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CONGRESSIONAL COMMITTEE REPORTS:  
THEIR ROLE AND HISTORY

*Thomas F. Broden, Jr.\**

Most lawyers have an extremely limited understanding of the function of a congressional committee report. In general, lawyers think of such reports as aids to the interpretation of statutes on the books and much has been written about this role of the committee report. This role is considered by many as the committee report's primary, if not its only, function. Nothing could be further from the truth. It is the purpose of this article to explain its other, more important roles, those in the legislative process and to examine the historical development of the use of written committee reports in Congress.

THE COMMITTEE REPORTS AND THE  
LEGISLATIVE PROCESS

It is not difficult to understand why lawyers take a restricted view of the function of the committee report. Most practicing lawyers look at the law as they look at the Bible. In some circumstances they turn to it as a guide to be followed; in others, they use it to justify what has already been done; and in still others they ignore it. If statutory law is looked at in this way it is easy to understand this distorted view of the function of the committee report. Its main function is in the legislative not the

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judicial process. The committee report gives its greatest service *before* rather than after a bill becomes a statute.

The legislative role of the written committee report cannot be overemphasized. It is freely recognized by the members of Congress for, when they desire information about bills pending on the House or Senate calendars, a copy of the committee report as well as the bill itself will always be consulted. This is accepted as a matter of course. A page on the floor of either house will seldom be requested to deliver a copy of a pending bill alone. Almost invariably he will be requested to bring with the bill the committee report on it. Off the floor, legislative assistants will automatically consult the committee report as well as, and often instead of, the bill itself to advise members of Congress.

Some examples will demonstrate the reasons for this procedure. Many times a bill is inscrutable on its face. For example, H.R. 6871, 84th Cong., 1st Sess. (1955) became Pub. L. No. 125, 84th Cong., 2d Sess. (1955) and extended for one year certain war risk hazard and detention benefits. It read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

Section 201 of the Act of December 2, 1942 (ch. 668, 56 Stat. 1033), as amended, is further amended by deleting the words "July 1, 1955" and inserting in lieu thereof "July 1, 1956."

Sec. 2 section 5 (b) of the Act of July 28, 1945 (ch. 328, 59 Stat. 505), as amended, is further amended by deleting the words "July 1, 1955" and inserting in lieu thereof "July 1, 1956."

The accompanying committee reports<sup>1</sup> indicate the substance of the legislation which is extended by this cryptic bill. In general it insures overseas employees of the United States against death, injury, or capture because of military action. The committee report indicates that the bill was recommended by an executive communication from the Secretary of the Air Force.

Likewise, bills on their face can be misleading. H.R. 9956 84th Cong., 2d Sess. (1956) became Pub. L. No. 933, 84th Cong., 2d Sess. (1956) and reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

Subdivision e of section 58 of the Bankruptcy Act, as amended, is hereby amended to read as follows:

"Sec. 58e. The court shall, in every case instituted under any provisions of this Act, mail or cause to be mailed a copy of the

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<sup>1</sup> H.R. REP. NO. 916, 84th Cong., 1st Sess. (1955); S. REP. NO. 692, 84th Cong., 1st Sess. (1955).

notice of the first meeting of creditors to the district director of internal revenue for the district in which the court is located, and to the Comptroller General of the United States. Whenever the schedules of the bankrupt, or the list of creditors of the bankrupt, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof, (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate) a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality."

At first glance this would appear to be legislation imposing certain notification requirements on the bankruptcy courts. However, when the member of Congress or a member of his staff compares the proposed new wording of Sec. 58e with the old law, he might be surprised and disturbed when he discovers that the effect of the new language is to eliminate rather than impose new notification requirements. He will find that the bill eliminates the requirement of mailing certain notices to the Commissioner of Internal Revenue and the Comptroller General. If he then plunges into the problem of determining the reason for this action and the official views of the Judicial Conference of the United States, the Treasury Department, and the Comptroller General of the United States, hours, if not days, might be consumed. The House<sup>2</sup> and the Senate<sup>3</sup> Judiciary Committee reports on this bill save all this research by authoritatively indicating that all agencies involved have concluded the notices are unnecessary and should be eliminated. Communications from each agency stating its position are made a part of the committee report, and the report clearly indicates that the only reason for the change is to reduce unnecessary notification.

#### THE COMMITTEE REPORT AND CONGRESSIONAL DEBATES

It is true, of course, that members of Congress may be apprised of the substance and effect of pending bills in many ways other than by consulting the committee report. If the bill is one of the few containing major controversial measures, public discussion in the various media of mass communication will be informative. Also, should a bill be heavily impregnated with partisan political aspects — as are many of the major pieces of legislation — sources other than the committee report must be consulted to determine these aspects, for partisan motives are

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<sup>2</sup> H.R. REP. NO. 2142, 84th Cong., 2d Sess. (1956).

<sup>3</sup> S. REP. NO. 2729, 84th Cong., 2d Sess. (1956).

never expressed in the report even though the report may be exploited for partisan political purposes. If, on the other hand, the bill is one of the vast number of relatively minor ones, a friend, constituent, lobbyist, or fellow member of Congress having a special interest in the bill may be a source of information. The debates on the bill on the floor of Congress can be very helpful; and, if the vote on the bill is carried over to a later date, the debate may be read in the Congressional Record. However, the personal views of the individual spokesmen in these debates, excepting possibly those of the manager of the bill, do not approach the authoritative explanation contained in the committee report.

Committee reports can also perform a valuable function in informing members engaged in congressional debates, since these reports afford members an opportunity to become familiar with the pending legislation. The members can then appreciate and more intelligently participate in debates on the bills. Digestion of the report as well as the bill is essential preparation for active participation in the debate on the bill. On occasion, the valuable role that the committee report plays in this preparation for debates is reflected in statements on the floor of the House or Senate; for example, there were occasional references to the House Judiciary Committee report<sup>4</sup> in the debates on the Civil Rights Bill of 1957.<sup>5</sup>

#### BILLS PASSED WITHOUT DEBATE

Since many pieces of legislation are enacted without debate on the floor of Congress, there is regular machinery provided in each chamber to help in the accomplishment of this end. In the House of Representatives two calendars are provided — the consent calendar and the private calendar. The private calendar is maintained exclusively for private bills and all of these are automatically placed on it. Within this group are included certain immigration bills, such as bills providing for exceptions to the immigration and nationality laws by requesting that named aliens be allowed to remain in the United States or named foreigners be allowed to enter the United States. Other private bills authorize the payment of money to named persons whom Congress feels have a moral right to payment from the govern-

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<sup>4</sup> H.R. REP. NO. 291, 85th Cong., 1st Sess. (1957). See, e.g., 103 CONG. REC. 7514, 7518 (daily ed. June 5, 1957); 103 CONG. REC. 7592, 7595 (daily ed. June 6, 1957).

<sup>5</sup> PUB. L. NO. 315, 85th Cong., 1st Sess. (1957).

ment but have no legal remedy by which they can recover. On the other hand, any bill may be placed on the consent calendar if a member so requests. In general, relatively non-controversial legislation is placed on this calendar because practically unanimous consent is necessary for passage.

In the Senate the procedure is a bit different. Rule VIII of the standing rules of the Senate authorizes the call of the calendar of bills and resolutions that are not objected to. In practice, the leadership arranges for the occasional calling of the calendar for unobjected-to bills. When this is done, the procedure is similar to the House procedure on the call of the consent and private calendars and the same type bills are taken up.

In the House each of the two calendars is called on an average of twice a month. The number of bills handled on a single calendar day can vary from a low of ten or fifteen to a high of ninety or more.<sup>6</sup> This, of course, requires a summary procedure which places the burden of speaking on opponents — if no objection is made either to the consideration or reading of the bills, they are automatically enacted. Also, interested members must acquaint themselves in advance with the nature of the bills to be called; on the day they are called, the Clerk's reading of them is only a formality in which he skims the bills, reading a scattered phrase or two. The only purpose of these "readings" is to formally comply with the rules of the House and Senate.<sup>7</sup> In this regard the legislative process makes use of fictions as well as does the judicial process. Each house maintains small committees which serve as watch-dogs over the bills on each of these calendars. The function of these committees is to be aware of the nature of each bill on the calendar so that nothing of real controversy slips through. Herein the written committee report plays another vital role. In view of the large number of bills on these calendars, limitations of time would make it impossible for the members of the committee, or their assistants, to do all the research necessary to inform themselves of the nature of each of the bills. The written committee reports, however, give authoritative statements of the substance of the bills. Witness the following colloquy which took place on the floor of the Senate:<sup>8</sup>

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<sup>6</sup> 101 CONG. REC. 8104-15 (1955).

<sup>7</sup> HOUSE OF REPRESENTATIVES RULE 21, cl. 1 (1955); SENATE RULE 14, cl. 2 (1953).

<sup>8</sup> 101 CONG. REC. 8115 (1955).

MR. PURTELL: Mr. President, in view of the fact that the calendar committee on this side has not had an opportunity to study or review the reports on the four bills following on the calendar, I ask that the further call of the calendar be suspended.

THE PRESIDING OFFICER: Without objection, the remaining bills on the calendar will go over to the next call of the calendar.

The report not only explains the substance of the bill but also sets out the views of the executive departments or agencies which have an interest in the legislation. If there is an unfavorable agency report on a bill, those members of the watch-dog committee representing the same political party as the Administration will require a very full and persuasive explanation before allowing the bill to pass. It is not too much to say that without the committee reports the task of these watch-dog committees would be impossible.

#### ANCILLARY BENEFITS DERIVED FROM COMMITTEE REPORTS

In addition to these direct benefits to legislative procedure, the written committee report performs valuable ancillary functions. The report provides a wealth of information not only to members of Congress but also to lobbyists, the press, and the general public.

Another ancillary function of the committee report — one well known to lawyers — is its role as an aid to the interpretation of statutes. The report is of assistance whether the lawyer is advising a client of his rights and obligations under a statute or whether litigation is involved. In *Holy Trinity Church v. United States*,<sup>9</sup> a lower court invalidated a contract by which a minister was brought from England to serve as pastor of a New York church. The lower court held that an act of Congress<sup>10</sup> invalidating contracts bringing aliens to the United States to perform "labor and services" applied to a minister's contract. The Supreme Court, holding that the literal meaning was not the real meaning of the statute, reversed, and, in doing so, employed congressional committee reports to help show that such a contract was not intended to be covered by the statute.

Though it is generally recognized that the committee report, the committee's authoritative statement of its views on the bill,

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<sup>9</sup> 143 U.S. 457 (1892).

<sup>10</sup> 23 STAT. 332, c. 164 (Feb. 26, 1885).

is the most reliable of all legislative history, this is not to deny the value of hearings and debates as aids to statutory interpretation. However, statements found in the hearings must be used cautiously. The purpose of congressional hearings is to provide the committee or subcommittee members with information and with the arguments pro and con on pending bills. Some of the witnesses, therefore, are advocates of one point of view and their statements are naturally going to be colored by their position. Within limits, the same defect applies to statements by members of Congress during debates on bills. It is also unlikely that a single member will be as well informed on a bill as the committee that handled the bill.

Another less apparent and less direct benefit derived from the use of the written committee report flows from the demands it makes upon the staff assistants of the committee whose responsibility it is to draft the committee report. The staff member assigned to a particular bill must learn all he can about the nature and effect of the bill; he passes this knowledge on to the subcommittee members handling the bill and eventually to the full committee. Attendance at hearings, examination of the positions of interested persons or groups, and study of the results of staff research combine to make an expert of the staff member. The knowledge that a full explanation of the bill must be written as soon as the bill is reported is added incentive to staff assistants to be well prepared before the subcommittee and full committee meetings. Benefits of the expertness of the staff member are transmitted to committee members and the possibility of intelligent committee action is thereby enhanced. Though one must be cautious not to over-emphasize the role of the staff in the determination of legislative policy, it cannot be doubted that the competence of the committee staff is reflected in the legislation reported by the committee.

The development of the use of written committee reports to accompany legislation marks a maturation of the procedure of a legislative body. In the United States House of Representatives this has been the practice since 1880. In that year the House extensively revised its rules and adopted a new requirement that each bill, when reported from a committee, be accompanied by a written committee report. The United States Senate was slower in adopting this procedure; however, since the turn of the century, Senate committees have followed the practice of submitting written reports to accompany most bills, and since World War II, practically every bill in the Senate has been accompanied by



a written report. No rule requires that this be done in the Senate; it is purely a matter of custom.

In contrast to the congressional practice it is rare for state legislative committees to accompany bills they report with written explanations.<sup>11</sup> There are undoubtedly a number of reasons for this, not the least of which is the lack of a competent committee staff to draft the report; rarely does a state legislative committee have a staff in any way comparable to even the weakest congressional staff. The legislators undoubtedly consider themselves too busy to perform such a mundane chore. Furthermore, the printing and distribution of committee reports would involve an expense which to many state legislators appears unnecessary. But this conclusion is open to serious question.

Let us now examine the development of the use in Congress of the written committee report to accompany bills. First, we shall trace its development in the House of Representatives, and then its later development in the Senate.

#### HOUSE OF REPRESENTATIVES 1789-1800

It is not possible to speak with certainty about the use of written reports by the early congressional committees for at that time the printing and distribution of documents was left to the discretion of the Clerk of the House and the Secretary of the Senate. Consequently, no official records are available. Also, the destruction of the Capitol in 1814 destroyed whatever surplus of documents then existed.<sup>12</sup> The early picture must be pieced together from a variety of documents including the debates and proceedings in the Congress of the United States, known as the Annals of Congress, volumes of early committee reports, documents included in the American State Papers series, Journals of early Congresses, early congressional documents in the Archives of the United States, and the writings of men on the scene such as those contained in the Journal of William MacClay, the Works of Fisher Ames, and the collected writings of Thomas Jefferson, James Madison, and others. This evidence indicates that in the early Congresses it was rare for committees to accompany bills with written reports; on those occasions when it was done, a private claims bill was usually involved.

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<sup>11</sup> 2 SUTHERLAND, STATUTORY CONSTRUCTION 491-93 (3d ed., Horack 1943).

<sup>12</sup> TABLES OF AND ANNOTATED INDEX TO THE CONGRESSIONAL SERIES OF UNITED STATES PUBLIC DOCUMENTS 9 (Government Printing Office 1902).

In the House of Representatives there were a number of factors which probably contributed to this rare use of written reports by committees. First, the informal atmosphere of the fledgling House of Representatives undoubtedly militated against such a refinement. Second, the role of committees in the early House was greatly different than it is today. Finally, legislative procedure was much more flexible and less well organized than now.

### *Informal Atmosphere of Early House*

The early House of Representatives made extensive use of the informal session known as the Committee of the Whole. "The rules were so framed as to permit almost unrestricted freedom of debate, and every member was given unlimited opportunity to satisfy his own craving to talk . . . . The House was so small that it was a genuine deliberative assembly . . . ." <sup>13</sup> In such an assembly there was no great need for written reports from committees; if any language in a reported bill required clarification, committee members made whatever explanation that was necessary in oral debate.

### *Minor Role Played by Early Committees*

The role played by early committees negated any substantial use of authoritative written reports to accompany bills. Practically all early committees were *ad hoc* bodies and each was appointed to consider a single item of business. There were two exceptions. The Committee on Elections and the Committee on Claims were at first appointed from session to session to serve the duration of the particular Congress; later, on November 13, 1794, they were made standing committees. By 1800 there were five standing committees. <sup>14</sup>

Practically all the early House committees were special or select committees who conceived their function as largely ministerial in nature. It was generally understood that authority to make policy determinations resided in the entire membership of the House. For example, in the Second Congress a committee was directed to bring in a bill pursuant to a message from the Secretary of Treasury containing his estimates of appropriations

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<sup>13</sup> HARLOW, *LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825* 127 (1917); See also SMELSER, *THE BIRTH OF THE NAVY, 1787-1798*, Manuscript, p. 61-61(c) (1957).

<sup>14</sup> Committees on: Elections, Claims, Commerce and Manufacturing, Revised and Unfinished Business, and Ways and Means.

needed for the operation of the government. The committee reported a bill exactly in accordance with the estimates.<sup>15</sup> In debate on the bill in the Committee of the Whole House, Mr. Parker inquired as to whether the committee had made extensive inquiry into the necessity of the appropriations.<sup>16</sup> Mr. Laurance, chairman of the committee, said it was not the duty of the committee to collect such information. He indicated his belief that the committee's sole function was to draft a bill in accordance with the estimates furnished by the Secretary of the Treasury and that the estimates were not to be examined more closely until later considered in the Committee of the Whole. After discussion pro and con, James Madison expressed the view that the House should work out some system by which House committees could scrutinize the operation of the Treasury Department.<sup>17</sup>

Although most of the early *ad hoc* committees took a restricted view of the scope of their authority, one group soon came to exercise an appreciable amount of discretionary power. These were the early House committees created to consider and report on given general subjects. The practice soon developed of taking general subjects discussed by the President in his State of the Union Message or subjects proposed in messages of the executive officials and dividing them among a number of select committees for study and report. For example, in his message of December 3, 1793, at the opening of the Second Session of the Third Congress, President Washington indicated the necessity for strengthening the military establishment and improving the militia. The entire message was referred to the Committee of the Whole; and, after discussion, the House adopted resolutions authorizing the appointment of select committees to consider these two general subjects. At the same time a third resolution was adopted authorizing the appointment of a committee on post offices and post roads, a topic not touched upon in the President's message, but independently suggested by the Committee of the Whole.<sup>18</sup> Select committees were accordingly appointed pursuant to these resolutions; and, on December 17, 1793,<sup>19</sup> the committee on the military establishment reported a bill which was debated at length. This bill was recommitted to other select committees a number of times before an amended

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<sup>15</sup> 3 ANNALS OF CONG. 157, 204-05 (1791).

<sup>16</sup> 3 *id.* at 221.

<sup>17</sup> 3 *id.* at 226-27.

<sup>18</sup> 4 *id.* at 141 (1793).

<sup>19</sup> 4 *id.* at 143.

bill on the subject was passed on January 23, 1794.<sup>20</sup> However, it was later defeated in the Senate.<sup>21</sup>

But this was not the end of the matter. On March 24, 1794, the House adopted a resolution that "measures ought to be immediately taken to render the force of the United States more efficient." This, along with a resolution calling for a select corps of militia to be developed by the several states, was referred to a nine man committee headed by Mr. Sedgwick.<sup>22</sup> A week later Mr. Sedgwick reported from the select committee six resolutions for consideration of the House. In sum the resolutions stated that:

- (1) the military establishment should be completed,
- (2) an additional corps of artillery should be raised,
- (3) the President should organize a militia of 80,000 drawn from states according to population,
- (4) an independent corps from a state could be accepted in lieu of the above fixed quota,
- (5) the states should arm and equip the men of the militia,
- (6) the President should raise a small military force under the authority of the government of the United States.

The first five resolutions were approved by the House on March 31, 1794; the sixth was approved the following day. These same men who comprised the committee reporting the resolutions were also appointed to another committee and requested to draft a bill in accordance with the resolutions.<sup>23</sup> The committee reported its bill on April 7, 1794, and it was read twice and committed.<sup>24</sup> However, on May 19, 1794, when the bill came up for consideration, it was rejected.<sup>25</sup>

It is evident that the breadth of the general subjects — the strengthening of the military establishments and the improvement of the militia — necessarily left the select committees with a certain amount of discretion. However, the fact that the entire membership repeatedly debated and re-referred the matter to committees indicates that there was not substantial reliance on the committee's initial conclusions. It is also evident that the entire membership of the House scrutinized much more carefully the bill finally drafted and proposed by the committee than it did the preparatory resolution reported to and adopted by the House. Another fact which stands out quite clearly is the dupli-

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<sup>20</sup> 4 *id.* at 272 (1794).

<sup>21</sup> 4 *id.* at 39.

<sup>22</sup> 4 *id.* at 528.

<sup>23</sup> 4 *id.* at 558.

<sup>24</sup> 4 *id.* at 561.

<sup>25</sup> 4 *id.* at 709-10.

cation of work performed by the second select committee chaired by Mr. Sedgwick, which committee undoubtedly re-covered much ground covered by the original committee appointed to study and report on this one aspect of President Washington's message. And to add more duplication of effort, there were a number of other select committees working on various aspects of the defense posture of the young Republic at this time. Similar duplication of effort was prevalent in other legislative matters where *ad hoc* committees were employed. This weakness in early House procedure is one which the standing committee system tended to remedy if not totally cure.

The failure of this defense legislation suggests another interesting point. President Washington was urging Congress to provide the admittedly feeble national government with stronger military capabilities, yet he met with little success. Here was a dynamic presidential program being held back by the Congress. The same situation has characterized much of our 20th century government; and, though it is often said that the institution of the Presidency gradually developed into a more dynamic institution than Congress, what occurred in this very early Congress suggests that by its very nature the Presidency may have always been a more energetic and progressive institution — exactly contrary to the expectations of the framers of the Constitution.

Another aspect of this legislative procedure is worthy of comment. Mr. Sedgwick's committee first reported a set of resolutions which were discussed and approved by the House, then the same men were appointed to a committee and ordered to bring in a bill in accordance with the resolutions. This two-step procedure, obviously an unnecessarily involved one, was followed extensively in the first decade of Congress. There-after its use declined and by the 19th century it was practically eliminated. These bill drafting committees did not employ written reports since the order of the House expressly stated the nature of the bill to be brought in; therefore, it would have been absurd for the committee to presume it necessary to re-explain to the House in a written report the meaning of the bill it had obediently drafted and reported. Also, these drafted bills were returned to the House very soon after the committee was set up. For example, the Sedgwick committee reported back its drafted bill within a week. In many instances the committees reported these bills within a day or two after the order to prepare them. To prepare in long hand an explanatory report to accompany the bill would have enlarged the task significantly.

*Flexible Legislative Process —  
Private Claims Bills*

In the informal days of the early House the two-step procedure described above was just one of many ways legislation was handled. Quite often a subject would be brought up for the first time in the Committee of the Whole; and, after the policy was fully decided, a committee would be appointed with instructions to bring in a bill in accordance with the agreed upon policy.<sup>26</sup> Occasionally a committee was directed to bring in a bill on a given subject even though no prior resolution had been debated and approved. This was the procedure followed, for example, in the handling of the Naturalization Bill. The House directed a committee composed of Messrs. Madison, Dexter, and Carnes to bring in a bill on the subject of naturalization.<sup>27</sup> The bill was reported on December 15, 1794,<sup>28</sup> extensively debated and amended, and finally passed the House on January 8, 1795.<sup>29</sup> It subsequently passed the Senate with amendments which the House accepted and was approved by the President on January 29, 1795.<sup>30</sup>

Still another procedure followed by the early House involved the reference of petitions and memorials to select and standing committees. For our purposes in this study of the development of the use of written congressional committee reports, this is a most important feature. Many of these petitions involved private claims against the Government of the United States; it was in the reporting of claims resolutions and claims bills that the first and greatest use of written committee reports took place. This was true in both the House and the Senate. In fact it is not too much to say that the general use of written committee reports to accompany bills grew out of the practice followed in the handling of private claims bills. The requirement that all bills reported by House committees be accompanied by a written report was adopted in 1880. By that time committees handling private claims bills had developed the general practice of accompanying bills with written reports. Committees handling public bills, on the other hand, generally did not accompany their bills with written reports.

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<sup>26</sup> 3 *id.* at 191 (1791).

<sup>27</sup> 4 *id.* at 968 (1794).

<sup>28</sup> 4 *id.* at 978.

<sup>29</sup> 4 *id.* at 1066 (1795).

<sup>30</sup> 4 *id.* at 1497-99 (1795).

A number of possible reasons for the use of written reports to accompany private bills suggest themselves. On the one hand the function of the committee was primarily a fact finding one. It was the agent of the House in assembling the data upon which the petition was to be granted or denied and, rather than leave this data to slippery memory or equivocal interpretation, it seemed, at least in some instances, more appropriate to reduce it to written permanence. Also, though the facts upon which larger issues of national concern such as defense, taxation, or road building might be of relatively common knowledge, the precise facts relating to a private claims petition could only be brought out by close investigation.

The function of the committee considering a private claims petition was more like the function of a court than that of a legislative body, for the decision on the petition turned as much on the facts as on large questions of policy. To an even greater extent this is true of the early Committee on Elections, established to study and report on cases of contested elections. For this reason the committee played a more important role in the consideration of these matters than it did in other legislative matters. Significantly enough, one of the first standing committees in the House was a Committee on Claims.

When written reports were used they accompanied the resolution reported to the House. They set out the facts as found by the committee; if relief was advised, the committee recommendations in the form of a resolution were also presented. They were in long hand and were sometimes read to the persons in the House chamber by a spokesman for the committee, usually its chairman. Sometimes these reports were printed and distributed to all members of the House. Most of the reports were thorough in presenting all pertinent facts. For example, on February 14, 1798, Mr. Dwight Foster submitted to the Committee of Claims a report on the petition of Henry Hill. This report is a careful description of a complicated Revolutionary War situation involving certain financing of General Greene's army in 1780 and thereafter. The committee sets out the details of the financial agreements, indicates why the matter cannot be justly settled under existing laws, and recommends special action by Congress to rectify the injustice.<sup>31</sup>

After these committees made their reports, it was up to the House to act. If the resolution was approved by the entire House,

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31 36 AMERICAN STATE PAPERS, CLAIMS 210 (1798).

and a bill was deemed necessary, the same persons who reported the resolution were usually directed to bring in a bill in accordance therewith. This ministerial function involved little work in view of the fact that the bills were substantially identical in language to the committee's prior resolution; consequently, the committee often reported the bill within one or two days. Again, this exemplifies the two-step process prevalent in the House during the first decade of Congress.

There were a few instances in which committees handling public legislation accompanied their bills or resolutions with written reports. For example, in 1798 the Committee on Ways and Means accompanied three resolutions relating to a direct tax on lands, houses, and slaves with a written report. The report states the committee's view as to the need for the tax proposed in the resolutions.<sup>32</sup> In one broad sweep it summarizes the financial condition of the new nation in May 1798, indicates the probable ordinary expenditures, sets out the probable revenue from import and tonnage duties, internal revenues, and stamp duties which were based on estimates of the Secretary of the Treasury, and then estimates extraordinary expenses which are mainly military in nature. The report points out that provision for payment of the national debt and provision for other defense spending was not resolved by the committee but rather was left to the discretion of the House. On the basis of this entire financial picture, the committee recommended an additional direct tax on lands, houses, and slaves to return an amount not less than two million dollars. The breadth and generality of this report and its lack of detail is typical of early committee reports.

### 1800—1810

The first few years of the new century saw no appreciable change in the use of written reports by House committees other than a gradual, almost imperceptible, increase in their use to accompany private claims bills. However, changes in House procedure which will have a bearing on the use of written committee reports do occur at this time and are worthy of mention.

#### *Development of the Practice of Reporting by Bill*

The first change concerns the decline in the use of the two-step procedure whereby committees first reported a resolution and were then re-appointed to draft a bill. By the first decade of

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<sup>32</sup> 8 ANNALS OF CONG. 1563 (1798).



the 19th century this practice, although not uncommon, was no longer generally followed. And as each session passed, it was used less and less. Soon committees were being authorized as a matter of course "to report by bill, or otherwise," and more were reporting by bill and fewer by resolution or otherwise. Not only did this eliminate wasted motion, but it also paved the way for committees to concentrate on the drafting of the precise language of a bill and to ponder the policy considerations involved in the legislative proposal. The result has been that committee reports today often give extensive analysis of precise language in a bill in addition to the elucidation of the policies involved.

By the time Henry Clay became Speaker of the House in the 12th Congress, the more modern procedure of reporting by bill rather than by resolution was firmly established as the usual practice. In 1815 blanket permission to report by bill was granted to standing committees and committees on the President's message.<sup>33</sup> However, there were a few instances in which the older procedure was employed. One of these was the hotly contested embargo bill during the War of 1812. On July 20, 1813, President Madison submitted a confidential message to the House recommending an embargo on all exports from the United States. The message was referred to the House Committee on Foreign Relations, presided over by John C. Calhoun of South Carolina.<sup>34</sup> The committee reported a resolution the next day which was debated, amended, and adopted directing that an embargo be established. Pursuant to this resolution a committee, comprised of two of the seven members of the Foreign Relations Committee, was appointed to draft a bill in accordance with the approved resolution. This bill was reported and approved the next day, July 22, 1813, by a vote of eighty to fifty,<sup>35</sup> although it was defeated in the Senate by two votes.

#### *Initiation of Legislation by Members*

The second noticeable change in House procedure at this time concerned the methods of initiating legislation. In the period from 1789 to 1800, legislative proposals were largely initiated by the President in his messages to Congress, by messages of other executive officials, or by petitions and memorials of citizens or groups of citizens. A member rarely proposed his own resolu-

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<sup>33</sup> 29 *id.* at 377 (1815).

<sup>34</sup> 26 *id.* at 499 (1813).

<sup>35</sup> 26 *id.* at 503.

tion or bill for House consideration.<sup>36</sup> Of course, although the initiation was external to the House, the views of the House members were controlling in determining passage or failure. Similarly, even when the House passed a measure prepared by others, the precise statutory language was the work of those in Congress. After the turn of the century, however, House members themselves, recognizing their positive role in the legislative process, began to propose resolutions with increasing frequency.<sup>37</sup>

This is not to say that the influence of the Executive on legislative policy lessened. The practice in both houses of Congress of formally referring the various parts of the President's State of the Union Message and other executive communications to appropriate standing or select committees was not only continued, but it was more firmly developed in the 19th century as a traditional part of the legislative process. The present practice whereby the President and executive department heads submit executive communications proposing specific legislation is the modern counterpart of this historical cooperation between these two branches of government.

The same is true of the modern practice whereby congressional committees receive the views of interested executive agencies and departments on proposed legislation. Today committees send a copy of the proposed bill to the one or more interested executive agencies as a matter of course. In general, the executive agency report carries great weight with the members of Congress — particularly those of the same political party as the Administration. During the First Session of Congress, congressional committees consulted with executive agencies on proposed tax legislation, pensions for veterans, and military preparedness; and, in fact, there was some complaint that the committees accepted too readily and without question the views of the executive on these and other legislative proposals.<sup>38</sup>

*Henry Clay as Speaker  
Maturity of the Committee System*

Henry Clay was Speaker of the House in the Twelfth Congress, part of the Thirteenth, the Fourteenth, and Fifteenth, part of the Sixteenth, and the Eighteenth. During this span of almost four-

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<sup>36</sup> See, e.g., 4 ANNALS OF CONG. 535, 565 (1794).

<sup>37</sup> See, e.g., 13 ANNALS OF CONG. 382, 515, 554-57, 562 (1803).

<sup>38</sup> HARLOW, LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825 131-50 (1917).

teen years the standing committee system in the House achieved maturity. In 1811 when Clay first served as Speaker there were only eight standing committees in a House of 186 members; in 1825 when he last served as Speaker there were twenty-five standing committees in a House comprised of 213 members. Not only was there an increase in the number of standing committees (which is not necessarily a good thing), but also, more importantly, their stature had greatly increased. In the first twenty years of Congress, committees were primarily considered ministerial arms of the House; for example, in the handling of public bills, committees drafted the legislation in accordance with policy decided upon by the entire membership. Also, many legislative proposals were never referred to standing or select committees, but rather were placed directly before the entire membership in the Committee of the Whole.

However, by the time Clay had completed his last term as Speaker, the general sentiment of the House was that all legislative proposals should receive the benefit of consideration by a standing or select committee. This is evidenced by the colloquy on the proposal of December 19, 1827, submitted by Mr. Bartlett to amend the rules of the House to provide that no bill shall be introduced except upon the report of a committee.<sup>39</sup> This would have replaced the rule which was in existence at that time and which provided:

Every bill shall be introduced by motion for leave, or by an order of the House, on the report of a committee; and, in either case, a committee to prepare the same shall be appointed. In cases of a general nature, one day's notice, at least, shall be given of the motion to bring in a bill, and every such motion may be committed.

Mr. Bartlett indicated that his amendment was intended to restate existing practice. He observed that although the existing rule seemed to authorize the introduction of bills into the House without prior committee consideration, this certainly was not and should not be the practice. Congressman Wood of New York expressed similar sentiments,<sup>40</sup> while Messrs. Bassett, Strong, Archer, Marvin, and Buck opposed the adoption of the new rule.<sup>41</sup> However, they all agreed that no legislative proposal should be considered by the House until it had received the attention of a standing or select committee. By 1827 the practice

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<sup>39</sup> 4 CONG. DEB. 823 (1828).

<sup>40</sup> 4 *id.* at 823-24.

<sup>41</sup> 4 *id.* at 824-25.

of referring legislative proposals directly to the entire membership in the Committee of the Whole was abandoned. The general procedure was to refer legislative proposals to either standing or select committees, and only after the committees reported the bill to the House would they be considered by the entire membership.

This marked the growth of the committee system in the House to a stage of maturity. Realizing the value of the division of labor provided by the committee system, the members no longer looked upon committees as merely ministerial arms of the House functioning only to carry out preordained policy. On the contrary, the committees were now looked upon as a vital stage in the process.

### *Refinement of Committee Reports*

Whereas the early House reports painted in rather broad strokes, by this time their nature had changed significantly. They were now more like modern committee reports in their precision and detail. For example, in the Second Session of the Twentieth Congress,<sup>42</sup> Chairman Barbour of the House Judiciary Committee reported a bill requiring at least five of the seven justices of the Supreme Court of the United States to concur in a decision pronouncing any part of a State Constitution or act of a State Legislature unconstitutional or invalid. The report recognized that it had been accepted for many years that the Court had the power to declare such State measures unconstitutional, and the committee indicated it was not questioning the validity of this proposition. However, the committee explained that the seriousness of the question involved in such cases indicated the wisdom of requiring greater than a bare majority vote. The committee report further indicated that the number five was chosen because the United States Constitution in a number of places requires concurrence of two-thirds of a body required to act, *e.g.*, proposed Constitutional amendments, impeachment by the Senate, and ratification of treaties.

Similarly in this same Congress, the House Ways and Means Committee submitted a written report<sup>43</sup> to accompany a bill repealing certain tonnage duties. The committee had been instructed by a resolution of the House of Representatives to inquire into the expediency of repealing the tonnage duties upon

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<sup>42</sup> H.R. REP. NO. 34, 20th CONG., 2d Sess. 1-2 (1829).

<sup>43</sup> H.R. REP. NO. 29, 20th CONG., 2d Sess. 1-4 (1828).

ships and vessels of the United States. The committee report described the situation which prevailed under the 6¢ per ton duty on ships entering United States ports and showed how this duty burdened the shipping industry of the United States. It reviewed the history of the tonnage duty and showed that it was originally imposed by an act of July 20, 1790, which had also imposed direct taxes on many occupations most of which had since been removed. The report indicated that the national debt was not great, that the prospects of its timely liquidation were favorable, and that the tonnage duty was only a small part of the revenue income. The report further indicated that United States shipping was affected the most by the duty and that the loss of revenue from foreign ships which would necessarily follow because of reciprocal treaty agreements would be small. The report then indicated that the committee was reporting a bill to repeal the tonnage duty.

### *Reliance of House on Committee Reports*

Not only were the reports more detailed and informative than earlier ones, but also they were used in debates more extensively by members of Congress. For example, in the Twentieth Congress, 1827-1828, a private bill was introduced for the relief of Marigny D'Auterive. D'Auterive's slave was impressed into the military service of the United States at New Orleans, and D'Auterive claimed the value of the lost time while the slave was in service. The Committee of Claims submitted a written report in conjunction with a bill compensating D'Auterive for a horse and cart which the government had commandeered, but not for the slave.<sup>44</sup> In explaining its conclusion in the report the committee drew a line between the status of a slave and property such as the horse and cart. Had this line not been authoritatively drawn in the written committee report, it is not difficult to anticipate that various members of the committee would have reported a variety of views as to just what the committee's position on D'Auterive's claim was. However, the most significant fact is that the committee report was referred to and relied upon in the debates on the bill.<sup>45</sup>

Even though by 1830 the standing committee system in the House had reached maturity, and the reports from the committees had recognized value, there was still relatively meager

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<sup>44</sup> 4 CONG. DEB. 899 (1828).

<sup>45</sup> 4 *id.* at 899-901.

use made of written committee reports to accompany reported bills. Probably human inertia is as good an explanation as any for this. In any event, written reports were still found to be used much more often with private rather than public bills.<sup>46</sup>

The traditional means of ascertaining the views of the committees were still relied upon, *i.e.*, through the reported bills themselves and the statements in debate by spokesmen for the committees, usually the chairman of the committees. In addition, the committees occasionally printed many copies of the basic documents relevant to bills under consideration and made them available to the members of the House. An example of the shortcoming of this procedure is shown in the consideration of the bill making appropriations for the civil and diplomatic expenditures of the Government for the year 1840. The estimates of the executive departments were printed and made available to all members of Congress. The chairman of the Ways and Means Committee, Mr. Jones of Virginia, indicated in debate<sup>47</sup> that many of the items in the bill were identical to recommendations of the executive departments. He also indicated that as each item in the bill came up, he would explain any changes made in the estimates by the committee. Had a written committee report been employed, these explanations could have been authoritatively set out therein and made available to the entire membership before debate. This would have made for a more searching discussion as well as provided an authoritative statement of the committee's views. The detailed explanation of the appropriation bill was surely helpful to the members of the House; but, undoubtedly, a written committee report which could have been more carefully analyzed by the members of the House would have afforded a greater understanding of the nature of the bill.

### 1830 — CIVIL WAR

The thirty year period between 1830 and the Civil War witnessed the crystallization of the use of written committee reports. The committees handling private claims bills continued to lead the way, while public bills were, for the most part, still reported unaccompanied by committee reports. This had been the picture from 1800-1830 and it came even more sharply into focus in the thirty year period preceding the Civil War. The Claims Com-

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<sup>46</sup> The proportion of written committee reports accompanying private bills far exceeded the two to one ratio of private over public bills enacted into law.

<sup>47</sup> 1833-73: CONG. GLOBE, 26th CONG., 1st Sess. 314 (1840).

mittee was still the dominant factor throughout the entire "four score and seven years." Other committees handling private bills, as the Committee on Pensions and Revolutionary Claims and the Committee on Public Lands, also accounted for a significant proportion of the written reports employed.

The general make-up of reports accompanying private bills also demonstrated a surprising uniformity over the years. In the earliest years of the Congress, the reports set out the facts of the claim for private relief along with the committee's recommendation.<sup>48</sup> This same format applied at the outbreak of the Civil War; and, parenthetically, it might be noted that this basic format applies today. However, today's reports on private bills almost invariably include a copy of the departmental reports on the bill. This is a more recent development.

#### CIVIL WAR — 1880

The Civil War thrust upon the federal government the necessity of swift action. When called into special session by President Lincoln, Congress responded by enacting into law thirty-four bills in approximately one month's time. This expeditious action, unparalleled in the history of the United States, included authorization for the calling forth of the militia, the use of volunteers, and the strengthening of the Army, Navy, and the Marine Corps. In addition, there were enacted measures providing appropriations for the military and civil establishments, provisions for the collection of taxes, the authorization of a national loan, and the punishment of sedition. But to accomplish all of this so quickly Congress had to adopt emergency procedures. Standing and select committees were often by-passed; many bills were introduced and referred directly to the Committee of the Whole on the state of the Union. Written committee reports were abandoned. To a certain extent these emergency measures were facilitated by the reduction in the membership of the House because of the absence of members from rebellious states. However, the drive to turn out necessary legislation tolerated none of the delays which the traditional procedures would have imposed.

Subsequent Civil War sessions of Congress returned to some of the more formal procedures. In general, bills were referred to either standing or select committees before floor action, though

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<sup>48</sup> 36 AMERICAN STATE PAPERS, CLAIMS (1789-1823). This volume contains many House and Senate committee reports.

written committee reports to accompany bills were used to a lesser extent than before the War and were confined almost exclusively to private bills. It was not until after the War that the trend of an increased use of such reports resumed.

After the Civil War, as before, the committees handling private bills, primarily the Committee on Claims and the Committee on Invalid Pensions,<sup>49</sup> made the greater use of written committee reports. By the time of the Forty-Fourth Congress, 1875-1877, ten years after the end of the Civil War, the Committee on Claims was accompanying a large majority of its bills with written committee reports; and the Committee on Invalid Pensions was accompanying practically all of the bills it reported with such reports. Five years later, when the House rules were extensively revised, the requirement of written reports to accompany all bills was adopted.<sup>50</sup> There can be no doubt that this rule was the result of the practice followed by the committees handling private bills. At no time before 1880 did any committee handling public bills make general use of written reports though some of these committees — particularly the Committees on the Judiciary, on Commerce, and on Indian Affairs — used written reports in a substantial *minority* of the bills they reported.

### SENATE

In the Senate, the development of the practice of accompanying bills with written committee reports involved essential differences as well as essential similarities with the development in the House. The most obvious difference is that the development in the Senate was totally evolutionary. There is not and there never has been a Senate rule requiring that all reported bills be accompanied by a written report as in the House. In the Senate this is strictly a matter of custom; it was not until the end of World War II that the practice could be considered universal. The most obvious similarity in development is that the general practice, now prevalent in both houses, grew out of the early use of written reports by committees handling private bills. Senate committees handling public bills as their counterparts in the House were much slower to embrace the use of written reports.

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<sup>49</sup> This committee considered private bills for the relief of Civil War Veterans of the Union Army.

<sup>50</sup> H.R. JOUR., 46th CONG., 2d Sess. 652 (March 2, 1880).



In discussing the development in the House we occasionally referred to legislative procedures of that body. There, of course, are many similarities in Senate procedures. For example, the relation of the President and Executive departments to the legislative process in the Senate was substantially the same as to that in the House. From the earliest Congresses the President's State of the Union Message was considered a source of legislative proposals, and the practice soon developed of referring parts of the annual message to appropriate committees. Similarly, executive communications from department heads were also considered the basis for legislative proposals. Finally, today, as in the House, Senate committees as a matter of course request the views of interested executive agencies and departments on pending legislation. The independence of the branches has not prevented intelligent cooperation between the executive and both houses of Congress in the development of legislative programs.

### *Informality of Early Senate*

The early Senate was a vastly less formal body than it is at present. This is not surprising when we remember that there were never over twenty-six members in the Senate during the First Congress; and most of the time there were less. This number is less than the complement of most standing committees in today's House of Representatives. It also was a much smaller body than the early House of Representatives. Another factor that contributed to the informality of the early Senate was that until 1793 its meetings were secret; the debate on Albert Gallatin's seat in the Senate in the Third Congress, 1793, was the first meeting of the Senate thrown open to the public.<sup>51</sup>

### *Variety of Legislative Procedure*

The early Senate employed a variety of procedures in the handling of legislation. In general, the early Senate made extensive use of special or select committees. Possibly for this reason the early Senate made less use than the House of the legislative device of the Committee of the Whole. One of the first select committees in the Senate was appointed to draft a bill organizing the Judiciary System of the United States.

On April 6, 1789, Richard Henry Lee of Virginia arrived in New York as the twelfth senator and the Senate was ready to proceed to business. The next day the Special Committee on the

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<sup>51</sup> BATES, THE STORY OF CONGRESS 23 (1936).

Judiciary was appointed. The committee consisted of Messrs. Ellsworth, Patterson, Maclay, Strong, Lee, Bassett, Few, and Wingate;<sup>52</sup> and on April 13, 1789, Messrs. Carroll and Izard were added.<sup>53</sup> This ten man committee was half the total membership of the Senate at the time.

The committee reported a bill to the Senate on June 12, 1789,<sup>54</sup> and it was debated extensively in the Committee of the Whole. On July 17, 1789,<sup>55</sup> it passed the Senate and was sent to the House where it lay pending action by the House on the Bill of Rights. Finally, without its being referred to any other committee, the bill was discussed in the Committee of the Whole of the House and passed with amendments on September 17.<sup>56</sup> The differences, as represented by the House amendments, were rapidly composed, and the President's signature was affixed to the Judiciary Act on September 24, 1789.

Undoubtedly, this is one of the most important pieces of legislation in the history of the United States; yet due to the rudimentary nature of the legislative process and the secretiveness of the Senate at that time, there is no official written explanation of the views of the special Senate committee which drafted the bill. That such a written report would have been extremely helpful cannot be doubted. Charles Warren in his scholarly article "New Light on the History of the Federal Judiciary Act of 1789"<sup>57</sup> demonstrates that a more accurate understanding of the act is possible when one has a fuller understanding of the views of the special Senate committee which drafted it. For example, such a written report would quite likely have thrown light on the question of whether Congress intended United States district courts to have criminal jurisdiction beyond crimes specifically defined by Congress.

Instead of reporting by bill, as did the select Committee on the Judiciary System, early Senate committees occasionally were involved in the two-step procedure we have seen in the early House, but this was used to a much more limited extent in the Senate than in the early House.<sup>58</sup> In either case, however, it was as rare in the Senate as in the House for a committee to accom-

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<sup>52</sup> S. JOUR., 1st CONG., 1st Sess. (April 7, 1789).

<sup>53</sup> *Id.* (April 13, 1789).

<sup>54</sup> 1 ANNALS OF CONG. 46 (1789).

<sup>55</sup> 1 *id.* at 49, 50 (1789).

<sup>56</sup> 1 *id.* at 894 (1789).

<sup>57</sup> 37 HARV. L. REV. 49 (1923).

<sup>58</sup> 5 ANNALS OF CONG. 26 (1795).

pany a bill with a written report. When a written report was employed it was usually on a private bill<sup>59</sup> rather than a public bill.<sup>60</sup>

### *Reliance on Committee Reports*

When written reports were used they were regarded as indicative of the committee's reasons for action. In the first session of the Ninth Congress, John Quincy Adams indicated he voted against a private bill more because of his disagreement with the written explanatory report than with the bill itself.<sup>61</sup> The bill as reported by the committee was for the relief of Hamet Caramilli, ex-Bashaw of Tripoli, who had been deposed by his younger brother.<sup>62</sup> During the war with Tripoli, officials of the United States Government conspired with Hamet Caramilli to bring down the then reigning Bashaw; and, as the committee report indicated, the United States was supposedly indebted to Hamet for his help. In debate Adams took issue with the report and discussed it at great length.<sup>63</sup> In his view the United States owed Hamet nothing. He said he would have voted for the bill if it had been represented as a magnanimous act in the way of a gift to an erstwhile ally, but he could not agree that any duty of payment existed. A modified bill for the temporary relief of Hamet Caramilli passed at that session of Congress.<sup>64</sup> This incident is significant because it demonstrates the importance Adams attributed to the views of the committees as indicated in the committee report. It is relevant to our study because as respect for the function of committees increased the value of written committee reports proportionately increased.

### *Senate Followed House in Creating Standing Committees*

The Senate was slower than the House in developing a regular standing committee system. However, the early Senate made extensive use of special or select committees and by 1816 referred practically all measures to committees of some sort before taking them up in the Senate. In a few areas of legislation, such as the Private Claims Bills, the Senate followed the practice of

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<sup>59</sup> For examples of reports on private bills, see 36 AMERICAN STATE PAPERS, CLAIMS 377, 411, 420, 435 (1789-1823).

<sup>60</sup> For examples of reports on public bills, see *id.* at 82, 953, 985 (1789-1791).

<sup>61</sup> 15 *id.* at 223-24 (1806).

<sup>62</sup> See the text of the committee report, 15 *id.* at 185 (1806).

<sup>63</sup> 15 *id.* at 211-24 (1806).

<sup>64</sup> 15 *id.* at 1106 (1806).

appointing a special committee on claims every session thereby using the substance but not the form of the standing committee system. The Constitution was over twenty years old before the Senate created standing committees for the consideration of pending legislation. The Joint Committees on Enrolled Bills and the Library of Congress and the Senate Committees on Engrossed Bills and Contingent Expenses were created earlier, but these were primarily administrative rather than legislative committees. On December 10, 1816, the Senate provided for Standing Committees on Foreign Relations, Finance, Commerce and Manufacturing, Military Affairs, the Militia, Naval Affairs, Public Lands, Claims, the Judiciary, the Post Office and Post Roads, and Pensions.<sup>65</sup> For the most part these committees were Senate counterparts of earlier standing committees created by the House.

It was not because of unfamiliarity with a standing committee system that the Senate failed to create such committees sooner; there was precedent for such committees not only in the House but also in the colonial legislatures. The Virginia House of Burgesses particularly made valuable use of the standing committee system.<sup>66</sup> The informality of the early Senate undoubtedly worked against the use of standing committees. But more than this, until the senators were disposed to defer somewhat to the views of the committee that studied a subject, the value of standing rather than special committees did not suggest itself. The value of a standing committee system over a special committee system resides largely in the expertise that comes from familiarity with the subject matter under the committee's jurisdiction. Until the membership in general is willing to recognize such expertise, however, there is no apparent value to standing committees.

Furthermore, until the authority of committees in general is recognized, the value of a written committee report is not great. For this reason, the development of the standing committee system is important to the development of the use of written committee reports. Where the Senate saw the necessity of relying on the committees handling private bills to secure the facts in the case, the value of written reports from these committees became apparent. It goes without saying, therefore, that the senators were slower to defer to committee recommendations on public bills.

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<sup>65</sup> S. Doc. No. 1123, 62d Cong., 3d Sess. (1912).

<sup>66</sup> R. V. HARLOW, *LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825* c. 1 (1917).

## 1820 — CIVIL WAR

By 1820 the Senate had developed the standing committee system and was beginning to recognize the value of written committee reports. For the most part, though, these reports were employed by the committees handling private bills; and, as times passed, more and more private bills were being accompanied by written committee reports. The Committee on Claims and the Committee on Public Lands accompanied a good percentage of the bills they reported with written reports.<sup>67</sup> Other committees such as the Committee on Pensions, Revolutionary Claims, and the Judiciary accompanied a number of their private bills with written reports.<sup>68</sup>

Though from a very early date, the First Session of the Fourth Congress, 1795-1796, it was recognized as appropriate for individual senators to introduce bills,<sup>69</sup> the usual means of initiating legislation was by petitions and memorials from private citizens or public groups. These petitions or memorials would then be referred to appropriate standing or select committees. The committees usually felt an obligation to take some action either favorable or unfavorable on them. Very few matters died in committees as they now do. Today there is rarely an adverse report from a committee on a bill. There were a large number of adverse written reports from committees on petitions and memorials, and most often the entire Senate concurred in the recommendation.<sup>70</sup> In one instance a Senate committee reported a bill but made no recommendation either favorable or adverse<sup>71</sup> rather than allow the matter to die in committee.

Although written reports were being employed increasingly in conjunction with private bills, their use on public bills was still fairly rare. However, one such occasion is worthy of mention. It was the report on May 8, 1850, of the Senate Committee of Thirteen,<sup>72</sup> chaired by Senator Henry Clay, which report embodied the Clay Compromise of 1850. The compromise involved the following provisions: the admission of California as a free state; the establishment of the Oregon-Utah territories without the Wilmot Proviso; the tightening up of the fugitive slave act;

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<sup>67</sup> See, *e.g.*, CONG. GLOBE, 2d CONG., 2d Sess. 51, 69, 75, 81, 96, 115, 168, 185 (1792).

<sup>68</sup> *Id.* at 87, 172, 203, 210.

<sup>69</sup> See, *e.g.*, 5 ANNALS OF CONG. 86-87 (1796).

<sup>70</sup> See, *e.g.*, CONG. GLOBE, 27th CONG., 2d Sess. 51, 75, 81, 115 (1841-42).

<sup>71</sup> S. REP. NO. 108, 31st CONG., 1st Sess. (1850).

<sup>72</sup> S. REP. NO. 123, 31st CONG., 1st Sess. (1850).

the abolition of the slave trade in the District of Columbia; the postponement of the admission of new states to be formed out of Texas; and settlement of the Texas and New Mexico boundary dispute. The Clay Compromise Committee Report accompanying S. 225 and S. 266<sup>73</sup> was reprinted in full in the *Daily National Intelligencer* of Washington and was commented on editorially. This shows the use of the committee report not only as a recognized valuable aid in the legislative process, but also as a means of bringing legislative proposals to the attention of the public. By the eve of the Civil War, a large number of private bills were being accompanied by written committee reports; for example, in the First Session of the Thirty-Sixth Congress, 1859-1860, the Committee on Pensions accompanied more than eighty of its bills with written reports, and the Committee on Claims similarly accompanied almost forty of its bills.<sup>74</sup>

#### CIVIL WAR — 1880

As we have seen, the Civil War demanded expeditious action from the Congress and, therefore, forced a modification of the usual legislative procedures. In the special session called by President Lincoln for the summer of 1861, there was practically no use made of written committee reports. In subsequent war sessions some committees resumed the use of written reports but on a scale which was reduced from pre-war days. Without a doubt, the Civil War retarded the development of the use of written reports in the Senate.

It was in 1880 that the House amended its rules to require the use of written committee reports to accompany all bills reported. At approximately this same time written reports in the Senate were still the exception rather than the rule in all but two committees, the Committee on Pensions and the Committee on Claims. The Committee on Military Affairs which also handled private bills used written reports in conjunction with most of the bills it reported. If a House bill was under consideration these Senate committees often saved themselves labor by merely copying the House report.<sup>75</sup> This practice was by no means confined to Senate committees inasmuch as House Claims and Pension Committees occasionally did the same thing when Senate bills were under consideration.<sup>76</sup>

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<sup>73</sup> CONG. GLOBE, 31st CONG., 1st Sess. 944 (1850).

<sup>74</sup> S. REPS., 36th CONG., 1st Sess. (1859-60).

<sup>75</sup> See, e.g., S. REP. NOS. 707, 708, 712, 717, 47th CONG., 1st Sess. (1881).

<sup>76</sup> H.R. REP. NOS. 1467, 1469, 1470, 1503, 47th CONG., 1st Sess. (1886).

### FINAL STAGES OF EVOLUTION

It was not until the turn of the century that Senate committees made use of written committee reports in a majority of cases. Committees handling public as well as private bills made increasingly greater use of such reports. From that time on the 20th century witnessed an increased use of written reports. There were occasional set backs. For example, in the Sixty-Seventh Congress, 1921-1923, a lesser proportion of bills were accompanied with reports than in preceding years. However, the general trend was clear. Through the twenties and thirties there was a fairly steady decline in the number of bills not accompanied by a written report, until by the end of World War II, the use of such committee reports was practically universal in the Senate.

### • CONCLUSION

Today the use of written committee reports is taken for granted in Congress. The development of this congressional practice, however, took many years — over ninety in the House and over 150 in the Senate. The development was separate in each house of Congress although in both it was the committees handling private bills that led the way. In the early history of Congress there was occasional use of written reports primarily in conjunction with private bills. In the period between 1830 and 1860 the authority and responsibility of committees was generally recognized; and with this recognition, the potential value of written committee reports became more apparent. Even so, human inertia being what it is, many years elapsed before all committees saw fit to use written reports to accompany bills. The House brought about this general practice by the adoption of a mandatory rule on the subject in 1880; the Senate development was totally evolutionary and was not complete until the end of World War II.

Although none contend that the use of written committee reports guarantees intelligent legislative activity, it is not too much to say they make such activity more possible. Committee reports contribute to debate on legislation and are essential to intelligent enactment of legislation without debate. The consent, private, and unobjected-to calendars would be impossible without them.