



第七卷

议会委员会

英文版

Parliamentary Committees



国家出版基金项目
NATIONAL PUBLICATION FOUNDATION

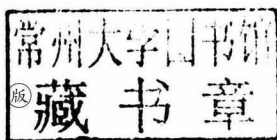
钱端升全集

陈夏红 主编

第七卷

议会委员会

（英）（文）



Parliamentary Committees

钱端升 著

中国政法大学出版社

2017 · 北京

声 明

1. 版权所有，侵权必究。
2. 如有缺页、倒装问题，由出版社负责退换。

图书在版编目（C I P）数据

钱端升全集. 1-12卷/陈夏红主编. —北京: 中国政法大学出版社, 2017. 5
ISBN 978-7-5620-7422-9

I. ①钱… II. ①陈… III. ①钱端升 (1900-1990) —全集 IV. ①D-52

中国版本图书馆CIP数据核字(2017)第068353号

出 版 者	中国政法大学出版社
地 址	北京市海淀区西土城路 25 号
邮寄地址	北京 100088 信箱 8034 分箱 邮编 100088
网 址	http://www.cuplpress.com (网络实名: 中国政法大学出版社)
电 话	010-58908524 (编辑部) 58908334 (邮购部)
承 印	北京华联印刷有限公司
开 本	720mm × 960mm 1/16
印 张	375
字 数	5000 千字
版 次	2017 年 5 月第 1 版
印 次	2017 年 5 月第 1 次印刷
定 价	1800.00 元

Parliamentary Committees

A Study in Comparative Government with Special Reference
to the British House of Commons, American Congress,
French Chamber of Deputies and German Reichstag

Thomson S Chien

Cambridge, Massachusetts

1923



SUMMARY

The parliamentary committee interests a student of political science in many ways. Looked at as a political institution in itself, its organization, procedure, powers and limitations betray characteristics which distinguish it from other political institutions. But the committee is more; it is a part and an organ of the legislature, and through the legislature it is also closely connected with the executive, the connection being particularly close in a parliamentary government. Hence a knowledge of its relation to the legislature and to the executive as well as its influence in the legislature and its effect on the executive is essential to the understanding of representative government, particularly, parliamentary government.

One who undertakes the study of parliamentary committees must first notice their prevalence in modern legislative assemblies. Their number and their importance may vary from one assembly to another, but they are everywhere in existence. The prevalence is due mainly to two reasons. Most modern assemblies, being large in membership, are ill-fitted for performing certain functions entrusted to them. Most of them, again, carry an amount of business too heavy to be transacted without recourse to committees. A few small assemblies with no multifarious functions to perform may have been able to dispense with committees; but they have

nevertheless appointed committees out of mere imitation.

Although committees are to be found in every assembly, in no two assemblies are they found to be exactly alike. In general there are two types of committees, standing committees and select committees. Standing committees are of permanent existence, in charge of a class of subjects. Their members are nominated at regular intervals. Select committees are appointed to consider a specific matter or a number of matters and end their life as soon as their task is finished. Usually assemblies which are large and powerful employ mainly standing committees. On the other hand, assemblies which are small and whose business is simple, rely chiefly on select committees. The type of committees which exists in a certain assembly, may, however, depend also upon the general structure of the government of which the assembly forms a part. In a parliamentary government with a strong executive, committees are apt to play a minor rôle, while in a government where the principle of the separation of powers, as regards the personnel of the legislative and executive branches, is strictly adhered to, the committees are usually standing and powerful.

Now as to the organization of committees. The prevailing method of nominating members of committees is through the parties in the legislature, each party being entitled to a number of places on the committee in proportion to its strength in the assembly. In general, the relative strength of the parties in the assembly is faithfully reflected in the committee. The idea of officially recognizing the existence of parties in one way or another, may not be universally looked upon with favor. But so long as parties do exist in legislative assemblies, it would be futile not to recognize their existence; unwise not to entrust the nomination of committee members in the hands of party organs; and unjust not to establish a fair distribution of members among the parties.

If the method of nominating members of committees proves to be a difficult

problem to the assembly, that of selecting leaders of the committee is no less difficult to the latter. Generally election by the members of the committee has proved to be the least objectionable, although there are assemblies which have not seen fit to use this method.

The procedure of committees follows in general that of the assemblies. The failure to obtain good attendance is in no way characteristic to committee meetings only. There is however, one vital difference between proceedings in a committee and those in an assembly. While the proceedings in an assembly are formal and open to the public, those in a committee are as a rule informal and not open to the public.

The powers of the committee is co-extensive with those of the assembly. Almost without exception, the duties which an assembly is called upon to perform are performed with the assistance of committees. In legislation the power of the committee varies in direct proportion to the strength of the legislature and inversely to that of the executive. If the share of the executive in legislation is large, that of the committee is small. If the executive has no or only an insignificant voice in legislation, the committee has an important rôle to play. This is particularly true where a system of standing committees happens to prevail. It has been shown that select committees are more amenable to the wishes of the legislature as a whole, and consequently their influence is not inimical to that of the legislature; whereas the standing committees, being permanent, are less under the control of the legislature.

The power of the committee in legislation as contrasted with the importance of the legislature is due to two causes, both apparently of the latter's own making. The first is the freedom of action conferred upon the committee. There are so many legislative measures introduced in the legislature and referred to the committees that to expect the committees to give careful consideration to every one of them is vain indeed. The result is that the committees are allowed to ignore measures which have no attraction for them. This discriminatory power leads also to the championship of

measures which are welcome to the committees but which may not be acceptable to the assembly as a whole. The other cause is a corollary of the first one, the inadequacy of time at the disposal of the assembly for the careful examination of measures reported by the committees. Naturally it follows the recommendations of the committee without much scrutiny. It seems therefore evident, that in order to recover its lost power of legislation, the legislature must reform its own procedure.

Besides legislation, committees also take a leading part in parliamentary investigations. The assembly itself being seldom a convenient machinery for conducting an investigation, committees are inevitably appointed for that purpose. In this case the supremacy of the assembly resolves upon the question whether its instructions are always deferred to.

The large share of committees in parliamentary affairs is, however, natural, considering the prominence of members of committees. Whatever be the method of their nomination, the members, at any rate the leading members, of important committees are also leaders of the assembly. Their influence and their reputation command respect in as well as outside the legislature, which is usually under their control. There is, of course, nothing to say against the leading members of the assembly being also leading members of its important committees. A committee that is not led by such members; cannot hope to have vitality. The question is how do these members come to be heads of the committees. If they are chosen to positions of importance by the consent, express or tacit, of the members of the assembly and are by them removable from such positions, their influence is legitimate and deserved. But if they obtain their position in any other way and their fitness does not measure up to their importance, the committees, of course, tend to be more and more irresponsible to the assembly which they are supposed to serve.

The inability of the assemblies in general to control their committees and the efficacy of the committees to subvert the assemblies, has a serious effect upon the

representative institution. Theoretically a committee represents the assembly and its conclusions and recommendation are also those of the assembly. But where committees are independent of the assembly, the latter cannot help falling into something like a panel from which committees are drawn, something which has little *esprit de corps*. This condition is of course very much to be regretted, not only because it breeds legislative inefficiency, but also because it perverts the representative and national character of a national parliament. Had it not been for the existence of party machinery which bridges over different committees and furnishes a semblance of unity of action, the sense of disintegration would have been more keenly felt.

But there is a further consequence of more serious nature brought about by committees, particularly by strong standing committees. In a government of Congressional type, where the executive and legislative powers are vested in separate hands, it is perhaps inevitable that strong standing committees should spring up to take the place of responsible ministers. The fault, if it be one, in such a governmental structure is not attributable to the assumption of power by committees, but is the cause of the assumption. On the other hand, in a parliamentary government, where the cabinet ministers, whatever be the manner of their appointment and whatever be the source from which they are drawn, are in reality none other than a committee of the parliament, charged with extensive legislative and executive powers, and responsible to the parliament, the coexistence of strong standing committees with powerful members at the helm, supported by the assembly, cannot but undermine the desirable predominance of the ministers, make their life precarious, and spread their responsibility thin.

To conclude, committees should be constituted to represent the assembly. Only such matters as can be best taken care of by committees, should be entrusted to them. Further, they should be under the constant surveillance of the assembly so that the collective will of the latter may always prevail. They are to be on-

ly the organs of the assembly and should not be suffered to imperil the executive leadership, if the latter is a recognized principle of the constitution. Hence where standing committees tend to destroy that leadership, select committees should be preferred.



PREFACE

For the appearance of a monograph on the subject of parliamentary committees the writer has no apology to offer. The subject is of sufficient importance to merit a fuller treatment than it has hitherto received. Woodrow Wilson's *Congressional Government* and L. G. McConachie's *Congressional Committees* have been the only special works that deal exclusively with committees of the American Congress; but Mr. Wilson sketches only the outline and Mr. McConachie exploits only the picturesque. Concerning the committees of the British, French and German assemblies even writings of such magnitude as Mr. Wilson's and Mr. McConachie's have not appeared. While the monumental works of Bryce and Lowell^[1] contain excellent chapters on the workings of the American and British committees, and the equally monumental treatises of Pierre and Hinds^[2] have a great deal to say about the forms and procedure of the French and American committees, there has been nothing like a work which explores all aspects of the parliamentary committee in any

[1] James Bryce, *The American Commonwealth*; A. Lawrence Lowell, *The Government of England*.

[2] Eugène Pierre, *Traité de Droit Politique, Électoral et Parlementaire*; Asher C. Hinds, *Precedents of the House of Representatives of the United States*.

country.^[1] As to the comparative study of parliamentary committees still less has been done. Joseph Bigaud's recent monograph^[2] is a work of that kind, but it informs little and says still less.

The study which the present writer has undertaken is more comprehensive in scope and empirical in method. It is not confined to the committees of any one particular country such as the works of Mr. Wilson and Mr. McConachie are. It is a comparative study of committees. The assemblies of Great Britain, the United States, France and Germany have been selected for special emphasis, partly because of the prominence of these countries, partly because of the representative character of their assemblies, and partly also because of the writer's acquaintance with their languages. No special mention is made of the upper chambers of the British and French parliaments; for, in the first place, they are secondary chambers; and, in the second place, they differ little from the respective lower chambers in the matter of committees. The total exclusion of the Bundesrat or Reichsrat of Germany from the study is justified on the ground that it is not a second chamber at all.^[3] Mention is made of the committees of other assemblies only for the purpose of contrast or of confirmation.

The principal object of the study is to explain the systems, the forms and the workings of the committees. No effort will be made to trace the past of committees

[1] André Breton's *Les Commissions et la Réforme de la Procédure Parlementaire* (Paris, 1922) came to me after this monograph had been completed and this preface written. Though the Book is hardly more than an analysis of the debates leading to the establishment of the committee systems in the French chambers, and of the Rules of the chambers relating to the committees, I would have gladly availed myself of the author's treatment of certain points.

[2] *Les Commissions parlementaires en France, en Angleterre, et aux États-Unis.*

[3] See, Paul Laband, *Das Staatsrecht des Deutschen Reiches*, I, 236. For the committees of the Bundesrat, see the *Revidirte Geschäftsordnung für den Bundesrat*, vom 26. April, 1880, § § 17 – 23. The *Geschäftsordnung* may be found in Triepel, *Quellensammlung zum Deutschen Reichsstaatsrecht*, pp. 227 – 231. See also, Ernst Goormann *Bundesrat und Bundestag*, Berlin, 1911, § 8, For the committees of the Reichsrat see Otto Meissner, *Das Neue Staatsrecht des Reichs und seiner Länder*, Berlin, 1921, p. 106.

except in a very brief way and except for the purpose of comparison. It has been the writer's aim to present first the written laws and rules—or, as Mr. Wilson would say, the “literary theory” —and second the unwritten laws and rules—or, as Mr. Dicey would say, the “conventions” —of or concerning the committees. Having done these, the workings of the committee will be described and explained to the fullest extent possible. Take the appointment of members of the standing committees of the Senate of the United States, for instance. The rule is that they shall be appointed by ballot, but the practice is that they are appointed through unofficial party committees. How they are appointed according to the actual usage is indeed more important and more interesting than how they should be appointed according to the written rules, and will therefore be described at length. But why they are so appointed must also be explained.

Although exposition rather than criticism is the principal object of this study, exposition may sometimes be critical. The nature of this study, which is comparative, also makes the total suppression of criticism unwise as well as unnecessary. At times, as the result of critical study, the writer will also venture suggestions he thinks practicable under the existing constitution.

In the preparation of this study the writer has encountered some unusual difficulties. His inability to visit the European parliaments in person deprives him of the opportunity of clarifying a number of obscurities and of verifying a number of statements, which he gets from the written sources. To sketch a living institution which is in constant change is always difficult, but to sketch it before the full effect of the post-War changes is known, is still more difficult. The war renders the work more difficult in another respect. Certain materials concerning the legislative works of the French and German chambers are never available on this side of the Atlantic, but the War stopped either the publication or the coming to this country of materials, which had formerly been available here.

A word need be said concerning the material from which this study is based. The writer has relied chiefly upon the parliamentary debates, documents and other records of the various countries. The works of such eminent authorities as May, Redlich, Hinds, Pierre, Hatschek^[1] and a host of others on the law of parliament have also proved to be of invaluable help. Lastly references have been constantly drawn from general treatises on government, from biographies of parliamentarians, from articles in periodicals and from miscellaneous other sources.

The organization of the material for presentation has given the writer no little trouble. It is recognized that to treat all the committees of one assembly together is at once easy and logical; but by so doing the comparative feature of the study will be largely, if not entirely, lost. To organize the material by topics irrespective of countries is more difficult and at times confusing, but is the more satisfactory of the two for the reason that it offers the maximum opportunity for the displaying of similarities and differences among the committees of various assemblies. Consequently the writer has preferred the topical arrangement to arrangement by countries.

Another matter which has disturbed the writer is the use of French and German terms which have no exact equivalents in English. It being the writer's effort to use none but English in the text as far as possible, he has taken great latitude in rendering into English terms which, in their original French or German form, are by many writers preferred to an English translation.

The writer avails himself of this opportunity to express his thanks to the numerous persons who have aided him in the preparation of this monograph. Among these he is indebted to Professor Henry A. Yeomans of Harvard University for helpful suggestions, to the staffs of the Harvard University Library, the Boston Public Library,

[1] Sir T. Erskine May, A Treatise on the Law; Powers, Proceedings and Usage of Parliament; Joseph Redlich, The Procedure of the House of Commons; Julius Hatschek, Das Parlamentsrecht des Deutschen Reichs.

and the Library of Congress, particularly to Mr. Walter B. Briggs of the Harvard Library, for ready aid and unfailing courtesy, and to the Hon. Frederick W. Dallinger, Representative from Massachusetts, and Hon. Oscar W. Underwood, Senator from Alabama, for valuable information concerning Congressional committees. He owes a special debt of gratitude to Professor Arthur N. Holcombe, also of Harvard University, under whose supervision this study has been undertaken.

T. S Chien
Cambridge, Massachusetts,
August 14, 1923

TABLE OF CONTENTS

I | SUMMARY

VII | PREFACE

PART I INTRODUCTION

3 | CHAPTER I THE ORIGIN AND DEVELOPMENT OF COMMITTEES

In England / 3

In the United States / 10

On the Continent / 14

20 | CHAPTER II PRESENT-DAY COMMITTEE SYSTEMS

Definition of the Parliamentary Committee / 20

Standing and Select Committees / 21

Other Committees / 25

Number of Committees / 27

Duration of Committees / 32

Types of Committee Systems / 34

PART II COMMITTEES NOT PROPERLY SO-CALLED

41 | CHAPTER III COMMITTEES OF THE WHOLE HOUSE

Prevalence / 41

Kinds of Committees and their Jurisdiction / 43

Constitution and Procedure / 44

Importance and Criticism / 53

56 | CHAPTER IV THE STANDING COMMITTEE OF THE HOUSE OF COMMONS

Development of the Standing Committee / 56

Constitution and Procedure / 67

Competence and Accomplishment / 83

Merits and Demerits / 93

The Standing Committee in the House of Lords / 97

99 | CHAPTER V SECTIONS

In France / 99

In Germany / 103

Elsewhere / 104

PART III THE CONSTITUTION AND PROCEDURE OF COMMITTEES

109 | CHAPTER VI THE MAKE-UP OF COMMITTEES

Size / 109

Nomination of Committee Members / 114

Election by the Assembly / 114

Appointment by the Presiding Officer of the Assembly / 117

Election by the sections / 119

Nomination by a Committee of Selection / 121

Nomination through Party Organs / 122

In the French Chambers / 122

In the Reichstag / 125

In Congress / 126

Methods of Nomination / 131

In the House of Commons / 131

In Congress / 132