

**The influence of standing committees  
on the forms of government.  
The case of France, Italy and the UK**

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1. *Introduction: different committee systems in different forms of government*

As Michel Debré used to say with regard to the French Fourth Republic, too many and too powerful committees in parliament can limit substantially the margin of manoeuvre of the executive branch in ruling over the country.<sup>1</sup> The standing committees were so strong as to become incompatible with the parliamentary form of government in existence at that time (1946 to 1958).

The setting up of standing committees for carrying out legislative oversight or scrutiny activities characterizes all parliaments in Europe and, potentially, in the world.<sup>2</sup> By “standing committees” we refer to those parliamentary bodies set up systematically at the beginning of every parliamentary term for the duration of the entire legislature – although their composition can be adjusted and updated to the political reality – and having a specialized jurisdiction, provided in binding rules or practice,<sup>3</sup> on a set of subject-matters as to cover the whole *spectrum* of public policies. In this sense they are deemed to form a “committee system”, based on a mutual relationship among these committees as for their composition and participation in parliamentary procedures. Although the operation of standing committees does not prevent the creation of *ad hoc* or special committees, legislatures usually rely on the former for the greater part of their constitutional tasks.

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<sup>1</sup> See Debré, Michel, “Trois caractéristiques du système parlementaire français”. In, *Revue française de science politique*, volume 5, n° 1, p. 46, 1955.

<sup>2</sup> According to a report published by the Interparliamentary Union, every democratic country has a legislature organized in committees: see Interparliamentary Union, *Tools for parliamentary oversight. A comparative study of 88 national parliaments*. Edited by H. Yamamoto, Genève, p15, 2008.

<sup>3</sup> Usually the boundaries of the jurisdictions of standing committees are fixed in the parliamentary rules of procedures or standing orders. Sometimes they can be set in the Constitution itself or by means of constitutional conventions, or parliamentary practice.

Moreover, standing committees enjoy a privileged relationship with the executive branch. They look closely at the daily activity of the Ministers and departmental secretaries, by subject-matter. Standing committees and Ministries entertain a constant “dialogue” on the relevant bills examined in parliament with regard to amendments tabled and the committee stage in the legislative process.

Given such a close relationship between standing committees and “their” Ministers, since the committees’ jurisdiction corresponds basically to the Ministries’ portfolios, it has been expressly acknowledged that parliaments, by means of their committees, are deemed capable to define the general political directions and priorities of national policies;<sup>4</sup> in other words, standing committees are able to shape the form of government in a certain legal system, that is the relationship between constitutional bodies entitled to set the general political directions in a polity.<sup>5</sup> At least potentially, the relationship between legislatures and executives is so intense within committees that the rules presiding over their functioning can strongly condition the performance of a certain form of government, especially where committees are empowered with veto or (autonomous) decision-making powers. When this happens the Executive is forced to negotiate the measures to be adopted with these parliamentary bodies.

Parliaments have changed substantially over time, particularly in the new century, as a consequence of new phenomena appearing in the

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<sup>4</sup> Volpi, Mauro, *Libertà e autorità. La classificazione delle forme di Stato e delle forme di governo*. Torino: Giappichelli, p109, 2010. “General political directions and priorities” is an expression used in the English version of Art. 15 TEU with reference to the European Council. This is an approximation to the Italian notion of “*indirizzo politico*” or the German notion of “*Richtlinien der Politik*” that do not exist properly either in French or in English. The official English translation of the German Basic Law uses “the general guidelines of policy” in the place of “*Richtlinien der Politik*” (Art. 65 GG). The official translation of the Italian Constitution for “*indirizzo politico (e amministrativo)*” (Art. 95 Const.), instead, as “general policy” seems not completely satisfactory. On the problem of translation in comparative law, see Sacco, Rodolfo, “Lingua e diritto”. In, *Traduzione e diritto – Ars Interpretandi*. Annuario di ermeneutica giuridica. Padova: Cedam, p117 et seqq., 2000.

<sup>5</sup> These constitutional bodies are certainly the Parliament and the Government, on the basis of the presence or the lack of a confidence relationship, and also, according to what the Constitution provides, the electoral body and political parties, whereas the judiciary and Constitutional Courts are in principle excluded from the notion of “form of government”. See Luciani, Massimo, “Governo (forme di)”. In, *Enciclopedia del diritto*, IIIrd revision, *Annali*. Milano: Giuffrè, p538-540, 2009. Under these conditions, there can be parliamentary, semi-presidential and presidential forms of government.

institutional landscape, such as the transfer of significant normative powers from legislatures to executives, the crisis of the parliamentary legislation and of the long standing representative function of political parties and legislatures, globalization and the deepening of processes of regional integration, mediatisation and personalization of politics, as well as the rise of populist movements. By the same token, for example we have witnessed a shift in the balance between the exercise of the legislative and the oversight function in legislatures in favour of the latter.

This paper argues that, in spite of the transformations of parliaments, standing committees, also by way of constitutional, legislative or standing orders' reforms, have accommodated their role accordingly, and are still influential in shaping the form of government.

This relationship, between standing committees and operation of a form of government is presented in three legal systems, France, Italy, and the United Kingdom (UK). These case studies have been selected on the basis of the different nature of their forms of government, semi-presidential in France and parliamentary in the other two countries, although loosely "rationalised" in Italy while (traditionally) very stable and centered on the role of the Prime Minister in the UK.<sup>6</sup> The committee systems in the three parliaments also show rather diverse features in terms of structure and powers assigned to standing committees<sup>7</sup>. While the standing committees of the Italian Parliament have been usually considered very powerful in the legislative process, those of the French National Assembly and of the UK House of Commons are often described as weak when it comes to the exercise of lawmaking power, although for different reasons (the size for the French committees and the lack of permanent committees dealing with

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<sup>6</sup> The notion of "rationalised parliamentarism" was coined by Mirkin-Guetzévitch, Boris, *Les Constitutions de l'Europe nouvelle*. Paris: Delagrave, 1928, aiming to define the parliamentary forms of government whose stability and endurance (and thus the prevention of political crisis) is ensured by legal mechanisms preferably entrenched by the Constitution. Until recently and, in particular, until the *Fixed Term Parliament Act 2011*, the British parliamentary system has shown a low level of "rationalization" as for the presence of written legal rules providing a detailed discipline of the form of government, but, in spite of this, has always performed as a very stable system.

<sup>7</sup> However, the analysis here is limited to the role of standing committees in the lower Chambers, given the peculiar features that identify the British House of Lords and the French Senate with reference to their composition and powers and, in addition, the circumstance that both are excluded from the confidence relationship with the executive.

bills in the UK). By contrast, in relation to scrutiny and oversight powers, the select committees of the UK House of Commons are deemed to be very influential, the Italian standing committees play a marginal role, whereas the committees of the French National Assembly stand halfway. However, in the last few years the transformation of the executive-legislative relationship, achieved by means of a constitutional reform in France and of legislative and standing orders' reforms as well as of changes of the institutional practice in Italy and the UK, has confirmed the centrality of standing committees for the proper functioning of those forms of government. Hence for the case selection, "the most different case logic"<sup>8</sup> has been used, in order to show that, despite the patent differences amongst the three committee systems, all of them are crucial for guaranteeing the equilibrium of the forms of government.

The paper is structured as follows: Section 2 provides an overview of the constituent moment of standing committees in the three legislatures as a turning point for the transformation of parliaments; Section 3 examines the structure and the organisation of the system of standing committees in each country; Section 4 analyses the evolution of the three forms of government in the light of the changes of the powers of the standing committees; finally, Section 5, attempts to draw some conclusions on the basis of the comparison between the three constitutional case-studies.

## *2. Transforming parliaments. The setting up of standing committees in France, Italy and the UK*

The legislature's choice to create a system of standing committees in the twentieth century depended on many factors: for instance, the engagement of the State, and consequently of the executive, in exercising new public functions and in providing social services; the need to control public expenditure more carefully; the growth of the statutes approved; the rise of a more complex and technical legislation. These factors imposed on parliaments more rational arrangements in order to face their new workload. Standing committees fitted perfectly with parliaments in search of a more specialised support to their activity,

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<sup>8</sup> See Hirschl, Ian, "The Question of Case Selection in Comparative Constitutional Law". In, *The American Journal of Comparative Law*, vol. 53, n°1, p125-155, 2005.

dealing with highly complex and technical bills, and for faster decision-making procedures.

Another prominent factor forced (most) parliaments to organise in committees, namely the creation of parliamentary groups as stable structures and points of reference for parliamentary procedures. The weight of groups in committees was proportional to their size in the Chamber. Thus, by sitting in committees political groups were able to control the crucial activities of pre-legislative scrutiny and oversight much better than had occurred in the previous *Bureaux*, whose components were chosen at random, or than the Committee of the Whole House, where parliamentarians (MPs) participated on a voluntary basis. The process of institutionalisation of standing committees, which entails a transformation of the parliament itself, however, has taken place at different moments in the history of the selected legislatures.

Since the period of the Revolution of 1789, the French legal system has always experienced an ambivalent relationship *vis-à-vis* parliamentary committees, in particular the standing committees. Periodically there has been a swing between their refusal, acceptance or even enhancement,<sup>9</sup> as a consequence of constitutional developments. Every French Constitution elaborated its own model of committees or forbade them. For example, while the Constituent Assembly of 1789 set up around thirty standing committees, specialised by subject-matter, the Convention of 1792 conferred on standing committees the power to rule as if they were governmental authorities enabled to take decisions; and then, from 1795 until 1848 no standing committees were in operation within the French legislatures.<sup>10</sup> Subsequently, from 1848 to the formation of the French Third Republic, in 1871, parliamentary activities were organised according to the system of the *Bureaux* – temporarily established and composed of MPs chosen by way of drawing – lacking any other organisational principle that could shape the legislature.<sup>11</sup> Only in 1902, by way of an amendment to the existing rules of procedure, did the establishment of standing committees

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<sup>9</sup> See Türk, Pauline, *Les commissions parlementaires permanentes et le renouveau du Parlement sous la V<sup>e</sup> République*. Paris: Dalloz, p35-44, 2005.

<sup>10</sup> See Roques, Xavier & Herin, Jean-Louis, “Les commissions parlementaires”. In, *Administration*, n°120-121, p32 et seqq., 1983.

<sup>11</sup> See Poudra, Jules & Pierre, Eugène, *Traité pratique de droit parlementaire*, Versailles: CERF et fils éditeurs, p970 et seqq., 1878.

become a general principle of parliamentary organisation.<sup>12</sup> And a few years later, on 1<sup>st</sup> July 1910, following the official set up of political groups in the Assembly, the rules of procedure were amended again, so as to ensure that the composition of the standing committees reflected proportionally the size of political groups in the House. With this decision to link standing committees and political groups, which was reproduced later on in many other legislatures in the world, the destiny of these two kinds of parliamentary bodies became irremediably interwoven. Since then, during the French Third and Fourth Republic, standing committees have grown in their prestige and number, building up a committee system able to control all public policies. The strength of standing committees in the presence of highly fragmented ruling coalitions in the executive branch put into question even the endurance of the government in office. Standing committees became so powerful that later the founding fathers of the Fifth Republic, in 1958, deliberately decided to marginalise these parliamentary bodies in the new constitutional architecture, up to the point that they were considered the main “victims” of the attempt to rationalise the French form of government.<sup>13</sup>

By contrast, the British parliamentary tradition, until recently, has not favoured a process of institutionalization of a committee system. For a long time, at least until the end of the Seventies, the will of the British executives to control parliamentary activities undermined the effectiveness of parliamentary committees, which were kept deliberately powerless by prohibiting their establishment as standing committees.

According to the distinction proposed by Norton, between “chamber-oriented” and “committee-oriented” legislatures, the British Parliament fell undoubtedly into the first category<sup>14</sup>. Before the 1979 reform of the Standing Orders, the House was at the heart of parliamentary work and the executive found it relatively easy to supervise its activity instead of being involved in complex negotiations with several committees.

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<sup>12</sup> See the resolution proposed by Antide Boyer, on 1<sup>st</sup> June 1902, « Journal officiel, Documents parlementaires », Chambres, session ordinaire, p2282, 1902.

<sup>13</sup> See Debré, Michel, “Trois caractéristiques du système parlementaire”, cit., p47 and Türk, Pauline, Les commissions parlementaires permanentes et le renouveau du Parlement sous la V<sup>e</sup> République, cit., p29.

<sup>14</sup> See Norton, Philip, “Nascent Institutionalisation: Committees in the British Parliament”. In, Longley, Lawrence D., & Davidson, Roger H., The New Roles of Parliamentary Committees. London: Frank Cass, p. 143 et seqq., 1998.

This did not imply, however, that the British House of Commons remained devoid of a clear internal structure. During the Tudor Kingdom (1485-1603), when the principle of separation of powers was still far from being enforced, the King was used to appointing committees in Parliament, aiming to control the activity of this institution.<sup>15</sup> Nonetheless, the attempt to circumvent such interference by the King with parliamentary autonomy led some MPs to meet in *committees of the whole House*, i.e. committees that met in camera to debate freely and were composed on a voluntary basis, which later became one single committee of the whole House, presided over by a temporary chairman, different from the Speaker of the House, who was deemed to be a “civil servant” of the King<sup>16</sup>. The activity of the committee of the whole House was kept confidential and showed a low level of formalisation compared to the procedure of the House. Since then, and until 1979, the proceedings in the House of Commons have been arranged according to three formats: the House, the Committee of the Whole House, in particular for money bill,<sup>17</sup> and special committees, appointed on an *ad hoc* basis to examine only a certain issue and dissolved immediately after. It is easy for the executive to gain control over special committees, since Ministers and departmental secretaries take part in committee meetings as members, as long as they have been elected as MPs. A few standing committees, called select committees, like the Public Accounts Committee (1861), had been established since the end of the nineteenth century, but they enjoyed limited autonomy from the executive and they did not oversee a large portion of public policies.<sup>18</sup>

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<sup>15</sup> See Keir, David L., *The Constitutional History of Modern Britain. 1485-1937*, II ed.. London: Adam and Charles Black, p151, 1943, and Vila Ramos, Beatriz, *Los sistemas de comisiones parlamentarias*. Madrid: CEPS, p54-55, 1999.

<sup>16</sup> The Committee of the Whole House was firstly summoned in 1606, during the reign of James I. See Campion, Gilbert F., *An Introduction to the procedure of the House of Commons*. London: Macmillan, p27, 1947.

<sup>17</sup> The involvement of the Committee of the Whole House does not imply that the House is bypassed. Rather, such a committee is summoned before a bill is examined in the House and shows a composition that can change item by item, depending on the interest of MPs on the issue at stake.

<sup>18</sup> See Todd, Alpheus, *On Parliamentary Government in England. Its origin, development and practical operation*, vol. I. London: Longmans, Green & co., p26 et seqq., 1867. The executive controlled committee appointments and often refused to transmit to these committees documents and dossiers to be used for their activity. The select committee on agriculture, which did not show enough deference towards the executive and that insisted on the transmission of some documents, was substantially

The increasing awareness about the poor performance of these isolated select committees led to the launch of a process of reform of the House of Commons' internal organisation, under the leader of the House, Richard Crossman,<sup>19</sup> who promoted the experimental setting up of a committee system, based on select committees – i.e. standing committees – covering the jurisdictions of all executive departments. Select committees started to be perceived by backbenchers as tools for enhancing their role in parliament and thus their powers were extended – they could set up subcommittees, appoint advisers, organize missions – and their role was eventually made official by the 1979 reform of the House of Commons' standing orders.<sup>20</sup> Since then the organization of the House of Commons has remained somewhat unchanged, except for the setting up of new select committees – like the select committee on justice established in 2002 – or the enlargement of some of their powers, for example, allowing the hearings of the Prime Minister from 2001 onwards.

In brief, there are around thirty select committees mirroring the jurisdiction of the executive's departments and a Liaison Committee that coordinates their activities, being composed of the chairmen of select committees. However, select committees are not involved in the legislative process (except for pre-legislative scrutiny), their role being limited to the scrutiny and oversight function. The lack of "legislative authority" of these committees has been subject to debate for decades, but an overall reform of the House of Commons' committee system has not yet been proposed.<sup>21</sup>

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inhibited from carrying out its activity: see Turpin, Colin & Tomkins, Adam, *British Government and the Constitution*, 7<sup>th</sup> ed. Cambridge: Cambridge University Press, p613, 2011.

<sup>19</sup> Being the leader of the House of Commons, Richard Crossman was also a member of the Cabinet.

<sup>20</sup> On this reform, see Baines, Priscilla, "History and Rationale of the 1979 Reforms". In, Dewry, Gavin, *The New Select Committees. A Study of the 1979 Reforms*. Oxford: Oxford University Press, p1 et seqq., 1985, and Giddings, Philip, "Select Committees and Parliamentary Scrutiny: Plus Ça Change". In, *Parliamentary Affairs*, volume 47, n°4, p669-686, 1994.

<sup>21</sup> The fact that select committees are *de facto* excluded from participating in the committee stage of the legislative process does not necessarily imply that they are "weak committees": see Benthon, Meghan & Russell, Meg, "Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons". In, *Parliamentary Affairs*, p23, May 2012. *Contra* Mattson, Ingvar & Ström, Kaare, "Parliamentary Committees". In, Döring, Herbert, *Parliaments and Majority Rule in Western Europe*. New York: St Martin's Press, p249-306, 1995.

Finally, the setting up of standing committees in the Italian Chamber of Deputies has been deeply influenced by the experience of the French and the British Parliament. Based on the French example of the *Bureaux*, the internal organization of the Italian Chamber of Deputies was basically modeled on such bodies from 1848 to 1920. However, such a model was mixed with other institutional arrangements, given the wide margin of manoeuvre left by the Albertine Statute.<sup>22</sup> In 1868 the Committee of the Whole House was established and periodically set up in the following years.<sup>23</sup> Special committees were occasionally established for the examination of bills, particularly at the beginning of the twentieth century, and even standing committees were created in 1863, although they did not participate in the legislative process.

As in the case of the French legislature, in the Italian Chamber of Deputies the turning point was represented by the creation of political groups in the House, which became the linchpin for the composition of parliamentary bodies. Indeed, after the 1919 electoral reform, which extended the suffrage and opted for the proportional formula for the election of the Chamber (the Senate was appointed by the King), political parties, and in particular mass parties, could not be disregarded in parliamentary organisation, as happened in the tradition of a “parliament of notables”. Following the recognition of political groups in the 1920 rules of procedure of the Chamber, nine standing committees, specializing in different subject-matter related to the government departments and composed proportionally to the size of political groups, were finally set up.

However, the operation of the new committee system was challenged by the authoritarian turn of the Italian form of government in 1922.<sup>24</sup> In a chamber where only the fascist party was admitted, the

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<sup>22</sup> Article 55 of the Albertine Statute of 1848 allows each Chamber to set up internal bodies for carrying out their activities without imposing clear constraints on the nature and composition of these bodies. See M. Mancini, U. Galeotti, *Norme ed usi del Parlamento italiano*, Roma, 1887, p. 212 and, more recently, Gianfrancesco, Eduardo, “Uffici e Commissioni nel diritto parlamentare del periodo statutario”. In, *Amministrazioneincammino.it*, p 5-7, July 2013.

<sup>23</sup> One of the most enthusiastic supporters of the Committee of the Whole House was Francesco Crispi (also a Prime Minister of the Kingdom of Italy), who was very much in favour of the “transplant” of the British model to Italy.

<sup>24</sup> See Orsina, Giovanni, “L’organizzazione politica nelle Camere della proporzionale: 1920-1924”. In, Grassi Orsini, Fabio, & Quagliariello, Gaetano, *Il partito politico dalla grande guerra al fascismo: crisi della rappresentanza e riforma*

provision on the proportional representation of groups within the standing committees could not be applied, and thus these bodies were replaced by the system of *Bureaux* until 1939, when the entire Chamber of Deputies was abolished and substituted by the Chamber of Fasces and Corporations, representing the different branches of trade and industry.<sup>25</sup>

Despite the different origins of the committee systems in Italy, France and the UK, the constitutional developments and the evolution of the form of government to some extent forced the three legislatures to set up standing committees able to control the executive, to adapt their functioning and even to limit their powers, as the case of France during the Fifth Republic shows.

### *3. The position of standing committees in Parliament and the organisation of the committee system<sup>26</sup>*

#### *3.1. The French National Assembly*

##### A. Constitutional acknowledgment

The French Constitution of 1958 has chosen to define as many elements as possible about the structure and the functions of standing committees. On the one hand, such a detailed discipline derives from the will of the founding fathers to put committee activity “under constitutional control”. On the other hand, by means of constitutional provisions, especially those introduced by Constitutional Law no. 2008-724 of 23<sup>rd</sup> July 2008, standing committees are decisively empowered and, being entrenched in the Constitution, committees’ powers have a

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dello stato nell'età dei sistemi politici di massa (1918-1925). Bologna: Il Mulino, p397 et seqq., 1996.

<sup>25</sup> On this Chamber, see Perfetti, Francesco, *La Camera dei fasci e delle corporazioni*. Roma: Bonacci, p196, 1991.

<sup>26</sup> Standing committees are not the only type of committee established in the three Chambers, namely, the French National Assembly, the Italian Chamber of Deputies, and the British House of Commons. For example, bicameral committees, special committees and committees of inquiry do exist in the three case studies, whereas the committee of the whole House is provided only in the House of Commons’ standing orders. However, the analysis in the present contribution is focused only on standing committees because these are the bodies most closely connected to the operation of the executive branch and thus are deemed to be particularly influential on the form of government. See in detail Fasone, Cristina, *Sistemi di commissioni parlamentari e forme di governo*. Padova: Cedam, p209 et seqq., 2012.

considerable expectation of endurance. Interestingly enough, the constitutionalisation of the rules on standing committees implies that, should their violation occur, it can be challenged before the *Conseil constitutionnel*, which can be asked to resolve disputes on the enforcement of parliamentary rules of procedure, even while the legislative process concerned is taking place.

The Constitution (Art. 43) fixes the maximum number of standing committees, that is eight in each Chamber, plus the Committee on European affairs (Art. 88-4 Cost.), which does not participate in the national legislative process.<sup>27</sup> Since 2008 standing committees have been involved in the mandatory examination and scrutiny of every bill prior to its debate in the House (Art. 43 Const.). Although the opportunity to set up a special committee on a bill upon request of the executive, or of the House, has been maintained following the constitutional reform of 2008, the default option for the examination of a bill now consists in relying on standing committees.

Art. 42 Const., as amended in 2008, ensures that during the first reading the bill at stake cannot reach the House before the deadline of six weeks since its proposal has expired. Although for financing bills, social security financing bills and bills concerning a state of emergency such a secured timeframe is not granted, because of the nature of the bills and the need for fast-track procedures, the time reserve at the benefit of standing committees allows for the proper scrutiny of bills.<sup>28</sup>

Since 2008, the French Constitution, for the very first time, also confers upon standing committees a general power to oversee and assess public policies by way of “missions” (Art. 51-2 Cost.); temporary bodies set up within a standing committee or between two or more standing committees. This provision impresses a “revolutionary” change in the role of the National Assembly’s standing committees, given the traditional understanding of the exercise of oversight powers in the French Parliament as a prerogative assigned to the House, but not to committees (see *infra*, section 4.1.).

Following the marginalisation imposed on standing committees by the 1958 Constitution, the constitutional reform of 2008 enhances, at least on paper, the role of these parliamentary bodies in the National Assembly and in the inter-institutional relationship with the executive.

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<sup>27</sup> See Jancic, Davor, “The French Parliament: A European Scrutineer or National Actor?”. In, *European Public Law*, volume 19, n°1, p129-159, 2013.

<sup>28</sup> Other constitutional provisions on standing committees are examined in section 4.1., since they affect the relationship with the executive.

### B. The structure of the committee system

The committee system of the French National Assembly has been rather stable since 1958, and was affected by the setting up of two new standing committees only in 2009, following the constitutional reform.

It is commonly agreed that a direct relationship between the size, the number and the strength of standing committees in parliament does exist: the smaller and more numerous standing committees are, the less the speaker of the House and political groups are likely to coordinate and to dominate standing committee activity.<sup>29</sup> However, under these circumstances, the committee system becomes highly decentralised and fragmented, since each committee acts regardless of the other standing committees. Likewise, the size and the opportunity for a multiple committee membership are definitely significant for an assessment of the shape of a committee system.

In Europe the French National Assembly is the Chamber with the lowest number of standing committees – only eight – compared to the number of MPs, 577 (Art. 24, section 3 Const.). Therefore, on average, a standing committee is composed of 70 MPs. Indeed, Art. 36 of the parliamentary rules fixes the maximum number of committee members at one eighth of the overall number of MPs (72), without setting a minimum threshold. Possibly the National Assembly's committees are among the largest standing committees in Europe and of course, by being only eight, their level of specialization in public policy is modest.

Although MPs are allowed to attend the meeting of other standing committees, the multiple membership in committee is forbidden and this does not favour the exchange of views and interaction between committees. The only exception is represented by the Committee on European Affairs, which is smaller in its size than the other standing committees (around 40 members) and is composed by members of the other standing committees because of its cross-sectional jurisdiction.

Besides the case of the Committee on European Affairs, the rules of procedure do not make explicit any asymmetry in the committee system, although the membership of some committees can be considered as particularly prestigious, because of the power conferred. For

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<sup>29</sup> See Smith, Gordon, *Politics in Western Europe. A comparative analysis*, 3<sup>rd</sup> ed. New York: Holmes & Meier, p167, 1980, and Strøm, Kaare, "Parliamentary Committees in European Democracy". In, Longley, Lawrence D. & Davidson, Roger H., *The New Roles of Parliamentary Committees*. New York: Frank Cass, p30, 1998.

example, the Committee on Laws (*Commission de Lois*), which has a pivotal role in the legislative process by examining the 60-70 per cent of the overall bills assigned to the National Assembly,<sup>30</sup> and the Committee on Finance (*Commission de Finances*), which enjoys a prominent role in the national budgetary procedures as well as in the European semester,<sup>31</sup> are more powerful than others.

### C. The composition of standing committees

In the three legislatures political groups are the points of reference for the appointment of committee members and the principle of proportionality is followed, aiming to mirror in committee the composition of the House.

Once the quotas of seats in standing committees have been allotted to political groups, the groups designate their “candidates” as committee members and then three possible procedural options are in place: the appointment on the part of the speaker of the House, the appointment by a committee of selection, the appointment following the vote of the House.

In the French National Assembly committee members are appointed by the speaker; a choice that allows to speed up the creation of standing committees and to review any proposal made by groups, favouring a balanced decision. The speaker acts as an arbiter in committees’ appointments, but is devoid of a substantial role to orient the decision.

The most important position in a standing committee of this Chamber is that of the chairman, who is elected by the each committee from among its members. The chairman is assisted by a bureau composed of four vice-chairmen and four secretaries (Art. 39 rule).<sup>32</sup> The election of the members of the bureau – chairman included – takes place by simple majority; in particular the political affiliation of the chairmen has been subject to debate. The monopoly of the parliamentary majority over the committee chairmanship has been harshly criticized by the opposition especially in 1973, 1978 and 1981,

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<sup>30</sup> See Camby, Jean-Pierre, & Servent, Pierre, *Le travail parlementaire sous la cinquième République*, 5<sup>th</sup> ed., p70, 2011.

<sup>31</sup> See Bouhadana, Irène, *Les commissions des finances des assemblées parlementaires françaises: origines, évolutions et enjeux*. Paris: LGDJ, 2007.

<sup>32</sup> The conspicuous size of the committees’ bureau in the National Assembly can be explained by the large size of the standing committees. See Avril, Pierre & Gicquel, Jean, *Droit parlementaire*, 4<sup>th</sup> ed. Paris: Montchrestien, p108, 2010.

when the Prime Minister – who, as all the other members of the executive branch, cannot be an MP – proposed to assign the role of committee chairmen proportionally to the size of political groups.<sup>33</sup> The fear of potential obstructionist conduct on the part of committee chairmen from the opposition has led to the refusal of any hypothesis of reform on this point. Thus, since 1980s, the parliamentary majority has always taken up all the committee chairmanships, except for the Committee of Finance whose chairman comes from the opposition bench, according to the rules of procedure.

The office of committee chairman is considered a distinguished position in France, performed by the MPs with the greatest expertise and the richest *cursus honorum*, and showing a strong political accord with the Prime Minister.<sup>34</sup> Moreover, the office of committee chairman seems somewhat inter-changeable with that of Minister, as confirmed by the institutional practice: many committee chairmen then become Ministers and vice versa. In addition the committee chairman is entitled to exercise on his own, or on behalf of the committee, specific prerogatives acknowledged by the *Conseil constitutionnel*.<sup>35</sup> For example, committee chairmen are members *ex officio* of the Conference of Presidents, the body that sets the agenda of the National Assembly together with the Executive and gives directions to parliamentary business.<sup>36</sup>

The rules of the National Assembly also provide the office of rapporteur, who is appointed by the chairman among the committee members to report on a bill or an item under examination by the committee and is usually chosen within the parliamentary majority.<sup>37</sup>

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<sup>33</sup> See Foyer, Jean, “Le président de commission parlementaire”. In, VV. AA., *Mélanges en l’honneur de Pierre Avril*. Paris: Montchrestien, p435 et seqq., 2001.

<sup>34</sup> See Türk, Pauline, *Les commissions parlementaires permanentes*, cit., p237.

<sup>35</sup> See the decision n. 69-37 DC, *Conseil constitutionnel*, 20<sup>th</sup> November 1969. A committee chairman can ask for an increase in the number of committee members (the decision is taken by the House) and can present oral questions on behalf of his committee.

<sup>36</sup> The Conference of Presidents is composed of the speaker, the vice-presidents, the committee chairmen, the president of political groups and the general rapporteur of the Committee on Finance.

<sup>37</sup> The general rapporteur of the Committee on Finance is appointed for the entire parliamentary term among the MPs of the majority. In the National Assembly, in 80 per cent of cases, an MP from the majority is appointed as rapporteur: see Türk, Pauline, *Les commissions parlementaires permanentes*, cit., p285. According to Pierre, Eugène, *Traité de droit politique électoral et parlementaire*. Paris: Librairies-imprimeries réunies, p901, 1919, the rapporteur is by nature an organ of the majority.

### 3.2. *The Italian Chamber of Deputies*

#### A. Constitutional acknowledgment

Compared to the French Constitution, the Italian fundamental charter of 1948 contains less detailed provisions about standing committees, although it confers on them significant prerogatives in the legislative process.

Art. 72, 3<sup>rd</sup> section, Const. recognizes explicitly the option – thus, this is not an obligation – to set up standing committees only for the procedure in which they are allowed to pass laws on their own, which is quite a unique power granted to Italian parliamentary committees in comparative perspective.<sup>38</sup> In other words, the Italian Constitution admits that the committees in the Italian Chamber of Deputies (as well as in the Senate) can pass legislation without the involvement of the House and on its behalf (*sede legislativa* or *deliberante*). The bill is examined, amended and approved by final vote directly in committee. The acknowledgment of such power finds a precedent in the power conferred upon the standing committees of the Chamber of Fasces and Corporations, but this occurred when an undemocratic regime was in place.

However, in the new democratic regime this committee power is framed within a brand new constitutional settlement and limited by clear boundaries. For example, standing committees cannot act as autonomous legislators on constitutional and electoral bills, on bills of legislative delegation, as well as on budget bills (Art. 72, 4<sup>th</sup> section Const.). Moreover, at any time during this kind of procedure either the executive or one tenth of the MPs in the Chamber or one fifth of the committee members can ask for the remittal of the bill to the House.<sup>39</sup>

In this hypothesis the Speaker of the Chamber assigns a bill to a committee only for the examination and amendments (*sede referente*),

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<sup>38</sup> On the basis of the Italian model, a similar power has been recognised in the standing committees of the Spanish Parliament, of the Greek Assembly, and of the Brazilian federal Congress.

<sup>39</sup> See Ciaurro, Gian Franco, “Commissioni parlamentari”. In, *Enciclopedia giuridica*, volume VII. Roma: Istituto delle Enciclopedia italiana, 1988, p. 8, and Traversa, Silvio, “La riserva di legge d’Assemblea”. In, *Studi per il ventesimo anniversario dell’Assemblea costituente*, volume V. Firenze: Vallecchi, p613 et seqq., 1969.

which is the basic option offered by the Constitution (Art. 72, 1<sup>st</sup> section Const.).<sup>40</sup> Afterwards, once the legislative process has started, it is always possible to change the position of a committee, from that of a committee in charge only for the examination of a bill to a committee (the same committee actually) acting as a legislator, and *vice versa*.

As in the French Constitution, following the 2008 amendments, the Italian Constitution also fixed a fundamental guarantee for committees: a bill cannot be debated in the House if it has not been examined beforehand by a committee. Furthermore, such a provision on the compulsory examination of bills in committees is not commonly found elsewhere at constitutional level.<sup>41</sup>

In spite of the fact that the Italian Constitution neither imposes the setting up of standing committees nor lists them, the institutional practice and the rules of procedure of both Chambers have led to the institutionalization of standing committees, whereas special committees have been an exception.<sup>42</sup>

#### B. The structure of the committee system

The number of standing committees in the Italian Chamber of Deputies has not been subjected to significant changes since 1920, and has increased from 11 to 14. After the adoption of the new rules of procedure in 1971,<sup>43</sup> the main reform of the committee system, in 1987, aimed at contrasting the problem of its fragmentation. At that time each standing committee had developed an exclusive and symbiotic relationship with the Ministry competent on the subject-matter without any fruitful interplay with the other standing committees. The reason was self-

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<sup>40</sup> The third option, which is infrequently used, is to assign the bill to a committee for its approval article by article, leaving just the final approval to the House (*sede redigente*).

<sup>41</sup> See Perna, Raffaele, "Le commissioni parlamentari al tempo del maggioritario". In, Lupo, Nicola & Gianfrancesco, Eduardo, *Le regole del diritto parlamentare nella dialettica tra maggioranza e opposizione*. Roma: LUISS University Press, p141-142, 2007, who highlights that in Europe only the Italian, the Finnish, and the French Constitutions provide this obligation.

<sup>42</sup> See Decaro, Carmela, "La struttura delle Camere". In, Martines, Temistocle, Silvestri, Gaetano, Decaro, Carmela, Lippolis, Vincenzo & Moretti, Raffaele, *Diritto parlamentare*. Milano: Giuffrè, p75-153, 2011.

<sup>43</sup> Indeed, both Chambers of the new Parliament elected in 1948 decided to re-adopt the rules of procedure of the Italian Chamber of Deputies in the pre-fascist regime, albeit with adaptations to the new Constitution. The new rules of procedure were adopted only in 1971.

evident: most laws were passed directly by standing committees acting as “legislators”.<sup>44</sup>

Against this status quo, in which every committee played its role alone and completely detached from the other parliamentary activities, the jurisdiction of standing committees has been revised in order to identify consistent and cross-sectional competences with reference to the portfolios allocated within the executive.<sup>45</sup> Moreover, the participation of other standing committees, alongside the one competent on the subject-matter in the legislative process, has been promoted by providing that some of them shall issue (semi-binding) opinions on every bill (see *infra*).

Compared to the standing committees of the French National Assembly, standing committees in the Italian Chamber are smaller in size, from 35 to 45 members each, since 630 MPs are allotted in 14 committees.<sup>46</sup> Likewise, also in the Italian Chamber, MPs – except the speaker – are obliged to participate in committee activities, but they must choose the membership of one committee only (Art. 19, section 3 rules).<sup>47</sup>

Following the reform of the rules of procedure in the 1980s, the committee system of the Italian Chamber of Deputies has become more integrated, more easily manageable, and in most procedures several committees are involved, although with different roles. The previous trend towards sectoralisation of committee activities and an exclusive relationship with “their” Ministry has been hindered. This does not mean, however, that no asymmetry features in the committee system. The Committee on EU Policies does not enjoy the same powers as the other committees in the legislative process, while it is very active on the scrutiny of EU draft legislation; some standing committees, like the

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<sup>44</sup> See Predieri, Alberto, “Parlamento 1975”. In, Predieri, Alberto, *Il Parlamento nel sistema politico italiano*. Milano: Giuffrè, p. 11 et seqq., 1975.

<sup>45</sup> See Berarducci, Elio, “La revisione delle competenze delle commissioni parlamentari”. In, *Il Parlamento della Repubblica: organi, procedure, apparati*. Roma: Camera dei deputati, p45 et seqq., 1987 and Letta, Guido, “Le nuove competenze delle commissioni permanenti nel regolamento della Camera dei deputati”. In, *Diritto e società*, n°1, p123 et seqq., 1989.

<sup>46</sup> There are no rules setting the number of members of standing committees or thresholds as in France.

<sup>47</sup> However, MPs are allowed to replace a colleague of the same political group who has been appointed in the executive or a colleague limited to a committee meeting or to a bill. Such a replacement is decided by political groups, which control the committees’ composition and they have to inform the committee chairman.

Committee on Constitutional Affairs and the Committee on Budget, are involved in the examination of every bill in order to assess, respectively, the compatibility with the Constitution and their financial effects. Under certain circumstances, their opinions are binding upon the other committees. If the latter do not comply with this opinion while acting in their capacity of legislator (*sede legislativa* or *deliberante*), the bill is immediately remitted to the examination of the House (Art. 93, section 3 rules); if the bill is only examined and amended in committee, the lack of compliance with this opinion must be justified in the report prepared for the House (Articles 73, section 4, 74, section 3, and 75, section 2, rules). In particular, the Committee on Budget is somewhat the linchpin of the legislative process. Whenever its opinion on a bill reveals that there are not enough resources for its funding and the committee competent on the subject-matter disregards the position of the Committee on Budget, the conditions set in the opinion are automatically converted into amendments voted in the House.

#### C. The composition of standing committees

The standing committees of the Italian Chamber of Deputies are formed proportionally to the size of political groups in the House (Art. 19, section 2 rules). Aiming to adjust the committees' composition to possible changes of the political groups and of the majority in the Chamber, Art. 20, section 5 of the rules provides the renewal of committees after two years from the beginning of the parliamentary term. Previous committee members can either be confirmed in their positions or be replaced, depending on the changing landscape of political groups and on the needs to observe the principle of proportionality. Meanwhile, before such a renewal is carried out, the composition of standing committees may not, temporarily, mirror the composition of the House, for example because new groups have been established or because some groups have withdrawn their confidence in the executive, or a new executive is appointed without prior elections, as happened during the 16<sup>th</sup> parliamentary term (2008-2013). Thus it can be that the majority in the House is provisionally the minority in one or more committees.

Although the role played by political groups in the designation of committee members is definitely crucial, the speaker has the final word. Indeed, the speaker is responsible for the allotment of committee seats, checks whether the proportion between groups is effectively respected,

and is allowed to intervene to balance the representation of groups in committees.<sup>48</sup>

The chairmen of the standing committees are elected by absolute majority among the committee members, and thus are “men of the majority”. Usually chairmen are chosen among those affiliated to one of the parties within the ruling coalition, but different from the party that supports the relevant Minister, as to provide a more accurate and pervasive control within the coalition. Sometimes committee chairmen can shift from the majority, at the time they were elected, to the opposition, as a consequence of developments occurring within the ruling coalition.

### 3.3. *The British House of Commons*

#### A. Constitutional acknowledgment

In the UK, talking about the constitutional acknowledgment of standing committees can appear as non-sense because of the lack of a Constitution conceived as a unique binding document endowed with great endurance over the time (i.e. its rigidity). However, as many scholars, and even judges, have pointed out, besides the constitutional conventions that certainly form part of the unwritten British Constitution, this Constitution is also composed of several Acts of Parliament enjoying a constitutional status.<sup>49</sup> Many of these Acts affect the form of government – e.g. the *Parliament Acts 1911* and *1949* and the *Fixed-Term Parliaments Act 2011* – and the exercise of public powers.

Not one of these Acts contains a reference to the standing committees of the House of Commons, presumably because, in homage to the principle of parliamentary sovereignty, which has been a

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<sup>48</sup> Cozzoli, Vito, I gruppi parlamentari nella transizione del sistema politico-istituzionale. Le riforme regolamentari della Camera dei deputati nella XIII legislatura. Milano: Giuffrè, p118-119, 2002, mentions several occasions in which the speaker has stepped in to tackle cases of violation of the principle of proportionality and, in particular, the over-representation of the mixed parliamentary group (composed of the MPs not registered in any other group).

<sup>49</sup> See Turpin, Colin & Tomkins, Adam, *British Government and the Constitution*, 4<sup>th</sup> ed. Cambridge: Cambridge University Press, p139, 2007, according to whom “although our constitution is frequently described as «unwritten», almost all of it is written down, somewhere”. This opinion was also shared by Justice Laws of *High Court in Thoburn v. Sunderland City Council* [2002] EWHC 195, [2003] QB 151 in 2002.

landmark principle of British constitutional law for decades,<sup>50</sup> a Parliament cannot bind its successor by dictating how to structure its internal organization. However, the lack of recognition for the role of standing committees in constitutional documents does not necessarily entail that they are weak parliamentary bodies. Rather, sometimes a constitutional clause that fixes the number of standing committees and their jurisdiction is really intrusive of the constitutional autonomy of a legislature and can aim to contrast the enlargement of the standing committees' number and powers.

#### B. The structure of the committee system

After the “revolution” occurred in 1979 and the creation, for the first time, of select committees in the House of Commons, the committee system has not been affected by significant transformations, although the debate on how to improve it is still ongoing.

The select committees that are the subject of the present contribution (S.O. 144 et seqq.) are: the 19 in charge of overseeing the expenditure, the administration and the policies implemented by the different governmental departments, also called “departmental select committees”, given their close relationship with the executive (S.O. 152); and, the unicameral select committees with a cross-sectional jurisdiction, like the Public Accounts Committee, the European Scrutiny Committee, the Public Administration Committee, the Environmental Audit Committee and the Liaison Committee, the body where all select committees are represented by their chairmen.

Other unicameral, though non-permanent, committees are the public bills committees, which are set up *ad hoc* for the examination of a bill and are dissolved as soon as the bill is finally approved.<sup>51</sup> To some extent the public bills committees complement the activity of select

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<sup>50</sup> See, for instance, Dicey, Albert V., *Introduction to the Study of the Law of the Constitution*. London-New York: Macmillan & co., 1889.

<sup>51</sup> See Thompson, Louise, “More of the Same or a Period of Change? The Impact of Bill Committees in the Twenty-First Century House of Commons”. In, *Parliamentary Affairs*, volume 66, n°3, p459-479, 2013. Blackburn, Robert & Kennon, Andrew, (Griffith and Ryle on) *Parliament. Functions, Practice, and Procedures*, 2<sup>nd</sup> ed. London: Sweet & Maxwell, p385, 2003, highlight that the original denomination of the public bills committees was “*standing committees*”, which was a *misnomer*, given their temporary nature. Possibly the name standing committees derives from the practice of the MPS to stand while speaking, a practice also observed during the debates in the House.

committees: the former are fully involved in the legislative process, whereas the latter exercise the oversight function.

On the whole, in the House of Commons, the number of select committees is remarkable if compared to the Italian Chamber of Deputies and even more so to the French National Assembly. The 650 MPs are not obliged to become member of a select committee.<sup>52</sup> Moreover, MPs fulfilling the role of whips or an office in the executive branch are excluded from select committees by law in order to avoid conflicts of interest, since select committees are established primarily to control the performance of the government. They can be heard before a select committee, but they are prevented from being members. Rather, select committees are composed of backbenchers and have a very small size – from 11 to 14 seats – fixed for each select committee directly by the Standing Orders.<sup>53</sup> Because of the limited number of seats available in the select committees, some backbenchers remain outside the select committee system: in other words, there are not enough seats for all the MPs potentially interested in membership of a select committee. The proposals of the Modernization Committee, which is periodically appointed to study reforms of the Standing Orders, to increase the size of select committees to (at least) 15 seats – so as to allow another 50 MPs to participate in select committee activities – to date have been disregarded.<sup>54</sup>

The size of select committees is kept deliberately small in order to have highly cohesive bodies able to carry out in-depth examination of departmental performance and whose members, who are often confirmed in their position term after term, are definitely expert on the subject-matter. In the House of Commons there is a strong belief that small standing committees are better able to perform their tasks

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<sup>52</sup> Following the approval of the *Parliamentary Voting System and Constituencies Act 2011* the number of seats in the House of Commons will be decreased from 650 to 600 starting from the next parliamentary term.

<sup>53</sup> By contrast, the *public bill committees* are usually composed of 16 to 50 MPs, depending on the importance of the bill. The more the bill is significant the bigger is the committee appointed, up to the point of summoning the committee of the whole House.

<sup>54</sup> Nonetheless, the overall number of MPs participating in select committees has increased throughout the years from 222 in the 1978-1979 session to 326 in the 2007-2008 session. See McKay, William & Johnson, Charles W., *Parliament & Congress. Representation and scrutiny in the Twenty-first century*, 2<sup>nd</sup> ed. Oxford: Oxford University Press, p559, table 8.1., 2012.

effectively, as confirmed also by the statements of some committee chairmen, who are in favour of the limitation of committee size.<sup>55</sup>

There is no hierarchy among select committees that can be inferred by any rule: the official powers of select committees to oversee the executive action are perfectly symmetric. However, the Public Accounts Committee is acknowledged *de facto* a peculiar *status*, as the first select committee established and usually chaired by an MP from the opposition bench. Its recommendations to the executive are taken into consideration much more so than those of other committees.<sup>56</sup>

### C. The composition of standing committees

It has been said that “*The beauty of the select committee system is that it is the only area of activity in this House at this time where the writ of the Whips office does not run. Once one is on a select committee, one is on it for the Parliament (...)*”.<sup>57</sup> Whosoever sits in a select committee, when overseeing the executive, is asked to act for the whole Chamber and not on behalf of its political group. This is why, by contrast to the process of appointment of the public bills committees – where also members of the executive branch seat –, carried out by an *ad hoc* Committee of Selection, select committee members must be confirmed in their position by the vote of the House, following the proposal by the Committee of Selection.

The involvement of the House in this procedure is crucial. For example, in 2001 the House of Commons refused to confirm the designation by the Committee of Selection of the members of the select Committees on Foreign Affairs and on Transport as long as the former chairmen of these committees were not included in the list of appointees. It appeared that the two former chairmen were victims of their group for their behaviour, and were considered too critical of the executive.

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<sup>55</sup> See the speech of the chairman of the House of Commons’ Business, Innovation and Skills Committee, Hon. Peter Luff, during the session 2007-2008, (HC Deb (2007-8), meeting of 28<sup>th</sup> October 2008, 481 c. 852), who complained about the fact that his committee, with 14 members, was too big to be ruled.

<sup>56</sup> According to Turpin, Colin & Tomkins, Adam, *British Government and the Constitution*, 7<sup>th</sup> ed., cit., p641-642, the greatest part of the Public Accounts Committee recommendations are accepted by the executive.

<sup>57</sup> See the speech by Hon. Diane Abbott, House of Commons, Commons Hansard, 7<sup>th</sup> July 1998, col936.

Once included in the list, the select committees have been finally appointed by the House.<sup>58</sup>

The chairman of a select committee is definitely in a powerful position. On the one hand, by contrast to the French and the Italian experiences, select committees do not elect either a bureau or rapporteurs on the issues under consideration. The reports in select committees are usually drafted by committee clerks as a chairman's report. On the other hand, the procedure for the appointment of a select committee chairman is regulated in detail by the Standing Orders and involves almost all parliamentary bodies; an element that highlights the prominence given to select committee chairmen. First of all the speaker, at the beginning of the parliamentary term, allots the positions as select committee chairman proportionally to political groups, according to their size. In other words, the speaker fixes how many chairs are granted to each group and this distribution must be approved by the House.<sup>59</sup> Afterward a competition between MPs starts within each group for the designation as a committee chairman. Interestingly, the election of committee chairmen is finally decided by House, unlike the rule in the French National Assembly and the Italian Chamber of Deputies, where the chairmen are chosen by the committee itself.<sup>60</sup>

S.O. 122C, introduced in 2010, provides, for the first time and only for select committees, that a committee chairman can be removed by way of a vote of no-confidence and thus assumes the existence of a confidence relationship between committee members and their chairman. The new provision might jeopardise the usual *modus operandi* of select committees as highly autonomous and independent bodies, albeit composed of MPs.<sup>61</sup> It runs counter to what the leader of the House of Commons stated a few years ago about the profile of committee chairmen: once appointed "they go native", as if they were not affiliated to a political party. If a committee chairman was removed through a resolution of no-confidence an unusual asymmetry would arise.

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<sup>58</sup> See Turpin, Colin & Tomkins, Adam, *British Government and the Constitution*, 7<sup>th</sup> ed., cit., p614-615.

<sup>59</sup> The liberal-democrats obtained for the first time the chairmanship of a select committee only in 1997.

<sup>60</sup> To become a candidate as a committee chairman the MP has to gain the support of at least 15 members of his group or 10 per cent of the MPs elected in the same party at the latest elections (S.O. n. 122B, section 8, amended after the elections in 2010).

<sup>61</sup> See McKay, William & Johnson Charles W., *Parliament and Congress*, cit., p366.

Committee members do not elect their chairmen, but they can remove him; by contrast, the House elects him, but has no say in his removal.

It is important to notice that the introduction of this provision in the Standing Orders in 2010 reflects the structural shift from a party government to a coalition government, following the election. The wording of S.O. 122C makes this clear: there is no reference to the majority and opposition as in most other Standing Orders, but rather to the “largest party represented” and “another party”, whenever the consensus lacks. This element confirms that committee composition and chairmanship are closely connected to the operation of the form of government and to its change.

#### *4. The evolution of the form of government in the light of the changes of standing committees' powers*

##### *4.1. A brief overview of the main developments of the British, Italian and French forms of government*

It has been observed that in a parliamentary form of government, grounded on the confidence relationship between the legislature and the executive, the latter is deemed to be a sort of “steering committee” in parliament.<sup>62</sup> In other words, it seems inherent that the executive can lead parliamentary activities, according to its political programme. However, even when the executive dominates the parliament, parliamentary bodies can influence, amend, and even replace the content of the bills tabled by the executive.<sup>63</sup>

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<sup>62</sup> See Elia, Leopoldo, “Il Governo come comitato direttivo del Parlamento”. In, *Civitas*, n°4, p59-66, 1951. Parliamentary systems are “fused power systems”, between the legislature and the executive.

<sup>63</sup> Amongst the many classifications of parliaments proposed by scholars, see Norton, Philip, “The Legislative Powers of Parliament”. In, Flinterman, Cees, Heringa, Aalt W. & Waddington, Lisa, *The Evolving Role of Parliaments in Europe*. Antwerpen: Maklu Uitgevers, p15-35, 1994, on the influence of parliaments on policymaking. In parliamentary forms of government the bills introduced by the executive are those that show the highest rate of success in terms of approval, though they might be heavily amended in parliament.

There are, however, several variations of parliamentary systems.<sup>64</sup> The British system, which for centuries has been a model of parliamentarism, based on party government, a strong Prime Minister, and the first-past the post electoral system, has been affected by some transformations in the last few years. The evolution partly derives from changes in politics and in the party system and partly from institutional reforms.

The 2010 general elections led to the formation of one of the few coalition governments (between conservatives and liberal democrats) in British constitutional history with significant consequences for the operation of parliament.<sup>65</sup> The simple distinction between majority and opposition had to be updated to a situation in which two parties rule together.<sup>66</sup> Even the chairmanship of select committees has been influenced by such political change (see *supra*, section 3.3.) and, interestingly, the strengthening of select committees is one of the objectives that the coalition government aims to fulfill (point 16 of the Coalition Agreement, on government transparency).

Furthermore, in 2011 three significant parliamentary Acts entered into force. The Parliamentary Voting System and Constituencies Act 2011 aimed at changing the electoral system from plurality to the alternative vote system and at reducing the number of Commons. It failed for the first part, because of the negative outcome of a referendum, but succeeded in introducing a cut of 50 MPs from the next parliamentary term onwards. The European Union Act 2011, following the entry into force of the Treaty of Lisbon, has list a series of cases in which parliamentary assent is required whenever certain clauses of the European Treaties are used: this is a condition for the executive to act upon. However, even more important for the British form of government is the Fixed Term Parliaments Act 2011, which “rationalized” it compared to the previous discipline based on constitutional conventions. Not only has the House of Commons a fixed

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<sup>64</sup> See Bradley, Anthony W. & Pinelli, Cesare, “Parliamentarism”. In, Rosenfeld, Michel & Sajò, Andràs, *The Oxford Handbook of Comparative Constitutional Law*. Oxford: Oxford University Press, p628-648, 2012.

<sup>65</sup> The Standing Orders for public business in the House of Commons were profoundly changed by the new Parliament in 2010 compared to those in force before the elections, aiming to adapt parliament to the new political reality.

<sup>66</sup> On the impact of the coalition government on the British constitutional system, see House of Lords, *Inquiry into the constitutional operation of coalition government – Written and oral evidence*. London: Select Committee on the Constitution, p59-101, 10<sup>th</sup> December 2013 (Robert Hazell’s written evidence).

term of five years but the hypotheses of an early dissolution are clearly fixed. The case for a self-dissolution of the Chamber by a two-thirds majority has been introduced, as well as the possibility for the House of Commons to adopt a motion of no confidence against the government followed by a (express) vote of confidence in favour of a new cabinet, which allows the House to avoid an early dissolution. Although possibly it is too early to assess the effects of these Acts, in principle the position of the House of Commons *vis-à-vis* the executive seems reinforced. As a consequence, the debate on the performance and prospects for enhancement of select committees has also arisen vigorously, as a way to ride the transformation occurring in the relationship between the executive and the parliament.<sup>67</sup>

By contrast, until the end of the last century, the functioning of the Italian Parliament did not follow the usual rationale of parliamentary forms of government, according to which the executive leads parliamentary activities. Rather, due to the fragmentation and the polarization of the party system and to the international constraints upon Italian politics, very unstable governments – which remained in office from six months to one year – were unable to rule parliament and were in fact submitted to its “diktat”.<sup>68</sup>

During the first forty years of the Italian Republic, when the communist party was kept apart from the Executive branch but not from the legislative process, standing committees represented the very centres of legislative production:<sup>69</sup> it suffices to say that in each of the first ten parliamentary terms (from 1948 to 1992) the greater part of the Acts passed received their final approval in committees without reaching the Floor of Houses.<sup>70</sup> Standing committees were the place

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<sup>67</sup> See Brazier, Alex & Fox, Ruth, “Reviewing Select Committee Tasks and Modes of Operation”. In, *Parliamentary Affairs*, volume, 62, n°4, p354-369, 2011, and Russell, Meg & Benton, Meghan, *Selective Influence. The Policy Impact of House of Commons Select Committees*. London: The Constitution Unit, UCL, p18 et seqq., June 2011.

<sup>68</sup> On fragmentation and polarization of party systems, see Sartori, Giovanni, *Parties and party system: A framework for analysis*, reprinted ed., Essex: ECPR, p80 et seqq., 2005[1976]. On the factors affecting government’s duration, see Fischer, Jörn, Dowding, Keith & Dumont, Patrick, “The duration and durability of cabinet ministers”. In, *International Political Science Review*, volume 33, p505-519, 2012.

<sup>69</sup> See Russo, Federico & Verzichelli, Luca, “Parliaments and Citizens in Italy: An Unfilled Gap”. In, *The Journal of Legislative Studies*, volume 12, n°3/4, p351-367, 2012.

<sup>70</sup> See. Gianniti, Luigi & Lupo, Nicola, *Corso di diritto parlamentare*, 2<sup>nd</sup> ed. Bologna: Il Mulino, p238, 2013.

where, in the atmosphere of the Cold War and behind closed doors, everyone could be included and actively involved in the legislative decision-making process. All compromises, sometimes even very controversial ones, and often with the Executive relegated to a passive role, were weaved by committees oriented towards the consensual and the most inclusive logic.<sup>71</sup> The result was an explosion of the legislative production, often originating from parliamentary bills: hundreds of super-sectional laws, mirroring the jurisdiction of standing committees and making an enormous increase to public expenditure.

However, at the beginning of the 1990s the collapse of the party system and the change of the electoral laws produced a majoritarian turn in the functioning of the political system, without any constitutional amendment and maintaining the same form of government. Although the legal norms – included the parliamentary rules of procedure – were not substantially restyled, the real operation of the relationship between parliament and government changed dramatically.

The Italian political context has shifted away from the time when confidential agreements achieved in committees were functional to accommodate a highly fragmented and polarised political debate, in the absence of an alternative for the composition of the executive. Nowadays coalitions are formed before the election and the system has moved towards a majoritarian logic, in the House as well as in committees, with a stronger role for the Executive in the legislative process compared to the past. Evidence of this evolution is given by the fact that the number of Acts directly approved by committees dropped substantially.<sup>72</sup> This does not imply that standing committees have lost any role in policymaking; they have been able to adapt and find new ways to influence the legislative process (see *infra*, Section 4.2.).

Finally French semipresidentialism is in many regards a hybrid form of government: on the one hand, the President of the Republic, who is directly elected by people, is at the same time the Head of State and the Head of the executive branch and, as in the United States,

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<sup>71</sup> See Pizzorno, Alessandro, "Opposition in Italy". In *Government and Opposition*, volume 32, n°4, p647-656, 1997.

<sup>72</sup> See, for instance, during the fifth parliamentary term (1968-1972) 78% of bills were approved ultimately in committees (at least in one of the two Houses), whereas during the fifteenth parliamentary term (2006-2008) the percentage dropped to 11%. However, during the latest part of the sixteenth parliamentary term (2008-2013), during the Monti government (2011-2013), which was supported by a wide coalition in parliament, the number of bills directly approved in committees rose to 17 %.

cannot even enter the Parliament; on the other, the Prime Minister, who is appointed by the President of the Republic, cannot operate without the confidence of the National Assembly.<sup>73</sup>

Up to the end of the twentieth century, however the French National Assembly was voluntarily put under the dominance of the Prime Minister and the government. The constitutional design of the French Fifth Republic was aimed to avoid any possible repetition of the experience of the Third and Fourth Republic, founded on a parliamentary system clearly affected by governmental instability.

Therefore, the legislative competence of the Parliament (*domain de la loi*) has been limited, in favour of the rule-making power of the executive (Ar. 37 Const.); the order of business of the National Assembly was defined by the executive (Art. 48 Const.); the approval of parliamentary resolutions was precluded; the government can use the blocked vote (Art. 44 Const.)<sup>74</sup> and the accelerated procedure (Art. 49, section 3 Const.).<sup>75</sup>

Only by the mid-1990s, initially by amending the rules of the National Assembly, has the parliament been gradually empowered.<sup>76</sup>

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<sup>73</sup> Some authors, for example Lauvaux, Philippe, *Parlementarisme rationalisé et stabilité du pouvoir executive*. Bruxelles: Bruylant, p52, 1988, tends to compare French semipresidentialism to a highly rationalized parliamentary system; others highlight its *sui generis* nature: see Elgie, Robert, "What is semi-presidentialism and where it is found?". In, Elgie, Robert & Moestrup, Sophia, *Semipresidentialism outside Europe. A comparative Study*. London-New York: Routledge, p. 1 et seqq., 1997. Linz, Juan J., "Presidential or Parliamentary Democracy? Does it Make a Difference?". In, Linz, Juan J. & Valenzuela, Arturo, *The Failure of Presidential Democracy. Comparative Perspectives*, volume I. Baltimore: John Hopkins University Press, p3-89, 1994, includes French semipresidentialism amongst the systems based on a dual executive.

<sup>74</sup> The government can ask the National Assembly to adopt just with one vote the entire text of a bill or a part thereof. All amendments are precluded, except those tabled or accepted by the government itself.

<sup>75</sup> If subject to the accelerated procedure a bill is almost immediately adopted because the bill on which the government has put a question of confidence is deemed automatically approved unless one tenth of the MPs tables a motion of no confidence that is then passed by the majority (of the members) of the National Assembly. Such a procedure is very unlikely to lead to the resignation of the government (only a minority government can be defeated by way of the accelerated procedure). Moreover, since 1958 only one government has resigned, in 1962, because a motion of no confidence was passed.

<sup>76</sup> Of course, compared to other legislature, like the U.S. Congress, the power of the National Assembly still remains weak, but considering the point of departure in 1958, the Assembly has been considerably strengthened.

Indeed, the first changes concerned the strengthened power of the committee on finance over budgetary issue and the control of the legislative implementation by standing committees: the main tool for empowering the Assembly was by means of its committees.<sup>77</sup> A decade later a major input towards reinforcing the legislature was found in the “presidentialization” of the form of government achieved by the constitutional reform of 2000 and in its following “re-parliamentarization” by the constitutional reform of 2008.<sup>78</sup> The former matched the duration of the presidential mandate – seven years – to that of the National Assembly – five years –, thus trying to avoid the risk of cohabitation, and providing for parliamentary elections after presidential elections (*loi constitutionnelle n. 2000-964*). Constitutional law n. 2008-724 has tried to re-balance the position of the parliament towards a very powerful President of the Republic.<sup>79</sup> For example, the order of business of the National Assembly has become *partagé* between the government and the Conference of the Presidents, and in addition to the traditional parliamentary function a new one has been added: to control and assess public policies (Art. 24 Const.). Above all, by way of constitutional amendments, the “re-parliamentarization” has entailed an extension of standing committees’ power in the legislative process and to oversee the action of the executive.

#### 4.2. *The transformation of standing committees’ powers in the legislative process*

It is well-known that, to date, in the British House of Commons the role of select committees in amending government bills has been almost inexistent. In principle the Standing Orders would allow the

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<sup>77</sup> See Avril, Pierre & Gicquel, Jean, *Droit parlementaire*, cit., p303-304.

<sup>78</sup> On the constitutional reform of 2000, see Colliard, Jean-Claude, “Une confirmation de l’évolution présidentieliste de l’Exécutif”. In, *Revue politique et parlementaire*, volume 10/12, p10, 2007; on the constitutional reform of 2008, interpreted as pursuing a “re-parliamentarisation” of the form of government, see Gicquel, Jean, “La re-parlementarisation: une perspective d’évolution”. In, *Pouvoirs*, n°126, p47-59, 2008.

<sup>79</sup> See Costa, Olivier, Schnatterer, Tinette & Squarcioni, Laure, “Peut-on revaloriser le parlement français? Le regard des députés sur la révision constitutionnelle de 2008 et les réformes souhaitables” In, *Les Essais – Jean Jaurès Foundation*, n°5, 2012, on how the 2008 constitutional reform has been perceived by MPs, showing conflicting views on its outcomes.

participation of select committees in the legislative process as committees in charge of reviewing and amending government bills. However in practice *ad hoc* public bills committees or the Committee of the Whole House have been preferred. In spite of the greater amount of time spent in the scrutiny of government bills and the wide use of the procedure to take evidence after 2006, the poor performance of public bills committees in shaping legislation has raised the question of whether select committees would be much more suitable in carrying out this task, given their permanent nature and the expertise of its members. Except for a few remarkable examples, like the Hunting Bill, public bills committees remain largely unable to shape legislation: the introduction of oral and written evidence in committees has reinforced legislative scrutiny, but the executive has reacted by introducing a huge number of amendments during the report stage, which follows the committee stage, aiming at responding to committees' scrutiny.<sup>80</sup>

A very gradual and still partial transformation of the role of select committees in the legislative process has occurred anyway. Occasionally bills have been assigned for legislative scrutiny to select committees and the number has slightly increased throughout the years, from three in the 2005-2006 session to six in the 2007-2008 session, and then has remained quite stable.<sup>81</sup>

Even more significant is possibly the present involvement of select committees in pre-legislative scrutiny on government bills, that is at an earlier stage of the legislative process, before the bill is officially tabled in the House of Commons. This has happened in a systematic way and, although select committees are not able to control the final legislative output (except for the implementation of legislation), by means of pre-legislative scrutiny they have become able to orient some fundamental choices of the executive in policymaking.<sup>82</sup>

Likewise the history of the standing committees of the French National Assembly has been characterized by a long-standing

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<sup>80</sup> For an in depth examination of public bills committees in the House of Commons, see Thompson, Louise, "More of the same or a period of change?", cit., p19, 2012, who points out that the impact of parliament, by means of public bills committees, on government bills is "perhaps more negligible today (...) than it was in the previous years", although their overall activity has increased.

<sup>81</sup> See McKay, William & Johnson, Charles W., *Parliament and Congress*, cit. p362.

<sup>82</sup> On select committees' pre-legislative scrutiny, see Brazier, Alex, Kalitowski, Susanna, Rosenblatt, Gemma & Korris, Matt, *Law in the Making: Influence and Change in the Legislative Process*. London: Hansard Society, 2008.

marginalization since 1958, followed by a later enhancement. A significant redress for standing committees has derived from the constitutional reform of 2008. As mentioned, the first signal of a committees' revenge was launched by the reform of the rules of procedure in the mid-1990s, which however was not strictly focused on the legislative process.

By contrast, Constitutional law n. 2008-724, organic law of 15<sup>th</sup> April 2009 on the application of Articles 34-1, 39 and 44 Const., and the amendments to the National Assembly's rules of procedure seem to have changed the landscape.

Not only does Art. 42, section 4 Const. reserve on any bill assigned at first reading six weeks for legislative scrutiny on the part of the standing committee competent on the subject-matter. A "revolution" is carried out in the way the legislative process is conceived, traditionally as government-centred. Since 2008 new Art. 42, section 1 Const. states that the House examines government and private members' bills on the basis of the text passed by the committee to which it was referred rather than, as it had been up until then, on the bill as presented by the government. Thus standing committees can adopt amendments which are immediately effective upon the bill concerned, although the House can change it further. This new committee prerogative has had as a corollary the acknowledgment on the part of the *Conseil constitutionnel* of the executive power to attend all committee meetings dealing with legislative scrutiny, aiming to ensure that its own bills are not overturned by committees.<sup>83</sup> To safeguard the action of the executive some bills are excluded from being directly revised in committees – although during the committee stage amendments can be tabled and passed –, namely constitutional revision bills, financing bills, social security financing bills.

Moreover, the *pivot* of the legislative process in the National Assembly is the rapporteur.<sup>84</sup> The rapporteur, an MP from the majority (see *supra*, section 3), represents the standing committee in the House, who can table amendments and reply to the Minister. It has been demonstrated that, even before the constitutional reform of 2008, 80 per

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<sup>83</sup> See the decision of the *Conseil constitutionnel* n. 2009-579 DC of 9<sup>th</sup> April 2009 on the *Loi organique relative à l'application des articles 34-1, 39 et 44 de la Constitution*.

<sup>84</sup> See Loquet, Patrick, *Les commissions parlementaires permanents de la V<sup>e</sup> République*. Paris: PUF, p37, 1981, and Cahoua, Paul, "Les commissions lieu du travail législative". In, *Pouvoirs*, n°34, p43, 1985.

cent of committee amendments tabled in the House derived from the rapporteur.<sup>85</sup>

Although leading to similar outcomes – the retention and the preservation of standing committee powers – the evolution of the “legislative function” of standing committees in the Italian Chamber of Deputies has followed a different path of development to the two previous Chambers. After 1994 the shift from a legislature based on standing committees, acting as autonomous legislators, to committees in charge “only” for the examination and amendment of bills, could have undermined the role of these parliamentary bodies in the legislative process (see *supra*, section 4.1.). Evidence of this risk comes from the way the parliamentary agenda and business are set, defined by the Conference of Groups Chairpersons (in agreement with the government) by special majority or, lacking this majority, by the Speaker.

Standing committees must simply adapt their schedule to the House order of business without having a say in the Chamber’s agenda. Nor are the provisions of the rules of procedure that provide for a minimum timeframe for legislative scrutiny enforced. The committee stage can be *de facto* stopped at any moment whether the report on a bill has been drafted or not, and the rapporteur has to be given the mandate to report to the House. In principle, during the committee stage, Italian standing committees have always enjoyed the power that the committees of the French National Assembly gained from 2008: they can amend whatever bill, which is examined in the House according to a text passed by committees. However, according to the rules of procedure of the Italian Chamber of Deputies, if the bill starts to be examined by the House without the completion of the committee report, all the work previously done by the committee in amending the bill and on the report is lost and the text is considered by the House according to the wording of the bill originally presented. Whether such an outcome can be considered consistent with Art. 72, 1<sup>st</sup> section Const., which makes the committee stage mandatory (see above, section 3.2.), is a matter of discussion.

A second major concern is represented by the practice of adopting maxi-amendments (*maxi-emendamenti*), particularly on decree-laws, which are enacted by the executive in extraordinary circumstances of

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<sup>85</sup> See Colliard, Jean-Claude, “Le débat des projets de loi sur le texte adopté en commission”. In, Camby, Jen-Pierre, Fraissex, Patrick, & Gicquel Jean, *La revision de 2008: une nouvelle Constitution?*. Paris: Dalloz, p197-202, 2011.

necessity and urgency, come immediately into force, and must be converted into a parliamentary Act within 60 days otherwise lose their effects retroactively (Art. 77 Const.).<sup>86</sup> A maxi-amendment, which is composed of one article divided into thousands sections and aims to replace the entire content of a bill, is always associated with a question of confidence put forward by the executive on the maxi-amendment itself. Thus, if the maxi-amendment is rejected the government has to resign. The “explosive mixture” of a maxi-amendment plus the question of confidence also has another procedural effect: should a question of confidence be raised, all the tabled amendments – also those of the principal committee – are precluded.<sup>87</sup> Therefore, even if the committee stage is concluded, the committee report is adopted and the House examines the bill (or the bill that converts the decree-law into law) as amended by the relevant committee, the maxi-amendment tabled together with the question of confidence can annul the outcomes of the committee work.

Yet, in spite of this result, it has been noticed that, on the one hand, when the committee stage has not been completed, the amendments adopted in committee and not transposed into the text for the House are inserted later on into the bill, in the House, for example as committee amendments. The principal standing committees, indeed, take part in the legislative process in the House, through a delegation of nine committee members (*comitato dei 9*), which of course enhances its influence compared to what happens in the British House of Commons and the French National Assembly.

On the other hand, even if a maxi-amendment is tabled and adopted, usually most of the changes made during the committee stage to the original bill are maintained in the final text as well as other committee amendments presented in the House.<sup>88</sup>

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<sup>86</sup> The unlawful use or, better, the abuse of decree-laws has been challenged by the Constitutional Court (and the President of the Republic has severely criticized the practice, in particular in 2011): see the decisions n. 360/1996 and 22/2012. However, the number of decree-laws does not seem to decrease.

<sup>87</sup> On maxi-amendments, see in detail, Piccirilli, Giovanni, *L'emendamento nel processo di decisione parlamentare*. Padova: Cedam, p261 et seqq., 2008.

<sup>88</sup> Data have been collected about the government bills passed during the sixteenth parliamentary term (2008–2013) by a joint research group between the Centro di Studi sul Parlamento at LUISS Guido Carli of Rome, and the Law Department, at the Sant'Anna School of Advanced Studies, Pisa. The first outcomes of the research were presented on the occasion of a seminar on “Il procedimento legislativo tra Governo “legislatore” e Parlamento “emendatore” [The legislative

Because of the new political context and the majoritarian turn, the influence of standing committees is shown in a more indirect and hidden way compared to the past. The role of standing committees has reacted to the (informal) transformation of the form of government.

#### 4.3. *The transformation of the oversight function of standing committees*

While the standing committees of the Italian Chamber of Deputies are still quite influential in the legislative process, their exercise of the oversight function has always been rather weak and the situation has become worse since the turning point of 1992-1994. In fact, the oversight function of the Italian Parliament in general has always been underused: oversight tools had been provided by the rules of procedure but exploited in only a limited way.<sup>89</sup>

Although they are devoid of the power to conduct an inquiry – which the Constitution assigns as obligatory to temporary, unicameral or bicameral, committees composed proportionally of the House (Art. 82 Const.), – standing committees can start fact-finding investigations, can carry out hearings, ask for specific documents, and devote part of their time to parliamentary questions.<sup>90</sup> An improvement in the way the traditional oversight tools are applied in the Chamber derives from the need to oversee the conduct of the government in EU affairs. Ministers are more and more often asked to appear before standing committees (as well as in the House) to explain the Italian position on certain European legislative dossiers, and prior and after Council of Ministers and European Council's meetings.<sup>91</sup> Likewise the “European activities”

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process between the legislative power of the executive and the amending power of the parliament], organised on 21st May 2010 at the Sant'Anna School on Advanced Studies, Pisa.

<sup>89</sup> See Manzella, Andrea, *I controlli parlamentari*. Milano: Giuffrè, 1970 and Chimenti, Carlo, *Il controllo parlamentare nell'ordinamento italiano*. Milano: Giuffrè, 1974.

<sup>90</sup> Recently, on 26<sup>th</sup> June 2013, by way of a new interpretation of the rules of procedure provided by the Committee on Rules (*Giunta per il regolamento*) of the Italian Chamber of Deputies, standing committees have been allowed the possibility to hear appointees to governmental positions, either using informal hearings or by providing internet broadcasting of the hearings. Standing committees issue a binding opinion upon the government appointment to independent agencies, like the independent authority on communication (law n. 249/1997).

<sup>91</sup> This is also because of the new provisions of law n. 234/2012, passed to enforce the new parliamentary powers provided by the Treaty of Lisbon.

of standing committees have been extensively enlarged, particularly in terms of the time used for the scrutiny of European draft legislative acts, if such activity can be conceived also as a way to oversee the executive.<sup>92</sup> This development has happened, once again, without any formal amendment of the rules of procedure, after the Treaty of Lisbon.

Moreover, given the broad rise in the adoption of legislative decrees by the executive (Art. 76 Const.),<sup>93</sup> standing committees are almost always asked to issue opinions on draft legislative decrees prior to their final approval by the government, but it is extremely rare that a parliamentary opinion on this draft is given binding effects.<sup>94</sup>

A major field where potentially the oversight powers of Italian standing committees may be strengthened is that of budgetary and fiscal matters. For the first time, constitutional law n. 1/2012 has acknowledged at constitutional level the oversight function on public finance of the two Chambers, to be regulated by the rules of procedure, which, however, have not yet been updated.<sup>95</sup> Standing committees, particularly those on budget and finance, can become the *pivot* for the fulfillment of this function.

As for oversight powers, standing committees of the French National Assembly were in a completely different position. Due to *ordonnance* n. 58-1100 of 1958 and to the jurisprudence of the *Conseil constitutionnel*, the oversight function of the two Chambers has been put under severe constraints. In particular, standing committees were precluded from exercising any inquiry, and some subject-matters, like foreign policy, defense, internal security, were excluded from being subject to committees hearings.<sup>96</sup> The oversight function could be

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<sup>92</sup> See European Commission, Annual Report 2012 on relations between the European Commission and national parliaments, COM (2013) 565 final: Bruxelles, p. 4, 30<sup>th</sup> July 2013, highlights, however, that the number of written opinions sent by the Italian Chamber of Deputies to the European Commission, in the light of the early warning mechanism and of the “political dialogue” in 2012 has decreased from 28 to 15 submissions.

<sup>93</sup> Legislative decrees are adopted following a legislative act of delegation by the parliament.

<sup>94</sup> See Lupo, Nicola, “Alcune tendenze relative ai pareri parlamentari sui decreti legislativi e sui regolamenti del Governo”. In Caretti, Paolo, Osservatorio sulle fonti 1998. Torino: Giappichelli, p139, 1999, and Albanesi, Enrico, Pareri parlamentari e limiti della legge. Milano: Giuffrè, p227-231, 2010.

<sup>95</sup> Constitutional law n. 1/2012 has introduced the balanced budget clause in Art. 81 Const. See also the organic law n. 243/2012. Until this constitutional law the oversight function of the Chambers was not recognised at constitutional level.

<sup>96</sup> See Avril, Pierre & Gicquel, Jean, Droit parlementaire, cit., p303-304.

exercised, within limits, only by the House. Therefore, whereas in Italy the enforcement of the oversight tools has been traditionally weak, although the tools were in principle provided, in France there were even legal limits to the exercise of the oversight function on the part of the standing committees of the National Assembly.<sup>97</sup>

Fact-finding investigations, known in France as *missions d'information*, now are considered the main tool for providing information to the House on matters of public interest (usually on the enforcement of legislation), but they are not carried out by the committees as such. Rather *missions d'information* implies the setting up of a temporary body, within or outside the competent standing committee, often composed of some of its members.

However, the constitutional reform of 2008 has changed such an understanding of the parliamentary oversight powers, although the actual effects on the exercise of the standing committees' oversight functions are still unclear. The parliament is now expressly entitled to control and assess public policies (Art. 24 Const.). It has been pointed out that standing committees are the principal beneficiaries of this provision.<sup>98</sup> Furthermore an *ad hoc* standing committee, having a cross-sectional jurisdiction on all public policies, has been established in the National Assembly, the *Comité d'évaluation et de contrôle des politiques publiques*. All the bodies of the National Assembly are represented in this committee, which can function as a *trait d'union* for parliamentary procedures dealing with the oversight function and is presided over by the Speaker.

Another (new) power conferred upon standing committees of the French National Assembly deals with the confirmation of presidential appointments. According to new Art. 13, section 5 Const., some presidential appointments to be defined by an organic law, "on account of their importance in the guaranteeing of the rights and freedoms or the economic and social life of the Nation", must be confirmed by the relevant standing committee, the Committee on Laws. In particular, such appointments are deemed rejected if three-fifths of the votes in committee does not concur with the presidential decision. However, in the light of legislative developments that occurred in 2009 (see organic law n. 2009-257 and law n. 2009-258), of the decisions of the *Conseil*

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<sup>97</sup> See Thiers, Éric, "Le contrôle parlementaire et ses limites juridiques: un pouvoir presque sans entraves". In, *Pouvoirs*, n°134, p71-81, 2010.

<sup>98</sup> See Dosièrre, René, "Le contrôle ordinaire", and Houillon, Philippe, "Le contrôle extraordinaire". Both in, *Pouvoirs*, n°134, p37 et seqq. and p59 et seqq., 2010.

*constitutionnel*, and following the adoption of the organic law for implementing Art. 13 Const., in 2010,<sup>99</sup> it does not seem likely that standing committees will often veto presidential appointments: the quorum to be reached for rejection is rather challenging.<sup>100</sup> However, standing committees are now in a position to control and review these appointments, and this can be considered an enhancement of their oversight powers.

Compared to the case of the Italian and French standing committees, the select committees of the British House of Commons are more equipped to oversee the conduct of the executive, since they have been established exactly for this purpose.

Select committees enjoy the power to conduct inquiries and thus to compel *sub poena* the appearance of witnesses, as well as to force the transmission of information and documents unless executive privileges can be invoked. Executive departments have not always shown a cooperative attitude towards select committees, by refusing to provide information or to send public officials as witnesses. Although drafted in the House of Lords, the *Scott Report* of 1996 has shed light on the executive omissions in providing information to parliament, even on matters of public interest, as on the illegal trade of weapons to Iraq.<sup>101</sup> Since then the cooperation between the executive and select committees has improved, thanks to the Freedom of Information Act 2000, on disclosure of the executive's documents, and to the Minister Code 2005. Lastly, since 2009 the guidelines for witnesses in committee hearings – the so-called Osmotherly Rule – presume the Minister allows public officials working in his department to testify before select committee as the general rule. Should the Minister persistently refuse authorization to one of the public officials to appear before a select committee, the select committee can force the House to execute its order against the will of the Minister.

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<sup>99</sup> The enforcement of Art. 13 Const. has been fulfilled by organic law n. 2010-837 and law n. 2010-838 that set a list of 51 presidential appointments to be subject to this procedure.

<sup>100</sup> See Pourhiet, Anne-Marie, "Le pouvoir de nomination du Chef de l'État contrôlé par le Parlement". In, Camby, Jean-Pierre, Fraisse, Patrick & Gicque, Jean, *La révision de 2008*, cit., p57 et seqq.

<sup>101</sup> See Leyland, Peter, "The Westminster Parliament and Executive Accountability: The oversight function of departmental select committees with reference to the Millennium Dome and the David Kelly affair". In, Rossi, Emanuele, *Studi pisani sul Parlamento II*, Pisa, Plus-Pisa University Press, p419 et seqq, 2008.

A recent reinforcement of the select committees' oversight powers has derived from the acknowledgement to control ministerial appointments. Such a result has been reached following a long and gradual process, in spite of the reticence of the executive. The green paper on *The governance of Britain*, and later on the coalition agreement of 2010, have promoted this achievement. Select committees hear the candidates to around thirty positions prior to their appointment, although it remains unclear the extent to which a select committee may object to an appointment.<sup>102</sup>

### 5. Conclusion

This paper has first described the origins of standing committees in the French, Italian and UK Parliaments and then has analysed the structure and the organisation of the three committees system of standing committees in each country. Secondly, it has focused on the evolution of the French, Italian and UK forms of government in the light of the changes of the legislative and oversight powers of the standing committees. Finally, in this section some conclusions are drawn on the basis of the comparison between the three constitutional case studies.

Prominent scholars have underlined, favourably<sup>103</sup> or critically,<sup>104</sup> depending on the case, that parliamentary standing committees are crucial for studying the relationship between legislatures and executives and how the form of government is shaped. This statement is of the utmost importance when we consider that these scholars have directly experienced how parliamentary committees work.

Notwithstanding the complex transformations of constitutional legal orders between the twentieth and the twenty-first century standing committees seem to confirm their centrality. Indeed, especially

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<sup>102</sup> See McKay, William & Johnson, Charles W., *Parliament and Congress*, cit., p76-77.

<sup>103</sup> See Barthélemy, Joseph, *Essai sur le travail parlementaire et le système des commissions*. Paris: Delagrave, 1934 and Elia, Leopoldo, "Commissioni parlamentari". In, *Enciclopedia del diritto*, volume VII. Milano: Giuffrè, p895-910, 1960. Both of them served as MPs and as Ministers.

<sup>104</sup> Wilson, Woodrow, *Congressional Government. A study in American politics*. New Brunswick: Transaction Publishers, 2009 [1884] and then Wilson, Woodrow, *Constitutional Government in the United States*. Memphis, Tennessee, 2010 [1908].

in parliamentary forms of government, the organizational features, the functions and the powers of parliamentary standing committees strongly influence the executive's stability.

In the three case studies considered, standing committees have adapted to the transformation of the form of government so as to preserve or even enhance their role, albeit in a different way compared to the past. At the same time, the organisation and the functioning of standing committees, since their establishment, has shaped parliamentary procedures.

Such a result seems confirmed by looking at the French National Assembly, the British House of Commons,<sup>105</sup> and the Italian Chamber of Deputies, although the structure of their committee systems and the powers of standing committees vary significantly.

The quality and the quantity of committees' activity can be put in direct connection with the level of autonomy of parliamentary decision making towards the executive<sup>106</sup>. This means that the strength of legislatures largely relies on the force of its committees<sup>107</sup>. Any coherent attempt to undermine a legislature passes through the restriction of the margins of manoeuvre of their committees. However, such an attempt would not have the sole effect of challenging the institutional balance within the legal system. It could also de-legitimize the policymaking process, which is largely based on committees for performing both the legislative and the oversight functions.

[18.4.2017]

Abstract: Parliaments have changed substantially over time, particularly in the new century, as a consequence of new phenomena appearing in the institutional landscape, such as the transfer of

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<sup>105</sup> Even in a parliament that has been traditionally described as based on a weak committee system. On the strengthening of select committees in the British House of Commons, see the key-note speech by John Bercow, Speaker of the House of Commons on "Towards a 21st century Parliament" at the Handard Society, London, 27<sup>th</sup> November 2013.

<sup>106</sup> See Mattson, Ingvar & Strøm, Kaare, "Parliamentary Committees". In, Döring, Herbert, Parliaments and Majority Rule in Western Europe. Frankfurt: Campus, p249-307, 1995.

<sup>107</sup> See Lupo, Nicola, "Il ruolo del Governo nelle commissioni parlamentari". In, Studi pisani sul Parlamento III. Pisa: Plus, Pisa University Press, p137-147, 2009.

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on the forms of Government*

significant normative powers from legislatures to executives, the crisis of the long standing representative function of political parties,, globalization and regional integration processes of regional integration, mediatisation, personalization of politics and populism. By the same token, for example we have witnessed a shift in the balance between the exercise of the legislative and the oversight function in legislatures in favour of the latter. This paper argues that, in spite of the transformations of parliaments, standing committees and parliamentary committee systems, also by way of constitutional, legislative or standing orders' reforms, have accommodated their role accordingly, and are still influential in shaping the form of government.

Keywords parliaments, standing committees, form of government, France, Italy and the UK

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