
Parliamentary Committees in New Zealand: A House Continuously Reforming Itself?

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I think that most New Zealand MPs would see the select committee system as the shining light of their parliamentary system as a whole. That, at least in part, is because it has been so well developed for so long in New Zealand. It is many years now since all non-financial legislation went to a select committee, nearly always for a full round of public submissions and hearing on those submissions.

Obviously it is rare for total policy reversal to occur. But it would not be fair to suggest that the power of the select committees is limited to minor matters or that it is essentially negative. It is normally constructive and often significant. Indeed, it would be true to say that most New Zealand parliamentarians bemoan the extent to which this part of the job is largely ignored by the media and is unknown to the public¹.

The story of the select committee system of the New Zealand House of Representatives is a remarkable one, for it is one of continuous reform. Why and how did the changes occur, and what are the characteristics of the present system? The argument of this paper is that, although recently the House has had reform imposed on it by having to anticipate and respond to a changed electoral system, to a very considerable extent the New Zealand system of select committees is the product of internally-generated initiatives. The result is an established and influential albeit flawed committee system.

¹ Michael Cullen, MP, 1998, pp. 53-54

The question of why the New Zealand Parliament has acquired an established committee system is a particularly interesting one given that, from the beginning of the modern party system until 1993, Parliament was dominated by the executive.² In general it is in the interests of governments to control Parliaments and not to permit the development of internal organisations that challenge executive hegemony. Parliamentary governments, where Cabinets are drawn from the legislatures, are particularly prone to executive dominance; and parliamentary governments elected by first past the post (FPP) electoral systems have the best opportunities to do so. Nevertheless, a major characteristic of the history of New Zealand's parliamentary committee system has been the growing assertiveness in monitoring and challenging the actions of the executive.

The committees have gradually separated themselves from Government. This tendency really began with the creation of the Public Expenditure Committee (see below) and was accelerated by the 1985 stipulation that ministers no longer sit on the committees and, further, that multi-functional subject committees be created. The separation from the executive has been more noticeable since Parliament was elected by MMP, especially when there have been minority Governments. Also the establishment of committees with three functions has resulted in each function strengthening the other two. Although the inquiry role took a while before it was effectively exercised (partly because of legislative overload), the range of parliamentary parties elected since 1996 has led to increased competition for media attention and hence a growing willingness to conduct high-profile inquiries. In the 1990-93 parliamentary term an average of 6 inquiries per year reported back to the House. In 1996-99, this figure went up to ten. An example was an inquiry into the Inland Revenue Department by the Finance and Expenditure Committee, tabled in October 1999, that made extensive recommendations concerning matters such as taxpayers' rights and responsibilities, the penalties regime, systems auditing and debt issues. It recommended legislative changes and a Taxpayer's Charter Finance and Expenditure Committee, 1999.³

In general, committees have been increasingly willing to criticise Government policy and operations. In March 1999, for example, the Government Administration Committee went so far as criticising the Prime Minister's (then Jenny Shipley) decision to switch from weekly to fortnightly cabinet meetings. This committee had an opposition majority but was chaired by a National MP, a former minister.

Committees have also played an increasingly influential role in the legislative process. Furthermore, the introduction of MMP has led to the development of a wider agenda in the committees, with more policy perspectives coming through in the questioning and discussing and since, 1985, the committee system has become steadily more open to media coverage and public participation.

On the debit side, as might be predicted from New Zealand's adversarial and majoritarian parliamentary history, the committee system has less successful features.

² For a more theoretical explanation see McLeay, 2000.

³ The Committee was chaired by the sole United MP, Peter Dunne. As well as the chair, there were four National (minority government) MPs, 1 ACT MP, 3 Labour MPs, 2 NZ First MPs and 1 Alliance MP. In other words the committee was evenly divided between Government supporters and Opposition MPs. See <http://www.gp.co.nz/w00c/I-papers/ird-iSnquiry.html> (15 June 2000).

The small size of the NZ Parliament - at present a mere 120 MPs but even smaller until 1996 - led to multiple committee membership and too much substitutions.⁴ The 1985 reforms, and the larger, post-1996 House, have helped reduce the scale of the problem but small size remains an obstacle in the way of MP specialisation. There has also been a continuing struggle to align the very different functions of the subject committees (as shown by the successive changes and, also, by the workloads of some committees). Another complicating factor has been the rapid pace of change in the state and public sectors. This has affected the capacity of the committees to scrutinise agency activities effectively. And although committees now have more access to independent expert advice than they did formerly, they are still overly dependent on information from the public sector. These factors taken together mean that financial scrutiny in particular is not always as full and informed as it might be.

The political balance between Government and legislature is of course crucial. The extent to which committees can challenge the executive depends both on political will and numbers, and the dominance of chairs held by Government MPs (even though since 1995 they have not had casting votes) has not helped committee independence. When there is a minority Government, potentially at least bringing a more unstable political executive, then committees have more scope and incentives to exercise muscle. The reverse is the case where there is a majority Government in power.

Overall, however, New Zealand has developed an open, sophisticated and adaptable legislative committee system, one that has been developing a more consensual style of operation than is exhibited in the House itself. The strength of the system is unusual for a House derived from the Westminster model. There are certainly some tensions and problems - between Government and Parliament, over inadequate resources, and over the distribution of chairs - but the overall prognosis is for exciting future development.

There have been two major rounds of reform of the New Zealand parliamentary committee system: during the 1984-1990 Labour government; and during the review of the Standing Orders of the New Zealand House of Representation [SO] in the transition to the multi-party Parliament that was the consequence of electoral system change. The House itself took the initiative to make changes in the mid-1980s. In contrast, the more recent reform round was a response to the externally-imposed electoral system change. Both before 1984 and since 1996, however, incremental reforms have been made, some of them with significant impact on committee processes and power. As occurs with almost all reforms of political institutions, each round of reforms, including the major ones, built on past House rules and conventions. Thus, despite the two major sets of reforms there have been notable continuities in the committee system. And despite the incrementalist nature of the changes, the cumulative impact has been radical. The next sections of this paper outline and discuss the most significant committee reforms.

⁴ Voters chose a 99-member Parliament overwhelmingly in the 1999 Referendum on the size of Parliament. Any reduction would seriously reduce the effectiveness of the select committees. See especially, Shaw 1999, pp. 71-4. For a discussion on public attitudes towards Parliament in New Zealand, see Ganley (2000). Under FPP, the House had gradually expanded in size according to population increase. The Royal Commission on the Electoral System (1986) recommended a Parliament of 120 but felt that MMP would also work with 100. After some debate about this in the House and amongst members of the public, the Electoral Act 1993 stipulated a Parliament of 120 (although a larger number is possible, if there is an 'overhang').

The Development of the Committee System before 1985

New Zealand has used parliamentary committee since the establishment of the Parliament in 1852⁵.⁶ The system was revised in 1962 when there were some changes to the names and the allocation of tasks of several committees.⁷ A more substantial and significant change that year was the reform of the Public Accounts Committee which, “despite its name, had focussed exclusively on the Estimates”⁸. The new, Public Expenditure Committee played a key role in the subsequent development of the entire committee system in that its activities set a broad template for subsequent committee reform.

*The Public Expenditure Committee rapidly established a strong reputation for itself, principally because it enjoyed powers of investigation not granted to other committees and because it attracted able and ambitious members. It was the only committee able to set up its own inquiries (without reference from the House) had subcommittees chaired by opposition members, and enjoyed the support of staff from the Legislative department (now the Office of the Clerk) as well as the Audit Office. Public Expenditure maintained a watching brief over the departmental estimates and conducted numerous, often highly political, investigations into public service efficiency and economy.*⁹

The committee rapidly gained considerable prestige, and it achieved an “essentially bipartisan approach during its post-expenditure investigations”.¹⁰

The primary weakness of the committee system at that time, at least insofar as the legislative process was concerned, was that bills were not routinely referred to committees. Whether or not they went to a committee depended on the whim of the Government of the day, although most bills introducing new legislation were in fact referred to committees. All the committees were chaired by Government backbenchers, and, also, ministers sat on them, thus doubly ensuring that Government policies were implemented. The distinction between legislature and executive was blurred; and scrutiny capacity was weak. Except for Public Expenditure, committees did not have the power to conduct inquiries unless instructed to do so by Parliament (in effect the Government). Although committees carried out some notable investigations, more frequently ad hoc committees were established for this purpose.¹¹ Nevertheless, the committees had the power to summon members of the public service and to subpoena witnesses. Also, they could hear public submissions,

⁵ Jackson, 1987, pp. 116-7

⁶ The New Zealand House of Representatives calls all its committees (apart from the Committee of the Whole House) “select committees”.

⁷ See G. Palmer (1979, p. 70) for a list of the 1978 Committees.

⁸ Skene, 1990, p. 4

⁹ Skene, 1990, p. 5

¹⁰ McRobie, 1978, p. 118

¹¹ see Mitchell, 1966, pp. 75-6

although “participation by interest groups is by invitation only”¹². Logeman reported that in 1966-67, for example,

*[F]orty submissions were heard on the Water and Soil Conservation Bill, and in 1971, 106 submissions were tabled for hearing on the Race Relations Bill. Although in most cases the government will have consulted with the major pressure groups prior to the drafting of the bill, further submissions and committee scrutiny will almost always result in amendments to the bill being recommended in the committee’s report. In 1970 only eight bills out of a total of 133 were reported back to the House without recommended amendments attached. Three bills carried the recommendation that they not be allowed to proceed.*¹³

Most of these bills had however been referred to the Statutes Revision and Local Bills committees.¹⁴ Many committees were scarcely used.

In 1979, there was a significant change when bills were, after the first reading in the House, referred to the appropriate committee, with some exceptions for money and urgent bills. There were up to twenty select committees at this time. Given the small size of the Parliament, informed participation by MPs on committee work was limited because of multiple committee membership and frequent substitution. This meant that there was little opportunity for MPs to specialise in particular policy areas, although the membership of the prestigious Public Expenditure Committee was to some extent an exception to this generalisation. Statutes Revision and Foreign Affairs were also respected committees

As can be seen from the very brief history outlined above, by the time Labour took office in mid-1984 certain expectations about the possible capabilities of the select committees had already been established and there were precedents in existence on which reform could be built.¹⁵ Nevertheless, New Zealand’s 1985 changes were to constitute a radical leap forward in the development of the Parliament, if not a change in direction.

¹² Logeman, 1975, p. 370

¹³ Logeman, 1975, pp. 368-9

¹⁴ Logeman, 1975, p. 369

¹⁵ The Labour Party had expressed its intention to improve the scrutiny function of the committees during the 1960s and 1970s (Smith, 1978, p. 133), and for many years there had been interest among some National MPs in improving the workings of Parliament.

The 1985 Committee System

**Table 1: The Permanent Select Committees of the New Zealand Parliament
(Subject Committees only)**

1985-1997	1997-1999	1999-
Commerce & Marketing Communications & Road Safety Education & Science Finance & Expenditure Foreign Affairs & Defence Government Administration Internal Affairs & Local Government Justice & Law Reform Labour] Maori Affairs Planning & Development Primary Production Social Services	Commerce Education & Science Finance & Expenditure Foreign Affairs, Defence & Trade Government Administration Health Internal Affairs & Local Government Justice & Law Reform Maori Affairs Primary Production Social Services Transport & Environment	Commerce Education & Science Finance & Expenditure Foreign Affairs. Defence & Trade Government Administration Health Justice and Electoral* Law and Order Local Government & Environment Maori Affairs Primary Production Social Services Transport & Industrial Relations

* Previously there had been an ad hoc Electoral Law Committee whose primary task had been to review the administration of the previous general election.

The new parliamentary committees in New Zealand created in 1985 gained powers that were potentially very substantial.¹⁶ Committees were now given three significant roles: legislative, inquiry and scrutiny. Most legislation was to go through the committee process; the committees were specialised bodies that tracked (broadly) the functions of government (see Table 1); anyone could make a submission to a committee; and hearings conducted heard in public.¹⁷ The reforms constituted major steps towards institutionalising the committee system through increasing the potential for membership specialisation. The committees were small, had investigative powers, could shadow government agencies and possessed “agenda-setting and evidence-taking powers”.¹⁸ On the other hand, as had always been the case, there was scant expert advice for the committees, beyond that provided by the public service (whose constitutional role is, of course, to serve the Minister, not Parliament). Table 2 summarises the post-1984 committee system.

¹⁶ see McGee, 1994; Mitchell, 1993; Palmer, 1897, pp. 132-8; Skene, 1987, pp. 72-87; and Skene, 1990

¹⁷ Jackson, 1987, pp. 113-132; and see the Appendix

¹⁸ Norton, 1998

The 1985 reforms did not substantially alter the power relationship between executive and legislature, for the winning party held the majority of seats in Parliament, awarded itself the majority of seats on the committees, and also gave itself all the committee chairs except for Regulations Review (chaired by an Opposition MP after 1985). Thus the majoritarian impulses of the two-party Parliament fostered by the FPP electoral system limited the capacity for Parliament to challenge the executive. Legislation was not overturned in committees, although significant amendments were made. Furthermore, the new committees experienced some significant operating difficulties; in particular, their work was dominated by their legislative function.¹⁹ Nevertheless, between their first year in operation and the first year of the 1987-90 Parliament, there was a substantial increase in the hours of evidence heard by the committees and the number of reports tabled in the House²⁰. Legislation automatically went to the committees for their consideration. Skene observed that “Committees routinely get involved in major political debates and make fundamental changes to legislation”^{21, 22}. In short, the reformed system laid the foundations for a more assertive and challenging Parliament than might have been anticipated in a Westminster, majoritarian legislature.

Table 2: The Powers and Functions of the Committee Systems, 1985-1995

<p>Committee structure and powers</p> <p>13 subject committees plus ad hoc committees; memberships of five and quorums of three</p> <p>Combination of legislative, inquiry and scrutiny functions</p> <p>Continued to have the power to send for persons, papers and records</p> <p>Abstention votes not recorded</p> <p>Ministers no longer committee members</p> <p>Chairperson had casting vote (as had always been the case)</p> <p>Appropriation rule continued preventing MP from moving any expenditure proposal, unless government agrees</p> <p>No role in international treaties</p>
<p>Committees and the legislative process</p> <p>Debate in House followed introduction of bill</p> <p>No limit on committee time to consider bills</p> <p>After consideration, bills reported to House with recommendations for change</p> <p>2nd reading debate followed by a stage where the committee of the whole House considers the bill clause by clause. After the 3rd reading debate the bill is enacted.</p>

¹⁹ Skene 1990, p. 13

²⁰ Skene, 1990, p. 17

²¹ Skene, 1990, p. 18

²² Skene argued that to some extent this was also a function of the other extensive changes introduced by the 1984-1990 Labour Government and the changed attitudes that those reforms illustrated (pp. 18-19).

The explanations for the radical nature of the 1985 changes to the committee system are complex. I have already argued that the incremental development of the committees before 1985 laid the foundations on which expectations about what committees could achieve were based. Furthermore, the 1985 changes were not a radical departure from parliamentary history, as were the House of Commons 1979 reforms. Skene wrote:

*The nature and size of committees established here owed more to previous systems and experience in this country than it did to the Westminster interest in subject committees. Our structure is the product of a long evolutionary process, beginning in the nineteenth century, not a copy of a contemporary British model*²³.

Other factors also help explain the 1985 changes, however. The Labour Party had fought the 1981 and 1984 election campaigns on an “open government” policy, a platform of constitutional and parliamentary reforms.²⁴ Geoffrey Palmer, a lawyer and, by 1984, deputy leader of the Labour Party, had been particularly instrumental in encouraging and developing these policies. Once in Government he had the opportunity to become a “constitutional entrepreneur”²⁵ changing Parliament’s operations which he had criticised for many years²⁶. Other individuals also had encouraged reform, including political scientists and staff in the Office of the Clerk of the House, especially David McGee, Clerk of the House. Interestingly, given the different institutional histories of the Westminster and Wellington Parliaments, a further key influence had been the construction of the new committees in the House of Commons in 1979, especially its departmentally focused select committees.²⁷ (In the Commons legislation continued to be dealt with by standing committees.) These developments had been closely examined by NZ MPs. The clue to a further reason for the 1985 reforms perhaps lies in the worlds of a later SO Committee Review which, in 1995, recommended the changes to anticipate the new requirements of MMP:

The present committee system structure was adopted in 1985 and had as its rationale the strengthening of the accountability of the Government to Parliament. This was seen as highly desirable given the growth in the range and complexity of government activity and the demand for efficiency, economy and effectiveness in the use of public resources.

There was a strong case put for more systematic, comprehensive scrutiny of government activity. It was felt that departments and

²³ Skene 1990, p.4

²⁴ These included the commitment to establish a Royal Commission on electoral reform. Labour had won more votes than did National in both 1978 and 1981, but won fewer seats in Parliament.

²⁵ McLeay, 1999a

²⁶ Palmer, 1979, 1987; and Skene, 1987

²⁷ Skene reported that parliamentary staff had tried to “to convince the Muldoon government at the value of the British model when the standing orders were reviewed in 1979. The attempt failed” (1990, p. 4). Other changes were agreed to, as explained above.

*other government bodies should be subject to a more uniform incidence of select committee investigations*²⁸.

In other words, the drive for increased governmental accountability that was a feature of the New Zealand state and public sector reforms, a drive that was partly a response to public management fashions and partly a reaction to the dominance of Robert Muldoon's prime ministership, also affected parliamentary reform.

The 1985 reforms - because they were widely regarded as being successful even if they did not fulfil all the expectations of their creators - laid down the pathway for the next major review of the committee system that the adoption of MMP occasioned.

Preparing for MMP

In 1993 New Zealanders voted to discard the simple plurality, single-member constituency electoral system in favour of a Mixed Member Proportional one. All the MPs and parties recognised that almost certainly the two parties that had overwhelmingly dominated Parliament and Government since 1935 would have to share their power with minor parties. In expectation of the reconfigured Parliament after the first MMP election at the end of 1996, the MPs reviewed SO, travelling to European countries to seek ideas and learn from the experiences of other proportionally elected legislatures.

The shape of the new system has been discussed elsewhere²⁹ and a summary of the changes is presented in Table 3. In brief, the new system again built on the past, with its structure of multi-purpose subject committees with substantial powers, but this time it built in allowances for the predicted multi-party Parliament. Minority reports were allowed, for example, and the chairperson lost his/her casting vote (to recognise proportionality and the shifting balance of power). New natural justice procedures were also introduced³⁰

The eight-member committees were to reflect the party shares in the House. It is worthwhile discussing how proportionality affected the committee system in practice. In 1997 committee places were indeed distributed in proportion to the parties strength in the House. Because the National/NZ First Government held a mere 61 out of 120 seats between them, and because ministers are excluded from the committees, the Government ended up having a majority on only one of the committees (Foreign Affairs, Defence and Trade), with half the seats in the rest. When the ACT MPs, who supported the Government on confidence votes, were counted with the Government, then the Coalition had a majority on eight further committees. This left it without a majority in Internal Affairs and Local Government, Maori Affairs, Regulations Review, and Transport and Environment. This situation changed again after the break up of the Coalition in August 1998 when Government control was further diminished. After the 1999 election and the formation of the minority Coalition Government between Labour and the Alliance with its total of 59 seats, committee places were

²⁸ SO Committee, 1995, p. 31

²⁹ see Boston, McLeay, Levine and Roberts, 1996

³⁰ Wilson, 1998.

again distributed according to the strengths of the parties. This time the Government had a majority on all but two committees.

Table 3: The Powers and Functions of the Committee System, 1995-1996

Committee structure and powers

12 subject committees plus ad hoc committees; memberships of 8 (app. By House); quorums of 4

Ministers can brief committees, hear evidence, and answer for policy, but do not have voting powers

Retain power to send for persons, papers and records

Committee reports more significant and may give differing (or “minority”) views

Government to respond to committee recommendations (excluding bills and some other reports) within 90 days after report is presented.

Greater access to independent advice

Abstention votes recorded

Chairperson has no casting vote

Financial veto procedure: MPs can propose expenditure or taxation but Government can veto proposal if it thinks it will have a more than minor impact on a range of fiscal aggregates.

Introduction of a set of natural justice procedures

No role in international treaties

Committee and the legislative process

No House debate following introduction of bills

Main debate at 2nd reading, after which bills are referred to committees

Limit of 6 months for consideration of bills

Committees can now divide bills

Debate on consideration of reports from committees by committee of whole House.

Consider bills clause and bills enacted after 3rd reading

There was no requirement in the new SOs that the committee chairs be distributed proportionately amongst the parties (as occurs in some other proportionally elected legislatures). In 1997, the National/New Zealand First Government refused to allow chairs to be distributed proportionally,³¹ a decision that caused ructions in the House and was to rebound on the Government parties when they found themselves in opposition after the 1999 general election. In 1997 the Opposition argued that the spirit of MMP was to share the chairs, even though this was not specified in the revised SOs. Oddly enough, the Coalition Government’s decision actually reversed a trend in the opposite direction, for in 1993, the National Government, with its narrow majority, had permitted the MP for Western Maori, a Labour MP, to chair the Maori Affairs Committee. In 1997, however, the Prime Minister, Jim Bolger, was faced

³¹ Formally the chairs are elected by the members of each committee. In 1997 ACT supported the Government nominees.

with resentful National MPs who had expected to win places in Cabinet which went instead to members of the junior coalition party and thus needed every patronage position he could muster in order to retain their loyalty. National took ten of the thirteen subject committee chairs, NZ First chaired Justice and Law Reform and, as a reward for its vote for supporting National's nomination for Speaker and for its legislative support, ACT chaired the Foreign Affairs, Defence and Trade Committee. Labour chaired the Regulations Review Committee but this was not a sop to the new MMP environment as an Opposition MP had done so since the 1985 reforms.

Despite its criticisms of the behaviour of the National/New Zealand First government, after the 1999 election that Labour/Alliance Coalition Government also announced that it would take the committee chairs. Labour took all bar Education and Science, which was taken by the Alliance. Following tradition, Regulation Review went to National. The Greens took the Local Government and Environment committee chair in return for their commitment to support the Labour/Alliance Government. The Greens voted with the Government on the appointment of the chairs "even though the party wanted them shared out proportionally among all parties". This press report continued,:

As a sop to the Greens, Labour will allow some deputy chairs to be taken by Opposition MPs. Rod Donald said 'it was a small positive step, but he thought it would disappoint the public.'

Helen Clark, the new Prime Minister, defended the government's stance, saying that National and New Zealand First had set the precedent in 1997. Clark commented,

There is a balance here in that, even including the Green, the Government only has a majority on seven committee³².

Copying the Netherlands, Denmark, Norway and Germany, there was to be a new Business Committee to organise House processes. The SO Committee perceived the main tasks of the Business Committee as being:

- to determine the order of business to be transacted and the time to be spent on it in the coming week's sittings;
- to recommend to the House a programme of sittings for each calendar year;
- to operate as a committee of selection in respect of recommending the personnel to serve on select committees; and
- other duties as the House decides from time to time³³.

The Business Committee is convened and chaired by the Speaker. All parties with at least six members are entitled to a representative on the committee and parties with fewer than six can choose a member to represent them on the committee. The decision making process of the Business Committee was envisaged as being consensual, with the committee aiming for unanimity where possible, or near-unanimity if the dissenting member represented a party of six members or fewer.

³² Edwards, 1999

³³ SO Committee Report, 1995, pp. 20-1

Thus the voices of minority groupings would be heard without permitting just one of those voices to paralyse proceedings.

There were three particularly surprising aspects to the new committee rules, one discussed above relating to the omission in SO concerning the allocation of chair positions, one involving committees (and Parliament) receiving a new power, and one that had the potential to make the committees less influential in the legislative process.

Parliament could now make financial amendments, although what was given with one hand was, on the other, partially taken away by the Government's financial veto over more than minor changes. The surprising reduction of influence was the decision to refer bills to committees after the second reading, the one that outlined the major principles, rather than after the first. (The first reading was no longer an introduction to the bill but merely a tabling of it with a debate on whether it should have a second reading.) According to the SO Committee, the intention of this change was that there should be a "a debate on the principles of the bill before it goes to a committee to give members of the committee an understanding of the mind of the House on the bill". If the bill did not proceed, then neither the Committee nor the public would have wasted time on it (1995, p. 540). In fact, this procedural change appeared to downgrade the status of the committees and reduce the potential for them to recommend amendments.

Tinkering with the MMP Committee System

After experiencing a year of the new SOs,³⁴ the Committee recommended that a few minor changes be made and that a further review take place after the rules had been in practice in an MMP Parliament. One change was that in future the Business Committee (rather than the House) would make permanent replacements in the memberships of select committees (temporary replacements being made by leaders or whips).

³⁴ The new SOs had been adopted by Parliament in December 1995 and brought into force on 20 February 1996, after the summer recess (SO Committee, 1996, p. 3). The first MMP election was held on 12 October 1996.

Table 4: The Powers and Functions of the Committee System: the Post-1996 Changes**Committee structure and powers**

Committees no longer to have automatic power to send for persons, papers and records (1999 Report)

Business Committee to assign MPs to select committees (1999 Report)

Procedures for parliamentary scrutiny of treaties adopted. A treaty, with a national interest analysis, presented to Parliament by Government and referred to the Foreign Affairs, Defence and Trade Committee. The Committee may examine a treaty referred to it itself, or it may refer the task to any other select committee. A select committee reports back to the House on any treaty referred to it (1999 Report).

Committees and the legislative process

introduction of bills separated from 1st readings

bills referred to select committees before, rather than after, the 2nd reading

Further changes were made after recommendations in the SO Report of 1999 including the provision that henceforth all permanent assignments of MPs to committees to be made by the Business Committee rather than the House. The names and tasks of several of the subject committees were changed³⁵. Again there was a surprising recommendation: committees were to surrender a very significant power. This was their authority (delegated from Parliament to committee chairs) to summon persons, papers and records³⁶. The only time in living memory that this power had been exercised had been in June 1996 (by the Justice and Law Reform Committee conducting an inquiry). The SO Committee argued that the power to order someone to attend a committee, be examined by it, and produce documents for it was a “serious infringement of that person’s civil liberties” and might be challenged under the NZ Bill of Rights Act 1990³⁷. The Committee argued that select committees should not have this automatic right. However, under certain circumstances the Speaker could issue a summons on behalf of the select committee.

Another significant change recommended and implemented in 1999, this time a reversal of the decision in the 1995 SO review, was to change yet again the timing of the referral of bills to committees. They were now to be referred after the first reading. The Report noted that, in practice, Government bills are almost never defeated at the first reading - plainly MMP had made no difference in this regard - and that:

Select committees are not, either in theory or in practice, confined to making drafting amendments to bills. Although the amendments that they recommend must be relevant to the subject-matter of the bill they can be of fundamental importance and alter its shape considerably. If there is one point at which the House should take an

³⁵ see Table 1 and Appendix 1

³⁶ SO Committee, 1999, p. 16

³⁷ 1999, p. 16

*‘in principle’ decision on a bill it is after the select committee had considered the bill and with the benefit of that consideration*³⁸.

In the case of Members’ bills,³⁹ there is potentially a higher likelihood that bills are defeated at the first reading and, in fact, most MPs (and the Government on these bills) often decide their response after public hearings at the committee stage⁴⁰.

A final important and especially symbolic change, was to involve Parliament in the process of implementing international treaties, an issue that had been on the parliament agenda for some time and had been the subject of reports by the Clerk of the House⁴¹ and by the Foreign Affairs, Defence and Trade Committee (1997). A former Labour Party Leader and Prime Minister, Mike Moore, had also taken an interest in this issue. All treaties “subject to ratification, accession, acceptance or approval” would be tabled in Parliament and then referred to the Foreign Affairs, Defence and Trade Committee for Inquiry into, and report back, to the House. Then the Government could act. (This was put into practice initially for a twelve-month trial period.)

Thus the SOs continued to evolve after the introduction of MMP: the historic pattern of incremental development of the system of select committees had not changed. The concluding section of this paper presents some possible explanations of why New Zealand had developed its sophisticated select committee system.

An Evolved Committee System: How it happened?

First, since 1950 the unicameral and comparatively small New Zealand Parliament has had to struggle to both supply a cabinet and to perform the full range of legislative tasks. Unfortunately, it is very difficult to assess, with any degree of precision, the effects of the particular shape of the New Zealand Parliament on internal reform. However, political scientists, House staffers and some MPs have been very conscious that the absence of another chamber puts the onus on the House of Representatives to perform the tasks of legislative review and amendment. Committees are the obvious bodies to perform the tasks. The fact that the Parliament was small also placed constraints on what could be achieved in any reform of a committee system. A scarcity of human resources perhaps led to the construction of multi-functional committees that could build up their powers accordingly.

A further constitutional characteristic might also have been significant: Parliament’s triennial term might well have encouraged a spirit of urgency about parliamentary reform amongst incoming MPs, much as it has done to recent Governments anxious to implement their own policy reforms. Furthermore, the short parliamentary term leaves little time to build resistance to proposed changes to House rules.

Second, the New Zealand Parliament, like most others has become increasingly professionalised, especially since the 1960s⁴². Parliamentarians have become full-

³⁸ SO Committee, 1999, p. 23

³⁹ ‘Private Members’ Bills were renamed ‘Members Bills’ in the 1995 SOs revisions.

⁴⁰ SO Committee, 1999, p. 23

⁴¹ 1996, pp. 25-35

⁴² McLeay, 1999b

time politicians for whom politics is a career, a profession. Because of this, they are interested in how their environment works and, also, how they can effect change. To do this, they need to be in positions that are influential. Of course in a parliamentary system, most MPs want to be ministers: that is their primary goal. But their party might not be in power and, even if it is, not everyone can be a minister. So there is an incentive to change the rules so that more MPs can be influential, both in affecting the legislative process and in scrutinising and monitoring the actions of the executive⁴³. Of course other legislatures also have become professionalised, although not institutionalised in the sense of developing a fully-fledged committee system, so this factor is a prerequisite for change but is not sufficient in itself to explain it.

Third, individuals - with ideas - are important, although they tend to be unsuccessful without supporters and the right environment for change. I have argued elsewhere that normally in periods of constitutional change there are MPs and staffers, and others perhaps outside the institutions, who are “constitutional entrepreneurs”⁴⁴. In New Zealand’s case, during the 1960s there were MPs who felt the lack of an upper house (abolished in 1950) and who argued that the political executive was too powerful and that there needed to be an increased separation of powers (Geoffrey Palmer, for example). Also, there were key, influential staff, such as the Clerk of the House, who were willing to keep reform on the parliamentary agenda.

Fourth, the support needed by constitutional entrepreneurs before they can implement their designs can be found when substantial cohorts of new members enter Parliament. New MPs frequently challenge the existing order of things, especially seniority systems and the lack of opportunity to affect policies⁴⁵. Small groups entering Parliaments, on the other hand, lack the numbers to effect change. Note that there was indeed an influx of new MPs brought into the House in the 1980s. Of all the MPs elected at that year, 26.3% were newcomers and criticisms of the way Parliament operated could be found on both sides of the House. Furthermore, Labour had an agenda of constitutional and parliamentary reform when it took power in mid-1984.

Fifth, the transfer of ideas about how other Parliaments operate was also very important for New Zealand. There has been ongoing circulation of ideas about process and committees among Westminster parliamentarians. The 1979 House of Commons reforms were useful part exemplars, although primarily for convincing New Zealand MPs that they were already on the right track with their earlier committee reforms: policy borrowing from abroad was not some sort of blind following of the mother Parliament. Learning about other Parliaments was also influential when it came to the changes made to SOs in anticipation of the advent of MMP. This time, MPs went to European Parliaments rather than to Westminster, to learn how multi-party legislatures, with minority and coalition governments, managed their business. But again the reforms built on New Zealand’s past and were modifications of practices observed elsewhere. Moreover, in typical New Zealand fashion, some aspects were left to be developed in practice - the selection of committee chairs, for example.

⁴³ Norton, 1998, McLeay, 2000

⁴⁴ 1999a

⁴⁵ Sinclair 1988; Norton, 1998

Changes in an institution's external environment provide a sixth explanation for the conditions under which reform occurs. The early 1960s and 1970s saw a renewed attention on constitutional issues; the early 1980s was a time when governmental accountability was a major concern; and the election of multi-party chambers encouraged increasing competitiveness amongst parties for space on the policy agenda. MPs try to enhance their profiles in a turbulent environment by changing parliamentary rules⁴⁶. This is not such a significant factor as the others: all contemporary democratically elected legislatures exist in an era of rapid change, many vociferous pressure groups, and a wide range of policy agendas, but not all legislatures adapt and reform. Inertia as well as reform can typify parliamentary organisation and process. But when there are other factors that predispose favourable conditions for reform, then the existence of an external environment can set up an internal environment that is sympathetic to institutional reform.

And the significance of the imposition of proportional representation electoral rules on a reluctant House? This was one external change that impacted directly and unavoidably on Parliament. MPs realised they would have to adapt Parliament's workings. Between 1993 and 1996 they tasted the flavour of multi-party policies. This was an unstable parliamentary term during which MPs left their parties and new parties were formed. The prospect of MMP presented parliamentarians with a constitutional change they knew would impact on their career paths, on Parliament's party composition and on the balance of power and influence in Parliament and between Parliament and Government. MMP thus provided the impetus for the 1995-1996 changes. Nevertheless, as I have shown above, the changes of 1995 and since then built on to an edifice whose foundations and first storey already were in existence. If the past structure had not been quite so developed, the present one might have been less radical in design and execution, even under proportional representation.

In short, when we try to understand how institutions get changed, we need also to understand the importance of precedent: one reform lays the pathway for the next; one set of substantial changes sets up expectations about the potential for future reforms; and so forth. The converse also may be true: unsuccessful change discredits reform; and disused powers (such as the power of committees to send for people, paper and records) may be removed or transferred elsewhere. Tradition, context, practice and circumstances all help explain how New Zealand's system of parliamentary committees has developed.

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⁴⁶ Sinclair, 1998

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**Appendix 1: Subject Select Committees and their Subject Areas
(after the 1999 Review of the Standing Orders).**

Committee	Areas of Jurisdiction
Commerce	business development, commerce, communications, consumer affairs, energy, information, technology, insurance & superannuation.
Education and Science	education, education review, industry training, research, science and technology.
Finance and Expenditure	audit of the Crown's and departmental financial statements, Government finance, revenue and taxation.
Foreign Affairs, Defence and Trade	customs, defence, disarmament and arms control, foreign affairs, immigration and trade.
Government Administration	civil defence, cultural affairs, fitness, sport and leisure, internal affairs, Pacific Island affairs, Prime Minister and Cabinet, racing, services to Parliament, State services, statistics, tourism and youth affairs.
Health	health.
Justice and Electoral	Crown legal and drafting services, electoral, justice and privacy matters.
Law and Order	corrections, courts, police and serious fraud.
Local Government and Environment	conservation, environment and local government.
Maori Affairs	Maori affairs.
Primary Production	agriculture, biosecurity, fisheries, forestry, land and land information.
Social Services	housing, senior citizens, social welfare, veterans' affairs and work and income support.
Transport and Industrial Relations	accident compensation, industrial relations, labour, occupational health and safety, transport and transport safety.

