

An Overview of the Development of U.S. Congressional Committees*

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Congressional committees have served as the primary instruments by which Congress has managed its daily business for most of the last two centuries. From their origins as temporary, ad hoc, legislative drafting bodies at the beginning of the Republic, they have acquired the characteristics of set jurisdictions, professional staffs and relative permanence. Besides their role in crafting legislation, they have become the instruments through which Congress oversees executive agencies and participates in formulating and overseeing national policy.

Congressional committees fall into four broad categories: standing, select, special and joint. Of the four, standing committees are the workhorses of Congress. They are permanent bodies¹ created by resolution or statute and authorized to examine and report out legislation to the full House or Senate. They also oversee legislation and federal agencies within their jurisdiction, and conduct hearings and investigations.

A few examples of standing committees include the House and Senate committees on agriculture, appropriations, armed services, financial institutions (or banking), commerce and foreign relations, which, as their names suggest, have jurisdiction corresponding with major economic sectors or national policy concerns.

Select committees and special committees by contrast have a more limited role. They are, in theory at least, temporary committees created for a special purpose, often investigative in nature and may be dissolved once that purpose is completed. They may hold hearings, or issue reports, but they do not generally report out legislation. One observer notes that while the original distinction between select and special committees was that the former were created by the presiding officers of the House and Senate, and the latter by parties or floor leaders, now the basic practical difference is that select committees are usually longer lived.² The term of a special committee is usually reckoned to fall within the two year life span of a Congress, while select committees may span several Congresses. The current roster of special and select committees, however, is replete with exceptions to all of these rules. The Senate Special Committee on Aging for example, was formed in 1961 but is a permanent committee. The Senate Select

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¹ "Permanent" is a relative term. House Committees must be reconstituted each Congress as the House, unlike the Senate, is not a continuing body. Also both House and Senate can eliminate standing committees at their discretion, but they must do so by amending their standing rules.

² 2 Garrison Nelson, et al. *Committees in the U.S. Congress 1947-1992* 981 (1994).

Committee on Ethics has been in existence since the 95th Congress. The Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence are, in fact, permanent standing committees, which do report out legislation.

Joint committees – at least as they currently exist – are different kinds of entities entirely. They may be temporary or permanent bodies. Their defining characteristic is a membership composed of equal numbers of Representatives and Senators. Currently there are four permanent joint committees and their functions are either advisory or administrative in nature. The Joint Tax Committee provides professional tax staff support for the House Ways and Means and Senate Finance committees but does not itself report out legislation. The Joint Economic Committee is also advisory, charged with examining national economic and budgetary issues. The Joint Committee on the Library of Congress and the Joint Committee on Printing provide oversight for the Library of Congress and the Government Printing Office. It should be noted, however, that the Legislative Reorganization Act of 1946 conceived of joint committees as instruments for fostering collaboration between the House and the Senate. Indeed, as recently as the early 1970's, the Joint Atomic Energy Committee did report out legislation and oversaw the nation's atomic energy program. Still, of the twelve joint committees named in the 1950's, none survives.³

The somewhat elastic nature of committee categories derives largely from the fact that neither the Constitution, federal law nor congressional rules established the “committee system,” as such.⁴ Rather, committees were in general, formed singly and at different historical periods, often to handle specific exigencies as they arose. Thus they draw their structure largely from the work they are required to perform. Committees often evolve by expanding their jurisdictions or consolidating with other committees and may be dissolved once their usefulness has passed. The current committee structure is the sum of surviving committees and subcommittees, together with the laws or resolutions that created them, and the rules, precedents and inter-party agreements governing such things as jurisdiction, chairmanships, numbers of assignments per member, staffing and party ratios in determining committee makeup. It is by examining the process of committee evolution that we can best understand the committee system.

Early Legislative Procedures and the Use of Select Committees

To set the stage for the emergence of standing committees it is useful to outline the legislative process as it was practiced in the House of Representatives during the early Congresses. In the House, the process of enacting legislation began, not as a rule, with the introduction of a bill, but with a broad discussion of a legislative proposal, often presented to the chamber in the form of a petition, memorial, resolution, or a message from the President. After the matter was discussed by the whole chamber, and the broad purpose of the legislation established, an ad hoc, or “select” committee would be

³*Id.* at p. xviii. Note that conference committees represent a category omitted from this discussion because they are ad hoc, generally short lived, and limited to reconciling House and Senate passed versions of legislation.

⁴ That said, the Legislative Reorganization Act of 1946 did transform what had been a large, mismatched and unwieldy collection of committees into something like a committee system, replete with support staff and dedicated research personnel, as will be discussed later.

appointed to draft a bill incorporating the chamber's instructions, after which it would be returned to the full House.⁵ Once a select committee's task was completed, it would be dissolved. The full chamber would then proceed to debate, and generally pass the bill.⁶ It should be noted that although similar procedures were employed by the Senate during the first decades of the Republic, the Senate did not generally initiate major legislation, but instead acted upon bills that were first introduced and passed by the House. The extensive use of select committees, and subsequent consideration by the full chamber ensured that the full House or Senate could maintain control and enforce a high degree of consensus over the legislative process.

Over the course of several Congresses, however, the inconvenience of legislative select committees became apparent. Not only did the House and Senate have to appoint a select committee for each legislative proposal, but they had, in effect, to debate it twice before a floor vote could occur. In the early Congresses, because of their smaller size – the House, for example, had only 59 members during the first Congress – this procedure, although inconvenient, was manageable.⁷ Population increases, however, and the resulting growth in House membership would change this. As a consequence of the 1790 census, House membership rose from 59 to 106; after 1800 it reached 142, more than double its initial size.⁸ As membership increased it became virtually impossible, given the press of business, to create select committees for each bill. The third Congress, for example, raised over 350 select committees.⁹

The Emergence of Standing Committees

Standing committees, by providing continuity and defined jurisdictions, promised a means of managing the chaos. Within their structure, members could develop an area of expertise and the competence to effectively handle a higher volume of legislation. Both the House and the Senate experimented with quasi-permanent select committees before moving to true standing committees. The House, for example, borrowed from the experience of Pennsylvania by using its Ways and Means Committee as a model for the House Ways and Means Committee, which was initially created as a select committee in July 1789.¹⁰ While it was dissolved shortly after its creation, it reappeared, essentially, as a continuing select committee in 1795. In 1802 it was established as a true standing committee.

The example of the House Ways and Means Committee illustrates another reason why the House moved slowly in creating permanent committees. The executive departments were being created during the same period, and with their creation, the shape

⁵ Joseph Cooper and Cheryl Young, *Bill Introduction in the Nineteenth Century: A Study in Institutional Change*, *Legislative Studies Quarterly*, Feb. 1989, at 69, 71. See also Ralph Volney Harlow, *The History of Legislative Methods In the Period Before 1825* at 223-4 (1917).

⁶ Another example of the difference in the legislative process in the early Congresses in the House from current practice: individual members could not introduce bills unless they first received approval from the entire chamber to do so. Cooper and Young, *supra* note 5, at 69.

⁷ Steven S. Smith and Christopher J. Deering, *Committees in Congress* 26 (2nd ed. 1990).

⁸ CQ Press, *Guide to Congress* 39-40 (5th ed. 1991).

⁹ Lauros G. McConachie, *Congressional Committees: A Study of Origins and Development of Our National and Local Legislative Methods* 124 (Burt Franklin Reprints 1974) (1898).

¹⁰ Harlow, *supra* note 5, at 129-130.

and perquisites of both Congress and the Executive Branch were being defined. Within the British Parliament, a model toward which many of the Federalists and even Jeffersonians initially looked, executive departments performed study and bill drafting functions.

It is generally believed that Alexander Hamilton had the first select Ways and Means Committee killed by persuading House members that the Treasury Department would handle its functions. Indeed, within a week of Hamilton's appointment as Secretary of the Treasury on September 11, 1789, the Ways and Means Committee was dissolved, and its business was "referred to the Secretary of the Treasury of the United States to consider and report thereon".¹¹ The State Department and the War Department under Jefferson also handled legislation referred to them by the House.¹² When the House subsequently reestablished the Ways and Means Committee, it was, in part, an assertion of its own prerogatives over revenues and as a means to counterbalance the authority of a parallel Executive department.

During this period of institutional experimentation the House created several standing committees. In 1794 it formed a Committee on Claims to handle the private bills that clogged its calendar. The following year it formed the Committee on Interstate and Foreign Commerce (which continues today as the House Committee on Energy and Commerce). In its first 25 years, the House created 14 standing committees including Public Lands (1805) and Judiciary (1813). By 1825 there were 28 committees, including Agriculture, Foreign Affairs, Naval Affairs, and Military Affairs. Along with the growth of standing committees came new House procedures. By 1830 legislation was routinely referred to committees without first being discussed in the House chamber and by the end of the decade, all standing House committees could report out legislation.¹³

Although increases in House membership and the press of business were responsible for the creation of many standing committees, such as the House Committee on Claims, many committees represented an attempt by Congress to promote "special interests" within the country or to establish an oversight or policy role. The Interstate and Foreign Commerce Committee, for example, represented an attempt to promote U.S. manufactured products. The Committee on Public Lands, constituted following Jefferson's 1803 Louisiana Purchase, reflected, in part, the House's displeasure at being kept ignorant of this transaction, and represented an assertion of its prerogative to be consulted about any future such undertakings.

While the standing committee system grew rapidly in the House, it evolved more slowly in the Senate and remained far less important in that body until after the Civil War. The Senate, like the House, experimented with quasi-permanent select committees, or "sessional" committees as they were called in the Senate. Beginning in 1806, the Senate adopted the practice of creating sessional committees with set jurisdictions and

¹¹ 1 *Journal of the House of Representatives* 113 (September 17, 1789).

¹² *Id.* at 135; for a discussion of the Jeffersonians' approach to standing committees and ministerial government see Joseph Cooper, *The Origins of the Standing Committees and the Development of the Modern House*, 56 *Rice Univ. Studies* 1-41 passim (1970).

¹³ Smith and Deering, *supra* note 7 at 28-29. However, although by this time standing committees exercised autonomy in reporting legislation, legislation referred to them continued to be in the form of petitions, memorials, messages from the President and the like. It was not until a long series of rules changes beginning in the late 1830s and ending around 1890 that bill introduction by members was established. See Cooper and Young, *supra* note 5 at 89-96.

referring to them jurisdiction-specific legislation during each session of Congress. It was a relatively small step from this procedure to creating standing committees. Still, it was not until 1816 that the Senate created any standing committees with legislative jurisdictions. In that year it raised twelve, including Finance, Commerce and Manufactures, Foreign Relations, Public Lands, Naval Affairs, Claims and the Judiciary.¹⁴ By the time of the Civil War, the Senate had only 22 standing committees compared to 39 for the House.¹⁵ In part this reflected the Senate's smaller size, which allowed for unrestricted debate and amendment and thus made initial action in the committee less important. Also, during this period, the Senate usually did not initiate new legislation, but rather considered measures passed by the House. Senate committees were therefore less important as gatekeepers than their House counterparts.

Senate Committees prior to 1846 were also far less important than House committees as instruments for effecting party policy. Committee members were chosen variously by ballot, by the president pro tempore of the Senate or by other methods before 1846, (when the majority and minority party members agreed to use lists of committee members cleared by party caucuses). Majority party leaders often could not control committees. Indeed it has been estimated that between 1819 and 1832 a fifth of Senate committees were controlled by the minority party; and that one-fourth were chaired by minority party members.¹⁶

As a result, during this period, Senate leaders would often sidestep committees and perfect legislation on the Senate floor.¹⁷ This difficulty was largely absent in the House where the Speaker appointed committee members and chairs, and thus exercised a far greater control over committee membership and business.

Civil War and Post Civil War Era

The Civil War, with its enormous demands for funding and debt repayments, led to the formation of separate appropriations committees in the House in 1865 and in the Senate in 1867. Previously the House Ways and Means and Senate Finance committees exercised appropriations authority together with their revenue-raising functions. By 1899, as a result of rules changes, the bulk of appropriations authority was taken over by other committees until nearly 20 committees took part in the appropriations process. This distribution of appropriations authority generally followed the jurisdictions of committees. For example, agricultural appropriations devolved upon the House and Senate Agriculture committees, and Post Office appropriations fell to the Post Office committees, etc. This decentralization of appropriations authority is generally ascribed to a desire by interested committees to exert greater control over programs within their jurisdiction.

¹⁴ Smith and Deering, *supra* note 7, at 28. See also Guide to Congress, *supra* note 8 at 540-541, which puts the number formed in 1816 at 11, and McConachie, *supra* note 9, at 349-358 for a listing of dates of creation of many committees.

¹⁵ Smith and Deering, *supra* note 7, at 25 for chart on numbers of committees per given time periods. See also Guide to Congress, *supra* note 8, at 540 for a chart showing creation dates for some committees.

¹⁶ Walter Kravitz, *The Evolution of the Senate's Committee System*, The Annals of the American Academy of Political and Social Sciences Jan. 1974, at 31-32.

¹⁷ Smith and Deering, *supra* note 7, at 30.

The post-Civil War period also saw a major expansion of the committee system. By 1918 the House had almost 60 committees while the Senate had 74.¹⁸ Population increases and economic growth impelled the formation of many new committees created to serve developing industries like railroads, mining, banking and the merchant marine. The press of legislation and the need to give priority to more important bills led the House to transform the Rules Committee into a standing committee in 1880. The Rules Committee had existed in prior congresses as a select committee but was authorized in the 1880's to report special orders determining which bills would be debated and which amendments would be in order. It thus not only gave great personal power to the Speaker, who until 1910 sat on the committee, but also provided the Committee with a large degree of control over legislation reported out by other committees.¹⁹

This period also saw changes in the means by which committee members were chosen. On the House side, the Speaker still generally appointed committee members and chairmen, the practice since 1790.²⁰ However, the ouster of Joseph G. Cannon as Speaker in 1911 brought with it a major change in the House committee assignment process in that the power to appoint committee members was given to Democratic and Republican Party groups. The Senate had used a variety of methods during the 1800's for determining appointments. These included choice by ballot, by the president pro tempore, by the vice president, and, in the mid-1840's by lists drawn up by leaders of the two major parties, and then by the president pro tempore again. By 1846 the Senate had essentially returned to the system of accepting lists drawn up by the major parties, in which seniority figured heavily. That system, with some modifications, has continued into the 21st Century.²¹

Consolidation of Committees and Budgetary Reform

While the 1800's saw the development and expansion of standing committees, the 20th Century was generally characterized by amalgamation, reform and the growth of subcommittees and congressional staffs. The first major order of business for the House and the Senate in the early 1900's was reducing the huge number of committees built up from the 19th Century and consolidating the appropriations process. Indeed, in the Senate the number of committees was in danger of surpassing the number of senators. For instance, in 1914 there were 74 committees and 96 senators. Senate committees, such as the long inactive Committee on Revolutionary Claims created to provide pensions for Revolutionary War widows, were typical of the deadwood that had accumulated over the 19th Century, serving no purpose but to provide members with office space and staff. By eliminating such inactive committees and by consolidating its appropriations committees, the Senate in 1921 cut 40 committees, trimming its committee roster from 74 to 34.²²

The House, which had 61 standing committees in 1914, managed a somewhat smaller reduction. In 1920 it consolidated jurisdiction over appropriations into one

¹⁸ Smith and Deering, *supra* note 7, at 33-34.

¹⁹ George B. Galloway, *History of the House of Representatives* 104 (1969). See also *Guide to Congress*, *supra* note 8, at 541.

²⁰ Smith and Deering, *supra* note 7, at 27. See also Harlow, *supra* note 5, at 249-56 passim.

²¹ *Guide to Congress*, *supra* note 8, at 541. See also Smith and Deering, *supra* note 7, at 31.

²² *Guide to Congress*, *supra* note 7, at 544.

appropriations committee. Seven years later the House folded eleven committees which handled oversight of government expenditures into a single committee on government operations for an overall reduction of 18 committees.²³

Underlying the consolidation of appropriations lay an attempt to rationalize the entire federal and congressional budgeting procedures. Before 1920 there was no national budget process. The Secretary of the Treasury transmitted annual budget requests from the various federal agencies to the eight House committees handling appropriations. Following House development of agency requests into legislation and subsequent passage of the legislation, the measures would then be handled by separate committees in the Senate. The process produced great jurisdictional overlap, inefficiency and waste. The Budget and Accounting Act of 1921 was the first step in rationalizing the federal budget process. The Act created a Bureau of the Budget to consolidate federal agency spending estimates and send one comprehensive annual budget to Congress. It also created the General Accounting Office to help Congress monitor government expenditures. Most significantly, the legislative process in creating the Act precipitated the consolidation of appropriations function into a single House and a single Senate Appropriations Committee in 1920 and 1922 respectively.²⁴

Legislative Reorganization Act of 1946

With the expansion of executive power during the Roosevelt Administration, Congress felt itself relegated to a kind of secondary status, burdened with a heavy work load, overlapping committee jurisdictions and inadequate staffing, factors that also hindered it in asserting an effective role in policy formulation. To study these problems, in 1945 Congress created the first Joint Committee on the Organization of Congress. As a result of its recommendations, the Legislative Reorganization Act of 1946 was enacted, which reduced the Senate's then 33 committees to 15 and the House's 48 committees to 19.²⁵ The Act also merged committee jurisdictions and transformed many standing committees into subcommittees, a process that – initially, at least – greatly enhanced the power of the remaining chairmen. A kind of jurisdictional pairing was also established between House and Senate committees such that both bodies had banking, tax and foreign relations committees, with roughly corresponding jurisdictions. The 1946 Act, also for the first time incorporated committee jurisdictions within the rules of each chamber.²⁶

The Act also authorized committees to hire as many as four professional and six clerical employees, and it expanded the staff of the Legislative Reference Service, (the predecessor of the Congressional Research Service), thus providing committees greater expertise in handling complicated policy issues. The Act required that committees, where possible, open hearings to the public, keep accurate records and ensure that once

²³ Galloway, *supra* note 20, at 65.

²⁴ Smith and Deering, *supra*, note 7, at 37.

²⁵ Smith and Deering, *supra* note 7 at 39. See also *Guide to Congress*, *supra* note 8, at 64.

²⁶ Organization of Congress: Final Report of the Joint Committee on the Organization of Congress, December 1993, <http://www.rules.house.gov/Archives/jcoc2.htm>.

bills cleared committees, they would be reported out quickly.²⁷ Finally, the Legislative Reorganization Act formalized the legislative oversight function of committees, a role which committees had played in practice since their founding, albeit without explicit legislative authorization.²⁸ In addition to creating the basic short roster of House and Senate standing committees that survives today, the 1946 Act underlies today's system of professional and clerical staffing, and stands as a major stepping stone in the process of opening up committee activities and records to public scrutiny.

House Committee Reforms in the 1970's

Paradoxically, the Legislative Reorganization Act of 1946 set the agenda for reforms over the next half century in part via its unanticipated consequences. By reducing the number of full committees, and then failing to limit the number of subcommittees, the Act produced an explosion of subcommittees in both the House and the Senate. At the beginning of the 81st Congress (1949), for example, there were only 60 subcommittees in the House and an equal number in the Senate. By 1975, however, the number had jumped to over 145 in the House and about 120 in the Senate.²⁹ This proliferation led junior members with subcommittee chairmanships – usually younger and more liberal members – to press for more staff and a greater role in policy making, which in turn, tended to erode the power of the generally more conservative full committee chairmen.

The committee reforms of the 1970's began with the recommendations of the second Joint Committee on the Organization of Congress, formed in 1965, which called for increasing member and committee staff and hiring more personnel with technical and scientific backgrounds. The Legislative Reorganization Act of 1970 incorporated many of these recommendations, including increasing the number of permanent professional staffers to six per standing committee, allowing committees to seek additional technical and scientific personnel and to request funding for temporary staff. The 1970 act further required that one third of funding for staff be directed to the minority party, and gave the minority the right to call witnesses at hearings. The act redesignated the Legislative Reference Service as the Congressional Research Service and gave it additional resources. In terms of procedural changes, the Act required that committees have written rules of procedure, that roll call votes be placed on the public record, and that committee reports on bills be made available for inspection three or more days before that legislation could be considered on the floor. It also allowed broadcast of House committee proceedings by radio or television.³⁰ These reforms further opened committee business to the public and began the process of diminishing the authority of committee chairmen by shifting power to subcommittees.

Other reforms to the committee system in the 1970's were conducted by party organizations. During the 92d Congress (1971-1972), for example, House Democrats

²⁷ Guide to Congress, *supra* note 8, at 63-64. For a summary history of the Legislative Reorganization Act see George Goodwin, Jr., The Little Legislatures, Committees of Congress, at 18-30 (c. 1970).

²⁸ Walter J. Oleszek, Congressional Procedures and the Policy Process, 290 (6th ed. 2004).

²⁹ Smith and Deering, *supra* note 7, at 43. See also Final Report of the Joint Committee on the Organization of Congress, *supra* note 26.

³⁰ Guide to Congress, *supra* note 8, at 72-73, 548. See also Smith and Deering, *supra* note 7, at 46-47.

and Republicans, acting separately, overhauled the seniority system, authorizing their party organizations to choose chairmen irrespective of their time in office. This reform led to the ouster of three Democratic chairmen in 1975.³¹ In the Senate, however, the seniority system continued in force. In 1973 the Senate Democratic Caucus adopted what it termed a “subcommittee bill of rights,” allowing subcommittees to choose their own chairmen, providing for subcommittee budgets, and requiring committee chairmen to refer legislation to the appropriate subcommittee within two weeks of referral to the full committee. Subcommittees were allowed to set their own meeting and hearing dates and to act on legislation referred to them.

In 1976, bipartisan reforms increased committee staffing to 18 professional and 12 clerical workers.³² One third of committee staff was reserved for the minority. Committees with more than fifteen members were required to create a minimum of four subcommittees, a move which had its greatest effect on the House Ways and Means Committee, which until then had operated without subcommittees. One year earlier, changes in House rules gave the Speaker multiple referral power over legislation. Now he or she could refer one bill to several committees either jointly, sequentially or through split referral – different parts of a bill to different committees.

Senate Committee Reforms

In the Senate, the reform process was initially directed at opening major committee assignments to junior members. In 1953, under what became known as the “Johnson Rule” (because it was championed by Senator Lyndon Johnson), Senate Democrats stipulated that every Democratic Senator, regardless of seniority, would be given a minimum of at least one seat on a major committee. By the end of the decade, Senate Republicans followed suit.³³ During the mid 1970’s, the Senate adopted several bipartisan rules affecting committee procedures and staffing. Among other matters, the reforms required that nominees for committee chairmen be elected by secret ballot rather than seniority, that committees hold open markups, and that committee staff assistance be provided for junior members. As a consequence of recommendations by the Stevenson Committee, (a panel chaired by Illinois Senator Adlai Stevenson, III, charged with examining the Senate committee system), by 1977 most of the Senate’s select and special committees had been eliminated. Six standing committees were also discontinued including the Aeronautical and Space Sciences, the Post Office and the District of Columbia Committees.³⁴

Changes in the Congressional Budgetary Process

Along with reforms and innovations, the period after World War II saw the birth of many new committees with jurisdictions reflecting emerging national concerns. Among the new committees were the Joint Atomic Energy Committee, the House and Senate Small Business committees, the House Committee on Veterans Affairs, the House

³¹ Leroy N. Rieselbach, *Congressional Reform: the Changing Modern Congress*, 52-53 (c.1994).

³² *Guide to Congress*, *supra* note 8 at 550-551. See also Rieselbach, *supra* note 31, at 102-102.

³³ Rieselbach, *supra* note 31. See also Smith and Deering, *supra* note 7, at 45.

³⁴ *Guide to Congress*, *supra* note 8, at 557.

Committee on Unamerican Activities, and the House and Senate Aeronautics and Space committees, many of which have since been eliminated or absorbed into other committees. Perhaps the two most important committees to emerge were the House and Senate Budget committees authorized under the Congressional Budget and Impoundment Control Act of 1974. As discussed, the 1921 Budget Act represented Congress' first attempt to reorganize the budget process. It was, however, primarily directed toward the Executive Branch, requiring that agencies submit their separate budget estimates for review by a newly created White House Bureau of the Budget before they were transmitted to Congress. In contrast, the 1974 Act was directed at the Legislative Branch.

Until the Second World War, Congress made no further reforms in its budget process. Between 1929 and 1940, federal spending and federal deficits were relatively small; deficits, for example, averaged less than \$3 billion, in current dollars.³⁵ Post war increases in defense and domestic spending, in contrast, necessitated more systematic fiscal planning. Estimates of spending, and any corresponding deficits were required in order to reconcile spending with revenues, raise the debt ceiling and attempt to enforce fiscal restraint over agencies.

The Legislative Reorganization Act of 1946 was Congress' first attempt to centralize its own budgeting process. The Act called for the creation of a joint committee on the legislative budget to consist of members of the House Ways and Means, Senate Finance, and the House and Senate Appropriations committees. Among other functions, this joint budget committee would draft an annual budget containing estimates of revenues and expenditures and a concurrent resolution would be introduced setting appropriations limits for each agency. Amounts exceeding estimated revenues would require passage of a separate debt ceiling measure. In 1947, 1948 and 1949 Congress attempted – and in each year failed – to implement a budget. Further attempts were abandoned and Congress resorted to adding specific spending prohibitions to the text of appropriations bills as a means of enforcing some measure of fiscal constraint.³⁶

The Congressional Budget and Impoundment Act of 1974 represented an effort by Congress to correct its earlier failures. The Act called for the creation of a House and Senate Budget Committee and a support organization, the Congressional Budget Office. While the 1974 Act, like the 1946 Act, left in place the existing appropriations, tax and authorization committee structures, it coordinated their efforts around an annual budget calendar. It also called for submission of two budget resolutions followed by a reconciliation process to conform expected revenue to projected spending.³⁷

Subcommittee and Other Changes in the 1980's and 1990's

Although there were no major changes to the committee system in the 1980's, House and Senate study panels did recommend rolling back several subcommittee reforms of the 1970's. On the House side, the Patterson Committee, named after its chairman, Jerry M. Patterson, recommended in 1980 that the House scale back its roster of subcommittees and limit member subcommittee assignments. These recommendations reflected the view that the growth in subcommittees over the previous decade had, as

³⁵ Guide to Congress, *supra* note 8, data from table 4.2, at 166.

³⁶ Guide to Congress, *supra* note 8, at 169.

³⁷ Oleszek, *supra* note 28, at 56-67 *passim*.

Congressional Quarterly expressed it, “decentralized and fragmented the policy process and limited members’ capacity to master their work.” In any event, in 1981, the House Democratic Caucus changed its rules to reduce the number of subcommittees to eight for committees with over thirty-five members and six for smaller committees. House and Senate Appropriations committees were excluded from these limitations and allowed to maintain thirteen subcommittees. On the Senate side, several panels convened during the 1980’s recommended curbing the number and power of subcommittees by variously prohibiting them from reporting out legislation, eliminating subcommittee staffing, restricting subcommittees to holding hearings, and limiting the number of committee and subcommittee assignments each Senator was allowed.³⁸ None of these recommendations came to fruition at the time.

In the early 1990’s, however, Congress returned to its project of reforming its operations, propelled, in part, by a wave of scandals in 1992. One involved mismanagement of funds in the House Bank and another scandal concerned a group of Senators known as the “Keating Five” who were alleged to have interceded on the behalf of Charles Keating, a savings and loan corporation owner. The impetus for reform also came from a desire, carried over from the 1980’s, to revitalize the full committees. To these ends, a new, ad-hoc, Joint Committee on the Organization of Congress (the third so named) was created in 1992. In its final report, House panel members called for reducing the number of House subcommittees, limiting member committee assignments, and combining the four existing joint committees into two. Senate panel members also recommended limiting Senate committee and subcommittee assignments, reducing the number of subcommittees and, going a step further, abolishing all joint committees. The panel also called for applying existing civil rights and workplace safety laws to Congress, which had previously excluded its own staff from such laws.³⁹ A year after the Joint Committee on the Organization of Congress was dissolved, the House and Senate introduced separate legislation incorporating parts of the Joint Committee’s recommendations styled the “Legislative Reorganization Act of 1994.”⁴⁰ Other legislation was introduced to bring Congress under national civil rights and workplace safety laws. None of the proposed legislation was enacted during the 103rd Congress. However, the House Rules Committee, independent of any recommendations by the Joint Committee on the Organization of Congress, abolished four select committees considered redundant.⁴¹ These were the Select Committee on Narcotics Abuse and Control; the Permanent Select Committee on Aging; the Select Committee on Hunger; and the Select Committee on Children, Youth and Families.

When the Republican Party regained control of both chambers for the first time in forty years in the 104th Congress (1995-1996), it put forward a set of conservative policy proposals called the “Contract With America.” Championed by the newly-elected Speaker, Newt Gingrich, the “Contract” was advertised as the Republican alternative to the Clinton legislative agenda. In addition to outlining national policy proposals involving such matters as tax reduction and welfare reform, the Contract included a series of rule changes designed to limit the power and independence of subcommittees. At the

³⁸ Guide to Congress, *supra* note 8, at 556, 558.

³⁹ Organization of Congress, Final Report, *supra* note 26.

⁴⁰ H.R. 3801 and S. 1824, 103rd Congress (2d Sess. 1994).

⁴¹ Guide to Congress, *supra* note 8, at 539, 556.

beginning of the 104th Congress, the House Rules Committee cut committee staffs by one-third and reduced the number of subcommittees to five per committee with the exception of the Appropriations, Government Reform and Transportation committees. The House Rules Committee also made subcommittee staff hiring the prerogative of full committee chairmen and imposed term limits of three consecutive terms on House committee chairmen,⁴² later extending these limits to subcommittee chairmen. On the Senate side, the Republican Conference imposed a six-year term limit on chairmen which became effective in 1997.⁴³

The first enactment of the 104th Congress was the Congressional Accountability Act, which established in law a process by which congressional staffers could mediate, and if necessary, litigate their workplace complaints.⁴⁴ Both chambers also passed a series of ethics rules in the 1989-1995 period affecting honoraria, outside income and post-employment lobbying.⁴⁵ House Republicans also moved to dismantle the Committee on Post Office and Civil Service and the Committee on the District of Columbia, making them subcommittees of the Committee on Government Reform and Oversight. They also eliminated the Committee on Merchant Marine and spread its jurisdiction over three committees.

Many House committees were also renamed during this period. The Committee on Government Operations, for example, became the Government Reform and Oversight Committee (later just Government Reform and still later in the 110th Congress the Oversight and Government Reform Committee). Among other changes the Committee on Education and Labor became the Committee on Economic and Educational Opportunities (later changed to the Committee on Education and the Workforce and still later back to the Education and Labor Committee).

At the beginning of the 107th Congress (2001-2002), House Republicans stripped the Committee on Commerce of its jurisdiction over the securities industry and transferred oversight of this industry to the Committee on Banking and Financial Services, which was renamed the Committee on Financial Services. The Commerce Committee was re-christened with its former name, the Committee on Energy and Commerce. The jurisdictional change was primarily intended to consolidate oversight of the banking, financial services and insurance industries in one committee, allowing for more rational supervision of the recently deregulated banking industry.

⁴² Donald R. Wolfensberger, *A Reality Check on the Republican House Reform Revolution at the Decade Mark, Introductory Essay for Congress Project Roundtable on "The Republican Revolution at 10: Lasting Legacy or Faded Vision?"*, 9 (January 24, 2005), <http://wilsoncenter.org/events/docs/repub-rev-essay.pdf>. Wolfensberger also discusses the Republican House rules package alternative from the 103rd Congress, "A Mandate for Change in the People's House," which (although it failed to pass) presaged many of the committee changes adopted as part of the Contract With America in the 104th Congress, 139 *Cong. Rec.* 9-31 passim (January 5, 1993). For discussion of committee reforms see also *Guide to Congress*, *supra* note 8, at 586.

⁴³ *Guide to Congress*, *supra* note 8, at 559.

⁴⁴ Congressional Accountability Act of 1995. Pub. L. No. 104-1. 109 Stat. 3. For a summary of provisions see *Guide to Congress*, *supra* note 8, at 602 (box).

⁴⁵ *Guide to Congress*, *supra* note 8, at 539 and 556.

Post 9/11 Changes in Congressional Committees

Even before the attacks on September 11, 2001, Congress launched several efforts to address the threat of terrorism. Representative Porter Goss, then Chairman of the House Permanent Select Intelligence Committee, for example, established a Terrorism and Homeland Security Working Group to monitor global terrorism. After the attacks, this panel was transformed into a subcommittee of the Permanent Select Committee on Intelligence. Additionally, the U.S. Commission on National Security for the 21st Century (also known as the Hart-Rudman Commission, a non-congressional body, chaired by former Senators Gary Hart and Warren Rudman) recommended in February 2001 that House and Senate select homeland security committees be created.⁴⁶

In the immediate aftermath of the September 11 attacks it was unclear what changes to the committee system, if any, were required. The homeland security effort was run by the newly created White House Office of Homeland Security, which essentially coordinated the security missions of existing federal agencies such as the Immigration and Naturalization Service, the Coast Guard and the Department of Transportation; because these agencies were already funded and overseen by established committees, the institutional infrastructure of Congress appeared sufficient. Believing that the White House-directed operation was inadequate, Senator Joseph Lieberman and Representative William Thornberry, however, soon introduced legislation to create a new homeland security department.⁴⁷ Although the White House first rejected this proposal, by early June of 2002 it offered its own plan for creating a Department of Homeland Security. The commitment to establish a massive new department virtually guaranteed that Congress would need to modify existing jurisdictions or set up new committees to oversee and fund it.

Once the White House committed to establishing a new department, the House of Representatives quickly agreed to form a Select Committee on Homeland Security, chaired by then Majority Leader Dick Armey, to draft enabling legislation.⁴⁸ Committees with jurisdiction over agencies to be consolidated in the new department were to submit language of their respective components to the Select Committee, which would then introduce a comprehensive bill. With its task accomplished, this first Select Committee on Homeland Security expired at the end of the 107th Congress (2002). Specifics on whether a single committee or several would assert jurisdiction over the new department were postponed until the next Congress.

On the Senate side, responsibility for drafting the enabling legislation fell mainly to the Senate Governmental Affairs Committee, which Senator Lieberman then chaired. This Committee subsequently assumed major jurisdiction over homeland security oversight and legislation on the Senate side. At the beginning of the 108th Congress, both chambers established separate appropriations subcommittees to fund the new Homeland Security Department. However, rather than create more than 13 appropriations

⁴⁶ U.S. Commission on National Security/21st Century, Road Map for National Security: Imperative for Change The Phase III Report of the U.S. Commission on National Security/21st Century (2001). The report is located at <http://govinfo.library.unt.edu/nssg/PhaseIIIIFR.pdf>.

⁴⁷ David Nather and Karen Foerstel, *Proposal Presages Turf Wars*, 60 *CQ Weekly*, 1505-08 (June 8, 2002).

⁴⁸ H.R. 5505, 107th Cong. (2002) (which was enacted as the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135).

subcommittees, each committee chose to consolidate the functions of two existing subcommittees, leaving homeland security appropriations under the auspices of a single purpose subcommittee.

Creating a single House committee to oversee the Department of Homeland Security proved more problematic. According to the 9/11 Commission Report, oversight jurisdiction over the Department of Homeland Security was scattered over 88 congressional committees or subcommittees.⁴⁹ Committee and subcommittee chairmen with oversight responsibilities were loath to cede power over a mammoth department that combined 22 agencies and over 170,000 employees. House leaders chose to mitigate turf conflicts by creating a new, temporary Select Committee on Homeland Security comprised of 50 members including the chairmen and ranking members of committees that already had homeland security jurisdiction. Chaired by Representative Christopher Cox of Connecticut, the Select Committee was tasked with overseeing the new department and drafting its authorizing legislation. This panel was subsequently transformed from a select to a permanent committee at the beginning of the 109th Congress (2005-2006).

The Senate Governmental Affairs Committee, which already handled the bulk of homeland security matters, was rechristened the Homeland Security and Government Affairs Committee in the 109th Congress. Its jurisdiction remains similar to the House Committee on Homeland Security except that the Transportation Security Administration, the largest division within DHS, falls under the purview of the Senate Commerce Committee.

In other matters, at the end of the 108th Congress, Senate Republicans voted to allow the majority leader to fill half of the seats open to Republicans on the most coveted Senate committees, also known as the “A” committees (such as Appropriations, Foreign Relations, and Finance), as vacancies occurred, enhancing his or her ability to impose discipline.⁵⁰ The remaining vacancies would be apportioned by seniority.

The Legislative Reorganization Act of 1946 divided the appropriations workload among 13 more or less functionally-paired appropriations subcommittees in each chamber, an arrangement that lasted for over 50 years and vested a great deal of power in their chairmen, collectively known as “cardinals.” House leaders, in particular, came to view these subcommittee chairs as out of step with their goals of spending restraint and legislative efficiency. At the beginning of the 109th Congress, both the House and Senate eliminated their VA-HUD subcommittees. The House also eliminated its District of Columbia and Legislative Branch subcommittees leaving it with ten appropriations subcommittees and the Senate with 12. The reduction in subcommittees allowed the leadership to reallocate jurisdiction among the remaining subcommittees and pick chairmen more inclined to toe the line.⁵¹

At the start of the 109th Congress, the House adopted new rules governing operations of the House Committee on Standards of Official Conduct (House Ethics

⁴⁹ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* 421 (2004).

⁵⁰ Veronica Oleksyn, *Seniority, Loyalty And Political Needs Shape Makeup of Committees*, 63 *CQ Weekly* 894-96 (April 11, 2005).

⁵¹ Joseph J. Schatz and Jonathan Allen, *A Challenging Year For Appropriators*, 63 *CQ Weekly* 1220 (May 9, 2005).

Committee) that effectively allowed the Committee to dismiss ethics complaints without investigation. The House leadership also removed Ethics Committee chairman Joel Hefley, under whose tenure the majority leader, Tom DeLay, was sanctioned several times in the 108th Congress. Subsequently, Democratic members (the committee is evenly divided between Republicans and Democrats) voted not to adopt the Committee's organizing rules, effectively preventing it from conducting business. The committee remained in limbo until April 2005, when, with the support of Speaker Hastert, the House re-adopted the original rules from the 108th Congress.⁵²

After winning back the House and the Senate in 2006, Democrats restored parity and matching jurisdictions to their respective appropriations subcommittees. The ten House and 12 Senate appropriations subcommittees produced jurisdictional mismatches that complicated the appropriations process, particularly when bills went to conference. At the start of the 110th Congress, both chambers created completely new Financial Services and General Government subcommittees with jurisdiction over the Federal Judiciary, the Treasury Department, the District of Columbia budget, and agencies such as the Federal Deposit Insurance Corporation and the Securities and Exchange Commission. As the Financial Services subcommittee took over District of Columbia-related appropriations, the Senate Appropriations Committee abolished its District of Columbia subcommittee. The House resurrected its Legislative Branch subcommittee, leaving each appropriations panel with twelve subcommittees. The House also realigned jurisdictions of several of its appropriations subcommittees, matching them to their Senate counterparts.⁵³

Apart from Appropriations Committee changes, the new Speaker, Nancy Pelosi, called for the creation of the Select Committee on Energy Independence and Global Warming. At her urging, House Democrats also adopted the existing Republican rule that imposed a term limit of three terms on committee chairmen.

Conclusion – Governing By Committee or By Party

From their origins in the select committees of the early Republic, standing Congressional committees became in the 19th Century the principle mechanisms by which Congress drafted legislation and exercised oversight over the federal government. In the 20th Century, standing committees evolved in ways that organized and integrated the budget, appropriations and taxation powers of Congress, asserting greater control over expanding executive agencies.

The creation of standing committees through the end of the Second World War, however, tended to be a haphazard process, leading to competing jurisdictions, and few

⁵² H. Res. 240, 109th Cong. (2005). See 151 Cong. Rec. H2616-26 (daily ed. April 27, 2005) for House consideration and re-adoption of the rules from the 108th Congress.

⁵³ Steven T. Dennis and Chuck Conlon, *Appropriators Plan Reorganization; Two New House Subcommittees Likely*, 43 CQ Today 6 (January 4, 2007).

direct pairings between House and Senate committees. With the Legislative Reorganization Act of 1946, Congress created what, for the first time, could truly be called a “committee system,” that is, a streamlined group of roughly jurisdictionally-paired House and Senate panels that integrated the work flow of both chambers and was supported by professional committee staff. The Act gave committees a level of professional expertise previously lacking and began the process of opening up committee activities to public scrutiny. It also represented an attempt by a more bipartisan Congress to reassert Congress’ role as a co-equal branch in the face of an executive branch whose power and resources had grown enormously during the Great Depression and the Second World War.

By the mid-1990’s, in an era when power had diffused from full committees to subcommittees, a Republican-controlled Congress sought to restore coherence to a policy process it believed fragmented by a proliferation of subcommittees in part by reducing the number and power of subcommittees and total committee staff.⁵⁴ However, the “Gingrich Revolution,” so-called because it was promoted by the new Speaker, Newt Gingrich, proved neither a revitalization of full committees nor an empowerment of full committee chairmen. Instead it reflected the imposition of a strict chain of command in which subcommittee and full committee chairmen took direction from party leaders, or were bypassed altogether in favor of policies advanced by leadership task forces and often brought to the floor without committee referral.⁵⁵ Indeed much of the most important party initiatives of the period (such as the Contract with America) were created by Republican party task forces and moved to the floor of the House without referral to committees.

Pursuing a party agenda outside the committee system can be regarded as simply a tactic, perhaps even an imperative tactic, to governing successfully with a narrow majority. It is also nothing new. It was the practice of the developing political parties in the early decades of the Republic before standing committees evolved. However, it also represents the application of parliamentary practice to governance. That is, the majority party moves key legislation in the House of Representatives without the mediation of standing committees or the effective involvement of the minority in the legislative process, akin to what is done British House of Commons. It is interesting that despite the growth of an elaborate committee structure over the last two centuries and rules setting out procedures for committee referrals, it is a relatively simple matter for committed

⁵⁴ See “A Mandate for Change in the People’s House,” 139 Cong. Rec. H17-24 (daily ed. January 5, 1993).

⁵⁵ Richard Cohen, for example, congressional reporter for the National Journal, argues that reforms empowering subcommittees dating from the 1970’s together with the Republican counter-reforms of the mid-1990’s transferred substantial power from committees to floor leaders and leadership task forces. He notes that much of the high profile legislation of the recent Republican era, beginning with the Contract With America, was drafted by party task forces and sent to the floor without consideration or with only cursory consideration by committees. See Richard Cohen, *Crackup of the Committees*, 31 National Journal 2210 (July 31, 1999). Similarly, Walter Oleszek, a senior specialist at the Congressional Research Service writes, “Today, [House] committee review of legislation is problematic on many key issues, partly because of partisan strife, narrow majorities and independent minded law makers. Committee power has diminished compared to party power.” He notes that the need to pass partisan legislation is a strong reason for Republican leadership to bypass committees and bring legislation directly to the floor. See Oleszek, *supra* note 28, at 104.

majority party leaders to work around the process and bring bills directly to the House floor.⁵⁶

Historically, however, it is useful to remember that Congress originally had no standing committees. Its legislative business was conducted either by temporary select committees, or by referrals to cabinet departments like Treasury, War and State, and was largely directed by the budding political parties of the era. Congress, however, soon discovered that it needed its own institutions -- permanent committees -- to effectively craft legislation, properly oversee the Executive Branch and assert its standing as the first branch of government. Whether party leaders exercise more or less control over committees and committee chairmen, or circumvent committees to pass party initiatives, they generally lack the expertise to craft effective legislation in many highly complex and technical areas of law without active committee participation in the legislative process.

It is clear that a tension exists between party government and the committee system. Traditionally, committees served to yoke the two parties to the legislative process, to oversight and to the formulation of national policy. Absent any discussion of political parties in the Constitution, committees evolved as the practical mechanisms by which parties exercised and even shared power in Congress. While the majority party may determine most policy results, the inherently democratic process of open hearings, markups and voting, and the existence of cross-party coalitions allows minority members to engage the majority in debate, publicize issues and often broker outcomes. Shifting decision making from committees to leaders or leadership groups greatly diminishes the minority's role in the legislative process. It also moves effective decision making outside the committee system and behind closed doors, frustrating the open government reforms of the last half-century.

Whether the turnover in party control restores greater independence to House committees is questionable. For instance, Speaker Nancy Pelosi inaugurated the 110th Congress by passing the Democrats "First 100 Hours" agenda by bringing legislation directly to the House floor, bypassing committees and blocking minority party floor amendments. As previously discussed, these same tactics were used by Republican Speaker Newt Gingrich to pass the Republican "Contract with America" more than a decade earlier. Since Democrats in the 110th Congress also govern with a narrow

⁵⁶ In the mid-1880's, Democrat and future president, Woodrow Wilson, published Congressional Government, which sets out a rationale for party government that is strikingly modern. Wilson criticizes congressional committees for being secretive, beholden to lobbyists and informed by such a hodgepodge of interests that formulating coherent, policy-driven legislation is nearly impossible. He indicates that because of their independence and insulation from party control, committees are inadequate instruments through which the majority can pursue its legislative goals or its popular mandate. In contrast, Wilson holds up the British Parliament as a model for effective democratic government. In Parliament, the majority party, reflecting the nation's will, commands the Commons, the Executive, and the legislative agenda and does so without the interference of bodies comparable to standing committees. Along these lines, Wilson argues that extra-official party groups rather than committees would be preferable to standing committees as instruments to advance the majority's agenda in Congress, serving as a kind of workaround to the defects he ascribes to committee government. Professor William F. Connelly Jr., author of the introduction to the recently republished 15th edition of Congressional Government, draws a parallel between Wilson and Newt Gingrich, another advocate of party control and an admirer of Wilson. "Wilson's book," Connelly notes, "reads almost like a field manual for Gingrich's experiment in Congressional party government." See Woodrow Wilson, Congressional Government: A Study in American Politics 99, ix (15th ed. 2002) (1900).

majority, they too are tempted to circumvent the committee system and the regular order of business to advance major initiatives, particularly in light of past Republican successes. On the other hand, the Democrats in the House, which have sizable factions such as conservative “Blue Dogs” from the South and a quite liberal Congressional Black Caucus, may not be as capable of effectively exercising party government. Still, it may be noteworthy that during the first session of the 110th Congress there were no initiatives to reform the committee system.⁵⁷ If a future chamber of Congress has a more lopsided majority then perhaps governance by committee will reemerge in importance as a controlling influence in Federal legislative matters.

⁵⁷ For an alphabetical list of standing congressional committees see the appendix that accompanies this paper entitled Standing Committees of Congress: 1789 to Present. The listing of committees is located at <http://www.llsdc.org/attachments/wysiwyg/544/Standing-Cmtes.pdf>. For another listing from 1802 to 1969, including length of existence, jurisdiction and predecessor committees see CIS U.S. Congressional Committee Prints Index: From the Earliest Publications through 1969: Findings Aids, 641-657 (Congressional Information Service, c1980). See also Nelson *supra* note 2; McConachie, *supra* note 9, at 348-358.

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