

# Congressional Record

## 103rd Congress (1993-1994)

### Committees of the Whole: Their Evolution and Functions

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`The spending of money is one of the two things that Congress invariably stops to talk about; the other thing being the raising of money. The talk is made always in the Committee of the Whole, into which the House resolves itself whenever appropriations are to be considered. While members of this, which may be called the House's Committee of Supply, representatives have the freest opportunity of the session for activity, for usefulness, or for meddling, outside the sphere of their own committee work.' 1

--Woodrow Wilson.

1 Woodrow Wilson, *Congressional Government* (1885; reprint ed., Baltimore: Johns Hopkins University Press Paperbacks edition, 1981), p. 113.

### INTRODUCTION

Definition--The Committee of the Whole House on the State of the Union, more often referred to as the `Committee of the Whole', is the House of Representatives operating as a committee on which every Member of the House serves. The House of Representatives uses this parliamentary device to take procedural



advantage of a somewhat different set of rules governing proceedings in the Committee than those governing proceedings in the House. The purpose is to expedite legislative consideration.  
2 (\*\*NOTE BY JAMES 6/21/15 - THIS IS BULL, THE PURPOSE IS SECRECY\*\*)

2 Ilona B. Nickels, 'Committee of the Whole: An Introduction,' Congressional Research Service Report for Congress (85-943 GOV), September 12, 1985, p. 1.

### Committees of the whole 3

in the U.S. House of Representatives have their origins in the British Parliament and in various American colonial-era assemblies. Neither committees of the whole, or any other committees of Congress, are provided for in the Constitution. But Congress, like its British counterpart, has always found it both convenient and necessary to delegate its responsibilities to different types of committees.

3 The plural 'committees' is used here and elsewhere since there are not only different types of committees of the whole to consider different classes of bills, but even within the same type, whenever a committee of the whole is formed to consider a particular bill it is considered a new committee for that specific purpose.

While committees are usually thought of as being smaller subgroups of their parent bodies, committees of the whole are unique in that they, as their name implies, are comprised of the entire membership of their parent House of Representatives. The purposes for such committees have changed somewhat since the origination of the concept in 17th Century England, though one rationale has remained constant throughout: the business to be considered by the committees was thought to be so important to the country as to warrant the full participation of all duly elected Representatives in their deliberations and decisions.

## THE BRITISH ANTECEDENT COMMITTEES OF THE WHOLE

As Bradshaw and Pring have observed in their book, *Parliament and Congress*, 'The power over money goes to the heart of government. The nature of the financial bargain struck between legislature and executive determines whether liberty and representation are effective.' 4

4 Kenneth Bradshaw & David Pring, *Parliament and Congress* (Austin, Texas: University of Texas Press, 1972), p. 306.

In Britain, the authors note, the historic development of this bargain hinged on the relationship between the monarchy and Parliament, 'and later, after much blood had been spilt, of a strong executive power operating through the Crown's prerogatives, to Parliament.' 5

5 Ibid.

From the earliest days, the monarch possessed a large revenue base and customary dues and was therefore independent of Parliament except for extraordinary needs, such as waging wars. To cover such needs, the monarch would look to the House of Commons for a bill of 'aids and supplies.' From such bills, the Commons was able to strike a bargain with the King: in return for the needed 'supplies,' certain remedies would be required by legislation or administrative action. 6

6 Ibid, p. 307.

From this basic bargain, the House of Commons was able to move against extra-parliamentary expedients used by Elizabeth I and the Stuarts for raising money, until eventually, with the Bill of Rights of 1688, it finally disposed of royal claims to impose taxes on its own authority, with this historic declaration: In Parliament: That levying money for or to the use of the Crown by pretence of prerogative without grant of Parliament, for longer

time or in other manner than the same is or shall be granted, is illegal. 7

7 Ibid.

The foreign and defense policies of William and Mary and subsequent monarchs enabled the House of Commons to establish an effective control on public finance based on the regular appropriation of moneys for particular purposes. This control extended not only to the old 'extraordinary' grants, appropriated in a series of annual votes, but over ordinary expenditures as well, including granting the King a regular income, known as the 'civil list,' for the ordinary expenses of government. Over the years, the Commons transferred more and more of these ordinary expenditures from the civil list, which the King could spend as he pleased, to the category of expenditures which was voted annually and which was therefore under the control of the Parliament. By the end of the 18th century, this civil list had been narrowed to the expenditures of the Royal household. 8

8 Ibid, p. 308.

This expansion of Parliament's authority over finance for a wide variety of purposes required special machinery to ensure that the money it appropriated was indeed being expended for the purposes and policies intended, and for no others. Initially, this machinery took the form of small committees of investigation within the Parliament to keep a tight hold on financial policy in every field of government and to investigate the misappropriation of funds. But the committees that survived in the 17th century were not the small committees, but committees of the whole house: the Committee of Supply, which started in 1620; and the Committee of Ways and Means, which started in 1640. As Bradshaw and Pring point out, though, these were committees 'in name only since every member of the House belonged to them,' and their real purpose was to allow 'the Commons to discuss the royal demands for finance informally and under a

chairman of their own choosing rather than under the 'King's man', as the Speaker was then regarded.' 9

9 Ibid, p. 309.

De Alva Stanwood Alexander, a former Member of the U.S. House of Representatives, in his *History and Procedure of the House of Representatives*, observes of this birth of the Committee of the Whole concept in England that: It originated in the time of the Stuarts, when taxation arrayed the Crown against the Commons, and suspicion made the Speaker a tale-bearer to the King. To avoid the Chair's espionage the Commons met in secret, elected a chairman in whom it had confidence, and without fear of the King freely exchanged its views respecting supplies. 10

10 De Alva Stanwood Alexander, 'History and Procedure of the House of Representatives' (1916; reprint ed., New York: Burt Franklin, 1970), p. 257.

In addition to the committees of the whole House on Supply, and Ways and Means, the House of Commons used the committee of the whole device for the consideration of money resolutions which authorized expenditures in connection with bills. 11

11 In the House of Commons procedural reforms of 1965-67, these financial committees were abolished in favor of consideration by the House. The use of committees of the whole for other important matters was eventually replaced by a Standing Committee System to debate and amend bills, though committees of the whole are still used from time to time on minor legislation not requiring consideration by Standing Committees. Bradshaw and Pring, op. cit., p. 216.

In addition to the element of secrecy, the committee of the whole device had appeal to Members because of their suspicion and distrust of the smaller committees which were comprised only of supporters of measures. As Bradshaw and Pring explain the appeal of the committee of the whole alternative:



`Not only did this remove the King's most powerful agent [the Speaker], but it also enabled his other supporters to be outnumbered; it denied to the grandees the power to make important decisions in small groups which they could dominate. It was an attempt to ensure that from then on members would always be equal in status, that decisions would be communal, that no small privileged group would control the functions of the House. It threw open to the whole House such secrets as had hitherto been reserved to committee members only.' 12

12 Ibid, p. 209.

While this evolution of the authority of the Commons over finance through secret committees of the whole might lead one to conclude that the Parliament had established itself as independent of the Crown, nothing could be further from the truth. As Bradshaw and Pring point out, while the personal authority of the monarch was trimmed with the civil war and revolution of 1688, `the English Constitution remained monarchical in essence.' And they go on: 13

`The chosen way forward in England was to leave the power of initiating expenditure where it had traditionally been, that is, with the Crown, but now with the Crown acting through ministers responsible to itself.'

13 Ibid, p. 309.

Another observer has put it even more bluntly: `The Crown demands money, the Commons grant it, and the Lords assent to the grant; but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers.' 14

14 Erskine, May, 18th ed. (1971), p. 676, as cited in Bradshaw and Pring, op. cit., p. 306.

The latter quote highlights another aspect of the British

Parliament which differentiates it from the U.S. Congress, and that is that the House of Commons may appropriate no money unless it has been recommended by the Crown--a prohibition first passed by the House of Commons in 1706, and which has since become a Standing Order of the House. 15

15 Ibid, p. 309.

[Page: H28]

## **THE PRE-CONSTITUTIONAL AMERICAN COMMITTEES OF THE WHOLE**

While it was this continued monarchical control over taxes and spending that eventually led to the American revolution and a new system of Government under which the legislative and not the executive was to have primacy over such matters, the concept of the committee of the whole not only survived the ocean voyage, but the American Revolution as well.

It is not difficult to understand why the concept of secret deliberations out of earshot of the King would have special appeal in the colonial assemblies, the Continental Congress, the Congress of the Confederation and the Federal Convention to frame the Constitution. And, indeed, it was frequently utilized in all of these legislative assemblies in early American history.

According to former House Parliamentarian Asher C. Hinds: The Continental Congress used the Committee of the Whole frequently, considering its important business and giving private audiences to foreign ministers therein. In the early days of the struggle for independence, it resolved into a `Committee of the Whole to take into consideration the state of America.' 16

16 Asher C. Hinds, *Hinds' Precedents of the House of*

*Representatives of the United States* (Washington, DC.: Government Printing Office, 1907), Volume IV, sec. 4705, p.986.

The Federal Convention, called to frame the Constitution, convened on May 14, 1787, and adjourned from day to day until a majority of delegates had arrived. On May 29th, the Convention adopted the following resolution: *Resolved*, That the House will meet to-morrow to resolve itself into a **Committee of the Whole House** to consider the state of the American Union. 17

17 Ibid, p. 987.

Thus we learn, for example, that after the Convention decided on a National Government to consist of three branches, it took up the question of whether the National Legislature should be unicameral or bicameral. House historian George B. Galloway writes that the question was apparently decided without debate, 'first in the **Committee of the Whole** with Pennsylvania alone dissenting, and finally in the Convention itself by a vote of seven States to three (Maryland divided) that the new Congress should have two branches.' 18

18 George B. Galloway, *History of the United States House of Representatives* (Washington, DC.: U.S. Government Printing Office, 1965), p. 1.

Not only is the name of the later House of Representatives' **Committee of the Whole House** on the state of the Union hinted at by the Continental Congress' **Committee of the Whole** to take into consideration the state of America, and the Constitutional Convention's **Committee of the Whole House** to consider the state of the American Union, but, as Hinds suggests, also from the Constitutional provision in section 3 of Article II that the President should 'from time to time give to the Congress information of the state of the Union.' 19

[Indeed, even today the 'Message of the President of the United States to the Congress on the subject of the State of the Union' is placed on the Union Calendar with the notation: 'Referred to the

Committee of the Whole House on the State of the Union.' 20

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19 Hinds, op. cit., p. 987.

20 See, for instance, the 'Calendars of the United States House of Representatives and History of Legislation,' One Hundred Second Congress, Union Calendar No. 2, January 29, 1991 (H. Doc. 102-1), and Union Calendar No. 253, January 28, 1992 (H. Doc. 102-176).

As Alexander points out, all of these various names for Committees of the Whole are derived from the English prototype 'Committee of the Whole House on the State of the Nation.' 21

21 Alexander, op. cit., p. 258.

## **THE FIRST HOUSE**

The first House of Representatives was scheduled to convene in New York on March 4, 1789, but only 13 of the 59 elected Representatives appeared and took their seats on that day. So, the House met and adjourned each day until finally, on April 1st, the 30th Member appeared to provide the requisite quorum under the Constitution.

On that first day, the House elected its Speaker and other officers. And, on April 2nd, it appointed an 11-member select committee to prepare and report standing rules and orders of proceeding. Five-days later the committee reported back a set of four fundamental rules which were adopted by the House. The first three dealt with the duties of the Speaker, decorum and debate, and bill procedure. The fourth rule prescribed the procedures of Committees of the Whole House in which bills were to be twice read, debated by clauses, and subjected to

amendment. 22

22 Galloway, *op. cit.*, p. 10.

It was also established at the same time that it should be a `standing order of the day, throughout the session, for the House to resolve itself into a Committee of the Whole House on the State of the Union.' As Hinds observes, `Thus the two kinds of Committees of the Whole were recognized at that time. The use of the article 'a' instead of 'the' indicates what was the fact, that there was then no individuality and permanence to these committees.' 23

23 Hinds, *op. cit.*, p. 987.

The distinction between the two types of Committees of the Whole in the first Congress is explained by Hinds as follows: So it is evident that in the First Congress, and for several subsequent Congresses, the Committee of the Whole House on the state of the Union was an arrangement for consultation chiefly. Whenever the House referred a matter they generally sent it to a Committee of the Whole House. 24

24 *Ibid*, p. 989.

Alexander elaborates on this distinction by noting that the function of the Committee of the Whole House on the state of the Union was for `the informal consideration of highly important matters before their reference to select or standing committees,' whereas the function of the Committee of the Whole House was for the consideration of bills after they had been formally reported from select or standing committees. The Committee of the Whole House was also called the Committee of the Whole House on Ways and Means when it was used for considering appropriations and revenue measures reported from committees (comparable to the Committee of the Whole on Supply of the House of Commons discussed earlier). 25

25 Alexander, op. cit. p. 258.

On November 13, 1794, the House adopted rules to ensure that all money bills would be considered in a Committee of the Whole House. These rules read in part as follows: No motion or proposition for a tax or charge upon the people shall be discussed the day on which it is made or offered, and every proposition shall receive its first discussion in a Committee of the Whole House. . . . All proceedings touching appropriations of money shall be first moved and discussed in a Committee of the Whole House. 26

26 Hinds, op. cit., sec. 4792, p. 1028.

To cite an example used by Galloway of how this dual-Committee of the Whole system worked during the first Congress--After a problem such as the location of the permanent seat of the Federal Government had been discussed from every angle in Committee of the Whole House on the state of the Union, it would be referred by House resolution to an ad hoc select committee with instructions to report a bill on the subject. Some days later the select committee would present its bill to the House, according to order, and after second reading the bill would be committed to a Committee of the Whole House. The House would then resolve itself into a Committee of the Whole House, the Speaker would leave the chair, another Member would take the chair and the Committee of the Whole House would consider and probably adopt amendments to the bill. Then the Speaker would resume the chair and the chairman of the Committee of the Whole would report the action to the House and deliver the proposed amendments at the Clerk's table where they would be twice read and usually agreed to by the House. 27

27 Galloway, op. cit., p. 10.

Not every Member was ecstatic about this sometimes laborious process. Representative Fisher Ames, writing to a friend in July of 1789 about a revenue collection bill, described how the bill `was

at first imperfect' so it was referred to a large and good committee which agreed on some principles and the clerk drew up the bill accordingly. Then it was considered in committee of the whole, `and we indulge in a very minute criticism upon its style. We correct spelling, or erase `may' and insert `shall', and quiddle in a manner which provokes me.' Ames concluded that, `Our great committee is too unwieldy for this operation. A great, clumsy machine is applied to the slightest and most delicate operations--the hoof of an elephant to the strokes of mezzotinto.'

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28 Ibid, p. 11.

[ Page: H29 ]

## **EVOLUTION OF COMMITTEES OF THE WHOLE**

Over the first five Congresses, Committees of the Whole House on the state of the Union were used to develop the guiding principles of all major measures before they were referred to select committees to work out the details and draft the bills. This process was used to develop the first tariff bill, the acts organizing the executive departments, and the first amendments to the Constitution. As Galloway observes of this process: `A committee of the Whole was the House itself under another name and in those days the House was small enough (65 Members) to function as a genuine deliberative assembly and to stage great debates on national questions.'

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29 Galloway, op. cit., p. 10.

With the increase in business in the early Congresses there was a natural increase both in the number of select committees (more than 350 were formed in the Third Congress alone) as well as the time consumed in both types of committee of the whole.

Congress saved some time by authorizing the Speaker, in 1790, to appoint all committees unless otherwise directed by the House. Previously all committees greater than three in number were elected. And, in 1794, the House empowered the Speaker to appoint the chairmen of committees of the whole who had also been previously subject to election by the committees. 30

30 *Congressional Quarterly's Guide to Congress*, Second Edition (Washington, D.C.: Congressional Quarterly, Inc., 1976), p. 36.

Because of the sheer volume of business, Congress began to delegate responsibility for initiating some legislation to standing or permanent committees. Four were established by 1795, and between 1802 and 1809, six more were added. Eventually, by the mid-1800's, a system of standing committees had replaced the original overview function of the early Committees of the Whole and the bill drafting functions of the select committees.

Nevertheless, the products of the standing committees were still brought back for consideration in Committees of the Whole House. 31

31 Ibid.

This eventually led to considerable congestion and confusion in committees of the whole House. Hinds points out that in 1817, 'the practice of referring several bills to a single Committee of the Whole had resulted in delays, and a rule was adopted that no more than three bills should be referred to the same Committee of the Whole, and such bills should be analogous in nature.' 32

32 Hinds, op. cit., p. 987.

But even this attempt to better rationalize and clarify the uses of Committees of the Whole apparently confounded Members. As Hinds writes, 'When the rules were revised, in 1860, this rule was dropped, Mr. Israel Washburn, Jr., of Maine, who presented the report, stated that the Committee on Rules 'were unable to understand what the rule meant, and saw no use in retaining it.' And Hinds comments on this: 'Mr. Washburn's statement affords

a remarkable illustration of how a practice of the House may subvert a rule so thoroughly that the rule may in the course of time become an enigma.' 33

33 Ibid.

As early as 1822, Representative Charles Rich of Vermont had proposed a rule change to attempt to remedy the confusion. His proposal would have provided that, exclusive of 'the Committee of the Whole on the state of the Union,' there should be three Committees of the Whole House: One on bills of a public or general nature, one on private or local bills, and one for private matters unfavorably reported from committees.' The Speaker would place bills on the Calendar for consideration in the appropriate Committee of the Whole the next day, to be taken up in the order in which they appear on the Calendar, and any number of bills might be considered in the appropriate Committee of the Whole at the same sitting. However, the House declined to consider this rule. 34

34 Ibid, pp. 987-88.

Two years later, in January of 1824, Rich renewed his proposition. While it apparently was not acted upon, it nevertheless became the practice without the adoption of the formal rule. By 1860, the new practice was so well-established that 'the most experienced Members of the House could remember no other.' 35

35 Ibid, p. 988.

This practice of having many Committees of the Whole, temporarily created for considering one, two or three bills, gradually changed until there came to be two committees, 'each with an individuality and calendar of its own,' and with it a more marked distinction between the Committees of the Whole House and the Committees of the Whole House on the state of the Union. Whereas the Committees of the Whole House on the state of the Union were originally used to originate matters without

such matters first being referred to them by the House, as early as 1833 references were made to this originating function as a usage of the past. 36

36 Ibid.

In the place of this original function of the Committee of the Whole House on the state of the Union as an arrangement for consultation, the idea evolved that it should become a committee that 'should receive what may be called the greater matters of legislation,' and that is the usage that has become crystallized in the current House Rule: the Committee of the Whole House on the state of the Union would receive public bills reported by the standing committees, while the Committee of the Whole House would receive private bills, even though under the early usage the Committee of the Whole House had received the greater proportion of both public and private bills. Until 1828, both appropriations and revenue bills were considered in the Committee of the Whole House; but since 1828, both classes of bills have been considered in the Committee on the Whole House on the state of the Union. But, as late as 1844, other classes of public bills were still being considered in the Committee of the Whole House. 37

37 Ibid, p. 989.

In the House Rules revision of 1880, the House adopted Rule XIII which officially established three calendars of business reported from committees: (1) a Calendar of the Committee of the Whole House on the state of the Union, to which will be referred bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property; (2) a House Calendar to which shall be referred bills of a public character not raising revenue or directly or indirectly appropriating money or property; and (3) a Calendar of the Committee of the Whole House to which shall be referred all bills of a private character. However, as has been discussed above, two of the Calendars had existed for many years as indispensable

to orderly procedure. An old rule No. 129, dating from January 25, 1839, referred to a Calendar of the private bills committed to the Committee of the Whole House; and old rule No. 114, dating from July 27, 1848, referred to a Calendar for bills sent to the Committee of the Whole House on the state of the Union. The 1880 rules revision simply codified these earlier practices and rules and established a new House Calendar for public bills which did not raise revenue or directly or indirectly appropriate money. Bills on the House Calendar were to be considered in the House as opposed to either of the Committees of the Whole. 38

38 Hinds, op. cit., sec. 3115, pp. 172-73.

In 1848, the House had adopted a rule (now rule XXIII, clause 4) providing that in the Committee of the Whole House on the state of the Union, bills were to be taken up and disposed of in their order on the Calendar, but when objection is made, a majority of the committee, shall decide, without debate, whether it should be taken up and disposed of or laid on the table. In 1880, this was revised to provide for bills to be taken up in their order on the Calendars, except bills raising revenue, for general appropriations, and for the improvement of rivers and harbors shall have precedence. And, when objection was made to the consideration of any bill, the committee would rise and report the matter to the House for determination without debate. 39

39 Ibid, sec. 4729, p. 998.

The Appropriations and Ways and Means committees were also given privileged status by a separate rule (XVI, clause 9) for bringing up their bills in the Committee of the Whole House on the state of the Union after the reading of the Journal on any day. While the privilege appears to remain in Rule XVI today for both committees, another rule change in 1975 removed the privilege from revenue measures from the Ways and Means Committee.

The various rules providing for the order of consideration of bills in the Committee of the Whole House on the state of the Union

were eclipsed by the evolving role of the Rules Committee in the last two decades of the 19th century to report 'special rules' or 'order of business resolutions' providing for the consideration of measures in the Committee of the Whole House on the state of the Union. The effect of these privileged resolutions from the Rules Committee, once adopted by the House, was in turn to give privileged status to the bills mentioned therein--thereby permitting them to be taken up out of their order on the Calendar.

This is the practice that has been followed up to present day.

## **THE COMMITTEE OF THE WHOLE TODAY**

As has already been noted, there are today two kinds of Committees of the Whole: the Committee of the Whole House on the state of the Union for the consideration of public bills affecting taxes or spending; and the Committee of the Whole House for the consideration of private bills, usually relating to claims of individuals against the government, special immigration status, or other special relief from the government.

In effect, only the Committee of the Whole House on the state of the Union is utilized today since private bills tend to be considered 'in the House as in the Committee of the Whole.' This latter procedure is undertaken by unanimous consent or a special rule, dispenses with general debate (unless provided for in the consent request or special rule), allows for the consideration of amendments under the five-minute rule, but also allows the previous question to be ordered at anytime, thereby potentially cutting-off the amendment process before all sections have been read for amendment. By the same token, bills on the Union Calendar which have been reported from the House Committee on the District of Columbia may be called-up as privileged on 'District Days' (the second and fourth Mondays of each month), and which should be considered in the Committee of the Whole,

are, as a matter of modern practice, usually considered instead in the House as in the **Committee of the Whole** by unanimous consent.

Other bills on the Union Calendar, which should be considered in the **Committee of the Whole**, are often considered instead in the House under other procedures. These include unanimous consent for their consideration in the House; placement on a Consent Calendar which is called the first and third Mondays of each month; by consideration under a suspension of the rules procedure which is allowed on any Monday or Tuesday; or by provisions of a special rule reported from the Rules Committee and adopted by the House.

Today, the overwhelming majority of bills passed by the House are considered in the House under one of these alternative procedures to the **Committee of the Whole**. Of the 970 public bills passed by the House in the 102nd Congress, for instance, 507 or 52% were considered under suspension of the rules--a procedure providing for 40-minutes of consideration in the House, prohibiting amendments, and requiring a two-thirds vote for passage. Roughly one-third of the public measures passed and enacted are so-called 'commemoratives' which designate certain days, weeks or months to recognize worthy causes or events, name buildings, roads, dams or places after people, etc. And most of these measures are considered by unanimous consent. Based on an analysis of special rules providing for the original consideration of public measures in the 102nd Congress, only about 10% of the bills considered by the House are considered in the **Committee of the Whole** House on the State of the Union. In short, it is reserved today for the consideration of only the most important legislation. 40

40 The above statistics are derived from 'Comparative Data on the U.S. House of Representatives,' compiled by the Republican Staff of the House Rules Committee, November 10, 1992, and are expected to be published in the Congressional Record of January

5, 1992.

As mentioned in the definition contained in the introductory section of this paper, one of the main advantages of considering legislation in the Committee of the Whole is that the Committee operates under a special set of procedures that enable it to expedite consideration. Whereas a quorum in the House is 218 Members, a quorum in the Committee of the Whole is 100 Members. Whereas amendments in the House are considered under the one-hour rule (per Member), amendments in the Committee of the Whole are considered under the five-minute rule (per Member). Whereas the House can be tied-up in votes over various dilatory motions, in the Committee of the Whole it is not in order to offer motions to adjourn, to table, for the previous question, to recommit or refer, or to reconsider a vote by which an amendment is agreed to or disagreed to.

As has already been mentioned, most important legislation today is brought to the Committee of the Whole by means of a 'special rule' or 'order of business resolution' reported by the Committee on Rules and adopted by the House. The basic purposes of such a special rule are five-fold:

To give the bill privileged status for immediate consideration in the Committee of the Whole (including a means for resolving into the Committee of the Whole);

To provide for a limited period of general debate (and thereby avoid the prospect of every Member taking full advantage of the hour-rule in debate);

To provide for the consideration of amendments under the five-minute rule;

To ensure the right to offer a motion to recommit when the bill is reported from the Committee of the Whole back to the House; and

To order the previous question on the bill to final passage without

intervening motion, thus precluding any additional debate or amendments back in the House after the Committee of the Whole has reported.

Thus, an atypical 'open rule' (only 34% of the rules reported in the 102nd Congress allowed for an open amendment process 41

) might read as follows:

41 I bid.

*'Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to do good works and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Good Works, the bill shall be considered for amendment under the five-minute rule, and each section shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.'*

As noted above, in recent times a more typical rule is restrictive (66% of the rules in the 102nd Congress limited the amendment process 42

). This means the rules are either closed (no amendments), or modified open or modified closed (allowing only for specified amendments). In addition, such special rules usually limit the debate time on each amendment made in order. Instead of in effect allowing every Member in the Committee of the Whole to speak five-minutes on each amendment, the rule might provide,

for example, for only 10 or 20 minutes of debate on minor amendments and 30 to 60 minutes on major amendments--equally divided between the proponent and a Member opposed to the amendment.

42 Ibid.

And, it is less likely today that such restrictive rules will allow for amendments to amendments, though when it is done it is usually allowed to advantage a committee chairman to offer a substitute amendment, or to play-off competing alternative amendments in a `king-of-the-hill' procedure whereby the last amendment adopted is the one reported back to the House (regardless of whether an earlier offered amendment garnered a larger majority vote).

Until 1971, there were no recorded votes in the Committee of the Whole. Today, any 25 Members may stand and demand a recorded vote on any amendment.

Following the amendment process in the Committee of the Whole, the House rises and reports the bill back to the House with the amendments adopted and the recommendation that the bill be passed with the recommended amendments. The Speaker then announces that, under the terms of the special rule, the previous question is ordered (thereby shutting-off any additional debate or amendment in the House). The Speaker then asks whether any Member demands a separate vote on any amendment reported from the Committee of the Whole. If so, separate recorded votes are taken on those amendments after the remainder of the amendments are first voted en bloc. There is no opportunity to reconsider any amendments which were not adopted in the Committee of the Whole. So, for instance, if an amendment in the nature of a substitute for the entire bill had been adopted in the Committee of the Whole after numerous amendments had been adopted to it, unless the special rule makes special provision, only the substitute or first degree amendment (as so amended) is considered reported back to the House. And separate votes may

not be demanded on amendments which had been adopted to it, no matter how major or controversial they may have been. After the Speaker puts the question on engrossment and third reading of the bill, and it is adopted, it is in order for any Member who is opposed the bill to offer a motion to recommit the bill to committee, with or without instructions. This right is reserved to the most senior minority member of the committee that reported the bill who is opposed to it in its present form. A simple motion to recommit, if passed, sends the measure back to committee. A motion to recommit with instructions to report back 'forthwith' may be used to offer one final amendment(s) to the bill.

The work of the **Committee of the Whole** is seldom reversed or recommitted by the House for the simple reason that the work was done by the same House under a different name and using different procedures. Moreover, while the House could, by not automatically ordering the previous question, reopen consideration of amendments defeated in Committee, this would defeat one of the main purposes for having such a committee, and that is to expedite the business of the House.

## **CONCLUSION**

The device of the Committee of the Whole originated in 17th Century England to protect the House of Commons in its deliberations over delicate financial matters affecting the Crown. In the latter half of the 20th Century, Committees of the Whole on major tax, spending and authorization matters have been abolished in favor of debate in the House or one of its standing committees, and inquiries or oversight by select committees. To this day, the Crown, represented through the Executive Ministers in Parliament, dominates the fiscal affairs of Government, and the House of Commons has little latitude in altering such policies.

In the United States, the Committee of the Whole House on the state of the Union has evolved from a body which originated debate to develop general guidelines for legislation which would then be fleshed-out by a select committee in detailed draft form.

The bill would then be reported back to the House which would commit the bill to a Committee of the Whole House for further debate and amendment before being reported back to the House for final passage.

With the growth of a standing committee system in place of select committees for each bill, the original purpose of the Committee of the Whole House on the state of the Union became redundant and fell into disuse. In its place, the Committee of the Whole House of the state of the Union replaced the Committee of the Whole House for the purpose of considering important tax and spending bills reported from the standing committees; and the Committee of the Whole House was converted into a body to consider only private bills.

In short, the House of Representatives ended-up where the House of Commons began by establishing a special Committee of the Whole (a combination of the British Commons Committees on Ways and Means and Supply) to consider the most important and often controversial legislation both in terms of the relationships between the Executive and Legislative Branches, and between the Representatives and the represented.

It is not too difficult to discern why the British counterpart Committee of the Whole on revenue and spending measures has disappeared while the American counterpart has grown in importance and thrives. The U.S. Constitution, which was in part a reaction against the British system it replaced, intentionally gave the principal powers over taxing and spending to the Legislative rather than the Executive Branch.

While the Congress recognized the need for delegating even these powers to standing committees, it at the same time reserved to the full House, through the Committee of the Whole, the final review authority over the decisions of the standing committees, and the ability for all Members to participate in changing such important legislation. As has been already been pointed out, consideration by the House of such measures by

other procedures does not allow for the same degree of participation or amendment, at least not without consuming considerably more time.

For all these reasons, the Committee of the Whole is not only different from the standing committees, but it survives and thrives precisely because it is considered a final check on the standing committees, much as the original committees of the whole in 17th Century England were an antidote to smaller committees. The Committee of the Whole is a convenient means for the House to duplicate as much of the work of the standing committee as it might find necessary to ensure that the final bill is a truly representative product.

De Alva Alexander has noted that under an earlier view, the Committee of the Whole was thought to be just another committee of the House. As an example of this, he cites a remark made on February 14, 1826, by Speaker John W. Taylor, 'an exceptionally able and acute Speaker.' In deciding a point of order as to whether a bill still pending in a standing committee could be considered as an amendment to a bill be considered in the Committee of the Whole, Speaker Taylor said that, 'the Committee of the Whole [is] but a committee of the House, though a large one.' 43

43 Alexander, op. cit., p. 257; also cited in Hinds, op. cit., sec. 4706, p. 990, under the heading, 'The Committee of the Whole has been held to be but a committee of the House.'

But Alexander takes issue with Taylor as follows: But the more modern view holds that it is the House itself doing business under a special and less formal procedure, by means of which the entire membership is enabled to participate in the consideration of a bill, unhampered by roll-calls or the intervention of motions to adjourn, to refer, to postpone, for the previous question, and the like. 44

44 Alexander, op. cit., pp. 256-257.

Likewise, another renowned House historian, George B. Galloway, has already been quoted in this paper as writing that, 'A Committee of the Whole was the House itself under another name\* \* \*.' 45

45 Galloway, op. cit., p. 10.

And contemporary congressional scholar Walter J. Oleszek of the Congressional Research Service, writes in his book, *Congressional Procedures and the Policy Process* the following: The Committee of the Whole is simply the House in another form. Every legislator is a member. House rules require all revenue raising or appropriations bills to be considered first in the Committee of the Whole. 46

46 Walter J. Oleszek, *Congressional Procedures and the Policy Process* (Washington, D.C.: Congressional Quarterly, Inc., 1989), p. 147.

To assert that the Committee of the Whole is nothing more than another advisory committee to the House is to completely misread history and misrepresent the true nature of such committees. In the final analysis, the Committee of the Whole, with its special authority for revenue and spending bills, is the very essence of the House exercising its special powers and prerogatives under the Constitution. Madison, in Federalist No. 58, put it this way:

The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of government. They, in a word, hold the purse--that powerful instrument. . . . This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure. 47

47 Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: The New American Library of

Literature, Inc., 1962 ed.), p. 359.

The Committee of the Whole remains today the critical device by which the House, acting together as 'the immediate representatives of the people,' retains its unique control over the purse-- 'that powerful instrument.' It is, in every sense of the term, the House of Representatives exercising its most fundamental legislative powers as granted under Article I of the Constitution.

[Page: H31]

## **BIBLIOGRAPHY**

Alexander, De Alva Stanwood. 'History and Procedure of the House of Representatives.' 1916; reprint edition, New York: Burt Franklin, 1970.

Bradshaw, Kenneth, and Pring, David. 'Parliament and Congress.' Austin, Texas: University of Texas Press, 1972.

'Congressional Quarterly's Guide to Congress, Second Edition.' Washington, D.C.: Congressional Quarterly, Inc., 1976.

Galloway, George B. 'History of the United States House of Representatives.' Washington, D.C.: U.S. Government Printing Office, 1965 (Printed Under the Supervision of the Committee on House Administration, 89th Congress, 1st Session, House Document No. 250).

Hamilton, Alexander, Madison, James, and Jay, John. 'The Federalist Paper.' New York: The New American Library of Literature, Inc., 1961; 1962 second printing edition.

Hinds, Asher C. 'Hinds' Precedents of the House of Representatives of the United States, Volume IV.' Washington,

D.C.: Government Printing Office, 1907.

Nickels, Ilona B. `Committee of the Whole: An Introduction.' Congressional Research Service Report for Congress (85-943 GOV), September 12, 1985.

Oleszek, Walter J. `Congressional Procedures and the Policy Process.' Washington, D.C.: Congressional Quarterly, Inc., 1989.

Wilson, Woodrow. `Congressional Government.' 1885; reprint edition, Baltimore: Johns Hopkins University Press Paperbacks edition, 1981.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentlewoman from the District of Columbia [Ms. **Norton**].

Ms. NORTON. Mr. Speaker, when we proposed this historic change, we recognized that the debate this afternoon would be inevitably partisan. After all, the five of us are Democrats. Can Members imagine my friends and colleagues on the other side of the aisle arguing as they just have if the five of us were Republicans? If so, they have a richer imagination than I.

They have conjured a conspiracy theory and sold it to some in the press. I take the floor this afternoon, Mr. Speaker, to announce that there indeed has been a conspiracy. There has been a conspiracy that brought this matter forward, and it is a conspiracy of the five Delegates who represent almost 5 million Americans. So I answer yes to the charge of conspiracy.

But at the same time, I feel I must tell the truth about the rest of the Democrats. They have been abidingly cautious, moving only after they received a third-party objective opinion about the law and about the Constitution.

My friends on the other side of the aisle, tomorrow morning you

will not want to be where you now are, and those Democrats who are not with us, neither will you if this package fails, for you will then have to read the pages of the papers in Moscow and Pretoria. Can Members imagine what those pages will say when it is reported that some in the United States of America voted to deny the right to vote on the House floor to other Americans.

Vote the way you wish.

Vote the way you wish, if you are prepared for that.

We knew that this would be a partisan vote. A partisan vote against democracy, my friends, is still a partisan vote against democracy, and it will be registered as a vote against democracy.

As a constitutional lawyer by trade and training, I am the first to concede that there are two sides to this constitutional question, as there are to every question of this kind.

But, my friends, we have, by far, the better side of that constitutional argument. You, my friends, you who are Members of this House, are more than a little pregnant on this issue.

We are flush with precedent, and that is the way the Constitution must be interpreted. The precedent was set when the vote was granted in the committee two decades ago, and in those committees, we who are Delegates have votes that count for more than they will count on the floor of the House, because those committees are smaller, and our votes will be usually lost as yours are as well in this much larger body.

You have given us the right to introduce legislation. You have given us the right to debate. We are Americans, my friends. You have the power. You have the authority to go the rest of the way, and the world is looking to see who will stand back and not march forward.

If you vote against this package, it is you who vote against the

precedent.

It is the Framers who set up this extra constitutional advisory body, the Committee of the Whole. It is they who struck the first blow, and you have been striking the blow ever since, when you have empowered Delegates over and over and more and more, and this is the final step in that democratic empowerment.

You, my friends, you have more to say on my budget than I do when it comes every single season before this House. You, my friends, have more to say on every law that makes its way to the House floor. That is wrong, my friends. That is un-American, my friends.

Let me say to you that this is not the first time other Americans have used my Constitution against me. Then, as now, I knew that the Constitution of my country was on my side. The Constitution of the United States of America is on the side of the Delegates, not on the side of those who oppose this package.

I ask you, my friends and colleagues, if you have already made up your mind, please reconsider this package. I ask you to vote for this package. Vote for strengthening democracy in the people's House. Vote for strengthening democracy, for proving that we will live by what we preach in the United States of America.

[Page: H32]

Mr. SOLOMON. Mr. Speaker, I yield 4 minutes to the very distinguished minority whip, the gentleman from Georgia [Mr. **Gingrich**].

Mr. GINGRICH. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I am particularly delighted to be able to, at this time, answer the distinguished gentlewoman from the District of

Columbia who is wrong in her precedents and her arguments.

If she will turn to page 31849, September 15, 1970, she will read the then-Member **Thomas Foley** saying:

Now, it is very clear, as the Resident Commissioner has said, that a constitutional amendment would be required to give the Resident Commissioner a vote in the Committee of the Whole or the full House.

She will see on the same page Mr. Sisk, I believe a Democrat of California, at that time saying:

I am not here proposing to make any great constitutional argument. As I understand by the statement of the distinguished Resident Commissioner, there is no question he could not vote on the floor of the House as a constitutional matter.

There was no precedent set in 1970; simply historically, factually wrong.

Second, as a matter of democracy, I am prepared to vote today or tomorrow or next week to return the District of Columbia's population to the State of Maryland. That could be done by statute. I am prepared to vote for a rule to bring to the floor a constitutional amendment, which I would vote against, because I think the Founding Fathers were right, but a constitutional amendment which is what would be required under the Constitution, to make the current District of Columbia a State. It is clear in the Constitution. But I would be willing to vote for a rule to bring it to the floor.

But for the Democratic leadership, by vote of a majority, to muscle through five Delegates being allowed to vote on the floor of the House is unconstitutional, as I think we will prove in a lawsuit, and is an offense to every taxpaying citizen of the United States.

Let me talk about democracy. The principle of democracy is

based on two things. One is, as the gentlewoman knows, one person, one vote. Under this Democratic proposed rule, 33,000 people in Samoa, on the House floor, will be the equal of 800,000 people in Montana. Three delegates representing less than half a congressional district will be able to outvote the entire State of New Hampshire, two Congressmen, will be able to outvote the State of Maine, two Congressmen.

It is insane, by rules of the House, to violate the principle of fair voting.

Let me go a step further and, by the way, if this body decided with the Senate and the President to make Puerto Rico a State, they would, in fact, be entitled to six or seven Congressmen, not one. So just on the basic principle, it is wrong.

But there is a second principle. The American Revolution was fought over the issue of no taxation without representation; it was not fought over the issue of no representation without taxation, being represented without taxation.

The fact is that under the Democratic proposal, there are four Delegates who currently represent areas that pay no taxes to the U.S. Treasury. They pay taxes to their own Commonwealth.

Let me just make this point: This proposal is a classic welfare-state power grab, and none of the Delegates got up and said, 'I have a new idea, let us pay all of our taxes to the U.S. Treasury and then we will raise local taxes on our citizens as though we were a State.' None of the Delegates came in and said, 'I have this brand new idea.' In fact, the District of Columbia is eager to have two Senators so they can raise taxes on the other 50 States to send the money to Washington. I understand that that is a legitimate power grab. That is a legitimate part of politics. But to come in here, by the rules of the majority, without the Senate acting, without the President acting, and by changing the rules of the House, to allow 33,000 nontaxpaying citizens in terms of the U.S. Treasury, they do not pay a dime; they pay all of that

money that goes right back to their local government.

Would we not love it in Georgia if we could get every penny back to Georgia from the U.S. Treasury that we pay in Federal income tax? I mean, I will be able to work out a deal with the gentlewoman tomorrow morning if she wants to say I get to vote that none of the money from my district comes to the U.S. Treasury; it all comes right back home.

But this is an outrage.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. **Hyde**], the very distinguished chairman of our Policy Committee.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, as far back as 1887, Lord Acton must have anticipated this moment when he famously proclaimed, 'Power corrupts, and absolute power corrupts absolutely.'

It is very helpful when you are dealing with a statute or a constitution to read the statute, read the Constitution, and article I, section 1, says,

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained the age to twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Now, all of us just took a solemn oath to support and defend the Constitution. The echoes of our solemn oath are still lingering in

this Chamber. But now we cannot wait to repudiate that oath in a raw exercise of political power that constitutes the first, and I hope the last, act of legislative arrogance and abuse of this embryonic 103d Congress.

During the endless, Iran/Contra debates, some in the Reagan-Bush administration were accused of lying or withholding information from Congress, misleading Congress, and this was characterized by many on your side of the aisle as shredding the Constitution.

[ TIME: 1500 ]

Well, today here and now we immolate the Constitution in a curious demonstration of insecurity on the part of the majority party. What an abysmal way to begin the Clinton administration.

Yes, we are for democracy--do you mind adding the word `constitutional' to `democracy'? I hate to presume to instruct a professor of law from my old alma mater, but constitutional democracy; there is a difference.

[ Page: H33 ]

Mr. WASHINGTON. Mr. Speaker, will the gentleman yield?

Mr. HYDE. Yes; if I have any time left.

Mr. WASHINGTON. I thank the gentleman for yielding.

I will ask the gentleman from Illinois whether at the time, I believe it was a year and a half ago or almost 2 years ago, when the House voted and you voted to commit our troops to Desert Shield/Desert Storm, did you vote to commit the lives of the

people in America Samoa to kill and die, if necessary?

Mr. HYDE. I voted to support the administration in Desert Storm.

I am not sure the gentleman did.

Mr. WASHINGTON. I did not.

Mr. HYDE. I rather think you did not.

Mr. WASHINGTON. I did not, and I am proud I did not. But that is not the question. The question is did that include the young women and men in American Samoa?

Mr. HYDE. Yes, and that vote did not amend the Constitution.

Mr. WASHINGTON. May I ask another question?

Mr. HYDE. I do not have the time. Would you get me some time?

## **PARLIAMENTARY INQUIRY**

Mr. WASHINGTON. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. **Edwards** of California). The gentleman will state it.

Mr. WASHINGTON. Is the Chair aware that under those circumstances, then, it is all right for them to die but not to be represented in Congress?

The SPEAKER pro tempore. The Chair rules that that is not a parliamentary inquiry.

The Chair recognizes the gentleman from New York [Mr. **Solomon**].

Mr. SOLOMON. Mr. Speaker, I assume that we still have more

time on this side than the other side, so I yield 2 minutes to the very fine gentleman from Virginia [Mr. **Bliley**].

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this is a terrible idea, granting the Delegates votes in the Committee of the Whole.

I would like to quote the words of a famous Virginian who once served in this body, John Randall, 'This idea is atrocious. It is like a dead mackerel on a moonlight light, it both shines and stinks.' For the following reasons: Thomas Jefferson, early in the days of the Republic, under the Articles of Confederation, moved that Delegates be given the right to be heard but not to vote. We have heard quoted the words of our current Speaker in 1970, when the issue of the Delegate from Puerto Rico was on the floor, say the same, that they did not have the right to vote in the Committee of the Whole.

We have heard previous speakers say what an atrocious thing this does to one man, one vote. Even under this, if you recognize Puerto Rico with 1 vote, with 3 1/2 million people, and Samoa with 46,000, they get the same vote.

Now, I will admit that the Delegate from the District of Columbia--it is a different case. They pay taxes. They are mentioned in the Constitution directly under the control of the Congress. But I would stipulate that the way to change that is by bringing legislation through the proper committees. And as the ranking member on the Committee on the District of Columbia, I would be happy to sit down with the Delegate and try to work the thing out. But it should go through the full Congress, not in a sudden, 1-day meeting, 2-day meeting of the Democratic caucus and then be jammed through this body, surely to be subject to constitutional scrutiny in a lawsuit on which I believe the House

would be on very shaky ground.

Mr. Speaker, I would hope that the Members would vote for the motion to commit and give this matter more study. It is not the right thing to do today.

Mr. Speaker, I rise in opposition to the proposed change in the rules of this House that would allow delegates from the territories and the District of Columbia to vote on the floor in the Committee of the Whole. This proposal is as ill-considered as it is unprecedented and unlawful.

Incredibly, on their first day to take up business on the floor, the 110 new Members of the House of Representatives are about to have part of their vote stolen. As for those of us in the minority, we are about to be robbed of half the gains that the voters gave us in this year's House elections.

Truly, today Washington, DC, will have a new reason to be known as the Nation's crime capital because today a majority of the Member of this House are poised to mug the Constitution and the taxpaying voters in every State.

In her article published yesterday in the Washington Post, my colleague, the Delegate from the District of Columbia, dismissed such criticisms as nothing more than a Republican conspiracy theory.

It wasn't Republicans who called this proposal an effort at `shameless political tyranny,' it was the liberal New York Times.

It wasn't Republicans who called the adoption of this proposal by the Democratic caucus 'outrageous behavior,' it was Roll Call--hardly an organ of right-wing opinion. And it wasn't Republicans who said the 'Democrats are stretching the Constitution beyond its limits and inviting further partisan abuse,' it was USA Today.

If there is a conspiracy afoot here, it is conspiracy of the thinking men and women of America who are unafraid to call this Democrat initiative what it truly is: a naked exercise of raw legislative power without regard for law, without regard for history, and without regard for right.

The proposal before us would allow Delegates to vote on virtually all legislation that comes before the House. In effect, this proposal would extend to Delegates legislative power virtually on a par with that of full Members of Congress. This the Constitution clearly forbids.

As my predecessor in the House from Virginia, John Randolph, once had occasion to remark, the proposal is like a rotten mackerel by moonlight, it both shines and stinks.

Nowhere does the Constitution provide for territorial Delegates. Rather, Delegates are solely creatures of statute. Since 1817, they have possessed the statutory right of debating but not of voting. The five Delegates currently in question are expressly restricted from voting by the very statutes, passed by the House, which created their offices.

History, law, and the Constitution notwithstanding, proponents of voting privileges for Delegates argue that the proposal is constitutional. In their view, voting in the Committee of the Whole is merely an advisory act.

Proponents claim that even though the vast majority of the business of the House is for all intents and purposes resolved in the Committee of the Whole, such votes do not amount to an exercise of legislative power.

By such reasoning, the House may next allow visitors in the gallery and the editorial board of the Washington Post the right to cast advisory votes on the House floor.

Indeed, why not allow those Members who have been named to President Clinton's

Cabinet to continue to serve as committee chairmen and vote-- after all, we are instructed today that such duties involve no real exercise of legislative power but are merely advisory.

Proponents cite a recent Congressional Research Service memorandum which concludes that `allowing a Delegate to vote in the Committee of the Whole is apparently consistent with present congressional interpretation of its constitutional authority.' In other words, the CRS opinion comes down to an assertion that the proponents' constitutional justification for giving Delegates a right to vote on the floor is consistent with the proponents' constitutional justification for giving Delegates a right to vote on the floor.

Those who would approve the amendment before us are simply peering into a constitutional mirror and seem gratified to find their own reflections staring back at them. Their novel legal

theory indeed reads like a conversation between characters in a Lewis Carroll story--words mean only what the proponents say they mean. Like true bureaucrats, they would turn the responsible exercise of legislative power into a infinite regression of advisory acts.

Although only too willing to wave what--in all honesty--is an ambivalent CRS memorandum as a battle-flag for their cause, proponents have been strangely silent about the Parliamentarian's October 2, 1992, memorandum, which states:

The statutes establishing seats for the various delegates all recognize that Article I of the Constitution contemplates the exercise of the legislative power by Members. The House may not by an exercise of its rulemaking authority contravene that constitutional mandate.

Proponents also ignore the first CRS memorandum, dated September 17, 1992, which concludes it is 'unclear whether allowing the Delegate to vote in such committee would violate the Constitution.'

In 1970, when the voting rights of the Resident Commissioner from Puerto Rico made its way to the floor of the House, it was you Mr. Speaker, who flatly, and in my view quite rightly, stated that the Constitution does not allow for Delegates to vote in the Committee of the Whole. Mr. Speaker, you knew then that the Constitution forbids Delegates to exercise the legislative power of members. At that time you came to the conclusion which history, law, and common sense conspire to compell: That if voting on the floor of the House on virtually all legislation that comes before it is not an exercise of legislative power in the constitutional sense, then nothing is.

Today, the Democratic caucus, which brought this proposal to the floor, is singing a different tune. I can only conclude that it is simply a coincidence that the caucus comes forward with this proposal as one of the first items of business after an election where, for the first time in years, Democrats were chosen as the Delegates from each of the territories and the District of Columbia, but Republicans made gains among House members.

It must also be a coincidence that this latest triumph for democracy will occur just in time to cut in half the gains voters gave to the Republicans in the House elections.

If a triumph for democracy is the same thing as a triumph for the Democratic caucus in rolling back what the voters thought they had accomplished last November, then certainly we do seem poised for just such a triumph.

Not only is the proposed rules change a grab for power at the expense of the Republican minority, but it is also a grab for power against those who pay taxes by those who do not. The territories, though they receive myriad Federal benefits, pay no Federal income tax. It is hardly right that they should share direct power over Federal taxing and spending decisions in Congress.

Before the territorial Delegates ask that they be able to vote on the floor of the House, they should ask that their constituents be taxed just as the constituents of voting Members are taxed.

The byword of the 1992 elections was 'change.' One of the first things that the Members of the 103d Congress are now asked to change are the results of those elections and undo the 10-vote advantage that the voters gave to Republicans. Part and parcel of

that change, we are asked to give more power to people who don't pay taxes to take money from those people who do pay taxes. And, as the keystone to it all, justifications are advanced that make a mockery of traditional principles of constitutional governance and law.

Already it seems that the more things change in Congress, the more they stay the same.

Mr. Speaker, I urge the Members of this House to reject the proposal that is before them.

I also ask unanimous consent to have several CRS memorandums, the Parliamentarian's memorandum, and editorials from the New York Times, USA Today, and Roll Call inserted in the Record.

Ms. SLAUGHTER. Mr. Speaker, for purposes of debate only, I yield 3 1/2 minutes to the gentleman from Maryland [Mr. **Hoyer**].

Mr. HOYER. I thank the gentlewoman for yielding this time to me.

Mr. Speaker, I have a great deal of respect for the distinguished gentleman from Illinois [Mr. **Hyde**], who serves on the Committee on Foreign Affairs as well as the Committee on the Judiciary. He is a very bright, able Member of this body.

However, I believe he is absolutely incorrect, wrong, as he debates the constitutionality of this provision and would reject emphatically the implication that this was rushed into.

Mr. Blaz, General Blaz, Republican Representative from Guam, wrote in 1985 to the Congressional Research Service, asking them for their opinion as to whether or not Delegates could be allowed to vote in the Committee of the Whole.

So, as the distinguished lady from the District of Columbia pointed out, this is not a partisan issue. As you will hear in some time, Puerto Rico, whose Representative is on the floor, 3.6 million people, in 1898, as a result of the war, Puerto Rico became a part of the United States. Prior to that, Puerto Rico was able to vote in the Spanish Assembly. They lost democracy, perhaps. America prides itself on being the beacon of democracy.

I think the editorials demean this proposal. It is a shame. We were out-PR'd on this, I admit; but the fact of the matter is the substance of this proposal says, as Jefferson concluded, that non-State territories ought to be represented in this body. Jefferson said that; this is not a new idea.

Now, America owns five jurisdictions--four, let me be more precise, because of course the District of Columbia is in a different situation--four. And the issue we raise is do we want to allow for more, some more participation or not?

Now, why do we have a special amendment adopted today in the caucus and presented in this rule? Because we want to make sure that the one four hundred thirty-fifth vote that each one of us has in this body was not diminished. How do we do that? By saying that the Delegates can only vote in the Committee of the Whole; it is a committee. No final passage of any measure can occur in the Committee of the Whole. It has to come to the House of Representatives, where only the 435 constitutionally elected Members under these rules will vote. Not one iota of constitutional undermining of votes is provided for in these rules, period.

Mr. BLILEY. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from Virginia.

Mr. BLILEY. I thank the gentleman for yielding.

I thank my friend from Maryland. Since he quoted Thomas Jefferson, I know he would want to quote him right. He said they

should be heard. And I agree, we agree; there is no argument. But he also said there should be no vote. And if you are going to change that, every time--even when you gave them votes in the committee, it was done by legislation which went through the whole process that included the President's signature--if you are going to change anything else, it ought to be done in the same way.

Mr. HOYER. I thank the distinguished gentleman from Virginia for referencing our most distinguished founder of the Democratic Party.

Even Thomas Jefferson, even Thomas Jefferson fell short of extending democracy to all Americans, even Thomas Jefferson. Was that not sad that in his time he did not see that citizens of color also ought to have a vote or citizens who did not own property ought to have a vote or that women ought to have the vote. Yes, he was the man and a genius of his time, but even then he was not as fully inclusive then as we are going to be today.