MONOGRAPH IN POLITICAL SCIENCE

THE ORIGINS OF THE STANDING COMMITTEES
AND THE DEVELOPMENT OF
THE MODERN HOUSE

JOSEPH COOPER

Vol. 56, No. 3
Summer 1970
RICE UNIVERSITY STUDIES

published by

WILLIAM MARSH RICE UNIVERSITY

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Individual numbers of RICE UNIVERSITY STUDIES may be purchased from the Rice Campus Store, P. O. Box 1892, Houston, Texas 77001.

Second class postage paid at Houston, Texas.
Monograph in Political Science

The Origins of the Standing Committees
And the Development of
The Modern House

Joseph Cooper

Published by
William Marsh Rice University
Houston, Texas

Vol. 56, No. 3       Summer 1970

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CHAPTER I

INTRODUCTION

The early history of committees in the House of Representatives is a topic well worth scholarly concern. The standing committees are such a familiar and important feature of the House that reliance on them is often assumed to be as old as the Constitution. In fact, this is not the case. It took several decades of incremental growth for the standing committees to come to the forefront of the legislative process and wide gaps in our knowledge still exist concerning the process of institutional evolution by which they attained preeminence. A need for investigating the rise of the standing committees therefore exists not only because of the need to ascertain and understand what happened historically, but also because of the long-run significance of the period in which the standing committees emerged. Attitudes and events in this period have had and continue to have an immense impact on the nature and operation of the House. This has been recognized in a very general way ever since Woodrow Wilson published Congressional Government in 1885. Still, the depth of the House's roots in its early and formative decades, the significance of the architectonic experiences associated with the rise of the standing committees, has never been adequately explored.

The object of this study is thus both to trace the key developments in theory and practice involved in the emergence of the standing committee system and to analyze the impact of these developments on the subsequent history of the House. In so doing we shall focus on Jeffersonian attitudes and practice. We may note that it was the Republican opponents of Federalism, the members who allied themselves under Jefferson's and Madison's leadership to combat the party of Hamilton and Adams, who ultimately determined the theory and practice of committee use in the initial decades of government under the Constitution. Similarly, it was their legatees, the new generation of Republicans who dominated Congress after Jefferson left the Presidency in 1809, who presided over the transformations in theory and practice that elevated the standing committees to a position of preeminence in the legislative process.

In analyzing and tracing changes in Jeffersonian attitudes and practice with regard to committees we shall deal with the whole period from 1789
to 1829. Although this approach expands the boundaries usually prescribed for the Jeffersonian era by including the decade from 1789 to 1801, such an expansion is necessary for our purposes. It is in these years that traditional Jeffersonian attitudes toward the use of committees took shape and altered the context of operation in ways that were critical for the future triumph of the standing committee mechanism. Finally, we may note that though the scope of this study has been limited to the House, the costs of excluding the Senate are far lower than abstract mathematical calculation would indicate. Not only was the House the more important body by far in the decades of greatest concern to us; in addition, it is highly probable that the broad pattern and impact of committee development applies in most important respects to the Senate as well.
PART ONE

JEFFERSONIAN ATTITUDES AND COMMITTEE PRACTICE: 1789–1809

Unlimited freedom to introduce bills and automatic reference to standing committees are so hallowed by tradition in the modern House that other methods of handling the introduction and reference of legislative business seem almost nonexistent. Yet practice and procedure were quite different originally than they are today. In the early Congresses it was not at all assumed that members ought to be free to introduce bills whenever they chose. On the contrary, the power to introduce a bill was closely guarded since a bill was seen as "law inchoate" and therefore not regarded as introducible on the responsibility of any single member. Thus, the rules adopted in the First Congress (1789–1791) provided that bills could only be introduced in a manner which involved the explicit approval of the House, i.e., by order of the House upon the report of a committee or by granting an individual member leave to bring in a bill. These provisions remained in effect throughout the Jeffersonian period, though in practice ways were found of evading their stringency from the very beginning. A similar point applies to reference. In contrast to present modes of operation reference was not strictly prescribed in the rules, but rather left to the discretion of the House.

As a consequence, the conduct of business in the early House bore little resemblance to current practice and procedure. The legislative process originated with the introduction and disposition of subjects introduced in the form of communications from members of the Executive Branch, resolutions offered by individual members, or petitions forwarded by private individuals or state legislatures. The House was under no obligation to refer the subject contained in these messages, resolutions, or petitions before it had settled the principles upon which it desired to act. Nonetheless, from the first the House preferred to refer to an agent for advice and assistance before committing itself on a subject. It is true that on occasion the House did first settle the question of whether legislative action was desirable in an area, but even in these cases much discretion was still left to the agent to whom the matter was referred. Such decisions on the part of the House merely affirmed that some form of legislative action should be taken, e.g., that a bill should be brought in with respect to a uniform system of bankruptcy.
The House’s preference for avoiding definitive decisions on the floor prior to reference combined with the flexibility it possessed in reference gave rise to an issue that became a focal point of political conflict in the early Congresses as well as a vigorous catalyst of institutional development. Since the report of the agent to whom reference was initially made could be expected to play an important, even decisive, role in determining the character of action taken with regard to a subject, the agent or agents on whom the House should rely in first reference became a question of crucial significance. There were potentially four types of agents to whom reference or recourse could be made: officers in the executive branch, Committees of the Whole, select committees, and standing committees. Though no one in the early 1790's foresaw the pattern of choice among these alternatives that ultimately emerged, the future institutional character of the House hinged in large part on the manner in which it would resolve this issue.

First Reference to Executive Officers

The propriety of depending solely or directly on members of the executive branch for reports that arranged and guided the course of legislative business centered on the question of the proper nature of executive participation in the legislative process. Jeffersonian theory in this regard was not fully formed when government under the Constitution began; rather, it developed and took shape over several Congresses. What the future followers of Jefferson did share from the very beginning was not a set of precise attitudes on legislative prerogatives, but rather a general belief in legislative autonomy. They believed from the start that the legislature was the lawmaking branch and that its decisions on legislation should be the product of its own desires—that it should be free to make up its own mind without being subject to executive control. It is in terms of this assumption that the Jeffersonian position on executive reporting emerged.

Jeffersonian thinking distinguished four categories of executive involvement in the legislative process by means of reports: the reporting of information, the reporting of advice or opinion, the reporting of plans, and the reporting of bills. With regard to the first and the last of these, the position of the Jeffersonians was clear, consistent, and uniform through time. The Jeffersonians opposed the notion that an executive officer should be allowed to report to the House by bill or accompany his report with a bill. Though they might have their differences with respect to the proper bounds of executive involvement in other regards, the introduction of bills by executive officers was clearly not acceptable, and as early as the second session of the First Congress (1790) future Jeffersonians supported the establishment of a precedent which has outlawed this practice, at least formally, from that time to the present. In addition, the Jeffersonians were
agreed on the propriety and indeed the necessity of securing information from executive officers and in their minds a meaningful distinction existed between reporting information to aid the legislature in its deliberations and utilizing the opportunity to report in such a way as to influence the opinion of the legislature or usurp its prerogative of originating and framing the laws.\(^9\)

However, Jeffersonian thought was not entirely consistent, harmonious, or uniform through time with regard to the other two categories of executive participation mentioned—the reporting of advice or opinion and the reporting of plans of action. At the time of the First Congress (1789–1791) both Hamilton and Jefferson served in the Cabinet, the former as Secretary of the Treasury and the latter as Secretary of State. In this Congress the *Annals* do not record any opposition by members, who would later be known as Republicans, to the numerous references made to Hamilton for opinion and plans and, what is more, similar requests for opinion and plans were also made to Jefferson which he honored without complaint.\(^10\) Indeed, on the one occasion during the First Congress in which the propriety of receiving opinion and plans from executive officers was extensively discussed, two prominent future Jeffersonians, James Madison and Abraham Baldwin, even supported vesting the Secretary of the Treasury with the power to report plans of finance at his own discretion.\(^11\) The opposition of other future supporters of Jefferson to this provision seems to have been based as much on their feeling that the Secretary should only report when called upon as on their feeling that executive officers should not report opinion or plans, and this was the way the matter was finally settled with the adoption of a provision authorizing the Secretary to digest and prepare plans as a substitute for the provision authorizing him to digest and report plans.\(^12\)

Despite this initial liberalism, by the first session of the Second Congress (1791–1792) Jeffersonian thinking had hardened considerably. Alarmed and angered by Hamilton’s programs and successes, sentiment crystallized along more enduring and familiar lines.\(^13\) The Jeffersonians came generally to a stand in opposition to both the reporting of advice or opinion and the reporting of plans by executive officers other than the President.\(^14\) They began to oppose not only unsolicited opinion or plans from executive officers, but also first or direct reference to executive officers for opinion or plans. On the whole, their feeling was that the rubric of information should be confined to facts and that opinion or plans should be opposed as interfering with the autonomy of the legislature and/or usurping its power to originate and frame the laws.\(^15\)

The *Annals* for the Second and Third Congresses (1791–1795) abound with statements argued on one or both of these grounds. The following
excerpts are representative. The first records the remarks of William Giles during a debate in the second session of the Third Congress (1794–1795):

The letter had come without any call. It was an Executive comment on a Legislative proceeding. It was a defense of a measure adopted by the Senate, and it condemned by implication another of that House.... A section of a bill passed in the Senate last session, and rejected by the House of Representatives was inserted in it, and recommended. This paper might operate very materially on the deliberations of the House. ... Gentlemen had called the contents of this paper information. He saw in it nothing but what the House knew without the assistance of the Secretary. He considered the report as an effort upon the opinion of this House, as an attack upon its independence, and that in a very indecent way. He thought the report in all respects unworthy of the notice of the House.34

The second excerpt records the remarks of Abraham Baldwin, uttered in the midst of a heated debate in 1792 over the propriety of requesting Hamilton to report a plan for the reduction of the debt:

When gentlemen talk of light and information only, he would agree with them, for he wished to obtain it from every proper source. It has been made the duty of the Executive Departments to give information to the Legislature, but this information should relate merely in his opinion, to statements of facts and details of business, but the laws should be framed by the Legislature, after they had acquired this information. ... There is a material distinction between receiving information on which to ground a law, and a plan of law ready formed. The latter mode he was opposed to. Gentlemen have said that we may reject what is proposed; but in this case we will only be exercising a kind of revisionary power, very different from a Legislative one; a very material difference from what is contemplated in the Constitution—the difference between originating and possessing only the right of a negative.35

Jeffersonian thought with regard to the reporting of opinion or plans by executive officers, nonetheless, never became wholly homogeneous or consistent. One source of difficulty concerned the ability of the President, as distinguished from inferior officers, to report opinion or plans. This occasioned considerable conflict between, and even within, the views held by individual Jeffersonians. One might think that the constitutional provision authorizing the President to give information on the state of the union and to “recommend” measures for the legislature’s consideration would have settled the problem; but it did not, in part at least because the question of the propriety of calling on the President for a report may be distinguished from the question of his ability to report at his own discretion. Hence, Jeffersonians such as William Findley and Josiah Parker supported the propriety of asking the President for advice or opinion concerning matters pending before the legislature, whereas John F. Mercer and William Giles seem to have opposed it. 36 Similarly, William Lyman seems to have supported the President’s ability to report plans, whereas William Findley seems to have opposed it despite the fact that he also held that the reporting of opinion by department heads was a greater encroachment than the reporting of plans.37 Moreover, even those Jeffersonians who were inclined
to take a sympathetic view of the President's power in these regards were faced with an implicit contradiction between such a viewpoint and their general position vis-à-vis legislative and executive power. For example, on one occasion James Madison defended the ability of the President to give advice to the House, noting that the "President had an undoubted right to give advice or information in any way he thought best." Yet on another occasion, speaking more generally, his remarks were recorded as follows:

Mr. Madison drew a distinction between the deliberative functions of the House and the ministerial functions of the Executive powers. The deliberative functions, he conceived, should be first exercised before the ministerial began to act . . . [he] saw some difficulty in drawing the exact line between subjects of legislative and ministerial deliberations, but still such a line most certainly existed.

A second source of difficulty related to the distinction which served as a major bulwark of Jeffersonian thinking with regard to executive reporting—the distinction between reporting in such a way as to aid the legislature in its deliberations and reporting in such a way as to interfere with the autonomy or prerogatives of the legislature. In truth, such a distinction, though useful, must to some degree be ephemeral, but the degree to which it is can vary greatly depending on the skill with which its criteria are elaborated. As applied by the Jeffersonians, the distinction became a very hazy one indeed. Though the Jeffersonians, in the early Congresses at least, were inclined to restrict the rubric of information to facts, they included both the identification of facts and findings on facts within the permissible area. Thus, even in the bitterest moments of their fight with Hamilton the Jeffersonians were willing to justify the reference of private claims to executive officers for reports concerning the satisfaction of these petitions. They regarded the investigations of executive officers in such cases as inquiries into the facts, even though such reports not infrequently involved a judgment on both the correctness of the facts and the justness of the claim. In addition, the Jeffersonians were willing to treat executive recommendations in more public areas of policy as findings properly contained within the sphere of information. For example, in the first session of the Fourth Congress (1795–1796) Thomas Claiborne introduced a resolution requesting the President to "lay before Congress a statement of the number of trading houses which would be necessary, of the different species of goods, and of the sums of money requisite to carry on intercourse with the Indian tribes." He supported his resolution on the grounds of securing necessary information, though he also added that "he wished to be guided by the President."

As the memory of the fight with Hamilton became dimmer, this tendency to treat executive findings as information increased. What occurred was a slow but perceptible expansion in the degree to which executive interpre-
tations of what was needed in particular circumstances were regarded as items that might properly be included under the rubric of information. Moreover, this development was paralleled by a decline in the hold of the rule or maxim itself. As a result, the old emphasis on restricting direct reference to information and the category of information to facts was no longer honored with the same degree of stringency as in the early and mid-1790's. During Jefferson's presidency subjects not infrequently were directly referred to department heads accompanied by requests that in effect or even explicitly solicited opinion and proposals. Similarly, department heads, such as Albert Gallatin, Jefferson's Secretary of the Treasury, did not hesitate to use the words "in my opinion" or "I suggest" in their responses to legislative requests; nor were the Jeffersonians in the House reluctant to refer to the "opinion of the Secretary" in debates.

Yet, despite these inconsistencies and disagreements, the net effect of Jeffersonian thinking was to restrict the House's ability to rely openly on the executive for the task of initially defining the nature and bases of its action and to create a need for alternative means or agencies to provide the detailed advice and direction it required. If there was some confusion over what information was and was not and even considerable backtracking, formally at least the Jeffersonian emphasis on information as the appropriate function of external sources was strong enough not only to rule out unsolicited advice or plans from department heads, but also to make first or direct reference for advice or plans to these officers on any wholesale or comprehensive basis unacceptable. If there was recognition of the President's constitutional right to provide opinion and recommendations and even some sentiment for direct reference to him for advice and plans, Jeffersonian regard for legislative autonomy served in formal terms at least to confine the President to a highly general and intermittent role in the first regard and to circumscribe and dilute reliance on him in the second. Thus, Jefferson when a member of Washington's Cabinet believed that the proper maxim for all executive officers was "to intermeddle not at all with the legislature" and as President, in deference to a strict interpretation of the requirements of legislative independence, he ended the Federalist custom of delivering the Annual Messages in person.

First Reference to Legislative Agencies

In place of executive direction and control Jeffersonian thought emphasized legislative autonomy. The alternative it proposed to reliance on executive officers for the initial delineation of the proper nature of legislative action was reliance on the legislature itself. This in turn meant reliance on committees and, for reasons that will become clear as we proceed with our analysis, the committee the Jeffersonians looked most favorably upon was the Committee of the Whole. Jeffersonian thought accordingly raised
the Committee of the Whole to preeminence as the focal point of the legislative process and it tried to establish a division of labor between the Committee of the Whole and the select and standing committees that would satisfy both its normative goals and the practical needs of legislative operation.

This theory took shape during the first four Congresses. Its development began with the convening of the House, but contrary to what is often supposed Jeffersonian thinking with regard to first reference did not mature by the end of the First Congress (1789–1791). In the period before the establishment of the executive departments, i.e., roughly the first session of the First Congress, the role of the Committee of the Whole was greatly overextended both in theory and in fact. In this period the Committee of the Whole seems to have been considered not merely as the proper arena for the initial delineation of principles in important areas, but also as the proper arena for the first determination of principles in all areas, and even as an appropriate arena for the initial delineation and consideration of detail. For example, in a discussion of the propriety of going into Committee of the Whole held in the early days of the First Congress (May, 1789) Elias Boudinot, a gentleman who in the future would ally himself with Hamilton, noted that although he preferred initial reference to a select committee, "it seemed to be a settled point in the House that a Committee of the Whole was the proper place for determining principles before they were sent elsewhere." Madison, in reply, defended the practice and argued that "it was much better to determine the outlines of all business in a Committee of the Whole." Similarly, the propositions establishing the tariff and the executive departments were elaborated at such length in Committee of the Whole that the task of the select committees appointed to draw up the bills became mainly clerical. It was with some reason that Fisher Ames complained to a friend:

Virginia is stiff and touchy against any change of the Committee of the Whole... They are for watching and checking power; they see evils in embryo; are terrified with possibilities, and are eager to establish rights and to explain principles to such a degree, that you would think them enthusiasts and triflers."

The result of the overextension of the theory of the Committee of the Whole was to blur the nature of the division of labor that ought to exist between the Committee of the Whole and the select and standing committees. Indeed, when carried to its logical conclusion, the notion that all business should first be referred to a Committee of the Whole and settled there removed the need for all other committees except those transitory ones appointed simply to draw up the decisions in the form of a bill. Yet, contrary to what Ralph Harlow implies, even in the First Congress there also seems to have been some feeling among future Jeffersonians that the role of committees less numerous than the whole properly exceeded the
merely clerical task of putting together a bill after principles and even details had already been determined. For example, George Clymer proposed that the subject of the tariff be given initially to a “subcommittee to collate the materials and bring them before the House better drafted than they are now.” James Jackson proposed a similar course of action with regard to the proposition creating the executive departments:

Mr. Jackson wished the motion had been referred to a subcommittee to digest: it seemed to him that they were building the house before the plan was drawn. He wished to see the system reduced to writing, that he might leisurely judge of the necessity and propriety of each office and its particular duties.

In addition, in the first session of the First Congress a standing Committee on Elections and a Committee on Ways and Means were established, undoubtedy with the support of at least some of the men who in the future would be followers of Jefferson.

Nor, as we have already indicated, was it clear in the First Congress that the heads of the departments did not constitute proper agents for the initial delineation of principles or the elaboration and arrangement of details, that the heads of the departments did not exist as a viable alternative to reliance on committees. With the support of future Jeffersonians first reference to the Secretaries became quite common after the establishment of the departments. This, of course, was highly detrimental to the roles, actual or potential, of all forms of legislative committees. For example, it is interesting to note that the Committee on Ways and Means was dismissed only six days after Hamilton took office and its business referred to him. Moreover, even in the early days of the struggle with Hamilton, it was still thought proper, after the House had made up its collective mind on a subject, to refer to him for the arrangement of its decisions into a system.

The process by which Jeffersonian theory with regard to first reference was elaborated and developed in the succeeding years is an involved one, and by no means a wholly consistent one. However, by the Fourth Congress (1795-1797) the theory seems to have been spelled out clearly enough to form a related set of attitudes on which the Jeffersonians were generally in agreement.

In the First Congress, among other things, it had been argued that subjects ought first to be referred to a Committee of the Whole so that their principles could be determined; that subjects ought to have their features systematized before being considered by a Committee of the Whole; that matters should be referred to a smaller committee if time was lacking for discussion; and that smaller committees should be used as means of helping the House inform itself in areas in which it was ignorant. It was on these far from consistent bases that Jeffersonian thinking developed. Nonetheless, in the immediately succeeding years the Jeffersonians in Congress elicted
a set of guidelines from such notions which, to their minds at least, were both realistic and logically compatible. By the Fourth Congress (1795–1797) the following propositions seem to have won general acceptance: that principles, not details, should be discussed when a subject was first referred to a Committee of the Whole; that matters of importance had prior claim on the Committee of the Whole, with matters of routine being first referred there only if sufficient time existed and facts were clear or established; that subjects which were excessively complicated or detailed might first be referred to smaller committees for the arrangement or systematization of their features; and that subjects in which the facts could not adequately or conveniently be established by the members through their own investigations and discussions ought first to be investigated by a smaller committee.47

In terms of these guidelines a division of labor could be and was established between the Committee of the Whole and the select and standing committees with regard to first reference. Standing committees could be and were established in routine areas of policy that regularly provided topics of business (e.g., claims) or in recurrent areas of major policy in which facts typically were so complex as to require extensive investigation and/or details so elaborate as to require prior arrangement (e.g., ways and means).48 Select committees could be used to handle more erratic or irregular subjects of both major and minor importance as well as matters thought to be so important as to require handling by special committees instead of the standing committees within whose jurisdiction they belonged.49 Still, the nature of the theory was not such as to remove the Committee of the Whole from its preeminent position. If one assumes that in most important areas facts can and will be ascertained by the individual members without the assistance of committees and that details will not be so complex or so varied as to preclude a decision on principles before they are arranged, and this on the whole was exactly what the Jeffersonians did assume, then it becomes entirely feasible to regard the initial reference of most important subjects to a Committee of the Whole for a decision on principles as proper and normal procedure.50

Thus, James Madison in a debate during the first session of the Fourth Congress (1795–1796) argued for first reference to a Committee of the Whole as follows:

Mr. Madison was of opinion, that all important propositions, and especially all those of an abstract nature, should be referred, in the first place, to a Committee of the Whole House. There could only be two reasons for referring, upon any occasion, to a select committee; either when there was an absolute want of time for the House to digest the subject themselves; or when any particular papers or documents were to be examined. This case was not clearly one of those. He recommended a Committee of the Whole in the first place. The general rule of propriety required it.51

Similarly, although Albert Gallatin successfully proposed the reestablishment of a Committee on Ways and Means in the same Congress because
"no subject more required a system," he still felt free to object to the first reference of less detailed subjects to standing committees:

... when this committee was appointed, it was not intended that it should have the power of reporting by bill. The business of the other six committees appointed at the same time, and to whom this power was given were wholly different from this. The principle of the objects upon which these committees were appointed to act had already been more or less settled in the House; but what was the business of this committee? It was no less than to report the measures proper to be taken for the protection of our commerce and the defense of our country... it did not only include arming of vessels, but also the raising of armies, building of a navy, erecting of arsenals, etc.; that so far from giving the committee further power, he thought the power already given them was too great, and that the subject should first have been discussed in a Committee of the Whole on the state of the Union. When principles of this importance were to be established, the business should be settled in the House.43

Once formed, the main lines of Jeffersonian thinking with regard to first reference persisted and continued to dominate Republican attitudes and practice throughout the presidencies of Adams and Jefferson, i.e., from the Fifth through the Tenth Congresses (1797–1809). The Jeffersonians remained partisans of the first reference of important matters to a Committee of the Whole for a decision on principles.44 Note the words of Willis Alston, quoted from the record of the first session of the Tenth Congress (1807–1808), with regard to a petition calling for the repeal of the non-importation act:

Mr. Alston said, he thought it at this time extremely improper to refer the petition as was proposed [to a standing committee]. If any steps were to be taken in regard to the prayer of the petition, it should be done in Committee of the Whole House. If the expediency of repealing the law, alluded to in the petition, was to be considered, it was a plain question, which would present itself to every member of the House, and could be decided without any previous reference to any inferior committee. In the Committee of the Whole a resolution might be brought forward which would determine the principle at once. He, therefore, moved that it be referred to a Committee of the Whole House.45

In addition, the reasons recognized for excepting some important matters from first reference to a Committee of the Whole remained broadly the same.46 For example, in a debate held in the second session of the Ninth Congress (1806–1807) over the need for amending a law regarding the writ of habeas corpus Barnabas Bidwell, one of Jefferson’s managers in the House, said:

... the necessary effect [of this motion], and of course the design, is to withdraw from the House the first decision of the main question, by referring it to a select committee for inquiry. That would be a departure from the usual and regular course of proceeding. The principle ought to be first settled in the whole House, and, if necessary, a committee afterwards appointed to report the details. I can see no useful purpose to be answered by appointing a select committee of inquiry: for such a committee could have access to no other sources of information, as to law or facts, than such as are already before us and before the public. They would possess no better means of judging, for themselves, than the same gentlemen now have in common with other members.47
In reply, Thomas Newton, like Bidwell a prominent Republican, defended reference to a smaller committee within the terms of Jeffersonian theory:

The single point, however, at issue is, whether we will commit this resolution, in order merely to obtain correct facts and information, which shall present the subject in such a form as shall enable us to act understandably upon it.  

On another occasion David Thomas, in opposing John Randolph's motion to decide the principle of arming the militia in Committee of the Whole, put the argument this way:

... every gentleman in the House would wish to see the whole militia of the country armed; but in all subjects of this nature it was invariably the case, that the House referred them to a committee, for the purpose of ascertaining all information relative to the subject, and to report a state of facts... In order that the subject might come before the House in such a shape that they could act upon it understandably... he should propose another amendment, referring the resolution to the committee appointed to inquire into the militia laws.

Nor did the main lines of Jeffersonian thinking with regard to the position of the standing committee vis à vis the select committee undergo great change. Rather, the select committee continued to rival the standing committee as an agency for the first reference of important subjects in cases where initial reference to a Committee of the Whole was not desired. This was so both because standing committees did not exist in many important areas of policy and because support continued to exist for the notion that subjects of importance might justifiably be referred to a select committee, even if a standing committee with jurisdiction over that area existed. Still, the standing committee made some gains. Four new standing committees, Accounts, Post Office and Post Roads, Public Lands, and District of Columbia, were established in the years between 1797 and 1809, bringing the total number to nine. Moreover, respect for and emphasis on the rights of the standing committees increased. Finally, the reasons given in support of their establishment represent an advance, favorable to the standing committee, over the thinking used to justify the establishment of standing committees in the years previous to 1797. For example, with regard to the establishment of the Committee on Public Lands it was contended:

that the business of the House would, on this point, be greatly facilitated by the institution of a standing committee, whose decisions would be uniform, who would from long experience become more enlightened than a select committee, and who would be enabled to dispatch the business confided to them with great celerity.

Yet, despite the continuities in Jeffersonian attitudes, here as elsewhere the stringency and hold of traditional notions declined as the years passed. In truth, there were a number of substantial weak points and confusions in Jeffersonian thinking regarding first reference, defects which even before 1809 served to turn the theory against itself and to undermine the position of the Committee of the Whole.
Initial reference of a subject to a Committee of the Whole for a decision on principles could, to varying degrees, merely be an empty formality which masked actual first determination by select and standing committees. The most extreme example of this is what happened to subjects in the President's Message after the second session of the Fifth Congress (1797–1798). Throughout the period from 1789–1829 and beyond, this message, delivered at the very beginning of each session, was one of the most important means of raising significant subjects for legislative consideration and it was accordingly always referred first to a Committee of the Whole. Prior to 1797 the subjects contained in the message were often discussed and resolutions determining principles passed before the subjects were turned over to various smaller committees. After 1797, with the exception of the first session of the Seventh Congress (1801–1802) when the Jeffersonians tried to return to the old method, practice changed decisively and the subjects in the message upon being received by the Committee of the Whole were immediately divided up and parcelled out to appropriate select and standing committees. Nor on other occasions was reference to a Committee of the Whole necessarily decisive. Even when the House in Committee of the Whole did enter initially into a discussion of principles, the extent to which the principles established would actually be determinative of the bill could vary greatly, depending on how strongly the House really desired to grapple with the basic principles of a measure as well as on the extent to which the nature of the subject allowed decisions on principles to be controlling.

The Jeffersonians also failed to realize the full implications of their thought with regard to the exceptions that might properly be made to first reference to a Committee of the Whole. Their reasons for preferring first reference to a Committee of the Whole were based on a primary axiom of theirs, that all legislators should be equal, and on its corollary, that the legislature as a whole should direct itself. As Ralph Harlow has put it, ideally the Jeffersonians saw the legislature as a “forum where every member was a peer and no man led.” Thus, first reference to a Committee of the Whole was preferred over first reference to a smaller committee because the Jeffersonians believed that the “sense of the majority” could more truly be ascertained before rather than after the report of a committee. Their reasons for believing this related both to the direct influence that the opinion and reasoning of a committee might have over the minds of the other members and the more subtle influence inherent in the ability to focus and direct the course of discussion through the presentation of a completely organized plan or measure. Hence their thought with regard to the exceptions that might properly be made to first reference to a Committee of the Whole, at least as far as it concerned matters of importance, was motivated by a desire to accommodate the need for first reference
to a smaller committee with the need for denying these committees influence
over the opinion of individual members with regard to policy. The excep-
tions the Jeffersonians recognized were therefore framed in terms of the
ascertainment of facts and the arrangement of details under the supposition
that the nature of a subject might require one or both to make possible
decision by the House.⁷⁹

Once it was admitted, however, that committees could properly be used
to ascertain and establish facts and to arrange and systematize details before
a matter had been considered in Committee of the Whole, these committees
necessarily became more than impartial fact finders or ministerial detail
arrangers. The ascertainment and establishment of “facts” with regard to
general legislative needs and propositions, and this was the way the Jeff-
ersonians interpreted fact finding, could not exclude opinion on what were
actually discretionary matters of policy. Neither could the arrangement
and systematization of details since this involved the choice of one set
of alternatives over another. In short, then, the reconciliation attempted
by Jeffersonian theory between the use of smaller committees in the first
instance and the preservation of the ability of the legislator to make up
his mind on policy entirely on his own could not be accomplished. The
result was that by the Fourth Congress (1795–1797) it was generally recog-
nized that committees were supposed to report opinion, despite the fact
that this undermined the rationale that both justified and restricted first
reference to these committees.⁷¹

Another problem in Jeffersonian thought stemmed from the flexibility
of the guidelines it defined to govern first reference to the Committee of
the Whole. As ideal incentives were undercut and practical pressures
mounted, the Jeffersonians, while still preserving the framework of their
thought, tended to widen the scope of the categories of exceptions they
had defined. In truth, the main bulwark underlying the belief that principles
could be determined before reference was made to a smaller committee
was faith in the ability of the individual members to inform themselves
of facts and to make general decisions even though details had not been
settled. However, as time went on there was a tendency to narrow the
area in which it was thought that facts might adequately or conveniently
be investigated by individual members or principles settled before details
were arranged.

As a consequence, a subtle change was introduced into the original Jeffers-
onian insistence that, in important areas of policy, principles should be settled
before reference was made to a smaller committee. As originally defined
this attitude understood principles to mean the broad controlling factors
in a subject and it postulated that such principles could usually be decided
first even if a subject was complicated.⁷² However, as the scope and range
of the exceptions were widened, as faith was lost both in the ability of
the members to inform themselves through discussion and in the feasibility of determining principles before details were arranged, the meaning of a prior determination of principles tended to be transformed from a decision on principles in the original sense to a decision on principles in the sense of abstractions, i.e., to a decision on matters not much related to or dependent on facts or details. Thus, whereas originally the Jeffersonians emphasized the settlement of basic issues, whether this called for abstractions or more than abstractions, the new tendency was to restrict prior determination to subjects and decisions that were abstract, even though this limited the scope and significance of the role of the Committee of the Whole.

Finally, there were some fatal contradictions between Jeffersonian ideals with regard to legislative autonomy, which formally at least severely restricted reliance on the executive, and Jeffersonian ideals with regard to majority rule, which promoted the cause of the Committee of the Whole. When in control of the House, whether in the mid-1790’s or during Jefferson’s presidency, the Jeffersonians found that they could not in fact do without detailed executive guidance and assistance. In deference to their ideals, what they largely substituted for direct reference to executive officers was use of smaller committees, both select and standing, as means of maintaining contact and communication with the departments. This in many ways was a good compromise of the conflict between theory and practical need that they faced. The smaller committees possessed the singular advantage of providing a channel for executive advice and plans while still maintaining and even increasing the House’s ability to criticize executive recommendations and delineate its own alternatives. However, its effect on the role and status of the Committee of the Whole was highly subversive, especially in the long run.

On the one hand, use of the smaller committees as intermediaries encouraged their stabilization in particular areas of policy, the establishment of continuing relations between them and the departments, and the carryover of personnel from session to session and Congress to Congress. As a result, the incentives to expand the scope of exceptions to first reference to a Committee of the Whole that already stemmed from the difficulty of keeping up with a large and growing workload and the difficulty of deciding principles without benefit of a detailed scheme or proposal were further reinforced. Members were increasingly confronted with entities that possessed superior access to executive information and could claim superior knowledge and wisdom. Moreover, members were increasingly confronted with a situation in which the path to maximizing their own influence lay in mutual deference to one another’s claims as specialists.

On the other hand, as the difficulties of leading the House politically multiplied over time due both to growth in size and division within the Republican party, first reference to smaller committees and use of these
entities as levers of attaining policy wishes became increasingly attractive to Republican leaders both in the House and the executive branch.\textsuperscript{79} Needless to say, neither of these tendencies found full expression nor had a decisive impact until after 1809. Ironically enough, as this fact suggests, the role and influence of the Committee of the Whole vis à vis the smaller committees ultimately rested on unified and effective executive leadership of the lawmaking process which formally, as in the case of Hamilton, or informally, as in the case of Jefferson, could supply the substantive and political conditions necessary to make use of the Committee of the Whole to decide principles and aggregate majority support feasible.\textsuperscript{77}

\textit{Reporting By Bill}

Second only in significance to the maxim that important subjects be first referred to a Committee of the Whole for a decision on principles, another maxim existed in Jeffersonian committee thought which provided a critically needed complement for its prescriptions regarding first reference. This was the notion that permission for the introduction of a bill should be given only after the subject had been discussed and determined by the whole House, preferably in a Committee of the Whole if the subject was at all important.\textsuperscript{78}

Full understanding of the importance of this maxim requires further analysis of a topic we have already discussed—the reasons underlying the preeminence of the Committee of the Whole in Jeffersonian thought. In approaching the proper nature of the legislative process, the Jeffersonians held fast to both the idea of the representative as the passive embodiment of the will of the people and the idea of the representative as a man actively engaged in the search for truth through discussion. Despite the apparent inconsistency of these ideas, the Jeffersonians saw the representative as obligated to represent the wishes and interests of his constituents and yet they also believed that the legislative process was properly a deliberative one in which truth issued out of the clash of opinion as long as reason and conscience ruled, that is, as long as discussion was not perverted by the evils of corruption or party.\textsuperscript{79}

That the Jeffersonians held both these ideas in combination is well illustrated by a number of debates in the \textit{Annals}. For example, in the first session of the Fourth Congress (1795–1796) William Giles, after noting that he “adored” the will of the people, went on to say:

There could be no Legislative act without deliberation; the opinions which were to guide their decisions must be matured by deliberation; they were not to decide upon predestinated impressions; but their conduct must rest on the operations of their own minds ... it [was] the duty of a legislator to exercise an opinion, and not shut his eyes against conviction, and not to receive them from extrinsic quarters. When the Constitution says, the Legislature
shall enact laws, it implies that they must be the fruits of deliberation, and not in the nature of an Executive act. 46

On another occasion, in the first session of the Second Congress (1791–1792), William Findley's remarks were recorded as follows:

Mr. Findley declared himself to be in favor of one Representative for every thirty thousand persons. The opinion of the people should be the guide of the committee; that opinion he conceived, to be in favor of the ratio he had mentioned. The representation ought as nearly as possible to express not only the will, but to participate in the wishes and interests of the people. . . . As to delays occasioned by a numerous body, he observed, that the Representatives were chosen to deliberate and to mature every subject before decision. 47

It is likely then that the sharp contrast now drawn between Jefferson's and Madison's views on representation would not have made much sense to the Republicans in the first ten Congresses (1789–1809) for they subscribed simultaneously to both positions. 48 Nor was it entirely illogical for them to do so since they had great faith in the existence of objective, unified, and rationally definable truth and in the ability of the people to recognize and accept what was right. Note the words of James Madison, William Giles, and Abraham Baldwin:

Mr. Madison said . . . As he had confidence in the good sense and patriotism of the people, he did not anticipate any lasting evil to result from the publications of these societies. . . . In a Republic, light will prevail over darkness, truth over error: he had undoubted confidence in this principle. 49

Mr. Giles. . . . I have said that I wish to discuss this subject with calmness. This is still my wish. I wish to take it up free from all partiality or prejudice, and to examine it on its intrinsic merits. . . . I hope gentlemen will therefore agree to take up the subject, and enter upon an examination of it, not with a view to triumph, but to truth. 50

Mr. Baldwin thought the resolution . . . unexceptionable. . . . The doctrine of publicity had been daily gaining ground in public transactions in general, and he confessed his opinions had every day more and more a greater tendency that way. . . . In a free Government, he wished the arguments for and against measures to be known to the people: this would reconcile them to those founded on sound reason and policy. This he had ever found the case in the part of the country he represented. Whenever he had had an opportunity of stating the reasons that had influenced his vote on any particular question, he found those reasons had weight, and reconciled his constituents to the measure. 51

Legislators could thus represent the interests of their constituents while participating in a process of discussion which identified truth and educated both legislators and their constituents in this knowledge. 52

Nor were rational discussion and mutual enlightenment seen only as means of identifying true or right policies and harmonizing the pursuit of such policies with popular will. In a basic sense the Jeffersonians viewed majority rule in the House so that it too was dependent on rational discussion. As is implicit in our previous discussion of majority rule, the Jeffersonians did not regard it as something wholly quantitative or mechanical.
Identification of the “sense of the majority” was the problem and this was conceived to be contingent not simply on processes that preserved the equality of members over decisions, but also on processes that elicited majority decisions through rational discussion and mutual enlightenment. It was, for example, this kind of conception of majority rule, combined with belief in the identifiability and strength of truth and reason, that led Jefferson to say in his First Inaugural “that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable.” Indeed, understood in the context of contemporary assumptions, Jefferson’s statement is far less vague than it might appear. Moreover, this relation between discussion and majority rule also means that the Jeffersonian position on first reference to smaller committees had a facet or dimension that we have not adequately developed. In truth, Jeffersonian fear of the distorting effects reliance on smaller committees might have on majority rule related not simply to the manner in which such reliance could infringe equal influence over outcomes, but also to the grave infringements of discussion and mutual enlightenment that such reliance could easily involve. Note, for example, the words of John Page, a Virginian who was one of the most ardent spokesmen in the early House of the basic articles of Jeffersonian faith:

...if, instead of discussing a question fully, and collecting the sense of all the members in a Committee of the Whole, it be referred to a committee...that committee might be unanimous in favor of a resolution, against which eighteen members from Virginia, and a proportionate number from other States, might vote; or, by the weight of that committee, the resolution might be carried, which could not have passed had it been fully and freely discussed in the House.87

Given this apprehension, we have an additional, equally fundamental, basis for understanding the preeminence of the Committee of the Whole in Republican thinking. The Committee of the Whole existed as a focal point of Jeffersonian committee thought not merely because it provided a means of avoiding structural infringement of the ability of all members to exert equal influence over decisions, but also because of the superior qualifications of the Committee of the Whole as an arena for rational discussion and deliberation. In contrast to the select and standing committees, it included the entire membership of the Congress, a group which even in 1809 was still small enough (141) to make collegiate decision making not at all a fantastic ideal.88 In contrast to action on the floor of the House, its procedure being that of a committee was less formal and debate was less limited.89 Moreover, the same qualities that distinguished the Committee of the Whole from the floor of the House or from the smaller committees enhanced its value as a dramatic platform from which to address the nation on great issues of policy. In short, then, we may conclude that Jeffersonian regard for the Committee of the Whole rested on several interrelated props. Its
advantages in terms of inclusive and untrammeled discussion as well as its advantages in terms of openness to all and lack of structure or hierarchy led the Jeffersonians to see the Committee of the Whole as the primary legislative mechanism for realizing a number of interdependent goals they cherished—majority rule, rational discussion and mutual enlightenment, the definition of true or right policies, and educating the people with regard to the issues.

On the basis of this analysis we now may more fully understand the significance of the maxim prohibiting the introduction of bills until subjects had been discussed and determined by the whole House. Interpreted strictly, it could be and was used to prohibit the introduction of bills even after principles had been determined. This could be important as a means of preserving the Committee of the Whole's control over the main features of an important measure and insuring a prior discussion of these features in cases where principles were not or could not be very controlling. For example, in the first session of the Third Congress (1793–1794) a resolution was passed declaring that adequate provision ought to be made to protect our commerce from North African pirates. This resolution was referred to a select committee which reported back a related set of resolutions concerning the number of new warships needed and the new items of taxation required to finance them. Only after these resolutions were fully discussed and approved in a Committee of the Whole was the select committee allowed to bring in a bill.⁹

Interpreted less strictly, i.e., simply that principles should be settled before bills were permitted, the maxim could be and was used to prevent a subject being completely defined and organized in the form of a bill before a determination on principles had been made. This could be important in cases where subjects were initially given to a select or standing committee as a means of preserving the Committee of the Whole's control over principles in important areas and the House's control in all areas. Even granting that these committees did more than merely ascertain facts or arrange complex materials so as to make possible decision by the whole, a decision on principles could still better be had, according to the norms of Jeffersonian theory, if committees merely reported their findings rather than presented a completely arranged and detailed bill. Thus, in the second session of the Fifth Congress (1797–1798), when the Federalists sought permission for a committee on the President's Message to report by bill, the Jeffersonians opposed it vigorously. Albert Gallatin argued that, though the other committees formed on the message had been given the power to report by bill, the principles of their subjects had been more or less settled before reference was made and that important subjects should first be determined in a Committee of the Whole before bills were allowed.¹⁰ He was supported
by John Nicholas, Abraham Venable, and Joseph Varnum. Of these three
John Nicholas' comments are especially noteworthy:

Mr. Nicholas thought the nature of this resolution fully justified the deviation which
had been observed in the forming of the resolution appointing this committee. It appeared
to him better to have the subject in the form of a report than a bill, in order that it
might receive full discussion.66

It was the practice of the House to have all important business first in the form of a
report, which gave time for discussion and reflection, and he thought an innovation upon
the usual order of proceeding in this respect might have a bad effect. He wished, before
any subject should be brought before them in a bill, they might discuss its principles.67

On another occasion, in the second session of the Fourth Congress
(1796–1797), the Committee on Ways and Means in order to secure a prior
decision on principles merely reported back a few simple resolutions to
the effect that a direct tax should be levied, instead of an elaborate plan.
Several prominent Federalists objected, contending that the committee
should bring in a bill before the issue was joined. The Republicans opposed
proceeding in this manner and one of their leading members, John Swan-
wick, spoke as follows:

It was absolutely necessary to decide upon one of two principles, either to support
commerce by a Navy, and thereby secure the revenue arising from it, or else call upon
agriculture to bear its full share of the public burdens. He therefore wished the principle
to be settled without regard to modification, because the more simple the light in which
the object was placed the better. The modification would properly be an after-business;
and when members had agreed upon the necessity of adopting the principle of a direct
tax, their opposition to any particular plans which might be offered would be moderated,
so that the best system which could be devised would probably be adopted.68

However, here as elsewhere, Jeffersonian thought was marked by the
defects of inconsistency in theory and retrogression in practice.69 Originally,
the notion that a bill should not be brought in until the subject had been
determined by the whole House was understood to apply to matters of
routine as well as to matters of importance. As a result, in the early Congresses
most important measures were examined first in a Committee of the Whole
before bills were allowed and less important subjects often received the
same treatment, though more frequently in the House than in Committee
of the Whole.69 Moreover, so strict was the adherence to this maxim that
bills reported by committees were closely examined to make sure they
conformed precisely to the resolutions which authorized them.69 Yet by
the Ninth Congress (1805–1807) traditional safeguards were usually not
observed with regard to routine matters and even with regard to more
important matters there was a decided tendency to allow committees to
report by bill before a Committee of the Whole had considered the subject.69
In addition, definite evidence of the existence of a new and opposing set
of attitudes with regard to reporting by bill can be found. For example,
it was claimed that it was proper for a committee to report by bill on its own discretion, if the committee accompanied its bill with a full statement presenting facts, reasons, and arguments on behalf of the adoption of the bill.\textsuperscript{99} Still, the old theory was far from dead even in the last years of Jefferson’s second administration. Many important subjects, especially those which were most crucial, continued to be determined first in a Committee of the Whole before bills were allowed.\textsuperscript{99}

\textit{Internal Operation}

In approaching Jeffersonian thinking with regard to internal committee organization and operation, let us again concentrate on the theory as it took shape in the first four Congresses (1789–1797) before we trace or examine later developments.

Jeffersonian attitudes in this area can be classified under four headings. In discussing these headings we shall make use of Jefferson’s famous \textit{Manual of Parliamentary Practice}. Although this manual was written for the Senate and not compiled until Jefferson became Vice-President under Adams, the quotations we shall employ aptly reflect both the theory and the practice of the House in the years before 1797.

In the first place, the Jeffersonians believed that when it became necessary to place resolutions or bills in the hands of smaller committees, these committees and their chairmen should be favorable to the object of the resolution or bill committed to them.\textsuperscript{100} They therefore supported the general practice of making the man who moved the appointment of a committee with regard to a particular resolution or bill its chairman. Indeed, it was Jefferson himself who gave the guidelines and rationale of this approach their most felicitous statement. Note the following excerpt from his \textit{Manual}:

\begin{quote}
Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it; or, as is said, the child is not to be put to a nurse that cares not for it. It is therefore a constant rule “that no man is to be employed in any matter who has declared himself against it.” And when any member who is against the bill hears himself named of its committee, he ought to ask to be excused.\textsuperscript{100}
\end{quote}

In the second place, the Jeffersonians believed that the committees ought to conduct their investigations and deliberations in a democratic manner so that the conclusions reached represented the deliberate judgment of at least a majority of the committee. Thus Jefferson’s \textit{Manual} states:

\begin{quote}
A committee may meet when and where they please if the House has not ordered a time and place for them, but they can only act when together and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled. A majority of the committee constitutes a quorum for business.\textsuperscript{100}
\end{quote}

Concomitantly, the Jeffersonians saw the chairman as a moderator of discussion and agent of the committee, not as a lord of its proceedings.
Hence, Jefferson describes his duties as presiding over the committee, putting the question to its members as he reads the paper or bill committed to the committee by paragraphs, and reporting the results of its proceedings to the House.164

In the third place, the Jeffersonians believed that experience or special knowledge with regard to a particular subject constituted an important basis for appointment to committees dealing with that subject. For example, in the first session of the Fourth Congress (1795–1796) it was explicitly recognized that a select committee about to be raised on the subject of protecting the Indians should include members from the Western frontier.165 Similarly, in the same session when Uriah Tracy, a Federalist member from Connecticut, asked to be excused from serving as chairman of the Committee on Claims, permission was refused.166 In this instance William Giles seems to have expressed the opinion of both the Republicans and the House:

Mr. Tracy was, perhaps, better qualified than any other member in the House for expediting that business. He had been at much trouble about it, for which the House were obliged to him. It was something of a systematic nature, and new members would not be able to go on it with the same degree of information and experience.167

In addition, not infrequently the Republicans thought it proper to confide important subjects which concerned everyone in the nation to committees appointed so as to include one member from each state in the union.168

In the fourth place, again in the words of Jefferson’s Manual, the Jeffersonians in the House believed that committees should have “full power over the bill or other paper committed to them,” except that in the case of bills the committee could not “erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words which are to be inserted or omitted.”169 This latter clause was a reflection of their feeling that a committee on its own responsibility could not change what the House as a whole had decided or endorsed.

Plain as these ideas may seem to be, their bearing and import can nonetheless not be fully appreciated unless we remind ourselves of the context of theory and practice within which they were defined. In the case of the notion that committees should be formed of men favorable to the object of a resolution, the effect of this guideline was to give the majority which existed with regard to a particular subject control over the committee to which it was referred. Assuming the existence of few if any standing committees, and until the second session of the Third Congress (1794–1795) only one did exist, then generally committees could be created as needed with regard to particular subjects which in turn enabled men favorable to the subject to be appointed in each instance. Moreover, although House rules beginning with the second session of the First Congress (1790) vested appointment of all committees in the hands of the Speaker, the rules also
permitted the House to elect a committee itself whenever it chose. Thus, if the House suspected with regard to any particular subject that the Speaker could not be trusted to conform to the custom of selecting men truly in favor of the resolution or bill, it could by majority vote take appointment away from the Speaker.

With regard to the notion that the committees should have full power over the papers or bills committed to them, such a maxim did not convey or involve as much actual power as it does now. If the legislative process commenced with the consideration of subjects and if principles were settled before reference was made to a smaller committee, and in the first four Congresses practice followed these lines at least with regard to important subjects, then the report or bill sent back by the committee had to conform to the decisions reached by the House and implicitly or explicitly embodied in the resolution of reference. In addition, even in those cases in which subjects were initially referred to a smaller committee, if bills were not allowed until the House had settled principles, and this was the usual practice in the first four Congresses, then again the bills reported by committees had to conform to the resolutions or orders authorizing those bills.

A similar point applies to the negative or obstructive powers of committees. They did not pose as great a problem as they do today. The committees were not seen as sitters of the business for the House but as fingers of the House. As a result, it was assumed that committees would report back, even if their report was unfavorable. Of course, the possibility of deliberate delay existed as did the problem raised by the lack of formal obligation to report back on the part of those committees which were merely instructed to inquire into a certain situation before principles had been settled. However, though their paucity indicates that there was not much need for them, motions for discharge could easily gain the floor and could be carried by a simple majority vote.

Lastly, though the Jeffersonians considered knowledge or experience as an important basis for appointment, this did not mean that they subordinated party to this criterion or equated it with seniority or prior committee service. In the latter respect they did not accord length of service the prerogatives it is now given. Past service on a committee was not regarded as something that necessarily determined one's rank or guaranteed one's place. Indeed, members were added to and removed from standing committees in large numbers quite freely. Nor was rank in a preceding session regarded as something that necessarily controlled advancement to the chairmanship. For example, the Committee on Elections in the Third Congress and the Committees on Claims and Commerce and Manufactures in the Fourth Congress had different chairmen in one session than in another and the men who succeeded to the chairmanships in these instances did not rank highest on the previous committee lists. In the former respect
it is probable that even by the mid-1790's party constituted an important limitation on other appointment criteria in Jeffersonian eyes. However, at this time negative attitudes toward vehement or open partisanship were still strong in Jeffersonian ranks, the standing committee system which involved general or continuing positions still in its infancy, and party divisions still somewhat confused.\textsuperscript{113} As a consequence, even when in the majority, the Jeffersonians were less insistent on partisan considerations in appointment than they would be in subsequent decades.\textsuperscript{114}

Yet, despite its virtues, Jeffersonian thinking with regard to the proper nature of internal functioning was less able to control practice in the years that followed 1797 than is true in the other areas we have previously examined. To a higher degree than is true with regard to first reference to a Committee of the Whole or reporting by bill, the notions of Jeffersonian theory in this area tended to become pious or outmoded precepts rather than governing norms, even in the years before 1809.

For one thing, the growth in the number of standing committees (there were nine by 1809) and the tendency through the years toward regular and general usage of the important committees on the President's Message created a situation in which the old harmony of object between a committee and a resolution or bill committed to it might well be disrupted.\textsuperscript{115} This could be particularly detrimental in cases where a standing committee was given a resolution or Senate bill previous to its discussion or determination in a Committee of the Whole so that it was merely instructed to inquire into a subject rather than instructed as to content.

The Jeffersonians were not unaware of the problems raised by the use of standing committees, by the use of a committee form to which all resolutions or bills in a subject area would be referred when reference was desired unless another course was moved and adopted on the floor. In the second session of the Ninth Congress (1806–1807), because it was feared that the Speaker would select the Committee on Ways and Means in such a way as to frustrate the policy wishes of the House, several leading members of the Republican majority tried to change the rules so as to require election of the standing committees by the House.\textsuperscript{116} They argued that the “method of appointment by ballot was much more congenial with the spirit of Republicanism.”\textsuperscript{117} Their opponents pointed out the time-consuming inefficiency of such an approach. The motion was defeated by only two votes.\textsuperscript{118} In the next session, when it was clear that the majority would control the standing committees, another attempt was made to change the rules to the same effect supported largely by Republican dissidents and Federalists.\textsuperscript{119} In this instance the opponents of the motion based their argument on the inefficiency of election both with regard to time and securing fit men, the advantages of having one responsible agent select
the committees, and the lack of knowledge on the part of the many new members in the House. The motion was overwhelmingly defeated.

De Alva Stanwood Alexander believes that this course of events indicates that the Republicans in the House, who at various times supported the principle of election, did so only for tactical reasons. However one may decide this question, and it does seem at least somewhat unfair to Jeffersonians such as James Sloan, James Holland, John Eppes, and Thomas Blount, who were fairly consistent in their support for election, in truth election did not constitute an adequate answer to the problem of disharmony between the views of a committee and the object of the resolution or bill-confided to it. Standing committees, even if elected, would nonetheless have sway over a whole subject area and on particular issues could still find themselves in opposition to a majority in the House. Moreover, as twentieth-century experience has shown, election by the House because of the forms it assumes and the secondary effects it involves is not necessarily a better vehicle for majority control of committees than selection by the Speaker.

For another thing, the position and prerogatives of the chairman were not adequately circumscribed by Jeffersonian theory. Not too many years elapsed before a key Republican legislator felt it necessary to point out to President Jefferson that one of the main barriers to effective party leadership by men informally tapped by the President was that the Speaker appointed the committees and "in the House...more than in any other legislative body within my knowledge, the business referred to Committees and reported on by them, is, by usage and common consent, controlled by their chairman." Chairmen, in short, readily became more than the mere "moderators" or "agents" which Jeffersonian theory had envisioned. For example, in the first session of the Seventh Congress (1801–1802), James Bayard, a Federalist, objecting to the report of a committee on which he served, complained to the House as follows:

It will be perceived by those who are accustomed to the form of proceeding upon committees, that our course has been entirely novel. It was usual heretofore for a committee to agree upon the substance of their report, and then to draw up a report in conformity to their opinion. In the present instance our opinion had not been asked, upon any point embraced by the report, before it was offered to us in its complete form. If the points and cases which the report contains had been separately brought under discussion, they would have been more fully investigated and considered, and the result might, in consequence, possibly have varied. As it regarded myself, this new mode of proceeding was a complete surprise.

To these words Joseph Nicholson, chairman of the committee, blandly replied:

He (Mr. Bayard) said it was usual to direct the chairman of committees in what way the report was to be made, and presented for acceptance. Having very little of this kind of business to do... he was not very conversant in the precise manner, but he thought
it was usual for the chairman to make propositions to the committee, to call forth their attention. He knew of no way to facilitate business so much, as by bringing in a sketch of a report, comprehending the principal features which the papers before that committee exhibited."

Nicholson was the victor in this instance not simply because the Republicans controlled the House, but also because the exercise of leadership or initiative by the chairman had become a matter of informal consensus. In 1804 William Plumer described the role of a committee chairman as follows: "The business of chairman of a standing committee is very arduous and attended with much labour. His duty is to call the Committee together, draw up the report in writing, which frequently is prolix and argumentative—And in the House he must support and defend the Report."126

Nor was the leadership role chairmen assumed limited to acts of commission. It is clear from the Annals that by the second term of Jefferson's presidency a point had been reached in the development of the House where deliberate delay on the part of a committee chairman could easily become a serious problem, despite the availability of an effective discharge procedure. Thus, at the close of the first session of the Ninth Congress (1805–1806) James Sloan denounced Randolph's behavior as Chairman of Ways and Means and offered two resolutions for the House approval, one requiring all the committees to be called upon to report every Monday unless dispensed with by unanimous consent and the other requiring all the standing committees to be elected by ballot and to choose their own chairman. His words have a very modern ring to them.

I offer these resolutions for the purpose hereafter of keeping the business of the House of Representatives within its own power, and to prevent in future the most important business of the nation from being retarded by a Chairman of the Committee of Ways and Means, or any other committee, from going to Baltimore or elsewhere, without leave of absence, and staying six days or more, either for his pleasure or his interest; to prevent the members of this House from being hereafter insulted by chairmen, or other members of the committees, for calling business out of their hands, after having kept it either from negligence or evil design more weeks than they ought to have done days. To prevent in future the Chairman of the Committee of Ways and Means from keeping for months the estimates for the appropriations necessary for the ensuing year in his pocket, or locked up in his desk, whereby the different appropriation bills may be kept back (as they have been this session) to the great injury of the nation, as well as individuals; and, finally, to prevent hereafter bills of importance being brought forward, and forced through the House, near the close of a session, when many members are gone home, and the minds of those who remain are necessarily turned homeward to their domestic concerns, and when there is not time for that full investigation and cool deliberation necessary to decide with propriety on important subjects, by which means laws may be passed injurious to the interests of the United States and derogatory to the character of the House of Representatives."

Finally, while Jeffersonian regard for knowledge or experience as a criterion in committee appointment remained strong, its impact was altered
by changes in the context in which it was applied. On the one hand, the emphasis the Jeffersonians placed on party became more firm and unyielding. Though still not adverse to recognizing knowledge or ability in minority ranks, whatever doubts they had had about party as an appointment criterion were largely laid to rest. If still not anxious to acknowledge or justify the importance placed on party, it is nonetheless true that by the time the Republicans regained power in the House in 1801 they regarded partisan considerations as dominant on all important committees and in most instances. On the other hand, elements in both theory and practice that had previously served to limit the deleterious effects of relying on knowledge or experience as a criterion grew weaker. Emphasis on knowledge is not an unmixed blessing, involving as it does the danger of turning over a subject or subject area to the particular interests most directly concerned. In the early Congresses this danger was mitigated by the practice of settling principles first or before bills were brought in, by the frequent use of select committees which dealt only with a particular subject, and by the employment of the principle of state representation. Less emphasis was placed on all these elements both in theory and in practice in the years after 1797 than in the years before, particularly with regard to the principle of state representation. As a result, when a Jeffersonian such as John Smilie in the first session of the Tenth Congress (1807–1808) affirmed the need for "knowledgeable" committee members the implications and repercussions were different than they had been in 1793 or 1794. According to Smilie:

...it was proper to select the most fit characters for each [standing committee]—on the Committee of Commerce, for instance, there ought to be placed Commercial men; on the Committee of Ways and Means, such as were best acquainted with subjects of finance, etc. 117

We should note, however, by way of balance that the Jeffersonians did make some adjustments and innovations in their approach to internal committee operation. In the first session of the Ninth Congress (1805–1806) a rule was passed giving any two members of a committee the right of calling a meeting if the chairman was absent or declined to convene such a meeting. 118 In the second session of the Eighth Congress (1804–1805) a rule governing the selection of chairmen was adopted which permitted committees to elect their own chairman if they so desired and this option was taken advantage of on two occasions. 119 Nor did Jeffersonian theory or practice change substantially with regard to the amount of deference accorded to prior service on a committee. Committee membership continued to be changed quite freely from session to session and members succeeded to chairmanships without strict regard to their rank or even presence on the previous committee list. 120 To cite an extreme example, we may note that the final outcome of dissatisfaction over control of the Committee
on Ways and Means by Republican dissidents was reconstitution of the committee in the first session of the Tenth Congress (1807–1808) to get rid of John Randolph and his cohorts.\cite{31}

Control Over Execution

Thus far, we have centered our attention on the role of committees in lawmaking. There is, of course, another role a legislature in a democratic system performs which is equally important—that is, the task of overseeing, supervising, controlling, call it what you may, the manner in which laws are carried out once they have passed into the statute books. In actuality, this task as performed by a legislature cannot be rigidly distinguished from the task of enacting law since oversight instructs legislation and since legislation is a prime weapon of oversight. At heart, then, the two processes are closely interrelated and over time the legislative process as a whole can be seen as a continuing interaction between these two facets of operation. However, it is useful for analytical purposes to approach the problem in terms of separate roles, distinguishing the legislature's role in defining or making law from its role in exercising control over the process of execution.

Before we directly confront the question of Jeffersonian attitudes with regard to the role of the House in controlling execution, there are three points by way of background that must be made if these attitudes are to be seen in proper perspective. The first is that the Jeffersonians placed great emphasis on spelling out the provisions of law as concretely and specifically as possible. This is not to say that the Jeffersonians, as is sometimes supposed, made no concessions to the needs of administrative flexibility or believed that the job of the executive branch could be made completely ministerial. Though they did believe that there was a logical or abstract distinction to be made between legislative and executive power, the majority of them did not see this as an absolute or even precise basis for discrimination in lawmaking.\cite{32} In addition, the Jeffersonians realized that specification of details in situations in which contingencies could not adequately be foreseen would be self-defeating, resulting in the frustration of the objects the law was enacted to achieve.\cite{33} Nonetheless, it still remains true that strict limitation of executive discretion was a cardinal principle of Jeffersonian thought and that they believed that this was both possible and practical as a general rule.\cite{34} Their view that the legislature was constitutionally the primary lawmaking or policymaking body as well as their regard for the legislature as the primary representative of the people made this emphasis inevitable.\cite{35}

Second, the Jeffersonians believed vehemently that executive officers were responsible for adhering strictly to the letter of the law.\cite{36} Again this is not to say that they believed that infractions or unauthorized actions were
not permissible under any circumstances. They recognized that the highest duty of the administrator was not to the letter of the law but to the achievement of its ends and to the duties of his office. Nonetheless, they placed primary emphasis on strict adherence and they felt that only those in the highest administrative positions would ever be faced with a conflict and these men only under most unusual circumstances. Moreover, they thought that when infractions or unauthorized actions did occur it was incumbent on the violator to report to the legislature immediately so that the legislature would have the opportunity to pass on the action, so that the legislature, rather than the individual official, would have the last word.

Third, the Jeffersonians believed that the President, not the Congress, was wholly responsible for execution and that the process of carrying out the law was a process that was entirely at his command. Henry Jones Ford and Wilfred Binkley have noted that in the Republican period cabinet officials were not seen as personal representatives of the President but rather as a permanent nonpolitical bureaucracy. This is true but it is wrong to conclude from this, as Binkley does, that they were not seen as executive subordinates of the President. Thus, for example, the Jeffersonians believed that the proper way for the House to request department heads to submit formal reports was through the President and that the department heads were subject to presidential direction in preparing such reports. Indeed, under both Washington and Jefferson even departmental correspondence was cleared with the President. We may conclude, then, as Leonard White has, that “no doubt arose in the minds of the Jeffersonians concerning the administrative supremacy of the President. The department heads were responsible to him. The executive power remained where the Constitution had placed it.”

Turning now to the main question we wish to consider, Jeffersonian attitudes toward the role of the House and its committees in the control of administration are marked by their restraint as compared with contemporary attitudes on this topic. To be sure, as might be expected given their emphasis on holding the executive to the letter of the law, they firmly believed that the House had a postnatal role to play. We may note that the Jeffersonians often described the House as the “inquest of the nation” and emphasized its function as an agent of the people in correcting violations and abuses of legal authority in the administrative process. The following two quotes are illustrative:

Mr. Nicholson. . . . This House, like the Commons of England, and the most numerous branch in the State Legislatures, is the grand inquest of the nation; they are to inquire into crimes and bring offenders to justice.

Mr. Claiborne. . . . if Mr. Pickering had departed from the directions of the law, to say so was no calumny. The committee proposed to be formed will inquire into all circumstances, and the public officers will be applauded or virtually censured. We are accountable
to the people for the expenditure of their money, and it is proper that our public officers
should be accountable to us. 139

As for the role of committees, here as elsewhere, they were seen as agencies
for establishing facts which could not as conveniently or adequately be
established by members on their own initiative. 140 However, due to the
nature of the inquiries required and in contrast to the situation with regard
to the first reference of legislative subjects, it did not take long before
it was generally recognized that committees rather than individuals were
better suited to determine facts in all cases where important violations
or abuses were alleged. 141 In addition, by the Fourth Congress (1795–1797)
it was recognized both tacitly and explicitly that these committees could
report opinion as well as facts. 142 Select committees rather than standing
committees were usually preferred for this work. 143

Nonetheless, as also might be expected given their emphasis on detailed
lawmaking and the responsibility of the President for execution, the Jeffers-
onians did not believe that the House had any right to get involved in
or interfere with the administration of the law. Moreover, to the Jeffers-
onians this meant not simply that the House should not attempt to direct
or participate in the process of executing the law, that it was properly
confined to the role of oversight or superintendence, but also that its sphere
of action as overseer or guardian was limited.

If the Jeffersonians believed that the House was the grand inquest of
the nation, they did not believe that it had unrestricted authority to inquire
into executive operations or conduct. Rather, they believed that the right
of inquiry was limited in reach and scope to objects or purposes within
the circumscribed grant of power conferred by the Constitution. Note, for
example, the words of James Fisk in the 1808 debate over whether the
House should institute an inquiry into the conduct of James Wilkinson.
Wilkinson, the commanding general of the Army, was accused of having
accepted bribes from a foreign power, but as a military man he was not
subject to impeachment. Despite the gravity of the charges, charges that
would lead a majority in the next Congress to vote for a committee inquiry,
in this last Congress of the Jefferson Administration Fisk’s opposition to
legislative investigation reflected traditional Jeffersonian premises and con-
cerns as well as the sentiments of the great majority of Republicans then
in the House.

Mr. Fisk did not believe the House possessed the power to institute an inquiry . . . For
what purpose should the inquiry be made? When made, could they effect any object
by it? No. And why? Because the Constitution had reserved to this House a power to
remove the superior officer, who alone could remove the inferior. . . . While gentlemen
were so extremely careful to guard the Constitution from violation, he begged they would
not trespass on it themselves; while they complained of a supposed breach of trust by
a public officer, he hoped not to see it realized in this House. 144
Similarly, if the Jeffersonians believed that the House had critical responsibilities as guardians of the rights of the people, they did not assume that the House bore sole or primary responsibility for the fate of the republic, that the functions and duties of the other branches counted for little in the preservation of our form of government. For example, in the extensive debate in 1808 over General Wilkinson, John Smilie, an old Jeffersonian who had served in the House for more than a decade, spoke as follows in arguing that Wilkinson's conduct was a matter for executive not legislative investigation:

... the gentleman supposes that, except this House can assume power to act for the public safety, there is no safety for the Republic. Surely, the patriots who framed the Constitution supposed that the distribution of power and the frame of Government it contained were sufficient to preserve the safety of the nation. But the gentleman says we must appoint a committee... If, according to his idea, this House is left by the Constitution to roam at large without limit or restriction, and exercise its powers as the passions would lead us, independently of the Constitution, I see nothing but ruin to result; and I am not afraid in the most express language to deny that power, nor am I afraid the Constitution will not bear us through. 68

Finally, if the Jeffersonians assumed that they had the right to inquire into the conduct of particular executive officers as well as operations of states of affairs, they regarded this right as limited by the President's responsibility for the conduct of subordinate officers and exercisable only for impeachable offenses over officers subject to impeachment. To illustrate the point let us quote again from the debate in 1808 over General Wilkinson. Note the words of William Findley, a Republican who had spent all but four years since 1791 in the House and had been a member of the House's first investigating committee on the St. Clair expedition:

Mr. Speaker, we can only prescribe to the Executive, or the courts of justice, civil or military, by a law of Congress; if the laws are insufficient for the detection of crimes, let Congress revise them, or make new laws. If there are not sufficient number of courts established, Congress has authority to organize other courts; but one branch of Congress alone has no right officially to inquire into, or sit in judgement on the character of Executive officers, except with a view to impeachment. 69

Given Jeffersonian theory's dual assumption that the House had a significant role to play in exercising control over administration and that this role should not be performed in such a way as to infringe executive prerogatives, the topics and objects the House could concern itself with had to be circumscribed to keep the House within proper bounds. Before we proceed to define the areas of concern that Jeffersonian theory acknowledged as legitimate, however, we should note that committee investigations were not the only mechanism of administrative control that the House employed. As in the case of simple legislation, resolutions calling on the President or department heads for information were quite common. When framed so as to involve oversight or superintendence, such calls requested
information on past operations and conduct as well as on achievements and difficulties in implementing a law, e.g., difficulties under the militia law, execution of the Act regulating foreign coins, the administration of the Sinking Fund, the state of military fortifications and arsenals, etc.\textsuperscript{134}

As such, these calls were employed to secure information that was useful or needed to revise or extend existing grants of legal authority or appropriations. In addition, they were used as a prelude to committee investigation for the purpose of determining whether an extended inquiry was necessary and/or to provide a foundation on which a committee inquiry could proceed. In short, though the committee mechanism was a more effective instrument, the reliance placed on committees did not supplant the individual member as a source of inquiry or agent of control. Indeed, resolutions calling for information were employed far more frequently than resolutions authorizing committee investigations. Nonetheless, though the Jeffersonians in practice were more lax about calls for information than about committee inquiries, in normative terms the same restrictions Jeffersonian theory placed on the topics and objects of committee inquiry applied to the topics and objects of calls for information.\textsuperscript{136} The areas of legitimate concern that Jeffersonian theory recognized may be categorized as follows.

First, and foremost, were inquiries into violations and abuses in the expenditure of public funds. On the basis of Congress' legislative power over both the appropriation of funds and the structure of executive organization, the Jeffersonians saw the handling and expenditure of public money by executive officers as a topic of unquestionable legislative concern. Moreover, though the Jeffersonians did not believe that the House had to assume sole or primary responsibility for the safety of the republic, they strongly believed that the House had singular responsibilities in the area of public expenditures. Not only did the Constitution provide that revenue and by implication appropriation measures should originate in the House, but as the sole body in the national government directly representative of the people the Jeffersonians saw the House as the people's primary agent of control, as the "guardians of the public money."\textsuperscript{136}

This general attitude toward the House's role in the area of public expenditures translated into assertions of the legitimacy of a variety of objects of inquiry. Inquiries into the question of whether funds had been expended according to law were seen not only as proper but as essential. Indeed, as early as 1791 future Jeffersonians began to press for institutionalizing this form of inquiry. Note the words of Elbridge Gerry:

He wished the House would make it a rule that every Executive should, at each session, lay before the House an account of the expenditure of all the money passing through their hands. The people depended on their Representatives for a scrutiny into the expenditure of the public money. He wished, at present, that a committee should be appointed to examine into the expenditure of all former appropriations, and that a rule should
be established to apply for the future, and procure regular accounts from every branch of the Executive Department.\textsuperscript{397} 

On the same occasion Madison spoke and called for periodic appointment of a committee to examine accounts. It is not surprising, then, that soon after their general and conclusive triumph in the election of 1800 the Jeffersonians in the House extended the jurisdiction of the standing committee that handled appropriation measures, the Committee on Ways and Means, to include regular examination of the appropriation laws to ascertain whether funds had been spent in conformity with them.\textsuperscript{398} We may also note that in the years from 1789 to 1809 many of the special committee inquiries into executive operations or conduct and most of the major ones were premised in large part on the legality of financial transactions, e.g., the inquiry into the state of the Treasury Department under Secretary Wolcott and the inquiry into the disbursement of public money by all departments under both Presidents Washington and Adams.\textsuperscript{399} 

The emphasis the Jeffersonians placed on legality was matched by the emphasis they placed on economy. Inquiries into the economy with which funds had been expended were also regarded as appropriate and necessary. Thus, major special or select committee investigations were premised on economy as well as legality. Note the charge given to the select committee appointed to investigate the disbursement of funds by all departments in the Washington and Adams Administrations:

\ldots to inquire and report, whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with the public money.\textsuperscript{400} 

In addition, with regard to economy as well as legality the Jeffersonians supported regular inquiry. By the mid-1790's they became strong advocates of the view that questions of waste and actual need should be looked into as an integral aspect of the appropriations process by the committee charged with the appropriation measure or by a special or select committee. For example, the Jeffersonians resisted further appropriations for the Mint in 1796 and further appropriations for the completion of three naval frigates in 1798 on the grounds that expenses had been excessive and that inquiry by a select committee should precede appropriation.\textsuperscript{401} On another occasion in 1796 Gallatin reported to the House that after inquiry the Committee on Ways and Means had decided that the estimate for army rations was too high and had cut it by a third.\textsuperscript{402} Involved in such actions was not only the notion that the House was the guardian of the public money, but also an important corollary of this notion. In the words of Albert Gallatin, if the House was to avoid "endless mischief," it ought "not to
vote money because an officer of a department calls for it, however much that officer may be entitled to the confidence of the House." 168

Nor did inquiries into the legality and economy with which funds had been expended exhaust the recognized objects of inquiry in this area. Rather, inquiries into the structure of executive organization and salaries with a view to retrenchment as well as inquiries into the administrative arrangements governing the manner in which funds were paid out and accounted for were also seen as quite appropriate. Indeed, the latter question was a source of great anxiety for the Jeffersonians during the years of Federalist dominance and a common, though not exclusive, theme of major select committee investigations. As William Giles put it in 1794 when advocating a committee inquiry into the state of the Treasury under Hamilton, it was "the peculiar province of the Representatives, immediately chosen by the people, to superintend the contributions and distributions of all public moneys." This in turn required "knowledge of the whole machinery of the Treasury Department" and legislative prescription of "rules of conduct" to avoid the emergence of a "species of law" defined by Treasury officers that would serve as "practical constructions of law contravening the legal constructions." 169 In addition, it is worth noting that when the Jeffersonians expanded the jurisdiction of the Committee on Ways and Means in the early months of Jefferson's first Congress, they did so in such a way as to confer a general right of inquiry on the committee that explicitly encompassed retrenchment and administrative accountability as well as legality. The clauses added at this time are as follows:

To examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such law; and also to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the departments, and to the accountability of their officers. 170

A second area of inquiry that the Jeffersonians recognized as legitimate in exercising control over the administrative process was misconduct on the part of executive officers. On the basis of the House's power to impeach civil officers for "treason, bribery, and other high crimes and misdemeanors," the Jeffersonians regarded inquiries into executive misconduct as entirely proper and impeachment itself as a significant check the Constitution had conferred on the House and Senate.

It is difficult for modern observers to appreciate how much reliance the Jeffersonians placed on impeachment or why they did so. Yet the plain fact is that they saw impeachment as one of the House's prime methods of administrative control. On the one hand, the reluctance the Jeffersonians felt for participating or interfering directly in the administrative process limited both the types of control mechanisms the House could employ and the uses that could be made of the ones that were seen as legitimate.
Impeachment therefore appealed because it was a potent corrective of executive wrongdoing if applied and because it was unassailable on grounds of interfering with the execution of the laws. For example, in the dispute over General Wilkinson in 1808, G. W. Campbell, Randolph's successor as Chairman of Ways and Means, argued that the House could not direct or instruct the President by resolution since instruction was not "a legislative act, nor intended to produce a law." In general, he stated that, "He did not know that this House could act in any other capacity than legislative, except in the single instance of prosecuting in cases of impeachment."  

On the other hand, many prominent Jeffersonians believed that the offenses subject to impeachment were not limited to high crimes or illegal acts, but also included illegitimate or unethical activities, e.g., the use of patronage for political or personal gain, and even maladministration. In short, the word "misdemeanor" in the constitutional grant of power could be and was interpreted loosely as misbehavior with the result that impeachment could be and was seen as simply a legislative device for removing officials who had erred in a serious or substantial way. Such a view was not without some basis of justification and led in Republican ranks to a very expansive view of impeachment as a control weapon. The words of Joseph Nicholson in a debate in 1804 over whether a committee should be appointed to investigate Justice Chase aptly illustrate the point:

... whenever any member of the House should rise in his place and state that any officer of the Government had been guilty of official misconduct, he had no hesitation in saying, that he would consent to an inquiry. He cared not how exalted his station, or how far he was raised above the rest of the community; the very circumstance of his superior elevation would prove an additional incitement. Such, he said, was the nature of the Government, and so important the duty, in this respect, devolved upon the House of Representatives, that the conduct of the Chief Magistrate himself, as far as his vote could effect it, should be subject to an inquiry whenever it was demanded by a member. The greater responsibility, the more easy and more simple should be the means of investigation.  

The failure of the Chase impeachment in 1805 seriously undercut the expansive approach advocated by such Jeffersonians as Giles, Randolph, and Nicholson. After this event views of the breadth of impeachment's reach began to contract as did confidence in its feasibility or effectiveness as a control mechanism. Moreover, another restriction existed on impeachment aside from the question of what constituted an impeachable offense and the need to depend on the Senate to convict. In contrast to the Jeffersonian attitude toward inquiry in the area of public expenditures, where a member's suspicions and desire for inquiry were accepted as adequate justification, many Jeffersonians believed that specific charges were required before inquiry into the conduct of particular executive officers could properly be authorized. A sizable number of others as well as many Federalists believed that it was also necessary to provide a foundation in fact for the
charges on the ground that to institute inquiry was itself to cast censure on the officer involved. Nonetheless, emphasis on and regard for impeachment as a control mechanism continued among Republicans even after the Chase fiasco. This was true for a variety of reasons: the disinclination to interfere with executive functions which limited other alternatives; the emphasis on spelling out the details in law which by encouraging confidence that discretion could be limited reduced the sense of need for stricter forms of oversight; and the persistence of the belief that impeachment could be applied to control or punish acts that were evil or wrong, even if not patently or clearly illegal. As a result, after 1805, as before, a common Republican response to charges of executive wrongdoing was to propose or suggest the initiation of impeachment proceedings. To cite an example, take the debate in 1809 over whether an executive officer had misconstrued or violated the laws by making certain payments to General Wilkinson. In opposing the passage of a resolution stating that the laws had been misapplied, James Holland spoke for a majority of his fellow Republicans:

Suppose this House were to resolve that the opinion of the Attorney General was incorrect, what good purpose would it answer? Would it bring back into the Treasury the money improperly applied? No. Is it consistent with the dignity of the House to pass an opinion on the subject? It is the duty of this House to make laws, and of another tribunal to decide on the laws when made; and if an incorrect decision be made, the person making it is liable to be impeached, and this House is the organ for that purpose. Why was not the matter brought forward properly?

Last, but not least, the Jeffersonians recognized a third area where inquiries into executive operations or conduct were legitimate. That is, inquiries into the fidelity and effectiveness with which legal authority conferred on executive officers had been implemented. On the basis of Congress' lawmaker power the Jeffersonians thought it quite proper for the House to inquire into the manner in which the laws had been executed in order that it might correct existing violations, abuses, or failures and/or prevent future ones through the further exercise of its legislative prerogatives.

This basis of oversight was clearly connected to an unchallengeable element of Congressional power. When called upon to legislate the House could hardly be denied the opportunity to look into need, which in turn meant that it often also had to be allowed to look into past executive performance. Nor could it be denied the opportunity of checking into violations, abuses, or failures when alleged since it was both the source of legal authority and capable as well as responsible for corrective action through further legislation. Thus, from the early Congresses on committees charged with such functions were simply appointed with little discussion or dispute. Note, for example, the following committee inquiries authorized in the Third and Fourth Congresses (1793–1797): the state of the Mint
and what is needed to render it more beneficial; the progress made under the Act to protect the frontiers; the nature and causes of the impediments to the conveyance of Southern mail; the operation of the Act for the relief and protection of American Seamen. In addition, in this area as in the other two we have identified, Republicans at times cited public exposure as a valid ground of inquiry. The claim was not only that the people had a right to know about violations or abuses in public expenditures, official conduct, or implementation of the law, but also that informing the people would provide them with guidance in exercising the potent corrective at their disposal—the vote. However, exposure was not offered as a self-sufficient or all-encompassing basis for inquiry, but rather as a complementary objective and beneficial consequence of inquiry for purposes and within areas permitted by the House's legislative or judicial powers under the Constitution.

We may conclude, then, that Jeffersonian thought sought to balance a high regard for executive prerogatives under the Constitution with a strongly felt need to allow Congress to function as guardian or watchdog of the administrative process. It therefore endorsed oversight or superintendence, not supervision or interference, and this role only within areas of legitimate concern and for purposes or objects related to those concerns. Nonetheless, here as elsewhere, grave weaknesses existed in Jeffersonian thinking that could and did ultimately undermine its goals.

In essence, the distinction between oversight and interference is a feeble and highly relative one. All forms of checks on administration interfere with the course of execution. In a basic sense interference is unavoidable because administration or execution is an ongoing process. Interference is therefore a matter of degree and a function of the extent of involvement and the influence exercised during involvement. The prime error of the Jeffersonians, however, was not that they did not generate clear guidelines to distinguish oversight from interference. Rather, it was that they assumed the set of distinctions they did define was adequate to their purpose of insuring executive command of the administrative process.

The commitment the Jeffersonians felt to protect executive prerogatives led them to define the legitimate areas of House activity in terms of the constitutional powers of the House and to limit the objects or purposes of inquiry to matters connected with these powers: inquiries into violations and abuses in the expenditure of public money on the basis of the House's power over executive organization and funds; inquiries into executive misconduct on the basis of the House's power over impeachment; and inquiries into the execution of the laws on the basis of the House's power to revise and extend them. However, the areas that were recognized to be of legitimate concern were extremely broad. In addition, since the distinction between activities that encroach on the executive and activities that do
not is an ephemeral one, the potential for expanding the extent, character, and impact of inquiry was great. To put the point another way, if one conceives the purposes or objects of inquiry as connected to or derived from the broad prerogatives of the House and combines this conception with a criterion for restricting inquiry based on the highly vague and malleable distinction between oversight and interference, the result is to circumscribe the scope and consequences of inquiry hardly at all. Rather, the reach of inquiry becomes highly elastic.

As a consequence, what Jeffersonian theory really had to rely on was not its objective power to discriminate between oversight and interference, but on its subjective power to induce discipline and restraint, on the willingness of members to restrict the number of inquiries and to confine those authorized to concretely defined matters closely connected to a definite legislative or judicial purpose within the power of the House. In the period from 1789 to 1809 such restraint did on the whole prevail. We may note that there were only about a half-dozen major committee investigations of executive behavior in these two decades and that the subpoena power was granted less than half the time even on these occasions. Nonetheless, hints that restraint was ebbing can also be found.

Dependence on self-discipline, however, was not the only limitation of the Jeffersonian approach. Equally, if not more important, the lack of an adequate basis of discrimination and the absence of any developed sense of this fact meant that when commitment to restraint declined all manners of inquiry could still assume the protective coloration of the old theory. Thus, inquiries that had only a vague connection to a definite legislative or judicial purpose within the power of the House could be justified, even though they were motivated in fact by the policy advantages or political gains to be secured from inquiry rather than by a desire to revise a law or appropriation or to invoke impeachment. Similarly, though the amount of interference rises almost proportionately with the number of inquiries, whether vague or specific, Jeffersonian theory was blind to this fact since it was premised on a supposedly qualitative distinction between "encroachment" and "nonencroachment." It could therefore pose no normative barrier to the multiplication of inquiries once the appetite for them increased. As an added problem, once public exposure was raised as a ground of inquiry, a potential for virtually infinite expansion in the scope and reach of inquiry was created. In short, then, Jeffersonian thinking on the role of congressional control of the administrative process not only contained the seeds of its own destruction, but provided the actual means or instruments by which it could be accomplished. Ironically enough, as the surrounding nexus of restraint that derived from strict regard for the character of executive power under the Constitution atrophied, the very set of postulates Jeffersonian theory provided could be applied to justify
ever increasing legislative involvement in the administrative process rather than to restrict the legislature to definite and circumscribed boundaries as originally intended.