in other parliaments.

Concluding comments

Clearly the House Standing Committees have relatively weak formal powers. A modest change that might go some small way towards redressing this would be to allow them to initiate their own inquiries rather than relying on references. However, unless Committee members were prepared to operate with a degree of bipartisan give-and-take – what Sartori referred to as a principle of ‘deferred reciprocal compensation’ – both in the initiation and in the conduct of inquiries, then the impact on their actual work would be minimal.

A rather more ambitious step would be to experiment with a Committee Bill: it would be a truly notable development were the members of a committee able to work in a sufficiently bipartisan manner to develop a piece of draft legislation.

However, it needs to be reiterated that institutional changes of this sort will make no

difference in practice if committee members themselves, and the House more generally, do not make use of them. A noted study by Lees and Shaw comparing the committee systems of eight national legislatures found that, whilst the committees in Japan and the USA had near identical formal powers, committees in Japan were the weakest in their study and the USA's the strongest.^{xiv} Furthermore, committees do have the capacity to play a more prominent role simply by choosing to do so. In this respect, one of the interesting things about the enhanced role for Select Committees in the UK House of Commons is that many of the proposals are essentially a formalising of things that some of the Committees have been doing of their own accord. Commenting on the proposed changes in the UK, the academic Meg Russell said '...the House itself must show more independence, and that is a cultural matter rather than something in the rules'.^{xv} This is equally true in Australia.

ⁱ Select Committee on Liaison, 2000, *Shifting the Balance: Select Committees and the Executive*, First Report, Session 1999-2000, para. 5.

<http://www.publications.parliament.uk/pa/cm199900/cmselect/cmliaisn/300/30002.htm>

ⁱⁱ See Andrew Hindmoor, Phil Larkin and Andrew Kennon, 2009, 'Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997-2005', *Journal of Legislative Studies*, Vol.15(1), pp.71-89

ⁱⁱⁱ Ingvar Mattson and Kaare Strom, 1995, 'Parliamentary Committees' in Herbert Doring (ed.), *Parliaments and Majority Rule in Western Europe*, New York: St Martins, p.250

^{iv} John Halligan, Robin Miller and John Power, 2007, *Parliament in the Twenty First Century*, Melbourne: Melbourne Univ. Press, p.158

^v See the discussion in Phil Larkin, 2008, 'The Changing Committee System of the British Parliament', paper to The 20th Anniversary of the House of Representatives Committee System conference, Parliament House, Canberra, 15 February, http://www.aph.gov.au/house/committee/20_anniversary/papers/larkin.pdf

^{vi} Giovanni Sartori, 1982, *The Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers, p.230

^{vii} I include in this the strategic review of particular policy areas.

^{viii} Chris Carman and Mark Shephard, 2009, 'Committees in the Scottish Parliament' in Charlie Jeffrey and James Mitchell (eds), *The Scottish Parliament 1999-2009: The First Decade*, Edinburgh: Hansard Society

^{ix} Membership of the Public Bill Committees does not require the House's ratification.

^x <http://www.guardian.co.uk/politics/2008/nov/11/nick-brown-labour-select-committees>

The UK also saw an outcry in 2001 when the government tried to oust two Labour MPs with a reputation for rebelliousness their Committee chairs: http://news.bbc.co.uk/2/hi/uk_news/politics/1439806.stm

^{xi} Marleau and Montpetit, *House of Commons Procedure and Practice*, Chapter 20, p.22

^{xii} Chau Pak-Kwan (2003), *The Chairmanship of Parliamentary Committees in Some Selected Places*, Research and Library Services Division, Legislative Council Secretariat, Hong Kong, p.15-16

^{xiii} See Mattson and Strom, op. cit., for a discussion of European parliamentary committees.

^{xiv} John D. Lees and Malcolm T Shaw (eds), 1979, *Committees in National Legislatures: A Comparative Analysis*, Durham, NC: Duke Univ. Press

^{xv} Meg Russell, 'Post MP's expenses do we need a new politics? And if so, what?', The Constitution Unit, p.3 http://www.ucl.ac.uk/constitution-unit/files/media/articles/2009/new_politics.pdf