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**ALL DRESSED UP WITH NOWHERE TO GO?  
THE RAPID TRANSFORMATION OF THE  
SOUTH AFRICAN PARLIAMENTARY COMMITTEE SYSTEM  
(IN COMPARATIVE THEORETICAL PERSPECTIVE)**

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**Supervisor: Professor Christina Murray**

**Department of Public Law  
University of Cape Town**

**Richard James Tristan Calland**

**Student Number: CLLRICO04**

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**By Richard Calland**

**1.0 INTRODUCTION**

South Africa's transition to democracy has been a journey of almost mythical proportions. The national parliament, in Cape Town, lies at the heart of the country's new democratic dispensation. Those who were fortunate enough to be present on 9 May 1994 to see the National Assembly elect the country's first black President, Nelson Mandela, will never forget the moving spectacle that followed, as black MP after black MP was sworn into a parliament that had, for over four decades, overseen and sustained the immoral laws of the Apartheid state. Now, in theory and in practice, parliament is the institutional centrepiece of democratic governance. As such it has been transformed from a part-time, cynical rubber-stamp into a full-time, vibrant place of work. It is a transformation that however dramatic and however inspiring it has been to behold, has not been without serious problems. Over three years into the new democracy, and parliament is only just beginning to come to terms with the consequences of its transformation and many questions, both conceptual and logistical remain unanswered.

It has become almost a cliché to say so amongst those who work in and for parliament, but its reformed committee system is the 'engine room' of its renaissance. Certainly, in its conflicting behavioural trends, impulses and patterns, the committee system reflects all of the principal dynamics that inform both the legislature as a whole and contemporary South African politics generally. It is, therefore, a fascinating and vital area for analysis, comment and academic research.

### **1.1 Comparative Theoretical Precepts**

Parliament tends to be best known by its plenary session – when the whole legislature is gathered as one; that is the public perception of a parliament; that is its most visible persona; the most vivid expression of its institutional being. Bagehot described such meetings as “the grand inquest of the nation” (Bagehot 1963: 152-153). Yet making decisions in large groups tends not to be the most efficient way to reach decisions. In the language of Bagehot, “a big meeting never does anything” (Bagehot 1963: 66); while Shaw puts it thus: “a mass meeting of legislators is not an outstanding place to get things done...” (Shaw in Longley and Agh 1997: 506). Hence, the pragmatic rationale that underpins the parliamentary committee.

Parliamentary committees have come into being, however, for other, more conceptual, reasons. Not only because, as Shaw has noted, “even a cursory consideration of this matter leads one to the conclusion that public affairs are nearly always conducted by small groups of men and women”, has such small-group decision-making been given an institutional framework. Committees have increasingly been perceived to provide legislatures with a more efficacious *modus operandi*. The case for a system of committees has traditionally rested on the view that, since the mid-nineteenth century, the increasing strength of the party system has caused the national legislature to lose control of the executive, at least in Westminster-based systems of government (Drewery 1985: 14). As

policy-making has become more and more complex, and the executive arm of government has become more and more sophisticated, so the capacity for substantive policy-making intervention by the legislature has declined (Olson & Mezey 1991: 3). At the same time, individual members of parliament were becoming relatively less well informed and increasingly generalist, and, consequently less able to exercise their functions, especially in terms of questioning government activities (Drewery 1985: 14). While support for the idea goes much further back, to the early part of the twentieth century, it was only in the late 1950s and early 1960s that a notion of the importance and potential of parliamentary committees was more fully developed (Drewery 1985: 15). The period since has seen a move away from ad hoc arrangements and towards parliamentary committee systems that are specialised and permanent, and which replicate the structure of the executive arm of government (Shaw in Longley and Agh 1997: 514). A further literature has focussed on the committee rather than the institution or the main assembly, and which has been taken further by a group of European scholars, led by Doring, who have sought to apply a Congress-derived neo-institutionalist approach to the comparative study of Parliaments. Of this group, Mattson and Strom have focussed most closely on committees and have demonstrated that most European parliaments and their committees possess greater powers over the drafting and redrafting of bills than does Westminster (noted by Halligan, Power and Miller in Longley and Agh 1997: 225). Further, these powers are positively correlated with committees' control over their own agendas (Mattson and Strom 1996: 299).

Thus, committees are seen not only as essential to the efficient dispatch of parliamentary matters, but as arenas of specialist expertise, developed over a period of time, in which the back bench member of parliament can find a useful role for his or herself. As such, they form an integral component part of the wider institution, with connections beyond, to the 'real world' of interest groups and expert knowledge (Zajc in Longley and Agh 1997: 490).

As Mattson, Strom and Damgaard's study of Western European Parliaments shows, no fewer than seven of the 18 countries have made such a transition (Mattson and Strom, Damgaard, in Doring 1996). Britain, Denmark, Portugal, Spain and Sweden established systems of permanent, specialised committees in the 1970s or 1980s; Ireland did so in 1993; Switzerland brought its previously unused specialised committees into use when reforms were effected in 1991; and, by now, all 18 countries have such committee arrangements in their Parliaments (Shaw in Longley and Agh 1997: 14). This trend has been noted too in so-called "new democracies", such as those in East and Central Europe, where the last wave of democratisation at the end of the 1980s has "revitalised the role of the parliaments and restored them as the most authoritative source of decision-making. In the post-communist countries the Parliaments have become the 'central site' for the development of new democracies" (Agh 1992, Liebert & Cotta 1990, referred to by Zajc in Longley and Agh 1997: 489). For slight, but significantly different reasons, argues Zajc, the Parliaments of the 'new democracies' had to find ways to organise themselves for effective action. Committees were the answer, in the rational division and allocation of the immense workload and in order to develop the incentives for the members to specialise and gain appropriate experience.

In one sense then, the parliamentary committee's time has come. Yet, while the world-wide trend towards the development and institutionalisation of

parliamentary committee systems appears uniform, it should not be allowed to mask the very substantial differences in style, powers and format. The 'Age of the Parliamentary Committee' is very much one of heterogeneity rather than homogeneity. There is a range of models from which to choose – a “continuum” to employ the term used by Halligan, Power and Miller in their study of the development of the Australian Parliamentary committee system – another Westminster-based system (in Longley and Agh 1997: 221). At one pole of such a continuum, lies the Congressional model. Since Woodrow Wilson characterised Congressional committees as “little legislatures” in 1885, their distinctive role in the American system of government has been well known. Congressional committees derive their power from the scale of their resources – a typical committee could have as many as between 50-100 staff – but also from Congress' own position in relation to the executive arm of government. In the US, there is a true separation of powers, in the sense that the administration is separate from Congress: Congressmen are not members of the administration, and vice-versa; and the separate powers are very clearly set out in the American Constitution<sup>1</sup>. It is acknowledged that it has, in addition, been argued that “Parties and committees are... a contradictory and even mutually exclusive means of internal organization [in a legislature]. The importance of each is inversely proportional to the other. The more important the committees, the less important the parties” (Olson 1980: 269). For each and all of these reasons – an extraordinarily high level of resources, a weak party system, and, clear, constitutional separation of powers – the United States is in many ways a “deviant case”, as the Lees-Shaw study emphasised when finding that “the committee system in the American Congress is not only the strongest system in the present study; it is by far the strongest.” (Lees and Shaw 1979: 387).

At the other end of the continuum, lies the other pole: the 'pure' Westminster-model of Parliamentary committee:

In Parliamentary systems based on the Westminster model, committees of the lower house always have to contend with the twin challenges of, on the one hand, strong demands of the government for control, even monopoly, of the business of Parliament, and, on the other hand, the desire of opposition parties and government alike to continue the electoral battle in both the house and its committees. In these circumstances, it is often difficult for Parliamentary committees to find a role for themselves as a cohesive body independent of both government and party, with a mission recognised by committee members, government, parties and media alike, as bodies exercising a general interest of Parliament and public in overseeing the activities of government and participating to some extent in the governance of the country. (Franks in Longley and Agh 1997: 199).

Where does South Africa lie along the continuum? Trapped in its Westminster mould; driving forcefully towards the 'American Dream'; or some place else? Or, is it too early to say? In broad conceptual terms, South Africa's Parliament is a hybrid: it is, for colonial, historical reasons, based on Westminster, but South Africa is now a constitutional state, although with an as yet undeveloped line of thought so far as separation of powers theory is concerned<sup>2</sup>. Its executive is headed by a cabinet, all of whom are members of Parliament, save that its head - the President - is not (the President ceases to be a member of Parliament upon being elected President by a majority of the National Assembly). The South African Parliament's committee system lies at the cross-roads of this hybrid: as this paper will attempt to show, it is a system that is some way beyond the Westminster model in terms of both legal/constitutional powers and the prevailing institutional instinct, and yet still a long way short of the political power of the Congressional committee system.

This paper seeks to begin what should be an intriguing and on-going commentary, with importance for South African parliamentarians, academics and civil society activists. It does so against the poignant backdrop of Baerwald's analysis of the Japanese parliament's committee system. Notwithstanding their specialised orientations, American influence and generous staffing:

[m]ost committees' work in the Diet [the Japanese Parliament] is an exercise in futility. Committees have extended meetings. The meetings are open to the public...and some sessions are televised. The committees have an elaborate staff...they can and do call Cabinet ministers to respond to interpellations, as well as experts to testify. They can and do conduct investigations...they publish their proceedings on a verbatim basis...but their authority is a chimera and their accomplishments largely meaningless. (Baerwald in Lees and Shaw 1979: 345-346).

As Shaw asks, "Why does one find this dissonance between image and reality?" and answers thus:

Baerwald accounts for it by describing the pre-legislative stages in policy formulation in Japan. He depicts an elaborate sequence of party and ministerial bargaining. The policy council of the dominant liberal party considers it. Next it goes to the Council of Vice Ministers and finally before the Cabinet. All this occurs before the bill is introduced in the Diet. By the time the bill reaches a standing committee it has been subjected to so many accommodations that it is unthinkable for the committee, where the government has a disciplined majority, to alter it. (Shaw in Longley and Agh 1997: 512).

Does this have a resonance for South Africa? Does the nascent South African parliamentary committee have authority? Or is a 'chimera'? Are the

accomplishments of the new committees 'largely meaningless'? As this paper will suggest, on one level, the committee system has come a long way. Yet on another, it is constrained by a number of both political and non-political factors and, as much as anything, an absence of a clear conceptual model or framework within which to secure itself in relation to the shifting sands of contemporary South African politics. South Africa's future will be determined by a number of factors. But the strength or otherwise of the Parliamentary committees is one such factor. And, because a strong and independent legislature is likely to be a critical pillar in the much hoped for consolidation of democracy in the country, it may well prove to be one of the most significant factors. In other words, it is submitted that the development of strong parliamentary committees is of very great importance to the democratic future of the country. This paper seeks to cover three main aspects of the overall configuration: the institutional and legal setting; the constraints - political and other - which have impacted thus far on the development of the committees; and, finally, the chief signposts for their future role<sup>3</sup>. Where appropriate and convenient, illustrative examples are presented.

## **1.2 Methodological Note**

The writer has, since March 1995, closely studied and monitored the South African national Parliament as head of the then newly created Idasa program PIMS – the Parliamentary Information & Monitoring Service. PIMS has carved a role as the leading civil society parliamentary monitoring organisation in the country, undertaking ground-breaking work in terms of legislative tracking, advocacy around ethics and other important areas of parliamentary process and good governance, and by its information dissemination, which includes the newspaper *Parliamentary Whip* (of which the writer is the editor). This paper is, therefore, primarily informed by what the writer has seen, heard and analysed since March 1995, during which period he has had numerous interviews and discussions with Members of Parliament and parliamentary staff. A number of

other interviews have, however, been undertaken specifically for this paper; some of them were 'on-the-record' (not for attribution), others were not. Some of the quotations are referenced, while some, therefore, are not.

In addition, the writer has had access to both the PIMS Legislation database and the PIMS Parliamentary Committee database, into which reports of committee meetings prepared by volunteer monitors working for the Parliamentary Monitoring Group (PMG) are entered. The PMG is a partnership between the Black Sash, the Human Rights Committee and Idasa's PIMS. In the absence of a verbatim – *Hansard* – transcript of committee proceedings – which, in itself, is a serious defect in the current system – the PMG reports represent the most comprehensive contemporary record of parliamentary committee proceedings<sup>4</sup>.

This paper is a substantially revised version of a paper originally prepared by the writer for presentation at a conference on "The Changing Roles of Parliamentary Committees" held in Budapest in July 1996 and organised jointly by the Research Committee of Legislative Specialists of the International Political Science Association and the Budapest University of Economic Sciences. The original paper was informed, in particular, by the work of three people who the writer invited to prepare short comments for the specific purpose of widening the range of experience from which the observations contained within the conference paper was drawn. The three were: Susie Cowen, the parliamentary monitor for the Human Rights Committee; Alison Tilley, Legislation Monitor of the Black Sash; and, Tom Engel, former researcher for the National Assembly's Portfolio Committee on Health. All three commentators have spent a great deal of time observing the committees at close quarters over the past few years, but, due to the nature of their respective organisations, the three have different outlooks and perspectives in relation to what they have seen. The writer is indebted to all three. Where the writer relies on the views or information

provided by one or other of these three, this paper will footnote by reference to their surname.

## **2.0 THE CONSTITUTIONAL AND INSTITUTIONAL SETTING**

### **2.1 Separation of Powers – South Africa’s final Constitution**

One of the Constitutional Principles established by the negotiations that led up to 1994 and which bound the drafters of both the interim and the final constitutions stated: “there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness”<sup>5</sup>. In spite of this clearly stated principle, the interim constitution said very little about the role of parliament in ensuring executive accountability and exercising oversight over organs of state - the only explicit reference being to members of cabinet having to account to Parliament.<sup>6</sup> It states simply that “the legislative authority of the Republic shall, subject to this Constitution, vest in Parliament, which shall have the power to make laws for the Republic in accordance with this constitution”<sup>7</sup>.

In contrast to this, the final constitution states that:

“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”<sup>8</sup>

The final constitution spells out what having legislative authority means for the National Assembly. It states:

"In exercising its legislative power, the National Assembly may -

- consider, pass, amend or reject any legislation before the Assembly;
- and
- initiate or prepare legislation, except money Bills.

The National Assembly must provide mechanisms -

- to ensure that all executive organs of state in the national sphere of government are accountable to it; and
- to maintain oversight of -  
the exercise of national executive authority, including the implementation of legislation;  
and any organ of state."<sup>9</sup>

Provincial legislatures are given similar legislative and oversight powers.<sup>10</sup> From the constitution it is clear then that: (1) the legislature's role is to pass legislation, to initiate or prepare legislation, to ensure executive accountability, and to exercise oversight over organs of state<sup>11</sup>; (2) the executive's role is to implement legislation, to develop and implement policy, to co-ordinate the functions of government departments and administrations, and to prepare and initiate legislation<sup>12</sup>; and (3) the judiciary's role is to apply and interpret the law impartially, independently and without fear and to decide on the constitutionality of all laws<sup>13</sup>.

## **2.2 Powers of Parliament**

Parliament is made up of two houses - the National Assembly and the National Council of Provinces<sup>14</sup> (which replaced the Senate). The two houses are distinct from each other with distinct functions. In a marked departure from the interim constitution's approach to the Senate, the final constitution limits the role of the National Council of provinces to representing provincial interests at national

level. It is to do this by participating in the national legislative process and by providing a national forum for the public consideration of issues affecting the provinces<sup>15</sup>. Interestingly, its role does not expressly include an oversight role, its powers being to pass legislation and initiate legislation.<sup>16</sup>

Also in contrast to the interim constitution, the final constitution is much clearer on the role of parliamentary committees. The final constitution clarifies that the committees may initiate and prepare legislation<sup>17</sup> and it expands the powers of committees (see below).

### **2.3 An Institution in Transition**

Parliament has had to determine its exact role at a time when the institution itself – with all its many facets – is in a state of dramatic transformation. The bureaucracy has been re-organised and many of the ‘old’ staff, including the Secretary to Parliament, have left or retired. The rules of parliament have been revamped, especially in relation to the work of the parliamentary committees, whose workload has burgeoned in line with the dramatic increase in the number of committees. Parliament, in summary, went from being “a part-time, cynical rubber-stamp to a full-time, vibrant place of work” almost overnight.

The explosion of optimism and visionary activity that occurred in May 1994, came, unfortunately, without the necessary staff or infrastructure being in place, and it has been an on-going uphill struggle ever since to catch up. MPs as well as committees faced huge problems, with wholly unacceptable shortages of technical, research and administrative resources. In terms of the relative power of Parliament to the Executive, this placed the Legislature at a very great disadvantage, both in terms of scrutinising legislation and in being able to develop the sort of pro-active role envisaged by its constitutional powers. On one occasion, for example, there was the unfortunate spectacle of seeing an

“old-guard” bureaucrat from the Department of Home Affairs, inform a member of a parliamentary committee who had the temerity to suggest an amendment to the Film and Publications Bill that was being scrutinised by the committee, that “we cannot entertain such an amendment at this late stage”.

Moreover, Parliament’s passage towards a stable institutional and procedural rhythm and routine has been disturbed twice. First by the work of the Constitutional Assembly, which because of the importance and urgency of the need to finalise the Constitution, often took precedence over the ‘normal’ houses of parliament and which absorbed a great deal of the intellectual energy of many of the most creative and influential MPs between May 1994 and May 1996. Second, by the advent of the NCOP, which was created by the Final Constitution to replace the Senate. The NCOP is a unique institution without obvious international precedent. There is no model to copy; everything must be specially adapted for the new house.

In addition, there has been a remarkably high turnover of MPs. Many have been “redeployed”, especially by the ANC. By the three year mark, over a quarter of the original intake of the National Assembly in May 1994 had ceased to be MPs.<sup>18</sup> At a time when the institution is trying both to find its feet and establish a new ethos and fresh routine, this has been very destabilising, particularly in view of the fact that the majority of those who left were taking a leading role in the new parliament. There has been a very high turnover of Chairpersons of committees, which has been especially unsettling.

Any examination of the role and performance of Parliament since 1994 must, therefore, take account of this context of very rapid institutional change, shortage of necessary resources to accommodate such rapid change, major distractions and an unsettlingly high turnover of key individuals.

## 2.4 The Political & Electoral Setting

In April 1994, South Africa employed an uncomplicated, list-system form of proportional representation. MPs were not, therefore, elected to serve individual constituencies. During the course of negotiations in relation to the final constitution, agreement was reached to retain the electoral system for the 1999 election. MPs have, however, been allocated to notional constituencies, at least in the case of the two largest parties, the ANC and the National Party (NP). This system has not operated well, with some MPs working assiduously to ensure that they visit their allocated areas regularly and others making no attempt to visit at all. In mid-1996, well over a year after the system of allocated constituencies had been introduced an advisor to a parliamentary committee chairperson – an ANC MP – told the writer that not only had the MP not made any attempt to service the constituency but that she had that day confided to her that she did not even know where it was.

Many of the new MPs who arrived in Parliament in 1994 have struggled to adapt to the change in life style and profession and have felt cut off from “their communities”<sup>19</sup> – a sense that has been strengthened by the absence of a formal constituency link. Formal constituencies can serve to strengthen the hand of the individual parliamentarian by providing him or her with evidence to support the case against the executive. ANC MP Yunus Carrim states that:

Obviously if you have a constituency system then you have a greater degree of latitude to challenge your party leadership. But it is also related to the fact that we are a new regime - there is an understandable tendency which is not destructive of democracy, that we feel we can not confront our own leadership because it exposes us as a party and as a movement. And it is not fair to expect any better than we are doing given the particular historical conjuncture. Underlying about race - that an attack

on our executive is an attack on blacks by whites. We are very sensitive about this; perhaps too sensitive about it. Some people feel that we are increasingly passive, increasingly docile in parliament, partly it is because it is more difficult for back benchers in the majority party to raise questions of their own ministers than it is for the opposition parties.

There is a further aspect to the electoral system that is of importance in relation to executive-legislative relations. On the basis of the proportional representation electoral system a so-called "anti-defection" clause was included in the interim Constitution whereby MPs who cease to be members of the party that nominated them to parliament lose their seats<sup>20</sup>. In other words, the seat in Parliament is owned not by the individual MP but by his or her party. Plainly, this increases the power of the political party managers, especially the whips, in ensuring party discipline. In a Westminster type system such as South Africa's, and with a ruling party with a substantial majority, the effect of such tight party discipline is to further fuse the legislative and the executive arms of government – the majority party's enforced political homogeneity acts as a bridge between the two.

The system, and its maintenance, is convenient for those close to the centre of ANC power who wish to run a tight and disciplined ship: it suits the party managers and there are some ANC MPs who believe that was the reason for the maintenance of the same electoral system in 1994. ANC policy is half constituency and half PR and they claim now that such a system will be implemented in time for the 2004 election. Interestingly, the NP were supportive of retaining the 1994 system, taking the view that it would maximise their own electoral prospects. There is some dispute about how and why the agreement to keep the same electoral system in 1999 was reached, given that the deal was made very late in the constitutional negotiations in May 1996. ANC MP Essop Pahad, who acted as Deputy President Mbeki's eyes and ears in parliament until he was appointed Deputy Minister in the Deputy President's office in July 1996,

brokered the agreement on behalf of the ANC. He maintains that the principal rationale was that it was too early to create a mixed PR/constituency electoral system in the sense that it might create a racial tension within the ANC at a time when the party was trying to foster a spirit of national reconciliation: the argument is that in order for the ANC to achieve a racially diverse list of Mps with a perhaps disproportionate number of whites, coloureds and indians, it would be most likely that the only way of achieving that would be for the white, coloured and indian candidates to enter by way of the list part of the system, the demography of the constituencies meaning that it would be likely that they would select black candidates; this would create two-tiers of Mps, in effect.

Such a racial tension has apparently arisen at local level where councillors elected under the constituency part of the complex electoral system employed in the local elections are laying claim to a higher authority than colleagues who were elected under the list part of the electoral system. On this basis it has little to do with race and a lot more to do with power. There is, however, a racial dimension: non-africans will largely come from the list and so the first problem will become over-laid by a race problem.

Many MPs speak of the 'debilitating' effect of having to move between, in some cases, three places: Cape Town; home; and an allocated constituency. The experience of being a parliamentarian has been a demoralising one in other ways: the 'gravy train' accusations, for instance, have annoyed the many hard-working ANC MPs who are confronted by a system of pay that rewards laziness and penalises hard work.<sup>21</sup> The job itself is, of course, at times mind-numbingly boring: long meetings devoted to the fine print of legislation, a far cry from the excitement of April 1994 and the drama of the years that preceded the election. As one ANC MP speaking in late 1996 put it, "Many people walk around here completely lost; they don't understand the link between parliament and the constituency. To that has now been added a sense of insecurity, with the

unexpected dismissal of Pallo [Jordan] and Holomisa. Many have accrued debts since they came to parliament and a feeling for life-style. So they will not go out of their way to be 'independent'. But you should not read too much into this - it is just a down phase."

Whether it proves to be a 'down phase' or not, it now seems highly likely that there will be a massive turn-over of MPs after 1999, with an influx of new, probably more 'professional' - in the sense that they are 'career politicians' - MPs. This will make a difference to the way in which Parliament operates.

### **3.0 THE PARLIAMENTARY COMMITTEE SYSTEM**

#### **3.1 Overview & Powers (on paper)**

Parliament has re-organised the way in which sessions are organised. Thus, there are "committee weeks" and "committee days" (as well as "constituency weeks" and "constituency days"). The order paper for a typical committee day makes impressive reading. On the 13 October 1997, for example, seventeen committees were sitting, considering matters such "Computer Specialist to discuss Special Reports of the Auditor General on Computer Auditing" (to the Public Accounts Committee), the Coastal Management Policy Process (the Environmental Affairs and Tourism committee), a briefing by the Department of Transport on the Road Accident Fund White Paper (the Portfolio committee on Transport). Elsewhere, there were public hearings of submissions and evidence by the Justice Committee on the controversial new bail law and by the Portfolio Committee on Finance on the Katz Tax Commission. Meanwhile, the Portfolio Committee on Constitutional Affairs were enjoying a workshop on "Parliament and the Constitution – South African and French Perspectives". A hive of activity, in other words.

It has become almost a cliché to say so amongst those who work in and for parliament, but its reformed committee system is the 'engine room' of the new parliament. Certainly, in its conflicting behavioural trends, impulses and patterns, the committee system reflects all of the principal dynamics that inform both the legislature as a whole and contemporary South African politics.

Prior to the historic, first all-race elections of April 1994, South Africa's parliamentary committees were important only for the part they played in the rubber-stamping of legislation put forward by the Nationalist Party dominated apartheid government. This was an experience shared by the committees of parliaments in communist East and Central Europe, where "the role of the committees and their internal organisation was little developed and corresponded to the decorative role of these Parliaments" (Zajc in Longley and Agh 1997: 489). In pre-1994 South Africa, the meetings of the committees - of which there were thirteen, immediately prior to April 1994 - were closed to both the public and the press. Now they are open<sup>22</sup> and have been the scene of some of the most significant political incidents of the new parliament.

Central to the so-called "negotiated" transition to democracy, was the interim constitution. The National Party (NP) used the constitutional negotiations to create a plural executive (Mattes in Reynolds 1994: 2-3) which meant that until May 1996, it was a partner in a Government of National Unity (GNU), along with the Inkatha Freedom Party (IFP) and, of course, the African National Congress (ANC). In the pursuit of this over-arching objective, the National Party and the other smaller parties omitted to extend the concept of power sharing to the legislature. In the light of their now relative importance in the legislature, it has been suggested that the NP failed to foresee the importance of the committees in the new parliamentary dispensation and that it should have insisted upon a sharing of the committee chairpersonships. The interim constitution is silent on the specific issue<sup>23</sup>, and, moreover, created the legal space for the new

parliament - and for the committees themselves - to develop their role. The NP has subsequently denied the proposition concerning the appointment of the chairpersonships, its former secretary-general, Roelf Meyer - who was the party's key negotiator at the time - claiming that "It might be an inhibiting factor. One might have to do things against one's own will"<sup>24</sup>).

Within weeks of the opening of the first session of the new parliament on 26 May 1994, the committees were proliferating. There are now a total of over fifty committees comprised as follows: twenty six "portfolio" committees of the National Assembly, which shadow Departments of State (Housing, Education, etc); fourteen select committees of the National Council of Provinces (NCOP); seven joint standing committees (which cover the most important areas of policy such as Finance and Defence); two joint committees (such as the joint Rules Committee); and a fluctuating number of ad hoc committees, which as the name suggests, are created in order to deal with ad hoc issues as and when they arise (such as the Ad Hoc Parliamentary Committee on Reproductive Rights).

Of the twenty seven portfolio committees, which have now established themselves as the most influential in policy and legislative terms, only two are chaired by non-ANC MPs (The National Assembly portfolio committees on Transport and Defence are chaired, respectively, by members of the PAC and Freedom Front). The size of the committees vary, but is normally between 15-25, with members appointed by their party whips in proportion to their size in the National Assembly, save that the smallest minority parties are entitled to at least one member per committee.

Equally rapidly, some of the new committee chairpersons saw the opportunity to define a potentially influential niche for both themselves and their committees. The portfolio committee on Justice, for example, played a critical role in both the inter-party negotiations and what amounted effectively to a re-

writing of the inevitably controversial Bill establishing the so-called Truth Commission during the last quarter of 1994<sup>25</sup>; and, with the legislation to establish the Human Rights Commission, the committee “practically rewrote the Human Rights Commission legislation”<sup>26</sup>.

Critically, the justice committee's membership included, perhaps not surprisingly given its remit, a number of lawyers who, typically in legislatures, were adapting to the demands of the law-making function of parliament rather quicker than many of their non-lawyer colleagues. Much depended, in this case, however, on the relationship between the committee chairperson and the minister his committee was shadowing, which was one based on a long experience of working together. This paper will return to this aspect of the committee system later.

What, if any, party political impetus lay behind this dramatic transformation? There is scant evidence, but it is known that the ANC at its National Constitutional Conference held from 31 March to 1 April 1995 considered and passed the following proposal:

The ANC proposes to use the Parliamentary committee system, structured to ensure executive accountability to an informed Parliament, a role for minority parties through such committees, and greater and informed public debate on legislation and to suggest new legislation to the relevant ministry. The committees shall have the necessary powers to conduct public inquiries into matters within their area of jurisdiction. (Macozoma in Kotze 1996: 112).

The changes in the Rules of Parliament that occurred during 1994 and 1995 further enhanced the renaissance of the committee system. Rule 52(1) of the

National Assembly's Standing Rules outlines the Functions of the portfolio committees, as follows:

....a portfolio committee shall.....

- (a) consider or deal with bills or other matters which are referred to it
- (b) by the Speaker under these Rules, or by or under a resolution of the house....;
- (c) monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of the government department or departments falling within the category of affairs consigned to the committee....

Rule 53 states that the Powers of portfolio committees shall include the power to:

- (a) summon any person to appear before it to give evidence on oath or affirmation;
- (b) summon any person to appear before it to produce any documents required by it; ....

As Macozoma says, "These powers are comprehensive in anyone's language...The Committees are given legal teeth in Rule 53 and Section 58(2) of the Interim Constitution." (Macozoma in Kotze 1996: 112).

Parliament has also shown that it is willing to place certain of its committees on a specific, express statutory basis for reasons of policy. In

November 1994, a special Parliamentary committee was created to scrutinise the actions of the intelligence agencies and to:

- oversee the expenditure of the intelligence services;
- consider and make recommendations about security legislation;
- order the investigation of any allegation of abuse by the intelligence services by a member of the public;
- refer any abuse of rights to the Human Rights Commission
- report every year to Parliament.<sup>27</sup>

Finally, section 55(2) of the Constitution states that:

- (2) The National Assembly must provide for mechanisms -
- (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
- (b) to maintain oversight of -
- (I) the exercise of national executive authority, including the implementation of legislation; and
  - (II) any organ of state.

One commentator is clear in her mind that section 55(1)(b) effectively gives Parliamentary committees the power to put forward legislative proposals, something that, as she herself has noted, some committees have been straining at the leash to do, but have been uncertain about whether or not they had the necessary power and that sub-section (2) is directed especially at the committees<sup>28</sup>.

It is in this sense that South Africa's Parliamentary committee system is 'All Dressed Up'. The question, however, is whether it has anywhere to go. Or,

put another way, having changed, as it incontrovertibly has, what exactly is its role to be? The metaphor of an engine – with which this section began – suggests movement and progress and, above all, power. However, the level of performance has been in this respect uneven – constraints, both resource-wise and political have had a major impact on the evolution of the new South African parliamentary committee system.

### **3.2 Constraints: Resources**

In terms of resources, the committee system is a microcosm of the rest of the South African Parliament: it inherited the infrastructure and staffing of a part-time rubber-stamp rather than the active place of work that it aspires to be. For example, the 'old' committee section was served by a staff of thirteen, one clerk for each committee. As was noted above, the committee system has expanded greatly, not just in numbers but in terms of activity. When the committees first began to expand their work in 1994, there were no researchers and no secretaries to serve either the Chairperson or the committee itself. As one committee chairperson put it: "If you don't have the staff you have to do what we did in the Justice committee, which is that [ANC MP] Willie Hofmeyer jumps on the phone at night after a meeting and phones America, and then Canada, and asks them 'Do you have something on this?' We can't work like this. Parliamentarians will burn themselves out"<sup>29</sup>. As was noted above, there are no *Hansard* - verbatim - records of committee meetings and the minutes taken are thin, recording only the basic decisions taken. This has serious ramifications so far as the notion of parliamentary accountability is concerned. The committee section is seen to be a "massive problem", with young and unskilled employees receiving no training, supervised by 'old' bureaucrats<sup>30</sup>. Another view<sup>31</sup> is that:

"skills may be the more significant issue, as opposed to infrastructure.

Those who were skilled recognised their need for infrastructure and went

out and leased, hired, borrowed and scrounged equipment and staff and researchers. They worked with volunteers and rapidly learned to use NGO capacity in the area of research. Those who were not sufficiently skilled in office work, paper management, public speaking and legislative process found themselves disempowered by the system. That adequate steps around training were not taken is the single biggest criticism that I have”.

The great majority of the MPs who entered Parliament in 1994 were new to the place. There was, and is, a huge amount of inexperience. Parliament, as an institution, was not prepared for this and had not, for example, prepared any sort of induction course. New MPs either sank or swam. In addition, a large number of the new MPs came from backgrounds that made Parliament not just an unfamiliar, but an intimidating place. There was, therefore, a combination of acute inexperience and an acute shortage of the necessary resources - administrative, technological, research - to support the new MPs. When placed in this context, it is a tribute to the depth of the talent of so many of the new political class that the committee system has been able to progress at all. Yet the combined effect has been to create a situation of, at times, substantive inexpertise.

One well-known case provides a useful illustration. In 1995, the Department of Health decided to put on a play to highlight the dangers of HIV/AIDS. Entitled *Sarafina II*, the play, the mismanagement that surrounded the tender procedures employed and the unauthorised expenditure of foreign aid, were investigated by the Public Protector who, in early June 1996, published a condemnatory report<sup>32</sup>. The role of the portfolio committee in the saga provides an interesting case study. When the furore first arose in early 1996, the portfolio committee indicated that it wanted the Minister of Health to appear before them to explain her policy and justify the expenditure of such a large amount of money

(R14.2m). It is now clear from a number of reputable sources that the Minister, Dr. Nkosana Zuma, initially refused to agree to attend the committee hearing - which was cancelled - and, moreover, that President Mandela had sided with her over the issue. Deputy President Thabo Mbeki intervened, however, in realisation that the political damage would be compounded by a refusal to obey the legitimate request of the committee.

When the Minister did then appear before the committee there were two notable features to the occasion. The first demonstrated the possible political constraints that exist (and is considered below); the second brought into sharp relief the inexperience of the committee. The inexperience was demonstrated in two distinct ways: first, the material used by opposition MPs in their questioning of the Minister was almost entirely derived from the press; secondly, the most material documents were sought at the meeting itself and not in advance. Thus, the civil servant responsible for the budget was asked, at the meeting, if he had a copy of the budget for the production of the play. He responded that he did, and a junior civil servant was sent off in order to prepare copies. Opposition MPs then endeavoured to cross-examine the Minister and the senior civil servants over a complex budget that they had only just had sight of. Not only should the MPs, through the committee chair, have requested the documents well ahead of the meeting, but also, ideally, they should have been assisted by the advice of, say, an accountant in going through the budget. No one, apparently, thought of this, and so inexperience and a lack of resources combined to render the committee inexperienced in its task of overseeing the executive.

On other occasions, portfolio or select committees have been constrained by not having their own advisors or technical assistants. In the case of the Film and Publications Bill, for example, the (then) Senate Select Committee on Home Affairs, sought to process the bill, in the normal way, but without any legal or other parliamentary advisors present. As a result, they found themselves

dependent on the Head of the Legal Department of the Department of Home Affairs, who was present. His principal interest, however, was to see the bill through as smoothly as possible. It certainly was not – and is not – to exercise self-oversight. Yet he ended up advising the committee on what was and was not an appropriate way of amendment to the bill; on one occasion, informing a member of the committee quite improperly that “we cannot entertain such an amendment at this late stage”.<sup>33</sup>

### **3.3 Constraints: Political**

The Sarafina II health committee case is also an emblematic one so far as political constraints are concerned. All the commentators who observed the committee meeting on 28 February 1996 were struck by the response of the ANC members to the situation. An hour and a half passed before an ANC member asked a question of the Minister and many of the ANC members looked uncomfortable throughout. Again, reputable party sources revealed the truth, which was that most if not all of the ANC members had been spoken to by senior leaders and told ‘not to rock the boat’ and to ‘be loyal to your minister’.

A senior ANC figure has more recently provided the writer with this admission:

“Look, it was still relatively early days. We did not know how to deal with something like this. Perhaps we should be condemned for it, perhaps we should be forgiven, but we were more concerned with damage control than we were with parliamentary accountability. In any case, it is a problem that we will always have to deal with – like any ruling party in such a system – how to be critical of our own people in government without providing the opposition, in parliament, in the media, with ammunition to use against us. It’s a difficult one, but with Sarafina we made a complete mess of it.”

There is, of course, nothing either surprising or unique about a political party seeking to both limit the political fall-out of a crisis and maintain the party

discipline of its members. Plainly though, where the majority party is strong, as the ANC is, it has a greater impact upon the political geography. In the current South African system, party discipline is shored up by virtue of section 43(b) of the Interim Constitution, which precludes MPs from 'crossing the floor' of the house and changing party (and which has been retained indefinitely by the final Constitution): if the member ceases, for whatever reason, to be a member of the party by whose list he or she was elected, then he or she loses his or her seat in Parliament. This means that many MPs are simply voting fodder, as the Whips become increasingly effective and organised. Again, there is nothing especially unique about this, except in the South African parliament the gap between those parliamentarians who are on top of the system - and in each and every committee there is very clearly a small clique who contribute to what happens whilst the rest are conspicuously quiet - and those who are not is very great.

One view<sup>34</sup> is that it is too soon for members of the ANC to be prepared to criticise their own colleagues in government and that it would, in effect, be unreasonable to expect it to happen yet, although it is conceded that if it does not start to happen regularly, however, then the wider implications will be very serious, not least because there will be a huge blur between the legislative and the executive functions. Certainly it is important not to lose sight of the fact that the ANC is undergoing its own transition from outlawed, liberation movement to a 'normal' political party, because in doing so the ANC is having to adapt old strengths - such as secrecy and loyalty - to the new political terrain, where transparency and substantive, formal accountability are entrenched both as a part of government policy and in the constitution. Where the ANC members of the parliamentary committees have adopted critical stances or subjected an individual or a policy to close scrutiny, the recipient has invariably been a "soft target" politically. The Public Accounts committee gave the IBA commissioners a torrid time in April and May 1997; and, the Portfolio Committee on Correctional Services have given IFP Correctional Services Minister Siphon Mzimela a hard

ride ever since his appointment. But, unlike Dr. Zuma, neither the IBA commissioners nor Minister Mzimela are ANC.

The other principle political factor has been - and, in reverse, will continue to be - the GNU. The power-sharing arrangement in the executive and the fact that consensus-seeking and politics by negotiation have been the *modus vivendi* of the South African transition to democracy has created a paradigm within which the committees are seen as the ultimate extension of such a consociational political model. Hence, the ANC has, in fact, very rarely had to use its majority in committees<sup>35</sup>. It has been suggested that such cross-party work has not only developed well, apace with the overall development of the committees, but may have fostered independence of thought amongst Members of Parliament, particularly in the ruling party<sup>36</sup>. The decision of the NP to pull out of the GNU may in time, therefore, confront this trend, as it seeks to define itself more clearly as the main opposition party, something that they have hitherto struggled to do<sup>37</sup>. Many share the view that the larger opposition parties - the NP and the IFP - have been "pitiful" in comparison with the smaller parties and that this is having a major impact on the emerging political culture<sup>38</sup>.

What underpins all of this is, if not a crisis, then an uncertainty of identity. The constitutional and institutional framework is in place as a foundation for a strong oversight function, but it would appear that neither the resources nor the political will or confidence exist in sufficient quantities to yet fully fulfil such a role.

#### **4.0 A FUTURE ROLE: SOME SIGNPOSTS ALONG THE WAY**

##### **4.1 Law-Making**

In attempting to draw something of an audit of the evolving South African committee system one runs the risk of reaching hasty conclusions, but there is consensus around a number of issues. On the positive side, a number of committees have legislated in a substantive sense. Three committees stand out in particular. The Portfolio Committees on Justice, Constitutional Affairs and Education respectively have all written or re-written a number of substantial pieces of legislation over the past three years. As was already noted, the Justice Committee played a major role in the final formulation of the Truth Commission legislation and again, more recently with both the Magistrates Amendment Act 1996 and the new bail legislation (the Criminal Procedure Second Amendment Bill 1997). The Education committee has played a substantial role in the detail of a number of major pieces of transformational legislation including the South African Schools Act 1996. The Constitutional Affairs committee has very adeptly carved a role for itself whereby virtually all policy initiatives receive the attention of the committee early on in the process. The committee, which is chaired by ANC (& SACP) MP Pravin Gordhan, is well-organised and plans well ahead, scheduling meetings after consultations with the Ministry about up-coming plans. As a good example of this, the committee has been closely involved in the process around local government reform. A political advisory committee including members of the parliamentary committee, and chaired by Gordhan himself, will be supported by a technical committee comprising experts, policy researchers and civil servants. Gordhan believes that through this very unusual but innovative process the parliamentary committee will have an "integral role". In another recent case, the Ministry presented them with a bill – the Multi-Party Democracy Bill – that contained just the bare bones of what was required to give proper effect to section 236 of the final constitution. Over the course of ten meetings, the committee fleshed out the bill, re-naming it in the process to the Funding of Represented Political Parties bill.

#### **4.2 Child Maintenance: an important case study**

The Lund Committee on Child and Family Support investigating the State Maintenance Grant System, produced a highly controversial report which calls for the phasing out of the current State Maintenance Grant system and the phasing in of a new system designed to achieve racial equity in child grants within the budgetary constraints imposed by the government's Growth, Employment and Redistribution policy<sup>39</sup>. Given the time constraints on the committee it did not embark on a consultative process defining itself instead as "more technical than consultative" (Lund Report 1996: 104). The committee convened in February 1996 and its report was published in August 1996 unleashing a storm of protest that was exacerbated by the Minister of Welfare's announcement prior to public hearings, that the government had already committed itself to one of the options provided in the Lund report.<sup>40</sup>

The Lund Committee worked from the assumption that welfare could not anticipate significant budgetary increases given the government's commitment to reducing the budget deficit and promoting economic growth. "There is little fiscal room for manoeuvre for the government," said the report in its opening chapter. The central issue faced by the committee was how to develop an equitable system that could be applied without racial discrimination and that would be affordable to the state given current budgetary constraints. The "heart of the problem," according to the report, is that "it is highly unlikely that government expenditure on family and child grants will be increased to the levels required to ensure equal access to all race group to grants at the existing levels and under present eligibility conditions" (Lund Report 1996: 12).

The recommendations of the committee included:

- Reforming the private maintenance system and promoting parental financial responsibility;

- Introducing a flat-rate child benefit and phasing out the Parent Allowance portion of the State Maintenance Grant. ;
- This new benefit should be paid to the primary care-giver and should be payable to all children who qualify in terms of a simple means test;
- It should be payable from birth for a limited number of years, with the number of years used as a cost containment mechanism. The level of the grant should be derived from the Household Subsistence Level for food and clothing for children;
- The benefit should be conditional on the proper registration of the birth of the child and the care-giver should be obliged to engage in certain health related activities in relation to the child in his/her care (eg growth monitoring and immunisation). (The Lund Report 1996: 86).

The report lists a number of options that follow an acceptance of the above recommendations. These options relate to the levels of benefit and the ages of eligibility. Choice of particular options will determine the percentage of children who will receive the benefit (what the report calls "targeting"). So for example, according to the report, if the benefit is made available for all children between 0 - 6 at the benefit level of R125 per month and based on the approximate amount currently being spent on the State Maintenance Grant, then 24% of children will be targeted by the grant. (Lund Report 1996: 95 – 96).

The choice adopted by the government, as per the Minister's press release of 5 March 1997 is : R75 flat rate per child between the ages of 0 - 6 years to be introduced on 1 August 1997. According to the Minister, this represents a target of 30% of poor children and would amount to 3 million children receiving the benefit.

Parliament and Civil Society: The Parliamentary Hearings

The Lund Committee chose not to involve civil society in its deliberations, and the parliamentary Portfolio Committee on Welfare ("the portfolio committee") was not consulted by the Minister before the matter went to the Cabinet meeting which approved the recommendations. In response to expressions of outrage by civil society pressure groups at the prospect of such an important and far-reaching policy being implemented without any comment from civil society, the portfolio committee decided to hold public hearings. These were held in Cape Town during April, 1997 and for one day each in Pietersberg and Umtata respectively the following months. Civil society's submissions to the portfolio committee in Cape Town were highly impressive for a number of reasons: the professionalism of the presentations; the expertise of the evidence and argument marshalled; the sense of a combined campaign - and a combined voice - that emerged; the creativity of the advocacy (Alison Tilley of the Black Sash began her submission by chopping up a banana in order to illustrate the budget allocations and to draw attention to the very small proportion of social spending devoted to providing a safety net for the most vulnerable members of society); the range of different groups involved, including COSATU, the Black Sash, the Community Law Centre at UWC, the South African NGO Coalition, the Institute for Social Development (ISD) and Idasa.

Although there was no decision that organisations involved in the campaign should hold the same position, there was a striking sequentiality to the submissions: there was very little repetition, rather a sense of one point building on the last. According to Tilley "the similar stance adopted by many of the submissions was as a result of all the shared information and joint discussions which had been held."

The portfolio committee plainly relied on the submissions. One ANC member of the committee, Mary Turok, said that "we were persuaded by them. There was a very strong feeling on the committee that R75 is an insult."<sup>41</sup> The

ISD research, picked up and developed by many of the others, had a significant impact. It showed that the government's figures were misconceived due to false assumptions about the process of phasing in the new scheme. This was powerful advocacy because it had the dual affect of not only criticising the proposed policy but at the same time demonstrating how it could be improved in line with the civil society counter proposals.

While her attendance throughout much of the two days of the hearing in Cape Town impressed both the pressure groups and the Members of the portfolio committee, Welfare Minister Fraser-Moleketi's public statement halfway through the hearing did not. "There is no turning back", Fraser-Moleketi said, in a media release. "The child support benefit will become a reality". Her further comment that "correct parliamentary procedures have been followed", displayed either ignorance of the role of parliament or else a contempt for it. The sense that parliament was being regarded by the executive as an irrelevance was enhanced – deepening the anger within the portfolio committee as well as beyond - when it became known that the Department had already printed leaflets setting out the details of the new benefit before the parliamentary hearings took place.<sup>42</sup> All of which is indicative of tendency towards a closed and centralised form of executive decision-making, more reminiscent of the old government's approach than that required under the new constitution. Moreover, some members of the ANC welfare study group believe that the Minister had become "trapped" by high level executive advisors, "whom she listens to regardless of whether they are arguing a good case or not".

### The Portfolio Committee

The portfolio committee's response was to not support the government's proposed policy. Setting out three alternative options, the portfolio committee unanimously proposed an option that would set the amount of the benefit at

R135, to be targeted at 80% of children aged between 0-9. This represents a very substantial difference of approach. It is the first time that a parliamentary committee has taken on an ANC Minister in such a way since the new parliament was formed. In order for this to happen, the view of the ANC welfare study group - which is the ANC members of the portfolio committee - was crucial. What was crucial to them, apparently, was that it became an issue of wider importance within the ANC caucus.

There was a widespread feeling within the ANC caucus that the Minister had been high-handed in her attitude, impolitic in her public appearance of stubbornness and, perhaps most telling, just plain wrong to have picked such a low figure as R75 per month, which as Turok puts it "confirmed the suspicion of some members that just because the children you were offering it to are black you are bringing it down to R75...and this left a sort of sour taste so we thought we had to address that".<sup>43</sup> Fraser-Moleketi was given, according to a number of sources, a very hard time in caucus.

Subsequently, a new policy position was reached after an agreement was brokered by Essop Pahad as Deputy Minister to Deputy President Mbeki. Pahad's role was to shuttle between Fraser-Moleketi and Finance Minister Trevor Manuel. Finally, enough money was elicited from the latter to pay for an increase to the level of R100 per month, less than the proposal of the parliamentary committee, but 33% more than the original proposal.

### **4.3 Other Dimensions**

Some of the committees have begun to produce excellent reports. The National Assembly Portfolio Committee on Health, for example, set something of a trend in 1996 by carrying out a field trip to the Eastern Cape in order to inspect hospitals there and, distressed by what they found, followed up with a clearly

worded written report. The Correctional Services committee regularly visits prisons. Secondly, some committees are beginning to master the need to balance polarised representations on legislation. The committee on Energy & Mineral Affairs had to hear greatly divergent views, for example, from both sides of industry on the Mine Health & Safety Bill 1996. Thirdly, the parliamentary committees are beginning to represent an alternative career structure in Parliament outside of the Whip's office, as competition in 1996 for vacant chairs of both the Joint Standing Committee on Finance and the Health Committee tend to indicate. Fourthly, as has already been noted, some committees have made substantial changes to legislation and, fifthly, even introduced their own policy/legislation changes and most importantly, some of the committees have begun to develop a keen interest in engaging seriously with the executive over policy development. The Joint Standing Committee on Defence has recently crossed swords with government over land mines and arms sales.

As these examples tend to suggest, a key finding is that there is a great divergence of experience, with committees defining their roles in very different ways. In other words, there is no uniform 'system' as such. There are a number of factors on which the operation of the committees depend: on the GNU/executive power-sharing dimension of the new political dispensation, in that if the committee is shadowing a Minister from a different party then the level of oversight tends to be greater, although with the withdrawal of the NP from the GNU and their improving parliamentary performance as the main opposition party, this factor will become increasingly less important; on the calibre of the particular MPs in the committee and the speed at which they have or have not developed specialism in the subject area; and on the character and demeanour of the chairperson of the committee.

On the question of specialism, an early study suggested that MPs were spreading themselves too thinly<sup>44</sup>. Some members of the minority parties were

members of up to fifteen different committees. While the ANC has not, due to its numbers, had to stretch itself quite so far, its party Whips have only recently begun to be more strategic about the placement of its members. At the same time, members are developing, now that they have had some time to grow into the job, genuine interest in the particular subject area.

As to the committee chairs, one view<sup>45</sup> has it that they are “all important”, in terms of their conception of the role of the committee and in terms of their political outlook and ambition: “some treat it as an individual crusade; whilst some make massive empowerment efforts with their colleagues on the committee; some see themselves as ‘second deputy minister’; others, as leaders of a different ‘estate’”. The fact that as many as four committee chairpersons were promoted into government in the first six months of 1996 tends to support this contention. Weight is also attached to the *management* capacity of the individual, in that “the place [Parliament] is in chaos, so you can’t be”<sup>46</sup> and “those chairs who take minutes, have them distributed, follow up on issues etc, are more effective than those who don’t (the Welfare committee, for example, were not taking full minutes until recently)”<sup>47</sup>

The overall trend since 1994 suggests that it is more likely to be a blip than a defining moment. Indeed, a number of important examples can be used to illustrate the weakness of the new Parliament in relation to the executive. The closure of the RDP office and the major macro-economic policy shift to GEAR were essentially executive decisions taken without reference to the legislature. The record of oversight by the parliamentary committees – the “engine room” of the new Parliament, according to the mythology – is uneven. Rarely, have they used the powers that the constitution and the rules of parliament provide them with.

Yet, the Child Maintenance policy case study represents an important departure from these trends. For the first time, a parliamentary committee, chaired by an ANC member, has taken on an ANC Minister and sought to change government policy. Moreover, the report of the committee was published despite – or perhaps in spite of – a publicly expressed position of executive obduracy. The policy, furthermore, was a socio-economic issue that was typical both in terms of the fundamentally important nature of its content so far as poverty alleviation is concerned and in its level of complexity – complexity that most often precludes legislatures from substantive intervention.

Parliament does indeed “lie at a crossroads in terms of whether it becomes a really challenging legislature, creative in terms of legislation, bold in terms of being able to tackle and identify issues, and almost revolutionary in making sure that transformation moves faster than it is moving now. If it does not take that direction then it will become a stool pigeon within the next two years and it will lose the vibrancy with which we started. There is a danger lurking that it will become an administrative arm of the executive.” (ANC MP). Or, as another ANC MP has put it, “we are still coming to grips with how parliamentary oversight corresponds or co-ordinates itself with executive authority”.

There is now, however, an important case-study in which Parliament overcame the constraints of inadequate resources, inexperience and inexpertise, and summoned the political courage to adopt the sort of powerful oversight role enjoined of it by the constitution. What the case did show very clearly was the opportunity that exists for civil society organisations and pressure groups to make an impact on the parliamentary committee; where the lacuna of technical and research resources in parliament can be filled by outside groups with credibility, professionalism and expertise, then it is likely that the committee will not only listen and be influenced by the submission, but may even be dependent upon it (Calland and Taylor 1997). In a sense civil society pointed the institution

in the right direction. It is argued that it was the intervention of civil society that was critical in the Child Maintenance case study.

Yet, although it was an essential ingredient in what happened, the more important dimension of the case is almost certainly the fact that the ANC caucus was sufficiently aggravated by the new policy that it was prepared to confront one of its own Ministers. Although the determination of the ANC committee chairperson was very important, what was of greater significance was that the ANC study group within the welfare committee was given the latitude by the wider ANC to adopt the position that in the end they did. In other words, the internal political dynamics within the ANC was the most important aspect of the matter.

This is always likely to be the case, such is the political geography of the new order. Nonetheless, it is possible to conclude that in the new configuration of constitutional arrangements, civil society has, it seems, a crucial supporting role in giving life and meaning to the separation of powers and functions set out so clearly in the constitution. While Parliament has at important times, as was noted above, played its part as “agency of change” in terms of its legislative role, hitherto there has been only limited comprehension of what the notion of separation of powers means in terms of executive oversight and accountability – though in the case of Parliament there is some mitigation arising from the nature of the institutional and political context of the transition to democracy.

#### **4 CONCLUDING REMARKS**

The evolution of the various committees is, then, somewhat patchy and uneven. ‘All Dressed Up’ in legal and constitutional terms, as they are, it remains to be seen whether the constraints that continue to limit their effectiveness as an executive oversight will be overcome or not. As things stand the Parliamentary

committees do not constitute a system as such and do not stand alone as an independent limb of either the legislature or the political system in general, but are highly sensitive to the macro-political context in which they are located. That, in itself, may be neither inappropriate nor unusual, but it is important to acknowledge that this is a reflection of an uncertainty about their role - and a confusion over the notion of a separation of powers (or, a separation of functions, at least) - rather than anything else.

It is still early days in the South African 'miracle' and so it would be unwise to conclude either that the South African parliamentary committee system is failing to fulfil the sort of oversight role envisaged by its constitutional and institutional setting or that it is as yet a critical pillar of the new democratic order. So far as the "continuum" discussed at the outset of this paper is concerned, it is possible to conclude as follows: that plainly, given the resource and political constraints that prevail, the South African parliamentary committee falls a long way short of the power and authority of the 'mini-legislature' of the US model, the constitutional and institutional position notwithstanding, but that despite those constraints the constitutional and institutional setting provides the committees with a power and authority that far exceeds that of the traditionally docile Westminster-type committee. As has been noted, some of the committees have played a substantive role in terms of the legislative – law-making function – but where they are weaker, is in terms of executive oversight.

If the South African committee system is to have an enduring role in the consolidation and enhancement of democracy in South Africa, however, then it will need to develop and use its limited, though growing, resources carefully. It will have to nurture expertise and policy specialism in both its support staff and within the committee membership itself. It will, for example, have to find a way to ensure that each and every committee has ready access to the sort of basic research and technical support necessary to avoid the sort of farce that the

Select Committee descended into in the case of the Film and Publications Bill. A roving, committees' support unit or set of units, for example, that include experienced, expert legislation draftspeople, would be an important service. In an ideal world, each committee would have a legal advisor, a clerk – skilled in the arts of political and media communication – as well as an administrator and at least one researcher expert in the portfolio.

Furthermore, the minority parties will have to develop and then sustain levels of performance in the committees that are articulate and penetrative, but which transcend adversarial politics and which do not lose sight of the gains that can be derived from a consociational model of political interaction. It will need to find a way to turn the theory of the separation of powers articulated in the final constitution into reality, equipping members in practice and procedure by training them.

More than anything, it will need to create, consolidate and entrench an institutional culture that enables the new political elite to apply a strong collective and individual mind to the task at hand, imbued with a defiant political will that is willing to take on and, where necessary, vigorously and expertly criticise the leadership of the ANC-in-government. If it is unable to do so, then there is a very real danger that both the work of the committees and their constitutional and institutional authority will be undermined and rendered relatively meaningless. In which case, the rapid transformation of the system as whole will come to be regarded as an ultimately disappointing chimera.

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## NOTES

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<sup>1</sup> Article I, Section 8; Article II, Section 1; Article III, Section 2, Constitution of the United States of America.

<sup>2</sup> The South African Parliament comprises two houses, derived from its Westminster heritage: a National Assembly of 400 MPs, elected by a simple list system of proportional representation as follows: ANC: 252; NP: 82; IFP: 43; Freedom Front (FF.): 9; Democratic Party (DP): 7; Pan Africanist Congress (PAC): 5; African Christian Democratic Party: 2; and a second chamber, the National Council of Provinces (NCOP), which came into being in February 1997, in accordance with the final Constitution. The NCOP comprises 54 permanent delegates, six from each of the nine provinces, and 36 special delegates, four from each province, including the Provincial Premier; the additional three are appointed from amongst the membership of the particular provincial legislature.

<sup>4</sup> In 1997 the PMG has trained and co-ordinated over 150 volunteer monitors; hence, the PMG is now in a position to cover all the committee hearings that take place.

<sup>5</sup> The interim Constitution, Schedule 4 *Constitutional Principles, VI.*

<sup>6</sup> The interim Constitution, Chapter 6, section 92(1).

<sup>7</sup> The interim Constitution, Chapter 4, section 37.

<sup>8</sup> The final Constitution, Chapter 4, section 42(3).

<sup>9</sup> The final Constitution, Chapter 4, section 55.

<sup>10</sup> The final Constitution, Chapter 6, section 114.

<sup>11</sup> The final Constitution, Chapter 4, section 55.

<sup>12</sup> The final Constitution, Chapter 5, section 85.

<sup>13</sup> The final Constitution, Chapter 8, sections 165 and 167.

<sup>14</sup> The final Constitution, Chapter 4, section 42(1).

<sup>15</sup> The final Constitution, Chapter 4, section 42(4).

<sup>16</sup> The final Constitution, Chapter 4, section 68.

<sup>17</sup> The final Constitution, Chapter 4, sections 73.

<sup>18</sup> "MP dropouts 'not losing faith in politics', *Parliamentary Whip*, 14 March 1997, page 1.

<sup>19</sup> This feeling has been especially intense for many of the new women MPs, according to as yet unpublished research carried out by Hannah Britton; see, for a summary of Britton's findings "Women have the Power – but not the numbers", *Parliamentary Whip*, 18 April 1997, page 1.

<sup>20</sup> Interim Constitution, section 43(b).

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<sup>38</sup> Engel.

<sup>39</sup> GEAR . See the undated Macro-Economic Strategy document put out by the Minister of Finance.

<sup>40</sup> Press release of 5 March, 1997.

<sup>41</sup> Private Interview, July 1997.

<sup>42</sup> See "*Minister Moleketi by-passed committees*" in the Parliamentary Whip 9 May, 1997 at page 3.

<sup>43</sup> Private Interview, 2 July 1997.

<sup>44</sup> PIMS Record, *Parliamentary Whip*, 18 August 1995, showed that MPs were members generally of at least seven committees, sometimes, in the case of the smallest parties, as many as 15.

<sup>45</sup> Engel.

<sup>46</sup> Engel.

<sup>47</sup> Tilley.