Making Legislatures Matter:
The Paradox and Potential of South African Parliamentary Reform

by

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Abstract

Calls for parliamentary reform and strengthening, especially the budget oversight and scrutiny function, are common among parliamentarians. Experience, however, shows that parliamentarians rarely actually enact significant reforms to enhance parliament’s effectiveness. Legislative studies scholarship focuses primarily on explaining why major reform rarely occurs. This study explains a South African case of major provincial parliamentary strengthening that occurred in a manner and during specific conditions that legislative studies theory suggests would either prohibit reform or weaken the legislature. The Gauteng Provincial Legislature (GPL) initiated and adopted a full reform package under the name ‘Programme Evaluation and Budget Analysis’ (PEBA) between 1998 and 2004. This reform expanded and deepened budget oversight and scrutiny processes in just six years, surpassing various formal reform efforts in the United Kingdom and Canada over roughly sixty years. This contrast in reform outcomes is explored at length. The GPL’s reforms also made public participation a formally integral component of budget oversight and scrutiny. PEBA’s development, adoption and implementation overturn conventional theorizing in the legislative studies field on parliamentary reform and transformation. This study uses the heuristic case study design and a theoretically
eclectic approach in light of the truly paradoxical nature of the GPL’s reforms. After exploring the full scope of the paradox in light of a century’s worth of legislative studies theorizing, the study incorporates elements of the theoretical structure advanced by critical liberalism, federalism studies, and deliberative democratic theory to develop a working hypothesis. Testing the working hypothesis produces refinements that increase confidence in the study’s findings and justify optimism about prospects for parliamentary strengthening. Future research to expand testing of the hypothesis may lay the foundations for a new theory of parliamentary transformation and demonstrates the necessity of being open to developments in parliamentary innovation where it is least expected.
Acknowledgments

I am indebted to so many people across years and continents in the development of this dissertation. My wife Lundi provided immeasurable support, helping to ensure that I finished what I started. Lundi’s constant encouragement kept me going and her perseverance during difficult times over the course of this project kept our family going. I will continue to show her, every day that I can, how much she means to me. Her role in my life makes all things possible and joyful. My children have unknowingly sacrificed a great deal as their dad stayed in school while they started school. I will endeavour to thank them by giving them the life they deserve.

My parents, Wardia and Sabah, have shown me what true patience and support for a child looks like. I was never without a watchful, protective gaze that only parents can offer. They have been ready to help even when they struggle to understand the choices and risks I’ve taken. I hope to honour them by following their example. My sisters, Michelle and Marsha, and their spouses, Kevin and Martin, have always been so supportive and helpful. The burdens they shouldered as I worked through this project are beyond enumeration.

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My large extended family and my closest friends always expressed the desire to see me more while accepting my long absences as a necessary sacrifice. I thank them all for showing me that my absenteeism could not diminish such special relationships.

My connection to South Africa is as personal as it is professional. I was taken in and welcomed in the most profound ways by so many good people. I’ve been taken in as a family member by the Bhabha family (especially Uncle Hoosen and Aunty Rashida); the Thobejane
family (especially Ninki and Mzamo); the Besdziek family (especially Dirk and Kerry); and most of all, the Maleiba family, who literally became family when I married Lundi. Andrew Martin and Deepak Vithal provided the type of love and dependability reserved for a brother.

All these South Africans provided love and support to a foreigner but also shared their lived experience, allowing me to feel some of the legacies of apartheid. They’ve given me a chance to live with them whether in an impoverished township or a comfortable suburb. The effect of this distinctly South African warmth and welcoming expanded my perspective in myriad ways.

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Dirk Besdziek, my manager in the GPL’s Research Unit, pushed the limits of my potential as a young researcher. His mentorship laid the groundwork for this project many years later.

A variety of Assyrian organizations and Assyrian activists offered support in multiple forms as we collectively worked on our struggle to survive. Knowing one is never alone is critical to meeting all challenges, including the work needed for this study. I thank them all, sincerely.

The last words of thanks are reserved for professors, friends and staff at the University of Toronto’s Department of Political Science because this is a foreword to a dissertation developed with their guidance and help. I owe a debt of eternal gratitude to Professor Richard Simeon who unselfishly advised me into the Master’s program, altering the direction of my life for the better.

My supervisory committee members made a profound impact on the dissertation. Professor David Cameron, my supervisor, has shown understanding for the various challenges I’ve faced
over the course of this project while constantly steering me to address critical questions in order to produce the best possible research. His guidance helped me navigate pressing research questions while teaching me how to expand my own intellectual horizons. David always found the time when I needed his help, despite all the demands on his own time. Professor Graham White has my deepest gratitude for his direct and thoughtful feedback. Graham’s capacity to point out the weaknesses and problems in an argument and his willingness to suggest solutions, which he generously provides, have been vital to the completion of this project. Professor Courtney Jung’s interventions before fieldwork made this project feasible, helping avert potential disaster. Her research and quality as a teacher helped equip me with some of the tools underpinning the success of this study. I am also indebted to Professors David Docherty (external reviewer) and Antoinette Handley (internal reviewer) for providing feedback that truly seeks to enhance the quality of the final product now and going forward.

Numerous students in the program made it a wonderful experience and provided much needed assistance along the way. However, I must give special thanks to Evan Rosevear, Kate Korycki, Sarah Flemig, and Semir Teshale. They gave freely and abundantly in the exchange of ideas during some arduous times. Finally, Carolynn Branton will always have my thanks and appreciation as Graduate Administrator. Her genuine kind-heartedness and endless patience was a constant as she guided me towards solutions to administrative hurdles in seeing my way through the program.
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Foreword

The roots of this project stem back to 1999, when I moved to Johannesburg, South Africa to start a 6 month internship at the Gauteng Provincial Legislature (GPL). That step eventually resulted in a contract with the GPL under the title ‘Contract Researcher – Public Finance and Governance’. It was in my capacity as a contract researcher that I was given the opportunity to serve the government as it pursued an ambitious legislature strengthening program.

My appreciation for the significance of my research work at the GPL was only a result of the clear importance it was given by the political leadership. I was too young and still had a great deal to learn about legislatures to understand the significance of the opportunity I was given by the GPL from the perspective of legislative studies scholarship. I left South Africa in early 2005 when the GPL political leadership forgave the remainder of my contract so that I could work to raise awareness about the persecution of indigenous Assyrians and other minoritized groups in Iraq.

A seamless transition in leadership from President Nelson Mandela to President Thabo Mbeki in 1999 was the backdrop of my arrival in South Africa. In 2018, the year I completed my dissertation, the ANC voted to recall President Jacob Zuma in advance of another no confidence vote, prompting his resignation. While this study’s main purpose is to hypothesize a remarkable instance of parliamentary strengthening, it hopefully offers some perspective for South African politicians and policy makers. It demonstrates that potential, domestically-created solutions to current national political dilemmas may be incubating at the provincial level and ready for serious consideration at the national level and across the provinces.
**List of Abbreviations**

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<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ANC</td>
<td>African National Congress</td>
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<td>BCM</td>
<td>Budget Cycle Model</td>
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<td>CBO/PBO</td>
<td>Congressional/Parliamentary Budget Office</td>
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<td>CPA</td>
<td>Commonwealth Parliamentary Association</td>
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<td>DDT</td>
<td>Deliberative Democratic Theory</td>
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<td>GPG</td>
<td>Gauteng Provincial Government</td>
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<td>GPL</td>
<td>Gauteng Provincial Legislature</td>
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<td>IFP</td>
<td>Inkatha Freedom Party</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>KZNL</td>
<td>KwaZulu-Natal Legislature</td>
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<td>LDN</td>
<td>Legislature Development Network (comprised principally of the World Bank, United Nations Development Program, Organization for Economic Cooperation and Development, and the International Monetary Fund)</td>
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<td>LPTG</td>
<td>Legislature Processes Transformation Group</td>
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<td>MBAP</td>
<td>Money Bills Amendment Procedure [Act]</td>
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<tr>
<td>MPL</td>
<td>Member of Provincial Legislature [South Africa]</td>
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<td>MDSD</td>
<td>Most Different Systems Design</td>
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<td>MSSD</td>
<td>Most Similar Systems Design</td>
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<td>NCOP</td>
<td>National Council of Provinces</td>
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<td>NDR</td>
<td>National Democratic Revolution</td>
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<td>NP</td>
<td>National Party</td>
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<tr>
<td>OCPOL</td>
<td>Oversight Committee on the Office of the Premier and the Legislature</td>
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<tr>
<td>OGGO</td>
<td>Government Operations and Estimates Committee [House of Commons, Canada]</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<tr>
<td>PEBA</td>
<td>Programme Evaluation and Budget Analysis</td>
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<tr>
<td>PFMA</td>
<td>Public Finance Management Act</td>
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<td>PSOM</td>
<td>Public Service Oversight Model</td>
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<td>RDP</td>
<td>Reconstruction and Development Plan</td>
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<tr>
<td>SCOPA</td>
<td>Standing Committee on Public Accounts</td>
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<td>SO</td>
<td>Standing Order</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>WBI</td>
<td>World Bank Institute</td>
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<td>WCPP</td>
<td>Western Cape Provincial Parliament</td>
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Introduction: Building a New Theory of Parliamentary Strengthening

‘It is too easy to become absorbed in various ways to describe the nature of change at Westminster, and to indulge in the language of evolution and incrementalism, when it is far more interesting, and challenging, to explain change.’ (Alexandra Kelso, 2009)

I(1) Introduction

The legislative studies field has been generating impressive scholarship for over a century. Theoretical contributions in the field predominantly focus on explaining how representative assemblies operate, how legislators coordinate to make legislative decisions, and typological classifications of legislatures. Theories of legislature change, specifically parliamentary strengthening, are rarer. Those that exist are relatively robust, being well-tested over many years and cases. This project seeks to explain a case of parliamentary reform falling outside the explanatory capacity of existing theory in the parliamentary studies field. As will be elaborated in the proceeding chapters, the standard scholarly literature on parliamentary and legislative studies cannot at all account for the scope and scale of legislature reform in the Gauteng Provincial Legislature (GPL) that is the focus of this thesis. More exactly, this project constructs a hypothesis and tests it as a first step in a potential theory-building enterprise. Research used to develop the hypothesis reaches outside the legislative studies field to assist in resolving a paradoxical case of legislature strengthening.

Legislators of the GPL voted in favour of a revised set of Standing Orders\(^1\) following the first two terms of ANC-led government. The legislature oversight reform initiative was packaged under the policy name ‘Programme Evaluation and Budget Analysis’ and hereafter will simply be identified as either PEBA or ‘the Reform’. The rules reform altered various aspects of the GPL’s operations, but none more so than its budget oversight function. Increasing the scope and

\(^{1}\) The term ‘Standing Orders’ is used for all references to official rules of procedure in all legislatures.
scale of budget oversight included significant reforms to public participation processes integrated with the scrutiny work of the GPL. Oversight, specifically scrutiny of government appropriations, became the foremost function of the GPL operationally as a result of the reform process. Other legislature functions, such as law-making and representation, were not diminished at all but instead overshadowed by the prioritization of budget oversight work. Without a doubt, the GPL was indicating that its core institutional fixation became ensuring that government appropriations were constantly and thoroughly subject to careful, formal study and public deliberation.

PEBA’s development began in 1998 when the GPL began methodically considering issues of government accountability and legislature oversight. By 1999, the GPL began deploying greater resources to designing a more rigorous legislature oversight system. Various administrative arms within the GPL were tasked to work on the development of PEBA. The Research Unit and Committees Unit played the most active roles in developing, testing, refining and finalizing the new oversight system. PEBA was designed and piloted over the course of 1999 to 2003. The new oversight system was rolled out completely over the course of 2003 and 2004. It was officially adopted as the GPL’s new process for legislature oversight through a reform of the GPL’s Standing Orders at the end of 2004.

Budget oversight at the GPL before initiating the reform process roughly matched the institutional framework for oversight across democratic legislatures throughout the world and especially equalled those in Westminster-based parliamentary systems. The final, post-reform institutional framework for budget oversight at the GPL far surpasses formal budget oversight systems in other long-standing and long-reforming parliamentary democracies.
Westminster has undergone rounds of reform initiatives for well over a century. Some have used the results of those reforms to defend the institution against the constant derision it seems to incur.\textsuperscript{2} Others have taken more contemporary reforms at Westminster as the basis for labelling it the ‘reforming Parliament’.\textsuperscript{3} Praise by accomplished scholars and practitioners for reforms at the United Kingdom’s House of Commons provides for an important comparative perspective. If Westminster’s reforms spanning many decades are praiseworthy, then what might be said of ‘the Reform’? PEBA took far less time and exceeds anything that occurred at Westminster over the last century.

Explaining why and how ‘the Reform’ occurred at the GPL is the primary objective of this research project. As such, it belongs to a tradition in legislative studies that David Judge chides by observing that “there is nothing new about criticism of Parliament nor demands for its reform.”\textsuperscript{4} The caution generated by Judge’s comment stems from the reality that so much demand for change produced so little of it. Scholarly persistence is justified, however, because of the variations seen in legislature change, even if incremental, over centuries and especially recent decades. It is too easy to dismiss parliament as a reform-resistant institution given its capacity to preserve the core elements of its foundation despite calls for deep change in periods of social and political upheaval.

Far more insight on parliamentary strengthening can be gained when the research question examines the occurrence of real change while the institutional features at the heart of parliamentary governance remain intact. This dual focus leads to a more productive line of

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enquiry in parliamentary transformation. Allowing for the possibility of significant variation, while recognizing the resilience of institutional design foundations, reflects parliament’s potential for adaptability.5 This is the case across a variety of societies with completely different social and economic conditions. An edited volume examining the operation of legislatures in Global South countries in relation to economic development agendas almost four decades ago concluded that “what becomes clear across the individual case studies and comparative studies [...] is that legislatures can be highly adaptable. As such, they remain highly relevant as they remake themselves or are remade by other components of the political system.”6

Parliament’s adaptability and stubbornness can sometimes confound legislative studies scholars. Significant changes are rare and when they occur, scholars in the field are often ill-equipped to explain those changes. PEBA epitomizes the dualistic character of parliamentary transformation. Expansive changes took place at the GPL necessitating the complete revision of whole sections of its Standing Orders. GPL reformers also steadfastly rejected altering the essential components of the parliamentary system. This reality about ‘the Reform’ makes for an engaging puzzle.

Terminological references to legislatures used in this study need clarification before proceeding. ‘Legislatures’ and ‘representative assemblies’ are synonyms for the broadest name of the institution. ‘Parliament’ is used exclusively for legislatures operating in the parliamentary design, whereas ‘congress’ is used only for representative assemblies within the presidential-congressional framework. ‘Westminster’ exclusively references the United Kingdom’s House of

Commons while ‘Westminster based, or ‘Westminster system’ is a reference to parliamentary systems deriving specific attributes from ‘Westminster’.

I(1)(a) Why Explaining PEBA Matters

Why would the African National Congress (ANC), enjoying total electoral supremacy, increase the GPL’s capacity to hold the executive to account, and why to a degree not required in far older parliamentary democracies and not expected by multilateral, governmental donor agencies? The question is all the more relevant since the prevailing wisdom, guided by prominent theories in legislative studies, strongly suggests the last thing to be expected of the ANC would be for it to empower the one institution designed to scrutinize its work and embarrass it if necessary in the process. Yet the ANC Gauteng did just that with a parliamentary majority that would be the envy of any political party. Legislative studies theory is effectively at a loss in answering this question.

Legislative studies scholars recognize the weaknesses of the field in theorizing parliamentary reform. A recent and meaningful contribution to explicitly theorizing reform at Westminster opens with the claim that the topic “has not enjoyed the dedication of an entire volume.”\(^7\) Thirty years prior, an edited volume on the subject of legislature reform across parliamentary and congressional systems acknowledged that “literature on legislative reforms is sporadic and fleeting.”\(^8\) Attempting to explain parliamentary reform has proven daunting enough a challenge to dissuade most scholars from trying.

The dearth of literature examining legislatures on the African continent compounds the challenge of explaining why and how PEBA came about at the GPL. Fish and Kroenig’s (2009)

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compendium of national legislatures throughout the world allowed them to survey the breadth and depth of the field. They observed that “articles on the newly resurrected Scottish parliament, which was established in 1999 to handle matters that the parliament of the United Kingdom devolved to it, outnumber articles on the legislatures of all African countries combined.”9 This observation can be broadened to legislatures in the Global South. Mezey asserted over 30 years ago that “because we know less about Third World legislatures and because we have found them less accessible, we have not been at all hesitant about being critical of them and their operation. And the greatest irony of all is that our criticisms [are] based upon our own unexamined premises about what constitutes a successful legislature.”10 Twenty-three years after Mezey’s stark appraisal, experts at the African Legislatures Project continue to observe that “Africa’s legislatures are largely absent from the comparative body of literature about parliaments and their members.”11 Salih’s edited volume, African Parliaments: Between Governance and Government, is able to comfortably assert that it is “the only collection of essays solely devoted to the study of contemporary developments of African parliaments [...].”12 Testing a hypothesis with the aim of explaining parliamentary reform in South Africa provides a chance to advance the boundaries of theorizing parliamentary change while compelling consideration of cases that are often ignored by the field.

Focusing on departmental oversight committees increases the value of this project because PEBA so dramatically altered the GPL’s committee system. In 1979, Lees and Shaw elevated the

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significance of this area of research in legislative studies with the edited volume *Committees in Legislatures*. They found that “no systematic cross-national study of committees in legislatures exists.” The void in comparative studies of legislature committees they identified is no longer a challenge. Scholars are now able to make strong assertions about the role of committees in legislature development as a result of this body of work.

Westminster’s committee system is expanding in terms of the number of committees and its functions. It is increasing its degree of specialization and so becoming more institutionalized. More importantly, this trend is global and not limited to Westminster. Observations by legislative studies scholars examining this orientation towards institutionalizing committees underpin the claim that a legislature’s strength is largely a function of its committee system. It is no surprise, then, that scholars have also taken note of the high priority committees receive in parliamentary reform initiatives. Institutionalization of committees is a trend also occurring in the Global South. PEBA’s extensive development of the role committees play in budget oversight and facilitation of public participation puts the GPL on the cutting edge of that trend.

Explaining how and why ‘the Reform’ occurred not only adds to the body of work theorizing

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legislature change but also can enhance appreciation for just how much committees can do in parliamentary systems if given the mandate.

A final terminological clarification is necessary before continuing because of the significant variation in forms of committees across legislatures. For the purposes of this study, the term ‘departmental committee’ refers specifically to any committee in a legislature’s committee system with a mandate to oversee a department, agency or combination thereof. Occasionally, the term ‘portfolio committee’ is used because that is what departmental committees are called at the GPL. When necessary, departmental committees are referenced by their proper name in their respective committee system.

I(1)(b) Legislatures Matter

The overall prevalence of parliamentary government in the world justifies enhancing knowledge of the causal factors in parliamentary strengthening. S.A. de Smith’s 1961 examination of the exportability of Westminster in newly independent countries affirmed the dominance of the system well over five decades ago.19 Docherty and Seidle, writing four decades after de Smith, begin their comparative study with the observation that “parliamentary government is the most popular form of government in the democratic world.”20

Legislative studies research is also linking legislature strength to the quality and strength of democracy. Fish employs one of the largest comparative datasets on national legislatures to explore the relationship between legislature strength and democratic outcomes in post-communist countries, concluding that:

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The strength of a national legislature may be a—or even the—institutional key to democratization. Every country that opted for a strong legislature—one that scored over .60 on the PPI (Parliamentary Powers Index) – achieved Freedom House scores of 3 or better in 2005. This group includes countries afflicted by poverty (such as Mongolia, Macedonia, and Bulgaria), ethnic tensions (such as Slovakia and Latvia), violent upheaval (such as Croatia), and extraordinarily cruel authoritarian legacies (such as Romania and Albania). None of the countries that adopted a constitution which provided for a legislature that scored below .50 of the PPI [...] received a Freedom House score as favourable as three in 2005. Failing to empower legislatures at the dawn of the post-communist period was a sufficient condition for remaining mired in authoritarianism 10 to 15 years later.

Research by Stapenhurst and Pelizzo (2012) goes further than Fish’s by exploring the linkages between legislature oversight (accountability) systems and democratic outcomes. They are able to verify that “effective oversight is a key determinant of a country’s democratic status as it increases the probability that a country is a formal or a liberal democracy.” While this specialized line of research seeks to distinguish between the impact of oversight tools and oversight effectiveness, it nonetheless makes it clear that legislature accountability systems are important for democratic outcomes.

Low confidence levels in legislatures are alarming exactly because the institution plays a potentially critical role in the quality and durability of democracy. British confidence in

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Westminster, one of the oldest parliaments, is in serious decline. World Values Survey data sets indicate that declining confidence in legislatures is not exclusive to the United Kingdom. Surveys in Canada for the period 2005-2009 reveal that 46% of Canadians do not have ‘very much’ confidence in the House of Commons, while 12% have no confidence at all. Almost 60% of Canadians lack confidence in their national representative assembly. Conditions are worse in the United States. Data for 2010-2014 show that just over 57% of Americans have low confidence in Congress and that 19.6% of survey respondents indicate having no confidence at all.

For the period 2005-2009, 24.5% of South Africans expressed low confidence in the National Assembly and 9% said they have no confidence at all. These numbers worsened for the period 2010-2014. Low confidence rose to 33% and no confidence at all rose dramatically to 19.5%. While the South African National Assembly compares favourably to its British, Canadian and American counterparts, it is clearly not immune from failing to inspire high confidence levels. It should be noted, however, that for the period 2005-2009, almost 64% of South Africans reported having ‘a lot’ or a ‘great deal’ of confidence in the National Assembly. This is important

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24 There is no data in the World Values Survey for the period 2010-2014 for confidence in the legislature. Data for 2005-2009 was used as the most recent.


because it indicates that ‘the Reform’ was not a knee-jerk reaction to ANC insecurity about declining public confidence levels in legislatures.

While Ryle (2003) joins many parliamentary studies scholars in identifying low citizen confidence levels in Westminster, he also helps to explain it by pointing out that most of those citizens do not understand the institution. He notes that one reason for the low regard of Parliament is that “very few people really appreciate the central function of Parliament as a critical forum, not a governing institution.”

So despite not directly governing the population, it is blamed for bad government. This reality requires developing an appreciation for what parliament is, and is not, before exploring theories of parliamentary change and testing the hypothesis at the core of this project.

I(1)(c) Conceptualizing Parliament

Parliament’s core features are few and foundational. It is comprised of representatives elected by the people and as such is a centerpiece in the architecture of representative government. The executive branch is, in turn, drawn from the membership of the legislature to operate the machinery of government. The executive branch must maintain the confidence of the legislature – majority support – in order to carry on with its work. Centuries of operation and adoption of the institution across the globe produce myriad variations but these features remain the most fundamental elements of democratically constituted parliaments.

These foundational features of parliament produce a secondary tier of features that are near-universal even if they are outgrowths of the foundation. Collective and individual ministerial responsibility to the legislature is found in some form and degree throughout democratically

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31 Ibid. P. 8.
constituted parliaments. The transition to universal suffrage affected the operation of ministerial responsibility. The popular vote produces a system that is often formally adversarial along Government—Opposition lines, though governing and opposition party members work to ensure a measure of acceptable legislature operation knowing roles can be reversed at the next election. Taken altogether, these features have also resulted in producing executive dominance as a core reality in almost all Westminster-based, parliamentary systems.

Blondel (1993) uses the features of parliamentary governance discussed above to arrive at a concise appreciation for what the executive truly is and does in Westminster-based systems. Blondel writes, “the authority of the state is transferred from parliament to the cabinet. [...] Thus, if one were to paraphrase the expression used by [U.S. President] Truman about his own power, one would say that the ‘buck stops’ at the cabinet.” Executive dominance is effectively a function of this structural arrangement driven by the exigencies of political survival for the governing party.

Blondel’s description of cabinets in parliamentary systems leads to the reasonable question, ‘if the legislature gives the executive control of the government, how does the legislature control the executive?’ This question was answered decades ago by Bernard Crick. He took into account the core features of parliamentary systems discussed above in detailing his answer. Crick, now


famously, wrote that legislature “control means influence, not direct power; advice not command; criticism not obstruction; scrutiny not initiation; and publicity not secrecy.” Crick’s choice of words in answering the question about legislature control is essential to conceptualizing the legislative branch in parliamentary systems. ‘Influence’, ‘advice’, ‘criticism’, ‘scrutiny’, and ‘publicity’ all reflect the deliberative nature of parliament. It is the place where debate, discussion and disagreement can, and must, be purposed towards making the executive responsive to the citizenry on matters of state policy and performance.

Thomas describes this institutional arrangement as “government through Parliament,” as opposed to “government by Parliament.” Parliamentary strengthening, understood in light of this raw and basic conceptualization of parliament, needs to explore the institution’s ability to hold the executive accountable and make it responsive to criticism levelled through the conduct of oversight. This institutional equilibrium between executive authority and the legislature is deeply rooted in the origins and creation of parliament.

I(1)(d) The Centrality of Budget Oversight and Scrutiny in Parliament’s Origins

Providing a definitive explanation on the origins of parliaments generally, and Westminster specifically, is unnecessary. It is sufficient for the purposes of this project only to acknowledge that parliament in Westminster evolved over many centuries. A noteworthy step forward in parliamentary governance in Britain resulted from Magna Carta in 1215. It provided limits on

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37 Ibid. P. 77.
the King’s authority over public finance by requiring that ‘common counsel’ precede the approval of funding for the King’s various initiatives and policies.\footnote{Maddicott, John Robert. 2010. \textit{The Origins of the English Parliament}, 924-1327. Oxford: Oxford University Press. P. 166-7.} A 2012 report on parliamentary strengthening of budget oversight produced by Canada’s House of Commons’ Government Operations and Estimates Committee (OGGO) recognizes the significance of this history, asserting that:

The principles underlying Canadian parliamentary financial procedures go back to the Magna Carta, signed by King John of England in 1215. When the King was not able to finance most public expenses out of his own revenues, he was obliged to seek funds by summoning the common council of the realm, or Parliament, to consider what taxes and tariffs should be supplied to support the Crown. It was generally recognized that, when ‘aids’ or ‘supplies’ were required, the King should seek consent not only to impose a tax, but also for the manner in which the revenues from that tax might be spent. In 1295, the writ of summons for one of these councils proclaimed: ‘What touches all should be approved by all’\footnote{Canada. Parliament. 2012. \textit{Strengthening Parliamentary Scrutiny of Estimates and Supply: Report of the Standing Committee on Government Operations and Estimates}. Ottawa: Standing Committee on Government Operations and Estimates. P. 3.}.

Scholars studying the history of Westminster situate its origins in the 13\textsuperscript{th} century due to notable developmental steps occurring in the institution over that time period. The greatest consensus rests on the year 1265. Simon de Montfort’s writ of summons in 1265, calling together a set number of knights from each shire, a set number of citizens from each city and a set number of burgesses from each borough, is seen as the founding of Parliament at Westminster, or, the \textit{House of Commons}.\footnote{Rush, Michael. 2005. \textit{Parliament Today}. Manchester: Manchester University Press. P. 32; Baldwin, Nicholas. 2005. “The Origins and Development of Parliament.” In \textit{Parliament in the 21\textsuperscript{st} Century}, ed. Nicholas Baldwin.} Deliberation on raising revenue for the purposes and
policies proposed by the Crown was already expected by 1265. The reason why 1265 is considered so significant is that the number of attendees far exceeded any other similar gathering, those called together were elected per orders issued to local keepers of the peace, and attendees not only deliberated on taxation and revenue but also an array of policy issues of critical importance to the realm.\textsuperscript{44}

These contours in parliamentary governance took on increasing solidity in the next century. In 1341, the Crown acceded to a formal measure stipulating that parliamentary assent was necessary for any aid or sustained charge. “Granting money – known as supply – thus became an important parliamentary function.”\textsuperscript{45} Grievances brought forth to the Crown, through attendees in Parliament, in the process of granting supply became a firmer right.\textsuperscript{46} Moreover, by the mid-14\textsuperscript{th} century, Parliament’s oversight role became more specialized:

As early as 1340, commissioners were appointed to audit the accounts of the collectors of subsidies. Where public officials were found wanting, Parliament used its power to remove them through impeachment, with the Commons voting impeachment, and the Lords trying the case. Though impeachment has since fallen into disuse, it provided the basis for the development of Parliament’s scrutiny of administrative actions.\textsuperscript{47}

Legislative studies scholarship never underestimated the absolute significance of this institutional role and its relevance within the context of executive-legislature relations.\textsuperscript{48} This is

\begin{flushleft}
\textsuperscript{46} Ibid. P. 18.
\textsuperscript{47} Ibid. P. 19.
\end{flushleft}
exemplified in Weber’s 1917 work ‘Parliament and Government in Germany’, written almost six centuries after the 1341 concession by the Crown to Parliament. Weber extols the best institutional arrangements and conventions of Westminster to draw forth lessons and necessary reforms for Germany’s national legislature. Weber argues that “control over the raising of revenues – the budget right – is the decisive power instrument of parliament, as it has been ever since the corporate privileges of the estates came into being.”⁴⁹ Legislative studies scholars sustained this awareness, building on this body of knowledge to establish that parliament’s “core and irreplaceable tasks are three: budget authorization, control of administration so funded, and legislative deliberation.”⁵⁰

Budget initiative at the onset resided with ‘the Crown’ and over time shifted to the cabinet. Parliament’s authorization is a step that follows from the tabling of the budget by the executive. Authorization by parliament is meant to follow from scrutiny of the budget. Scrutiny, in turn, enforces accountability for governmental planning, implementation and the resulting outcomes. “The process is thus essentially an *interchange* between the scrutineer and the object of scrutiny, [...] which may, or may not, affect the way in which either or both act subsequently. In that way, the scrutiny process is closely associated with notions of [...] *responsible government*.”⁵¹

Budgetary oversight as a parliamentary function is greatly diminished in Westminster and other long-standing democratic parliaments despite the significance it is officially accorded and awareness of its origins in the earliest stages of parliamentary governance. This has been the case for not less than six or seven decades. Legislative studies scholars focusing on Westminster

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describe the budget process as “virtually a formality.” Deliberations on the budget are no longer rigorous. Instead, the legislature’s assent to executive measures is provided “without first subjecting them to sustained scrutiny.” Canada’s House of Commons, which established departmental committees approximately a decade before Westminster, does not require those committees to examine the budgets requested by their respective departments. As a result, they often do not engage in sustained budget scrutiny.

Executives, and the parties they lead, are the beneficiaries of diminished budgetary oversight because that function is part of the institutional architecture for holding governments accountable. In short, it makes the executive’s work in the legislature easier. Budget scrutiny originated as a concession of power by ‘the Crown’ to those elites who fund it. The development of budget scrutiny by the legislature has always been deeply entwined in the contest over authority between executives and legislatures. It is the potential impact of sustained budget scrutiny that fuels the efforts by some to avoid it and others to strengthen it. Tania Ajam, a South African legislative studies scholar who focuses on budget oversight, sets forth the reality in pointed, contemporary terms:

The budget process is unique in that it strives to integrate, in an over-arching framework, the governance choices of the whole of government and the individual policy choices of each sector in a concrete, regular and reliable way. Far from being a mere technical accounting process, it is inherently and intensely political. Without such a process, there can be no meaningful political debate on the appropriateness of choices proposed by

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government, possible alternatives, the responsibility of decision makers, or the coherence and integration of diverse policies supporting over-arching goals [...] .

Executives and governing parties have seen fit to allow a marked decline in parliament’s budget scrutiny function. Parliamentary reformers, for their part, never abandoned efforts to enhance budget scrutiny functions as part of parliamentary strengthening agendas. Parliamentary studies research reveals that parliamentary reformers in the United Kingdom whose efforts began in the 1960s first focused on enhancing the legislature’s budget scrutiny capacity. British parliamentary reformers did not try to establish a veto or determinative capacity over budget decisions. Instead, their efforts remained fully within the parameters of parliamentary control actualized through influence, advice, criticism, scrutiny and publicity. British parliamentary reformers have consistently failed to significantly strengthen Westminster’s oversight capacity. Failure to reform underpins the description of budget approval in Westminster as a formality lacking sustained scrutiny.

Failure to substantively strengthen the formal capacity of parliament to scrutinize the budget despite decades of trying by long-established parliamentary democracies is exactly why the GPL’s PEBA-based reforms are a paradox. South African parliamentary reformers operating a new democratic legislature achieved in a few short years what Westminster could not despite Westminster’s immeasurably greater resources, experience and reform efforts spanning decades. Innovating PEBA marks a distinctively South African actualization of Crick’s conceptualization of parliamentary control. It also represents a return to basics in terms of parliament’s origins.

PEBA-based reform of the GPL’s Standing Orders resulted in revising almost all of the formal processes on budget oversight. The GPL’s reforms, upon completion in 2004, greatly surpassed any reform measure in older, reformist democratic parliaments. Explaining why and how this happened is important well beyond South African legislative studies.

I(2) Methodology – A Heuristic Case Study

‘The Reform’ is not paradoxical simply because the GPL did in six years, what other reforming legislatures could not do in sixty years. It is a paradox because the cumulative knowledge in the field of legislative studies on legislature transformation suggests PEBA could never occur at the GPL, or predicts a weakening of the GPL. Choosing to explain the paradox requires justification because ‘the Reform’ can easily be used as a case to question several long-standing theories of legislature change.

When the ANC entered the GPL in 1994 as the governing party it set about implementing its massive legislative agenda designed to undo decades of apartheid-era laws as the first of many governance measures to bring about a complete social transformation of the province. When the ANC was returned to power in 1999 with an even stronger basis of electoral support, it became clear that South Africa generally, and Gauteng Province specifically, were operating a dominant party system.

The overwhelming majority of South Africans wanted change, they wanted it fast and they gave the ANC the electoral mandate to make it happen. Given these conditions, the GPL easily qualifies as a critical case (Eckstein 1975) for theories predicting sustained executive dominance and legislature diminution in parliamentary systems. Expectations, according to theory and experience, were that the executive would weaken the legislature and reduce accountability
processes, in order to easily pass its legislative agenda and go about the business of social transformation.

PEBA’s emergence and institutionalization through the GPL’s Standing Orders indicates that it did not behave in accordance with those theories. The GPL seemingly upends assumptions that take on almost lawlike status in the legislative studies field. Flyvberg (2006) sees the value of case studies for falsification purposes as critical for establishing the rigour of standing theories. Flyvberg would suggest treating the GPL as a ‘black swan’ case study to disprove those theories predicting a weakening of the GPL.

Variety within the ‘black swan’ case study mold affords the chance to choose between Eckstein’s crucial, must-fit, most-likely case studies or Lijphart’s theory-infirming and deviant case studies. Any one of these approaches provides a clear-cut path to accentuating the inability of established theories of parliamentary systems and legislature change to explain ‘the Reform.’ This, in turn, could be used to question those theories and call their explanatory value into doubt. A negative finding, however, would remain just that. A cursory glance at Canada’s House of Commons and Canada’s provincial legislatures that conform to established theories serves to relegate one negative finding to relative inconsequentiality. Conversely, trying to understand why ‘the Reform’ happened and the internal dynamics of the GPL in effecting ‘the Reform’ opens up the potential for theory-building in the legislative studies field.

Approaching the GPL with a view to explanation as opposed to a case that simply does not ‘fit’ established theoretical paradigms is nothing novel. Legislative studies scholar Abdo Baaklini, writing in 1979, called for “a period of restraint [...] during which [scholars] refrain from judgemental conclusions. Instead of posing abstract questions and offering abstract prescriptions for [legislative] development, [scholars] might better ask what developing countries
are doing and why.” The need for in-depth and deliberately inductive research is echoed by contemporary legislative studies scholars like Malcolm Shaw. Shaw argues that the preponderance of cross-national legislative studies in the field is nullifying a substantial amount of specific national factors in the drive to generalize.

This project uses the heuristic case study approach to try to explain ‘the Reform’. This is the best option considering the paucity of relevant theories on legislature change and given the relative lack of value in simply producing a negative finding. Instead of moving up a proverbial ladder of abstraction in order to obviate data from a specific case that does not fit a general theory, heuristic case studies zero in on the non-conforming data “to stimulate the imagination toward discerning important general problems and possible theoretical solutions.” Hypothesis-generating research is also achievable by setting forth plausible hypotheses to account for phenomena that do not fit a given theory and then deliberately conducting a case study to render those hypotheses definite. Bennett and George (2005) place Lijphart’s ‘hypothesis-generating case study’ on equal footing with Eckstein’s ‘heuristic case study’ in typological terms. The drive to explain a discrete phenomenon that does not fit existing theory affords the opportunity for ‘conceiving of generalizations’ and thereby fits within the ‘theory-building’ enterprise of social science. The possibility of constructing a new theory of legislature strengthening animates this entire research project. The first step is to arrive at a hypothesis and test it.

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I(2)(a) Methodology – Path Dependency, Process Tracing, Institutional Layering and Conversion

‘The Reform’, seen as an anomaly in terms of received wisdom within legislative studies, demands a qualitative orientation for explanation which a heuristic case study facilitates. It is the failure of existing theories in legislative studies to account for causal mechanisms producing ‘the Reform’ that reflects the extent of the gap in the literature. Przeworski and Teune identify causality as a ‘property of a system of variables’. It is the system of variables that is unknown and which requires illumination. The goal of explanation in the absence of robust theories makes induction a necessary approach. Various methods complement the heuristic case study approach and assist in refining the working hypothesis over the course of the study but process tracing and path dependency are the most important.

Process tracing emphasizes the causal path between independent and dependent variables along theoretically informed premises. “The process tracing method attempts to identify the intervening causal process—the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable.” Process tracing is a qualitative method oriented towards identifying the processes driving institutional change with a view to identifying causal mechanisms. It allows for multiple independent variables as well as multiple theories to inform the research enterprise in order to refine and ultimately crystallize an explanation. Focusing on causal pathways and mechanisms makes process tracing ideal for identifying interdependence and endogeneity. The search for causal connections in the processes

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generating an outcome also makes process tracing ideal for taking account of equifinality, if it is present. The possibility that more than one causal process contributes to an outcome is accounted for by starting with multiple theories and taking an inductive approach. This can generate findings often summarily dismissed in a deductive design. Bennett and George assert that process tracing is useful for theory-building, “not only because it generates numerous observations within a case, but because these observations must be linked in particular ways to constitute an explanation of the case. It is the very lack of independence among these observations that makes them a powerful tool for inference.”

Process tracing is the best method for uncovering multiple variables, independent and intervening, in the causal process arriving at ‘the Reform’. Process induction is a particularly relevant variant of this method. It informs the methodological design of this project because it “proceeds mostly backward from effects to possible causes, though it could also involve forward tracing from a long list of potential causes that have not yet been formalized as theories or widely tested in other cases.” This approach allows for the most robust sweep of factors bringing about ‘the Reform’ while also providing the opportunity to uncover unknown variables. Process induction informs the decision to dissect ‘the Reform’ early in this project and answer the question, ‘what is the explanandum’, thus starting with the dependent variable. It is an

overtly inductive method useful for generating observations on causal mechanisms and the
“heuristic rendering of these mechanisms as potential hypotheses for future testing.”

Answering the ‘what’ question draws attention to the confluence of identity politics, federal
dynamics, and the ANC’s effort to enhance deliberative quality in committee oversight
processes. Trying to answer the ‘what’ question also emphasizes the inability of legislative
studies to properly conceptualize and theorize ‘the Reform’ because it cannot account for these
dynamics – it is blind to them in most respects. This helps remove all hesitation in accepting the
necessity of theoretical eclecticism to successfully understand ‘the Reform’. Critical liberalism,
federal theory and deliberative democratic theory (DDT) provide starting points for moving
inductively from the outcome toward potential causes because they help in conceptualizing ‘the
Reform’ itself. Again, established theories of Westminster-based parliamentary systems do not
offer the same foundation. This approach also conforms to Peter Evans’ understanding of the
role theory plays in framing empirical puzzles and generating plausible hypotheses that inductive
research can then refine.

Path dependency can complement process tracing for this project. The explanandum in its
most basic rendering is a matter of institutional redesign. ANC decision makers chose to
formulate the GPL’s budget oversight system. These choices were possibly bounded, perhaps
unrecognizably, by previous choices on institutional rules and government policies. GPL
Standing Orders in 1994 established departmental committees with a broad mandate to scrutinize
and oversee the work of their respective departments. The choice to adopt a committee system
and oversight mandate in line with those existing in the United Kingdom, Canada, Australia and

70 Ibid. P. 3.
71 Kohli, Atuli, Peter Evans, Peter J. Katzenstein, Adam Przeworski, Susanne Hoeber Rudolph, James C. Scott and
other long-established, democratic parliaments is absolutely relevant to understanding ‘the Reform’.

This project is still firmly rooted in the field of legislative studies exactly because ‘the Reform’ strengthened what existed and did not create something entirely new. It took the existing committee system and expanded its role and capacity, albeit to a level others have failed to realize. This aspect suggests conformity with the understanding set forth by Loewenberg, Squire and Kiewiet that “to a considerable extent the structural and procedural development of legislatures is path dependent. Decisions about committee prerogatives taken in the 1990s reflect decisions made in the same legislatures in prior decades.”

South Africa’s adoption of the basic features of parliamentary oversight and scrutiny in 1994 possibly framed the realm of choices bringing about ‘the Reform’.

Bennett and George specify the importance of allowing for the possibility of path dependency as a factor for explanatory purposes. Process tracing, in their view, works to identify significant decision points in a path dependent process if they are causally relevant. This conceptualization of path dependency follows the tree and branch metaphor Pierson and Levi use in elucidating the method. The decision to move along a certain branch makes it likely that future decisions are unlikely to depart from the overall direction of the branch.

Pierson builds on this conceptualization with the notion that path dependent processes can offer increasing returns for decision makers who remain committed to a path. Certain decisions

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exert significant pressure to continue down a chosen path because every “step down a particular path produces consequences which make that path more attractive [...]”. Path dependent phenomena that exhibit increasing returns processes can reinforce virtuous or vicious spirals. Establishing whether and how path dependency provides explanatory value and sensitivity to the increasing returns framework is important for curbing any rash evaluations about the nature and pace of ‘the Reform.’

Thelen offers the concepts of institutional layering and institutional conversion to get a handle on situations that are short of being revolutionary yet are too quick to be evolutionary. Institutional layering “involves the partial renegotiation of some elements of a given set of institutions while leaving others in place.” This is relevant given the GPL’s targeting of budget oversight for major change while leaving other aspects of its Standing Orders intact.

Institutional conversion addresses itself to situations where institutions modify their purposes, thereby altering roles and functions. This concept is relevant but needs qualification. Budget oversight was a core function of the GPL from its establishment in 1994. However, oversight stood second to the law-making function given the need to replace the legal architecture of the apartheid state following the first democratic elections. GPL emphasis shifted to a focus on the need for improving government delivery and results only after the essential elements of the legal edifice of apartheid were effectively undone and replaced.

Worsening socioeconomic conditions coincided with the shift from legislating away apartheid to concerns over government capacity and delivery. Oversight became the next logical

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75 Ibid. P.253.
76 Ibid. P.253.
78 Ibid. P. 226.
area for focusing attention in most legislatures as a result. In the case of the GPL, changing socioeconomic conditions propelled the governing party to increase the relevance of one aspect of an existing institution. Institutional conversion is valuable in broadly framing the shift in purpose at the GPL. It allows researchers to approach the phenomenon at a higher degree of abstraction in terms of hypothesis development and testing. Institutional conversion, however, cannot explain ‘the Reform’ without significant help. Many other South African legislatures faced similar socioeconomic conditions but were not successfully strengthened. Institutional conversion still requires help from critical liberalism, DDT and theories of federalism to arrive at an explanation. Uncovering the causal mechanisms and processes bringing about ‘the Reform’ with the help of theoretical eclecticism is necessary.

Descriptive inference is a central objective in methodological terms for this project. It “encompasses inferences from observations to concepts.”79 Description along these lines is not concerned with raw facts but using those observations to “describe political institutions, social structures, ideologies and other complex phenomena.”80 Descriptive inference assists in grasping political identities, provincial-level legislative systems, the qualities of committee deliberation at the GPL, among other key factors relevant to understanding ‘the Reform’. Gerring sees “methodological affinity between descriptive inference and case study work.”81 Confirming those causal mechanisms that are systematic and can be reported in conceptual terms is necessary to refine the hypothesis and for theory-building afterwards.82 Taking a heuristic case study approach that draws on process tracing and allows for the possibility of path dependency is the

80 Ibid. P. 36.
ideal approach for achieving these ends until such time as similar phenomena can be identified. Lastly, ‘the Reform’ as the dependent variable makes it easy to follow Skocpol’s injunction to value theoretical eclecticism given the myopia of current theorizing in legislative studies. Mahoney and Rueschmeyer argue for allowing “research questions and actual historical patterns to help shape the selection of appropriate analytic frameworks.” The methodological approach utilized for this project described up to this point is determined by the nature of the puzzle.

History helps to grasp the conditions shaping the ANC directly as well as the specific context of key ANC decisions. History also assists in developing a wider contextual setting in which those decisions were taken. Secondary sources provide an important resource in filling out this contextual setting but primary documents, such as the ANC’s strategic policy papers and related materials, are necessary for rendering the ANC’s agenda and actions in theory-building terms. ANC identity formation, especially as a liberation movement, is critical for understanding the policy outcomes it sought to generate and the consequences of not actualizing those outcomes when it became the governing authority.

Primary source materials within the GPL, which are public, are also necessary for piecing together decision-making processes and identifying important decision points and junctures. Legislature sources include Hansards, internal planning reports, committee reports and relevant legislation. Various iterations of the GPL’s Standing Orders, as well as the country’s Constitution, are treated as primary sources providing insights into how the government understood the challenges facing it.

Elite interviews are used to rigorously test the working hypothesis. Interviews are semi-structured. This approach serves two purposes. First, interviewees are able to contradict or

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support the hypothesis. Second, semi-structured interviews allow interviewees to cover as much subject matter as possible to unearth variables and factors missed before fieldwork. Interviews in South Africa with those decision-making elites responsible for conceiving, adopting and implementing PEBA are essential for verification and expansion of evidence gathered from primary source documents. More specifically, elite interviewing serves as the best complement to process tracing\(^84\) as senior ANC leaders were directly involved in critical junctures of the reform process. Interviews with senior GPL staff directly involved in ‘the Reform’ serve to corroborate findings from the interviews with ANC leaders.

I(2)(b) Methodology – The Long Shadow of American Legislative Studies

Legislature development in the Global South struggles to receive concerted attention in the legislative studies field. Deeply entrenched biases in the field contribute to this reality. Research on legislature development remains overly transfixed on the capacity of a legislature to directly impact government decision making. “Often, the unstated premise was that if the legislature was not able to exercise the ultimate authority to say no to the executive—as the United States Congress and the parliamentary parties of the European legislatures could—then the legislature’s role in decision-making was likely nil.”\(^85\) Any developments, including PEBA, not explicitly geared towards attaining U.S. Congressional-like authority, become unimportant or invisible to the wider field.

Classic U.S. legislature-executive conflicts driving legislature development outcomes do not provide a workable frame for understanding ‘the Reform’. The GPL was not a ‘weak legislature’ becoming stronger in the face of executive opposition to ‘the Reform’. Zero-sum contestation,


that is the hallmark of executive-legislature power relations in the U.S., is simply not present with respect to ‘the Reform’ and so the typical system of variables sought out by dominant research paradigms are blind to developments in places like Gauteng, South Africa. Mezey encapsulates the cumulative impact of this bias in the field, asserting that:

Some scholars, convinced that strong legislatures were desirable [...] turned to the question of how such legislatures evolved and persisted. This approach tacitly accepted the weak-legislature conclusion and sought to discover the causes for the legislature’s status and the conditions under which it could be improved.  

Research on how strong legislatures evolved and persisted reinforces a focus on the U.S. Congress as the archetypal ‘strong legislature’. Across theories and methodologies lies the centrality of the U.S. Congress and American legislative studies.

Publication trends in legislative studies invariably reflect this research bias. Barkan (2009) summarizes research on publication tendencies in legislative studies journals to show a bias towards the U.S. experience and the overall neglect of Global South and especially African legislatures. He reports that 93 of 110 articles on legislatures published in the American Political Science Review between 1993 and 2001 and Journal of Politics between 1996 and 2001 focused on U.S. legislative experience. This number declined to 60 articles out of 100 from the years 2002 through 2008, however only seven of those 100 articles looked at legislatures in newly democratizing states. Publications in the two foremost journals on legislative studies further reflect core biases in the field. Barkan notes that between the years 1995 and 2008, three-quarters of the articles published in Legislative Studies Quarterly focused on the U.S. and only 15 articles

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88 Ibid. P. 512
88 Ibid. P. 5.
on new democracies. From 1995 through 2008, the Journal of Legislative Studies published 400 articles. 208 of those articles focused on legislatures in Western Europe and “68 articles or 17 percent have dealt with the new legislatures in Third Wave democratizers [...] Only three [articles] have dealt with the legislature in an African country.”

American legislative studies casts a long shadow over the wider field. It is either the direct object of research or frames the research agendas in other sub-fields. It exists in a self-reinforcing relationship with prominent theoretical and methodological trends. This situation creates blind spots in parliamentary studies making cases like the GPL invisible to the field.

I(3) Hypothesizing the Reform and the Impact of Fieldwork

Explain ‘the Reform’ can help render visible what is currently hidden. Using the heuristic case study design is fitting because it requires using non-conforming data in terms of dominant theorizing to start grasping the parameters of the phenomenon that cannot be explained. Identification of non-conformist data provides a chance to draw on other theories if appropriate when trying to identify causal linkages between the variables being considered as causally relevant. This process can result in the identification of an early, working hypothesis.

Heuristic case studies can best be compared to a journey across unknown, opaque landscapes. The attempt to navigate such uncertain and unclear terrain is essential to arriving at a broad view of the phenomenon being examined. Just like any journey into the unknown, missteps and loss of direction are risks that must be confronted. This can involve the incorrect identification of variables or the consequent development of a flawed hypothesis. This reality of the research process also becomes part of the writing process and it means that readers join the researcher employing the method through both missteps and successes.

89 Ibid. P. 5. (emphasis added)
Research in advance of fieldwork immediately drew attention to a number of variables and factors with a high probability of being causally relevant. This assisted in formulating a working hypothesis consisting of three elements. First, PEBA was the outcome of ANC Gauteng legislators’ efforts to actualize the social transformation at the heart of the ANC’s political identity. Movement decision making by ANC Gauteng legislators overcame typical governing political party calculations that inhibit most efforts at legislature strengthening. Second, facilitating public participation as a systemic element of budget oversight increases the deliberative quality of budget scrutiny but also seeks to sustain meaningful interaction between a liberation movement and those citizens who are seen to share the movement’s vision and goals. Finally, South Africa’s distinct form of federal design provided the impetus and opportunity for a major legislature strengthening initiative in Gauteng.

Discussion of the research producing the working hypothesis here will only serve to confuse readers. The summarized version of the working hypothesis offered above provides a sense of direction while considering all the evidence presented in the proceeding chapters. Setting forth a summary version of the working hypothesis at this point also offers some assurance of progress made in advance of fieldwork.

Perhaps the most exciting, indeed fun, aspect of this research project was the realization that some errors were made with respect to variables and the working hypothesis. Fieldwork shed light on two new variables which were previously unknown. Fieldwork also forced a realization that two of the variables identified in the initial research phase were operating quite differently than expected. While most of the working hypothesis was confirmed by fieldwork it was still flawed in key respects. Processing the missed variables and adjusting for how other variables
actually operated causally to rework the hypothesis reflects the most challenging and rewarding element of this entire research project.

Explaining why and how the GPL strengthened its budget oversight and scrutiny systems so extensively and rapidly compels thoughtful consideration of legislatures operating outside the typical framework of competitive party-based systems. Competitive party-based systems nurture and legitimize strong opposition to the governing party. Such a system establishes zero-sum calculations by political parties seeking to ‘win it all’ through majority control of the legislature. Party politics structured along such lines are inherently adversarial and the legislature provides institutional space for vigorous contestation between adversaries.

PEBA draws attention to the legislative dynamics created when a successful liberation movement moves into a central position in a dominant party system. ANC Gauteng leaders did not face a realistic prospect of losing power in the immediate sense that grips governing parties in competitive party-based systems. Executive-legislature relations can take on exceptional forms under such conditions and play a role in producing unexpected outcomes.

Operating in a dominant party system led by the ANC does not tell the whole story, however. Dominant party systems led by the ANC existed in five other provinces over the same time period as this study. Legislature strengthening along the lines of PEBA did not occur in any of those provinces. None of the other five provinces could match the size and capacity of the GPL. Gauteng Province had an 86-seat legislature in 1994, followed by 73-seat legislatures in 1999 and 2004. The Eastern Cape Province most closely matches Gauteng with a 56-seat legislature in 1994, followed by 63-seat legislatures in 1999 and 2004. Limpopo Province had a 40-seat legislature in 1994 and then 49-seat legislatures in 1999 and 2004. The Free State’s and
Mpumalanga’s legislatures only ever had 30 seats throughout the time period of this study. North-West’s provincial legislature increased from 30 seats to 33 seats from 1999 onward.

Every South African provincial legislature appoints approximately eleven to twelve members to the executive. Each provincial legislature appoints approximately eight Office Bearers, these include Speakers, Deputy-Speakers, Leaders of the House (Leaders of Government Business), among other positions. Also, every provincial legislature appoints ten members to the National Council of Provinces. This is South Africa’s equivalent of a senate where the intention is to have each province equally represented. Deploying ten members to South Africa’s second chamber affects legislatures in the smaller provinces far more significantly. At best, the Eastern Cape has 30 to 35 members available to oversee ten or eleven ministries through departmental committees. Limpopo may have anywhere from 21 to 26 members available. The Free State’s and Mpumalanga’s 30-seat legislatures, and North-West Province’s 33-seat legislature, have only a handful of members available to establish anywhere from ten to eleven departmental committees. None of these legislatures possess the raw size and capacity of the GPL necessary to conduct oversight along the lines required by PEBA.

South Africa’s National Assembly easily matches the size and capacity of the GPL and can pursue legislature strengthening similar to PEBA. The ANC also operates in a dominant party system at that level of government. National government responsibilities and its legislative role in South Africa’s federal design present obvious institutional differences between the National Assembly and GPL, which might account for the absence of legislature strengthening similar to PEBA. Fieldwork and hypothesis testing covered in Chapter Six explicitly address the divergence in legislature strengthening outcomes. The absence of significant legislature strengthening in the National Assembly suggests the need to qualify the causal significance of
dominant party system dynamics. A variety of factors, many unknown in advance of fieldwork, play a causal role in producing PEBA.

Seeking out those factors, developing a working hypothesis, testing it and refining it, culminates in a set of surprising and important findings that can only be fully appreciated by following the research process as it unfolds. The proceeding chapters are structured along exactly those lines. Chapter One provides context for readers before the study begins trying to explain PEBA. Chapters Two to Four examine the reform process, its paradoxical nature and the ANC’s experience with post-apartheid governance in an effort to develop a working hypothesis. A working hypothesis is fully elaborated at the end of Chapter Four and is tested in Chapters Five and Six. Chapter Seven concludes this hypothesis-testing step in building a new theory of parliamentary strengthening and considers next steps and implications of the findings.
Chapter One: A Selective History of South Africa, Gauteng Province and the ANC

‘Let us live and strive for freedom in South Africa our land!’ (South African National Anthem)

1(1) Which South African History?

South Africa’s history can be as contested as the racial and ethnic identity dynamics that consume so much of the citizenry’s attention. Providing a historical background and context is necessary for this project but is also bound to fall short in fairly treating important aspects of a place and people with such wonderful and conflict-ridden experiences. While South Africa might be more familiar to researchers studying federalism or identity politics, it is unlikely to be as familiar to researchers in the fields of legislative studies or deliberative democracy. History and context in this short chapter, therefore, are parsimoniously filtered through the lens created by the parameters of the project.

1(2) A History of Engineering Inequality

Inequality in South Africa is severe and observable almost everywhere. South Africa’s Gini coefficient was 0.66 on the eve of the country’s first democratic elections.90 This made South Africa one of, if not the most, unequal countries in the world as it transitioned to democracy and it remains so into the present.91 Colonialism, imperialism and state policies of apartheid played determinative roles in entrenching and exacerbating inequality in South Africa.

Persistent British and Dutch contestation for control over the land culminated in the ascension of Afrikaner political, governmental supremacy in 1909 when the United Kingdom passed the South Africa Act. Afrikaner military leaders came to dominate the new government

91 Ibid. P. 3.
through successful elections in 1910 and made racial segregation “a leading idea of state.”92 In 1948, the governing National Party began intensely legislating into existence the apartheid state. Apartheid continued the formalization and institutionalization of racial and ethnic development policies, worsening existing racial and ethnic inequalities at the time of apartheid’s formal inception to its eventual collapse.

Deliberate, pernicious racial and ethnic development policies rooted in South Africa’s colonial and imperial past fueled opposition well before the establishment of the apartheid system of 1948. Laws on land ownership, residency, education, and mobility, among other aspects of social, economic and political life, were all designed in such a manner that ensured unequal development of the vast majority of South Africans. Resistance to oppressive state policies and practices decades before apartheid came into existence invoked the experience of unequal development to contest prejudicial state policies.

The South African National Native Congress was formed in 1912 and was renamed the ANC in 1923. The first formal constitution of the organization was issued in 1919 and sought to engage the government and authorities. It was not framed as a liberation movement but the constitutional objects of the organization reflect the seeds of later political dissidence and resistance. One of the constitutional objectives of the organization was to:

agitate and advocate by just means for the removal of the ‘Colour Bar’ in political, education, and industrial fields and for equitable representation of Natives in Parliament or in those public bodies that are vested with legislative powers or in those charged with the duty of administering matters affecting the Coloured races.93

1(3) The ANC During and After Apartheid

A National Party electoral victory in 1948 allowed Afrikaner nationalists to aggressively pursue what Meierhenrich (2008) describes as a shift from segregation to apartheid. Meierhenrich (2008) quotes: “In the years preceding the watershed election, Afrikaners had become increasingly concerned with race relations. The prevalent view at the time was that the state should be called on ‘to maintain white supremacy’ and the ‘purity’ of the white ‘race’.” National Party enhancement of the state apparatus producing discriminatory development along racial lines was soon followed by political shifts within those organizations and peoples resisting oppression.

1955 marks an important point in the ANC’s articulation of its political project. It convened a ‘Congress of the People’ in Kliptown and set forth its vision in the now famous ‘Freedom Charter’. Jung (2000) mentions: “Since 1955 the Freedom Charter has essentially represented the official ideological position of the ANC. Charterism is characterized by a commitment to equality, nonracialism, economic as well as political rights, and opposition to apartheid.” The National Party banned the ANC in 1960. It began a concerted program under a ‘state of emergency’ to violently target ANC leaders and to create the conditions for sustained repression of the organization. “The top [ANC] leadership had disappeared, midlevel leaders were banned and intimidated, and followers were disillusioned and frightened.”

It is within this period that the ANC shifted away from the policy of nonviolence. Landau (2012) provides a more critical study of how the ANC shifted from pacifism to the use of

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95 Ibid. P. 103.
violence. Landau argues that the start of the shift occurs in the late 1950s. An armed wing of the ANC emerged officially on December 16, 1961. It was called Umkhonto we Sizwe ('Spear of the Nation'). ANC armed struggle never seriously threatened to destroy the security apparatus of the apartheid state but it sustained a program of violently attacking state, and eventually civilian, targets.

Unbanning of the ANC in 1990 was not the result of a decisive victory of any kind by the ANC. There is no indication that ANC armed struggle played a decisive role. The apartheid state found itself in an untenable political and economic position yet retained a hegemonic position in terms of its capacity to project military force and deploy its security apparatus. Apartheid government leaders opted to negotiate a transition while they still retained a significant degree of strength. Anti-apartheid resistance managed to exhaust the regime and force it into negotiating its end and a transition to a democratic system of governance in South Africa.

1(4) Critical Features of a Negotiated Transition

ANC leaders accepted the need to make significant compromises in the transition to democracy by the early 1990s. Power sharing with major opposition political forces and thereby postponing majority rule for the first term of government was the most prominent compromise made by the ANC. The desire to avoid a breakdown in the process was paramount. ANC National Executive Committee member Jeremy Cronin described the ANC’s acceptance of a

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100 Ibid. P. 246.
Government of National Unity “as an attempt to hold [South Africa] together and avoid a Bosnia.”

ANC compromises, such as establishing a Government of National Unity with a sunset clause, were deemed acceptable based on ANC projections of extraordinary electoral dominance. Two of these compromises are relevant for the ‘selective’ history provided here. First, the ANC agreed to dissolve apartheid-era administrative boundaries and create nine provinces that shared powers concurrently with the national government and possessed exclusive powers too. Fewer provinces in a purely centralized state would be ideal for implementing the ANC’s vision for South Africa by removing powerbases for regional and local opposition but the ANC accepted a system of federalism in almost everything but name. Second, the ANC accepted a closed-list, proportional representation electoral system even though a first-past-the-post, single-member constituency system could ensure absolute ANC control of national and provincial legislatures. Both of these concessions play distinct but remarkable roles in setting the stage for PEBA’s origination and development.

Apartheid South Africa created multiple layers of administration directing jurisdictions of various racial and ethnic groups making maps as complicated as the system itself. However, it had four provinces serving as regional administrations through which the centralized state operated. This deceptively simple provincial system was legislated in England through the South Africa Act of 1909 and was effectively undone with the end of apartheid.

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103 Ibid. P. 87.
The map of South Africa changed significantly when old provincial boundaries were redrawn to create nine provinces. Gauteng Province was carved out of the old Transvaal Province. Gauteng Province is the smallest new province but is home to the country’s administrative capital, Pretoria. The provincial capital, Johannesburg, is an economic force in the country and the continent. The province is among South Africa’s most populated. Gauteng had a population of 7 834 125 constituting 19.3% of the population in 1996. The population grew to 9 388 954 by 2001, the midpoint of PEBA’s development. Population figures for Gauteng Province and Johannesburg specifically, cannot fully account for the massive number of domestic and international migrants. This has been the case from 1994 to the present.

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Opting for a closed-list, proportional representation electoral system was a concession to the ANC’s negotiating partners concerned about their ability to be represented in legislatures. Again, ANC willingness to accept these concessions was predicated on ANC projections of massive electoral success for the 1994 elections onward. ANC calculations proved sound in Gauteng. It won 50 of the 86 seats in the GPL in the 1994 elections. ANC electoral dominance increased in 1999 elections. The GPL’s seats were reduced from 86 to 73 but the ANC still won 50 seats, giving it an even greater majority.

\textsuperscript{106} Ibid.
Two specific features of South Africa’s proportional representation system require emphasis for this project. Using a closed-list means that party leaders decide who makes it onto the list and where they are ranked. Prospective candidates understand that their political careers in representative assemblies are largely determined by party officials in such a system. Political party control over elected members under this new system in 1994 was enhanced by a rule preventing floor crossing. Elected members could not leave their party and join another and retain their seat in the legislature. Instead, they surrendered their seat when leaving their party. “The nondefection clause makes for an extremely strong parliamentary whip system, in which party leaders can essentially guarantee a solid bloc of votes. This feature undermines the capacity of backbenchers to act as an opposition to party leaders and diminishes their leverage in party debates.”

ANC Gauteng leaders and elected representatives carrying a legacy of struggle against inequality assumed governmental authority in 1994 under conditions giving them almost absolute control of the legislature. This control was democratic, legal and a result of the negotiations to end apartheid. It is in this context that GPL leaders decided to engage in an unprecedented legislature strengthening program.

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Chapter Two: Gauteng Provincial Legislature Reform

‘At a time when government’s expenditures have increased, there has also been a trend for Parliament, especially in committee, to abandon the practice of reviewing detailed budget estimates before the passage of the government’s annual budget. This principle of ‘grievance before supply’ has been forgotten.’ (Gordon Barnhart, 1999)

2(1) Is the Reform Real?

Is PEBA real? Did ‘the Reform’ actualize PEBA in the formal Standing Orders of the GPL? Did PEBA-based budget oversight and scrutiny reforms result in the required work by GPL legislators? Establishing the real existence of ‘the Reform’ is the necessary focus of this chapter. It elaborates on PEBA’s development and implementation. This, in turn, provides a detailed understanding of ‘the Reform’ which will help in appreciating what makes it a paradox in the following chapter. Establishing how PEBA developed and careful examination of its implementation highlights key features of the oversight system, enabling identification of theories in other fields that can shed light on the phenomenon and help in developing a working hypothesis in Chapter Four.

Jean Blondel, author of several seminal texts in the area of legislative studies, warns that “those executives which have a very strong authority over the Nation and the legislature can afford to appear to give the legislature constitutional powers, because these in practice will not be used.”108 The ANC executive certainly possessed extraordinary, democratically based strength over South Africa and Gauteng Province at the time it commenced with legislature reform through to its conclusion. It becomes necessary, per Bondel’s words of caution, to describe how PEBA originated and the true existence of a stronger scrutiny function at the GPL. Providing an

account of how PEBA was developed and implemented serves to dismiss doubts about the enhancement of budget oversight at the GPL.

2(2) A Concise History of PEBA’s Development and Adoption

A history of the origin of the reform process and how it proceeded through to completion and adoption is the first step in establishing the reality of ‘the Reform’. This short historical overview spans the years 1998 through 2004. It begins with GPL enquiries into the nature of parliamentary oversight and concludes with the adoption of PEBA through a major overhaul of the GPL’s Standing Orders. This time frame covers the end of the First Legislature, all of the Second Legislature, and the start of the Third Legislature of the post-apartheid era.

In 1998, GPL Speaker Trevor Fowler initiated the push for a study critically reviewing oversight at the GPL and discussing the nature of parliamentary oversight broadly. GPL researchers were officially tasked to produce such a study by the Rules Committee, chaired by Speaker Fowler. The final report, entitled ‘Enhancing Oversight in South Africa’s Provinces: Institutions and Concerns’ was produced for internal consumption by the GPL in 1998 and was eventually published outside the GPL by the African Security Review in 1999.\(^9\) 1998 marks a discrete and formal commencement of a reform agenda in that GPL decision makers were concertedly reviewing the nature and potential of legislature oversight.

GPL reflection on its oversight function with a view to possible reform began towards the end of the very first term of democratic governance in South Africa. Four years of legislating away apartheid was coming to a close and attention began turning towards government’s performance in delivery. This was happening as South Africans were preparing a return to the

polls for the second democratic national and provincial elections in 1999. South Africans returned the ANC to power with an even stronger majority and facing weaker political party opposition in those elections.

1999 is also the year that South Africa’s National Assembly passed the Public Finance Management Act (PFMA, Act 1 of 1999). Ensuring the ‘timely provision of quality information’ is listed as one of the PFMA’s four key objectives. This includes an array of public financial management reports ranging from three-year medium term budget policy statements to annual budget schedules, quarterly reports, monthly reports and annual financial reports. Non-financial information is required, in varying degrees, across these reporting requirements. Passage of the PFMA provided the GPL an opportunity to utilize departmental financial reporting requirements in the process of rethinking GPL oversight processes and outcomes.

Elections held in June 1999 meant the final session of the First Legislature and initial session of the Second Legislature were both relatively short. The full implications of the PFMA were being processed during that time and the GPL’s research on legislature oversight was beginning to crystallize into a reform agenda. In the spring of 2000, the new Speaker of the GPL, Hon. Firoz Cachalia, established the ‘Legislature Processes Transformation Group’ (LPTG). Official terms of reference adopted for the LPTG in May 2000 made the reformist agenda clear, declaring:

The objective of the [LPTG] is as follows: (a) to monitor the developments of parliamentary reform in other provincial, national and international legislatures; (b) to improve procedures of the Legislature in order to ensure efficiency and effectiveness; (c) to increase capacity to consider and pass laws effectively; (d) to enhance the ability to
exercise effective oversight of the actions of the Executive and other state organs; and (e) to strengthen the public right to participate in the legislative process.\textsuperscript{110}

At around this time, GPL leaders were also considering the findings contained in a GPL commissioned report entitled ‘The Committee System in the Gauteng Provincial Legislature: An Assessment, and Recommendations for Improvements’. GPL decision makers refer to this report as the ‘Committee Efficacy Study’. By October 2000, LPTG members were formally considering two distinct budget oversight reform options. First, was the option to establish a ‘Budget Analysis Unit’ to work alongside a newly created ‘Budget Oversight and Accountability Committee’.\textsuperscript{111} The GPL’s House Proceedings Manager, working under the Parliamentary Operations Directorate, led a study visit to the United States in June 2000 to examine the design and work of budget oversight offices serving the Florida and Louisiana state legislatures.

The second option being explored proposed strengthening the existing committee system to conduct budget oversight, under the project banner, ‘Programme Evaluation and Budget Analysis’.\textsuperscript{112} PEBA would require all departmental committees to shoulder the responsibility of holding the executive fully accountable through the exercise of budget scrutiny. Instead of creating a new administrative division and new legislature committee, all committees and all relevant, existing administrative units, would need to meet the challenge of fulfilling the GPL’s budget oversight responsibilities.

On November 13, 2000, Speaker Firoz Cachalia announced in plenary that “plans are underway to develop [an] independent capacity in the legislature for programme evaluation and


Hon. Cachalia added, “I am confident that institutionalization of such a capacity will enhance both accountability and service delivery.” From that point onward, the GPL was charting a new path since no models existed elsewhere and the GPL opted to reject the popular U.S. legislature utilization of budget analysis units mainly serving appropriations committees. GPL publications indicate that the decision to pursue PEBA represents its second ‘flagship’ initiative; the first being the creation of the Public Participation and Petitions Standing Committee and the Public Participation and Petitions Office in 1995.

2001 represented a period of research and redesign proposals in pursuit of developing an institutional model without concrete precedent elsewhere. The GPL used some of its existing internal research capacity as well as contract research work to lay the foundations for building a new budget oversight system that enhanced the capacity of the existing committee system. GPL researchers and LPTG leadership were able to showcase the first phase of research towards designing a new budget scrutiny system in September 2001, at the University of Stellenbosch.

The GPL research paper presented in Stellenbosch, entitled, ‘Measuring the Delivery of Development: A Preliminary Model for Programme and Budget Oversight in the South African Provincial Context’, set forth the foundations for a strengthened legislature budget oversight capacity. Two basic components provide the initial basis of innovation. First, the GPL presented the ‘Public Service Oversight Model’ (PSOM). The PSOM provides an analytical framework for overseers. It compels explicit evaluation of political priorities, public sector inputs and outputs.

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114 Ibid. P. 1631. (emphasis added)
116 Ibid.
and how these three factors reach equilibrium with political and policy outcomes.\textsuperscript{117} The PSOM is highly political. Overseers must first engage policy priorities and intended policy outcomes before moving into financial analysis. Consideration is given to inputs (e.g. money, labour, machinery) and outputs (e.g. goods and services) only after interrogating priorities. Only then does the oversight process move into the details of the budget plans to examine whether planned inputs and scheduled outputs can be expected to balance with stated outcomes. This is referred to as a ‘politically-negotiated equilibrium’.\textsuperscript{118}

The second component presented by the GPL in Stellenbosch is the ‘Budget Cycle Model’ (BCM). The BCM sets forth the stages in budget oversight over the legislative year. It covers the annual appropriations (budget) requests, quarterly financial reports, annual performance reports, the audit report oversight work and finally requirements for proactive committee oversight reports based on serious concerns discerned in one of the other stages of the BCM. “This is the tangible activation of the PFMA in the operations of the legislature. The components of the BCM are, in their complete rendering, detailed enough to describe a committee’s entire annual agenda.”\textsuperscript{119} The most significant aspect of the BCM is it institutionalizes cyclicality in budget oversight. Some quarterly reports invariably arrive while discussions are underway about the forthcoming appropriations request, while audit reports also assist in retrospective review of annual reports and forthcoming budget requests.\textsuperscript{120} This built-in overlap between the preceding,

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\textsuperscript{120} Ibid. P. 52-3.
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current and upcoming financial years is a reality confronted in the budget-making process which the GPL mirrored in its oversight process.

Speaker Firoz Cachalia used the GPL’s 2002-2003 financial year budget speech to announce that the “Legislature has developed a Programme Evaluation and Budget Analysis model, PEBA, and this year implementation of the model will be piloted in three departmental committees – Public Safety and Community Liaison, Housing and Education.”121 Public safety and crime preoccupied most people’s attention, housing backlogs for the poorest were increasing rapidly and reversing the damage of apartheid-era education was a monumental task for the government. Piloting PEBA in these committees reflects a ‘sink-or-swim’ approach to establishing its technical and political operability in high priority policy areas for government.

In 2002, the GPL also planned and hosted a conference under the banner ‘Parliaments and Poverty Eradication’. Speaker Cachalia opened the conference unequivocally asserting that “the functional area among the many other functions of parliament and legislatures (that is, the specific focus of this conference) is budget oversight and its potential role in addressing the challenge of poverty alleviation.”122 The conference had local and international dimensions but it all focused on the question of how legislature budget oversight can positively contribute to poverty alleviation.

Three years of conceptual development and institutional design innovation, followed by one full year of piloting in three high-profile departmental committees afforded Speaker Cachalia an opportunity in mid-2003 to claim that the PEBA conceptual model is “one of the most advanced in [South Africa] and [...] potentially expands oversight beyond what is typical in most parliamentary jurisdictions” while also noting that PEBA “was developed, conceptualized and

incubated in this legislature.”

GPL 2003-2004 budget plans, coinciding with the Speaker’s comments, provided for a new PEBA project coordinator, PEBA piloting across all departmental committees and an evaluation of PEBA’s performance at the end of the financial year.

GPL decision makers made PEBA “standard operating procedure for all [departmental] committees” after evaluating the operation of PEBA over the 2003-2004 financial year. Making PEBA the oversight model for all departmental committees compelled the GPL to also prepare members of the Executive and all legislators for a more rigorous oversight function. GPL reformers established the Ad Hoc Committee on Ministerial Accountability in 2003 on a parallel track with PEBA implementation across the departmental committees. The terms of reference for the Ad Hoc Committee required proposals “for the purpose of strengthening Executive accountability to the provincial legislature and matters incidental thereto.” It also required proposals on strengthening the accountability of senior civil servants, heads of departments and heads of provincial agencies to the provincial legislature. The Ad Hoc Committee tabled its full report in May of 2004.

On August 26, 2004, the LPTG met to review the ‘Progress Report on the Implementation of the Oversight Model’. The LPTG was now led by a new Speaker, Hon. Mzameni Mdakane, following elections in April. The LPTG’s report focused on the capacity of the GPL’s oversight committees to handle all required tasks over the BCM. The GPL met implementation expectations according to the review. The same LPTG meeting also reviewed a legislature oversight policy document to create oversight synergy between the budget scrutiny work of

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124 Ibid. P. 5345.
127 Ibid. P. 8.
departmental committees and the Standing Committee on Public Accounts (SCOPA). The LPTG issued two decisions following the review. First, the Chair of Chairs, who heads a committee of all Chairpersons, needed to “ensure that committee management is improved to deal with PEBA implementation”, and that GPL “administration develop a report on the implementation of PEBA, which should reflect government priorities and indicators.” These decisions signalled the finalization of PEBA’s development in the GPL.

Speaker Mzameni Mdakane formed a ‘Rules Committee Reference Group’ towards the end of 2004. This group’s mandate included operationalizing and institutionalizing PEBA through the GPL’s Standing Orders. On December 2, 2004, in the early months of the GPL’s Third Legislature, legislators adopted a revised set of Standing Orders containing all PEBA-based reforms through a motion by the Deputy Speaker and seconded by a member of the official opposition. The motion carried without any debate, concerns or resistance.

The GPL altered its budget oversight function in the newly revised Standing Orders along three dimensions: scope, citizen involvement, and substance. Enlarging the scope of budget oversight was achieved by shifting from a linear to a cyclical process through several new rules. Standing Order (hereafter SO) 222(a-d) requires oversight committees to report on departmental annual appropriations, annual reports, audited financial statements and quarterly reports. Cyclicality is then a function of committees scrutinizing past, present and future departmental operations on a constant basis. SOs 173 and 174 establish an oversight committee responsible exclusively for overseeing the Premier’s Office and the GPL. In this way, delivery and performance oversight extends to those offices that were free from such scrutiny in the past.

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130 SO is a common abbreviation in reference to formal rules and regulations for legislatures.
because their functions were considered beyond the remit of conventional budgetary oversight. SO 170 (1-3) requires SCOPA’s work to be integrated into the work of departmental committees. This ensures that technical financial management matters are considered by departmental committees while examining broader policies and plans.

Embedding and expanding public participation in budgetary oversight generated the most new rules. SO 221(1) makes a normative and empirical claim that public petitions to the GPL contribute to the fulfillment of GPL oversight work. SO 221(2) then requires the GPL to “facilitate the participation of the public in its oversight processes.” This is framed by SO 130(1) that reasserts the constitutional requirement for public participation in legislature operations per §118 of the constitution. SO 222(1)(c), obligates departmental committees to address issues referred by the Petitions and Public Participation Committee. SO 152(2)(a) directs GPL committees to report on public participation in the deliberation of all legislation. Finally, SOs 57, 58, and 61(1) require the Petitions and Public Participation Committee to report quarterly and annually on its work; ensuring that the committee is held accountable for public participation levels.

Finally, ‘the Reform’ significantly empowers the GPL in fulfilling its oversight function by codifying the substance of budget oversight work. SO 220(1-3) asserts the constitutional foundation of legislative oversight as part of the governmental effort to realize the aspirations embodied in the Bill of Rights. SOs 151(3)(b) and 152(2)(g) oblige the GPL to report all issues under scrutiny in terms of the Bill of Rights, with specific emphasis on socioeconomic and gender rights. South Africa’s Bill of Rights guarantees the provision of an array of basic services that target poverty in the country, with a focus on the black population and women. SO 164(1)(2)(c) establishes a Gender Committee and requires public participation through the
committee. SO 149(1-2) compels each GPL departmental committee to report annually against oversight work plans in order to ensure committee accountability in the execution/delivery of oversight work. This accountability is lastly rounded out by SO 47(1)(a), which requires the executive to respond to every issue raised through the oversight process within time frames established by the legislature. These Standing Orders focus the substance of GPL oversight by codifying the socioeconomic rights enshrined in the constitution. ‘The Reform’ also recalibrates executive-legislature relations by linking the relevance of legislative oversight work for socioeconomic rights.

The term “must” is used in every Standing Order referenced above. The adoption of “must” do oversight legal text commits the GPL to a level of scrutiny of executive performance unprecedented in South Africa. In late December 2004, GPL administrators developed training modules and workshops to help the recently elected representatives of the GPL understand the technical, operational implications of the new Standing Orders. Training sessions for members of the GPL took place on January 24-25, 2005. Specialized workshops took place on January 18-19 to train members on SCOPA’s new method of work and the ways departmental committees can now benefit from SCOPA oversight outputs. From that point onwards, PEBA was no longer a project, but instead the legislated and required format of GPL budget oversight and scrutiny.

1(3) Implementing PEBA

PEBA-based reform of the GPL’s Standing Orders occurred in a well-documented and verifiable manner. To what extent, however, has the new budget oversight system been executed from the time of its adoption through the end of the Fourth Legislature in early 2014? Verification of the intent to implement PEBA with a significant degree of success, or progress, is necessary for demonstrating the real existence of the dependent variable at the centre of this
project. Official GPL primary source documentation provides the basis for verifying the ANC’s intent to implement a rigorous budget oversight system with a confirmed degree of success.

GPL leaders conducted an efficacy study at the end of the Third Legislature to assess the first full term of implementation. The report is entitled, ‘PEBA Efficacy Study: Period 2004-2008’ and was released in 2009. Departmental committees had to scrutinize departmental appropriations requests under the old Standing Orders at the GPL. They also regularly conducted scrutiny of departmental annual reports but it was not formally required by the GPL’s Standing Orders. Both these functions now had to be done and required greater public participation in the oversight process. Performing focused intervention studies and reporting on quarterly reports were entirely new tasks and significantly increased the workload of departmental committees. Focused intervention studies require committees to isolate a priority concern arising from scrutiny during a previous oversight stage and investigate the matter in greater depth. Quarterly reports provide the timeliest information about whether and how departments are turning resources into outputs.

Summary findings of the efficacy study indicated:

A steady increase in the number of [focused intervention studies] conducted since 2004 [...] a steady increase in the number of quarterly report oversight processes (with or without public participation) undertaken since 2004 [...] public participation in respect of the two key oversight imperatives, namely the annual report and budget processes, [...] increased steadily.\textsuperscript{131}

By all counts, the GPL intended to execute the new budget oversight model and was making consistent progress in implementing the required stages of work over the course of the Third

Legislature. Public participation in the budget and annual report oversight stages went up by three-and-a-half times.\textsuperscript{132} Forty-five percent of the required focused intervention studies were conducted.\textsuperscript{133} Committee schedules and the legislative calendar constrained efforts on quarterly reports, but committees generally were able to scrutinize 2\textsuperscript{nd} and 3\textsuperscript{rd} quarterly reports.\textsuperscript{134}

Results from the efficacy study also indicate challenges in realizing the full potential of PEBA-based oversight. Public participation and engagement during key stages of the BCM did improve steadily but lacked feedback to civil society actors who were making inputs in deliberations.\textsuperscript{135} Committees did not regularly incorporate past committee recommendations into current deliberations nor were they always able to link their findings to larger policy issues and intended policy outcomes.\textsuperscript{136} Despite that limitation, the efficacy study did find a higher response rate to oversight committee recommendations across all departments over time. “This means that the Departments responded to most of the recommendations/resolutions made per financial year on nearly a 1:1 basis.”\textsuperscript{137} Oversight reports were being produced across the various stages of the BCM but the full impact which can be derived from robustly applying the PSOM over the course of the Third Legislature was not fully realized.

GPL challenges and even shortfalls in qualitatively implementing the new budget scrutiny system do not reflect the absence of the dependent variable. Conducting a detailed implementation review and bringing to light all the shortcomings in execution demonstrates the institutional effort to surmount implementation problems. The Third Legislature of the GPL was the first to operate in the post-reform period. ‘The Reform’ itself is unprecedented and so a new

\textsuperscript{132} Ibid. P. 26.  
\textsuperscript{133} Ibid. P. 26.  
\textsuperscript{134} Ibid. P. 26.  
\textsuperscript{135} Ibid. P. 4.  
\textsuperscript{136} Ibid. P. 4-5.  
\textsuperscript{137} Ibid. P. 6.
legislature in a new democracy, without a deep human resources pool of legislature talent, would inevitably face tremendous struggles in execution. Yet, the efficacy study helps verify that PEBA’s operationalization became increasingly real over the course of the Third Legislature.

Success in overcoming shortfalls and challenges in implementing the new rigorous budget scrutiny system in the Fourth Legislature can be determined by using the GPL’s Order Paper and comparing it at two different, post-reform periods in time. An Order Paper is produced just about daily in most legislatures. It is a public document listing agenda items for the next scheduled sitting, items for future sittings, reports or documents formally referred to committees, legislation referred to the legislature or committees, and scheduled interpellations and questions. ‘Orders of the Day’ list those items (reports, motions, interpellations and questions, statements, speeches) for a sitting scheduled on the day the Order Paper is issued. Departmental committee budget oversight reports listed on the ‘Orders of the Day’ indicate reports tabled and debated in plenary. Comparing the Order Papers for the 2006-2007 and 2010-2011 financial years confirms the GPL’s intention and progress in implementing the PEBA-based reforms. These years offer an excellent basis of comparison. Each is the second year in a term of government and so follows an election year. Governments are well into pushing their policy and programme agendas while neither dealing with the interruption of an election year nor the pressures of a pending election. 2006-2007 of the Third Legislature is a year covered in the efficacy study and 2010-2011 of the Fourth Legislature represents the second financial year following the efficacy study.

Departmental committees scrutinized and reported on each department’s appropriations request in the 2006-2007 financial year. These were tabled and debated in plenary. The same is true for annual reports for each department, though there were a few failures in timing between the tabling and deliberation of SCOPA reports. Aligning tabling of annual reports and reports on
audits intends to create synergy between the quantitative financial analysis of public accounts work and the wider scope of scrutiny by the other oversight committees. GPL delivery on focused intervention studies and quarterly reports in the 2006-2007 financial year was almost completely lacking. Only two focused intervention studies made it to plenary. Six quarterly reports made it to plenary but four of them were for the previous financial year and so virtually inconsequential in terms of system design, leaving only two completed by the Finance Committee which only studied the macro-fiscal accounts of the Gauteng Provincial Government (GPG). It is worth recalling that this was only the first full legislative year in the post-reform era and the efficacy study did observe improvement through to 2008.

The 2010-2011 financial year confirms the upward trajectory in delivery on PEBA-required oversight outputs by the GPL. All departmental appropriations requests were scrutinized, reported on and deliberated in plenary. Annual reports and public accounts reports were in perfect synergy except in those cases where departments were restructured, merged or altered, thereby making perfect synergy impossible. Thirteen focused intervention studies made it to plenary and thirty-seven departmental committee reports on quarterly reports. This is a staggering escalation in implementation. The marked improvement of GPL oversight outputs in the form of focused intervention studies and reporting on quarterly reports helps confirm both the intention and progress in implementing the reformed oversight system.

Legislature Hansard records of debates in plenary give greater texture to the documentary record derived from the efficacy study and GPL Orders Papers. Samples are chosen deliberately and not randomly. A small sample of issues is drawn from a variety of oversight reports tabled in plenary in 2005 and 2008. Analysis of issues from 2005 provides insights on implementation in the first year of the first term of a new legislature operating along the lines of ‘the Reform’. 2008
was the last full year of the first legislature following adoption of ‘the Reform’. Finally, a sample oversight report on a department’s quarterly report is chosen from 2010 to conclude the more textured confirmation of the intent to implement PEBA-based reforms and progress made in doing so. The references used are text from oversight reports that are read in plenary by departmental committee Chairpersons, reflecting a willingness to bring significant issues to light on the most visible level in the Legislature.

Table 1: 2005 Oversight Committee on the Office of the Premier and Legislature (OCPOL) – Oversight Report on the 2005-2006 Financial Year Budget Request of the Office of the Premier

<table>
<thead>
<tr>
<th>Extracts from Report in Plenary</th>
<th>Technical Significance</th>
<th>Broader Significance</th>
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<tbody>
<tr>
<td>“The Director-General’s investigation report on the capacity of the Office of the Premier to monitor implementation of policy objectives and how capacity gaps will be addressed be submitted to OCPOL [...]” (P. 570)</td>
<td>absence of key inputs (staff/human resources) at the start of the financial year makes corresponding outputs unlikely to materialize</td>
<td>warning of potential failure in a key governance area being forecast</td>
</tr>
<tr>
<td>“OCPOL is concerned about the proper monitoring of the 53 indicators by the Office of the Premier and progress made in implementation by various departments.” (P. 570)</td>
<td>concerns about fulfillment of a core governance function of the Office of the Premier being linked to broader issue of delivery in standard, service delivery departments</td>
<td>warning of potential failure in a key governance area highlighted</td>
</tr>
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(continued on following page)

“The Office of the Premier reports on the measures and progress on the implementation of the recommendations of the Ministerial Accountability Report [...] submitted by 15 September, 2005.” (P. 570)

establishing full compliance with accountability systems developed by the GPL

potential compromising of GPL’s accountability function being highlighted

“The Office of the Premier reports on the status and progress of the 53 performance indicators that are a subject of OCPOL’s Focused Intervention Study and the report be submitted by 15 September, 2005.” (P. 570)

government-wide indicators enable evaluation of governance outcomes and review of government policies

OCPOL fulfilling oversight imperative to conduct Focused Intervention Study based on existing budget scrutiny

Table 1 provides evidence of the GPL’s commitment to implementing PEBA-based reforms immediately. Selecting OCPOL in this sample is important because the existence of a committee dedicated to overseeing the leader of government and the legislature is rare and presents unique challenges in terms of accountability since a provincial premier does not actually deliver specific services and yet is accountable for the performance of government as a whole. OCPOL immediately began tabling reports identifying serious matters of concern and weaknesses in the Office of the Premier, the highest governing authority and the leader of the ANC Government in Gauteng. OCPOL even committed to conducting a focused intervention study on a matter that speaks to the highest profile initiative led by the premier.
Table 2: 2005 Speaker’s Reaction to the Absence of the Relevant Minister for Plenary Debate – Committee on Social Development – Focused Intervention Study

<table>
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<tr>
<th>Extracts from Speaker’s Statements</th>
<th>Technical Significance</th>
<th>Broader Significance</th>
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<tr>
<td>“when reports like these are presented to the House at least the [Minister] responsible should be in the House.” (P. 688)</td>
<td>purpose of deliberation in plenary is to have the relevant minister directly subjected to public scrutiny</td>
<td>a new Speaker during the first year of implementing ‘the Reform’ is trying to ensure maximum accountability</td>
</tr>
<tr>
<td>“I do think that [the Minister’s presence] is very important. I think many of you have read the criticism about the National Assembly […] if we are not careful we might find ourselves exactly in a similar situation where we just do it for routine purposes, without honour and dignity that we give to this report.” (P. 688)</td>
<td>procedurally driven oversight work in the legislature can easily become routine and possibly diminish the value of oversight outputs in the view of the executive</td>
<td>differentiation from negative tendencies in the National Assembly signals a sense of urgency in the GPL and budget oversight reports have a profound value and deserve the utmost respect from all members</td>
</tr>
<tr>
<td>“Deputy Chief Whip, you are here. We should never allow a situation like this because it is unacceptable. We spend a lot of money for members going to do their work in terms of PEBA.” (P. 688)</td>
<td>addressing a senior whip with directive language escalates the significance of the relevant minister’s absence and need for improved scheduling going forward</td>
<td>budget oversight work and reports are legislature outputs resulting from prioritization of oversight and the application of resources to producing oversight reports for which the GPL is accountable</td>
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Table 2 reflects the Speaker’s view that a committee simply producing an oversight output is insufficient. The Speaker also wants to ensure that ministers are present in plenary when oversight reports pertaining to their departments are discussed. Such candor and chastisement by the Speaker in plenary would simply never occur if PEBA was mere window dressing.

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<tr>
<th>Extracts from Report in Plenary</th>
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<tr>
<td>“more work needs to be done in [...] broadening participation and coordination of efforts within broader civil society including public and private partnerships.” (P. 920)</td>
<td>government department being held accountable for failing to properly engage the public</td>
<td>public participation and engagement is a constitutional imperative and failure is a serious political matter</td>
</tr>
<tr>
<td>“This was further highlighted in public submissions by Challenge Church and People representatives from Ms. Patricia Harvey-Mokoena and Ms. Ethel Barlow from Sophiatown, Ms. Yolanda Frederick from Kliptown and [...] the Community Animal Welfare Organization.” (P. 920)</td>
<td>committee meeting its obligation to enable public participation in budget oversight processes and also referencing contributions in plenary</td>
<td>commitment to implementation of PEBA-based imperatives established with inclusion and utilization of public inputs in the oversight process</td>
</tr>
<tr>
<td>“committee noted the qualified Auditor-General’s report including matters of emphasis [...] allocative efficiency [...] budget sustainability [and] timely implementation of mechanisms to avoid over and under-expenditure.” (P. 921)</td>
<td>synergy with SCOPA’s financial audit oversight work being incorporated into budget oversight work</td>
<td>specialized work of public accounts committees enables departmental committees to meaningfully scrutinize financial concerns</td>
</tr>
<tr>
<td>“delayed presentation of quarterly reports [...] ongoing challenges to implement a successful financial and programme management system [...]” (P. 922)</td>
<td>financial management capacity being highlighted as a serious problem demonstrated by the failure to properly generate quarterly reports</td>
<td>problems with core financial management implicate the veracity of implementation by a department and is a serious indictment</td>
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“several other key policy delivery challenges such [as] attaining allocative efficiency in [...] agriculture with emphasis on the second economy including economic bridging [small and medium enterprises] with those most vulnerable [...].” (P. 922)

connecting financial management problems with delivery challenges that directly impact on the vulnerable and poorer elements of Gauteng’s agribusiness sector

pro-poor, poverty alleviation targets are among the highest priorities for the GPG and linking financial management challenges to failures in policy relating to citizens operating in the ‘second economy’ is a serious indictment

“immediate and wide-ranging steps need to be undertaken in terms of developmental policy interpretation and implementation.” (P. 923)

committee calls into question department’s capacity with respect to its handling of high-level policy

PEBA-based reforms require attention to policy analysis and programme evaluation but problems in the former cast serious doubts about the latter

Table 3 shows that not only did the Committee on Agriculture, Conservation and the Environment begin meeting critical processual imperatives such as public participation and use of public accounts oversight work, but the Committee also drew linkages between delivery and concerns in macro-policy and financial management.


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<td>Report in Plenary</td>
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<tr>
<td>“The vacancies in the Office of the Premier are a matter of concern for the Committee. The issue is whether the existing vacancies in the Office of the Premier have had a negative effect on performance.” (P. 1025)</td>
<td>implementation requires inputs and human resources are one of the most basic inputs in government delivery</td>
<td>problems on the inputs side of budgeting and resource application inevitably raises concerns about the generation of outputs and then non-realization of policy goals</td>
</tr>
<tr>
<td>“The Annual Report states that almost all the provincial departments have their gender budgets in Budget Statement 2. The Committee is concerned that only six departments out of 12 have the gender budget.” (P. 1025)</td>
<td>gender budgets explicitly link programmatic and line-item spending to specific policies and objectives in pursuing gender equality</td>
<td>misreporting on the status of gender budgeting across departments by the Office of the Premier is a serious indictment given the high-profile given to policies addressing gender inequality</td>
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“With regard to the 53 indicators, the Committee finds it difficult to assess the Office of the Premier on the basis of the performance of the Gauteng Province Departments.” (P. 1025)

| intended policy outcomes are determined by the policy priorities driving budgets and problems with government-wide policy indicators reflect challenges in linking government budgeting with policy outcomes |
|——|
| inability to properly link budgets to policy outcomes undermines the budget accountability framework between the legislature and executive |

“Challenges arising from increased migration into Gauteng from other provinces, and from other countries, are not adequately reported [...]. Migration is putting increasing pressure on infrastructure, budgets, resources, capacity and delivery of services.” (P. 1025)

| scope and scale of necessary government delivery needs are largely driven by population size and improper accounting for population dynamics can negatively impact on all aspects of a budget |
|——|
| population size not only affects on the technical side of delivery targets per planned government services and goods but can also affect policy prioritization as a result of delivery that falls short and fuels worsening conditions as a ‘vicious spiral’ in a policy area |

Table 4 demonstrates that OCPOL’s budget oversight work scrutinizing the Office of the Premier addressed macro-policy issues and concerns as well as detailed issues of resource application and execution. The committee did not hesitate to link the problems raised to questions of delivery failure or impending policy failure. The political will of the GPL to fully implement ‘the Reform’, even within the first year following its adoption, is verified by the rigorous scrutiny of the leader of the governing party in the legislature. This is further confirmed by the readiness of the premier to respond and account for the findings in OCPOL’s report. The premier rose to respond in plenary “to specific questions raised in [OCPOL’s] report.”

Compliance by the Premier’s Office in submitting itself to such exacting scrutiny led by a chairperson from the premier’s own party demonstrates the political will necessary to make ‘the Reform’ real. Concerns were raised in the ensuing debate about the nature of holding the Office of the Premier accountable after addressing the issues in OCPOL’s oversight report. Specifically,

\[142\] Ibid. P. 1033.
the argument was made that “[the] Office of the Premier does not deliver services.” This was followed by a terse exchange whereby the Leader of Government Business asked, “is [OCPOL] purporting to assess in this province whether we have a good Premier or a bad Premier, whether we have a Premier who is performing or not performing? Is that the judgment for a single committee of the House to make?” This occurred during one of the last debates of 2005 marking the first year of implementing ‘the Reform’ and makes it clear that nothing was easy about the process. There was friction and stress on key political figures, but the governing ANC persisted with implementation.

Table 5: 2008 Committee on Economic Development – Oversight Report on the 2\textsuperscript{nd} and 3\textsuperscript{rd} Quarterly Reports of the 2007-2008 Financial Year for the Department of Economic Development\textsuperscript{145}

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<tr>
<td>“The fact that the department did not report on risk management in the 2\textsuperscript{nd} and 3\textsuperscript{rd} quarterly reports is unacceptable.” (P. 2348)</td>
<td>risk management pertains to most aspects of capital resource management which enables most other aspects of the government delivery process</td>
<td>identifying a budgetary reporting failure by a high-profile department as ‘unacceptable’ in plenary requires a significant degree of political will by a committee</td>
</tr>
<tr>
<td>“The reporting of the Department under the following sub-programmes: Human Resources, Logistical Support and Communication, is not according to targets set in the business plan.” (P. 2348)</td>
<td>the committee is not saying the department ‘shifted the goal posts’ but instead changed the goal posts entirely</td>
<td>compromising of GPL’s accountability function</td>
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\textsuperscript{143} Ibid. P. 1035.  
\textsuperscript{144} Ibid. P. 1035-6.  
“For the 2nd and 3rd quarters of the 2007-2008 financial year, the Economic Planning and [Gauteng Economic Development Agency] have been competing in the mandate of providing support to municipalities for the development of viable local economic development strategies. This shows that there is a problem with communication and coordination of policy implementation.” (P. 2348) a major departmental programme and a government agency are duplicating work and also expending resources competing to do the same work over the course of the current financial year budget oversight by the committee is revealing duplication and resource wastage within the current financial year through scrutiny of quarterly reports and linking this detailed matter to larger issues of policy management in the department

Table 5 confirms GPL implementation of PEBA-based reform imperatives, especially serious efforts to meaningfully scrutinize quarterly reports and to link current implementation issues to larger policy management concerns.

Table 6: 2008 Committee on Social Development – Oversight Report on the 2008-2009 Financial Year Budget Request of the Department of Social Development

<table>
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<tr>
<td>“After a thorough scrutiny of Vote 6, with the assistance of PEBA and PSOM, as the official tools of analysis [...]” (P. 2447)</td>
<td>explicitly indicating the formal budget oversight framework applied by GPL committees establishes Legislature expectations</td>
<td>committee reports often reference application of PEBA and PSOM and doing so in plenary is part of further institutionalization of the process</td>
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| “Although the Department’s plans on the war against poverty are almost similar to the 20 apex priorities, there seems to be fewer, or no, priorities on the creation of employment for persons with disabilities, which both the President and the Premier have emphasized as important for departments to implement.” (P. 2447) | Committee is identifying an entire policy priority that is absent from the department’s annual budget request | preparedness by oversight committees to tackle high-level policy gaps and shortcomings demonstrates significant political will and intent to implement rigorous oversight |
| “Although the department managed to finalize MOU’s (Memoranda of Understanding) with other municipalities, they had not signed MOUs with Johannesburg and Emfuleni municipalities, after +/-18 months of protracted negotiations. There is no doubt, that this delay has had a negative impact on service delivery, to the intended beneficiaries in these municipalities [...] whilst R33.4 million had lain dormant since 2007/2008 [financial year] to date.” (PP. 2449-50) | incomplete work and failure to complete tasks is leading to the lack of service delivery and waste, through non-utilization, of scarce financial resources | identifying failure to deliver and the waste of resources directly tied to social development programmes are a serious indictment of the department and minister |
| “By its own admission that there is no scientific rationale upon which targets are determined, the Department on Social Development should look into conducting a broad based provincial social welfare needs analysis, and that status report be provided six months from the date of the adoption of the report.” (P. 2450) | committee alarmed by a weak information system by which to evaluate and oversee the performance of the department | targets set by departments are largely determined by political priorities and significant policies and the requirement by the committee to have the department report-back on this matter compels the executive to clarify its priorities and commit to a more coherent policy plan |
Table 6 reveals how a committee overseeing one of the largest spending departments in the GPG is adeptly navigating between technical, sub-programme implementation problems and macro-level policy concerns. This increasing capacity and skill in conducting budget oversight is occurring in the final full legislative year (before an election year) of the first Legislature operating under the new oversight system and reflects learning and progress by overseers.


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<td>“In 2007-2008, the Department received a qualified audit, the adverse opinion expressed by the Auditor-General reflects negatively on the otherwise favourable historical record in this regard.” (P. 3078)</td>
<td>establishing synergy with SCOPA’s financial audit oversight work by incorporating it into budget oversight work</td>
<td>specialized work of the public accounts committee enables departmental committees to meaningfully scrutinize financial concerns</td>
</tr>
<tr>
<td>“Whilst the total amount underspent is within the 8% allowed by Treasury, it has raised some issues relating to the lack of internal controls and effective early warning signal mechanisms which should receive urgent attention in the period going forward.” (P. 3078)</td>
<td>financial management capacity in the department is a liability requiring attention to internal procedures and is significant enough to be made a priority</td>
<td>weak financial management directly affects resource utilization and the conversion of resources (inputs) into goods and services (outputs) which must happen to produce outcomes per planned priorities</td>
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“Quarterly reports in terms of the PEBA framework are key early warning mechanisms. In 2007-2008 the Department has submitted quarterly reports of non-financial performance, but has excluded the financial statements. As part of its in-year monitoring, the Committee has thus not been able to consider the overall outcome [...] which may have assisted in detecting problems with financial management systems and controls early enough to avert the adverse audit opinion and poor financial performance.” (P. 3078)

<table>
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<tr>
<th>“Quarterly reports in terms of the PEBA framework are key early warning mechanisms. In 2007-2008 the Department has submitted quarterly reports of non-financial performance, but has excluded the financial statements. As part of its in-year monitoring, the Committee has thus not been able to consider the overall outcome [...] which may have assisted in detecting problems with financial management systems and controls early enough to avert the adverse audit opinion and poor financial performance.” (P. 3078)</th>
<th>a key aspect of the budget oversight system and accountability framework of the executive to the legislature is rendered inoperable due to reporting failures by the department which in turn prevents the committee from interceding on a looming crisis</th>
<th>committee’s articulation of the knock-on impact of non-reporting by the department indicates the extent to which the committee perceives itself to be there to assist in averting crises and enabling successful delivery</th>
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<tr>
<td>“Educational access has been expanded to the vast majority of the eligible learners. Through the provision of scholar transport, school nutrition and the introduction of the ‘no fee’ schools, government has provided a social safety net that effectively reduces barriers to learning access.” (P. 3079)</td>
<td>three sub-programmes are directly linked to the target of expanding learner access</td>
<td>committee remains sensitive to the bigger picture and policy priorities while accessing detailed, sub-programme information</td>
</tr>
<tr>
<td>“That the committee, in noting the substantial amount underspent [...] and that the variances in spending were across programmes, was concerned, that at face value there seems to be a significant problem [...] budgeted funds were not spent during the financial year, planned delivery did not happen during the financial year. This points to weak capacity to manage programmes, which has a bearing on the lives of the people.” (P. 3080)</td>
<td>financial mismanagement directly connected to the non-utilization of resources and delivery failure with the acknowledgment that the consequences of failure are felt by the citizenry</td>
<td>linking financial mismanagement to delivery failure through budget scrutiny is the most robust form of oversight and underpins the most serious indictments levelled against members of the executive in the fulfillment of the accountability function and making ministers responsible to the legislature</td>
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Like the Department on Social Development, the Department of Education is responsible for a massive proportion of the provincial budget and its performance explicitly impacts on poverty in the province. This makes it a high-profile department and is led by a senior minister. Table 7 verifies that the committee did not hesitate to identify the most serious failings on the part of the department and link these failings to delivery problems. This demonstrates a notable amount of political will in the GPL and its committees as it implements a rigorous budget oversight system.

Table 8: 2010 Committee on Sports, Recreation, Arts and Culture – Oversight Report on the 3rd Quarterly Report of the 2009-2010 Financial Year for the Department of Sports, Recreation, Arts and Culture

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<tr>
<td>“The Committee’s approach in assessing the department was based on the Public Service Oversight Model [...]” (P. 1150)</td>
<td>explicitly indicating the formal budget oversight framework applied by GPL committees establishes Legislature expectations</td>
<td>committee reports restating application of PSOM in plenary is part of further institutionalization of the process</td>
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<tr>
<td>“[... ] research projects that were scheduled for completion in the fourth quarter may not be completed due to time and capacity constraints.” (P. 1151)</td>
<td>committee identification of delivery failure within the ongoing financial year</td>
<td>allows focus on all aspects of this programme, sub-programme(s) going into next financial year and forthcoming budget request by the department</td>
</tr>
<tr>
<td>“[... ] inadequate responses given by the Department for not achieving certain outcomes is worrying to the Committee.” (P. 1151)</td>
<td>accountability requires information, especially in the form of responses to queries, to facilitate committee deliberations</td>
<td>compromising of GPL’s accountability function</td>
</tr>
<tr>
<td>“[... ] lack of proper planning, monitoring of services and service providers in accordance with inputs allocated.” (P. 1151)</td>
<td>basic functions necessary for realizing the benefits of departmentally funded, outsourced services are going unfulfilled</td>
<td>inputs in the form of financial resources are being expended but the necessary inputs from departmental staff are absent, compromising performance</td>
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“The Department does not thoroughly and adequately prepare themselves for presentations to the [...] Committee.” (P. 1151)

Committee meetings with the department at budget oversight stages are essential to effective scrutiny

compromising of GPL’s accountability function

“[...] Committee is concerned that outputs planned for Programme 2, which is cultural affairs, were not achieved, and as a result, did not reach its intended outcome to create work opportunities for local performing artists, managers and technicians.” (P. 1151)

delivery failure explicitly linked to outcome failure in a specific programme

the entire framework for this programme is called into doubt as the failure to deliver forces an examination of how inputs were handled and the cumulative impact of failing to generate the intended outcomes compounds the challenges for this programme

Table 8 establishes that the third quarterly report oversight process and debate in plenary occurs in close proximity to the start of the next financial year. Problems identified at this stage begin to reduce confidence in overseers about departmental capacity. This situation pressures departmental officials to pre-empt the incoming criticism by overseers in the forthcoming budget request. Within-year budget oversight is intensely technical and financially focused but is readily linked to departmental policies, priorities and overarching goals.

The non-random oversight report samples cited here make use of oversight outputs focusing on straightforward, heavy-spending, line-item delivery departments like Social Development and Education, as well as more specialized delivery departments like Sports, Recreation, Arts and Culture and also departments that do not technically ‘deliver’, such as the Office of the Premier. The non-random sample deliberately focuses on serious problems raised in reports. Positive developments were occurring and success in delivery was fueling significant in-migration to Gauteng Province. Serious problems reported in plenary, however, help verify real political will in implementing PEBA. Oversight report excerpts and statements in plenary deliberations cover
budget requests, annual reports, focused intervention studies and quarterly reports. Altogether, this non-random sampling helps verify that the GPL was intent on implementing ‘the Reform’.

The sample of oversight outputs making it into plenary fits the picture created by examining the GPL’s Order Papers and all of this evidence is consistent with the findings of the efficacy study. Taken together, this evidence demonstrates that the GPL and ANC leadership of the GPG fully intended to implement ‘the Reform’ and made notable progress over successive financial years in doing so.

This chapter began with the question: “Is ‘the Reform’ real?” In other words, this chapter seeks to establish the existence of the dependent variable. Skepticism about the real existence of ‘the Reform’ among legislative study scholars is both expected and appropriate. The entire premise of this project is that a phenomenon took place that is both unprecedented and beyond the explanatory tools of current legislative studies scholarship. It is expedient to devote this much attention and effort to verifying the existence of ‘the Reform’. First, primary source documentation provided an understanding of how PEBA emerged and then underpinned ‘the Reform’. Second, the new Standing Orders of the GPL were used to describe what ‘the Reform’ is in institutional terms. Third, primary source documentation drawing on the efficacy study, GPL Order Papers and Hansards of plenary deliberations demonstrate the real intent of the GPL to implement ‘the Reform’ and confirmed progress in attaining that goal.

Verifying the existence of ‘the Reform’ is one piece of the foundation on which this project can proceed. Verifying the paradoxical nature of PEBA is equally necessary. Chapter Three focuses on that essential task.
Chapter Three: The GPL’s Reform as a ‘Paradox’ for Legislative Studies and Legislature Development

‘Parliament often seems at its weakest in the control and scrutiny of public money.’
(John McEldowney and Colin Ley, 2005)

3(1) Introducing the GPL’s Reform as a Paradox

This chapter begins with a review of some basic understandings developed by legislative studies scholars regarding political parties in legislatures, committee systems and legislature autonomy. The discussion provides a starting point for examining legislative studies scholarship to understand why so much good research produced over the course of a century is unable to explain ‘the Reform’. Theoretical eclecticism applied in Chapter Four to develop the working hypothesis stems from the analysis in this chapter. A review of careful description about parliament’s budget oversight work and theories explaining the decline of parliament’s role in budget scrutiny equips expert and non-expert readers alike in appreciating the extent of the paradox generated by the GPL’s development and implementation of PEBA.

Establishing the paradoxical nature of ‘the Reform’ is a vital pillar of this project. This chapter juxtaposes established legislative studies theories and experiences in parliamentary reform with the reality of PEBA at the GPL. The exercise in juxtaposition necessitates repetitive citation of dominant theories in legislative studies in the words of the scholars themselves, as well as citing the experiences in parliamentary reform that accord with those theories. The purpose is to establish the ‘lawlike’ quality of those theories. If the exercise is successful, the lawlike nature of several foundational theories in legislative studies will be appreciated and ultimately ‘the Reform’ will be seen as a true paradox for violating them so deeply. Complete validation of the dependent variable as a paradox is also absolutely essential to justify the
necessity of developing and testing a new hypothesis and sets a foundation to perhaps create a new theory of legislature transformation.

The chapter starts small and then expands to the bigger ideas of legislature strengthening and several of the grander efforts in parliamentary reform. The purpose is to build an understanding of how paradoxical ‘the Reform’ truly is across several fields, subfields and experiences in legislature design and transformation. Enough is provided in each field and subfield to establish the paradox of ‘the Reform’. This provides specialists and non-specialists in legislative studies the ability to confidently conclude that ‘the Reform’ should not have happened, and certainly not in the fashion it happened, given the state of theorizing in legislative studies.

3(1)(a) ‘The Reform’ Never Should Have Happened at the GPL

As Mezey (1979) set forth, strong governing parties will resist the strengthening of committees. Departmental committees are identified as the cornerstones of an effective budget oversight system and governing party leaders perceive stronger committees as a potential threat to the party’s control of the legislature. Shaw (1998) explores the topic of legislature committee power and uses the U.S. Congress as the core reference point owing to its status as the most ‘autonomous’ legislature and committee system. Shaw argues, along with others, that weak parties are a necessary, though not sufficient condition, for the development and empowerment of a legislature’s committee system. Shaw’s own assumptions build on work by David Olson, who argued almost twenty years before Shaw that “parties and committees are ... contradictory and even mutually exclusive means of internal organization [in a legislature]. The importance of

each is inversely proportional to the other. The more important the committees, the less important the parties, and vice versa.”

The certainty underlying this assumption about parliamentary systems is consistently affirmed by scholars in the legislative studies field. Longley and Davidson consider the expanding roles of parliamentary oversight committees as part of an ongoing contestation for power between backbenchers and the executive. Executives are seen as wholly oppositional actors in the parliamentary reform effort. David Docherty writes that given “the adversarial nature of Westminster legislatures, members of the executive naturally seek to advance their legislation and policies with as little opposition as possible. If cabinet members can avoid scrutiny of their own caucus and the opposition parties, they will.”

Graham White, also generalizing about the qualities of parliamentary systems, asserts that “individual MPs, including most of those on the government side, have virtually no influence on important policy decisions. In cabinet-parliamentary systems, such as [Canada’s], power, authority, and responsibility are meant to be centralized in the executive [...]”

Polsby’s (1975) comparative work on congressional and parliamentary systems emphasizes how real strengthening of the legislature is inimical to those wielding executive power in parliamentary systems. He asserts that empowering committees that oversee departments in Westminster “from the standpoint of government and ministries alike would be suicidal, since such a move would place significant weapons in the hands of the party opposition. [...] Consequently, the idea, although seriously advocated, seems alien to the genius of the British

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Constitution.” The troublesome nature of the GPL case for legislative studies theory boils down to the presumption that power is being contested everywhere and always in a zero-sum struggle between executive and legislative branches. Yet, the ANC in Gauteng defies the theoretical framework guiding these dominant theories in legislative studies.

Apart from the general understanding that executives will seek to impede legislature strengthening are broader notions in the legislative studies literature that legislatures are not likely sources of dynamic initiatives seeking to bring about societal change. Mezey’s literature review focusing on legislative studies in the Global South identifies the relevance of the ‘conservative legislature’ hypothesis postulated by Robert Packenham building on ideas set forth by Samuel Huntington. Prevailing ideas in that literature suggest Global South legislators in societies facing serious socioeconomic challenges will direct most of their energies outside of the legislatures, leaving the institutions themselves outside of the realm of major change. Joel Barkan’s research of parliamentary behaviour in East Africa in the late 1970s is part of a larger body of literature carrying forward the ideas set forth by Packenham. Altogether, this area of literature dismisses legislatures as sources of serious institutional innovation to meet socioeconomic challenges confronting societies in the Global South.

Strong claims about executive opposition to parliamentary strengthening as well as underlying notions of legislature conservatism, especially in Global South countries, create blinders in the legislative studies field to ‘the Reform’. The paradox is not simply a matter of current theories in the field failing to explain how PEBA came into fruition. Dominant theories

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156 Mezey, Michael L.. 1983. “The Functions of Legislatures In the Third World.” *Legislative Studies Quarterly* 8(4). P. 528; Mezey’s analysis on this matter looks at Robert A. Packenham’s ‘Legislatures and Political Development’ in the edited volume *Legislatures in Developmental Perspective* which in turn builds on the work of Samuel P. Huntington in *Political Order in Changing Societies*.

157 Ibid. P. 529.
and ideas in the legislative studies field preclude consideration of South Africa generally and Gauteng specifically as generators of serious parliamentary strengthening because of the ANC’s electoral strength, the early onset of a dominant party system, and a predisposition in the field to overlook the possibility of legislature strengthening in the Global South.

3(1)(b) A ‘Dominant Party System’ Adds to the Paradox

South Africa is described as having a dominant party system. This typological label applies to South Africa (and especially Gauteng province) in the period preceding, during and following ‘the Reform’. The ANC nationally, and in seven of nine provinces when the reform began in 1998, was assured that executive prerogatives were unassailable. The ANC’s strength in the National Assembly and GPL expanded during ‘the Reform’, meaning that the party had an electoral mandate as strong as any party in a democratic parliamentary system could hope to achieve. The additional variable of a dominant party system is seen by scholars as a factor eliminating any prospect of legislature empowerment.

Handley, Murray and Simeon’s (2008) conceptualization of South Africa’s dominant party system is set against the conventional view of a competitive party system. Incumbent and opposition parties play the roles of government and loyal opposition with the outcome being the protection of democracy. The absence of a substantial, loyal opposition in South Africa leads

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them to ask “whether there is a broader set of institutions that can act as a source of opposition and provide genuine checks and balances.” These scholars look to opposition (factions) within the ANC, the courts, elected provincial governments, the media and civil society as sources of accountability. A rigid application of competitive party system theory, in their analysis, rules out any prospects of parliamentary strengthening of oversight and accountability functions by the ANC in Gauteng because it was operating in a dominant party system.

The generalized propensities of parliamentary systems discussed up to this point, combined with a dominant party system, are applied to South Africa so uncritically by scholars that it can result in flawed predictions and empirical blind spots. Joel Barkan, one of only a few legislative studies scholars focusing on Africa, applied theories derived from his past comparative work to South Africa. His observations about the ANC leadership’s centralization of power leads him to conclude that South Africa’s National Assembly was unlikely to get the institutional independence that comes with budget amendment powers “anytime soon”.

The National Assembly passed the Money Bills Amendment Procedure and Related Matters Act (MBAP) in 2009, the same year as Barkan’s prediction. Barkan sees such a change becoming possible only through the erosion of the ANC’s electoral dominance. He writes, “once parity or near parity is achieved between the parties, it is very likely that the Assembly will become a more open, and less controlled branch of government.” MBAP was passed at a time when the ANC held 66 percent of National Assembly seats. The ANC had lost some support following the 2004 elections, but the other political parties were fractured and nowhere near

161 Ibid. P. 192.
162 Ibid. P. 192.
164 Ibid. P. 225.
165 Ibid. P. 226.
electoral parity. Barkan’s incorrect prediction of the conditions under which MBAP would be adopted results from his application of the dominant party system variable.

This research project accepts the typological designation of South Africa as a ‘dominant party system’ for the period of time relevant to ‘the Reform’. This factor only reinforces the confounding nature of ANC-driven empowerment of the GPL’s budget oversight and scrutiny function from the perspective of long-standing theories and areas of significant concurrence among legislative studies scholars. Simply put, the context in which ‘the Reform’ occurred all but precludes any chance of its occurrence from the perspective of theory.

3(1)(c) American Legislative Studies Compounding the Paradox

‘American legislative studies’ is not only a distinct sub-field of legislative studies, but also dominates the others. It is central in setting the research agenda and as a normative standard for evaluating the status of legislature development. This reality compounds the challenge in legislative studies to theorize ‘the Reform’ and is also a factor in making it that much more paradoxical.

When Polsby (1975) set forth the ‘transformative, arena and rubber-stamp’ typology as a useful guide for distinguishing legislatures, he also helped to further entrench a normative research agenda focused on how to make legislatures more transformative. The U.S. Congress is understood as the most transformative legislature. Polsby himself notes, “[only] a little scholarly attention has been paid to the issue of the reform of legislatures, looking toward the enhancement of their independent powers. One favored place to begin has been for reformers quite consciously to adopt as their model the United States Congress.”166 Malcolm Shaw’s synopsis on

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the changing roles of parliamentary committees in 1998 is emblematic of the normative awe in which U.S. Congressional committees are held. Shaw identifies that the preceding twenty years of comparative study affirms the exceptional status of U.S. Congressional committees. Shaw cites the oft-used description by legislative studies scholars “that the committee system in the American Congress is not only the strongest system [...] it is by far the strongest.”167 Legislature development is an effort to accrue greater strength when guided by this widely held perspective and consequently, the U.S. Congress becomes the standard against which all such efforts are measured.

Budget authority, and the ability to determine actual spending, ascends to the top of the list of ‘must have’ powers for parliamentary committees to begin approximating the American ideal. This paradigm-driven bias enters almost seamlessly into the analyses of legislative studies scholars writing on the strengthening of parliamentary committee systems. Barnhart’s global comparative review on committee strengthening conducted by the Commonwealth Parliamentary Association (CPA) suggests that budget oversight can only become ‘worthwhile’ if committees could reduce/increase spending at the programme level while remaining within the overall budgeted amount (so as to not actually increase or decrease the budget).168 The Hansard Society’s well-known Commission on Parliamentary Scrutiny in the United Kingdom called for changing estimates processes “to allow Parliament to debate and vote transfers within overall departmental budgets. This would help focus the attention of MPs and ministers, and hopefully the media and the public, on the scrutiny of spending plans.”169 Just like Barnhart, the Hansard

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Society’s Commission sees the ability to help set within-programme spending levels as a means to empower committees but also elevating their significance in the political system as a whole. Docherty’s review of legislatures stemming from a Canada-wide ‘democracy audit’ is critical of the fact that Parliament’s departmental committees are “prevented from making even modest changes within government spending lines.”\(^\text{170}\) Each of these sources advancing parliamentary reform is infused with the normative agenda of making Westminster-based parliamentary committees more transformative by giving committees real budget authority.

‘The Reform’ did not entertain the encouragement of GPL committees altering within-programme spending amounts. It did enhance the formal budget oversight and scrutiny process to an unmatched degree but stopped short of allowing committees the ability to explicitly determine spending levels. Allowing departmental committees the authority to directly affect spending levels blurs the lines of responsibility that is at the heart of responsible government.

As Sutherland cautioned reformers in Canada’s House of Commons in the early 1990s, “responsible government can only make sense when the government is an identifiable entity within another entity that keeps it responsible.”\(^\text{171}\) It is not the Health Committee and its chairperson who are ‘responsible’ in the framework of responsible government. It is the Minister of Health, the rest of the executive and the governing party who must account for policy decisions. If these lines are blurred by reform, it would constitute a fundamental change to the system of responsible government and could be called ‘revolutionary’. The GPL, however, remained fully consistent with the responsible government framework and paradoxically ignored the dominant committee reform agenda driven by scholars and practitioners.


3(1)(d) A Fixation on Legislature Autonomy Compounds the Paradox

‘Transformative’ and ‘autonomy’ are synonyms in the conceptual language of legislative studies. Transformative legislatures and transformative committees possess and exercise the power to make policy decisions. This enhances the degree of legislature autonomy from the executive branch. When legislature reform seeks to create a more transformative committee system or plenary it is couched in the language of ‘legislature autonomy’. Conversely, legislatures that are not transformative, or have notably less transformative capacity, are seen to lack autonomy from the executive. Legislative studies is fixated empirically and normatively with enhancing legislature autonomy.

The fixation on legislature autonomy drives the research agenda and is fully entwined with methodological developments in legislative studies. This tendency is enhanced exceptionally in the research areas of legislature evaluation and legislature reform. Polsby’s important contribution in 1975 addressed the matter of legislature reform under the question “toward transformativeness?”.172 Key contributions in the comparative study of legislatures that typify the state of the field since Polsby’s work display remarkable fidelity towards that research agenda. Mattson and Strom, whose comparative research on committee powers in Europe is widely cited, study committee power through the prism of policy influence.173 The empirical focus is on “the ability of the committees to influence or determine parliamentary outputs, thus emphasizing the decisional functions of parliaments.”174

Loewenberg et al., who edited the volume Legislatures: Comparative Perspectives on Representative Assemblies, list the ‘factors influencing institutional autonomy’ of legislatures as

174 Ibid. P. 285. (emphasis added)
one of four key research questions in the field.\textsuperscript{175} The other three questions guiding the work in the volume and for the field are: motives on choices regarding rules of procedure, stability of equilibria-generating forces in institutional arrangements, and the impact of members with either long or short-term career aspirations for the legislature. ‘Institutional autonomy’, which is an attribute of the institution, is specifically privileged as a matter of focus for researchers.

The \textit{Journal of Legislative Studies} produced a special issue on the theme of comparing and classifying legislatures in 2006, in order to take stock of the field. Contributing authors were asked to use four qualitative measures in writing about the legislatures in their respective areas of expertise. These four measures were: (1) the extent to which legislative measures are enacted independently of the executive; (2) the extent to which major public policy issues are initiated by the legislature; (3) the extent to which the legislature acts to reverse or alter executive initiatives; (4) the extent to which the legislature acts to reverse or alter executive initiatives on major public policy issues.\textsuperscript{176} Every measure is in fact seeking out a particular aspect of legislative autonomy. This research agenda is framed by a conceptualization of the U.S. Congress as the exemplar of legislative autonomy, making it the teleological endpoint of legislative development.

Fish and Kroenig’s (2009) global survey on national legislatures cements the fixation of the field on the attribute of institutional autonomy. They exhaustively survey national legislatures of countries with populations of greater than half-a-million. The survey generates a legislature power index. Two of the four categories of the survey are: legislature influence over the executive and legislature autonomy. The other two categories are: specified powers and


legislature capacity.\textsuperscript{177} Legislature transformativeness, or autonomy, is not just an attribute in this literature, but an end. This takes on even greater significance as the focus on legislature autonomy influences methodological preferences in the field.

Kenneth Shepsle (2002) suggests that American legislative studies is in fact more than a ‘field’ of the social sciences. Shepsle asserts that American legislative studies is in fact better understood as a ‘methodology’ serving as the point of origin for an array of methodological innovations in the social sciences and is notable for its lack of commitment to a singular theoretical premise.\textsuperscript{178} Shepsle maintains that “American politics has served the wider political science community by forging scientific tools and providing a laboratory in which they are tested, perfected and prepared for export.”\textsuperscript{179} Shepsle’s claim is validated by the work of accomplished scholars studying parliamentary systems.

The impact of American legislative studies’ ‘exports’ on the work of ‘importing’ scholars is as palpable today as it was in the 1960s and 1970s. Malcolm Aldons’ work is that of a practitioner-scholar. His professional life straddles work in the Australian legislative system and the field of legislative studies. His research focuses on the role and relevance of parliamentary committees (especially in Westminster systems). In the first major phase of his work, he seeks to measure the influence of legislature committee reports. He approaches the task by devising ordinal rankings for executive branch responses to committee oversight report recommendations. Executive branch responses are classified within the following range: ‘accept’, ‘agree’, ‘support’,

\textsuperscript{179} Ibid. P. 388.
‘accept in principle’, ‘accept in part’, ‘not accept’, and ‘disagree’.\textsuperscript{180} Aldons wants to measure the extent to which legislatures, through committees, can impel new directions in executive decision making and policy.\textsuperscript{181} In his analysis, this offers a measure of the legislature’s influence and at the same time an indicator of its autonomy from the executive.

In the second phase of his research, Aldons proposes conceptualizing legislature committees on a ‘decisional — non-decisional’ spectrum. The research agenda he pursues seeks to establish whether committees can directly influence or determine legislative outputs and outcomes.\textsuperscript{182} Aldons only sees committees and legislatures within a conceptual frame defined by the U.S. Congress driving a preoccupation with the ideal of legislative autonomy. The core presumption of such a framework is that adversarial relations between executive and legislative branches are both necessary and beneficial. Aldons then argues that to ascertain where a legislature sits on the spectrum between the ‘decisional’ and ‘non-decisional’ endpoints requires an exclusively quantitative approach. Committee reports and the explicitly written decisions contained therein are assigned ordinal rankings established by Aldons in order to arrive at a coefficient measuring the committee’s assertion of its autonomy and measurable impact on political outcomes.\textsuperscript{183} Aldons’ work, which has set the research agenda for many in the field of legislative studies, not only imports a distinctly American ontological framework for studying legislatures but is unable to break free of that ontology because he also imports the accompanying epistemological paradigm. It is this uncritical, twofold acceptance of a distinct Americanist legislative studies framework that underpins the failure of current theory to account for ‘the Reform’.

\textsuperscript{181} Ibid. P. 25.
\textsuperscript{182} Ibid. P.85.
\textsuperscript{183} Ibid. P.85.
Inadequate attention to the dynamics of legislatures in the Global South generally, and South Africa particularly, generates obvious failures in the applicability of the most generalized models for legislature evaluation. For example, Monk (2010) is one of several legislative studies scholars taking forward the research agenda set by Aldons. However, Monk takes exception to the evaluative criteria set by Aldons. Monk dismisses the idea that ‘decisional’ committee resolutions contained in reports suffice to reflect legislature effectiveness. Monk’s alternative approach requires first identifying ‘relevant’ groups that choose to participate in committee processes and secondly, surveying those interest groups about their perceptions of committee effectiveness and autonomy.\(^{184}\) The ‘relevant’ groups are: the executive/cabinet, the bureaucracy, parliament in plenary, interest groups, the general public, and the judiciary.\(^{185}\)

Note that Monk is not questioning Aldons’ project of measuring legislature relevance as a proxy for its autonomy from the executive branch. Nor is he departing from a methodology which exclusively seeks out easily observable data that are convenient for large-N quantification. Monk justifies his model on the premise that “politicians must attend to, or be seen to attend to, the interests of the most vocal and visible.”\(^{186}\) Like Aldons, and most others, Monk’s framework for analyzing legislatures obscures more than it reveals if applied to settings like South Africa. Those segments of the population who preoccupy the vast majority of the South African government’s time and resources are the least likely to participate in committee processes. The socioeconomically weakest segments of the population are also the most disempowered politically. The fundamental assumptions underpinning Monk and Aldons’ work, assumptions

\(^{185}\) Ibid. P. 7.
\(^{186}\) Ibid. P. 10.
‘exported’ by American legislative studies, make it improbable to recognize let alone theorize ‘the Reform.’

The emphasis on legislature influence that preoccupies the better part of parliamentary scholars’ attention has fused with the quantitative, large-N methodological turn. It is difficult to challenge Shepsle’s claim about American legislative studies being as much a methodological entity as a field of study that is exported globally in the legislative studies field. Parliamentary studies scholars largely affirm his assertion. However, the combination of what is worth knowing (legislature autonomy) and how to know it (large-N, quantitative analysis) serves to make ‘the Reform’ invisible to scholars. What transpired in terms of parliamentary reform at the GPL is profound and yet does not demonstrate a zero-sum power struggle with a legislature asserting its autonomy against the executive. Large-N quantitative analyses seeking to establish legislature autonomy and how legislatures can become more transformative are unlikely to register what happened at the GPL. This situation makes ‘the Reform’ paradoxical as it remains effectively outside the perspectival lens of scholars in the field and is not readily accessible as a phenomenon to the favoured methodological tools employed by those scholars.

3(1)(e) A Parliamentary Studies’ Renaissance on Legislature Autonomy

Aldons recommends a deep historical study on the emergence and operation of legislature committees to answer whether “committees [were] appointed to assist the executive or check the executive?”187 In all likelihood, he is recommending this research endeavour in order to reconcile the incongruity between the modus operandi of parliamentary committees and the normatively driven research focus on legislature autonomy pervading the field today. Again, Aldons is unable

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to frame this question in anything but mutually exclusive terms because of the adversarial conceptualization of executive-legislative relations at the foundation of legislative studies. This is given pride of place in American-based legislative studies which also underpins the near obsession with ‘legislative autonomy’. Framing ‘assist’ on the one hand and ‘check’ on the other in mutually exclusive terms obscures more than it illuminates in the GPL’s case. Instead, replacing the conjunction “or” with the preposition “through” allows for a constructive reframing of Aldons’ question, which would read – ‘How does the GPL assist the executive through checking it?’

Budget oversight and scrutiny that constantly and cyclically analyzes, queries, deliberates, and reports on all stages in the budget cycle of government but that does not seek to diminish the capacity of government to explicitly and directly determine policy will necessarily take on a collaborative hue. Committees that are required to conduct such rigorous budget oversight but who cannot, or will not, alter the actual budgets will need to take a more constructive, deliberative approach in engaging the executive on serious matters. Such committees will not seek to make immediate impacts on poor budget policy choices but will be resigned to a longer-term form of influence, depending on the issue. Departmental committee budget oversight framed in Aldons’ terms presumes head-on confrontation and so the only way for committees to succeed in making an impact is to increase their decisional autonomy at the expense of the executive. However, budget oversight that sees oversight committees assisting the executive through budget oversight work is collaborative and necessitates longer horizons for influence through constant engagement and meaningful deliberation.

Blondel (1973) cautioned against uncritical acceptance of mythical notions about parliamentary autonomy from the executive in evaluating parliamentary functioning. He writes:
The yardstick by which to measure the significance of legislatures should not be whether the legislature ‘really’ passes all the statutes, or even most of the rules of the country, and whether it is in a ‘real’ position to make or unmake governments. These simply are not the ‘functions’ of legislatures. The function of the legislature is to provide a means of ensuring that there are channels of communication between the people and the executive, as a result of which it is possible for demands to be injected into the decision-making machinery whenever they exist and for the executive decisions to be checked if they raise difficulties, problems, and injustices. This is why it is critical that the legislature be involved in matters of detail and of relatively limited importance as much as with matters of general importance. This is why it is also critical that the legislature be concerned with decisions already made as well as with matters still under consideration. Indeed, this is, historically, why legislatures began, for the defense and protection of citizens against undue encroachments by the executive on detailed and limited questions was often much more visible to the average [person] than the preparation of bills and the development of general principles.188

Blondel’s rendering of the essential criteria against which to measure parliament’s role and functioning is in need of a renaissance in parliamentary studies specifically and legislative studies generally. A more grounded conceptualization of how parliament functions and why can help guard against conflating it with the U.S. Congressional committees and plenary. At the same time, a more accurate and less wishful conceptualization of parliaments can enable the fuller appreciation for how remarkable ‘the Reform’ was while understanding that at no time did it seek attainment of some American legislative studies driven paradigm. ‘The Reform’ will

remain a paradox in the absence of a renaissance among parliamentary scholars on the core nature of parliaments.

3(1)(f) American Legislative Studies Directly Affects Legislature Reform Agendas

The research question motivating this project also intersects with the literature studying the linkage between legislature appropriations processes and fiscal restraint. This is a sub-field of legislative studies with a long history. Theories developed in this sub-field profoundly influence how practitioners have progressed in the areas of budget oversight and accountability systems. The relevance of this literature is crucial for Global South legislatures that are being ‘developed’ by Global North donors because of concerns by the latter that expanding legislature capacity and autonomy might unwittingly lead to ever-growing government budgets in debtor states. Once again, the U.S. Congress takes on archetypal significance for both scholars and practitioners.

PEBA, as a formal institutional framework for budget oversight and scrutiny is completely disconnected from this body of literature and the legislature design blueprints guided by it. PEBA is rooted singularly within the effort to ensure that money is used as planned, the plans are sound in light of government priorities and finally that the desired outcomes were generated. PEBA can oversee government programmes aiming to produce fiscal restraint but only if that is rendered part of expenditure plans and priorities. Otherwise, it is not impelled by an over-arching normative commitment to fiscal restraint. Somehow, the GPL charted a distinct path and turned away from the most dominant institutional innovations in budget oversight driven by legislature development programmes globally. This heightens the paradoxical nature of ‘the Reform’.

The ‘fiscal restraint’ literature, from the perspective of technical budget oversight design and praxis, is largely generated by the World Bank Institute (WBI), International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), United Nations
Development Program (UNDP), bilateral country donor agencies and a cohort of specialized policy institutes, think tanks and NGOs. This cluster of entities is identified as the ‘Legislature Development Network’ (LDN) for the purposes of this project. The multilateral and bilateral governmental organizations sitting atop the network deploy millions of dollars toward legislature development projects as well as experts, advisors and consultants. Musolf and Smith observed that “it may not be too much to claim that organizations like [the] Inter-Parliamentary Union and international development banks and assistance agencies generate pressure to have legislatures and provide models as to how they should be organized or what they should do.”

An LDN donor consultation process in 2007 reveals the truth of Musolf and Smith’s claim made close to three decades earlier. The 2007 donor consultation report recommends support for a ‘standards based approach’ and working within donor-defined ‘principles’ to increase the likelihood of institutional reforms in donor recipient legislatures consistent with donor-established expectations. The same 2007 report twice makes mention of the need to use benchmarks for democratic parliaments through the OECD Development Assistance Committee. This further impels legislatures in the Global South to conform their representative assemblies to models proffered by the Global North.

A set piece institutional innovation gaining significant momentum through the LDN is the establishment of a ‘Congressional/Parliamentary Budget Office’ (CBO/PBO). CBO’s are singularly focused on budgetary oversight work. The first CBO emerged in the California State


191 Ibid. P. 19, 37.

192 The author will use CBO and PBO (Parliamentary Budget Office) interchangeably. Where specific governance systems are being discussed, CBO will be used for Presidential-Congressional systems and PBO for Westminster-parliamentary systems.
Legislature due to that legislature’s concern over its diminishing budget authority.\(^{193}\) Mezey (1979) situates the advent of the CBO in the U.S. within a legislative branch contest to wrest some power from the executive branch in the appropriations process. The U.S. Congress established its CBO in 1974. Improving the information received by American legislative committees through the CBO allows appropriations and budget committees to rival the Office of Management and Budget in the American executive branch.\(^{194}\) The CBO (or PBO) evolved into an American legislative sector ‘export’ now found in many legislatures and desired by many more.\(^{195}\)

A PBO analyzes all aspects of the budgeting, appropriating, and financial reporting process and provides its findings to parliament. This could be a benign institutional device to empower legislators in their budgetary oversight work. However, the LDN injects additional content and institutional substance to the PBO model in order to prevent deviation from OECD, IMF and World Bank notions of fiscal restraint. The same 2007 LDN donor consultation report referenced above highlights the work of Barry Anderson, head of the Budgeting and Public Expenditures Division of the OECD, and former official in the U.S. Congressional Budget Office. Anderson asserts that CBOs have the following four core functions:

(1) Economic Forecasts – that are objective, conservative and centrist. (2) Baseline Estimates – that are based on projections not predictions, are centrist, have a basis in current law, have a medium term focus and replace previous year and executive baselines. (3) Analysis of the Executive’s Budget Proposals – that is objective (a


technical review not a programmatic evaluation) and may serve to enhance the credibility of the executive and executive forecasts. (4) Medium Term Analysis – which forces the executive to look beyond one year, estimates medium term economic and fiscal impacts of policy proposals, takes account of fiscal risks such as guarantees, pension liabilities, contingent liabilities and PPPs, and provides a basis for long term analysis.¹⁹⁶

The ‘fiscal restraint’ content and discourse being infused into the PBO institutional model by the LDN is far more explicit today. This message has only grown stronger since 2007. In 2011, the OECD’s Budget and Public Sector division said PBO’s are a tool to “address bias toward spending and deficits” and that PBOs will, “generally enhance fiscal discipline.”¹⁹⁷ In 2013, the OECD Budget and Public Sector division was sustaining this message in parliamentary development programmes, arguing that PBOs “address deficit bias and procyclicality and more generally enhance fiscal discipline.”¹⁹⁸ Anderson (2009) articulates the conundrum for LDN interests presented by increasing legislature activism in budgetary processes as a result of legislature capacity building programmes. He says there is a standing concern, almost a received wisdom, that legislatures are inherently inclined to tax less and spend more. Anderson, however, argues that poor fiscal discipline need not be an inevitable outcome of increasing a legislature’s role in budgetary processes if ‘Maastricht-type rules’ and other institutional features are added that “frame budgetary decisions within preset totals.”¹⁹⁹

An OECD 2011 briefing acknowledges the growing popularity of PBOs but recognizes that they are “often part of a broader package of reforms.” This ‘broader package’ of institutional reforms is also combined with the message that PBOs serve fiscal discipline. This message is delivered through the multilateral forums and processes of parliamentary development that are directed and funded by the LDN. In this way, the LDN can empower and develop legislatures to act as additional, domestic guarantors of fiscal discipline in the Global South. So not only do executives of Global South states face the external pressures from Global North donor states and international financial institutions to depress state spending as far as possible but an additional watch-dog on fiscal discipline emerges out of the legislature under the guise of ‘legislature development’, fostered conveniently by LDN programmes.

The impact of this agenda is observable all too easily in the Global South and especially in South Africa. In 2010, the Southern African Development Community-Parliamentary Forum issued its parliamentary development benchmarks. Under section 7.3 ‘Financial and Budgetary Powers’, it agreed that “Parliaments shall have a Parliamentary Budget Office, established by law, with qualified staff to assist in budget analysis and monitoring budget implementation, and advise Parliament at least on a quarterly basis.” Two years later, South Africa’s National Assembly was putting the finishing touches on its own PBO, ready for launch in 2013. South Africa established its PBO within the legal edifice of MBAP in 2009. MBAP contains fourteen substantive sections of which the PBO is just one. Not less than twenty-five articles and sub-articles of MBAP are directed at ensuring the inviolability of the fiscal framework and by extension the maintenance of fiscal discipline.

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The South African National Assembly appears to be conforming more or less exactly to the legislature development trajectory intended by the LDN. This is consistent with South Africa’s performance in relation to fiscal discipline. In 2004, the year ‘the Reform’ took effect through changes to the GPL’s Standing Orders, the IMF released its ‘Article IV Consultation Staff Report’, wherein the South African government was commended “for its impressive track record in budgetary management.”\textsuperscript{202} South Africa’s willingness to continue floating exchange rates, its approach to relaxation of capital controls, and the government’s ‘cautious strategy’ on external debt management underpinned the IMF’s praise at the time. It is no surprise, then, that South Africa’s MBAP and PBO would be broadly attuned to the model provided for them by the LDN.

As indicated earlier, the literature on legislature development and change generated by the LDN is rooted in a highly particular and distinct sub-field of American legislative studies that focuses on the question of elected assemblies and fiscal restraint (or the absence thereof). Work by Aaron Wildavsky and Allen Schick sets a good portion of the research agenda for this sub-field which seeks to explain budgetary control and fiscal discipline without linkages to broader social, political and democratization outcomes.\textsuperscript{203} Institutionalizing budget restraint is an end in itself that resonates strongly with the ontological foundations of neoliberal economics. This work is ‘Americanist’ in its roots and orientation and its progenitors, like V.O. Key Jr., framed questions about the operation and budgeting by legislatures firmly in the particular context of the U.S. Congress.\textsuperscript{204}

The most contemporary and rigorous work in this tradition is Joachim Wehner’s, \textit{Legislatures and the Budget Process: The Myth of Fiscal Control}. As the title suggests, the

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\item \textsuperscript{202} International Monetary Fund. 2003. \textit{Staff Report for the Article IV Consultation}. Washington, D.C.: International Monetary Fund. P. 18.
\item \textsuperscript{204} Key, V.O.. 1940. “The Lack of a Budget Theory.” \textit{American Political Science Review} 34(6). P. 1137.
\end{itemize}
\end{footnotesize}
explanandum is fiscal control and preventing financially reckless legislators from perpetually increasing government expenditures beyond government revenue. Wehner’s work is an extraordinary and succinct synthesis of theorizing on legislative processes that looks at 80 countries. He does more than most to include numerous states that endured colonial domination, inter- and intra-national conflicts and foreign-based economic interventionism. Many of these countries are subject to World Bank, IMF and OECD development and economic management prerogatives. Ultimately, however, the dependent variable remains fiscal prudence through legislative systems design.

Wehner (2010) draws on several accomplished scholars in this specific discipline to draw forth a critical division of labour between departmental committees in the appropriations process to help ensure fiscal restraint:

Wildavsky [...] famously described the Appropriations Committee of the U.S. House of Representatives as ‘a guardian of the Treasury’. Schick argues that to centralise responsibility in a budget or finance committee ‘encourages examining the budget in fiscal terms’, whereas to disperse authority across sectoral committees ‘encourages a programme orientation’. Crain and Muris similarly regard the consolidation of control within one committee as [...] ‘a mechanism to contain spending pressures’. 205

The convergence on South Africa of the research agenda driving the subfield of legislatures and fiscal policy with the literature produced by the LDN can be grasped in Jaochim Wehner’s research focused on legislatures and budgeting in South Africa. Wehner’s initial assessment of MBAP considers “to what extent the adopted framework facilitates an active parliamentary

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process while safeguarding fiscal prudence.”\textsuperscript{206} This effectively restates the whole frame of the LDN agenda for parliamentary development and reform in the Global South while fully reaffirming the research agenda set by V.O. Key seventy years ago.

Wehner, writing in 2009, the same year that MBAP became law, argues that South Africa can maintain fiscal discipline by adopting a two-step budget process that centralizes the decisions on the aggregate budget within one committee.\textsuperscript{207} Budget aggregates, he writes, should not be arrived at through a balkanized committee process where each committee possesses ‘strong sectoral interests’.\textsuperscript{208} Theory in this literature predicts that centralizing the legislature appropriations process forces one committee to take ownership of outcomes and defend fiscal prudence. A balkanized process spread among several committees with sectoral interests will generate free-riding and ever-increasing budgets as no one committee need take ownership of the final outcome.\textsuperscript{209}

It comes as no surprise that South Africa’s MBAP follows the ‘Maastricht-like’ controls required by the LDN and advanced by scholars such as Wehner specifically and the legislature appropriations design subfield more widely. Section 8 of MBAP requires referral of the fiscal framework and revenue proposals directly to the Finance Committees of the National Assembly and National Council of Provinces (NCOP), South Africa’s equivalent of a Senate. These committees first approve or amend the fiscal framework and revenue proposals. Section 9 of MBAP then requires the Division of Revenue Bill to be referred to the appropriations committees of the National Assembly and the NCOP. Any amendments must be consistent with

\textsuperscript{207} Ibid. P. 29-30.
\textsuperscript{208} Ibid. P. 30.
\textsuperscript{209} Ibid. P. 30.
the fiscal framework finalized in the Finance Committees. Section 10 of MBAP then locks-in the Appropriations Committee as the key ‘custodian’ of the appropriation bill and it must process the recommendations of sectoral committees. Finally, Section 15, Article 2 of MBAP directs the South African PBO to support the newly established Finance and Appropriations Committees per Section 4 of the act, as the PBO’s highest priority.

This institutional design primarily sustains ‘fiscal prudence’ by shielding the government’s budget from the demands and pressures stemming from ‘sectoral’ committees such as health, education, and social development, among others. Centralizing budgetary oversight through finance and appropriations committees to solidify budget aggregates inhibits sectoral committee deliberation on policy priorities in the latter stages of the appropriations process. Institutionally, the foremost political priority is fiscal prudence, secured explicitly in the Finance and Appropriations Committee stages. Fiscal prudence is then preserved implicitly by structurally suppressing the potential for sectoral committees to discuss the most pressing priorities in areas like health, education, and social services. It is the potential for sectoral (portfolio/standing) committees to conduct truly expansive deliberations on the full scope of the felt needs of the citizenry that is being abandoned in the process of increasing parliamentary power within the LDN’s paradigm of legislature development.

3(1)(g) PEBA as a Politically Significant Alternative to LDN Models

The Reform’, and the GPL’s PEBA oversight model on which it is based, stands in stark contrast to what is now institutionalized in the South African National Assembly and the model being exported via the LDN. A key structural difference between the competing models is that the GPG’s appropriations bill is referred to the Finance Committee at the same time as each departmental appropriation request is referred to the corresponding departmental committee. The
GPL’s Finance Committee mandate does not include confirming absolute aggregates that bind the ‘sectoral/departmental’ committees later on. The GPL’s Finance Committee is a ‘portfolio committee’, meaning it possesses the same formal status as other ‘sectoral’ committees such as the Portfolio Committee on Education and the Portfolio Committee on Health. The GPL’s Finance Committee holds hearings first and it does consider fiscal prudence but the other committees with budget oversight responsibilities also begin work on the relevant departmental/agency budget(s).

More importantly, PEBA structurally requires uninhibited, expansive deliberations on priorities underlying the budget. “A [portfolio] committee’s first engagement with the [budget] will be a presentation by the corresponding portfolio department of that department’s conceptualization of the policy environment. The presentation will explain the policy priorities in the same detail that led to their adoption in the executive.” GPL portfolio committees are unable to do more than recommend changes to a department’s budget, but they are free to fully interrogate and explore the priorities and felt needs of the citizenry in their jurisdiction. The GPL’s PEBA policy document makes it clear that “the priorities and outcomes of a department are not subject to Finance Committee scrutiny.” This preserves the GPL’s prerogative in deliberating the issues of greatest concern to the people and rejects an institutional lever used in other jurisdictions to advance donor-determined concerns for fiscal restraint.

The explanandum at the root of the research question guiding this project is not just paradoxical for conventional legislative studies theory. ‘The Reform’ reveals an alternative path

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for legislature development that is disagreeable from the perspective of academics whose research aims to shield government budgets from the pressures of sectoral committees. Sectoral committees exist to focus on specific policy issues such as health, housing, education and social welfare. They can directly or indirectly channel the citizenry’s voices into budget oversight deliberations. PEBA and ‘the Reform’ present a potential model of legislature design that is antagonistic towards budget oversight models proffered by the OECD, World Bank and other entities that comprise the LDN. Somehow the GPL turned away from the LDN model despite its popularity and the pressures to adopt it. In so doing, the GPL relied on its own limited resources and charted a distinct path without the financial and human resource incentives that are provided by the LDN when a legislature conforms to its agenda. This is remarkable, to say the least.

3(2) PEBA as a Paradox According to Scholars

Describing fundamental problems and deficiencies in legislatures before theorizing the cause of the problems and discussing solutions is the predominant format for legislative studies research projects. Parliament’s abandonment of exacting budgetary oversight is easily recognized at, or near, the top of a list of unfulfilled duties regularly identified in literature evaluating parliamentary systems. Legislative studies scholars have been observing and describing parliamentary failure in the area of appropriations scrutiny for over a century. Discussing this specific dereliction of duty as set forth across the literature by a variety of authors on parliamentary performance enables a fuller appreciation of the paradoxical nature of ‘the Reform’.

McKay and Johnson (2010) best summarize the condition of financial scrutiny at Westminster from 1900 through to the end of the Second World War; a period that sets the stage for the agenda-setting research on budgetary oversight in Westminster from the 1960s onward.
The authors observe that during “the first half of the twentieth century, [...] while select committees were reluctantly appointed in the Commons to scrutinize the government’s estimates of expenditure (and there were repeated proposals for the invigoration of the system), committees’ remits were deliberately limited, adequate staff and budgetary resources were denied.”

Crick’s classic, *The Reform of Parliament* fully takes account of Westminster’s non-performance of budget oversight at the time he published his evaluation in 1964. Crick identifies measures such as the use of ‘Committee of the Whole’ to oversee the finance bill and money resolutions “at best cumbersome, and at worst an extremely time-wasting device.”

‘Committee of the Whole’ in Westminster effectively converts the plenary into a committee of six hundred members. The ineffectiveness of this arrangement for debating government revenue was both manifestly real and easily intuitive. Crick highlights the government’s refusal to allow substantive deliberation of supply legislation in an actual committee despite a 1959 recommendation to do just that by the Select Committee of Procedure. He goes on to note that “the Government, after dallying for a while, [...] repeatedly frowned on the idea [...].”

*The Reform of Parliament* was published just as prospects of a new government in Westminster were increasing. Like-minded reformers (constituted mainly by legislative scholars and legislature staff), sharing the concerns and evaluations expressed in Crick’s analysis, came together in 1964 to establish the Study of Parliament Group. Crick’s book crystallizes the state of affairs in 1964 following the previous half-century of parliamentary development at Westminster, especially following the Second World War. The evaluation begins and concludes
on rather bleak terms. Crick introduces his evaluation declaring, there “is much contemporary evidence to suggest that Britain so lacks effective scrutiny of the workings of the Executive that a situation is created in which the popular esteem for Parliament and Government declines and its own effectiveness crumbles.”216 One of the paramount recommendations he makes is to have the Select Committee on Estimates actually engage in scrutiny and inquiry of government appropriations by establishing new standing committees to do such work; reflecting the reality that this duty of Parliament was not being fulfilled.217 K.C. Wheare’s (1968) examination of financial scrutiny procedures in Westminster notes that the Select Committee on Estimates, as well as the Select Committee on Public Accounts, are the only two committees where ministers do not appear specifically because policy discussion is prohibited in these two entities. Crick underscores the dearth of institutionalized means for financial scrutiny, writing there “can be little doubt that the present committee system of the House is a ramshackle compound of conflicting elements.”218

Giddings’ 2005 edited volume, The Future of Parliament, came about to mark the fortieth anniversary of the establishment of the Study of Parliament Group and Crick’s seminal contribution in 1964. In their chapter, ‘Parliament and Public Money’, authors McEldowney and Lee observe that 40 years on, the days spent deliberating on the government finance (revenue) bill declined from 20 days to 5, while the days allotted for expressly deliberating public expenditure have been reduced to 3 from 30.219 They conclude that Westminster can make contributions in studying ‘value for money’, specifically via the work of the Public Accounts Committee but that “Parliament does not have, and perhaps should not be expected to have,

217 Ibid. P. 194.
218 Ibid. P. 95.
capacity for systematic analysis and sustained influence on priorities between taxation and expenditure and within expenditure itself.”\textsuperscript{220} The claim made by the authors reflects the despair in the field in terms of Westminster’s role in the appropriations process. They are essentially asserting that fiscal oversight in the form of value-for-money studies conducted by 1 or 2 committees can be effective with the abandonment of systematic and ongoing department-specific committee scrutiny of departmental budgets. That is a contradiction in terms that cannot be set aside. Unsurprisingly, McEldowney and Lee, the former a legislative studies scholar and the latter a seasoned practitioner, open their chapter declaring, “Parliament [Westminster] often seems at its weakest in the control and scrutiny of public money.”\textsuperscript{221}

Westminster’s non-performance in the area of budgetary oversight is noted by scholars over the intervening decades from the time \textit{The Reform of Parliament} was published through to the present. In 1983, Philip Norton highlighted the unwillingness of governing party Members of Parliament to subject party leaders and members of the executive to ‘sustained investigation’. He employs Lord Hailsham’s (1976) pejorative moniker for Westminster as an ‘Elective Dictatorship’, resulting from among other things, the governing party’s ability to control the legislature’s timetable through its majority in the House.\textsuperscript{222} A decade later, in 1993, Norton observes that departmental select committee reports are not debated in plenary and so little to no linkage exists between Parliament’s oversight work and the departments being scrutinized.\textsuperscript{223} According to Norton, the consequence is that “Parliament cannot claim to subject the conduct of

\begin{itemize}
\item \textsuperscript{220} Ibid. P. 78.
\item \textsuperscript{221} Ibid. P. 78.
\end{itemize}
government to continuous and comprehensive scrutiny. Much of what Government does avoids parliamentary attention.”224

Failure to effectively scrutinize appropriations in the UK’s House of Commons is a current reality and not a matter of the past; a reality noted by scholars beyond the Study of Parliament Group. McKay and Johnson observe that despite “elaborate care taken to present to the House of Commons a very detailed account of the Supply requested by the Crown, the House does not go through the Estimates request by request or even department by department. Debate on the Estimates is structured and limited.”225 As such, one day not later than February 6th, another day in mid-March and finally one day in early August, are allotted to debate and vote on estimates. In mid-2008, Westminster resolved, without debate, appropriations for the year ending on 31 March 2009 amounts totalling £463,971,519,000. “In other words, a global demand for resources, a cash requirement and the limit on retained income across the whole of government are, so far as not already authorized, all rolled up in a single resolution.”226 Graham P. Thomas highlights Westminster’s ‘summary approach’ when it comes to approving all major aspects of government appropriations.227 The brevity of the process attests to the paucity of scrutiny in the United Kingdom’s House of Commons despite ongoing reforms to strengthen budget oversight for decades.

CPA studies routinely focus on evaluating parliamentary performance across the CPA. CPA studies can be practitioner-centered or academic, and at times a synthesis of both. A 1999 CPA study on the work of parliamentary committees written and compiled by Gordon Barnhart is a synthesis of both. It opens gravely, with Barnhart’s lament that the “principle of ‘grievance

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226 Ibid. P. 260.
before supply’ has been forgotten.” Barnhart’s claim is more an indictment of parliament’s suppression of a core function, than a trite description of present affairs. Barnhart himself bridges the academic-practitioner divide having served in senior legislative staff positions in Canada (provincially and nationally) and as a legislative studies scholar. Barnhart’s experience in Canadian legislatures informs his evaluation and is essentially shared by his Canadian colleagues.

One of Barnhart’s colleagues in the field of Canadian legislative studies is Peter Dobell, founder of the Parliamentary Centre in Ottawa, in 1968. Dobell’s (1985) discussion on reforming Canada’s House of Commons has an explicit focus on budgetary oversight and draws on decades of reform experience. Like Westminster, parliamentary reform in Canada focuses extensively on departmental committees. Canada’s departmentally dedicated oversight committees came about a full decade before Westminster established such committees. Dobell notes that prior to the reforms of the 1960s, all committee activity required the approval of the governing party before committee action could take place. In 1968, when Canada’s Standing Orders for the House of Commons were amended to create such committees, those committees were provided the chance to make decisions on oversight work without governing party approval. Writing almost 17 years after the establishment of departmental committees, Dobell acknowledges the extension of committee independence but notes that “committees have generally not exploited their powers.”

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230 Ibid. P. 55.
Newly created committees tasked to oversee specific departments did begin to review estimates being referred for committee scrutiny. Programme-specific comments were forthcoming and recommendations too; all contained in short reports.\textsuperscript{231} However, any progress was reversed 5 years into the 1968 reforms, when a standing committee member attempted to have the House concur with a standing committee’s report on estimates (appropriations). The Speaker denied the motion seeking the plenary’s concurrence with the committee’s report on estimates based on the House of Commons’ Standing Orders which required the opposition to use one of its allotted days to raise such a motion.\textsuperscript{232} Such a ruling reflected anything but diligent adherence to arcane, procedural requirements. Instead, it represented an explicit refutation of the notion that committee reports on departmental estimates could be used in plenary, a far more public venue than in committee; unless the opposition party opts to use its limited allotted days to do so. Shortly thereafter, Canada’s House Leader, through the parliamentary secretary, issued a notice to all committee chairpersons indicating that reports on estimates may only approve, reduce or eliminate estimates and that “reports of a substantive nature, including recommendations on items relating to or contained in the estimates, are clearly not allowed.”\textsuperscript{233}

The significance of this episode for budget oversight in Canada’s House of Commons back in 1973 cannot be understated. It signalled to all members, but especially those government backbenchers serving on departmental committees, that in-depth scrutiny of departmental appropriations requests would not be a meaningful exercise in terms of likely impact given that such work is more than likely never to reach plenary. A litany of such rulings is the basis on which White writes that parliamentary committees at the provincial level, like their national

\textsuperscript{231} Ibid. P. 56.
\textsuperscript{232} Ibid. P. 56.
\textsuperscript{233} Ibid. P. 57.
counterparts, suffer from, among other things, “debilitating restrictions on [their] powers [...] to
determine public policies or control government activities.”^{234} It is also the reason why Docherty
confidently asserts that “the importance of committees cannot be overemphasized, but
unfortunately they are underutilized. Too many jurisdictions in Canada are reluctant to use
committees to their full effectiveness. The result is to severely limit the ability of members to
participate in legislative functions.”^{235}

Peter Dobell and Graham White offer colourful evidence reflecting the poor results in the
area of departmentally-focused, budgetary oversight conducted by Canadian departmental
committees, despite decades of reforms. Dobell (1985) observed an abysmal level of committee-
driven oversight despite nearly two decades since creating departmental committees with full
powers to scrutinize and report on departmental appropriations. He writes that in 1984, “13 of 21
standing committees had held meetings to discuss one or more of the departmental reports
referred to them. However, in every instance but one, the committee’s aim seems to have been
short term and highly political, and has not been followed up by a report to the House.”^{236} White
observes, almost comically, that:

Ministers do not wish to see independent, effective committees with substantial
opposition representation challenging their power or causing political difficulties for
them. [...] Provincial legislative committees may thus be hamstrung [...] by government
reluctance to sanction active committees. A telling illustration of this last point is the fact

^{236} Dobell, Peter C.. 1985. “Some Comments on Parliamentary Reform.” In Institutional Reforms for Representative
that until recently the Agriculture Committee of the Saskatchewan Legislature had not met for decades.\textsuperscript{237}

According to the Government of Saskatchewan, “agriculture is the root of [the province’s] economy and accounts for over one-third of the province’s total exports. [Saskatchewan accounts for] over 40 percent of Canada’s farmland totalling more than 60 million acres. Approximately 33 million acres of agricultural land is used for crop production each year.”\textsuperscript{238} It appears that until recently, Saskatchewan’s provincial executives considered agriculture too important for legislature committee oversight.

Global perspectives on the weakness of budgetary oversight in parliamentary systems, like that offered through the CPA study referenced in this section, are only reinforced by the observations made by legislative studies scholars who tend to focus on the United Kingdom and Canada. A focus on these two legislatures in terms of how legislative studies scholars describe the poor state of parliamentary budget oversight is merited given that they are not only two of the oldest parliaments but they have also accumulated more than eight decades of parliamentary oversight reform between them from the 1960s onward. Consider the preceding description of parliamentary oversight by accomplished legislative studies scholars against the operation of ‘the Reform’ at the GPL set out in Chapter Two. Not only did the PEBA reform process take only six years, but it was being largely implemented only four years after adoption and achieved almost full implementation approximately a decade later. Also, the PEBA reforms are further institutionalized as opposed to being diminished and undercut like the more modest reforms that occurred in Canada and the United Kingdom. The paradoxical nature of ‘the Reform’ is only


accentuated by the description of how little other reforming parliamentary systems do when it comes to budgetary oversight.

3(3) PEBA as a Paradox According to Legislative Studies Theory

Legislative studies scholars cannot be faulted for dedicating so much attention to the shortcomings of parliaments in the area of budget oversight. The British, Canadian and Australian national parliaments (and the subnational counterparts in those countries), along with several other parliaments belonging to the Commonwealth, consistently affirm the necessity of effective budget oversight reforms with conviction. Indeed, many of them even pursued scrutiny and budget oversight reforms over decades. Yet, legislative studies scholars are able to observe and report on the manifest failure of those reform agendas to actually strengthen parliamentary budget oversight. Numerous legislatures that have cumulatively piled on decades of reform efforts are unable to provide legislative studies scholars with any evidence other than the continuing decline of budget oversight work by parliaments.

Efficiency reforms in parliament, especially in the budget and legislative process, have an entirely different trajectory. Efficiency reforms aim to enhance the ability of parliaments to consider and subsequently pass government legislation. Reforms aiming to enhance the efficiency with which parliaments tackle the legislative agenda, including appropriations, stand in an almost inverse relationship with reforms aiming to improve the effectiveness of parliamentary scrutiny of appropriations. This reality is not lost on legislative studies scholars. Barnhart, writing from the overarching perspective of the CPA, offers a stark appraisal of governing party preferences with respect to parliamentary reform:

Governments have been less willing to invest tax dollars into an effective parliamentary system which would only become an obstacle to ‘effective and efficient’ government.
Within government circles, it is common for ministers to believe that members of parliament are obstacles to the efficient flow of decision making. [...] It is rare for any government to encourage the strengthening of parliament as a way of encouraging honesty in government or responsiveness to the public will.239

Smith’s (2003) review of past reforms in Canada’s House of Commons only reinforces Barnhart’s generalization. Smith’s research highlights the determined effort of the executive to ‘streamline’ the legislative process; that is, to speed-up the process and thereby secure passage of the governing party’s legislative agenda as soon as possible. Though, she also notes that this reform imperative contended with the desire of backbench members to be more useful.240 The victor of the two contending impulses behind parliamentary reform in Canada identified by Smith is clearly the executive’s desire for streamlining at the expense of systematic, parliamentary budget oversight and scrutiny. Writing more than fifteen years earlier, Canadian legislative studies scholar C.E.S. Franks described how governing parties viewed committees as instruments for expediting legislation.241 Franks himself was writing during what he called ‘an age of reform’ at the House of Commons, and yet the consistency of this one dimension in the decades preceding his work and up to the present, only serves to emphasize the resolute commitment of governing parties to resist reforms that empower parliament, specifically through committees, to engage in more robust oversight and scrutiny.

Preference for efficiency reforms of the legislative process and resistance to increasing the effectiveness of oversight and scrutiny mechanisms is also the norm in the United Kingdom’s House of Commons. Kelso summarizes reform at Westminster from the early-1960s to the late

1990’s as a period where “successive Procedure Committees came to pay increased attention to that dimension of efficiency that involved streamlining the House of Commons and its working practices.”

In his book, *Parliament in an Age of Reform*, Thomas asserts that while “governments express support for reform, they tend to favour those changes which facilitate the passage of government business rather than those which make the task of scrutiny easier.”

Experience with the UK’s Labour Government reform initiative launched in 1997 provides ample evidence for legislative studies scholars and practitioners alike of government’s preference for efficiency reforms and unwillingness to countenance oversight and scrutiny reforms. Mark Shephard’s (2004) contribution to the World Bank Institute publication ‘Trends in Parliamentary Oversight’ opens with a synopsis of the Labour Party’s reform through the special Select Committee on Modernisation of the House of Commons; which was created by the Labour Government in 1997. Shephard notes that despite producing nineteen reports from its creation until 2003, the focus was on “changing working practices and the style and form of proceedings” with little to no attention on ministerial accountability. Ministerial accountability was one of the four areas the new Modernisation Committee was tasked to review but the subject was relegated to the lowest priority and reports instead sought to enhance how Parliament could more efficiently process legislation. Shephard himself draws on the findings of the UK’s Hansard Society in observing that “parliamentary reform has been one of improving the efficiency of Parliament, but not its effectiveness.”

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245 Ibid. P. 40.
Oonagh Gay, who worked at the UK’s House of Commons Library for thirty years and worked with legislators on various reform initiatives at the House of Commons, observed that Leader of the House Margaret Beckett’s priorities did not include improving the capacity of Parliament to hold the executive accountable. Instead, the Leader of the House focused on “the processing of legislation, and her viewpoint was straightforward. The Labour government had been given a mandate from the electors to carry out its manifesto – legislation should pass through both Houses as smoothly as possible.” The Leader of the House faced some resistance from opposition and governing party MPs. Opposition party MPs created a commission to focus on improving scrutiny and accountability and were joined by the Liaison Committee which is comprised of chairpersons of select committees. It did not matter, according to Gay, “Beckett continued with the modernisation agenda, concentrating on the more efficient management of business.”

On the surface, executive unwillingness to countenance meaningful empowerment of parliamentary oversight and scrutiny functions can be understood as a function of simple zero-sum contestation for power. Party leaders, and members of the executive, look upon parliamentary strengthening efforts as sources of risk to a governing party’s legislative (and policy) agenda. The prospect of equipping legislatures with the capacity and opportunity to significantly expand scrutiny of government legislation might lead to stalled government legislation, or even worse, its defeat. The mere prospect is simply out of the question from the

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247 Ibid. P. 374.

Michael Rush (1979) ascribes a sense of entitlement to the leadership of the governing party as the overarching source of executive disdain for parliamentary strengthening. He writes that parliamentary government “rests [...] on the premise that the Government is entitled to secure the passage of its programme so long as it commands sufficient support in Parliament [...].”\footnote{Rush, Michael. 1979. “Committees in the Canadian House of Commons.” In \textit{Committees in Legislatures: A Comparative Analysis}, eds. John D. Lees and Malcolm Shaw. Durham: Duke University Press. P. 212.} This executive sense of entitlement in pursuing passage of its legislative agenda is so powerful that it effectively precludes progress in the area of committee reform too. Mezey captures the axiomatic nature of this matter when he observed that strong parties with solid majorities will resist committees developing specialized knowledge and expertise because it may produce challenges to executive control of the legislature and policy making.\footnote{Mezey, Michael L.. 1979. \textit{Comparative Legislatures}. Durham: Duke University Press. P. 96.} The consequences of this reality are devastating given the centrality of committee reform to almost every reform programme seeking to enhance parliamentary oversight and scrutiny. It is this well-understood and basic reasoning by the executive which underpins explanatory frameworks for the lack of successful parliamentary oversight reform in legislative studies scholarship and is exactly why ‘the Reform’ is so paradoxical.

Executive prerogative and entitlement are both important elements of the impediments to parliamentary strengthening, but only suffice as surface-level explanations of the reform-resistant dynamic observed decade after decade across numerous parliamentary systems. The relevance of these factors in explaining failed reforms derives primarily from how easily they are observed when reforms are attempted and ultimately fail to meet expectations. To penetrate
beyond surface-level factors, legislative studies scholarship focuses on the theory and maxim of responsible government to theorize executive intransigence in the face of persistent calls for reform. The significance of this causal variable cannot be understated. Responsible government sits at the heart of Westminster parliamentary systems. As a maxim it shapes the realm of possibilities for both reformers and decision makers in parliament while as a theory it provides a robust predictive device for shedding light on the expected behaviour of governing and opposition parties.

Responsible government is a twofold causal variable according to how scholars conceptualize and theorize it. Responsible government, in the literature surveyed for this project, simultaneously impedes effectiveness reforms to parliamentary oversight and scrutiny processes while propelling efficiency reforms preferred by the executive. It is helpful to first understand responsible government in its most basic terms before looking at how legislative studies scholars turn to it as a causal variable for explaining outcomes in parliamentary reform. Docherty writes that the “first priority in a Westminster model is to maintain the confidence of the legislative assembly. If it cannot do that, it cannot govern. The executive must always ensure that it enjoys the confidence of the majority of members and the consequent legitimacy to govern.”251 Docherty’s rendering of the concept is apt. There is no exaggeration in saying that without confidence in the House, governments cannot govern. As Rhodes, Wanna and Weller explain, “the concept of ‘responsible government’ was taken to mean the maintenance of the confidence of the lower house (in the government, its ministers, its legislative proposals, and authorization of its annual budget) in an adversarial party system.”252 Responsible government generates a

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survival instinct, literally, for the governing party through the confidence requirement for votes on significant legislation such as appropriation bills.

When governing parties contend with this dynamic it generates the impulse to remove all obstacles and smooth out any sources of friction in the legislative process in order to pass government legislation for which they were elected and feel responsible for actualizing. As such, efficiency reforms are understood as acceptable survival measures from the perspective of governing parties. Empowering oversight and scrutiny processes, which can slow down the legislative process and increase sources of friction, are seen as potential threats to government survival. There is nothing base or coarse in the calculations of governing parties seeking to ensure the passage of their legislative agendas and also reduce threats to them. In the estimation of governing party after governing party from all stripes across many different jurisdictions over decades of reform efforts, there really is a sense that governing parties are justified and right to prefer efficiency reforms and resist effectiveness reforms because ultimately they are responsible for fulfilling the agenda promised to the electorate.

In the 2003 edited volume, *Reforming Parliamentary Democracy*, David Docherty and F. Leslie Seidle appropriately preface the topic at hand noting that “[at] the heart of [parliamentary] arrangements have been the enduring principles of responsible government and accountability to the legislature.” At some point in the past these ‘enduring principles’ ensured that executives gave account to the legislature because the legislature could unmake a cabinet and bring down a government. Legislative studies scholars still debate the degree and duration of that idealized past where legislatures were able to ensure the executive was responsible for fulfilling its electoral mandate. That debate is not the focus here, however. What is relevant for this study is

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that the two enduring principles identified by Docherty and Seidle underwent a massive transformation in operation when party systems fully developed and took hold in parliamentary systems. By 1961, when S.A. de Smith was writing about the export of Westminster-based models of government design in former British colonies and newly independent states, he was able to assert with absolute confidence that “the formation of a government is effectively determined by a party machine.”\textsuperscript{254}

The implication of this hard fact is that the party apparatus supplanted the legislature as the key focal point for answerability and elections became the paramount exercise for maintaining confidence with respect to executive (and party) performance. Parties, and the executives they help shape, understood elections as the defining mechanism upholding the confidence principle of responsible government.\textsuperscript{255} As such, the legislature became an instrument for ensuring the passage of the governing party’s agenda with a view to enhancing the chances of electoral success, thereby sustaining the confidence principle. This tremendous shift in the operation of the confidence principle at the heart of the Westminster system fundamentally altered the nature and functioning of the legislature.

Party organization, in turn, adapted to meet the electorally determined confidence requirement by the early twentieth century.\textsuperscript{256} Party allegiance became a pronounced feature in parliamentary systems as a necessary means of strengthening parties to meet the challenges of forming government and maintaining authority granted at the polls. Rhodes, Wanna and Weller summarize this paradigm shift, highlighting that “some scholars have distinguished ‘responsible

government’ (as a nineteenth-century convention applying to ‘ministerial’ governments) from its modern variant ‘responsible party government’ (governments sustained by rigid party discipline where the party assumes responsibility and imposes some answerability).”

Responsible party government has been solidifying, expanding and evolving but it remains the empirical manifestation of the responsible government ideal.

The transmogrification of the responsible government principle is profoundly significant for the Westminster system, especially for its systemic counterpart: accountability to the legislature. Legislature oversight and scrutiny processes were instrumental to the operation of a parliamentary system of governance when the confidence requirement was upheld through the legislature and the parliamentarians comprising it. Legislature oversight and scrutiny processes became liabilities and threats generating undue political risks from the vantage of the executive branch and political parties when the electorate and election cycles assumed primacy in upholding the confidence requirement – effectively making and unmaking governments.

To allow the legislature and its committees the opportunity for in-depth, cyclical scrutiny of departmental appropriations is to risk delaying implementation of prioritized programmes at best and political embarrassment if poor planning and execution of government projects comes to light. When the governing party understands that the confidence requirement is met at the polls it becomes loathe to empower the legislature which can expose it to severe judgment by voters if and when shortcomings are discovered. Limiting such opportunities and containing such risks became the order of the day in parliamentary systems when the two core principles of responsible government and accountability to the legislature changed so dramatically. Nowhere

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is the impact felt greater than in the work of committees and failed reforms at committee level. C.E.S. Franks set forth this reality in a sombre assessment:

In fact, committees were doomed to have a strongly partisan component by the nature of the tasks assigned them. Their function of handling government bills, estimates and other inquiries gave the committee two sorts of functions: one on bills and estimates, of handling the government’s programmes, which is a highly partisan endeavour and which the government, under the conventions of responsible parliamentary government, must control to ensure that legislation is passed in an acceptable form; and a second supposedly non-partisan function of making independent investigations on behalf of the House as a whole. The government, to ensure that its needs were met by committees, had by necessity to exert a strong control over the committees so that it could control the legislative programme. The reality of this problem meant that instruments by which the government could control the committees were always there, even when they were making non-partisan investigations. […] These and other factors combined to make the committees unsatisfactory.258

None of what legislative studies scholars are observing and explaining with respect to parliament’s diminished efforts in systematic budget oversight and scrutiny should result in deriding elected officials and members of the executive in parliament. Parliamentarians in Canada, the United Kingdom, Australia and many other parliamentary democracies are not violating or undermining the parliamentary system but are instead operating within the parameters of a system that is itself dynamic. As White’s study of Canadian provincial and territorial legislatures demonstrates, the parliamentary system has proven itself resilient and adaptable to myriad differing contexts across diverse societies without actually abandoning its

core tenets.\textsuperscript{259} Even with central features of the system changing and sometimes becoming unrecognizable, such as responsible government and accountability to the legislature, they remain fully relevant and in operation. Responsible government remains intact but is operationalized through the confidence principle in different ways, as discussed above.

To understand how the operation of responsible government and accountability to the legislature can change so dramatically without abandoning the core tenets of parliamentary governance requires incorporation of a final, critical principle at the heart of the system. The advent and complete entrenchment of a loyal opposition in parliamentary governance is the one element keeping the system true to itself. A loyal opposition sits at the centre of parliamentary governance and is integral to actualizing the principle of responsible government and responsible party government; perhaps even more so in terms of the latter. Wheare (1968) admonishes legislative studies scholars to never take the principle of ‘loyal opposition’ for granted. He writes, “[there] is nothing inevitable or automatic about it. [...] It means much more than that opposition is permitted or even legal. It means that it is constitutional; that it is ‘loyal’; that though the Opposition may disagree with the government [...] it agrees with the rules of the game.”\textsuperscript{260}

The emergence of ‘Her Majesty’s Loyal Opposition’ reflected an understanding that a faction (or party) in the legislature could sit outside the corridors of power and be expected to devote its energy to critiquing the government of the day, providing the electorate with an alternative choice if the current government fails to meet the electorate’s expectations. This exceptional role sustains responsible government and accountability to the legislature even with the emergence of ‘responsible party government’ and its adverse impact on legislature budget oversight and


scrutiny systems. The loyal opposition continues to constantly seek out the shortcomings, missteps and failures of the governing party and to bring its assessments to the public’s attention. Simply put, the loyal opposition will use any means at its disposal to challenge the governing party’s popular support and to erode the public’s confidence in the governing party during the intervening years between elections.

To fulfill this role, the loyal opposition draws on every available legislative and non-legislative opportunity and means at its disposal. The loyal opposition, in Wheare’s account, employs various tools in the legislature, including formal written and oral questions to the executive in plenary, it relies on motions of censure and no confidence and debates on financial legislation.\(^{261}\) Wheare’s emphasis on debates over financial legislation reflects the political significance of appropriations and is the reason why the executive prefers efficiency reforms to expedite passage and resists effectiveness reforms, resulting in the decline of systematic legislature budget oversight and scrutiny. The governing party is denying the opposition a critical tool and the opportunity to further its agenda of shaking the electorate’s confidence in the executive by enhancing efficiency in processing appropriations at the expense of effectiveness of legislature scrutiny of government budgets.

The preceding descriptions and explanations of abysmal execution of parliament’s budget oversight and scrutiny work by an array of legislative studies scholars are in fact a result of the loyal opposition keeping the core principles of the parliamentary system intact. The executive remains sensitive to the confidence requirement at the heart of responsible government because the loyal opposition is always there to challenge it. The loyal opposition will use every method available to it in the legislature to serve that end. This propels party allegiance to the point where governing members can be expected to defend the party at all times in the House and the

opposition expected to always criticize. Moreover, the realities of responsible party government have also coincided with the systematic decline of budget oversight as executives persistently seek to reduce the legislative tools available to the opposition as it fulfills its purpose.

Parties playing the role of loyal opposition compensate for the reduced tools and opportunities in legislature-driven budget oversight and scrutiny through strengthening other means of compiling information and bringing it to the public’s attention. They still plough through detailed departmental financial reports, draw on media reports bringing issues to light, as well as maximizing chances to embarrass the government during question periods and public debates. However, it is necessary to reflect on the obvious fact that the systematic decline of legislature budget oversight and scrutiny was never the work of one executive term in just one parliamentary system. It has been a gradual process spanning numerous different executives for no less than a century across a variety of parliamentary systems. It must be that parties playing their part as the loyal opposition opted to sustain or even further atrophy the weak and ineffectual budget oversight systems once they formed the government and the executive. This attests to the robustness of legislative studies theories on efficiency reforms coming at the expense of effectiveness reforms and helps explain the state of disrepair in parliamentary budget oversight.

A powerful, albeit anecdotal, testament to the accuracy of the descriptive and theoretical accounts in legislative studies scholarship discussed in this chapter is provided by the accomplished parliamentarian, Quinton McGarel Hogg. Hogg is better known by his formal title, Lord Hailsham. Lord Hailsham served as a parliamentarian in the United Kingdom for almost twenty years. His political career includes service as Lord Privy Seal, Leader of the House of Lords, Lord President of the Council, Lord Chancellor and he also served as a cabinet minister. In 1976, Lord Hailsham’s party was fulfilling the role of loyal opposition. Presumably, he and
his colleagues in opposition were enduring the challenges of holding the executive to account while the executive used its authority and control of the House to deny the opposition as many opportunities to attack as possible. Lord Hailsham’s frustration with the experience in opposition motivated him to castigate the operation of the system at that time in a public lecture where he stated:

Until recently, the powers of government within Parliament were largely controlled either by the opposition or by its own back-benchers. It is now largely in the hands of the government machine, so that the government controls Parliament, and not Parliament the government. [...] look at the Budget. I suppose that, at the turn of the century, it could have been expected to never exceed £100 million in any one year. [...] we are now spending something like £50,000 millions in the annual Budget every year [...]. At the same time, the checks and balances have largely disappeared. Power has centralized itself more and more in the Commons, more and more on the government side of the House, more and more on the front benches, while the time allotted for debate of individual measures has become progressively less and less.262

Lord Hailsham motivates for system-wide reforms through his thoughtful and pointed exposure of deep flaws in the operation of the Westminster system, where among other matters, he takes note of the marked decline in budget oversight and scrutiny. Lord Hailsham’s lament and call for reform focused on the hegemony of the executive:

I have reached the conclusion that our constitution is wearing out. Its central defects are gradually coming to outweigh its merits, and its central defects includes the absolute

powers we confer on our sovereign body, and the concentration of those powers in an executive government formed out of one party [...]. [...] I have suggested change. I would have not made these suggestions if, at the end of a long life, I had not seen the unmistakable marks of disruption and dissolution. My object is continuity and evolution, not change for its own sake. But my conviction remains that the best way of achieving continuity is by a thorough reconstruction of the fabric of our historic mansion.263

Lord Hailsham’s speech is best known for popularizing the pejorative designation of Westminster as an ‘Elective Dictatorship’. The term, no doubt, existed long before Hailsham’s 1976 speech but his key claim was cutting; Westminster had become an elective dictatorship in reality, no longer just in theory, and only deep reform could address the crisis. By 1979, Lord Hailsham and his party were once again in power. The opportunity to initiate serious reform as the government was his from 1979 through to 1987. Lord Hailsham did not seize the opportunity. He continued to acknowledge some key problems, including executive control of the legislature, but dropped references to an ‘Elective Dictatorship’ at Westminster. Most notably, Lord Hailsham did not spearhead substantive reforms to reduce the hegemony of the executive during his tenure.264 Lord Hailsham’s more subdued stance on legislature strength once returned to the legislature as part of the governing party reinforces the robustness of theories used to explain the increasing power imbalance favouring the executive and the decline of legislature budget oversight and scrutiny.

Lord Hailsham is undeserving of harsh criticism for failing to initiate meaningful reform when he found himself back in government, despite his scathing public indictment of Westminster while in opposition. Decades of experience and decades of theorizing all correctly

263 Ibid. P. 72.
predicted maintenance of the status quo when the United Kingdom’s Conservative Party returned to power for the ensuing seventeen years. As Norton writes, “Parliament [in 1979] was dominated by large cohesive parties, one party enjoying the spoils of office. The House of Commons was organized essentially on the basis of that political reality.” Norton’s characterization of the House of Commons in 1979 follows from his evaluation of failed committee reforms initiated in the 1960s. Those 1960s reforms established seven new select committees to oversee departments. Ministers were hostile to the committees, the committees were not resourced to meet the task at hand and the Agriculture Committee came to an end after clashing with the government. More specifically, a newly created Expenditure Committee established in 1971, empowered through “six functional subcommittees […] proved eclectic in its choice of topics for investigation and produced reports that differed little from those of its predecessor, [the Estimates Committee].” Reforms that fell short of reformers’ expectations, especially in the area of budget oversight and scrutiny, were the norm before and after Lord Hailsham because the operation of responsible party government greatly altered the operation of accountability to the legislature.

Docherty (2003) identifies events in the 1990s and early 2000s that are thematically similar in Canada’s House of Commons. Part of Canada’s 1993 Liberal Party election platform called for legislature strengthening by empowering backbench Members of Parliament. Specifically, the Liberal Party as loyal opposition contesting the elections promised to empower parliamentary committees with “greater influence over government expenditures.” This is an explicit

266 Ibid. P. 145.
267 Ibid. P. 145.
commitment to grant committees the capacity to scrutinize the budget in a fashion that allows for legislature budget oversight processes to directly impact government appropriations.

The Liberals governed from 1993 until early 2006. Over a decade of Liberal Party governance without meaningfully fulfilling the 1993 promise to strengthen the legislature’s committees in terms of budget oversight only confirms the powerful institutional forces marshalling the behaviour of governing parties irrespective of the legislature reform policy positions they may advocate when serving as the loyal opposition. “The [Liberal] government did create a House Modernization Committee following the 2000 election”, writes Docherty, however, “the majority of changes proposed by the Modernization Committee provide for greater efficiency, even if scrutiny is compromised.”

Smith offers a candid reflection on C.E.S. Franks’ ‘age of reform’ in Canada’s House of Commons, observing that “Parliament was subject to a series of reforms. Moreover, the activity has continued until today. There has been no lack of well-intentioned effort. Those who are unhappy with the parliamentary system, then, cannot complain about that. Instead, their complaint must be that it has accomplished very little.”

Canadian legislative studies scholars Peter Aucoin and Mark D. Jarvis (2005) attempt to discern a way to advance the parliamentary reform agenda in Canada by reassessing the concept of accountability. Their book, Modernizing Government Accountability: A Framework for Reform, builds on the idea that the centuries-old principles of responsible government and ministerial accountability were out of sync operationally with modern government bureaucratic designs and practices. They also observe and report the negative impact of partisanship for the operation of responsible government and the confidence requirement underpinning it. Aucoin

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and Jarvis report that “party discipline radically reduces the effectiveness of the House in holding ministers to account [...] House committees in a majority government have little interest in the accountability function. The committee’s government majority is rarely willing to extract accounts from ministers in order to hold them to account [...]”.271 The authors go on to note the absence of “a tradition or culture that legitimizes, even promotes, the public value of MPs cooperating with Opposition MPs in a non-partisan manner in committees in holding ministers and officials to account.”272

Barhnart, writing again from the global perspective, confirms the prevalence of the parliamentary dynamics elaborated here, stating that it “has been the trend throughout Commonwealth Parliaments that the estimates have not been reviewed thoroughly, if at all. Members have used their time to debate broad issues but have avoided detailed examinations of the estimates [...]”.273 Appropriations pass through legislatures in as frictionless a manner as the executive can reasonably expect and in ways that would likely shock citizens if they were to know. This current, widespread condition in legislatures is produced by decades of successive efficiency reforms at the expense of effectiveness reforms.

Responsible government helps theorize the executive’s preference for efficiency reforms and its aversion to effectiveness reforms in the area of budget oversight and scrutiny. Responsible party government helps explain the accentuation of that dynamic and the decline of systematic legislature budget oversight and long history of failed reforms as the operation of accountability to the legislature changed. Yet the centrality of a loyal opposition to the parliamentary form of

272 Ibid. P. 73.
governance serves to explain the fidelity of the institution to its origins despite massive changes in how it operates.

This review of legislative studies literature emphasizes the paradoxical nature of ‘the Reform’. The governing party at the GPL empowered the mechanisms of legislature budget oversight and scrutiny, thereby increasing the ability and opportunities of the loyal opposition to shake the public’s confidence in the government. The governing party exponentially enhanced the effectiveness of legislature budget oversight and scrutiny processes. The reform entailed a massive increase in the number of committee meetings, number of reports produced and stages of accountability requiring the executive’s attention in parliament. Budget oversight reports are debated in detail in plenary, consuming a significant amount of the legislative calendar. Effectiveness superseded efficiency, with the latter understood to mean the speed at which the executive can push its appropriations legislation through parliament. Finally, the loyal opposition became empowered as never before because it is included fully at every stage in the reformed budget oversight process. ‘The Reform’ is a paradox on every fundamental level from the perspective of legislative studies scholars’ descriptive and theoretical body of work.

3(4) PEBA as a Paradox According to Practitioners

The paradoxical nature of ‘the Reform’ has been articulated thus far through the descriptive and theoretical body of literature generated by legislative studies scholars. A fuller appreciation, however, is gained by studying the literature on enhancing parliamentary budget oversight and scrutiny produced by legislatures and legislature staff. Practitioners in the United Kingdom and Canada have been generating material on the subject with every reform wave. This literature is extensive but only a sample of this literature from contemporary sources suffices in making the case that ‘the Reform’ is thoroughly paradoxical. The focus here will be on the United
Kingdom’s and Canada’s national legislatures since they have both institutionalized a permanent focus on enhancing budget oversight and scrutiny in committee. The written materials produced from within these legislatures and about their reform efforts reflect a body of knowledge drawn from direct experience and extensive institutional memory.

At Westminster, the enhancement of legislature budget oversight and scrutiny is institutionalized through the Liaison Committee. The Liaison Committee’s mandate includes “considering general matters relating to the work of select committees – agreeing to guidelines and core tasks for committees and promoting effective scrutiny.”\textsuperscript{274} The Liaison Committee appears fully committed to this mandate, declaring officially that it “takes a particular interest in encouraging effective committee scrutiny of: [...] Government Departments’ finance and performance”.\textsuperscript{275}

In 2008, the Liaison Committee published a penetrating report entitled, ‘Parliament and Government Finance: Recreating Financial Scrutiny’. The title of the report is itself a testament to the woeful state of this function in the UK’s House of Commons. To ‘recreate’ is to ‘make anew’ and in this instance can only mean that what once was in terms of budget oversight and financial scrutiny no longer exists and so must be rebuilt. The report dismisses the idea that there ever was a ‘golden age’ whereby the Commons reviewed every line of the appropriations bill. However, the report also notes a cessation of thorough scrutiny and deliberation of appropriations by the House following the creation of an effective accounting system in the late nineteenth century.\textsuperscript{276} So a notable decline in the performance of detailed budget scrutiny

\textsuperscript{275} Ibid.
manifests at the point in time when the House could access superior information about government finances.

The Liaison Committee was urging the House to reassert its role in budget oversight, almost a century-and-a-half following the creation of an effective accounting system, on the basis that it is a fundamental responsibility to be fulfilled by Parliament and because improving the effectiveness of legislature budget oversight can help enhance government performance.\textsuperscript{277} The Liaison Committee took a severe tone in its conclusion, stating that for “far too long the House has shirked the task of providing itself with the means to carry out financial scrutiny effectively, and it is time that the House was more assertive in this area.”\textsuperscript{278} The Liaison Committee found itself confronting the realities of a parliamentary system practically shunning a core function in spite of decades of concerted reform initiatives and plenty of rhetoric in support of reform. Consequently, the committee’s appeal for restoring financial scrutiny was framed in a ‘back-to-basics’ discourse that has yet to result in meaningful reforms remotely on par with those that took place in the GPL.

The disparaging tone of the Liaison Committee’s 2008 report is likely due, in part, to the preceding decade of reports and findings that emphasize the failure to make real progress. One particularly important report was produced by The Hansard Society. It convened the Commission on Parliamentary Scrutiny in 1999. The commission was chaired by the Rt. Hon. Lord Newton of Braintree, and its membership included a variety of Members of Parliament, legislative studies scholars and it was served by a number of clerks and professional staff. The Commission’s findings, released in 2001, present readers with a severe reality check about Parliament’s performance in scrutinizing government finances. The report found that:

\textsuperscript{277} Ibid. P. 31.
\textsuperscript{278} Ibid. P. 31.
[although] Standing Orders establishing the departmental select committees gave powers to examine the expenditure (as well as the administration and policy) of the relevant government departments and associated public bodies, the Commission’s research confirmed the low priority given to finance. Only around a third of select committee inquiries considered any form of expenditure issue, and only 9.1 per cent examined the Estimates.279

The Hansard Society’s Commission on Parliamentary Scrutiny itself attempted to build momentum from a 1999 House of Commons Procedure Committee Report calling for government appropriations to be formally referred to departmental select committees. The Procedure Committee report proposed a requirement for committees to prepare reports on the Estimates to be tabled in plenary. It is telling that this specific 1999 Procedure Committee recommendation even allowed for a perfunctory committee report indicating that ‘the Committee has examined the Departmental plans and the Estimates and has no comment to make’280, presumably to assuage potential anxiety on the part of the Executive about the content of budget oversight reports. Regardless, the executive in the United Kingdom rejected all of these proposals.

Undaunted, the Hansard Society produced a report in 2006 entitled ‘The Fiscal Maze: Parliament, Government and Public Money’, following-up on the 2001 Hansard Society Commission report. The 2006 report emphasizes the utter inability of Westminster to muster any budget oversight reforms on par with those which took place at the GPL. The 2006 report was authored solely by experts, and while politicians were interviewed, they were not part of developing and approving the report as was the case with the 1999-2001 Commission on

280 Ibid. P. 62.
Parliamentary Scrutiny. The 2006 report largely restricts itself to setting forth detailed observations of short-comings in budget oversight at Westminster and positing necessary systemic and rules-based reforms as remedies.

Reform proposals put forth by the Hansard Society in 2006 include: allowances for parliamentary committees to take expert and public evidence in order to establish priorities for the executive to consider; greater scrutiny of departmental annual reports and related documents on spending plans by departmental select committees; systematic and regularized allowance for plenary deliberation of committee reports on departmental annual reports; fixing dates for the budget cycle to allow for a standardized budget oversight cycle, especially on appropriations; and, syncing select committee oversight outputs with the legislative and plenary calendar for passing appropriations legislation. These proposed reforms are essentially more detailed restatements of the reforms urged in the 1999 Procedure Committee and 2001 commission reports referenced above. That none of these proposed reforms has come fully into fruition is to be expected in light of theory and experience. However, what concerns this study is the fact that the reforms advocated by the Hansard Society listed here are simply standard, formalized procedure in South Africa’s GPL as a result of ‘the Reform’ completed in 2004.

Ryle’s (2005) concluding reflections on the state of budget oversight at Westminster reflects the lack of real progress in parliamentary reform in that institution. He candidly remarks that:

A second major blemish [at Westminster] is the failure to consider expenditure plans seriously. There should be full annual scrutiny, concluding with debates on the floor of

282 Ibid. P. 2.
283 Ibid. P. 2.
284 Ibid. P. 19.
the House, of the planned total and balance of expenditure, with emphasis on debate of priorities. Select committees should also report on the priorities of expenditure within the various sectors of government and on major individual investments and projects; the latter should be subject to specific approval in the Estimates.²⁸⁶

Ryle’s harsh evaluation about the lack of systematic budget oversight at the House of Commons derives from 38 years of service as a clerk in the House of Commons, and experiences ranging from co-founding the Study of Parliament Group with Bernard Crick to serving as Secretary of the Hansard Society Commission on the Legislative Process from 1991 to 1993. He is a practitioner-scholar and much of his career in the legislative sector spans the last four decades of attempted reform of basic duties required of Westminster.

One development that has taken place at Westminster is the creation of the Scrutiny Unit which conducts budget analysis to equip departmental select committees in conducting budget oversight. Scrutiny Unit staff were contacted in the course of gathering raw data for this study in early 2016. A series of questions were asked based on the ‘Compare and Contrast’ graph and the categories of budget oversight. Scrutiny Unit staff confirmed that departmental select committees still do not systematically and annually produce oversight reports on the core financial documents such as annual reports or the estimates/appropriations. Staff could only confirm that most committees conduct oral evidence-taking sessions and a few committees opt to produce a report with recommendations. The exercise is often limited to bilateral question and answer exchanges between a departmental select committee and its corresponding department. Departmental select committees cannot produce quarterly reports, even if they were inclined,

because they only receive mid-year reports and then unaudited full year reports which are reviewed by the Public Accounts Committee.

Practitioners with experience at Canada’s House of Commons provide similar conclusions to those at Westminster about the state of budget oversight and scrutiny. Peter Milliken’s writings on the future of the Canadian Commons’ committee system in the CPA’s 1999 study on parliamentary committees provides a candid, firsthand evaluation of the state of budget oversight in 1999 (at exactly the same time as the UK’s Hansard Society began its Commission on Parliamentary Scrutiny). Milliken served as an MP in Canada’s House of Commons for twenty-three years and for ten of those years he was the Speaker. His reform proposals are significant for the purposes of this study because they inherently reflect what is not occurring.

Milliken puts forth reform proposals for enhancing budget oversight and scrutiny under the sub-heading, ‘Miscellaneous Proposals’ where he argues that:

One of the main roles of Parliament is to vote on the expenditure of moneys for the government, and to hold the government accountable for its spending. Except at a very general level, this requires fairly detailed and technical scrutiny if it is to be done responsibly. While Parliamentary Committees are charged with reviewing the spending estimates of government departments and agencies, this is often not undertaken in a thorough or systematic way. [...] As the Royal Commission on Financial Management and Accountability concluded in 1979, ‘the key to the House of Commons assuming a more effective and influential role in financial management and accountability lies in its committee system’.  

The incongruity of making a reform proposal addressing ‘one of the main roles of Parliament’ under the sub-heading ‘Miscellaneous Proposals’ suggests the lack of confidence borne of tremendous experience on the part of the author on the likelihood of the reform being seriously considered. Milliken’s recommendation also implies that the budget oversight and scrutiny function is conducted at the House of Commons in an irresponsible manner. His reference to the 1979 Royal Commission on Financial Management and Accountability only reflects the longevity of the calls for serious reform without real success.

Canada’s House of Commons remains steadfast in not moving ahead with meaningful reform in the area of budget oversight even while consistently studying the matter and proposing reform agendas. This reality is made clear in the 2012 report of the OGGO entitled, ‘Strengthening Parliamentary Scrutiny of Estimates and Supply: Report of the Standing Committee on Government Operations and Estimates’. The report opens with the following, reproachful overview of the subject:

[It] has long been acknowledged that Parliament does not effectively fulfill its role and standing committees are at best giving perfunctory attention to the government’s spending plans. In recent history, there have been two wide-ranging reviews of the estimates process, one by the House of Commons Standing Committee on Procedure and House Affairs in 1998, and another by the House of Commons Standing Committee on Government Operations and Estimates ... in 2003. Of the 75 recommendations that came out of the two reports, ‘The Business of Supply: Completing the Circle of Control’ and
'Meaningful Scrutiny: Practical Improvements to the Estimates Process’, few changes were made.\textsuperscript{288}

It is worth noting, again, that the issuance of the 1998 report referenced by the OGGO coincides with the onset of the GPL’s effort to rethink parliamentary budget oversight. By 2004, the GPL reforms were complete and far exceeded the most ambitious of reform proposals made in Canada. By 2012, Canada’s OGGO, had to open the discussion on its most recent budget oversight reform agenda by acknowledging the lack of real progress after decades of trying. Canada’s House of Commons also has access to the type of reports that form the foundation of the GPL’s budget oversight cycle. The 2012 OGGO report indicates that departments produce reports on plans and priorities, alongside expenditure plans and priorities for the current year and the two following years. Departmental performance reports have been provided to the House of Commons since 1997, and allow overseers to compare results against expenditure and performance plans. Yet none of this has resulted in the House of Commons systematizing a more robust budget oversight framework.

Westminster and Canada’s House of Commons engaged in reform efforts over a period of decades. The reformers consisted of parliamentarians, legislature staff and at times involved parliamentary studies experts. Reformers were given mandates to establish commissions, working groups or other formal bodies to investigate and recommend changes. These efforts produced change but the outcomes of those reforms in legislature strengthening are exactly the state of affairs that legislative studies scholars currently describe as lacking. ‘The Reform’ is paradoxical for so clearly producing what others could not in so short a time.

Comparing Reformed Legislatures in Gauteng, Canada and the United Kingdom

Writings by legislative studies scholars and practitioners from descriptive, theoretical and experiential perspectives on the poor execution of legislature budget oversight, and the struggle to enhance legislature oversight systems, help develop appreciation for the profoundly exceptional nature of ‘the Reform’. Yet a review of the actual rule-based operationalization of budget oversight and scrutiny in the United Kingdom’s and Canada’s national legislatures renders the legislature design disparity with the GPL in explicit, tangible terms. Canada and the United Kingdom are selected for this more textured descriptive comparison because of the decades of reform experience they share and the amount of knowledge generated by their efforts.

The specific criteria for evaluating budget oversight and scrutiny are drawn from the categories of budget oversight work delineated in Table 9, ‘Budget Oversight Scope’ following the ‘Legislature Compare and Contrast’ graph (below). These categories actually reflect stages of budget oversight work and related outputs. As such, they provide the clearest demonstration of a legislature’s fidelity to what most, if not all, legislative studies scholars and practitioners agree to be one of parliament’s ‘primary’ duties.

How legislatures formally approve the annual appropriations request of the government of the day provides a starting point for this review exercise. Departmental committees in the UK have a broad mandate provided through their Standing Orders to oversee and scrutinize departmental appropriations. Through Standing Order (S.O.) 133, committees are permitted to report on all referred matters. S.O. 152(1) confers a clear budget oversight mandate on departmental committees, stating that these committees are “appointed to examine the expenditure, administration and policy of the principal government departments […].”

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Departmental appropriations are referred to committees yet only three sitting days are allotted in plenary to debate departmental committee budget oversight reports under S.O. 54(1). Consequently, a specific committee is tasked under S.O. 145(1)(c) and 145(3) to select a number of reports from the total reports produced for plenary debate to fit within the tight three-day limit. The task of the committee selecting reports for debate is made easier by the fact that most committees do not produce detailed budget oversight reports. Departmental committees do hold meetings on departmental budget estimates but are not required to produce reports of their findings because S.O 152(4)(c) says “committees appointed under this order shall have power [...] to report from time to time [...]” The option to not report findings from budget oversight work is the preferred choice at present for these committees.

In Canada, the House of Commons’ departmental committees are given the same opportunity and general framework to scrutinize and report on departmental appropriations. The theoretical, principled authority of the House of Commons over appropriations is asserted boldly in S.O. 80(1), which states that “all aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons.”\textsuperscript{290} Appropriations requests are, in turn, referred to departmental committees under S.O. 81(4). The very same Standing Order also affords departmental committees the option to not report on appropriations requests referred to them. S.O. 81(4) states that departmental committees “shall consider and shall report, or shall be deemed to have reported” the appropriations request back to the plenary.\textsuperscript{291}

The ‘deemed to have reported’ rule allows departmental committees to approve an appropriations request by not reporting. The budget estimates are referred to departmental committees, per the Standing Orders, on March 1\textsuperscript{st} of every year. Committees are given until

\textsuperscript{291} Ibid.
May 31st to report. Despite three months to scrutinize appropriations reports and produce oversight reports on the estimates, the House of Commons’ departmental committees overwhelmingly opt to not report and instead exercise the “deemed to have reported” option provided by S.O. 81(4). The 2012 report, ‘Strengthening Parliamentary Scrutiny of Estimates and Supply’ produced by the OGGO addresses this Standing Order in explicit terms. The report openly acknowledges that, “as committees are not required to review the estimates, sometimes they do not do so.”

The report includes the testimony of the Parliamentary Budget Officer at the time, Kevin Page, who declared, “I think we should have reports coming out of every standing committee around those programme activities to try and improve them. The deemed rule should just go. I don’t think it’s even part of the conversation. To me, it’s just a symptom of failure.”

Government departments in many democratic, parliamentary systems produce financial statements at the conclusion of a financial year. These are often accompanied by annual reports providing a layer of description to supplement the raw financial statements. These reports provide a description of the progress made and performance of a department in fulfilling its agenda set forth in the appropriation request for that financial year. There is no explicit rule-based requirement for departmental committees to scrutinize and report on those annual reports in the United Kingdom.

In Canada, departmental committees have the option to scrutinize and report on departmental performance. S.O. 108(2)(d) says departmental committees “shall be severally empowered to review and report on [...] an analysis of the relative success of the department as measured by the


293 Ibid. P. 27.
results obtained as compared with its stated objectives [...]” The terms ‘shall be’ reflect that departmental committees have the option to do such work or not. The same 2012 OGGO report referenced above indicates that committees effectively opt to not scrutinize and report on departmental annual performance reports.\(^{294}\) The OGGO report notes that reform recommendations were made through two official parliamentary initiatives in 1998 and 2003 urging departmental committees to scrutinize departmental annual performance reports. The 2012 OGGO report states that despite recommendations for such oversight work being made by House of Commons-driven reform initiatives, “these recommendations do not appear to have resulted in better consideration by standing committees of these reports.”\(^{295}\)

Standing orders in the United Kingdom’s and Canada’s national parliaments are silent on quarterly financial reports. Departments produce them and legislatures have the capacity to collect them and scrutinize these reports which provide the opportunity to monitor in-year implementation of departmental programmes. In sharp contrast, departmental committees at the GPL are required to scrutinize quarterly financial reports of the departments and agencies they are responsible for overseeing.

Oversight work is a product developed by a legislature when looked at through the prism of a legislature’s Standing Orders. Either the output is required or not. Government outputs are deliverables. The ultimate purpose of government outputs is to deliver what is expected for the benefit of citizens in a legislature’s jurisdiction. This work too, can be subjected to oversight and scrutiny. S.O. 121(4) in Canada’s House of Commons requires the Board of Internal Economy to submit a financial report of relevant committee expenditures. S.O.’s 139(1) and 144(1)(b-c) of the United Kingdom’s House of Commons require the Administration Committee and the

\(^{294}\) Ibid. P. 19-20.
\(^{295}\) Ibid. 20.
Finance and Services Committee to produce reports on the financial management of Parliament. These are submitted to the House of Commons Commission and not to plenary. There is no indication if any of these financial management reports in Canada or the United Kingdom are used to oversee and scrutinize the performance of these legislatures in the conduct of their work, especially their oversight work.

GPL S.O. 149(1-2) states that departmental committees “must report at least once a year to the House on [their] activities,” and that “a committee’s annual report should include an assessment of the way in which the committee has fulfilled (a) the goals identified in its annual programme; and (b) its law-making and oversight responsibilities.” Each departmental committee is held accountable, in plenary, for the delivery of oversight and scrutiny work. This exceptional accountability mechanism is dwarfed, however, by the existence of the Committee of Oversight of the Legislature and the Premier’s Office (OCPOL) through GPL S.O. 173 and S.O. 174. OCPOL’s mandate is to oversee the province’s executive office and legislative branch in the same procedural fashion as any other government department or agency is overseen. The annual appropriations requests, annual performance reports, quarterly reports (among other budget-related matters) of the Office of the Premier and the GPL are all subject to systematic budget oversight and scrutiny. Specifically, the GPL is overseen by OCPOL for the “successes and failures [...] in fulfilling its constitutional mandate”, which includes conducting budget oversight and scrutiny. Oversight work at the GPL is seen as a government ‘deliverable’ and so the GPL is held accountable for its performance of that function. The Canadian and British Standing Orders of the national legislatures are entirely silent on this area of work.

Systematic budget oversight and scrutiny in Canada’s and the United Kingdom’s national legislatures does not remotely approximate the post-reform budget oversight function in the
GPL. This reality is empirically manifested in both the Standing Orders and budget oversight outputs of Canada’s and the United Kingdom’s legislatures, as discussed throughout this chapter by scholars and practitioners. A broader, comparative perspective of this reality is provided in the following graph and tables. The graph itself draws out several essential phenomena occurring through ‘the Reform’, but the primary focus in this chapter is on the measurement and operationalization of ‘Budget Oversight Scope’.

The graph uses a simple ordinal measurement to assess the systemic design of budget oversight and oversight outputs in a legislature. The focus is on formal, institutional requirements on budget oversight but allows for the potential that an output occurs without a rules-based requirement. A ‘2’ indicates that a budget oversight function and output is formally institutionalized and ‘must’ be delivered. A ‘1’ applies in those instances where a budget oversight function and output is permitted but not required, or where the rules are silent but the legislature produces the output regardless. A ‘0’ indicates the absence of a rule and the lack of a budget oversight function and output. The ‘may versus must’ distinction here is paramount. Most legislatures in democracies institutionalize budget oversight in some form but while it is permitted it is not required. Oversight committees ‘may’ conduct budget oversight, or ‘may not’. Post-reform GPL oversight committees ‘must’ do budget oversight and all oversight reports must be submitted to plenary for debate. Legislatures included in the rule-based, oversight function comparison were selected on a non-random basis.
Graph: Gauteng Legislature's New Rules - Compare & Contrast

- **GPL-OR**: Gauteng Provincial Legislature-Old Rules
- **GPL-NR**: Gauteng Provincial Legislature-New Rules
- **Cda HoC**: Canadian House of Commons
- **UK HoC**: United Kingdom’s House of Commons
- **KNA**: Kenyan National Assembly
- **BNA**: Bulgarian National Assembly
- **CoP**: Congress of Peru
- **NSW LA**: New South Wales Legislative Assembly

**Budget Oversight Scope**
- Max: 12

**Public Participation & Oversight**
- Max: 8

**Codifying Substantive Equality**
- Max: 6

**Total**
- Max: 26

Legend:
- GPL-OR
- GPL-NR
- Cda HoC
- UK HoC
- KNA
- BNA
- CoP
- NSW LA

Compare & Contrast:
- GPL-OR (Gauteng Provincial Legislature-Old Rules)
- GPL-NR (Gauteng Provincial Legislature-New Rules)
- Cda HoC (Canadian House of Commons)
- UK HoC (United Kingdom’s House of Commons)
- KNA (Kenyan National Assembly)
- BNA (Bulgarian National Assembly)
- CoP (Congress of Peru)
- NSW LA (New South Wales Legislative Assembly)
**Explanation of Legislature Selection for Compare and Contrast Chart:**

1. **GPL-OR** (Gauteng Provincial Legislature – Old Rules): a necessary choice to contrast with the GPL’s new rules.
2. **GPL-NR** (Gauteng Provincial Legislature – New Rules): these are the rules against which the others are contrasted.
3. **Cda HoC** (Canada’s House of Commons): Canada’s House of Commons initiated reform efforts seeking to strengthen the legislature in 1968, wherein committees were created to mirror departments for accountability and oversight purposes, especially in terms of reviewing government estimates (projected expenditures). Since then numerous reform efforts have been undertaken, notably the Lefebvre Committee of 1982 and then the McGrath Committee which issued proposed reforms in 1985. The press for reform was sufficient enough to prompt C.E.S. Franks to open his 1987 classic, *The Parliament of Canada*, with the line: ‘Ours is an age of reform.’ In 2012, forty-four years after the 1968 reforms, Canada’s House of Commons issued another detailed report, ‘Strengthening Parliamentary Scrutiny of Estimates and Supply: Report of the Standing Committee on Government Operations and Estimates’, calling for further reforms in budget oversight.
4. **UK HoC** (United Kingdom’s House of Commons): The United Kingdom’s House of Commons followed Canada’s model with the reforms in 1979 leading to the creation of ‘select committees’ tasked to oversee government departments and agencies, especially with respect to estimates and budgetary matters. In 1996 the Labour Party publicly declared its intentions to reform (modernize) parliament which included enhancing ministerial accountability. In 1997 the Select Committee on the Modernisation of the House of Commons began its work. In 2000, John Major publicly acknowledged that a ‘golden opportunity’ for parliamentary reform was lost during his tenure as Prime Minister. The most recent iteration of the impulse to reform came with the 2009 Wright Committee’s reforms.

6. **BNA** (Bulgarian National Assembly): M. Steven Fish’s and Matthew Kroenig’s 2009 global survey of national legislatures sets forth a ‘parliamentary powers index’ that identifies Bulgaria’s National Assembly as equal to that of the United Kingdom’s House of Commons and surpasses Canada’s House of Commons. Elsewhere, Fish and Kroenig argue that the creation of a “strong legislature” in Bulgaria is the determining variable for greater democratization in Bulgaria and a decline in democracy in Russia.

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7. CoP (Congress of Peru): Peru is acclaimed for formalizing participatory budgeting at the subnational level. The system was brought into existence through the ‘National Participatory Budgeting Law’ in 2003. Participatory budgeting is a national imperative in Peru and represents a specific vision for the nature of civil society and citizenry engagement in the budget process.

8. NSW-LA (New South Wales Legislative Assembly): The NSW LA has been investigating various institutional design matters with respect to budget oversight as well as specific means to measure the performance of budgetary oversight. These efforts are informed, in no small measure, by the work of Malcolm Aldons whose research is significantly influenced by the Americanist conceptualization of legislature autonomy. It is also worth noting that the NSW LA is a subnational legislature, as is the GPL.

Note: The tables below use the most recent rules/Standing Orders of each legislature as of 2014 to determine the rank for the legislature procedures and corresponding rules requirements selected for measurement. The questionnaires on legislature design by the International Budget Partnership (IBP) (www.internationalbudget.org) are used to verify if there is a practice in place and the rules are completely silent on a legislature design feature.

**Breakdown of the Ordinal Measurement System Used in this Chart**

Score 2 = ‘Must’
A score of ‘2’ indicates that the legislature design feature is provided for in the formal rules and ‘must’ be implemented. For example, the first column in the table ‘Oversight Scope’ looks at legislature design in relation to overseeing the appropriations bill (annual budget). A score of ‘2’ indicates that the formal rules demand that committees report on the appropriations bill after scrutinizing it.

Score 1 = ‘May’
A score of ‘1’ can indicate either of two circumstances on a given design feature. It could mean that a design feature is formalized in the rules but the feature is not required; meaning that committees or plenary ‘may’ perform the function but it is not required. A score of ‘1’ could also mean that a design feature is actualized in practice though is not required by the rules.

Score 0 = ‘Not’
A score of ‘0’ indicates that the legislature design feature does not exist and the function is not performed.

Note: This chart is only used to illustrate the scale and scope of the GPL’s reforms. Using the GPL’s own reforms as the categories for measurement/comparison reflects this bias in the table but is only designed to emphasize the exceptional nature of the reform.
<table>
<thead>
<tr>
<th>Legislature</th>
<th>Budget/Appropriations/Supplements</th>
<th>Annual Report</th>
<th>Quarterly Reports</th>
<th>Synergizing Oversight</th>
<th>Legislature Accountability on Oversight</th>
<th>Oversight of the Premier (or PM) and Legislature</th>
<th>Score (Max 12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng Provincial Legislature – Old Rules</td>
<td>6.33(5) – committees MUST report on appropriations.</td>
<td>1</td>
<td>0</td>
<td>5.6(6) – Speaker MAY combine 2 or more committees.</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Gauteng Provincial Legislature – New Rules</td>
<td>209(2); 210(3); 222(1)(a); 222(1)(b) – portfolio committees MUST review departmental budgets and report back to the House.</td>
<td>2</td>
<td>2</td>
<td>170(1-3) – the Standing Committee on Public Accounts MUST refer pertinent budget management issues to the Portfolio and Finance Committees.</td>
<td>2</td>
<td>149(1-2) – each committee MUST produce and present an annual report on its activities; especially oversight.</td>
<td>173; 174 – the Oversight Committee on the Premier’s Office and the Legislature (OCPOL) have full oversight powers and responsibility.</td>
</tr>
<tr>
<td>Canadian House of Commons</td>
<td>81(4-5) ; 108(2)(b-c) – committees MAY report on department budgets referred to them.</td>
<td>1</td>
<td>1</td>
<td>108 (1)(a); 108(3)(c)(x)(y) – committees MAY sit jointly. The Standing Committee on Government Operations and Estimates MAY work with other committees.</td>
<td>1</td>
<td>121(4) – the Board of Internal Economy MUST table an annual report outlining the expenditures of every relevant committee.</td>
<td></td>
</tr>
<tr>
<td>Legislature</td>
<td>Budget/ Appropriations/ Supplements</td>
<td>Annual Report</td>
<td>Quarterly Reports</td>
<td>Synergizing Oversight</td>
<td>Legislature Accountability on Oversight</td>
<td>Oversight of the Premier (Prime Minister)</td>
<td>Score (Max 12)</td>
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<tr>
<td><strong>House of Commons of the UK</strong></td>
<td>54(1) – 3 days are allotted for plenary debate on committee reports on estimates, or related issues. 133 – committees MAY report on any referred matters. 145(1)(c); 145(3) – the Liaison Committee selects committee reports for debate over those 3 days.</td>
<td>0</td>
<td>0</td>
<td>137A(1)(a-d) – committees MAY refer evidence and findings to other committees, hold joint sittings and issue joint reports.</td>
<td>139(1); 144(1)(b-c) – the Administration Committee and the Finance and Services Committee produce reports on the financial management of the legislature and MAY report to the House of Commons Commission</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>Parliament of Kenya – National Assembly</strong></td>
<td>207(1-3) – Budget Appropriations Committee (BAC) MUST report on the national budget and submit recommendations in plenary. 232(4) – departmental committees submit recommendations on the annual budget to the BAC.</td>
<td>2</td>
<td>1</td>
<td>232(5) – BAC MUST consult departmental committees when reviewing the Budget Policy Statement. 235 (4-5) – departmental Committees MUST review budget estimates and send reports to BAC.</td>
<td>200(1-2) – departmental committees MUST report at least half-yearly on progress of work. Reports are collated by the Liaison Committee and reported in plenary.</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Legislature</td>
<td>Budget/Appropriations/Supplements</td>
<td>Annual Report</td>
<td>Quarterly Reports</td>
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<tr>
<td>Bulgarian National Assembly</td>
<td>24(1-3) - relevant committees MUST review departmental budgets and report back to the House. 24(1); IBP committees MAY review departmental annual reports.</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>8(1)(5) – Speaker MUST submit budgetary and annual financial reports for review.⁹</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Congress of Peru</td>
<td>81(c); IBP – committees MAY do appropriations oversight. IBP – legislature MAY review and report on audit reports.</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>30(b-d); 33 – Board of Internal Economy. 32(e) – Speaker reports financials to plenary.⁹ 39 – Dedicated auditor of Congress.</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>New South Wales Legislative Assembly</td>
<td>246(3) – estimates referred to General Purpose Standing Committees that MAY report. Public Accounts Committee MUST review (and MAY report) on government’s financials and performance audits per Public Finance Accountability Act (1983).¹⁰</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>311-314 – allows (in)formal communication between upper and lower House committees.¹¹</td>
<td>0¹¹</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: IBP = Inter-Parliamentary Union
1. Synergizing oversight allows multiple committees to coordinate oversight work to address issues greater than each individual committee’s remit. This ensures major policy issues are addressed as robustly as possible.

2. Legislature accountability for oversight requires that legislatures are held to account for performance in delivering/executing the oversight function.

3. Refers to institutional, legislature mechanisms explicitly geared to overseeing the Premier’s (or Prime Minister’s) Office and the Legislature itself.

4. Currently the legislative business cycle only allows for 2 of 4 quarterly reports to be fully processed in portfolio committees but this problem arises because the legislative calendar still requires adjustment; not because political will is lacking.

5. The ‘deemed to have been reported’ rule allows committees to opt out of reviewing and reporting back on departmental budgets/estimates (annual and supplementary).

6. Discussions with officials serving the Standing Committee on Government Operations and Estimates confirmed that committees rarely review, let alone report on, departmental annual performance and financial reports.

7. The formal rules of the KNA intend for this procedure to occur but it has proven difficult to implement as a result of the legislative calendar. The BAC’s recent reports tabled in plenary reflect the challenge and is proposing solutions. The intention is to actualize this formal aspect of budget oversight work.

8. BNA’s Rules are ambiguous. The International Budget Partnership (IBP) survey indicates that the BNA reviews and reports on annual audit reports inconsistently. The IBP surveys legislature powers and operations using local staff, local civil society partners and where permitted, legislature/government responses. These surveys sometimes provide data on what legislatures do outside formal Standing Orders.

9. While this is a ‘must’ rule, it only requires financial reporting. There is no corresponding requirement to report on the actual detail of work, such as oversight work.

10. There is nothing in the Rules of the New South Wales Legislative Assembly requiring this oversight work but it is being done.

11. This is generous considering that nothing specifies coordination between committees within the lower House.

12. Standing Order 127 provides for directing questions in plenary to committee chairpersons but this is too modest a feature.
<table>
<thead>
<tr>
<th>Legislature</th>
<th>Public Participation</th>
<th>Petitioning</th>
<th>Synergizing Petitions(^1)</th>
<th>Broadcasts &amp; Media</th>
<th>Score (Max 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gauteng Provincial Legislature – Old Rules</strong></td>
<td>5.11(1)(v) – committees MAY summon persons, hold public hearings, and solicit public comment. 6.9(2)(4) – committees MAY receive public inputs on non-money bills. 6.33(4) – Finance Committee MAY solicit public comment on money bills.</td>
<td>7.3(1-2) – any member of the public can petition the GPL.</td>
<td>7.7 (1-2) &amp; 7.8(1-3) – the Speaker MUST refer petitions to relevant committees and committees MUST report on handling of a petition.</td>
<td>1.21(1) – the Speaker MUST regulate public access, including media access, per Section 118 of the Constitution.</td>
<td>6</td>
</tr>
<tr>
<td><strong>Gauteng Provincial Legislature – New Rules</strong></td>
<td>222(3)(c) – committees MUST report on measures to facilitate public participation in the conduct of oversight work.(^2) 152(2)(a) – committees MUST report public participation during legislative work.</td>
<td>57(1-2) – any person can petition the GPL. 61(1-2) – the Petitions and Public Participation Standing Committee MUST report annually and quarterly on its activities and the effectiveness of the petitions process.</td>
<td>222(1)(c) – each portfolio committee MUST deal with issues referred by the Petitions and Public Participation Standing Committee.</td>
<td>51(1) – the GPL MUST be open to the media.(^3)</td>
<td>7</td>
</tr>
<tr>
<td><strong>Canadian House of Commons</strong></td>
<td>108(1)(a) – committees MAY ‘send for persons’ in the conduct of their work. 113(5) – legislative committees MAY ‘send for persons’ in the conduct of their work.</td>
<td>36(1-8) – petitions are referred to the House by an MP. The departments MUST reply within 45 days. Departmental failure to reply results in referral to the relevant committee.</td>
<td>0</td>
<td>119(1-2) – committee proceedings MAY be televised with approval from the House via the Standing Committee on Procedure and House Affairs.</td>
<td>4</td>
</tr>
<tr>
<td>Legislature</td>
<td>Public Participation</td>
<td>Petitioning</td>
<td>Synergizing Petitions</td>
<td>Broadcasts &amp; Media</td>
<td>Score (Max 8)</td>
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</tr>
<tr>
<td><strong>House of Commons of the UK</strong></td>
<td>1 <strong>89(2); 125(1)(2)</strong> – committees MAY allow public in during meetings and oral testimonies. 135(1); 152(4) – committees MAY ‘send for persons’ in the conduct of their work.</td>
<td>2 <strong>153-156</strong> – MPs MAY present petitions to the House.</td>
<td>0</td>
<td>1 <strong>IBP</strong> – media are given access to plenary sittings and committee meetings.</td>
<td>4</td>
</tr>
<tr>
<td><strong>Parliament of Kenya – National Assembly</strong></td>
<td>1 <strong>191</strong> – committees MAY summon witnesses in the conduct of their work.</td>
<td>2 <strong>220 (1(a-b))</strong> – members of the public can submit petitions through MPs or directly to the National Assembly. 227(1-2) – a petition is submitted to the relevant departmental committee which MUST respond within 60 calendar days with a report.</td>
<td>2 <strong>227(1-2)</strong> – departmental committees receive petitions relevant to the matters under their purview.</td>
<td>1 <strong>252(2)</strong> – the National Assembly’s plenary and committees MUST be open to the media. 250; 1st Schedule (Broadcasting Rules) 1(2); 3 – plenary sessions and committee meetings MAY be broadcast. 6(1)(5) – the Speaker regulates media access and authorizes media broadcasting.</td>
<td>6</td>
</tr>
<tr>
<td><strong>Bulgarian National Assembly</strong></td>
<td>2 <strong>28(3)</strong> – committees MAY invite interested parties to meetings/hearings. 28(4) – committees MUST allow representatives from trade unions, professional and industrial associations to participate by making submissions and join deliberations. 36-41 – The Committee on Interaction with Civil Organizations and Movements is the channel for significant levels of public participation.</td>
<td>2 <strong>36(1-2)</strong> - the Committee on Interaction with Civil Organizations and Movements MUST also be responsible for handling petitions.</td>
<td>2 <strong>36(1)(1)</strong> – proposals from the Committee on Interaction with Civil Organizations and Movements MUST be forwarded to relevant committees. 39 – civil society organizations MAY be allowed to attend committee meetings and submit written opinions. 41 – civil society organizations MAY participate in parliamentary oversight per Chapter 9 - Parliamentary Control.</td>
<td>2 <strong>47(3)</strong> – oversight work MUST be broadcast on television and radio. 28(9) – accredited media are provided access to the legislature and committee meetings.</td>
<td>8</td>
</tr>
<tr>
<td>Legislature</td>
<td>Public Participation</td>
<td>Petitioning</td>
<td>Synergizing Petitions</td>
<td>Broadcasts &amp; Media</td>
<td>Score (Max 8)</td>
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</tr>
<tr>
<td>Congress of Peru</td>
<td><strong>1</strong> IBP – public hearings on the macroeconomic and fiscal framework are not held. Sector committees hold a limited number of hearings with public inputs. <strong>70</strong> – allows civil society organizations to participate in law-making process.</td>
<td><strong>2</strong> 23(f) – allows for the public to petition Congress.</td>
<td><strong>0</strong></td>
<td><strong>62</strong> – accredited media are allowed access to Congress.</td>
<td><strong>4</strong></td>
</tr>
<tr>
<td>New South Wales Legislative Assembly</td>
<td><strong>1</strong> 289, 290 – committees MAY send for persons to testify and provide evidence.</td>
<td><strong>2</strong> 121, 125 – petitions by public permitted; sent to the Executive which must reply.</td>
<td><strong>0</strong></td>
<td><strong>263</strong> – media coverage allowed per Speaker’s permission. <strong>368</strong> – media allowed full broadcast coverage.</td>
<td><strong>5</strong></td>
</tr>
</tbody>
</table>

1. Synergizing petitions requires legislatures to coordinate across committees to resolve petitions but to also ensure that petitions with policy relevance are given an opportunity to inform the oversight work of portfolio committees.
2. It is worth noting the substantial increase in the GPL’s commitment to public participation in the oversight process. This not only greatly surpasses requirements in the GPL’s old rules but is only matched by the Bulgarian National Assembly.
3. It should be noted that public broadcast (television and radio) are costs that can be prohibitive for some legislatures and it is somewhat unfair to compare them on this basis.
4. Standing Order 127(3) for Kenya’s National Assembly requires committees considering public bills to facilitate public participation and take public inputs into account in its consideration of legislation. This same requirement does not exist in the Standing Orders specifying the processes for budgetary oversight.
**Table 11: Institutionalized Substantive Equality: Socioeconomic**

<table>
<thead>
<tr>
<th>Legislature</th>
<th>Institutionalized Substantive Equality – Public Participation</th>
<th>Institutionalized Substantive Equality – Gender</th>
<th>Institutionalized Substantive Equality – Socioeconomic Vision in the Bill of Rights</th>
<th>Score (Max 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gauteng Provincial Legislature – Old Rules</strong></td>
<td>1 5.6(5)(i) – Standing Committee on Petitions and Public Participation.</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Gauteng Provincial Legislature – New Rules</strong></td>
<td>2 130(1) – the GPL MUST facilitate and strengthen public involvement in the processes of its committees per Article 118 of the Constitution.</td>
<td>2 163 - 167 – establishes the Gender Committee and Gender Caucus to elevate gender issues in oversight, public participation and other processes. 151(3)(b) – committees MUST indicate how the matters under review affect gender rights per the Bill of Rights. 152(2)(g) – committees MUST report on how a law under review impacts on gender rights per the Bill of Rights.</td>
<td>2 220(3) – GPL oversight MUST be pursued with the aim of realizing the rights in the Bill of Rights. 151(3)(b) – committees MUST indicate how the matters under review affect socioeconomic rights per the Bill of Rights. 152(2)(g) – committees MUST report on how a law under review impacts on socioeconomic rights per the Bill of Rights.</td>
<td>6</td>
</tr>
<tr>
<td><strong>Canadian House of Commons</strong></td>
<td>0 104(2)(v) – Standing Committee on the Status of Women.</td>
<td>2</td>
<td>1 108(3)(d-e) – the Human Resources, Skills and Status of Persons with Disabilities Committee has an ‘equality’ mandate. The Justice and Human Rights Committee reviews and reports on Human Rights Commission reports, which include ‘equality’ issues.</td>
<td>3</td>
</tr>
<tr>
<td>Legislature</td>
<td>Institutionalized Substantive Equality – Public Participation</td>
<td>Institutionalized Substantive Equality – Gender</td>
<td>Institutionalized Substantive Equality – Socioeconomic Vision in the Bill of Rights</td>
<td>Score (Max 6)</td>
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<tr>
<td>House of Commons of the UK</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>3</td>
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<tr>
<td></td>
<td>152B – Joint Committee on Human Rights has broad mandate to</td>
<td></td>
<td>152(2) – Work and Pensions Select Committee oversees the Department of Work and</td>
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</tr>
<tr>
<td></td>
<td>address rights protected by the Human Rights Act of 1998,</td>
<td></td>
<td>Pensions which addresses social welfare policies.</td>
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<td></td>
<td>which includes protection from discrimination on the basis</td>
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<td>of sex.</td>
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<td></td>
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<tr>
<td>Parliament of Kenya – National</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Assembly</td>
<td>214(1)(c) – Joint Committee on National Cohesion and Equal</td>
<td></td>
<td>214(1)(c) - Joint Committee on National Cohesion and Equal</td>
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<td>Opportunity is mandated to enhance equal opportunities and</td>
<td></td>
<td>Opportunity is mandated to enhance equal opportunities and</td>
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<td></td>
<td>improving the quality of life of persons marginalized on the</td>
<td></td>
<td>improving the quality of life and status of persons marginalized on the basis of,</td>
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<tr>
<td></td>
<td>basis gender.</td>
<td></td>
<td>among other things, ethnicity, race, culture, and religion.</td>
<td></td>
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<tr>
<td>Bulgarian National Assembly</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Congress of Peru</td>
<td>0</td>
<td>0</td>
<td>76.1(b) – tax laws MUST account for development and welfare needs of the country.</td>
<td>1</td>
</tr>
<tr>
<td>New South Wales Legislative Assembly</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>

1. This category emphasizes the intention of the reformers to explicitly affect South Africa’s (Gauteng’s) social transformation.
2. A Petitions Committee was established in 2015 (just outside of the timeline for this comparison) and it does enable the public to participate. The criteria used in the measures for this table would give the current system a ranking of ‘1’ because it does not demand public participation in budget oversight process.
The graph serves to lay bare the paradoxical nature of ‘the Reform’. Pre-reform budget oversight rules at the GPL modestly exceeded those of the national legislatures in Canada and the United Kingdom. They also exceeded those of the Congress of Peru which has built a reputation for innovation in participatory budgeting. The GPL’s pre-reform rules matched those of New South Wales’ Legislative Assembly and the Bulgarian National Assembly. The former is noted for being a subnational legislature in a long-standing democracy that has been looking at committee oversight reform through the prism of analysis offered by Malcolm Aldons; whose work seeks to make parliamentary committees more transformative. The latter is identified by Fish and Kroenig (2006) as one of the more remarkable and stronger legislatures on a global comparative scale. Finally, the GPL’s pre-reform rules fall behind only those of the Kenyan National Assembly. The Kenyan National Assembly’s Standing Orders reflect the final outcome of an LDN-driven reform exercise to create a budget oversight system in the fashion promoted by the World Bank and its partners.

GPL pre-reform Standing Orders are notable for benchmarking well when compared with legislatures from a variety of political and geographic backgrounds. When understood in this light, it becomes plainly clear that ‘the Reform’ does not represent an effort by a newly democratized legislature to ‘catch-up’ to older or stronger legislatures. The GPL did not initiate a revamping of its budget oversight function because it was lagging behind on some global standard. Instead, ‘the Reform’ represents a legislature surging well-beyond the standard of institutional design of budget oversight from a position of relative institutional parity.

Adding to the paradox of ‘the Reform’ is the matter of time. The GPL came into existence with the transition to a democracy in 1994; following the first democratic elections. The GPL began reflecting on its oversight work and the oversight function conceptually in 1998, after four
years of existence. In 1999 it began focusing towards reform and concluded the process by the end of 2004. ‘The Reform’ took a maximum of six years from start to finish. The legislatures selected in the comparison have existed for far longer than the GPL. These other legislatures have been reformers for far more years than the existence of the GPL too. The GPL accomplished in six years what some of the far more advanced and very well-resourced legislatures have been unable to accomplish in almost sixty years.

Moving away from the hard and fast comparison of Standing Orders is helpful in order to appreciate not only the paradox of the reform but also how these arcane rules are actually tied to deeper political principles and values. Ryle (2005), drawing on his significant experience at Westminster, provides a framework to compare legislature institutionalization of oversight and scrutiny along a set of practical criteria that help bridge the conceptual gap between detailed rules and broader principles and values. He writes, “[effective] criticism by Parliament requires three things: adequate opportunities for the participants on both sides of the House to initiate debate on matters of their own choosing; appropriate procedures for different types of business; and access to relevant information.”

Ryle’s criteria lead to a favourable evaluation of ‘the Reform’. Budget oversight at the GPL provides a litany of opportunities for all parties and representatives to initiate debate on matters of their choosing. The GPL’s stages of budget oversight during the legislative calendar and its Standing Orders provide no fewer than six, and sometimes eight, explicitly focused phases of budget oversight work per financial year. Each phase involves a series of committee meetings followed by deliberation in plenary. The number of meetings becomes exponentially greater when one considers that each departmental committee is executing these functions. The BCM

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also provides for no fewer than two series of focused intervention studies (almost like committee inquiries) on serious topics arising from budget oversight work. The oversight reports produced are tabled in plenary and debated. Taken together, all representatives across all parties are afforded a significant array of chances to debate substantive issues. Procedures for all of these opportunities are provided for in the Standing Orders of the GPL and each stage of budget oversight work is built on the formal financial reports and supplementary reporting required of departments to the GPL.

The GPL’s reforms are profound but Canadian and British national legislatures have made reforms too. They are evolving and they are dynamic. This comparative exercise should not be taken to suggest that no progress has been made by parliamentary reformers in Canada and the United Kingdom. Canadian legislative studies scholar Jennifer Smith references another Canadian legislative studies expert and reformer, Peter Dobell, to argue that progress is being made and the contribution by committees is improving.299 Franks opens his seminal work, The Parliament of Canada, by indicating that Canada’s parliament is in an age of reform but goes on to indicate that efforts to strengthen committees in the United Kingdom have been more successful.300 This praise, even if modest, makes it reasonable to ask: what would Smith, Dobell, Franks and others say of the GPL? The praise earned for the reforms in the other legislatures used in this comparative exercise only serves to reinforce the paradoxical nature of the GPL’s accomplishment. The remainder of this chapter provides an explicit account of lawlike generalizations and theories of parliamentary reform to conclude the argument about PEBA’s status as a paradox and sets the stage for building a working hypothesis to explain ‘the Reform’.

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3(6) PEBA’s Violation of ‘Lawlike’ Generalizations in Legislative Studies

‘The Reform’ lies beyond the explanatory framework of the current literature in legislative studies and is exceptional when contrasted with reform progress and budget oversight design in other legislatures. It is paradoxical for these reasons. Is that enough, however, to justify a research project testing a hypothesis based on ‘the Reform’ to explore new variables in order to arrive at a new theory of legislature transformation? No. To justify such an endeavour it is necessary to empirically demonstrate that ‘the Reform’ upends the most basic axioms of parliamentary behaviour and also contradicts existing theories of legislature transformation. If that can be accomplished and added to the weight of the preceding analysis in this chapter, it will fully establish the paradoxical nature of ‘the Reform’ and open the way for developing a new theory of legislature transformation. That is the substance of the remaining sections of this chapter.

One important caveat is necessary before proceeding, however. It is not the intention of this project to enter ongoing debates in the social sciences generally, and political science specifically, about the possibility of developing theories that are as valid as established theories in the natural and physical sciences. Whether various theories in legislative studies can attain to the validity of something like the law of gravity is well beyond the scope of this project. However, the legislative studies literature on parliamentary behaviour has isolated core patterns and institutional outcomes that arguably hold the status of ‘lawlike’ generalizations. ‘The Reform’ is a paradox because it empirically contradicts these lawlike generalizations.

Reviewing more of the legislative studies literature is unnecessary in order to proceed. The lawlike generalizations overturned by ‘the Reform’ can all be distilled from the descriptive and theoretical accounts on budget oversight decline provided by legislative studies scholars earlier
in this chapter. In effect, these lawlike generalizations represent the most parsimonious conclusions drawn from that body of work. Therefore, the axioms are not elaborated upon. Instead, there is only a focus on how each is profoundly contravened by ‘the Reform’.

The table below sets forth three core lawlike generalizations in the field of parliamentary studies. Next to each of these axioms is a listing of scholars whose work is important to the field, focuses on parliamentary design and reinforces the validity of the lawlike generalization either by explicitly restating it or for using it as a valid theoretical premise in their own studies. Again, these lawlike generalizations are not presumed to be as valid or as strong as the ‘law of gravity’, but they come as close as can be expected for the social sciences.

Table 12: Lawlike Generalizations in the Legislative Studies Field on Parliamentary Effectiveness

| 3. the opposition (minority) parties ‘do’ oversight and carry the burden of holding the government to account (majority/governing party MPs defend the party) | Aucoin, Smith & Dinsdale (2004: 52-55); Aucoin & Jarvis (2005: 45, 73); Docherty (2005: 124-5, 127, 139, 179); Franks (1987: 15, 35, 232); Judge (1983: 19, 57); Polsby (1975: 279, 283, 297); Rhodes, Wanna & Weller (2009: 197); Rush (1979: 212); Smith (2003: 151); Thomas (2000: 39); Weber (1917: 1423); Wheare (1968: 77-79) |
1) **Strong Parties and Weak Committees:** A successful liberation movement-turned-political party thrust into a parliamentary system is likely to develop into a strong party in the conventional sense of Westminster systems. When the institutionalized impulses of responsible government (discussed earlier) are combined with entrenched internal discipline fostered in a liberation movement, it is almost a foregone conclusion that a ‘strong party’ will emerge. The ANC is no exception to this reality, having actively resisted state oppression for eighty-two years before being able to contest democratic elections in 1994. Adaptation to the fundamental dictates of a parliamentary system and the maintenance of confidence was never going to be a challenge for the ANC. As a liberation movement it developed a plethora of internal decision-making processes which naturally grafted onto the institutional features of parliamentary operations, such as caucus. This allowed the ANC to easily master the operation of a parliamentary system of governance.

ANC capacity to fashion itself into a strong party also derives from its profound electoral success and the electoral system. The ANC established electoral primacy nationally and throughout most of South Africa’s provinces in 1994. The ANC’s electoral success has been consistent in Gauteng, winning clear majorities from the first democratic elections until the present. Indeed, the ANC held 50 of 73 seats in the GPL when research towards the design of PEBA began and 51 of 73 seats when ‘the Reform’ was complete. Moreover, South Africa uses a closed-list, proportional representation electoral system. A candidate trying to win a seat requires being listed as high as possible and then hopes the party wins enough of the popular vote to make the cut. Even a non-specialist in electoral system design can appreciate that these conditions are more likely to encourage members who are reliable in the eyes of the party leadership. Hughes asserts that the “current proportional representation party-list system militates against
constituency representation and responsiveness, while encouraging party loyalty. [...] party loyalty also parleys into a reverence and professional fear of the executive.”

Gauteng ANC Members of the GPL know their political futures are profoundly determined by the party leadership in such a system. All of this further fashions the ANC into a strong party.

‘The Reform’ came about through the efforts of an ANC that epitomized the ‘strong party’ caricature in a parliamentary system. High levels of discipline combined with phenomenal electoral success gave the party a clear mandate to govern. Yet, it is under these conditions that the ANC strengthened the committee system of the GPL in an unprecedented manner. Where legislative studies scholars identify the ‘lawlike’ consistency of strong parties stifling or diminishing committee strength, the ANC in Gauteng Province did just the opposite.

2) Executives Try to Reduce Oversight Tools: Theories of responsible government discussed earlier help illuminate the causal chain propelling executives with strong electoral mandates to weaken legislatures in order to fulfill campaign platform promises expeditiously. It would be an exercise in deliberate myopia, however, to also ignore the natural instinct of ministers seeking to reduce the opportunities whereby they might be embarrassed, and thereby suppress or diminish legislature oversight tools and capacity. Attempting to avoid public exposure for a failure or short-coming may violate the need for transparency and accountability but is a profoundly understandable survival strategy for any politician.

PEBA oversight processes, as reflected in the GPL’s BCM, require an exponential increase in the number of stages in which a department and minister must be present in committee and in plenary to explain policies, decisions, strategies and account for implementation successes and failures. To be exact, the pre-reform BCM formally required oversight of appropriations and

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informally required scrutiny of annual performance reports. The post-reform BCM formally requires committee oversight outputs on appropriations, annual performance reports and quarterly reports. It also demands the production of two separate focused studies on departmental operations in high priority areas of concern which arise from deliberations in the other stages of budget oversight work. Altogether, pre-reform budget oversight provided two stages in which members of the executive are exposed to scrutiny and post-reform budget oversight quadruples the exposure by institutionalizing eight stages per financial year.

The increased number of stages in budget oversight work generates a massive increase in the number of meetings for each stage of budget oversight work. The appropriations stage alone consists of numerous contact points between the committee and minister. First, a preliminary committee meeting occurs whereby the whole committee is given a budget analysis briefing by committee staff producing questions that are put in writing to the Minister for which responses are required in writing. The answers are officially tabled and then a meeting takes place attended by senior departmental officials and the responsible minister. That meeting results in follow-up deliberations which may require the presence of the department and minister but certainly produces another round of question and answers between the departmental committee and the department. Finally, committee meetings are held to draft and finalize a report and recommendations tabled in plenary which requires a formal response in plenary from the relevant minister.

Members of the executive branch of the provincial government accepted an exponential increase in the GPL’s oversight tools and its capacity to employ them. The axiom that members of the executive will try to reduce legislature oversight tools is wholly contradicted by ‘the Reform’.
3) **Opposition Parties ‘Do’ Oversight:** A loyal opposition is institutionally entrenched in Westminster-based systems. It officially exists to offer voters an alternative government in waiting. Parties finding themselves as the official opposition are strongly mobilized to identify government failures and to bring these faults to light and present policy alternatives to earn majority support from the electorate at the next election. A loyal opposition legitimately devotes itself to eroding the electorate’s confidence in the governing party.

Governing party members confronting this constant onslaught find themselves driven to defend the government. Whether the defense of the party and government is motivated by genuine belief in being right or merely for the sake of survival is not the issue at hand. Governing party members rally to defend the party and government and in so doing reaffirm the loyal opposition’s mandate to constantly criticize the government. This tendency is so absolutely prevalent it attains to the status of a lawlike generalization.

PEBA produces a constant stream of critical analysis of departmental performance. This can and does implicate the minister and the governing party in leadership short-comings or even failure. Yet, the entire process is driven by departmental committees with a majority membership, and each chairperson, drawn from the governing party. Chairpersons of departmental committees read oversight reports in plenary which require official responses in plenary from ministers. This oversight work does not supplant or diminish the other forms of government-opposition confrontation in the legislature. Moreover, those other processes in the GPL, such as question period, very much conform to the patterns of behaviour predicted by the axiom that the substance of oversight work is the duty of the loyal opposition.

‘The Reform’ is exceptional even within the GPL. It carves legislature budget oversight and scrutiny out of this framework and requires governing party members to fulfill the oversight
function on an unprecedented scale. PEBA shatters the axiom in parliamentary studies that opposition members fulfill the critical oversight function while governing party members simply cover and defend the government.

3.7 Failed, Flawed, Under-developed and Under-specified Theories

Theories of legislature transformation cannot account for ‘the Reform’. They are either significantly under-specified or completely defied as theories. This is not an evaluation of the robustness of existing theories on legislature transformation. Those theories discussed here are based on extensive research, reflecting some of the best work of notable scholars in the field. Instead, the validity of these theories in other contexts is exactly what establishes the paradoxical nature of ‘the Reform’ and justifies the effort to test a new hypothesis of legislature change.

Parliamentary Strengthening and Reform as a Function of Minority Government:

Minority government is seen as most likely to produce legislature transformation and ideal conditions for strengthening oversight committees. This theory, in some respects, builds on the axiom that strong-dominant parties weaken legislatures. Marsh’s (1986) Policy Making in a Three Party System explicitly builds a theory of legislature strengthening on the basis of no single party commanding a majority. He argues that under minority government, “[the] traditional concern for a strong executive would be modified by the liberal priority to extend political participation and to qualify concentrated power. Parliamentary select committees would share the powers of political initiative now concentrated in the hands of ministers.”\(^\text{302}\)

Legislature strengthening as an outcome of minority government is also intuitively easy to comprehend. A minority government will need to make a variety of concessions in bargaining

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with other parties to survive votes of confidence and prevent a return to the polls. The absence of a majority reduces the power exercised by the leader of government as a result.\(^3\) As White asserts, “Minority governments – in which no party commands a majority of the seats – enhance the policy roles of the legislature collectively and the members individually.”\(^4\) He goes on to note that periods of minority government in Ontario’s provincial legislature “produced extensive legislative reform.”\(^5\) Confidence in this theory of legislature strengthening leads Aucoin and Jarvis to reference the experiences of minority government in New Zealand to suggest that Canada ‘could’ see the House of Commons empowered under minority government.\(^6\) White echoes the same sentiment when he concludes that the failure of two Canadian political parties to create a coalition government in 2008 represents “the loss of the best opportunity in decades to get on with the essential business of parliamentary reform.”\(^7\)

Blondel’s (1973) classic, *Comparative Legislatures* sets out this theory in the context of minority governments where inter-party negotiations are needed to achieve a majority. He writes:

> if [...] the nationalization of the parties is not as marked, or fractionalization of the parties is greater, the strength of the legislature will increase [...] however nationalized the party system may be, a highly fractionalized party system (one in which the legislature is


\(^5\) Ibid. P. 263.


composed of a number of parties of about the same size) will lead to the legislature being relatively influential.\textsuperscript{308}

Blondel’s framing of this theory accounts for coalition governments arising from the absence of any one party holding an absolute majority.

Carey, Formanek and Karpowicz (2002) use the minority government theory of legislature strengthening in a comparative study of legislature change in the Czech Parliament and Polish Sejm. Greater strengthening in the Czech Republic’s Parliament is attributed to periods of minority government but the authors acknowledge the early stages of the findings.\textsuperscript{309} Parliamentary experiences with minority government are the focus of a 2009 Institute for Government study entitled, ‘Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall’. The report, which examines minority government dynamics across a variety of countries, affirms that parliamentary strengthening can occur under minority government. However, it challenges the notion that parliamentary reform is more likely, indicating that a champion and clear agenda are also necessary factors along with minority government.\textsuperscript{310}

A study to review parliamentary oversight commissioned by the Speaker of the GPL in 1998 is taken as the starting point of ‘the Reform’. This comes at the end of the first term of democratic governance in South Africa, which began with democratic elections in 1994. At the time, the GPL’s plenary consisted of 86 seats. The ANC won 57.6\% of the popular vote and held an absolute majority with 50 seats. The National Party won 23.9\% of the popular vote, holding

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21 seats. Notable smaller parties won 6.2% (Freedom Front), 5.3% (Democratic Party) and 3.7% (Inkatha Freedom Party) of the popular vote.

The second democratic elections in South Africa took place in 1999. The GPL’s plenary was reduced from 86 to 73 seats. ANC electoral success surpassed their performance in the previous elections. Their seat allocation remained 50 but this was now based on winning 67.9% of the vote. The opposition, on the other hand, fractured. The rebranded New National Party won only 3.9% of the popular vote. The new official opposition party became the Democratic Party, but it only won 17.9% of the vote and held 13 seats. Five parties constituted the remaining +/- 10% for a total of 7 seats. ‘The Reform’ occurred over a period during which the ANC constituted an absolute majority and the opposition was fracturing and weakening at the polls.\textsuperscript{311} The minority government theory provides no value in coming to grips with how ‘the Reform’ occurred.

\textit{Legislature and Committee Strengthening as a Function of Weak Parties:}

Asserting that weak parties produce stronger legislatures (and committees) inverts the axiom referenced earlier that strong parties (like the ANC) will weaken committees. Polsby (1975) makes this case explicitly to theorize the foundations of strong legislatures, such as the U.S. Congress. His classification of the U.S. Congress under the typology of ‘transformative legislature’ indicates that it has enough power to set policy and even directly alter executive policy making. Polsby writes, “[the] less centralized and hierarchical the management of legislative parties, the more transformative the legislature.”\textsuperscript{312} A party’s control over the nomination process is one of the factors used to measure the degree of centralization in a party. If the party determines whether a person can be nominated to stand for election it will

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fundamentally affect that person’s calculations of engaging in activity that frustrates or angers those party leaders. This in turn should inhibit efforts of elected representatives to empower committees that oversee and scrutinize the work of the executive branch.

Shaw (1998) uses this theoretical framework to explain the strength of the U.S. Congress and specifically its committee system. He argues that weak cohesion in parties diminishes the capacity to exert control and results in committees developing “a life of their own and to make a strong contribution to the outputs of the legislature.”

South Africa’s closed-list proportional representation electoral system institutionalizes the antithesis of the American system. The centralized party leadership determines not only who can stand for election but also the rank order on the closed-list. It effectively gives the ANC absolute power in determining a politician’s electoral prospects. Parliamentary strengthening and committee reform occurred in Gauteng nonetheless. The ‘weak party – strong legislature’ theory offers no explanatory value in the case of ‘the Reform’.

Legislature Strengthening Resulting from Legislature-Executive Contestation for Power:

Hawes’ (1993) in-depth analysis of growing departmental oversight committee influence in Westminster is in many respects a direct challenge to the minority (and coalition) government theory put forth by Marsh (1986). Hawes sees a puzzle presented by expanding committee influence in Westminster during a period of Conservative Party electoral dominance in the late 1980s. It certainly contradicts the minority government theory. He argues that during the strong majority period, governing party members contested party leadership for power. Executive-legislature contestation fashioned committees “as a counterpoint: a platform for the expression of back-bench views, often of a bi-partisan kind which provided, however minimally, an antidote to

the overweening centralism and arbitrary use of executive power [...].”

The zero-sum contestation for power between executive and legislative branches is a significant theoretical framework employed by U.S. legislative studies scholars and Hawes’ general approach resonates with that institutional design literature.

In South Africa, however, ANC party leadership, legislature leadership, committee chairpersons and governing party members of the GPL worked in concert and coordination to bring about ‘the Reform’. The process was not frictionless, but it was never a zero-sum contestation for power. It was a collective effort that drew on all segments of the ANC’s decision-making and leadership apparatus in Gauteng. The zero-sum, institutional power contestation model fails to explain ‘the Reform’.

**Parliamentarian Professionalization and Legislature Strengthening:**

Explaining, and advocating, parliamentary strengthening through reform was a critical matter for Max Weber. He writes, “[the] decisive question about the future of Germany’s political order must be: How can parliament be made fit to govern? Every other way of putting the question is simply wrong, and everything else is secondary.”

Weber’s efforts to theorize parliamentary reform developed a century ago, in 1917 and 1918, and were published posthumously in 1922.

Weber specified his vision for the type of parliament Germany needed. He sets forth the concept of a ‘working parliament’ and defines it simply as a legislature that “supervises the administration by continuously sharing its work.” Parliamentary oversight, which he calls supervision, is at the core of ‘sharing’ in the work of government. Weber is remarkably explicit about the ideal form of parliament in this regard. In terms of ‘parliamentary accountability’,

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316 Ibid. P. 1416.
Weber says political and administrative leaders of government “must account for their actions exhaustively to parliament, subject to verification by that body or its committees.”317 He seeks a measure of ‘parliamentary control’ which requires government departments and agencies operating according to guidelines approved by parliament.318

Weber theorizes that parliamentary reform, “depends above all on the development of a suitable corps of professional parliamentarians.”319 For Weber, Germany needed to develop seasoned parliamentarians with the expertise and wisdom necessary to surmount the extensive obstacles to reform. Resistance to reform, in Weber’s analysis, would arise from “administrative policy makers, who want to have maximum freedom from supervision”320, and also the, “typical party functionary”, trying to prevent the emergence of strong political leaders in the legislature.321 Uhr (1993) uses Weber’s theory to build a model for evaluating parliamentary strength. Uhr also accepts Weber’s focus on the professional parliamentarian as the core independent variable for legislature transformation in the development of his model.322

Blondel (1973) does not employ the explicit concept of ‘professional parliamentarian’ but he does use experience over time in a legislature to make parliamentary socialization a variable in explaining parliamentary strengthening. Blondel argues that parliamentarians seeking to effect policy change, especially on broad policy matters, must devote their careers to a limited number of ideas and work constantly at the general level for the ideas to eventually take root. Legislatures must exist for an extended period of time to bring about an institutional process of

317 Ibid. P. 1408.
318 Ibid. P. 1408.
319 Ibid. P. 1427.
320 Ibid. P. 1417.
321 Ibid. P. 1427.
socialization that compels parliamentarians to recognize the limits to their power and capacity to bring about large scale transformation.\textsuperscript{323}

Both parliamentary socialization and the development of professional parliamentarians are necessarily functions of some extended duration of parliamentary operation and experience. The parliamentarians who brought about ‘the Reform’, in contrast, initiated the process at the end of their first term in government and completed the entire reform process at the front-end of the third term of government. Moreover, this was accomplished during the first experience with democracy in South Africa. The parliamentarians themselves were anything but career parliamentarians by virtue of only assuming office shortly after successfully participating in a liberation movement. Also, the ANC leadership in the GPL conducted the process in coordination with the executive branch, in sharp contrast to Weber’s expectation of sources of opposition. Indeed, the GPL brought about a new set of institutional arrangements best approximating Max Weber’s ‘ideal’ in a manner that completely contradicts his theory of how it would happen. ‘The Reform’ wholly defies Weber’s theory.

\textit{Parliamentary Reform as a Function of Political Will:}

The explanatory value of every theory discussed up to this point in relation to ‘the Reform’ is close to, or at, zero. Political will as a cause of legislature transformation does not fail as a theory in the same manner as the others discussed here. Political will, however, most often becomes a tautological explanatory device when applied by scholars to theorize legislature reform because it is left under-specified and abstract conceptually. Political will can become useful in developing a hypothesis for ‘the Reform’ if it is used only as a general guide in drilling down to the deeper motivations and perspectival lenses of parliamentary reformers.

Milliken emphasizes the political will of all members of Canada’s House of Commons as necessary to bring about reform, especially of the committee system, which is constituted by backbenchers. Rush argues that the determining variable in Canada is the political will of the executive. Irrespective of the source of political will, they both agree that the attitudes of elected representatives are critical to strengthening parliament and empowering its oversight and scrutiny systems. Thomas focuses on backbenchers at Westminster, arguing that enhancing legislature oversight “depends on the attitudes of Members of Parliament. [...] This means that MPs have to have split personality; sustaining their party either in government and opposition on the one hand and acting as public watchdog on the other.”

What is important about these three illustrative references is that the authors only meaningfully incorporate political will as a key determining variable at the conclusion of their respective analyses. Consequently, readers are left with a tautology, wherein parliamentary reform does or does not happen on the basis of whether decision makers want reform. There is no substantial effort at verification by applying the concept in a causal framework. Instead, this supposedly determining variable is used to conclude studies, often more as a lament by scholars. This in itself speaks volumes both about the usage of the concept in explaining parliamentary strengthening and the frustrations of legislative studies scholars who acknowledge that very little of it ever really happens.

Philip Norton’s incorporation of political will in his work stands apart from others who use it because he explores this variable in a theoretically grounded causal framework. In Norton’s

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view, parliamentary reform is “dependent on the political will of MPs to achieve it. They have to be willing to vote for it in the face of executive reluctance or hostility.” He sees the executive-legislature power struggle as the backdrop to successful reform. Norton does draw on the broader theory of parliamentary reform as a function of executive-legislature contestation. However, he uses that as a starting point to examine the causal linkage between executive-legislature friction and the generation of enough political will on the part of governing party backbenchers to stand against their leadership and compel reform.

His theory includes two additional components. First, institutional reforms tabled at the start of a new parliament increase the likelihood of successful reform. Second, a set of reform proposals should already exist, often developed by a legislature’s procedure committee in the form of a report. These additional two factors are meaningless without political will for Norton. He says, “[the] existence of a window is not sufficient. Members have to be willing to ensure that proposals are brought before the House for debate and to approve those proposals.”

Conflict between the governing party leadership and governing party members is the driver of political will in this theory. Norton studies how executive-driven policies in the United Kingdom in the 1960s and 1970s laid the groundwork for covert dissent among governing party backbenchers to manifest as overt dissent during the 1970-1974 term of government. Increasing dissension built an attitudinal shift among backbenchers propelling reforms in the late 1970s. Financial scandals in 2009 laid the groundwork for backbenchers to push through reforms in 2010. Norton identifies how the “impact on MPs was marked” and strengthened backbenchers

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329 Ibid. P. 153.
who used a 2009 report recommending a set of reforms in light of a recent scandal to successfully do so at the start of a new government in 2010. Norton is able to use this theoretical framework to demonstrate the causal relevance of political will to explain reform at Westminster. His critical contribution is to empirically validate political will as a variable to a degree unmatched by others.

While ‘the Reform’ affirms the relevance of political will, it does not operate causally in the way Norton theorizes, nor does it confirm the additional elements of his theory. Internal conflict and tension within the ANC in Gauteng was not palpable, let alone significant enough to lead to overt signs of dissent. While it would be unrealistic to expect any political party to be free of internal conflict and tension, the ANC in the GPL did exude solidarity and deep coordination between the executive and governing party backbenchers. ANC backbenchers at the GPL did not have to find the courage to push through and vote in ‘the Reform’ in the face of executive resistance.

‘The Reform’ also does not support Norton’s view that a pre-existing reform package tabled at the start of a new legislature increases the chances of success. ‘The Reform’ began with a study commissioned by the Speaker of the GPL at the end of the first term of government in 1998. In 1999, the ANC began its second term of democratic governance in Gauteng exploring reform options without a concrete roadmap. The reform effort then proceeded in earnest from 1999 onward, progressing over the course of the ANC’s second term of government in Gauteng. It was only at the start of the Third Legislature, in 2004, that GPL reformers began developing a rules reform package based on PEBA. It was passed later in the year.

The way in which ‘the Reform’ unfolded contradicts these additional elements of Norton’s theory and the operation of political will as a variable occurs in an entirely unexpected manner.

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Regardless, this only further confirms the paradoxical nature of ‘the Reform’ while at the same time refocusing attention on the resoluteness the ANC in Gauteng must have possessed to strengthen the GPL’s budget oversight and scrutiny function to such a degree.

Norton’s research provides a usage of political will as a variable that focuses on the deep motives of the reformers and backbenchers from the governing party. This is the critical step in hypothesizing why and how ‘the Reform’ occurred. Norton’s theory may not explain how and why ‘the Reform’ occurred but it directs attention to the ANC in Gauteng itself as a starting point. The rest of the legislative studies field, as discussed over the course of this entire chapter, simply cannot offer such a starting point. Descriptive accounts and theories all indicate the truly exceptional or contradictory nature of ‘the Reform’. A variety of subfields and specialized disciplines within legislative studies are completely blind in theoretical terms to what happened at the GPL. The legislature development programmes dominating the landscape and that build on the core ideas and normative agendas in American legislative studies did not resonate at the GPL. ‘The Reform’ is in every sense a paradox from the perspective of legislative studies literature. Hypothesizing why and how ‘the Reform’ occurred begins with an effort to understand the ANC and the conditions facing it leading up to, and throughout, its reform effort.
Chapter Four: Post-1994 Political Dynamics and the ANC’s Experience with Governance

‘The Constitution whose adoption we celebrate [...] recognizes the fact that the dignity of the individual is both an objective which society must pursue, and is a goal which cannot be separated from the material well-being of that individual’ (Thabo Mvuyelwa Mbeki, 1996)

4(1) Institutionalizing High Expectations

Developing an appreciation for the ANC’s experience with governing South Africa is essential for coming to grips with the conditions facing ANC Gauteng’s reformers in 1998-1999. This chapter traces through important processes and initiatives, some of which begin before democratic elections, to understand the sources of ANC frustration and the challenges it faced leading up to the decision to commence with legislature strengthening in Gauteng. Examining the ANC’s earliest experiences with governance also establishes a basis for understanding the ANC well enough to know why theoretical eclecticism is necessary for hypothesis-building. ANC plans for helping the poorest and most vulnerable South Africans offers a starting point in this analysis.

On November 23, 1994 South Africa’s National Assembly formally circulated a policy White Paper on ‘Reconstruction and Development’ through Government Gazette No. 16085. The ANC’s ‘Reconstruction and Development Programme’ (RDP) was a key ANC policy document promoted during the election campaign. A written statement was included at the front end of the White Paper from President Nelson Mandela. President Mandela unequivocally asserts that South Africa “is going through a profound transformation at all levels of government and society to ensure the implementation of the RDP.”332 President Mandela follows this by restating the commitment to solving the problems of poverty and massive inequality through reconstruction

and development alongside economic growth.\textsuperscript{333} The president emphasizes that “the White Paper on the RDP sets out the initial plans of the Government to orientate its activities fully and effectively towards these goals.”\textsuperscript{334}

Converting the RDP campaign document into a draft government policy tabled in the national legislature marks an immediate readiness on the part of the ANC to formally institutionalize political ideas, election platforms and even hopes. The trajectory of the RDP effectively displays the willingness of the popularly elected ANC to refashion the state in line with its political project. The clearest reflection of this reality can be found in South Africa’s Bill of Rights which comprises Chapter Two of South Africa’s Constitution. The constitution was adopted on December 18, 1996; almost two years following adoption of the RDP.

Section 7(2) and Section 8 of South Africa’s Bill of Rights binds the legislative, executive and judicial branches of government to ‘respect, protect, promote and fulfil’ the following rights: land reform (§ 25), housing (§ 26), health care, food, water and social security (§ 27), education (§ 29) and basic nutrition, shelter, basic health care and social services for all children (§ 28 (c)). Each of these rights was an explicit component of the RDP tabled two years earlier. The RDP was institutionalized as an exceptional government ministry, led by Minister Jayaseelan (Jay) Naidoo, based in the Office of the President. Twenty-two ‘Lead Programmes’ “were identified, planned and budgeted to kick-start delivery” for the first year of operation.\textsuperscript{335} These twenty-two programmes covered the abovementioned rights and more. Challenges in implementing the RDP as a stand-alone initiative resulted in a decision to close the RDP office in March 1996. Minister Naidoo was assigned another ministerial portfolio. The RDP Fund, standing at approximately

\textsuperscript{333} Ibid. P. 4.  
\textsuperscript{334} Ibid. P. 4.  
R7.5 billion at the time, which was roughly $2.5 billion Canadian, found a new home within the Ministry of Finance.

1994 to 1996 saw the formal institutionalization of an array of socioeconomic rights. Challenges arose and failures were experienced, but education, social welfare, housing, health care, land reform and so many other socioeconomic rights explicitly linked to the ANC’s goal of affecting ‘social transformation’ of South African society took concrete, governmental form. White papers became governmental policies taking departmental and ministerial form underpinned by constitutional articles. By 1996, high expectations for fighting poverty and doing away with inequality could be seen explicitly in the design of government.

Institutionalization of high expectations for social transformation carried on after the closure of the RDP Office. The ANC’s 50th National Conference in 1997 restated the identification of the RDP as the organization’s ‘Electoral Mandate’. The same National Conference, held in Mafikeng, recommitted the ANC, Congress of South African Trade Unions and South African Communist Party, as members of the Tripartite Alliance to implement the RDP. The conference’s ‘Strategy and Tactics’ final paper exhorts “each component of the Alliance [...] to organize and mobilise its social base and any other forces allied to it, for the implementation of the [RDP] [...].” In the same document, the ANC as government affirmed that it “shall continue to reform the budget to allocate an increasing share of resources to capital expenditure and social services particularly to those who were previously disadvantaged.”

Thabo Mbeki was elected President of the ANC at the 50th National Conference. Mbeki’s closing statement contextualized all the formal decisions taken in Mafikeng by asserting that:

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What all these decisions mean is that [...] we must transform the machinery of state as speedily as possible to ensure that this becomes an instrument that serves the interests of the people [...] we must continue the struggle to devote greater and greater amounts of public resources to the goal of meeting the social needs of the people.\textsuperscript{339}

High expectations for the social transformation of South Africa as a result of ANC-led governance were not simply based on campaign materials, speeches and written declarations or statements. High expectations were also a function of ANC measures formally institutionalizing the social transformation agenda in the apparatus of the state. Mbeki’s closing statements in 1997 meant that more reform was certain because the ANC proved from 1994 onward that public pronouncements regarding social transformation goals are readily translated into institutional change.

4(2) Transforming Political Institutions as a Means to an End

ANC leaders issued a discussion document called ‘The State and Social Transformation’ in late 1996, on the eve of adopting a new constitution. The document opens with a single sentence, declaring that the “struggle for the social transformation of the South African society is essentially the task of replacing the apartheid state with a democratic one.”\textsuperscript{340} Establishing a democratic state and developing democracy in the country was a means to an end. Democratization was not the goal of the ANC but a path towards repurposing the state for attacking poverty and undoing inequality for the oppressed.


Debates about the ANC’s commitment to specific political systems and economic policies heightened after the dissolution of the RDP Office and adoption of the ‘Growth, Employment and Redistribution’ macroeconomic fiscal strategy in 1996. The former is understood to be politically left-leaning and calls for a large state footprint in affecting pro-poor socioeconomic change. The latter is seen to be right-leaning and calls for pro-poor socioeconomic change through a notably more modest state footprint, per popular neoliberal macroeconomic tenets espoused by the IMF and World Bank. ANC leaders, however, refused to be pigeon-holed ideologically and consistently reaffirmed their commitment to approach the challenge of social transformation in a variety of ways. The RDP was alive and well in the ANC’s estimation because it was now fully embedded across departmental plans and budgets. At the 50th National Conference of the ANC, a year after the closure of the RDP Office, it was made clear that the:

RDP asks to be judged in terms of its capacity to provide jobs, shelter, safe water, healthcare, nutrition, relevant education, and safety and security to the people of South Africa. All other ideological considerations (for instance, socialism or the ‘free market’), and all other technical considerations (for instance, optimal annual growth rates, or budget deficit reduction targets) are secondary to the overriding concern of meeting human needs, in a sustainable manner [...] the RDP refuses to lock itself into either preconceived technical or ideological dogma.

The ‘Strategy and Tactics’ document amended and adopted at the 50th National Conference of the ANC in late 1997 does not downplay the possibility that macroeconomic policy can undermine the goals of the ANC. ANC articulation of its perception of this potential threat

342 Ibid. P. 189-90.
reaffirms the underlying conviction that democratization is a means to an end and was never an end in itself. The ANC’s 1997 ‘Strategy and Tactics’ document claims that the:

[...] symbiotic link between capitalism and national oppression in our country, and the stupendous concentration of wealth in the hands of a few monopolies therefore render trite the vainglorious declaration that national oppression and its social consequences can be resolved by formal democracy underpinned by market forces. [...] While formal democracy may present opportunities for some blacks and women to advance, without a systematic national effort led by the democratic government, to unravel the skewed distribution of wealth and income, the social reality of apartheid will remain.\(^\text{344}\)

For the ANC, formal democratization was necessary to put liberators in position to retool and refashion the apparatus of state toward new ends.

Thabo Mbeki became the second president of South Africa in 1999. President Mbeki’s inaugural address reaffirmed the decisions and positions taken at the ANC’s 1997 National Conference. South African journalist, writer and political commentator Allister Sparks honed in on this fact in an article he published on June 21, 1999. Sparks moves beyond the issue of a smooth transition between Mandela and Mbeki to observe that the transition “marks a generational change within the ANC, from a generation that was committed to struggle and liberation to a younger one whose task is to deliver.”\(^\text{345}\) Mbeki asserts that the “full meaning of liberation will not be realized until our people are free both from oppression and from the dehumanizing legacy of deprivation we inherited from our past.”\(^\text{346}\) Sparks draws on these


statements and the nature of cabinet members selected by Mbeki to note that “it all points to a less collegiate and more imperial presidency than Mandela’s, with Mbeki the technocrat very much in charge of the direction and coordination of policies on all fronts. Nothing will be allowed to divert or disrupt the drive for delivery.”

By 1999, ANC leaders and South African political commentators were not alone in identifying the imperative to bring about a real social transformation in South Africa. Anti-apartheid leader Archbishop Desmond Tutu used his Chairpersonship of the Truth and Reconciliation Commission in 1999 to also unequivocally declare that:

reconciliation means that those who have been on the underside of history must see that there is a qualitative difference between repression and freedom. And for them, freedom translates into having a supply of clean water; having electricity on tap; being able to live in a decent home, and have a good job; to have accessible healthcare. I mean, what’s the point of having made this transition if the quality of life of these people is not enhanced and improved? If not, the vote is useless!

From the onset of ANC direction of the South African state, it became clear that institutions can and would be repurposed to help actualize the ANC’s project of social transformation. Extensive designing of the state was accomplished over the first term of government. By 1999, emphasis was shifting to seeing real results in the social transformation of South Africa and that meant improved government delivery. The importance of these dates for the purposes of this study cannot be understated. Recall that it was 1998 when the outgoing GPL Speaker, Trevor Fowler, commissioned a rigorous study on the purpose and potential of legislature oversight. In 1999, the new GPL Speaker fully committed to a legislature reform agenda.

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4(3) Delivery Challenges over the First Term of Democratic Governance

Government delivery in pursuit of social transformation became a more pressing existential matter for the ANC after the first term of government. However, it was not a novel sentiment. Tokyo Sexwale, a seasoned anti-apartheid, ANC leader, and the first premier of Gauteng Province candidly conceded in 1993 that “it is the question of delivery that frightens me. How to deliver—people have been dispossessed, their birthright has gone.”349 National-level delivery challenges were amplified in populous and economically powerful provinces like Gauteng. Sexwale’s fears were not unfounded and his words took on increasing prescience year after year of ANC-led government nationally and in Gauteng Province.

After three full years of implementing the RDP, an ANC report entitled ‘The Core Values of the RDP’, acknowledged that “many problems and challenges were only partly understood back in 1994.”350 President Mandela provided his last report to the ANC National Conference in Mafikeng as President of the ANC and echoed the concern about delivery. In his final address, he identified “faster delivery of social services” as the foremost problem facing the government, followed by crime prevention, management of public finances and collection of state revenues.351 The growing concern was expected given the scale of growing challenges in delivery and therefore, social transformation.

National-level economic challenges could not be downplayed. Finance Minister Trevor Manuel conceded that government “results, in the short term, have not always reached the targets

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we set for ourselves [...]”\textsuperscript{352} South Africa’s economy was growing at an average rate of 2.9% from 1994 through 2000.\textsuperscript{353} Economic growth challenges and shortfalls profoundly affected provinces. Gauteng Province “increasingly experienced lower economic growth than expected during the 1994-1999 period, combined with the failure of the RDP to meet the urgent social service needs of [...] citizens [...]”\textsuperscript{354} Gauteng’s unemployment rate (measuring those who did not bother to seek work the previous month) increased from 32% in 1994 to 37% in 1999.\textsuperscript{355}

From 1994 onward, the South African Government invested heavily in education following the adoption of compulsory education for all 7-14 year-old children. There was a 10% reduction in the amount of underqualified teachers from 1994-1999 and the education budget swelled to R54.1 billion in 2000 from R31.8 billion in 1994. “But education standards continued to lag behind those of other middle-income countries.”\textsuperscript{356}

Housing delivery also failed to meet targets. ‘RDP homes’ became hotly contested politically. Apartheid-era leaders at the national level were quick to point out that government-delivered houses must be small and fall below people’s expectations if the ANC Government hoped to stay within its budget limits.\textsuperscript{357} The pressure to deliver RDP homes in populous provinces like Gauteng cannot be overstated. Gauteng delivered more housing units than any

\textsuperscript{353} Ibid. P. 176.
other province over the first few years of the RDP, but “by December 1997 the province only managed to achieve 22.7% of the 243,000 intended units.”

National-level delivery shortfalls in light of demand should not fully cloud the remarkable delivery that did occur. Tom Lodge’s cursory review highlights some astounding accomplishments, including: new clinics for primary health care reaching 8.5 million patients; the resettling of 68,000 families over 220,000 hectares of land; the delivery or ongoing construction of 600,000 cheap houses; 154 rural roads totaling 1,500 kilometers; clean water reaching 2.5 million people for the first time; and, 1.4 million homes getting connected to the nation’s electrical grid. Yet, capacity and implementation challenges were clearly evident. “Millions of rands earmarked for RDP projects were left unspent – the RDP Fund ‘rolled over R2-billion in unspent funds from 1995 into the 1996/7 fiscal year’ while ‘overall government roll-overs increased from less than R3.5-billion in the 1993/4 fiscal year to R8-billion in the 1996/7 fiscal year’.”

RDP Minister Jay Naidoo encapsulated the sense of crisis around the matter of government delivery when he was quoted in the popular Mail & Guardian national newspaper on the eve of the RDP Office closure, saying “very little has happened in the past two years.”

**4(4) Opposition Parties Were Not a Factor**

Delivery shortfalls did not affect electoral outcomes in 1999. National electoral outcomes in 1999 show a strengthening of the ANC and weakening of the opposition. In 1994, the ANC won

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361 Ibid. P. 190.
62.65% of the vote, giving it 252 seats in the National Assembly. Five other parties combined for 36.08% of the vote and 146 seats. The National Party earned 20.39% of that total for 82 of those 146 seats while the Inkatha Freedom Party received 10.54% of the total vote for 43 of the 146 seats. Altogether, the ANC plus 5 other parties accounted for 99% of the total vote.

By 1999, the ANC share of the total vote increased to 66.35%. This increased the number of ANC held seats in the National Assembly by 14, for a total of 266. Opposition parties, on the other hand, fragmented. The National Party tried reinventing itself as the New National Party but lost 54 seats having earned only 6.87% of the vote. The Inkatha Freedom Party lost 9 seats having received 8.58% of the vote. The Democratic Party was the only opposition party with major increases in electoral support. It received 9.56% of the vote and increased its share of seats to 38 from only 7 in 1994. More importantly, however, is the reality that the ANC and 9 opposition parties now constituted 99% of the total vote. The fragmentation from 5 notable opposition parties to 9 reflects a strengthening of the ANC and weakening of the opposition.

A 2001 volume of the journal *Democratization* focused on opposition party dynamics in South Africa. The concluding article summarized findings across the articles and noted that “according to most popular wisdom, [...] PR [proportional representation] has provided for the ANC’s electoral hegemony and the fragmentation of contending political parties [...]”. Handley, Murray and Simeon (2008) also note the fragmentation of opposition parties under Thabo Mbeki’s presidency.

Increasing ANC electoral strength diminished opposition hopes of one day forming government. Opposition parties then adopted a “largely rhetorical and confrontational style

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instead of choosing the route of constructive criticism.” This reflects a degree of corrosion in the political system. Opposition parties are expected to make reasonable policy statements and constructive criticism because they may be asked to form government in the next election and will be held accountable for making good on their public statements. When opposition parties no longer subscribe to the idea of being the ‘alternative government’, as observers noted in South Africa, it results in the types of grandiose political posturing and empty rhetoric the ANC can simply ignore and feeds into a vicious spiral as accountability suffers.

Gauteng Province mirrored the 1994 and 1999 national electoral dynamics and outcomes. The ANC Gauteng increased its percentage of the total vote to 67.9% from 57.6%. The National Party went from 23.9% to 3.9%. The Democratic Party did ascend to official opposition with 17.95% of the vote but increasing ANC electoral success over this time period coincided with serious fracturing in the opposition parties in Gauteng Province. Declining opposition party strength coincided with the onset of the GPL’s strengthening of the legislature budget oversight and scrutiny function.

4(5) Budget and Economic Policy Constraints

Effective opposition parties serve to provide citizens alternative policies as the ‘government-in-waiting’. This institutionalized threat to the elected government keeps it wary of excessive policy risks for fear of tipping electoral support in favour of the opposition. ANC electoral supremacy might have contributed to a dismissive posture towards parliamentary opposition, but the ANC was not immune to external sources of opposition and accountability.

External, powerful economic interests emerged as the most significant source of opposition and accountability on critical policy questions. These economic interests preferred alternative economic policies and had extra-parliamentary accountability mechanisms at their disposal to sanction the ANC if necessary. Alternative economic policies by definition frame, and can constrain, policies aiming to achieve the ANC’s vision of social transformation and the socioeconomic outcomes at the core of that vision.

Profound changes in ANC economic policy between 1990 and 1994 provide evidence confirming the real, extra-parliamentary constraints in economic policymaking projecting influence even before the first sitting of a new democratic parliament. ANC leader Nelson Mandela is the highest-profile figure demonstrating the impact of that influence. Nelson Mandela affirmed the ANC’s intention to nationalize mines, banks and monopoly industry in 1990. In 1994, Mandela abandoned the policy and used the World Economic Forum as the stage for declaring his government’s intention to pursue economic policies acceptable to domestic and international business elites.\(^\text{365}\)

South African business interests across a variety of sectors mobilized earnestly to formally engage the ANC on macroeconomic policy in the early 1990s. A hallmark form of engagement with the ANC during this time took the form of presenting ‘scenarios’ to ANC leaders. These scenarios essentially projected outcomes of various economic policy frameworks. Unsurprisingly, policy packages requiring major state interventionism endured deprecation and belittlement as fearful results were projected.\(^\text{366}\) Trevor Manuel, who would later become South Africa’s Finance Minister, was presented with the ‘Icarus’ scenario. Heavy state-driven


ANC acceptance of responsibility for apartheid-era national debt exemplifies the external pressures facing ANC policymakers. Mac Maharaj, a senior ANC leader, explains the ANC’s decision, arguing that, “we had to be careful not to leave important people disgruntled. This would have been a source of instability, something we could not afford.”\footnote{Gumede, William Mervin. 2007. \textit{Thabo Mbeki and the Battle for the Soul of the ANC}. London: Zed Books. P. 95.} As Gumede observes, “agreeing to pay the debt would elicit a positive response from the market, and South Africa’s first black government would gain enormous stature in the international community for doing what none of its counterparts elsewhere in Africa had been willing to do.”\footnote{Ibid. P. 95.}

Latitude in economic policy formulation by the ANC was observably constrained, most notably from 1990 onward. Business and financial interests mobilized in earnest to be heard among ANC leaders and the impact is evidenced by the 1990 to 1994 shift from ‘nationalization’ to ‘liberalization’ of the economy. Though research shows the indirect nature of this influence on
the ANC, it was no less real. Certain policies, especially those favouring an aggressive shift of resources to alleviate poverty, were politically ‘unaffordable’, as Mac Maharaj states. ANC leaders perceived certain policy choices as no choices at all due to external pressures more powerful than any parliamentary opposition party and despite becoming the undisputed, democratically confirmed leaders of South Africa. Social transformation remained the focus of the ANC’s vision but it had to account for policy constraints and limitations defined by economic policies influenced by non-liberation movement actors.

4(6) GPL Launches the Reform

ANC experiences and challenges with governance discussed up to this point illuminate important aspects about the organization as well as the conditions it faced on the eve of ‘the Reform’. Tracing through that history assists in studying the reaction of ANC Gauteng legislators. The purpose of this discussion is to begin rendering possible causal factors and mechanisms in theoretical terms to proceed with the goal of hypothesis-building.

Section 45 of South Africa’s constitution gives the National Assembly the authority to formulate joint rules providing for its work and that of the NCOP. Section 116 (a-b) is more directive about the authority of provincial legislatures in formulating Standing Orders. Under the heading ‘Internal arrangements, proceedings and procedures of provincial legislatures’, the constitution states that: “A provincial legislature may – (a) determine and control its internal arrangements, proceedings and procedures, and (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.”

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ANC leaders possess immeasurably greater latitude in determining how South African legislatures are designed. Yes, the LDN espouses models and innovations, like the CBO/PBO, and uses development programmes to foist these on ‘developing legislatures’ in the Global South. However, at no point is their evidence demonstrating ANC Gauteng chafing as a result of concerted external pressure to adopt discrete, parliamentary arrangements proffered by the LDN. Sovereignty over provincial legislature design questions and policies far exceed sovereignty over matters such as national economic policy. ANC provincial leaders seeking out creative solutions to overcome pressing challenges effectively had a free hand in the area of parliamentary reform, unlike their national counterparts dealing with economic policy.

4(7) PEBA as More Institutional Transformation

If forces external to the ANC exercised power limiting how much resources the ANC could deploy in pursuit of social transformation, the ANC would at least establish how institutions were designed in the use of the those limited resources. Potential reformers at the GPL had more than a free hand, care of the Constitution, to engage in legislature reform. Moreover, Mbeki’s closing remarks as the newly elected President of the ANC in 1997 ordered members of the organization to “transform the machinery of state as speedily as possible to ensure that this becomes an instrument that serves the interests of the people.”

Final resolutions and adopted reports provide substance to Mbeki’s call for more institutional reform pursuant to realization of the ANC’s overriding goal of social transformation. In the document ‘Resolutions – Social Transformation’, the ANC noted that it “needs to define infrastructure in the broader sense of the word, thus adjusting [the ANC’s] approach to delivery

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and upgrading of infrastructure and re-examining the institutions that regulate, facilitate finance and monitor delivery.”\(^{374}\) Specifically, under the heading ‘Role of Government Institutions’, the ANC resolved that “where necessary, legislation [be] amended and or repealed to facilitate the refocus of government institutions’ priorities in relation to the delivery of basic infrastructure.”\(^{375}\) ANC leaders at the GPL did just that by amending the Standing Orders per PEBA’s requirements to strengthen budget oversight with a focus on delivery.

ANC plans set forth in its final ‘Strategy and Tactics’ document reflect the urgency and deliberateness driving the next phase of institutional reform. The 1997 ‘Strategy and Tactics’ document, as adopted on December 22, 1997, states that “social change cannot await the transformation of the state machinery and other instruments of power. But, as experience has taught us, we cannot expect to proceed with the desired pace without changing these instruments.”\(^{376}\)

ANC successes in dismantling the apartheid-era legislative framework and replacing it with a democratic legislative framework built experience in institutional development and reform. Undoing apartheid’s legal apparatus unfolded successfully. Acknowledgement of failures and shortcomings in social transformation by 1997 prompted the ANC to do exactly what it was doing from 1994 to 1997: more institutional transformation. Legislature transformation became part of the policy discussion landscape in Gauteng. It is a reaction entirely consistent with the ANC’s approach over the preceding three years and it helps contextualize GPL Speaker Fowler’s request to explore the potential of legislature oversight the following year, in 1998.


\(^{375}\) Ibid.

Government leaders calling for institutional innovation and reform in the face of clear and serious challenges such as government delivery shortfalls, is nothing new. Leadership calls for institutional reform have never proven sufficient enough for the occurrence of reform. Chapter Three reveals that calls for parliamentary reform spanning decades in Canada and the United Kingdom produced very little real institutional change, especially in the area of strengthening parliamentary oversight. ANC calls for reform offer no explanatory value in light of the frequency of such calls by governments around the world and the modest changes to parliamentary practice in the area of budget oversight and scrutiny.

Chapter Three exhaustively demonstrates that legislative studies theory cannot explain why or how ‘the Reform’ occurred. Legislative studies theory needs significant help in coming to grips with ‘the Reform’. Research presented up to this point explains a variety of processes leading up to ‘the Reform’ or shaping the conditions in which ‘the Reform’ occurred. All of this establishes the theoretically ‘non-conformist’ nature of PEBA’s origins, adoption and implementation. Methodologically, theoretical eclecticism is unequivocally the way forward in the search for an explanation. Theoretical eclecticism is also well-suited to heuristic case studies.  

The remainder of this chapter consists of drawing on some helpful theoretical and analytical tools from other fields of study that assist in developing a working hypothesis alongside some assistance from the legislative studies field. The working hypothesis was taken to South Africa to be tested through fieldwork and further research following fieldwork.

Development of the working hypothesis, testing the working hypothesis, and reworking the original hypothesis in light of fieldwork and more desktop research is elaborated in this project.

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for two reasons. First, it is honest with the method. Heuristic case studies presume incorrect estimations about the operation of certain variables as well as variables being missed in the desktop research phase. Reflecting these realities in the writing process allows readers to follow application of the method and better appreciate the value of the tested, reworked hypothesis. Second, hypothesis testing in this fashion constitutes the earliest steps of theory building. Scholars from the various fields and disciplines engaged in the issues raised here will benefit from complete transparency in application of the method for the purposes of further testing. This approach in writing enables further scrutiny of the final hypothesis pursuant to producing, at some point, a new and robust understanding of why and how parliamentary strengthening can occur.

4(8) Theoretical Eclecticism and Hypothesis Building

Chapter Two verifies the existence of PEBA and provides an understanding of its functions and purpose. Chapter Three builds on Chapter Two by systematically and comprehensively confirming the inability of legislative studies to recognize, let alone theorize, ‘the Reform’. That is not to say that such a well-developed field in political science has nothing to contribute to developing a working hypothesis. Regardless, legislative studies does need help in coming to grips with explaining why and how PEBA emerged and took root at the GPL. This chapter begins with a look at the ANC’s struggles with the realities of governance, setting the context for 1998 and the onset of GPL reform efforts. The nature of the phenomenon and context of its occurrence discussed up to this point serves to rule out the possibility of identifying a single theory of parliamentary strengthening for application in a deductive project design.

Theoretical eclecticism is central to the methodology of this study because of what is understood about PEBA and the difficulty explaining why and how it developed. Evidence
gathered in advance of fieldwork about ‘the Reform’ necessitated working with specific concepts and theoretical toolkits in deliberative democratic theory (DDT), critical liberalism and federalism. Concepts and theories which offer some assistance within legislative studies literature complement the contributions from these three other areas of study and come together to help form a working hypothesis.

4(8)(a) DDT: Addressing the ‘What’ Question

Sections 57(1)(b), 70(1)(b), and 116(1)(b) of South Africa’s constitution allow the National Assembly, NCOP and provincial legislatures to establish rules to encourage “participatory democracy”. GPL reformers approached the challenge of operationalizing this constitutional ideal in a manner resonating with the DDT research question: “[How] can the informal opinion and will formation that goes on in civil society and the public sphere have the power to influence the formal institutions other than by simply mobilizing voting majorities?”378 National Assembly Speaker, Hon. Frene Ginwala, put the challenge to the South African legislative sector in a manner consistent with a DDT lens when she asserted:

Democracy requires that citizens should be continuously engaged in governance through interaction with those who make decisions. Marking a ballot and dropping it into a ballot box once every few years [...] is only one step in a process of building a society that genuinely serves the interests of all its people. Those who are elected to make policy and laws on behalf of the people are required to fulfil their mandate in continuous consultation and dialogue with the citizens on whose behalf they act. [...] The voices of the people must be heard in our legislative and executive institutions, but this will not happen if we sit back in our committee meetings and offices. We need, instead, to seek

out those voices and opinions and facilitate ways and means of engaging all sectors of society in crucial debates.\(^\text{379}\)

Increasing public participation in the budget oversight process is a robust way of answering the DDT problematic cited above from a legislative design perspective. Budget oversight in the PEBA design is systemic, ongoing and cyclical. Public participation aspects of the reform necessarily take on the same institutional features. First, the GPL tries to ensure that organizational, local community and individual activist elements of civil society are engaged in ways to help them understand the materials submitted by government departments. Second, there is an explicit emphasis on enabling public inputs into the oversight process by the economically weakest elements of society. Third, those same entities are given opportunities for input on submissions by departments at every stage of the budget cycle in ways that enable committee members of all parties to hold departments accountable. DDT literature cannot be ignored in this case because public participation is geared to enhancing the quality of committee oversight deliberations.

Three themes within the DDT literature become immediately salient in trying to develop a working hypothesis. First, ‘the Reform’ is situated within the DDT literature looking at ‘designed forums’ and ‘democratic deliberation’. Sub-committees and full committees are, almost by definition, ‘designed forums’. Conventional, institutional design of parliamentary committees predates the advent of DDT and designed forums. DDT, however, does offer opportunities for grafting DDT institutional designs onto parliamentary committees.\(^\text{380}\) Grafting DDT designs onto parliamentary committee processes are associated with enhancing what is


termed ‘micro-deliberation’ in the DDT literature. Second, the focus on oversight is about positively affecting government delivery which prioritizes undoing the multilayered forms of state violence done to the majority of South Africans. DDT claims to empower the weakest and most vulnerable by giving them a voice which speaks to that focus within the GPL. Third, ‘the Reform’ compels reflection on how designed forums such as committee oversight processes can improve the transmission of opinions and will-formation in the public sphere to formal political institutions.

A pressing question requiring attention is whether DDT literature and the public participation aspects of ‘the Reform’ assist in reconciling the GPL’s use of micro-deliberative, designed forums and the larger DDT project to become relevant for mass politics. DDT struggles to reconcile its predilection for studying ‘designed forums’ and ‘micro-deliberation’ at the expense of attention to society-wide political discourse formation and channeling mass opinion as part of society-wide deliberation. Reconciliation might be achieved by thinking through ‘the Reform’ within DDT’s ‘systemic turn’. The systemic turn in DDT seeks to break out of the myopic focus on mini-publics (micro-deliberation) and to make DDT relevant in providing an account of democracy at the level of mass politics. The systemic turn refocuses attention on the wider public sphere in the constitution of a deliberative system of which any designed forum is simply a single, inseparable part of the whole. The element of ‘transmission’ within a deliberative system serves as a potential keystone for theorizing the deliberative elements of ‘the Reform’.


Dryzek (2010) presents ‘transmission’ as a critical concept and feature in the systemic turn. Transmission focuses on the “means through which deliberation in public space can influence that in empowered space.” Participation in public space is inclusive of societal actors, regular citizens and politicians alike. Empowered space produces collective decisions through formal institutions (like legislatures) and informal networks (like those driving the global economy). Empowered space is where deliberation between actors occurs within institutions capable of producing collective decisions. As a concept, transmission draws attention to the means and mechanisms by which GPL oversight committees deliberately seek to channel discourses in public space through committees in order to enhance deliberation. Operationalization, from a DDT lens, necessitates addressing the mechanisms facilitating public inputs into the deliberative process and attention to ensuring that no one is precluded from participating because of obstacles outside of their control.

DDT also recognizes the importance of when public space can influence deliberations in empowered space. ‘Sequencing and timing’ are critical concepts in empirical research on whether and how deliberative mechanisms are utilized in legislative and policy processes. ‘The Reform’ appears to create the transmission mechanisms by which legislature committees (empowered space) are constantly influenced by deliberation in public space at the start of each phase of budget oversight. The sequencing of public participation is grafted onto the sequence of every step in the budget oversight cycle. DDT offers a lens by which to identify and categorize

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384 Ibid. P. 11.
385 Ibid. P. 11.
these institutional design features and to appreciate the resonance with DDT norms on sequencing.

The conscious effort by GPL reformers to enhance the quality of committee deliberations allows for a consideration for how ‘the Reform’ approximates some of the formal ideals of deliberative democracy while being manifestly unable to realize others. Cohen’s oft-cited elaboration of DDT fundamentals idealizes a situation in which deliberating members all agree to the terms of their association and those terms are determined by the deliberating members.\textsuperscript{388} “Free deliberation among equals is the basis of legitimacy” to fulfil this formal ideal.\textsuperscript{389} Legislature oversight committees existed long before this DDT ideal and so the terms of association between members of such committees were defined long ago. Also, legislature committees are constituted by party members in proportion to each party’s representation in plenary. Equality in the absolute sense is impossible under these conditions because of the differentials in voting strength among majority and minority parties.

Equality in GPL oversight committees is approximated by ensuring that all committee members are given full access to all the information submitted by departments, the briefings and analysis of committee researchers, and the oral and written contributions by members of the public transmitted to committees through public participation mechanisms. Information parity for all committee members, as well as equal opportunity to interact with all of the materials submitted and the participants themselves creates a level playing field for deliberative purposes in committee. This reflects the closest GPL committees get to the ‘equality ideal’.

\textsuperscript{389} Ibid. P. 21
Legitimacy, in the formal DDT idealization, is a function of agreed upon deliberative procedures resulting in clearly evident “connections between deliberation and outcomes.”\textsuperscript{390} GPL committee oversight reports are developed as committees deliberate. Support staff capture the issues raised by all members over the course of oversight meetings and present the working draft for corrections at each stage. The level playing field for deliberation in committee oversight processes produces report language and findings resulting directly from those deliberations. The agreed upon deliberative procedure is explicitly connected to the final report, including observations from public inputs transmitted to a committee. Majority party members, as a result of this design, are not able to simply compel acceptance of their version of a report on the minority.

Cohen’s formal ideal requires deliberative democracy be “an ongoing and independent association, whose members expect it to continue into the indefinite future.”\textsuperscript{391} ‘The Reform’ cannot be reconciled with this core formal feature of a deliberative democracy. Members of committees are almost never independent. Instead, they are almost always members of political parties with pre-existing policy positions. Association in committee is necessarily finite because composition will change at every election if not sooner as a result of unprojected adaptations to changing strategic issues over the course of a parliamentary term. Appreciating irreconcilability between the realities of departmental committee design and a key formal ideal of DDT establishes the explanatory limits of DDT for this project and further justifies theoretical eclecticism.

\textsuperscript{390} Ibid. P. 21  
\textsuperscript{391} Ibid. P. 21
Deliberation is also a process and DDT provides normative theories to account for how deliberative democracy justifies decisions taken, especially by elected representatives.\textsuperscript{392} This area of the study within DDT provides important assistance in building a hypothesis but also draws attention to unavoidable limitations. Gutmann and Thompson (2004) offer four criteria in providing for the justificatory ideal of deliberative democracy through this lens. ‘Reason-giving’ is the first criteria. It requires seeing citizens as meaningful actors with a role in governance processes either directly or through their representatives as intermediaries.\textsuperscript{393} In processual terms, it means that citizens “take part [...] by presenting and responding to reasons, or demanding that their representatives do so, with the aim of justifying the laws under which they must live together.”\textsuperscript{394}

Reformed GPL oversight processes require committees to hear public inputs on departmental operations and reports. Committee members are able to utilize citizen inputs directly in scrutinizing departmental officials and members of the executive. Committee reports, which are tabled in plenary, require inclusion of the inputs made by citizens that impacted deliberations. These reports are then debated in plenary, fueling further debate and deliberation by legislators. Departmental reasons for developing and implementing policies and programmes can be interrogated. Committee reasons for concurring or diverging with a department are provided for in this process; all the while including an element of citizen involvement. The reason-giving criterion is operationalized in the PEBA paradigm.

\textsuperscript{393} Ibid. P. 3.
\textsuperscript{394} Ibid. P. 3-4.
The ‘accessibility’ criterion demands deliberation occur as an inclusive, public process and that the substance of deliberations should be comprehensible for participants.\textsuperscript{395} GPL oversight committees must make an effort to be inclusive of all segments of society and also ensure that the most vulnerable are not excluded from a chance to participate. At the same time, the GPL’s public participation unit holds budget workshops and education lessons on government budgets in order to empower citizens to engage the materials and issues.

GPL operations per ‘the Reform’ necessitate facilitation and utilization of public inputs in the oversight process. Accessibility is certainly the goal but is attained only in degrees without ever reaching the ideal. Budget oversight, whether over an appropriation or a quarterly report, is bounded by time and resource constraints. Choices have to be made that inevitably result in some voices not reaching committee and some issues not being fully deliberated upon in order to get an oversight report to plenary. As such, public participation per ‘the Reform’ can only aspire to realize the accessibility criterion without ever really attaining the ideal.

Two remaining criteria are entirely entwined when applied to understanding specific features of the ‘the Reform’ with the aim of developing a hypothesis. Gutmann and Thompson assert that deliberative democratic processes are justified when decisions are ‘binding’ and ‘dynamic’. The former binds members to a decision once taken and should seek to directly or indirectly influence government decision making.\textsuperscript{396} The latter criterion presupposes that justification of decisions will change over time and processes must allow for change. Committee members are expected to hold fast to the critical findings and recommendations of the oversight reports they adopt collectively. Yet, the cyclicality in budget oversight resulting from ‘the Reform’ ensures

\textsuperscript{395} Ibid. P. 4.
\textsuperscript{396} Ibid. P. 5.
that departmental performance is evaluated in a manner allowing for changes in how committees arrive at their findings. Dynamism is provided for in such an oversight framework.

Acknowledging that DDT is predominantly understood as a normative theory is necessary since it is being drawn upon in an explicitly explanatory endeavour. Scholars with important, contemporary contributions in the field make it explicit that theirs is a normative project.\(^{397}\) DDT offers a normative theory aiming to alter democratic practices with a view to actualizing a normative ideal.\(^{398}\) How can an overwhelmingly normative scholarly enterprise be instrumentalized for explanatory purposes?

Chambers (2003) offers a broad understanding of DDT’s normative project that assists in developing and testing a hypothesis explaining ‘the Reform’. Chambers argues that DDT shuns liberal individualist approaches to democracy which cast people and processes in economic terms where voting is the focus and the aim is to aggregate preferences as fairly as possible.\(^{399}\) DDT’s alternative is ‘talk-centric democratic theory’ focusing on “communicative processes of opinion and will-formation that precede voting. Accountability replaces consent as the conceptual core of legitimacy.”\(^{400}\) In this framework, “accountability is primarily understood in terms of ‘giving an account’ of something, that is publicly articulating, explaining, and most importantly justifying public policy.”\(^{401}\) Transformation of GPL rules pursuant to increased channeling of community and nongovernmental inputs into committee oversight seems to resonate with Chambers’ account.


\(^{400}\) Ibid. P. 308.

\(^{401}\) Ibid. P. 308.
Oversight committees within the GPL, through the reform, are at least attempting to approximate the normative ideal expressed succinctly by Chambers. DDT’s explanatory value for this project derives from the concerted effort by GPL reformers to enhance the quality of deliberation in committee. Legislators pursued the goal of qualitatively enhancing committee oversight deliberations in a manner that can be apprehended by DDT’s conceptual toolkit. While ‘the Reform’ is smaller than the system-wide scale that concerns Chambers and others, it nonetheless helps comprehend what is happening in the operationalization of the GPL’s revamped oversight function. Applying the normative conceptions of DDT scholars to explanatory frameworks is not unjustified. Dryzek explicitly acknowledges an ‘empirical turn in DDT’, which seeks to test and thereby refine claims by scholars.\footnote{402}

A relevant example of this empirical turn is presented in the 2004 book \textit{Deliberative Politics in Action: Analysing Parliamentary Discourse}. The authors test the claim that specific institutional arrangements can either enhance or inhibit ‘talk culture’ and the quality of deliberation which in turn positively or negatively affects political outcomes.\footnote{403} The 1998 GPL study on parliamentary oversight, commissioned by the GPL’s Speaker, revealed that a majority of Members of the Provincial Legislature (MPLs) sought to create a more collegial culture in oversight committees. Institutionalizing a more cooperative, collegial approach to oversight aimed to make oversight constructive, resulting in improved governance.\footnote{404} GPL parliamentarians in 1998 were expressing a belief in DDT’s normative claims without any reference to those discrete claims from the literature itself.

Once the need to enhance the quality of committee deliberations became a priority it led to institutional reforms which are best appreciated within the DDT literature. DDT answers the question: ‘What did GPL reformers do in pursuing the qualitative improvement of departmental committee deliberations?’ The richness of the field helps to understand what aspects of ‘the Reform’ give operational substance to ideas about the systemic turn and concepts like transmission and sequencing. Tracing through the processes of ‘the Reform’ reveals the causal significance of the impulse to change how overseers deliberate in committee along theoretically informed premises. Reforms directly linked to enhancing deliberation in committee serves to also give a degree of substance to the larger, formal ideals of deliberative democracy including the way elected officials can justify budget decisions.

Answering a sizable element of the ‘what’ question at the core of this project is an important contribution by DDT but also serves to emphasize its inability to explain ‘why’ GPL reformers sought to enhance the quality of oversight committee deliberations. GPL reformers were not self-identified ‘deliberative democrats’. No evidence exists of a deliberate effort to operationalize DDT’s normative ideals. ‘The Reform’ was not a conscious effort to empirically test DDT’s normative ideals. DDT only illuminates what the reformers did in theoretically informed terms.

Trying to understand why GPL reformers were trying to enhance the quality of committee deliberations requires understanding the perspectival lens of those GPL reformers who initiated the process in 1998 and concluded it by the end of 2004. ANC members of the GPL who initiated and concluded ‘the Reform’ must be rendered in theoretically informed terms for explanatory purposes and building a hypothesis. The scholarship which helps answer the ‘why’ question also happens to be the source of significant criticism directed at DDT.
4(8)(b) Critical Liberalism: Addressing the ‘Why’ Question

Authors such as Iris Young and Chantelle Mouffe level serious indictments of DDT from the perspective of what Dryzek (2010) calls ‘radical contemporary pluralism’. The quality of these critiques is evidenced by the extent to which the DDT literature attempts to respond to issues raised by these two authors. The foundation of the critique against DDT is firmly rooted in conceptions of substantive equality. Mouffe (1999) and Young (2001) assert that DDT fails before it can get started because some segments of society are ill-equipped for ‘deliberation’ within the DDT frame. Better-equipped actors operating within a deliberative democratic system will reinforce, if not propagate, existing social inequality.405 Jung (2008) builds on this critique of DDT in her development of critical liberalism. She argues that the uncritical approach of deliberative democrats “neglects the ways in which the public sphere is configured to exclude and indeed constituted by exclusion.”406

Legislatures are highly formalized, rule-driven, procedurally guided institutions. Professionals, such as lawyers and policy experts, can struggle in navigating legislatures for engagement on critical debates and policy deliberations. People existing in a condition of poverty and other forms of social disadvantage and weakness are likely to struggle to an even greater degree in engaging parliamentary committees. Concerns raised by Mouffe, Young and Jung of the potential for designed forums like parliamentary committees to favour those with more power and capital (in its various forms) at the expense of those with less power and capital cannot be ignored.

DDT and critical liberalism are approached in a manner allowing for the possibility that each offers explanatory value and complements the other. At the very least, they are not conceived as mutually exclusive in developing a working hypothesis to be tested by fieldwork and additional, post-fieldwork research. This is a pragmatic approach given how the puzzle is understood. ‘The Reform’ explicitly intends to create committee budget oversight systems that diminish antagonisms and increases collegiality and constructive deliberation across political parties. The resonance with DDT is clear. However, ‘the Reform’ tries to improve deliberative quality in committee oversight work in order to try and enhance government delivery. The overarching goal is to effect a major social transformation across South African society and improve substantive equality. DDT provides an account of what ‘the Reform’ does, whereas critical liberalism addresses itself to underlying impulses of ‘the Reform’. Fieldwork and follow-up research might validate, recalibrate or invalidate this nascent formulation but adopting a more restrictive approach before conducting fieldwork cannot be justified.

Drawing on critical liberalism as developed by Jung (2007, 2008), and the literature it builds upon, helps to make some sense of variables appearing to operate in perplexing ways.407 ‘The Reform’ is perplexing from the perspective of legislative studies theory because a governing party in a dominant party system should not create processes that can bog down government with extraordinary accountability measures. A governing party should seek as easy a route as possible for its legislative agenda with the aim of delivering on its electoral promises. Oversight is primarily the terrain of the opposition, leaving the ruling party to fulfil its electoral mandate.

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407 See, The Moral Force of Indigenous Politics: Critical Liberalism and the Zapatistas (2008). Reading the entire book will offer a robust introduction to critical liberalism. The project of explaining why and how the GPL adopted PEBA only makes use of relevant elements of the theoretical structure advanced by critical liberalism. Critical liberalism offers a coherent way of understanding political identity formation and change in the context of ANC efforts to meet the challenges of state obligation following the end of apartheid.
Typical, explanatory theories of governing party behaviour in dominant party systems (see Chapter Three) would identify ‘madness’ on the part of the ANC for pursuing PEBA.

Critical liberalism directs attention to the underlying motives guiding ANC Gauteng decision making, helping to see that there is some ‘method’ at work and no evidence of madness. It “advances a theoretical structure” to answer the question, “how should democratic institutions process the political claims that arise and contest the exclusions and inclusions set in place by the modern state itself?”

Jung (2008) utilizes several theories and literatures to put forth a compound, multifaceted ‘theoretical structure’ to answer the question.

Some elements of critical liberalism’s theoretical structure provide a ‘toolkit’ helping to make sense of ANC decision making in Gauteng. An important part of the toolkit are the heuristic categories of ‘resistance’ and ‘project’ identities that recognize groups seeking to challenge the principles of domination and to transform pernicious social structures. These help to critically revisit how the ANC is conceptualized. Understood through these heuristic devices, the ANC’s operation as a political party is simply another parchment stitched into the fabric of a long standing resistance movement with the aim of overturning the conditions of social, political and economic exclusion. Critical liberalism illuminates the possibility that GPL reform was an instrumental process actualizing the ANC’s larger goals apart from its political party identity.

Legislative studies theory can only theorize ANC behaviour as a political party. Re-election is undoubtedly a primary motive for the ANC as a political party, but the failure to deliver the social transformation that underpins the ANC’s ‘resistance’ and ‘project’ identities represents an existential threat. The existential threat to the ANC on this more fundamental level offers

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409 Ibid. P. 70.
analytical coherence for theorizing ‘the Reform’ that is lacking in the legislative studies literature.

The GPL case also offers a chance to push some of critical liberalism’s boundaries by looking at claim-making, especially with a focus on reparative and compensatory claims. The former type of claim made by actors seeks community-wide reparations for community-wide sufferings. The latter form of claim-making seeks compensation for the descendents of persecuted peoples.410 Such claims, in the South African context, are seen as necessary responses to ‘enduring injustices’. Spinner-Halev (2007) argues that “enduring injustice has roots in the past, and continues to the present day; an enduring injustice endures over time and often over space as well.”411 History becomes central to conceptualizing and addressing an enduring injustice. More specifically, repairing an injustice demands accounting for history as articulated and expressed by the descendents of victims and victimized peoples.412

Underpinning this conceptualization of enduring injustice is the assumption that descendants of perpetrators and victims still exist within the same state and the “responsibility for the past argument [also] assumes that the state under which a past injustice was committed still exists.”413 This assumption is significantly challenged by the South African case. ‘The Reform’ itself opens the door to a more dynamic understanding of enduring injustice, reparation and identity. ANC reformers are carriers of the history of injustice, like all other victims in South Africa. Unlike all other victims in South Africa, ANC reformers played a distinct role in bringing down the apartheid regime. In the process of dismantling the apartheid state, ANC reformers helped to construct a new government purposed for undoing the enduring injustices of the apartheid state.

412 Ibid. P. 576.
413 Ibid. P. 587.
Government budgets easily subsume the ‘reparative’ and ‘compensatory’ claim-making typologies and potentially go well beyond the scale of compensation that can be typically expected. Power over government budgets and state resource allocations are exactly the matters preoccupying GPL legislators who see state appropriations as the best instrument for undoing the enduring injustices of apartheid.

ANC control of South Africa’s appropriations process creates an interesting problematic for critical liberalism. Critical liberalism as articulated by Jung (2008) largely addresses the conditions facing persecuted groups (indigenous, ethnic, racial, and so on) arrayed against state-defined social structures and boundaries. The GPL’s reform process provides a chance to employ critical liberalism in a situation where a significant entity from the persecuted, majority population assumes almost full control of the state. Claim-making by the persecuted population is not necessarily abandoned, but the terms of contestation and identity are likely altered when one of the main actors of the resistance movement democratically penetrates the state apparatus as fully as the ANC in South Africa.

Identity formation is conceptualized in constructivist terms by Jung to develop critical liberalism. The scholarship Jung draws on sheds light on how ANC GPL legislators might be affected by the transition from resistance movement to governing party. In this framework:

Power should not be conceived as an external relation taking place between two pre-constituted identities, but rather as constituting the identities themselves. Political practice in a democratic society does not consist in defending the rights of preconstituted identities, but rather in constituting those identities themselves in precarious and always vulnerable terrain.414

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Identity becomes malleable and possesses resilience expressed through adaptation and transformation but within a coherent analytical framework, from this perspective. Serious challenges and pressures can place political identity for a specific group on ‘precarious and vulnerable terrain’. Constructivist theorizing of identity formation is part of the theoretical structure advanced by critical liberalism, underpinning the assertion that “identity is explicitly not prior to the social and political processes in which it plays a part.” Appreciating this source of dynamism in identity formation and mobilization helps to transcend the bounded conceptualization of ANC legislators as single-minded ‘vote-getters’ in the parliamentary arena.

In this literature, notions of recognition (group-identity affirmation) and distribution (monetary/material reparations) are seen as different aspects of a single democratic struggle or collective effort. Efforts to undo past wrongs informed by standard notions of liberal justice fail to understand that recognition and distribution are cognate. If these two are mutually constitutive of a group struggle for justice and as such help shape the identity of a group, what happens if a specific segment of that group suddenly controlled those levers of state authority to decide matters of recognition and distribution? According to Jung, politicized identity is distinct from other forms of identity because it “has to do with governance and government, state allocation of resources, and the organization of public (political) space.” ANC members of the GPL and the provincial party apparatus enter a unique circumstance in 1994 when they assume control over the levers of power previously used to oppress them.

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417 Ibid. P. 470.
Would the failure to address the claims of those falling within the representative base of the ANC’s ‘project identity’ generate a distinct form of accountability for a resistance movement operating a governing political party? Do conventional forms of accountability in established liberal democracies fail to properly conceptualize the way members of entities like the ANC feel accountability? Groups confronting the full machinery of the state and ongoing social exclusion experience the reinforcement of their project identity according to critical liberalism.\(^{419}\) Does ANC employment of the state in its struggle against forms of exclusion and injustice threaten to undo the ANC’s project identity if it fails to actualize its agenda? This reversal of the causal relationship at the heart of critical liberalism’s project reflects the versatility of the theoretical structure advanced by critical liberalism.

Critical liberalism assists in recognizing how specific actors, like ANC legislators at the GPL, might find themselves on ‘vulnerable terrain’ with respect to their political identity. It emphasizes how patterns of state exclusion are factors in identity formation but concurrently establishes the grounds of contestation and political agency.\(^{420}\) The very forms of oppression provide the terms “on which [victimized] peoples themselves can challenge, and potentially transform, the conditions of their own incorporation and future.”\(^{421}\)

ANC legislators at the GPL possess the ultimate instrument for channeling ‘political agency’ through control of the provincial state apparatus, constitutionally charged with delivering social transformation. Critical liberalism builds on an understanding that “states have produced the terms of political belonging and engagement they are in turn faced with adjudicating.”\(^{422}\)


\(^{420}\) Ibid. P. 76.

\(^{421}\) Ibid. P. 76.

\(^{422}\) Ibid. P. 23.
GPL legislators became the ‘adjudicators’ upon winning South Africa’s first democratic elections in 1994.

Political identity, in this framework, “is that portion of identity which emerges as salient in the organized struggle over the allocation of resources and power residing in the state [...].”423 ANC members are committed to democratically assuming control of the state specifically to assume control over the ‘allocation of state resources’ as a key part of the effort to affect social transformation. Allocating state resources is implemented on an annual basis through the appropriations process. This empirical fact provides the pivot point reflecting the importance of critical liberalism in developing a working hypothesis.

Critical liberalism advances a normative theory of state obligation to victimized and persecuted groups. States “forged social groups, and the political identities they anchor, by using markers as cultural practices, phenotypical traits, biological sex, property-ownership, and wealth to organize access to power and delimit the boundaries of citizenship.”424 State obligation is grounded in these policies and practices. Critical liberalism operates on the generalized notion that some, or most, states might be reticent in fulfilling such an obligation to right past wrongs – especially if such action necessitates significant resource commitments. It is a normative theory using empirical evidence to articulate what should happen exactly because the injustices it identifies endure into the present. An ANC-led South African government stands in sharp contradistinction to the typical governments studied in the research on such state obligations. Far from evading responsibility, ANC legislators at the GPL completely assumed the mantle of responsibility in fulfilling the South African state’s obligations in undoing enduring injustices.

Extrapolating from the theoretical structure employed by critical liberalism to conceptualize identity formation (albeit with a reversal of the standard causal relationship between state action and political identity) suggests ANC shortcomings in government delivery can generate a form of ‘identity accountability’ and negative pressure producing a political identity crisis. It seems reasonable to conceptualize the ANC as a movement experiencing ‘identity accountability’ resulting from its position as a governing party. Identity accountability is a unique concept exactly because it seeks to reconcile the precarious and vulnerable ground political identities can experience when confronted with the institutionalized accountability systems in the South African provincial legislative sector. This distinct form of accountability may offer explanatory value regarding the ANC’s readiness to engage in reforms beyond the grasp of current theorizing in legislative studies.

ANC inability to deliver social transformation on the scale and at the pace expected from within the ANC produces a form of internally felt accountability that no opposition party can generate. A form of ‘identity accountability’ led ANC GPL legislators to radically transform the legislature in an effort to successfully deliver on social transformation and in so doing, remain true to their ‘political’ identity. Identity accountability is a key conceptual device developed for this study. It assists in recognizing the political identity based challenges facing ANC members transitioning from liberation movement organizers and fighters to governing party provincial legislators. Critical liberalism provides the heavy lifting in the hypothesis building phase of this study by providing insights into why ANC legislators operating in a dominant party system reformed the GPL’s budget oversight and scrutiny system to an unprecedented extent.
4(8)(c) Federalism: Addressing the ‘How’ and ‘Why’ Questions

‘The Reform’ unfolded while the ANC consistently sustained a policy discourse expressing reticence about the value of federalism and the provincial level of government. This discourse escalated over the course of ‘the Reform’ and during the first term of implementation culminating in ANC national discussion documents questioning the value of the federal bargain. This context, in light of federalism studies, helps to see ‘the Reform’ as a culmination of efforts by an administrative organ within a subunit of the South African federation seeking to increase its institutional capacity and relevance in helping overcome the enduring injustices of apartheid.

The effect, or lack thereof, generated by administrative federal arrangements is contentious terrain within federal theory. For Riker, the administrative theory of federalism is valueless as an explanatory tool for how federations are sustained once formed. The administrative theory of federalism argues that sustaining federations occurs through federal government readiness to ‘share duties’ with subunits. This helps to maintain the guarantees between center and periphery. Riker debunks the administrative theory of federalism almost completely, arguing instead that maintenance of federations results from decentralized party structures placing peripheralizing pressure on the federal government.

It is important to emphasize here what Riker rejects as an explanatory framework. Riker dismisses the administrative theory of federalism “because he is strident against the claim that the normative principles of political scientists, i.e. federal administration is good because it shares responsibilities, have any explanatory power in describing political reality.” What Riker cannot account for, is whether holding such a normative belief among the political actors of a

426 Ibid. P. 50-51 and 50-51.
federation can help to sustain a federal system.\footnote{Ibid. P. 419.} This becomes a more complicated matter in the literature on federalism with the existence of ‘administrative federations’.

There are federal systems defined by the allocation of legislative authority at the center and expectation that subunits will administrate and deliver within such legislative frameworks. “Administrative federalism is an inter-level power distribution scheme which distributes power, but at the same time, protects the existence and authority of all the governments.”\footnote{Maheshwari, Shriram. 1992. Problems and Issues in Administrative Federalism. New Delhi: Allied Publishers. P. 4.} A specific design of administrative federalism takes on a co-operative or integrated form by separating legislative and administrative authority in a manner that reinforces interdependence and coordination between spheres or levels of government.\footnote{Watts, Ronald L.. 2008. Comparing Federal Systems. Montreal & Kingston: McGill-Queen’s University Press. P. 86.} Subunit legislative authority is confined to the administrative and delivery needs particular to each subunit in such federal systems.\footnote{Ibid. P. 92-93.} Administrative federalism constitutionally “assigns legislative functions to the central state and administrative functions to lower level jurisdictions [...]”.\footnote{Schwager, Robert. 1999. “The Theory of Administrative Federalism: An Alternative to Fiscal Centralization and Decentralization.” In Public Finance Review 27(3). P. 284.} The existence of administrative federations does not in itself validate the administrative theory of federalism. It does mean, however, that outright dismissal of federal, administrative design as a possible causal variable is not an option.\footnote{Riker refers to particular administrative arrangements within a federal system as ‘accidents’ and as such, inconsequential in the search for causal variables; see, Riker, William. 1975. “Federalism.” In Handbook of Political Science: Governmental Institutions and Processes, eds. Fred I. Greenstein and Nelson W. Polsby. Reading: Addison-Wesley. P. 141.}

Administrative federalism varies from country to country where it has been adopted. Germany’s form of administrative federalism is understood to be so centralized in terms of legislative authority residing at the national level that it is sometimes referred to as ‘executive
Germany’s jurisdictional equivalent of a South African province is “autonomous in the administration of [its] own exclusive power [and] also responsible for applying most national laws and delivering most services. In so doing, they possess considerable discretion for policy implementation and execution.” Such a system permits the national legislature to set out uniform legislation and national standards while allowing subnational legislatures to account for local or regional distinctiveness with respect to implementation. Appreciation of this feature of administrative federalism is important to this study because the ANC entered negotiations hoping to avoid adoption of a federal system of government.

The ANC-headed South African government opted for a German version of administrative federalism because the ANC were “deeply reluctant federalists.” Murray and Simeon observe that ANC representatives in the constitution negotiating process who studied various federal systems concluded that Germany “is not federal at all.” Consequently, “South Africans expressly chose [a] German path of integrated federalism with an administrative division of powers [...].” ANC negotiators defended the division of powers between federal and provincial

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440 Ibid. P. 228-239.

authorities by referencing the comparability with Germany’s framework when negotiators from other parties pushed for greater devolution to the provinces.\textsuperscript{442}

The ANC’s adoption of a federal system was contingent on reassurances that federalism could not impede, and would even enhance, government delivery.\textsuperscript{443} The ANC’s study of administrative federalism in Germany affirmed the possibility of sustaining extensive centralization while allowing provinces to meet nationally-determined delivery mandates focused on reducing socioeconomic disparities. South African provincial governments can define legislative agendas within the boundaries set by nationally-determined norms and standards. Provincial governments are also expected to determine the most suitable implementation policies and plans within their jurisdiction. The onus to deliver government programs such as education, health and social welfare rests most heavily on provincial government in South Africa’s administrative federal design. ANC leaders accepted federalism as a concession to other groups on the understanding that provinces would deliver the social transformation planned and legislated by the federal government.\textsuperscript{444} Administrative federalism as a means to enhance government delivery pursuant to overcoming enduring injustices provides a linkage to a subfield of federalism studies relevant to hypothesis-building in this project.

Research on the ‘paradox of federalism’ tries to explain the maintenance of federal systems once adopted. Theories on the ‘paradox of federalism’ try to establish whether federalism and


subnational authority over specific policy areas can reduce conflict between groups within a state and prevent secession or system collapse. The ANC entered into a federal arrangement because it felt it had little alternative at the time. Federalism was a necessary concession by the ANC and not its first preference for the post-apartheid reshaping of South Africa. This is often the case in contemporary post-colonial, post-conflict conditions wherein federalism is adopted as a bargain between competing groups.

Erk and Anderson (2009) suggest three prospective dimensions to explore and build theory in trying to resolve the paradox of federalism. These are, “(1) the political will of the subunits and their institutional and societal capacity; (2) federal institutional design codified in the constitution; (3) uncodified economic and social factors.” Uncodified economic and social factors include economic disparities between peoples and across regions as well as the social cleavage structure within a society. Erk and Anderson conclude that “none of the three dimensions exists in a vacuum. They interact with one another leading to complex combinations and difficulty in separating out which factor is responsible for what outcome.” ANC preference for administrative federalism appears to resonate with all three dimensions set forth by Erk and Anderson; validating the idea of causal interaction between all of them.

Cameron ascribes increased relevance to the effects of the ‘uncodified’ dimension, “at least in the short term.” Cameron’s reflection on federalism and secession pivots on the salience of a “territorially concentrated minority’s protracted experience of discrimination and exclusion”

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447 Ibid. P. 198.
and not necessarily the institutional structure of federalism.\textsuperscript{449} The socioeconomic impulses driving the ANC project to enhance the role of the GPL in governing Gauteng lends credence to Cameron’s conclusion but illustrates the appreciable interactions across all three dimensions.

Uncodified socioeconomic factors played a critical, perspectival role in the ANC’s adoption of administrative federalism; following its concession to accept a federal system. Federal studies firmly grasps the role of social and economic factors in federal failure which serves to highlight the fragile ground being navigated by the ANC. Federal failure in Malaysia, manifested by the expulsion of some territories, is linked to socioeconomic cleavages underpinning ‘race’ and politicization of identity.\textsuperscript{450} Significant social and economic rifts along sectarian and ethnic lines are linked to the conflicts with state elites and subnational groups fueling federal failure in Ethiopia and Indonesia.\textsuperscript{451} A variety of local-level social and economic tensions facing Francophone and Anglophone Cameroonians forms part of the causal web resulting in federal failure in Cameroon.\textsuperscript{452} Research on Yugoslavia’s failed federal system underpins the conclusion that “federalism fails if it does not address dominant social issues.”\textsuperscript{453} Research on the ‘paradox of federalism’ is premised on the understanding that federal maintenance is never certain and that socioeconomic factors are significant.

Unsurprisingly, South African provincial government performance in enhancing socioeconomic conditions became a paramount criterion against which ANC leaders would

\textsuperscript{449} Ibid. P. 310.
evaluate the utility of the federal system. Results were consistently found wanting. “The dispersal of decision making and implementation to new institutions [did] not appear to [lead] to the development of new centres of growth or, in any significant measure, to the improvement of the conditions of the poorest South Africans [...].”\textsuperscript{454} The ANC’s leadership sustained its reservations about the benefits of federalism during the period of ‘the Reform’. By August 2002, midway through ‘the Reform’ process, an ANC National Conference discussion document explicitly argued that:

There have been suggestions for a major rethink on Provincial government and strengthening local government. [...] Given the current situation, powers and workload of most provincial legislatures, should we consider a system that provides for MPLs to function on a part-time basis, with a clearly defined legislative role?\textsuperscript{455}

ANC statements about rolling back provincial legislature responsibilities to a part-time basis in the context of growing concerns over poor performance put provincial legislators on public notice.

By 2003, Nico Steytler, who served as an advisor to the Constitutional Assembly in drafting the constitution, observed ongoing ANC “skepticism regarding provinces [that] is fed by their poor performance both as legislatures and administrators.”\textsuperscript{456} Steytler saw a real possibility for a greatly diminished provincial sphere in 2003, arguing that “South Africa is dominated by a party that is ambivalent about the need for provinces. Provinces are not performing well and national


control over expenditure is increasing.” These observations arising midway through ‘the Reform’ reflect ideas with real currency which grew in significance from 1996 onward.

Erk and Anderson’s ‘uncodified socioeconomic factors’ continued to play a dominant role in the ANC’s consideration of federation maintenance at a time when ‘the Reform’ was being considered by the rest of the South African legislative services sector. The ANC openly questioned the utility of retaining federal arrangements, among other concerns during its 52\textsuperscript{nd} National Congress in 2007. From the ANC’s perspective, “[the] cooperative government model, which was the product of the negotiation phase suited to that time and experimented with over more than a decade, has also not worked, if the measure of its effectiveness is service delivery efficiency and responsiveness.”

South Africa’s National Speakers’ Forum adopted a slightly amended version of PEBA called the Sector Oversight Model just over a year following the 52\textsuperscript{nd} ANC National Congress where serious doubts about federal arrangements were officially expressed. The National Speakers’ Forum is comprised of every Speaker of South Africa’s 10 legislatures. Adopting the Sector Oversight Model reflects the intention to try and enhance the impact of legislatures on government delivery outcomes. While correlation of the decision by the National Speakers’ Forum does not automatically mean causation, the timing of the decision of all other South African Speakers cannot be dismissed.

The causal interdependence of the ‘uncodified economic and social factors’ and the ‘codified, federal institutional design’ categories identified by Erk and Anderson appears fairly clear in this case. Administrative federalism (ie. codified federal institutional design) is justified and

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\item \textsuperscript{457} Ibid. P. 247.
\end{itemize}
sustained by how it can attack the enduring injustices suffered by the majority of South Africans (ie. uncodified economic and social factors). What, however, of the first dimension, ‘subunit political will and institutional capacity’?

Contemporary research on the origins of federalism in Europe may offer a starting point on the causal relevance of ‘subunit political will and institutional capacity’ for hypothesis-building. Ziblatt’s (2004) case for the causal importance of ‘infrastructural [administrative-institutional] capacity’ within subunits for the emergence of federations in Europe is especially compelling. For Ziblatt, subnational governments secure the emergence of a federation when subunits are robustly institutionalized and deeply embedded in their jurisdictions and therefore adept at governing.459 Ziblatt then addresses the maintenance of federations by showing that without “high levels of institutionalization via constitutional and parliamentary legitimacy, the subunits of a potential federation will be absorbed and swept away via a unitary strategy of state formation.”460 Ziblatt’s theory fuses together the project of explaining the ‘formation’ and ‘maintenance’ of federations because one variable, ‘institutional capacity’, explains both.

Does Ziblatt’s theory offer explanatory value for the ‘paradox of federalism’ problematic and by extension the GPL case? Can Ziblatt’s proposition about institutional capacity and federation origins hold in cases where the state exists in advance of the federal bargain? The reality of state creation in the Global South as a product of European, colonial control requires a relaxation of the rigid separation of the emergence of a federation and then its continued operation and maintenance. This does not diminish the value of Ziblatt’s theory for this project. It does require adapting Ziblatt’s project for a Global South, post-colonial setting. Ziblatt’s research attempts to show:

460 Ibid. P. 78. (emphasis added)
that the task of creating federalism is not about weakening government, as is so often assumed. Rather, creating federalism is ironically about increasing the capacity of government. [...] indeed, insufficient attention has focused on the institutional ‘capacity’ prerequisites of federalism at the subnational level. 461

The GPL is displaying the same institutional capacity-building imperative at the subnational level that is causally significant in Ziblatt’s theory. The difference is that institutional capacity-building at the GPL is an active variable pursuant to federation maintenance only, without any causal role in federation origins.

One key element in how the GPL is pursuing its institutional capacity-building efforts is worth highlighting in order to conclude this discussion. Of all the technical reforms to its Standing Orders, those that codify the government’s objective of generating social and economic transformation are of the highest order. A quick glance at Table 11, ‘Institutionalized Substantive Equality: Socioeconomic’ following the ‘Legislature Compare and Contrast’ graph (see Chapter Three), demonstrates that codifying socioeconomic policy goals in the GPL’s Standing Orders draws strategically from the constitution’s codification of socioeconomic transformation as the animus of federal governance. In the categorical terms employed by Erk and Anderson above, the GPL appears to deliberately codify the ‘uncodified economic and social factors’ to propel its ‘institutional capacity-building’ which serves to further cement its ‘codified institutional design’ in the federal system of governance.

Federalism supplements critical liberalism in hypothesizing why ‘the Reform’ occurred in addition to explaining how it came about. Administrative federalism as part of an institutional strategy to address enduring injustices in South Africa is an extension of the causal significance of the ANC’s political identity. Adopting administrative federalism, however, resulted in South

461 Ibid. P. 98 (emphasis added)
Africa’s constitution, under §116(1)(a-b), according provincial governments full authority over legislature rules and procedures. GPL legislators asking how they could contribute to improving GPG service delivery in the province instrumentalized authority over legislature rules, per administrative federal design, to make it happen.

4(8)(d) Legislative Studies Complements Theoretical Eclecticism

Legislative Studies and DDT

Legislative studies cannot explain ‘the Reform’ but does provide important accumulated knowledge that complements hypothesis-building inputs from critical liberalism, DDT and theories of federalism. A starting point in the context of this study arises from the intersection of parliamentary studies and DDT. Steiner, Bachtinger, Sporndli and Steenbergen (2004) use basic concepts in legislature design and DDT to theorize deliberative quality across a variety of legislative systems. The authors are left puzzled by observations that ‘sophisticated justifications’ and ‘constructive politics’ in parliamentary committee systems exceed those in congressional systems. Also, positional politics are notably elevated in congressional systems and not parliamentary systems so that deliberative quality in parliamentary systems exceeds that in congressional systems. These observations contradict their hypothesis that increased veto points in congressional legislative processes should enhance deliberative quality because actors will need to compromise to get their work done. Veto points are at a minimum in parliamentary systems and so no such institutional incentive to deliberate and compromise exists on the part of the governing party.

In other words, Steiner et al., are surprised to find that the ‘collegiality’ desired by GPL legislators in 1998 seems to inhere in parliamentary committee systems more so than in congressional committee systems. Steiner et al. turn to Simone Chambers’ research in the DDT field to make sense of their unexpected finding. Chambers study of the 1992 Quebec Referendum reveals that conferences on the secession vote well in advance of the referendum date approximated DDT’s ideals for deliberative quality. Participant positions hardened into zero-sum posturing only when the referendum became imminent, and the proverbial ‘yes/no’ decision moment arrived. Chambers hypothesizes that deliberative quality declines when a decision point closes in.\(^{463}\) She finds that:

The end of the conferences did not represent any kind of closure or decision. It is not quite right to say that nothing was at stake, for it was not an academic conference discussing constitutional options for ancient Athens but rather citizen participants who were aware of the seriousness and urgency of the issues and knew they had the ear of the public as well as the political elite. Nevertheless, it is correct to say that a binding or authoritative decision was not at stake and this freed participants from the fear of premature or disadvantageous closure. Participants could ‘afford’ to be flexible, open, and cooperative. [...] It was impossible to recreate that flexibility during the referendum campaign because [...] the fear of being the loser overwhelmed any principled desire to reach a cooperative agreement.\(^{464}\)

Committee reports, even with recommendations for the executive, exist on a decisional spectrum in most parliamentary systems somewhere in-between ‘binding’ and ‘irrelevant’; never really reaching either endpoint. Pre-Quebec referendum conferences are not the same as

\(^{463}\) Ibid. P. 47-9.
\(^{464}\) Ibid. P. 48-9.
legislature oversight committees but Chambers’ finding can be grafted onto ‘the Reform’ to help account for the ANC’s openness to significant strengthening of oversight committees. GPL committee oversight reports do not result in authoritative, binding decisions requiring government action. Oversight outputs are significant because the decision-making elite and parts of the public pay attention. The ANC, recognizing the fluid decisional consequence of committee oversight outputs, can see the possible benefits of good oversight work helping to enhance delivery outweighing the potential political costs of adverse oversight findings. Parliamentary design producing oversight outputs within Crick’s (1964) framework of “advice not command; criticism not obstruction; scrutiny not initiation” intersects with empirical research in DDT on the decisional consequence of deliberations to suggest that the ANC can politically afford to be more flexible, open, and cooperative, in terms of legislature oversight design.

*Legislative Studies, Critical Liberalism and Federalism Studies*

Socioeconomic factors play an important role in conceptualizing parliamentary systems that happens to reinforce confidence in how critical liberalism and federalism theory render socioeconomic factors causally relevant. Legislative studies establishes the incomparability between parliamentary and congressional systems based on the exceptional susceptibility of the former to social forces. Polsby (1975) provides the most succinct description of the academic implications of this real difference in the two systems. Polsby insists that in parliamentary systems “the impact of external forces is decisive in accounting for legislative outcomes. For transformative [or, congressional] legislatures, what is decisive are variables depicting internal structure and subcultural norms.”

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An ambitious effort by British parliamentary scholars in the early 1980s to theorize parliamentary reforms at Westminster affirms Polsby’s assessment. Judge opens the discussion by acknowledging a correlation between calls for parliamentary reform and downturns in the economy.466 Walkland argues that “it is impossible, except at the considerable risk of abstracting the subject from its determinants, to separate Parliament [...] from the political and economic systems in which it is located.”467 Walkland’s analysis begins with references to past significant parliamentary reforms as responses to class conflict during the Stuart monarchy and then later reforms responding to industrialization.468 Philip Norton, whose own theory of parliamentary strengthening (see Chapter Three) is popularly called ‘the Norton View’, asserts that “parliamentary reform in Britain cannot be seen in isolation from the wider political, economic and social changes which affect society.”469 Norton uses this fundamental understanding to link extra-parliamentary social factors to attitudinal changes in parliamentarians generating enough political will to confront and challenge the executive and force through reforms.470 The underlying significance of executive-legislature conflict is an important factor in why ‘the Norton View’ cannot account for ‘the Reform’ but all of this literature affirms Polsby’s appreciation for the extraordinary causal significance of socioeconomic factors and social forces in parliamentary reform.

Development challenges in the Global South, where governments are expected to achieve greater socioeconomic outcomes with fewer resources, further verify the causal significance of socioeconomic factors. Salih’s expansive study of African parliaments concludes with the

468 Ibid. P. 37.
470 Ibid. P. 61.
observation that unmet expectations of socioeconomic transformation in the view of “poor and underprivileged citizens”, is propelling African legislatures to “work even harder to make a difference by showing their ability to hold the executive accountable to the governed.”

This research on African parliaments identifies the correlation between socioeconomic factors, complexity in governance and a tendency in legislatures to try and enhance accountability systems. Critical liberalism and federalism treat socioeconomic factors and substantive equality in more causally explicit terms but the overlap with legislative studies on the consequentiality of socioeconomic factors and social forces builds confidence in the hypothesis-building process.

Salih’s conclusion serves to complement the theoretical eclecticism employed in this project. It affirms the correlation between socioeconomic factors and legislature reform but fails to be useful in theorizing the causal process of reform in a generalizable fashion. Parliamentary studies says something about socioeconomic factors and social forces correlating with parliamentary reform but these findings simply do not say enough in explaining ‘the Reform’. Appreciating the complementarity of some of these factors identified in the parliamentary studies literature helps affirm the hypothesis-building contributions from DDT, critical liberalism and federalism.

4(9) A Working Hypothesis

Everything up to this point of the project aims to fulfill the fundamental requisites of a heuristic case study. Heuristic case studies are used when existing theory in a field cannot account for a phenomenon. In that sense, it is a methodology particularly suitable for the earliest stages of theory-building by assisting in the development and testing of a working hypothesis.

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Getting to the testing stage is a massive endeavour requiring the establishment of several pillars on which the working hypothesis rests. It is a laborious and necessarily exhaustive enterprise. Chapters Two through Four are constitutive of those pillars. Chapter Two describes the phenomenon fully and establishes its real existence through numerous, verifiable primary sources. If there is no phenomenon, otherwise known as ‘dependent variable’, there is no project. Chapter Three accounts for almost exactly one century of theorizing in the legislative studies field and the literature produced by expert practitioners in legislature operations to confirm the paradoxical nature of the dependent variable. If there is no ‘paradox’ there is no project. Demonstrating the real existence of ‘the Reform’ and its paradoxical nature in light of current legislative studies theory leads to the construction of the third pillar.

Chapter Four begins with a look at the ANC’s experience with governance to establish context and consideration of a variety of plausible factors connected to ‘the Reform’. This allows the research process to move from possible independent variables toward the dependent variable then moving back in the other direction. Process tracing through the ANC’s assumption of leadership, exercise over the levers of state power, and the initial experience helps zero in on non-conformist data in light of existing theory. Theoretical eclecticism, which lends itself to heuristic case study design, assists in accounting for non-conformist data and can help shed light on what happened, why it happened and how. Validating the necessity of theoretical eclecticism, and the specific contributions by DDT, critical liberalism and federalism in formulating a testable working hypothesis, constitutes the third pillar.

All the preceding materials come together to produce a working hypothesis consisting of three essential elements. Elements one through three of the working hypothesis are developed
through the contributions of critical liberalism, DDT and federalism studies, respectively. While there is one working hypothesis, each element is presented separately below:

**Element One:** The ANC internalizes failures in bringing about the social transformation of South Africa as an identity crisis to the extent that the ANC situates itself within an anti-colonial, anti-apartheid project identity. This ‘identity accountability’ propelled ANC Gauteng reformers to engage in a legislature transformation initiative that unsettles the lawlike understandings about parliamentary strengthening in the legislative studies field. ANC electoral dominance in Gauteng gave the ANC confidence in pursuing legislature reform despite the risks in empowering opposition parties through the legislature.

**Element Two:** Parliaments serve as potential conduits for transmitting the perspectives of those citizens comprising a key part of the ‘project identity’ motivating the ANC. Committee oversight processes now combine systems to constantly seek out public perspectives with institutional devices to enhance cross-party collegiality in order to optimize deliberative quality. The reformers anticipate notable improvements in oversight outputs through increased deliberative quality in committee. Ultimately, ‘the Reform’ aspires to use oversight to tangibly affect government delivery of goods and services.

**Element Three:** The pervasive pressure on government to deliver is being felt most acutely at the provincial level. The ANC’s skepticism about federal arrangements at the highest levels of the party apparatus nationally is generating an existential threat at the subnational level felt acutely by provincial legislatures. Administrative arrangements at
the provincial level afforded the GPG and GPL the opportunity to enhance institutional capacity at the subnational level in response. The national leadership of the ANC allowed ‘the Reform’ because it was a contained, subnational experiment. ‘The Reform’ then spread subnationally through federal, intergovernmental forums over the intervening years because the non-binding decisional nature of enhanced legislature oversight work in a parliamentary system can produce governance benefits without exorbitant political costs.

PEBA’s occurrence at the GPL reveals the inadequacy of well-developed understandings and robust theories in legislative studies. The lawlike ideas about parliamentary strengthening discussed in Chapter Three are effective explanatory tools in other cases, but this only serves to accentuate the paradox presented by the GPL case. Heuristic cases require the development and testing of a working hypothesis but offer no guarantees of success and, as stated in the Introduction, can be fraught with errors and challenges. Each element of the working hypothesis requires testing, validation or invalidation and refinement in light of fieldwork. Fieldwork and hypothesis testing corrected how specific causal relationships were understood and uncovered some new variables. Each element of the working hypothesis is more robust as a result of fieldwork as the next two chapters demonstrate.
Chapter Five: The ANC Gauteng’s ‘Identity Crisis’

‘The framework of structural injustice does not determine however who will get what. What it does instead is to structure a conception of obligation that places a special burden on the state.’ (Courtney Jung, 2007)

5(1) Roots of High Expectations and Deep Frustration

The working hypothesis developed in the previous chapter was taken into fieldwork to be tested. Before proceeding with the findings from fieldwork, this chapter begins by affirming the centrality of social transformation to the ANC. This establishes the high expectations of the liberation movement in order to better grasp the reaction of GPL legislators facing serious challenges in achieving their vision at the end of the first term of government.

Social transformation was at the heart of the 1955 Freedom Charter. It was reaffirmed as a paramount objective of the ANC in 1969 through its first ‘Strategy and Tactics’ report adopted at the first ‘National Consultative Conference’; a forum that became the basis for issuing all major ANC policy positions and agendas. That 1969 ANC ‘Strategy and Tactics’ document asserted:

It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy. To allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not represent even the shadow of liberation. Our drive towards national emancipation is therefore in a very real way bound up with economic emancipation. We have suffered more than just national humiliation.

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Our people are deprived of their due in the country’s wealth, their skills have been suppressed and poverty and starvation has been their life experience.\textsuperscript{473}

ANC leaders used another national conference, held on the eve of promulgating a new democratic constitution in 1996, to restate the existential significance of social transformation to the ANC’s political project. In a document entitled, ‘The State and Social Transformation’, the newly minted political party firmly claimed that:

The most important current defining feature of the South African democratic state is that it champions the aspirations of the majority who have been disadvantaged by the many decades of undemocratic rule. Its primary task is to work for the emancipation of the black majority, the working people, the urban poor, the rural poor, the women, the youth and the disabled. It is the task of this democratic state to champion the course of these people in such a way that the most basic aspirations of this majority assumes the status of hegemony which informs and guides policy and practice of all the institutions of government and state.\textsuperscript{474}

Important segments of the ANC, if not the majority of the organization, understood and accepted the state’s ‘special burden’, to use Jung’s terminology, in undoing enduring injustices.

Clear terms are used by the ANC in establishing social transformation as the overriding goal of liberation and democratization. This is repeated over and over again in ANC official policy documents and is restated by elected ANC leaders. The ANC calls it the ‘National Democratic Revolution’ (NDR) but it is often rendered in simple terms. The NDR, according to the ANC at its 1997 National Conference, “means the liberation of Africans in particular and black people in


general from political and economic bondage. It means uplifting the quality of life of all South Africans, especially the poor, the majority of whom are African and female.\(^\text{475}\)

ANC National Conference resolutions in 1997 on the issue of poverty are set forth on the explicit premise that “poverty is the single greatest burden of South Africa’s people, and is the direct result of the apartheid system.”\(^\text{476}\) The conference resolutions affirm the “commitment of the ANC to attacking poverty and deprivation as the first priority of the democratic government.”\(^\text{477}\) Roughly midway through ‘the Reform’, in 2002, another ANC ‘Strategy and Tactics’ national conference document identified the following ‘Pillars of Struggle’: “to build and strengthen the ANC as a movement that organizes and leads the people in the task of social transformation [...] to strengthen the hold of the democratic movement on state power and transform the state machinery to serve the cause of social change.”\(^\text{478}\)

Policy statements directly obligating the new democratic state to undo the enduring injustices of minority rule and linking these to the ethos of the ANC immediately preceded ‘the Reform’ and continued over the course of the GPL’s transformation. ANC liberators did not simply promise to undo the enduring injustices of colonialism and apartheid through electoral platforms and grand policy packages; they quite explicitly staked their identity on it. Examining the consequences of these high expectations for ANC decision makers at the GPL through rigorous interviews is the most robust means of testing the working hypothesis.

Interviews with ANC decision-making elites directly engaged in ‘the Reform’ are used to verify each element of the working hypothesis. Interviews also supplement the information


\(^{477}\) Ibid.

gathered through primary source data analysis during desktop research in advance of fieldwork. Interviewee identities are kept anonymous because most of them remain active in South African politics. Opting to keep interviewee identities anonymous does not adversely affect confidence in the findings. Opposition party members were initially considered for interviews but it became clear that PEBA’s origination, development and adoption was entirely driven by the ANC. Opposition party MPLs play key roles in oversight but played no causal role in why and how ‘the Reform’ occurred. As such, interviews with opposition MPLs would not yield any findings that validate or invalidate the working hypothesis.

ANC decision-makers interviewed during fieldwork played active roles in some or all of the stages of PEBA’s origination, development and adoption. Twenty-six interviews were sought from the political representatives driving the legislature reform process and five interviews from senior legislature administrative officials. Eighteen interviews were secured with ANC political leaders and three interviews were conducted with GPL administrators. Seven of the twenty-six politicians were identified as particularly important. Four of those seven were interviewed. Interviewees include all but one Speaker, several Deputy-Speakers, a variety of MPLs serving as Chairpersons, MPLs serving as Office-Bearers (especially Leaders of the House and Chief Whips), MPLs who became part of the executive and those who served in the executive branch and returned to the legislative branch.

It is a diverse population of interviewees spanning inception, development, adoption and implementation stages of ‘the Reform’. ‘The Reform’ commenced at the end of the First Legislature and unfolded over the course of the Second Legislature. It was adopted and institutionalized more fully over the course of the Third Legislature. Multiple speakers, office-bearers, chairpersons, party leaders served over the course of this period. ‘The Reform’ was not
one actor’s achievement but reflects a decision by the governing ANC to strengthen the GPL. Interviewee anonymity reinforces the collective, organized nature of involvement in bringing about ‘the Reform’. All of these factors off-set any potential risk to the quality of the findings by keeping interviewee identities anonymous.479

‘Social transformation’, ‘social change’ and ANC ‘identity’ were not explicitly stated or indirectly referenced in the formal interview questions. Semi-structured interviews permitted interviewees to independently and almost unwittingly verify or disprove the various elements of the hypothesis. For example, the questions prompting most of the responses about ANC ‘identity accountability’ asked: “What is the most important function of parliament?”; “What is accountability?”; “What is oversight? What does it do?”; “Why was PEBA necessary?”; “What does PEBA do?”; “Can you discuss/reflect on the type of challenges facing you in the 1st, 2nd and 3rd terms in government?”. Interviewees were encouraged to speak as freely, widely or specifically as desired in answering the questions in order to avoid creating a bias on the main element of the working hypothesis. Samples of the answers given are directly, but anonymously, quoted for each relevant element of the working hypothesis and discussed accordingly.

A consolidated rendering of the working hypothesis is restated below for the reader’s benefit:

The ANC internalizes failures in bringing about the social transformation of South Africa as an identity crisis to the extent that the ANC situates itself within an anti-colonial, anti-apartheid project identity. This ‘identity accountability’ propelled ANC Gauteng reformers to engage in a legislature transformation initiative that unsettles the lawlike understandings about parliamentary strengthening in the legislative studies field. ANC electoral dominance in Gauteng gave the ANC confidence in pursuing legislature reform

479 All interviews were conducted in English but a majority of interviewees do not speak English as their first or even second language. Responses are quoted as exactly as possible in order to increase confidence in the findings.
despite the risks in empowering opposition parties through the legislature. Parliaments serve as potential conduits for transmitting the perspectives of those citizens comprising a key part of the ‘project identity’ motivating the ANC. Committee oversight processes now combine systems to constantly seek out public perspectives with institutional devices to enhance cross-party collegiality in order to optimize deliberative quality. The reformers anticipate notable improvements in oversight outputs through increased deliberative quality in committee. Ultimately, ‘the Reform’ aspires to use oversight to tangibly affect government delivery of goods and services. The pervasive pressure on government to deliver is being felt most acutely at the provincial level. The ANC’s skepticism about federal arrangements at the highest levels of the party apparatus nationally is generating an existential threat at the subnational level felt acutely by provincial legislatures. Administrative arrangements at the provincial level afforded the GPG and GPL the opportunity to enhance institutional capacity at the subnational level in response. The national leadership of the ANC allowed ‘the Reform’ because it was a contained, subnational experiment. ‘The Reform’ then spread subnationally through federal, intergovernmental forums over the intervening years because the non-binding decisional nature of enhanced legislature oversight work in a parliamentary system can produce governance benefits without exorbitant political costs.

5(2) Verifying the Existence and Impact of ANC Gauteng MPL ‘Identity Accountability’

‘Identity accountability’ is the first and foremost element of the working hypothesis. It is the conceptual device focusing on political identity dynamism and tension within the ranks of ANC GPL legislators. This concept does not see political identity as static and fixed but fluid and adaptive. Identity accountability is a necessary conceptual tool for organizing observations about
ANC GPL legislators that does not accord with standard theorizing in the legislative studies field. It presupposes the existence of a political identity linked to a specific purpose, or project, giving that political identity substantive content which in turns faces the pressures of South African provincial legislature accountability systems. Identity accountability is the motive force of the working hypothesis because it explains the source of political will necessary to bring about ‘the Reform’ and do what legislators in other reformist parliaments failed to do despite greater experience and resources. Verifying the existence and impact of ‘identity accountability’ is achieved over several steps in the interview process but begins by establishing how accountability is understood.

Fifteen of the eighteen politicians explained the concept of accountability in unequivocal terms. Defining, or explaining, accountability as a distinct concept in the parliamentary setting provides a baseline for understanding how these legislators might hold themselves accountable as members of the ANC even though the answers they provided were to an open-ended question. ANC GPL legislators hold the executive accountable within the GPL. They would understand that citizens hold them accountable on the same unequivocal terms collectively as the ANC without distinguishing between executive and legislative branch members. Box 1 contains a sample of statements by interviewees on accountability.

Box 1: Accountability Understood in Fundamental, Absolute Terms

Interviewee A11: “Accountability for me is taking responsibility for actions that you take. Especially, well both the politician and the accounting officer, who in this case in the GPG would be your Head of Department and officials. So accountability for me is basically taking responsibility for whatever action that you have taken, and you must be held responsible.”

Interviewee A11: “Oversight should ensure that Government delivers on what it had promised the people that it would deliver on. For me that is the basic oversight. To ensure that, yeah, policy is implemented properly, the public money is well-spent, both economically, efficiently and effectively.”

Interviewee A14: “So accountability to us is about the extent to which people who are in the executive arm of government, or in the executive arm of parliament [...] are forever able to
ensure that they come back with reliable information to say to people: ‘we committed ourselves, that give us this particular amount of money, these are the sort of things that we want to do’. So when [they] come back, we want to be able to ensure that, [they] demonstrate to us: ‘how have you fared with regard to usage of that particular allocation which we gave to you?’ So to us, that is being an extreme importance with regard to the area of accountability.’”

Half of the interviewees explicitly situate social transformation at the core of the ANC Gauteng’s agenda for the period covered by this study. If ANC Gauteng legislators were holding themselves collectively accountable, it would be on the basis of how the provincial ANC performed in actualizing social transformation. Yet, social transformation is presented in a manner eclipsing the simple structural divide between ANC legislators and ANC ministers. Social transformation is consistently reflected in more transcendent, fundamental terms. It goes beyond ‘party’ or ‘MPL’, instead often being couched in epic language describing a fundamental purpose. Box 2 provides a sample of the way interviewees perceived social transformation.

Box 2: Social Transformation at the Core of ANC GPL Legislators’ Project

Interviewee A3: “We are not just a normal democratic revolution, we are about the transformation of a society. Therefore, because we are about the transformation of society, you needed laws [rules] that could assist us to do so.”

Interviewee A17: “Now, we have a goal. The goal is the ‘National Democratic Revolution’ and we have certain . . . it wasn’t national social democracy . . . it was ‘National Democratic Revolution’, through and through, in my own view. And because of that, it was very important that we almost, confine ourselves to what was in the ANC’s ‘Strategy and Tactics’ and project that into what we were doing.”

Interviewee A21: “So then, I think in the second term . . . many of those things were done through that phase, just to try and give meaning to what we said in the Constitution, giving meaning, for instance, that’s when the ideas around improving oversight were born, remember, 1999, the PFMA was finalized […]. So from 1999 to 2004 [it] was really about transformation.”

All interviewees expressed some sense of increasing obligation to deliver over time but several were specific about the second and third terms being discrete factors and experiencing a heightened sense of accountability. PEBA began at the end of the First Legislature, developed throughout the Second Legislature and was adopted in the first year of the Third Legislature. Timing is important for correlating the changing perspectives of ANC Gauteng MPLs to the
stages of PEBA’s development. Box 3 reflects a couple of the more forthright statements by interviewees about increasing pressure to deliver.

**Box 3: Accountability for Social Transformation Increases for Each Term in Government**

Interviwee A5: “Come the second term, when I was there, it was: ‘well now we have to start the People’s Contract, what people want from us.’ We have to deliver services, we have the step of laying the foundation [in the first term], but now we have to deliver the services. People out there are expecting something from us as government, to deliver services to them.”

Interviwee A8: “In that second term . . . it was when we really started to grapple with the question of: ‘okay, so what do we mean by delivery, how are we going to measure delivery?’ . . . We can’t just wait until 2004, and then realize, ‘by the way, we haven’t done the things that we said we needed to do.’ We’ve got to have much more consistent measures. So I think that legislative changes around a more systematic oversight parallel changes that were, or developments that were, happening in government itself.”

ANC MPLs at the GPL were facing a challenge and saw themselves as agents of the people responsible for social transformation. Critical liberalism, and the literature it builds on, conceptualizes and understands agency on the part of the oppressed as a function of the hegemonic forces that define the boundaries of exclusion and targets of persecution.480 Jung asserts that “those who would issue a critique against dominant patterns of power need to first develop a space and language of contestation. They must transform the terms of exclusion into the basis of opposition.”481 Jung cites Manuel Castells who argues that the actor constructing “collective identity, and for what, largely determines the symbolic content of this identity, and its meaning for those identifying with it or placing themselves outside of it.”482 Three types of identity are elaborated in this work:

Legitimizing identity, produced by the state to rationalize domination; resistance identity, generated by devalued people to resist the principles of domination; and project identity, ‘when social actors, on the basis of whichever cultural materials are available to them,

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481 Ibid. P. 70.
482 Ibid. P. 70.
build a new identity that redefines their position in society and, by so doing, seek the transformation of overall social structure.\textsuperscript{483} Jung refines, or qualifies, Castell’s conceptualization, by arguing that there is nothing arbitrary about the ‘cultural materials’ employed by actors carving out a project identity. Jung sees these actors utilizing the legitimizing identity in the development of their project identity.\textsuperscript{484} This reasoning underpins Jung’s assertion that “the South African anti-apartheid movement [...] built a Black identity to anchor political opposition, not coincidentally, but \textit{because} race was the condition of apartheid exclusion.”\textsuperscript{485}

Primary source research using ANC documents, as well as statements by ANC Gauteng MPLs in plenary, suggest that these reform-minded legislators are driven by the overarching purpose of social transformation. Social transformation sits at the heart of the ANC’s project identity because it extends from the Black experience of exclusion and oppression and as such is practically synonymous with liberation. The ANC Gauteng MPLs behind the PEBA reform never lost sight of the overriding project at the heart of their political identity. Box 4 provides examples from the statements of interviewees confirming this reality.

\begin{quote} Box 4: Social Transformation at the Heart of ANC Gauteng Legislators’ Project Identity \end{quote}

\begin{center} \begin{tabular}{|p{1\textwidth}|} \hline
Interviewee A3: \textit{“We are still driving the entire South African society to what we think is an ideal society as espoused by the Freedom Charter.”} \\
Interviewee A7: \textit{“Parliament, in my view, is an institution that represents the voices of the people; and those voices of people has got to do with, first and foremost, the quality of life of people. In that sense, the people give a mandate, and I underline the word ‘mandate’, for parliament to act on their behalf, to ensure that parliament exercises oversight on behalf of the people on the executive authorities to ensure that the ultimate mandate-objective is achieved, and that objective is the quality of life of citizens.”} \\
Interviewee 15: \textit{“The most important function of the Legislature is to . . . monitor implementation of the values of the Constitution, particularly the Bill of Rights, to right the wrongs of the past.”} \\
\hline
\end{tabular} \end{center}

\textsuperscript{483} Ibid. P. 70.  
\textsuperscript{484} Ibid. P. 70.  
\textsuperscript{485} Ibid. P. 71. (emphasis added)
ANC legislators in Gauteng helped build a project identity that valued social transformation above all else. Apartheid’s collapse followed by ANC electoral supremacy placed ANC Gauteng legislators in an exceptional situation. They became responsible for actualizing the very transformation that was the purpose, or material content, of their project identity. There is no exaggeration in asserting that ANC Gauteng MPL efforts to bring about the social transformation at the heart of their project identity was, or is, an existential struggle. All but one interviewee openly acknowledged the introspective effect of serving in the GPL and confronting the reality of government delivery shortfalls. A sample of interviewee statements is provided in Box 5.

Box 5: The Unsettling Effect of Government Delivery Shortfalls for ANC Gauteng MPLs

Interviewee A7: “The new [GPL] rules were very clear, because the new rules were reacting to the experience of the period 1994 to 1998-1999, and clearly at that point in time, it was very clear, in the development of democratic governance in South Africa, in Gauteng in particular [...], that the policy objectives were not being achieved in the implementation programmes. There was beginning to be an unsettlement from the people about the quality of service delivery.”

Interviewee A14: “Ninety-nine, comma nine, if not one-hundred percent members of caucus of the ANC [at the GPL], are members of branches of the ANC. And these are people who, in the course of exercising their work, and the administrative indifference that they are witnessing, and the frustrations that are creeping-up in their respective communities, they are coming back [to caucus] to say: ‘we need to find a way, to discuss these particular matters, because if you do not, also, we are alien to the observations that are a reality’. [...] Look into the socioeconomic impact, socioeconomic impact, I think those operational words [...] ‘socioeconomic impact’ are important. Now, when a Congress sits and evaluates, because part of the reason why the ANC, we have, what you call ‘Strategy and Tactics’, which we formulated [...] it was a consequence of us seeking to ensure that we are also able to take stock of the route that we are travelling.”

Interviewee A20: “As we started to experience failure and disappointment over delivery, obviously, that provokes a discussion. And when you are not that far removed from the Constitutional, founding moment, to some extent, the legitimacy of the basic structure – three spheres [federalism] – is not completely embedded, and people are in the process of analyzing what’s not working, why is it not working?”

Experiencing delivery shortfalls as the ANC collectively is one matter, but it is altogether different as an ANC member serving as an MPL in the GPL. Several interviewees expressed heightened pressure because of their position in the representative assembly. Interviewee A3
stated, “we [the ANC] are a movement that also now have control of the levers of power, that we must use that power, to transform society.” Interviewee A9 acknowledged that “it was very clear that we [the ANC] are in charge, we can no longer blame apartheid or whatever, there’s no apartheid anymore.” Serving in the provincial sphere of government compounds pressure felt by ANC representatives elected to the GPL because of the distinct constitutional role provincial government plays. ANC MPLs are acutely aware that they serve in the representative assembly for the sphere of government carrying the greatest weight in actualizing social transformation. Administrative federalism in South Africa, as discussed in the previous chapter, constitutionally obligates the provincial sphere to play a determinative role in delivering social transformation. Box 6 reflects how deeply aware interviewees are of this fact.

Box 6: Provincial Government is Responsible for Key Social Transformation ‘Deliverables’

<table>
<thead>
<tr>
<th>Interviewee A8:</th>
<th>“It’s all laid down in the Constitution. Provincial government is primarily responsible for the delivery of social sector services – health, education, social development […] it is primarily a social sector delivery organ.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interviewee A10:</td>
<td>“Provincial government, like I was saying, is a sphere in between the three, but I think delivers a lot of social services. The national government will be more about national norms and standards […] but social issues are delivered by provincial government.”</td>
</tr>
<tr>
<td>Interviewee A21:</td>
<td>“So provinces distinctly, their core mandate is education and health […] that is also demonstrated by the budget size. Gauteng’s budget, eighty percent of it goes to education and health. […] National sets norms and standards, provinces implement.”</td>
</tr>
</tbody>
</table>

Appreciating the added pressure of serving in the GPL as an ANC MPL is essential to grasping the type of accountability being felt in the period preceding, during and following ‘the Reform’. Social transformation is seen as synonymous with Black liberation and is at the heart of the project identity developed by many of these legislators alongside so many others. These specific legislators assumed positions of authority to bring about the social transformation and more specifically served in the sphere of government tasked to deliver the goods and services most directly affecting social change through government. Box 7 provides a sample of the
Identity accountability is a conceptual device that integrates parliamentary notions of government accountability with a constructivist understanding of identity formation as understood by critical liberalism. The goal here is not to create a new concept but to understand the political will needed by ANC reformers at the GPL to bring about ‘the Reform’. ANC Gauteng MPLs fully grasped their accountability to the public but not in the general sense of most governments in most democracies. Instead, ANC reformers felt accountable for actualizing something far greater than an election manifesto or policy platform. Their job was to bring to fruition the very societal condition that anchored their political identity. The very real, and very serious, struggles and shortcomings in actualizing that purpose heightens the precariousness and vulnerability, in Mouffe’s terms, of ANC Gauteng legislators’ identity. Political will to bring about ‘the Reform’ was not a function of typical parliamentary accountability systems. It was
fueled by a group whose political identity was challenged in extraordinary ways and as a result, they reacted in extraordinary fashion.

Interviews also revealed the importance of thinking about identity accountability beyond a negative form of pressure. Two of the interviewees identified as high-priority participants for this study in advance of fieldwork revealed an *aspirational* dimension to identity accountability. When pressed about how the challenges of governance were being felt, the response given by Interviewee A20 was that:

I think there were concerns about performance, but at that time it wasn’t driven by a sense that we failed, it was driven by a sense of what we ought to be achieving. That it was like: ‘we’re not going to settle for second best, we’re not there simply to win elections. We want change, we want change in people’s lives, okay’. So that liberation idea, people were still living that ideal. People wanted to change people’s lives. They wanted people’s lives to improve. And not just to improve incrementally, you know, for example, we wanted to fix education, you know all the good things that a better education means in a society where education was provided on a discriminatory basis, it was a symbol of servitude of the African population and white domination. So I think those were living ideas.

Interviewee A3 did not connect the responsibility of governing and shortfalls in delivery to a negative form of pressure and potential threat to their political identity. Instead, the discussion of being in power, shortcomings of the ANC, and being accountable for social transformation, led them to say:

We are in power now. In fact, it’s a bigger challenge, it *is* a bigger challenge, because we are a national liberation movement character-wise and then we always espouse those
ideas; that the national liberation movement is there to liberate the South African people; that we have not concluded the work that was designed by the ANC in 1912, of truly liberating people. We know that at the political level they are partly liberated but at the economic level they are not liberated.

Both interviewees making these comments acknowledge shortcomings and even failures on the part of the ANC in government. For reasons that are not yet clear, however, these two interviewees experience identity accountability in a manner propelling them to live up to their project identity. This contrasts with the majority of interviewees that experience identity accountability as a failure to manifest their project identity. If identity accountability is to be useful beyond the scope of this study it will require an allowance for the possibility that it is a multidimensional concept.

Whether identity accountability operates as a negative or positive source of motivation is secondary at the moment to its usefulness in helping to understand the incredible degree of political will needed to bring about ‘the Reform’. GPL reformers interviewed for this study deeply appreciated the nature of accountability. ANC Gauteng MPLs understood that social transformation was the single most important objective upon becoming the governing party. The experience of governing over the first term of government and into the second put ANC MPLs in Gauteng on precarious and vulnerable terrain in terms of their political identity. Social transformation is deeply rooted in the project identity that defined the ANC MPLs in the anti-apartheid era. Failures in bringing social transformation to fruition as planned and budgeted fueled a form of identity accountability. This was exacerbated by operating in the provincial sphere of government that is constitutionally mandated to implement those programmes closely connected to realizing social transformation. Identity accountability generated the political will
necessary to bring about a parliamentary strengthening reform package far exceeding other parliamentary strengthening initiatives in both vision and practice.

5(3) The Explanatory Rewards of Theoretical Eclecticism

Critical liberalism and parliamentary studies assist in developing the concept of identity accountability in order to understand the degree of political will driving ANC GPL reformers. This is the centerpiece of the first element of the working hypothesis. Further testing of the first element of the working hypothesis developed primarily with the help of critical liberalism is necessary. The second and third elements, developed from the DDT and federalism studies literatures respectively, then follow. Testing each element explicitly affirms the benefits of adopting theoretical eclecticism in coming to grips with the paradox of GPL strengthening.

5(3)(a) ‘Seeing Like a Movement’ and Not a Party

Hypothesizing political will as a function of identity accountability presumes that ANC Gauteng MPLs operated more like a movement than a political party. Chapter Three shows that according to conventional wisdom no governing political party in a parliamentary system would produce something like PEBA under the conditions existing in South Africa generally and Gauteng specifically. Those legislative studies theories discussed in Chapter Three are correct in most cases. Unlike most cases, ANC MPLs were experiencing ‘identity accountability’. Critical liberalism assists in recognizing that ANC MPLs in Gauteng processed the political world around them more like a movement than a political party and this propelled ‘the Reform’.

Comments made over the course of some interviews reveal the instinctive, personal inclination to think about the issue of parliamentary oversight as a movement. Interviewee A1 casually stated that “the rules of the Legislature had to express [a] philosophy of being an activist
legislature; not just a parliamentary system.” Interviewee A3 said they “take PEBA as an enhanced form of, or mechanism to assist us to do our effective oversight function. The [pre-reform] rules that we designed at the time, were rules that were almost not as advanced as we needed them to be.” Redesigning oversight to reflect ‘an activist legislature’ and to indicate that the pre-reform Standing Orders were ‘not as advanced as we needed them to be’, despite being on par with Standing Orders in Canada and the United Kingdom, reflects the absence of a party lens. Instead, these reformers were instinctively thinking about how the GPL’s Standing Orders could help the ANC as a movement produce project-identity defined outcomes.

A number of interviews confirm a deliberate, organizational approach towards parliamentary oversight that is movement-oriented and not driven by party calculations. Political parties understandably see legislature oversight as a stick almost exclusively in the hands of the opposition. ANC leaders in Gauteng took an explicit decision to approach oversight as a mechanism with the potential to actualize the ANC’s goals as a liberation movement, in accordance with their project identity. Box 8 provides statements confirming that PEBA’s creators were ‘seeing like a movement’ and not a party.

Box 8: Parliamentary Strengthening a Movement Choice, Not a Party Calculation

Interviewee A15: “Because generally in the nature of where people are located, sometimes [ministers] might think that people are probing too much, so you will find individuals that try and resist but that because there was strong support from the party outside the Legislature for what we call, we called it: ‘constructive tension’. ANC said there is a necessity for constructive tension to ensure the betterment of our people.”

Interviewee A3: “In Gauteng, the difference, we said that: ‘effective oversight function would assist us to perform better as an organization’. There was no fear because of mutual trust that those in the executive and those in parliament were colleagues who were together in the trenches, fighting together.”

Interviewee A2: “So I think also, the authority of the party, in ensuring that you don’t treat your own with kid gloves, because you come from the same party. But it’s the principle of service delivery, of serving the people that elected us that is central, and you will account to [the Legislature].”

Interviewee A17: “I think the party would call it ‘dialectical’, you know, we saw it as almost
a healthy situation. I felt certainly, while I was there, and I think I can speak for colleagues generally, that yes, you didn’t feel you needed to be in bed with the executive, you felt that actually you were ordered to achieve your common objective [...] there was a need to have this tension.”

Interviewee A20: “There was a bit of blowback, and I think that those of us who were pushing this [PEBA] process were able to persuade the powers that be, okay, that look: ‘even though there are some [political] costs to this process, these are the costs we must be willing to pay, we must be prepared to pay if we are serious about liberation, if we’re serious about transformation’.”

Discerning and then confirming the ANC’s movement outlook on parliamentary oversight despite its party role also further verifies the usefulness and robustness of identity accountability as a concept. ANC members were ‘seeing like a movement’ in how they approached oversight. This increases confidence in the finding that ANC Gauteng MPLs internalized setbacks in achieving social transformation like a movement in relation to their project identity. Confirming these aspects of the working hypothesis is critical because it offers insights into the causes and sources underpinning the political will to pursue PEBA. Unsurprisingly, interviewees reflected the exceptional degree of political will driving their reform efforts.

While discussing the general purpose of PEBA, Interviewee A1 contextualized the period immediately preceding ‘the Reform’ saying:

Look, I think we have to take it back because I think PEBA also builds on a robust system of rules [and] committee system. You will remember that when our jurisdiction was put together, the format of the committee system was taken from quite a lot of jurisdictions. So there will be a parliamentary system, as in Britain and Canada. [...] You will see that even the [GPL’s] committees themselves, in the rules at the time, were not as narrowly defined as maybe the UK, maybe even Canada. So for me that’s a starting point. But that was not enough, you had to then push the boundaries of the rules and actually empower the Legislature as Gauteng to delve more into the details because we felt that
even as they were robust, they were not to the standard we thought PEBA would actually
drive the situation [...]. So [the Standing Orders] had to be revamped altogether.

Acknowledging that the GPL’s committee system was modelled after Canada and the UK but
needed to become even stronger in the estimation of the ANC Gauteng reflects the degree of
awareness and deliberateness driving the reformers.

The political will driving ANC MPLs at the GPL from 1998 through to implementation of
‘the Reform’ is still evident a decade later. Interviewee A11 used current Premier David
Makhura to illustrate the point. It was noted that “the posture of the current Premier, when we
speak about Gauteng, he’s not defensive, but he takes the Legislature and its committees very
seriously and he has instructed his [ministers] to do the same.” Fieldwork confirmed the truth of
this statement. Premier David Makhura was in attendance at an OCPOL oversight meeting on the
Office of the Premier’s First Quarterly Report in the early stages of fieldwork for this study. 
Premier Makhura was available to answer committee questions in that meeting. The GPL’s
oversight system is exceptional for requiring budget oversight on quarterly reports and for
extending oversight to the Office of the Premier. Attendance and active participation by the
Premier in OCPOL’s scrutiny of a first quarterly report is a tangible manifestation of exceptional
political will.

Interviewee explanations of why the GPL’s new Standing Orders use the term ‘must’ for all
budget accountability requirements of the executive reflects the political will in developing and
implementing PEBA. Interviewees make it clear that the PEBA-based budget oversight system
demands full compliance and so the language in the Standing Orders needed to formally
institutionalize that exacting standard. Political will to strengthen oversight to this degree reflects
Box 9: ‘Must’ versus ‘May’ Accountability and Oversight Work Reflects Rare Political Will

Interviewee A4: “‘Must’ is a huge difference, and I think ‘may’, removal of the word ‘may’, removes the discretion and therefore removes the ability of persons in power to manipulate processes. Whereas ‘must’ means that persons in power are obliged with no discretion given to their juniors who must summon them to appear […].”

Interviewee A5: “The substance of the new rules is different because it forces [the executive] to ensure they do things correctly, and it is coming from that model that we are using, PEBA . . . that everything is a must, that I must do these things the way that is expected, so it is a demand from the model that we are using. […] Now you can’t find any [minister] that does not know what is expected of [them], they know what the rules want. It’s a must that they must come and account […]. Before, [ministers] thought they may not [account] then we had to change the rules to move along with what we want to do if we are serious about service delivery issues.”

Interviewee A9: “I know from caucus we were quite conscious about this ‘may’, ‘may’, ‘may’ because ‘may’, ‘may not’. […] What’s needed is implementation, and implementation must be about a ‘must’, ‘must’, because if you say ‘may’, that means they ‘may not’. It was not just semantics, it was to enforce implementation, to improve service delivery.”

ANC GPL legislators making parliamentary reform decisions like movement actors explains the determination and political will necessary to create, adopt and implement PEBA. As provincial legislators, these reformers identified parliamentary oversight systems as an instrument to overcome governance challenges in relation to their project identity. Every interviewee indicated that parliamentary oversight can and does play an active role in enhancing government delivery. Believing in this institutional function is important because there would be no reform to speak of if they thought budget oversight is pointless. Box 10 contains statements by interviewees reflecting full confidence that budget oversight does affect service delivery.

Box 10: GPL Reformers Convinced that Oversight Does Positively Impact Service Delivery

Interviewee A2: “Oversight can play a role in service delivery, if committees understand what is expected of them in exercising their oversight role. What questions to ask, what to look for, and in this case, with the Gauteng Legislature, I like the focused intervention studies, because when a department or member of the executive gives you a shopping list of what they are going to do, then the committee will identify three or four [projects] that they focus on. If they said they’ll build a thousand houses in a particular financial year, by the end of a quarter,
they must have built two-hundred-and-fifty houses. So if they have not, then the committee should question and bring the issue to the House [plenary] and the Member of the Executive Council must explain why they have not achieved that, and if they have not achieved that, how are they going to achieve it at the end of the year.”

Interviewee A17: “I believe [oversight] is the sharpest tool, because if it’s exercised by the ruling party, the argument is that it can be too subjective, but then oversight is exercised by all MPLs . . . both the opposition and the ruling party. And arguably, the opposition would be very keen to find any challenges or where the service was not delivered. So in that respect, it’s a very sharp tool. And how is it effectively managed? [...] In health, for example, when people found out that actually the reason why babies were dying in the [province] was not because people didn’t care . . . but actually because of the faulty instruments, because the calibration on the amount of fluid, or the injection was not verified. [...] And that was only realized on the spot, through asking questions: ‘How do you know that that is the correct amount?’ Just a simple question, and that was oversight.”

ANC confidence in the potential for parliamentary oversight to enhance government delivery is relevant to verifying the working hypothesis and the value of critical liberalism in developing a key element of the hypothesis. Government delivery is the empirical, tangible aspect of actualizing social transformation. Failures and shortcomings in government delivery are experienced as a form of identity accountability exactly because government delivery is understood as the operational process for actualizing the social transformation project. ANC reformers see an explicit linkage between their efforts and the project identity demanding an end to the enduring injustices of apartheid. Box 11 shares a couple statements reflecting this movement-type perspective.

Box 11: Good Parliamentary Oversight Work Attacks Apartheid’s Enduring Injustices

Interviewee A13: “The purpose of Provincial [Legislature] is to ensure that the people of Gauteng, their lives are improved, through ensuring that the executive does implement the programmes and projects according to the stated objectives, through the oversight work. [...] We are saying: ‘the mission that the ANC is carrying is not yet fulfilled’, [...] because people are not totally liberated yet in terms of social and economic development’.”

Interviewee A7: “PEBA’s main responsibility is to ensure, as I said, a sense of accountability but it also is concerned with overseeing the prudent management of public resources, it’s also interested to see whether there’s quality service delivery in terms of the outputs and what are in fact the implementation of, or the achievement of the outputs are making an impact in the quality of life of society. Whether public policies are achieving the outcomes that are appropriate to contributing towards what the Constitution of South Africa says. There
must be achieved a quality of life for all citizens, and fundamentally, that’s what PEBA seeks to achieve, a quality of life of all citizens through prudent mechanisms of ensuring that the executive is accountable in its programmes and the Legislature exercises its Constitutional mandate to ensure that the executive is accountable.”

ANC reformers were ‘seeing like a movement’. This finding assists in verifying the causal significance of the ANC’s project identity because other legislators in other parliaments do not react to governance challenges and governmental shortcomings by strengthening oversight and scrutiny systems of the legislature, especially in dominant party systems. It is the content of the ANC’s project identity as a liberation movement that defined how these legislators processed and reacted to the challenge of ‘delivering’ social transformation. Methodologically, these interviews help render ANC reformers at the GPL in theoretically informed terms for explanatory purposes.

Discounting the possibility that some interviewees may feel a ‘pride of ownership’ influencing the reliability of their statements is acceptable for several reasons. Interviewee statements are significant for testing the working hypothesis because what they are saying accords with, and therefore helps confirm, the causal mechanisms at the core of the working hypothesis. Statements here are also significant for verification purposes because these interviewees are not discussing something they promise to do or a future plan. They are discussing something they produced over a decade ago. Reliability of interviewee statements stems from confirmation that PEBA implementation took place and expanded from the time of its adoption (see Chapter Two). Finally, interviewee reliability also stems from the necessity of each interviewee acknowledging frustrations and failures as members of the governing party. Politicians are often loathe to admit weaknesses and problems but the interviewees do so freely in explaining the imperative behind strengthening the GPL.
Interviews with ANC reformers not only verify the causal mechanism set forth in the working hypothesis, but accord almost completely with the ANC’s ‘Strategy and Tactics’ of 1997; the year before ‘the Reform’ was initiated. That document, cited in Chapter Four to help understand the ANC’s project identity, made it clear to ANC members that ‘seeing like a movement’ was paramount:

While at this stage we define ourselves as a liberation movement, it is trite to counterpose this to being a ‘party’ in the broad sense or as it is understood by adherents of formal bourgeois democracy. It is our strategic objectives, the motive forces of the revolution and the character of the terrain in which we operate such as mass work, parliament and government as a whole which are central in defining our organizational character, irrespective of the formal label attached to it.\(^{486}\)

The same ‘Strategy and Tactics’ document adopted at the ANC’s 50\(^{th}\) National Conference goes on to assert that:

The ANC should continuously improve its capacity and skill to wield and transform the instruments of power. *This includes a systematic approach to parliament as the forum to lay the detailed legal framework for transformation* […]. In all centres of power, particularly in parliament and the executive, ANC representatives must fulfil the mandate of the organization.\(^{487}\)

Interviewee statements accord with the written record set forth in ANC primary source documents adopted more than a decade and a half before fieldwork. These statements, in turn, are consistent with the understanding that ANC reformers were making legislature reform decisions as a liberation movement with a well-developed project identity. This verifies the first


\(^{487}\) Ibid. (emphasis added)
element of the working hypothesis and the explanatory utility of ‘identity accountability’ as a source of political will underpinning ‘the Reform’. Critical liberalism does the heavy lifting in developing the working hypothesis. It sheds the most light on the most important causal mechanism by answering the question: ‘why did PEBA happen?’

5(3)(b) Operationalizing Transmission and Sequencing in DDT’s ‘Systemic Turn’

The second element of the working hypothesis addresses the reforms to the GPL’s petitions and public participation processes required by the PEBA reform package. Interviewees discussed public participation reforms and verified those elements of the working hypothesis developed with the assistance of DDT with emphasis on the concepts of transmission and sequencing.

Transmission helps come to grips with GPL efforts to actively seek out the views and opinions of the public through formal intake mechanisms integrated with budget oversight and scrutiny work by departmental committees. As elaborated in the preceding chapter, transmission is part of the systemic turn in DDT research. Fifteen of the eighteen interviews with ANC reformers serve to verify the relevance of transmission in understanding their efforts. Those interviews also verify the value of DDT’s ‘systemic turn’ in rendering ANC decision making along theoretically informed lines. Box 12 contains statements demonstrating deliberateness in creating transmission mechanisms in the oversight process.

Box 12: Petitions and Public Participation Reforms Established Transmission Mechanisms

Interviewee A2: “I usually said in Gauteng, the public out there are our eyes and ears. We are only seventy-three; eleven of those are in the executive. We cannot be in every street and block and township and suburb in Gauteng, [a province] of thirteen million people. We depend on the public out there, to be the extension of the Legislature, to do that oversight for us and bring issues to our attention, so that you can bring it to the attention of the executive."

Interviewee A8: “Part of [oversight] is calling on the community and stakeholders and saying: ‘Okay, this what government says is happening. What do you think is happening and what do you think about the way in which it’s happening?’"

Interviewee A15: “[Public participation] actually provides the committees with a window to
GPL reformers see petitions and public participation as a means of transmitting a wide array of policy-relevant information to departmental committees in the conduct of oversight. Political will formation, broad concerns, specific grievances all fall under the umbrella of oversight relevant information as revealed in the sample of statements in Box 12. Most important is that transmission is constant as a result of budget oversight being cyclical.

Sequencing of public participation follows the stages of budget oversight work in the BCM so that transmission is as constant as the oversight system itself. This sequencing for the purposes of transmission is consistent with the normative theorizing on the systemic turn in DDT. Public participation takes on a systemic role in governance per ‘the Reform’ by virtue of its integral role in the PEBA model. Box 13 provides interviewee statements confirming the systemic nature of public participation given its role in budget oversight.

Box 13: Public Participation’s Role in the System of Budget Oversight per ‘the Reform’

Interviewee A4: “I did, however, work very strongly and actively in the public participation petitions process, and I really worked hard to make that succeed. And for me, that is, conceptually, of a piece with PEBA, because what it is intending to do, is to deepen the Legislature’s reach in terms of understanding from people themselves, their experiences of the delivery of services, [...]. It’s a dimension of oversight. It’s like a strand, it’s a narrative, it’s another source of information, other than what the department provides.”

Interviewee A8: “We were trying to get this institution [the GPL] to play a meaningful role. So, PEBA would be the more institutionalized systematic process, but the public participation process, I think, was trying to give individuals and communities direct access to the oversight function.”

Interviewee A7: “[Public participation and oversight reform] happened at the same time because the process of oversight of the executive has got to do with ensuring the executive is accountable on its commitments and in the process of government implementing what it said are
Interviewees confirm the intention to instrumentalize public participation for the enhancement of the PEBA-based oversight process. Their statements also demonstrate the underlying goal of making public participation as broadly inclusive as possible. What they did, even though unfamiliar with the DDT literature, is create transmission mechanisms allowing the ideas, concerns, grievances, opinions and will formation of the citizenry to reach departmental committees in the conduct of oversight work at a scale approximating, or aspiring to, mass politics. The DDT literature conceptualizes transmission as a society-wide process channeling political discourses in ‘public space’ to decision makers in ‘empowered space’. Interviewees verify the explanatory value of the systemic turn in the DDT literature. They also reveal their focus on systematically and constantly receiving nongovernmental information relevant for budget oversight.

PEBA oversight processes require departmental committee support staff to facilitate public participation and channel nongovernmental information to committees. That source of nongovernmental information is put forward alongside analysis and information developed by departmental committee support staff. All of this non-departmental information provided to departmental committees is seen to enhance deliberative quality in the oversight process. Interviews found that GPL reformers are convinced that PEBA-based oversight enhances deliberative quality in the GPL as a result of the types of information reaching committees. Box 14 provides insights given by interviewees on deliberative quality in departmental committees.
Interviewee A16: “You see, committee support staff is guided properly on how it will feed information into the committee, and the committee is now dealing with issues on the basis of quality information that is gathered by the support staff on behalf of the committee, and members of the committee are guided by the same PEBA, on what is it that they should do. [...] Even if you may want to pursue your political party agenda, at least this [PEBA process] will, you know tighten you, [constrain] you.”

Interviewee A14: “If there is a sense of rationality, a sense of science in what you are saying. . . . I’m likely to come back to you and say: ‘I think you’ve got a point’. Oversight is more objective, that is why initially people will think oversight is a punitive measure but we actually argued that oversight is not punitive, look at oversight as a point of reference in terms of how we can make things much more better.”

Interviewee A17: “What PEBA enabled us to do, was to produce that report which everyone could by and large agree on. You may have someone who didn’t, but the objective was to facilitate a broad consensus, or sufficient, on that.”

Improving deliberative quality as a function of systematization of oversight and public participation processes through the PEBA reforms is seen to underpin enhancement of collegiality in departmental committees. Interviewee 20, from the high-priority list of participants, summarized this specific perspective, stating that:

I mean here, you have the governing party pressing for oversight, not the opposition. The opposition had a very narrow view of oversight. They wanted a stick with which to beat us, and, I mean, the ordinary sort of logic of competitive politics. We did have a broader agenda at that time. We were the ones, under our own control . . . that were taking the steps to strengthen the Legislature, to strengthen oversight, and we did think, that you know, for committees to work well, there needs to be a better balance between cooperation and competition in the [departmental] committees. I think that PEBA did have that impact. You started to see a culture develop in the Legislature where there was that better balance, and so members became more experienced in managing their different roles: their party hats with their roles in committee. [...] So, for the opposition, why should they ever cooperate with the government, right? But, is opposition simply
about attacking the government, never recognizing when there’s progress? Vice-versa, is it the role of the government always to cover-up failure and wrongdoing? So I think we were developing, you know, a more mature politics also.

Fourteen of the eighteen ANC reformers made statements indicating that collegiality in departmental committees improved. GPL reformers are mostly convinced they actualized the goal of enhancing collegiality set forth in the 1998 GPL internal study on parliamentary oversight referenced in Chapter Four. Statements such as these from GPL reformers cannot be dismissed because they instituted a series of reforms clearly intending to enhance deliberative quality. Their actions through ‘the Reform’ are consistent with previously stated intentions and present perceptions.

Fieldwork and interviews cannot establish whether DDT’s formal and justificatory ideals, as elaborated in Chapter Four, provide explanatory value. ANC reformers at the GPL believe they are operating in accordance with some of those ideals. Interviewee statements suggest that public inputs and support staff contributions in departmental committee oversight processes equalize resources to all MPLs enhancing deliberative quality. PEBA also creates conditions where most, if not all, committee members can agree to an oversight report because of agreement on the processes and methods leading to report production. Interviewee statements along these lines resonate with Cohen’s (1989) ‘equality’ and ‘legitimacy’ ideals.

Increased deliberative quality also actualizes Gutmann and Thompson’s (2004) ‘reason-giving’ criteria as part of the justificatory ideal, according to interviewees. They assert that using non-departmental information forces deliberations beyond party positions. MPLs must give reasons for their positions while deliberating with other committee members in more substantive
terms. Ministers, in turn, face more knowledgeable committee members empowered with more penetrating questions and so must provide reasons for policies and actions in greater detail.

Interviewee statements do not confirm whether deliberative quality and collegiality are actually improved. ANC MPLs saying this is the case does not make it so. This is not a DDT study designed to test deliberative quality and collegiality. Design of this study focuses on verifying the perspectives of the reformers and thereby rendering their decisions and actions along theoretically informed premises to explain ‘the Reform’. Interviews confirm that efforts to robustly integrate will formation, grievances and knowledge in public space with GPL oversight deliberations produced mechanisms of ‘transmission’ following a PEBA-defined ‘sequence’ resulting in ANC MPLs believing their oversight processes are more collegial and actualize various DDT normative ideals.

Interviews also confirmed the prudence of allowing for the possibility that critical liberalism and DDT are complementary for hypothesis building purposes. Statements by ANC MPLs about the challenges of implementing public participation processes reinforce confidence in the critique of DDT. How these challenges were discussed and addressed demonstrates that the criticisms are valid but do not necessitate a mutually exclusive approach to the ideas offered by the scholars engaged in the debate. Box 15 provides statements by interviewees acknowledging the impact of enduring injustices on current public participation processes and efforts to mitigate the risks.

Box 15: GPL Reformers Account for Exclusion and Marginalization in Public Participation

| Interviewee A1: | “We always had this notion of, articulation of, ‘equality’ versus ‘equity’, because equality then, is like what you say, we are family, we are together, and all that; me, [you], black, white and ‘what what’488, we are on the same pedestal, and all that. But that |

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488 The term ‘what what’ is a South African colloquial expression equivalent to saying ‘this and that’ in the course of a discussion or argument.
doesn’t look at the underpinnings and nuances. We’re not starting from the same starting point. So that’s where the issue of equity comes in. And, it usually talks to marginalized groups, or groupings, and all that. So that if you look, you go outside there, who makes the greatest noise, even in civil society, it will be people who have [greater] resources. But the real marginalized guys don’t have a voice. Now, if you claim to represent the people as the state, as the Legislature, you got to work your way beneath equality to invite the marginalized groups, to come on board. So it means that you’ve got to be alive as to how then, how do they make their claims? How do you organize yourself as the Legislature, to allow people in Soweto\textsuperscript{489} to express their aspirations, because they don’t have the necessary resources, and all that? So that’s the issue of assistance you can give. In fact, I remember well, the Legislature does quite well, with that, they will go to a specific community, as the Legislature [...]. In that way, you’re trying to penetrate beneath the notion of equality. [...] You must remember, public participation and the petitions system in the Legislature is informed by this [problem], that’s what drives the logic of petitions and public participation.”

Interviewee A20: “That’s why we set-up a public participation office and the function of that office [is], for the purposes of any particular matter under consideration in a [departmental] committee, in the example I gave you, say, pension reform, the function of that legislative institution [the public participation office] is to identify the groups that were disadvantaged in the political process even though they might be numerically preponderant, by virtue of our inequalities, are under-resourced politically, to, in a sense, facilitate their participation. [...] The main rationale for public participation . . . is to compensate, it is to facilitate public participation in the political sphere, it is to equalize the conditions of political participation by compensating for systemic disadvantage.”

GPL reformers understand that apartheid’s victims continue to suffer enduring injustices in the post-apartheid era. Public participation processes must account for ongoing exclusion and marginalization in their view. The very critiques made by Mouffe, Young and Jung in Chapter Four regarding DDT are the reasons for developing processes and mechanisms to include the weakest and most marginalized in GPL budget scrutiny and oversight work. What GPL reformers did, as a result, is establish institutional tools and practices to account for inequality and disadvantage through public participation processes.

DDT literature indicates a normative orientation to enhance equality and account for marginalized populations and groups. GPL reforms to public participation are not evidence of an overlap between DDT and critical liberalism in this study, however. ANC MPLs at the GPL

\textsuperscript{489} Soweto is a large, well-known township located in Gauteng Province.
were not acting as deliberative democrats and to suggest they were without using the term would require an untenable exercise in concept stretching. They are liberation movement members operating as elected representatives in a political party with a project identity defined by the experiences of colonial and apartheid-era persecution and oppression. ANC MPLs ‘seeing like a movement’ pursued public participation reforms best understood through the ‘systemic turn’ in the DDT literature, verifying the second element of the working hypothesis. DDT complements critical liberalism in hypothesizing ‘the Reform’ by explaining what the reformers did, whereas critical liberalism helps understand why they did it.

5(3)(c) Institutional Capacity-Building as Function of Federal System Design

The third, and final, element of the working hypothesis tries to account for the causal significance of South Africa’s federal system to explain PEBA’s development. The 50th National Conference of the ANC in 1997 implicated federalism with political machinations of the former regime. The ANC argued that the “regime sought to use negotiations to retain as much of white minority rule and privilege as possible. Under the guise of so-called minority rights, federalism, and orderly transition, it pursued an outcome in which whites would have the right of veto over both the content and process of change.” This charge put the entire provincial sphere of government on notice in 1997. Failure to realize social transformation as quickly and widely as hoped resulted in various ANC National Conference pronouncements questioning federal arrangements. The GPL commissioned its internal research into its oversight work with a view to reform the following year, in 1998.

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By 2002, the ANC publicly criticized representative assemblies within the governance framework in light of failure to make major strides in social transformation. The 51st National Conference asserted that:

Representatives of the ruling party in the national and provincial legislatures, as well as in local councils, are not optimally using their considerable legislative power in terms of either debating policies and legislation, or exercising their oversight role vis-à-vis the Executive. [...] Parliament is not functioning as the Congress of the People as anticipated. Special groups of policy beneficiaries e.g. rural women, are not enabled to hold the government accountable when policy targeting is not benefitting them sufficiently [...].

PEBA development and piloting was underway at this point and approximately two years away from full adoption.

Pre-fieldwork, hypothesis-development research concluded that ANC identity accountability combined with anti-federal views within ANC national resulting in ANC national conference pronouncements questioning federalism and the existence of the provincial sphere. According to the working hypothesis, this situation generated “an existential threat at the subnational level felt most acutely by provincial legislatures”. This top-down pressure exerted by ANC national propelled the GPL to develop itself and contribute to solving governance problems in the provincial sphere and justify its existence.

Interviews revealed that this causal factor produced pressure for change from the bottom-up. A lack of understanding about the internal processes of the ANC resulted in this causal factor being cast upside-down in causal terms. Interviews helped to right the variable and better understand how federalism played a role in bringing about ‘the Reform’. Box 16 references

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interviewee statements demonstrating how ANC primary sources, specifically national conference pronouncements, were misconstrued in the hypothesis-development stage of this case study.

Box 16: Pressure on ANC Provincial Sphere Propelling Reform Is Not ‘Top-Down’

Interviewee A4: “Those ANC [national] policy resolutions would have been informed by the provincial debates. Absolutely. So I think, it’s almost like, the question assumes that the ANC [national] is a thing apart from . . . so it’s [provincial ANC] debates that shape those [National Conference] outcomes, it’s much more organic. [Debates about federalism] wouldn’t have happened at the national level if they were not happening at the provincial. It’s very important that you understand that. The way that the ANC functions is that it is the sum of its parts. It’s not a body separate from the sum of its parts. It may be that a debate is raised from a particular component of this whole that hadn’t yet started in another part of the whole. […] It’s to do with your understanding, I think, that I want to challenge that the ANC at national [level] sits over there and it has a separate life. The ANC national is the composite.”

Interviewee A5: “We are part of [National Conference report development], we’re part of those processes because remember, in the ANC, before the National Conference, we have the National General Council . . . to assess the work that we have done in the past two years. We start there, discussing policies in the National General Council, then after the National General Council we’ll have our National Policy Conference, and provinces and municipalities are represented there. Myself, as a provincial leader […], at the provincial level, we are part of those politics, we are part of the National General Council, we are part of the National Policy Conference that discusses and reviews the policies. […] Subsequent to [provincial debates] we will have our National Conference. So those three years, is the three years of preparing for that National Conference. […] So already we [in provinces] know what will be the position at the National Conference […]. In fact they start from the branch, from the regions, from the province, and then national will be the last.”

Interviewee A8: “If you go to a National Conference of the ANC, the big voting blocs in those conferences are the provincial leadership of the ANC, and that provincial leadership runs provincial government.”

Discovering the bottom-up dynamic of political pressure to perform in the provincial sphere not only sheds more light on the causal relevance of federal arrangements in bringing about PEBA but also further verifies the causal role of identity accountability. Provinces are the primary vehicles for delivering social transformation and it should come as no surprise that ANC provincial and local levels would raise alarms about performance. Pressure to deliver on social transformation created pressure at the appropriate level of the ANC in the federal framework.
ANC national did not have to coerce or chastise subnational levels to induce performance because identity accountability operating at those subnational delivery levels of government generated enough pressure to officially raise concerns.

Righting the causal direction of this factor in helping explain ‘the Reform’ confirms the causal importance of South African federal design arrangements. Provincial government raises concerns about its own performance exactly because it is provincial government and not because it fears national. It reflects just how responsible that sphere of government in Gauteng felt with respect to its own performance. This new understanding based on interviews also reinforces the causal role of identity accountability which should be felt greatest at the provincial level since it is tasked to deliver social transformation.

The role of ANC national in influencing policy development behind PEBA was also incorrect in the original explanatory framework. Pre-fieldwork research used the understanding that ANC national exerted top-down pressure on ANC provincial to suggest that policy development behind PEBA starts at ANC national. The original explanatory framework states that “the leadership of the ANC allowed ‘the Reform’ because it was a contained, subnational experiment.” ANC national leadership permission and even broad guidance was presumed to exist and drive ‘the Reform’ given how pressure on ANC provincial was understood in advance of fieldwork.

GPL reformers made it clear that PEBA fully originated in the GPL with ANC MPLs initiating and driving the process. PEBA did not start at national or even require national permission to commence development. Instead, PEBA developed provincially in Gauteng and then went across to national. In this sense, the jurisdictional direction of how PEBA developed as
policy is backwards in the working hypothesis. Box 17 provides statements by GPL reformers on the Gauteng, provincial origins of PEBA.

**Box 17: PEBA Exclusively a Gauteng, Provincial Policy Initiative**

Interviewee A2: “[PEBA] was an initiative of the Gauteng Legislature, to do that, it had no pressure from National. I think it’s part of the [...] collective leadership of the time at the Legislature, that it came, that idea. It’s asking yourself the right questions, and the ‘what if?’ kind of question, to come to some conclusions.”

Interviewee A21: “I don’t think the reforms at Gauteng were about proving to National Government or the ANC national leadership that provinces can work. [...] Gauteng has always been distinct in many ways . . . one of the defining characteristics of this province has been for me, has always been about boldness and the desire to make sure that the ANC values and the principles are adhered to and lived through in the best expressed way in Gauteng. [...] We shouldn’t assume that other provinces are doing what we are doing.”

Interviewee A10: “PEBA originated here [at the GPL] and this has informed the national ‘Public Sector Oversight Model’, so I think we’ve pushed it [...].”

PEBA originated exclusively at the provincial sphere as a provincially driven policy specific to Gauteng’s needs and challenges. Correcting this element of the hypothesis is consistent with the correction to the causal direction of pressure facing ANC Gauteng (see Box 16). These two corrections increase confidence in how the working hypothesis uses ‘institutional capacity-building’ as a causal variable to explain ‘the Reform’. PEBA is a deliberate provincial legislature policy of institutional capacity-building explicitly for the provincial sphere because the greatest pressure to perform and overcome challenges was felt at that level of government in the legislative branch.

Erk and Anderson (2009) and Ziblatt (2004) both identify ‘institutional capacity’ as causally relevant for federalism maintenance. The working hypothesis builds on some of their ideas to suggest that “administrative arrangements at the provincial level afforded the GPG and GPL the opportunity to enhance institutional capacity at the subnational level” as a response to an existential threat facing the provincial sphere from ANC national. There was no existential threat to the provinces and GPL reformers did not act because of pressure from ANC national.
Interviews confirm the relevance of institutional capacity-building but the pressure and drive to reform was internal to the provincial sphere generally and GPL ANC members specifically.

Two distinct themes driving provincial legislature capacity-building are discerned from interviewee statements. The statements are not mutually exclusive but do suggest some variations in perspective or matters of emphasis worth making explicit for the purposes of this study. Interviewee statements about the drive for institutional capacity-building are presented in Boxes 18 and 19 and then discussed together.

Box 18: GPL Institutional Capacity-Building as Organic Legislature Capacity Development

Interviewee A8: “I’ve always understood the provincial government, when I was in the Legislature, from the very beginning, provincial government was by and large, a policy-taker not a policy-maker. And as I said, right at the beginning, my understanding of why we focused on oversight was because we were not federal [national government], we didn’t have that leeway. We may well have spent a lot of time developing provincial policies and provincial laws if we had thought that we had that power, but we didn’t. We thought that we had to hold the provincial government accountable and [PEBA] was the mechanism that we developed to do that.”

Interviewee A15: “The pronouncements [by ANC national] was not within the understanding that: ‘abolish the provinces’. They were saying the provinces must do what they are supposed to do in line with the Constitution. That was our understanding [at the GPL].”

Interviewee A17: “I think Gauteng, [...] was able, with an amount of openness and transparency, to see more clearly some of the challenges. Yes we had a budget, [...] we could see that the budget was a tool, we saw all of that. But we were exercising our oversight in a very fragmented fashion. Until, perhaps, [the GPL leadership] identified the fact that look, if we had a single tool, what could this single tool be that is common to everyone and could assist us. [...] So now, how do we ensure that all committees can utilize the same template? [...] And I think that is when one was able to bring in PEBA because we [...] looked at the performance [...] what was the impact of what [the department] did? [...] What PEBA gave us, was a very effective tool which we could utilize in this toolbox and say: ‘for ‘x’ this is how we’re going to evaluate the budget’.”

Box 19: GPL Institutional Capacity-Building Due to Capacity Imbalance with Departments

Interviewee A5: “Before, it was difficult to do [oversight] if you don’t have measures and means to do it. But now, I can probably say, as Gauteng Legislature, we are playing that role, that we are expected to do – oversight over government departments. You can be able to do that when you have tools. Tools like we are using now at the Legislature, which [PEBA], it is that programme of evaluating budgets. So you have those tools you must use. [...] You can’t just get this thick document from the department which is a budget report or annual report and think that as a public representative you’ll be able to read that document alone. You need assistance to ensure that there is this guiding tool that you must follow, and always when I speak to people,
about the ten points that PEBA talks to, so that it assists you. So those ten steps that you must use from PEBA, from the beginning of analyzing, of doing the research, making a follow-up, of even going out to communities and doing that contact, helps you to be able to sharpen your tools to do oversight. [...] Before, we were not doing it, before we will just get a presentation from government departments and we’ll just listen to them giving us these huge figures, talking about things we have never seen.”

Interviewee A9: “[PEBA] is improvement in terms of oversight. Because when you look at [the] executive, let’s take the executive, you have a minister there with a huge administration of professionals, and politicians are not necessarily professionals. [...] They might be professionals or they might not be and it is not a requirement for them to be a professional. [...] When you go into a government department, you are going to get highly technical professionals. [...] In exercising oversight over these people . . . how can you say: ‘No’ if you don’t have [expertise]? Therefore, you need to improve your mechanism of oversight to be able, to allow you, to ask good questions. [...] I think PEBA came in to increase the capacity of the Legislature to be able to ask the right questions.”

Disappearance of the ‘existential threat’ to the provincial sphere diminishes the explanatory value of ‘institutional capacity’ as a variable in Ziblatt’s theory of federation maintenance. Institutional capacity for Ziblatt is about strengthening subnational levels of government as a defense against being “absorbed and swept away”. The ‘paradox of federalism’ literature is also concerned with explaining federation maintenance. Erk and Anderson, however, identify three dimensions interacting to impact on federal outcomes. Two of these dimensions are ‘institutional capacity’ and ‘socioeconomic factors’.

ANC MPLs were clearly and unequivocally developing the institutional capacity of the GPL. They understood this in terms of developing the capacities suitable to provincial governance as well as a process of matching the strength of the other provincial institutions around them. Provincial government, in their own understanding, carries the constitutional mandate to deliver the social transformation at the core of the ANC’s project identity. Socioeconomic conditions preoccupied ANC legislators facing governance challenges at the provincial level. Enhancing government delivery was, and remains, a key focus. It is in this context that ‘the Reform’ reflects

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a conscious policy of institutional capacity-building within a subnational, federal framework to increase the chance of realizing greater social transformation.

Federalism is relevant to explaining ‘the Reform’ because it is the very structure of South African federal design, combined with the particular governance challenges facing provinces that drove GPL reformers to enhance the legislature’s capacity. The working hypothesis needs correction in the way federalism plays a role in bringing about PEBA but fieldwork confirms that federal design is causally relevant. Administrative federalism helps answer the ‘how question’ of PEBA development by drawing attention to the impact of subnational, federal design. Federalism also complements critical liberalism by further refining appreciation for the causal significance of socioeconomic factors operating at the subnational level.

5(4) Fieldwork Reveals Two New Factors Helping to Explain PEBA

Fieldwork revealed two completely new factors helping to explain ‘the Reform’. Both stem from the ANC Gauteng’s internal decision-making structures outside the legislature, at Walter Sisulu House, where ANC Gauteng provincial leadership operates. First, ANC Gauteng deployment decisions regarding ANC members deployed to serve in the executive and legislative branches are seen as causally relevant to interviewees. Senior members of the liberation movement were deployed to both branches. ANC deployment as a factor arose typically during discussions about executive-legislature relations over the course of interviews. Interviewee A1 indicated that:

We’ve been lucky in Gauteng, in terms of what you call ‘deployment’. We’ve never subscribed to this notion that says: ‘your bright [people], your senior [people], you take them to the executive and then leave the rest in the legislature’. The distribution has
always been very good. That you take the most senior to both, because that counts. So if somebody [from the movement] is very senior in the legislature, you can’t mess up.

Interviewee A16 focused more on the position of Speaker in ANC deployment decisions, to observe that “almost all of the Speakers have happened to be senior members of the legislative committee of the ANC.”

Specific positions given to senior ANC members deployed to the GPL are also worth noting. An interviewee pointed to the significance of Speaker Trevor Fowler then becoming Leader of the House after commissioning a study on parliamentary oversight. In fact, continuity in almost all key Office Bearer positions is a remarkable contributing factor to success of ‘the Reform’. Seeing through significant reform initiatives would not only require senior liberation movement deployments to the legislative branch but also continuity in senior legislature positions to develop institutional memory and political will. The table below provides the names of relevant Office Bearers reflecting significant continuity in personnel.

Table 13: Continuity Among ANC GPL Office Bearers Over the Course of PEBA Development

<table>
<thead>
<tr>
<th>GPL</th>
<th>First Legislature</th>
<th>Second Legislature</th>
<th>Third Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speaker</td>
<td>Trevor Fowler</td>
<td>Firoz Cachalia</td>
<td>Mzameni Mdakane</td>
</tr>
<tr>
<td>Deputy Speaker</td>
<td>–</td>
<td>Lindiwe Maseko</td>
<td>–</td>
</tr>
<tr>
<td>Leader of the House</td>
<td>Firoz Cachalia</td>
<td>Trevor Fowler</td>
<td>Firoz Cachalia</td>
</tr>
<tr>
<td>Chief Whip</td>
<td>Mzameni Mdakane</td>
<td>Mzameni Mdakane</td>
<td>Mandla Nkomfe</td>
</tr>
<tr>
<td>Chair of Committees&lt;sup&gt;493&lt;/sup&gt;</td>
<td>–</td>
<td>Mandla Nkomfe</td>
<td>Lindiwe Maseko</td>
</tr>
</tbody>
</table>

Speaker Trevor Fowler initiated strengthening of GPL accountability systems by commissioning an internal GPL study on parliamentary oversight towards the end of the First Legislature. Firoz Cachalia was serving as Leader of the House at that time. During the Second Legislature, these two key decision makers traded positions. Mzameni Mdakane carried on serving as Chief Whip over the First and Second Legislatures, becoming privy to all decisions.

<sup>493</sup> The ‘Chair of Committees’ chairs a committee comprised of GPL committee chairpersons to ensure, among other matters, coordination across committees on oversight as well as initiatives such as implementation of PEBA.
and plans in the GPL strengthening process and tasked with ensuring MPLs fulfil specific tasks assigned by the party. Elections took place after PEBA’s total development as a policy package and Firoz Cachalia, who served as Speaker during the PEBA development phase, returned as Leader of the House in the Third Legislature. Mzameni Mdakane went on to become Speaker in the Third Legislature. Speaker Mdakane established the rules reform task team to amend the GPL’s Standing Orders per PEBA’s requirements. Mandla Nkomfe served as Chair of Committees during the piloting and development of PEBA and then served as Chief Whip in the Third Legislature. Lindiwe Maseko went from Deputy Speaker in the Second Legislature to Chair of Committees in the Third Legislature; a position effectively responsible for full coordination across all committees per PEBA’s oversight prerogatives. Finally, Lindiwe Maseko went on to serve as Speaker in the Fourth Legislature, after the full institutionalization of PEBA.

ANC Gauteng internal decision-making processes at Walter Sisulu House played a role in PEBA creation and implementation well-beyond deployment choices. Fourteen of eighteen interviewees revealed a direct role played by ANC provincial structures outside the legislature in strengthening the GPL. Unique and politically powerful internal ANC Gauteng structures approved and supported GPL strengthening from beginning to end. This second factor was completely unknown before fieldwork.

One century of legislative studies theorizing created a blind spot resulting in a failure to consider the possibility that internal, extra-parliamentary ANC structures actively supported legislature strengthening. Weber noted, over a century ago, the “resentment of the typical party functionary [affecting] the attitude of some parties toward the introduction of parliamentary government and hence the recruitment of leaders in parliament.”

not generally applicable today in democratic parliamentary systems but Weber reminds legislative studies scholars that internal party officials are organizationally predisposed to perceiving parliament as a problem to be contained or managed. Party functionaries actively seeking to strengthen the institution that can use accountability systems to slow down party agendas is almost unthinkable.

Interviews reveal how ANC internal decision-making structures played a role in PEBA’s development from inception to conclusion. Internal ANC structures outside of the GPL approved of the agenda and supported it through to its conclusion. Box 20 provides interviewee statements revealing how this factor actively contributed to PEBA’s development, adoption and institutionalization.

Box 20: ANC Gauteng Internal Structures Approved and Supported GPL Strengthening

Interviewee A3: “The Working Committee of the ANC at the time was also involved in real discussions [about PEBA]. In fact, in Gauteng, I’m not sure at [National] Parliament [they] do that, but in Gauteng, every meeting of the Provincial Working Committee, they used to have an item around the Legislature. As a result of that, they were well-informed. They knew PEBA is coming, they knew the research is being done, who is doing the research, they knew what is the purpose of doing that. [...] Even if it is a Rules decision, [it] will be taken first to the caucus, and then from the caucus [...] taken to the Provincial Working Committee, for processing purposes, to the Provincial Executive Committee, because the Provincial Executive Committee is the highest decision-making structure in between [ANC] National Conferences. We [took] it to the Provincial Executive Committee once processed by the caucus. So PEBA processes were managed that way . . . step-by-step.”

Interviewee A8: “The Provincial Executive Committee has a sub-committee called the Governance Sub-Committee and all government matters, including PEBA, would be tabled in the Governance Sub-Committee. So if Firoz [GPL Speaker, Second Legislature], or Trevor [GPL Speaker, First Legislature], or whoever, wanted to introduce this system, they would have to table it in the Governance Sub-Committee of the Provincial Executive Committee. The Provincial Executive Committee is elected by the [ANC] branches of Gauteng. [...] So . . . whomever was driving this process would have gone to the Governance Sub-Committee and would have presented and the Governance Sub-Committee would have expressed their opinions and then they would have gone to the [Provincial] Working Committee of the Provincial Executive Committee. So, from the Provincial Executive Committee, which at that time was twenty-five people, or twenty people, there would be a [Provincial] Working Committee of six people plus the five [GPL] Office Bearers, so it’s eleven people. So what the [Provincial] Working Committee does, is they process all issues that will come eventually to the Provincial Executive Committee.”
Executive Committee for approval. So once the [Governance] Sub-Committee has approved it, it will then be tabled at the Provincial Working Committee and then it would be extensively interrogated and it would also have to go to caucus and all the opinions would have to be factored in. Then the final presentation would be in the Provincial Executive Committee. The Provincial Executive Committee would then actually approve it.”

Interviewee A14: “Chief Whip of the Caucus of the ANC, the [Chief Whip] is also a member of the Provincial Working Committee, they actually assist with the day-to-day running of the [ANC]. So in-between the Provincial Executive Committee . . . you have these twelve people that assist with the responsibility of ensuring that, they have to ensure that the programmes of the [ANC] are being implemented. Firoz was also a member of the Provincial Working Committee, okay. Trevor was also a member of the Provincial Working Committee. So there has really been a particular practice with regard to how then do you ensure that there is a sustained connection between the legislative arm and the . . . ANC. [...] Well, for the past three terms there has been a troika, that is the Chief Whip, the Speaker and the Premier . . . all of these people are on the Provincial Working Committee.”

Interviewee A20: “The PEBA process could not have taken place without the support of the Premier, without the support of the Provincial Executive, Provincial Secretary [of the ANC] and Chairperson [of the ANC]. Those of us who were driving this process needed their support.”

The importance of discovering the role of the ANC outside of the GPL in bringing about ‘the Reform’ goes beyond shedding light on previously unknown mechanisms of the process. This new evidence strongly confirms the necessity of seeing the ANC outside the limited conceptualization of a political party to explain ‘the Reform’. It was ANC ‘the movement’, with its structures outside of the legislature, playing a determinative role in strengthening the GPL. What is entirely paradoxical to legislative studies theory is only comprehensible through the prism of the ANC’s project identity and the drive to bring about social transformation.

The Provincial Working Committee is comprised of six ANC members elected by ANC local branches to the Provincial Executive Committee, in addition to five GPL Office Bearers. This entity sits between the Governance Sub-Committee and the Provincial Executive Committee. The interface between ANC non-legislative and legislative leadership to decide critical institutional outcomes verifies the source of non-party decision making underpinning the decision to pursue PEBA. Evidence of the role played by ANC Gauteng internal decision-

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495 Another interviewee said the Provincial Working Committee consists of eleven members. The discrepancy is considered to be minor and so clarity was not sought during interviews.
making structures helps to confirm the key causal inferences developed up to this point through a theoretically eclectic approach. Most importantly, this evidence confirms ANC political identity as a central causal variable. This element is the motive force of the working hypothesis, fueling the political will to reform. Verification that ANC non-legislature structures played an active role in PEBA’s development increases confidence in the contribution by critical liberalism in hypothesizing ‘the Reform’.

Interviewee A20 asserts that PEBA could not have developed without support from the Premier, Provincial Executive, ANC Provincial Secretary and ANC Provincial Chairperson (see Box 20). PEBA crossed a number of veto points within internal ANC provincial leadership structures before development could begin. These veto points existed within the ANC Provincial Executive Committee, Governance Subcommittee, and Provincial Working Committee. The number of veto points and political leaders wielding those vetoes reflects the amount of ANC political actors involved in approving the PEBA process and bringing it into fruition. It was not possible for one ANC GPL leader, or even a handful, to bring it into existence. ANC Gauteng created PEBA in a collective process involving several ANC provincial leadership structures.

5(5) A Revised Hypothesis

Interviews verified, disproved and altered elements of the working hypothesis. Interviewees also shed light on unknown factors and variables relevant to hypothesizing ‘the Reform’. Heuristic case studies taking the first steps to building a new theory where none exists can expect this outcome in the hypothesis-testing stage of research. Processing hours and hours of interviews to test the claims and foundations of the working hypothesis required revisiting key materials used in the desktop research phase and then changes to the working hypothesis. The refined hypothesis contends that:
The ANC internalizes failures in bringing about the social transformation of South Africa as an identity crisis to the extent that the ANC situates itself within an anti-colonial, anti-apartheid project identity. This ‘identity accountability’ is driving the ANC into a determined search for governance solutions. Its electoral dominance in Gauteng gave the ANC confidence in pursuing legislature reform despite the risks in empowering opposition parties through the legislature. ANC MPLs see legislature oversight as a potential lever to assist in overcoming government delivery challenges. They also see public participation as critical to effective oversight. Parliaments can serve as conduits for transmitting the perspectives of those citizens comprising a key part of the project identity motivating the ANC. Committee oversight processes now combine systems to constantly transmit public inputs into committee deliberations as reformers try to enhance cross-party collegiality in order to optimize deliberative quality. The reformers anticipate notable improvements in oversight outputs through increased deliberative quality in committee. The pervasive pressure on government to deliver is being felt most acutely at the provincial level because of administrative federal design. South Africa’s system of administrative federalism affords the GPG and GPL the opportunity to enhance institutional capacity at the subnational level in response to the experience of identity accountability.

It is necessary to point out the removal of the concluding element in the working hypothesis before proceeding to the next chapter. The working hypothesis concluded by asserting that ‘the Reform’ was a “contained, subnational experiment” permitted by the ANC’s national leadership. Interviews reveal the provincial origins and initiative in the development and adoption of PEBA. This fact negates the validity of the claim that ANC national permitted PEBA’s development as a
subnational experiment. The original explanation also argues that PEBA spread subnationally through intergovernmental forums because of “the non-binding decisional nature of departmental committee oversight.” No interviewee provided statements verifying or disproving this element of the explanation. Every opportunity was given for such evidence to be articulated in interviews but no evidence was provided. Consequently, it is dropped as an element of the explanation.

ANC electoral dominance in Gauteng is a factor built into the explanation that is unaddressed in this chapter. Interviews alone do not suffice to retain it as part of the explanation but ANC electoral dominance in Gauteng was so pronounced that it cannot so easily be dismissed as causally relevant. Further testing is needed to address whether electoral dominance is a valid element of the explanation. The following chapter addresses ‘electoral dominance’ through a comparative exercise testing the hypothesis and other elements of the explanation.
Chapter Six: Hypothesis Testing Through Negative Cases

‘For the more ambitious reformers, the iron grip of the party managers, disguised as the ‘usual channels’, has continued to prevent any significant shift in the balance between legislature and executive.’ (Philip Giddings, 2005)

6(1) An Initial Comparative Exercise

Heuristic case studies are used to explain phenomena that defy existing theory. It is the appropriate method when explaining something new is more valuable to a field of study than trying to disprove existing theories with a single case. Moving beyond a hypothesis to establish whether a new theory is developing will eventually require comparative case studies. The uniqueness of phenomena like PEBA is exactly what makes a heuristic case study approach necessary and comparative research a significant challenge. The rarity of the phenomenon being explained makes it more likely to begin comparative research by selecting cases for the absence of the dependent variable.

South Africa has nine other legislatures all operating in the same time period as ‘the Reform’. This population of legislatures provides a potential source of sample cases for comparative purposes. Findings from a simple comparative exercise in this chapter need to be qualified by the reality that this is not a comparative study. Comparisons being drawn here are only sufficient for refining the hypothesis and explanation.

Verifying and refining the working hypothesis in Chapter Five creates the starting point for a basic comparative exercise. South Africa’s National Assembly, which is physically located in the Western Cape, and the KwaZulu-Natal and Western Cape provincial legislatures provide ideal comparative cases within Mills’ ‘most similar systems design’ (MSSD) framework. MSSD looks at cases where a great many variables are similar and yet the dependent variable occurs only rarely or not at all. This affords the chance to loosely control for some potential causal factors
and isolate specific variables to establish whether they are indeed causally relevant. Selection is based on broad similarities between the three provinces where the legislatures being compared are situated while controlling for only one or two distinct political differences.496

6(2) Criteria for Comparing Other Legislatures with the GPL

KwaZulu-Natal, Western Cape and Gauteng provinces are among the stronger economic performers in the national economy. These three provinces accounted for an average of 65 percent of South Africa’s GDP using statistics for 1996 and 2006.497 Gauteng Province was responsible for 33.7 percent while the Western Cape and KwaZulu-Natal generated 14.4 and 16.5 percent, respectively.498 KwaZulu-Natal’s GDP per capita measured 8.5% in 1999, as ‘the Reform’ was getting underway. Gauteng’s GDP per capita measured 21.2% and the Western Cape’s was 16.7%.499 Gauteng had the highest GDP per capita ranking in 1999 followed by the Western Cape whereas KwaZulu-Natal’s was the third lowest. Despite this difference and variations in the sources of economic activity between the three provinces, all three stand apart from the other six provinces with respect to economic performance.

Census and survey data reported by Statistics South Africa for the time period relevant to this study suggest that all the legislatures being compared had access to skilled labour. Those statistics indicate that 21.2 and 20.7 percent of the population lived in KwaZulu-Natal and Gauteng respectively. The Western Cape was the fourth most populous province; with an

496 Skocpol, Theda and Margaret Somers. 1980. ‘The Uses of Comparative History in Macrosocial Inquiry’ in Comparative Studies in Society and History. 22(2). P.183-184.
498 Ibid. P. 3.
average of 10.2 percent of the population calling it home.\textsuperscript{500} Higher education levels in the Western Cape, at 11.5 percent, were the best in the country.\textsuperscript{501} This offsets the population imbalance with Gauteng and KwaZulu-Natal, where higher education levels in the population were 10.8 and 6.6 percent, respectively.\textsuperscript{502} Western Cape, Gauteng and KwaZulu-Natal were on average the top three performers for higher education in their populations for the time period relevant to this study.

Gauteng, Western Cape and KwaZulu-Natal provincial legislatures are all part of the same political system and completely equal constitutionally. Obviously, the National Assembly stands apart from the provincial legislatures jurisdictionally. The National Assembly enjoys all the benefits accruing to the Western Cape, Kwa-Zulu Natal and Gauteng legislatures by virtue of drawing on the resources of these provincial jurisdictions as the legislature for the national sphere of government.

Economic strength, demographics and labour supply in Gauteng, Western Cape and KwaZulu-Natal provinces distinguish these three provinces from the rest. Legislatures located in the economically smaller and less populous provinces are less comparable due to notable disparities in demographics, economics and labour supply. Controlling for these factors addresses the argument that Gauteng’s relative resource wealth gave the GPL a decisive capacity advantage over other legislatures. Comparing legislatures in these three provinces assists in identifying variables other than socioeconomic strength to explain ‘the Reform’.

Motivation to reform also needs to be accounted for in this comparison. Failure to realize the social transformation of citizens in Gauteng is seen as a key factor in motivating the ANC


\footnotesize{\textsuperscript{501} Ibid P. 23.}

\footnotesize{\textsuperscript{502} Ibid. P. 23.}
Gauteng to strengthen the GPL. Transforming the lives of citizens in the post-apartheid period was a challenge for all the legislatures being compared here with the GPL. A detailed, sector-by-sector analysis of development and delivery challenges is inappropriate for the purposes of this chapter. Success in reducing poverty and inequality provide sufficient grounds for establishing whether the legislatures faced similar performance challenges or not.

Every government in South Africa was constitutionally required through the Bill of Rights to design programmes for the purposes of alleviating poverty and increasing equality in their jurisdiction. Census data indicate persistent or slightly worse poverty levels in each legislature’s jurisdiction from 1996 to 2001. KwaZulu-Natal’s poverty index remained at 39.3 percent whereas the Western Cape’s poverty index increased from 14.6 to 16.7 percent. The poverty index for the whole of South Africa increased from 33 to 33.4 percent. In Gauteng, the poverty index increased from 20.1 to 20.8 percent.\(^503\) Census data for 1996 to 2001 covers the experience with governance following democratization through to the first three years of ‘the Reform’.

Statistics South Africa data for 2005-2006, immediately following ‘the Reform’, shows that Gauteng’s individual poverty rate of 24.9 percent was the lowest in the country. Western Cape had an individual poverty rate of 28.8 percent and KwaZulu-Natal’s was the worst of the three provinces at 58.5 percent.\(^504\) Lastly, data on income inequality for 1995 to 2005 reveal a worsening Gini coefficient. The increase of South Africa’s Gini coefficient from 0.64 in 1995 to 0.69 in 2005 suggests that South Africa was becoming “one of the most consistently unequal countries in the world.”\(^505\)

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South Africa’s National Assembly and the provincial legislatures in the Western Cape and KwaZulu-Natal faced the same, or worse, conditions of poverty and inequality as the GPL. Did the lack of significant progress in transforming their societies result in similar legislature strengthening exercises? Specifically, did the National Assembly, Western Cape Provincial Parliament (WCPP) and KwaZulu-Natal Legislature (KZN) formally enhance budget oversight and scrutiny systems like the GPL? The primary goal of this comparison is to see how similarly resourced legislatures responded to similar challenges facing the GPL with respect to legislature oversight.

6(3) Comparing the Standing Orders on Budget Oversight and Scrutiny

Older versions of the Standing Orders for the legislatures were sought out during fieldwork in the Western Cape and KwaZulu-Natal. The comparison attempts to use Standing Orders from the other legislatures at the onset and conclusion of ‘the Reform’. The ideal years for comparing Standing Orders are 1998 and 2004. South African legislatures have different forms of archiving and storing such data preventing comparison for those exact years across all cases. The Standing Orders collected do provide a sufficient basis for comparison nonetheless.

National Assembly – Standing Orders, 1999: Standing orders at the National Assembly require departmental committees to conduct oversight. S.O. 201(1)(b)(i) states that a departmental committee “must maintain oversight of the exercise within its portfolio of national executive authority, including the implementation of legislation.” S.O. 201(1)(c) then qualifies the scope and scale of departmental committee oversight. It says, departmental committees “may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state [...] including the legislative programme, budget [...] policies of such organ of state [...]”
The ‘must do oversight’ language in the National Assembly’s Standing Orders is a general injunction to conduct scrutiny exercises and pursue a degree of accountability. Scrutiny of departmental appropriations is specifically framed within the ‘may do oversight’ language. Like Westminster and Canada’s House of Commons, the National Assembly gives committees a choice about whether and how to conduct budget oversight.

_National Assembly – Standing Orders, 2004:_ National Assembly Standing Orders pertaining to departmental committee oversight generally and budget oversight specifically were unchanged from 1999 to 2004. S.O. 201(1)(b)(i) and S.O. 201(1)(c) from 1998 remained the same in 2004.

_WCPP – Standing Orders, 1998:_ S.O. 84(4) of the WCPP states, “The [departmental] committee whose assignment is or includes social welfare matters must monitor the socioeconomic conditions of the residents of the Western Cape and make recommendations to this House concerning the improvement of those conditions.” Explicit emphasis on socioeconomic conditions in relation to departmental committee oversight reflects a belief that oversight has the potential to positively affect social change.

S.O. 85(2)(a) deviates from the ‘must do oversight’ mandate in S.O. 84(4). It says, “A [departmental] committee may examine and report on the expenditure, administration or policies of provincial government departments and associated public bodies falling within a category of provincial government affairs assigned to the committee [...].” Legislators at the WCPP are given the same structure for approaching oversight as their counterparts at the National Assembly. Oversight is a ‘must’ in the broad, unspecified legal context but budget oversight specifically is optional.

_WCPP – Standing Orders, 2003:_ Standings Orders of the WCPP underwent reform between 1998 and 2003. As a result, S.O. 84(4) shifted to S.O. 79(4) and S.O. 85(2)(a) became S.O.
82(2)(a). The language of these resolutions remained exactly the same in the 2003 Standing Orders. Nothing had changed in terms of the scope and scale of budget oversight and scrutiny.

**KZNL**: Past Standing Orders for the KZNL were unavailable during fieldwork. However, the most recent version of that legislature’s Standing Orders is accessible and will have to suffice for comparative purposes at this point. KZNL Standing Orders as of 2016, under S.O. 181(1)(b) state that a departmental committee “must maintain oversight of the exercise of provincial executive authority falling within its portfolio, including the implementation of legislation.” S.O. 181(1)(c) tells departmental committees they “may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state [...] including the legislative programme, budget [...] policies of such organ of state [...].” These two Standing Orders use the exact same wording as S.O. 201(1)(b)(i) and S.O. 201(1)(c) of the National Assembly’s Standing Orders. Unsurprisingly, they create the same structure whereby oversight broadly defined is a ‘must’ but budget oversight and scrutiny is optional.

**6(4) Exploring the Findings**

The National Assembly, KZNL and WCPP only use the term ‘must’ when oversight is operationally unspecified. The term ‘may’ applies to oversight in their Standing Orders when the object of scrutiny is rendered explicit, such as budget appropriations. All of the Standing Orders for these legislatures being compared with the GPL are silent on annual reports and quarterly reports in 1998-1999 and 2003-2004. These legislatures institutionally design budget oversight and scrutiny in similar manner to Westminster and Canada’s House of Commons. The National Assembly, KZNL and WCPP are notable for the absence of legislature strengthening despite all the broad criteria for comparability with the GPL and facing a similar governance challenge with respect to the persistence of enduring injustices rooted in apartheid and colonialism.
Greater financial and human capital does not account for the GPL’s development of PEBA. Gauteng is the richest jurisdiction with access to a skilled labour force but the other legislatures were also comparatively strong in the South African context. Access to greater resources than poorer, less-populated provinces did not result in any notable legislature strengthening in comparable jurisdictions over the same period of time.

Comparing these legislatures also suggests that ANC control of government does not necessarily result in strengthening legislature accountability and scrutiny systems. ANC national election victories over the period relevant for this study ensured absolute control of the National Assembly. At no point did ANC dominance of the National Assembly result in legislature strengthening of budget oversight even though national legislators could not significantly reduce poverty and faced increasing inequality. Identity accountability may have been experienced by national ANC legislators but it was insufficient for generating either the vision or political will to pursue legislature strengthening reforms. Formal oversight systems at the National Assembly exemplified the status quo.

This basic comparative exercise cannot dismiss the role played by relative financial and human resource wealth. It also does not negate the importance of ANC control of government in bringing about ‘the Reform’. Yet the ANC dominated in far poorer provinces over the same time period and did not engage in any legislature strengthening despite similar governance challenges. The absence of the dependent variable manifesting in relatively wealthier South African legislatures facing similar challenges suggests that other factors play an important role in making ‘the Reform’ possible.

Electoral dynamics at the provincial level stand out as a feature distinguishing Gauteng province from the other provinces in this comparison. Provincial election results in Gauteng over
the 1994, 1999 and 2004 elections indicate the existence of a dominant party system. The ANC Gauteng’s first election victory gave it 57.6 percent of the vote in 1994, followed by 67.9 percent in 1999 and 68.4 percent in 2004. Opposition parties in Gauteng fractured and weakened over the course of these elections.

Electoral outcomes over the same three election cycles in KwaZulu-Natal and the Western Cape reflect the existence of a competitive party system. The Inkatha Freedom Party (IFP) formed government following the 1994 provincial elections in KwaZulu-Natal with 50.3 percent of the vote. The IFP formed provincial government again following the 1999 elections with 41.9 percent of the vote. In 2004, ANC KwaZulu-Natal won 47% of the vote and formed the government. Electoral dynamics in KwaZulu-Natal were competitive, unlike those in Gauteng.

Provincial elections outcomes in the Western Cape are similar to those in KwaZulu-Natal. Western Cape voters gave the National Party (NP) 53.2 percent of the vote in 1994 but only 38.4 percent of the vote in 1999. The NP needed a coalition to govern the province. Western Cape voters elected the ANC to government in 2004 with 45.3 percent of the vote and the re-branded New National Party effectively collapsed, earning only 10.9 percent of the vote. Western Cape electoral dynamics were also competitive.

The NP and IFP are also driven by distinct and dynamic political identities. The NP’s greatest expression of social transformation as a reflection of political identity dynamics is evidenced by the NP’s construction of the apartheid state. Afrikaner nationalism was given notable expression through the NP and the apartheid-era South African state under the direction of the NP. NP leaders committed their party to a democratic transition in the early 1990s and initially took positions within the Government of National Unity in the immediate transition to
democracy in South Africa. By mid-1996 the NP officially withdrew from the Government of National Unity and began playing a more direct opposition party role.

IFP’s history also reflects a propensity for political identity dynamics to interact with state institutions resulting in notable forms of social transformation, at least within KwaZulu-Natal. It is the party most rooted in its origins as a political force expressing Zulu nationalism. Over the years, IFP leaders navigated the formal institutionalization of traditional Zulu social structures as well as resisted apartheid-era homeland policies while also resisting various leftist or other anti-apartheid structures that the IFP deemed threats to the core political values and identity of the Zulu nation. IFP leaders eventually made the transition to also being a non-racial political party. Political identity dynamics within the NP and IFP, and the implications of those dynamics for issues such as social transformation, potentially had implications for legislatures under NP and IFP control. However, these are not relevant to this analysis because the demands of a competitive party system appear sufficient to stifle serious consideration of legislature strengthening.

While the NP enjoyed some success in the Western Cape and the IFP enjoyed even more success in KwaZulu-Natal, neither of them entered the 1999 and 2004 provincial elections as confidently as the ANC Gauteng. ANC Western Cape and ANC KwaZulu-Natal continued to operate in competitive party systems even when they eventually formed governments through electoral success in those provinces. Party managers do their jobs in competitive party systems and seek to deny opposition parties opportunities to threaten the governing party at the polls. Legislature strengthening of budget oversight can be the source of serious threats to a governing party and party managers can be counted on to resist legislature strengthening in competitive party systems. ANC Gauteng electoral dominance established over the first three provincial
elections is a factor setting the GPL apart from provincial legislatures in the Western Cape and KwaZulu-Natal.

Legislative studies theory covered in Chapter Three predicts that dominant party systems tend to strengthen the executive at the expense of parliament. ‘The Reform’ is a paradox because it defies this general wisdom in the field. Comparing the GPL with provincial legislatures in the Western Cape and KwaZulu-Natal indicates that Gauteng’s dominant party system is possibly a causal, or intervening, variable bringing about ‘the Reform’. Findings at this point are only suggestive yet are difficult to dismiss. Competitive provincial party systems where legislatures had similar capacities to the GPL and faced similar broad governance challenges did not manifest the dependent variable. They operated along the lines predicted by legislative studies theory.

The existence of a dominant party system in Gauteng might have created the political space for ANC ‘identity accountability’ to then take on a causally relevant role. Mustering the necessary political will to pursue and institutionalize PEBA would be easier for the ANC Gauteng in an uncompetitive electoral system. Interviewee A3 explicitly acknowledged the enabling impact of operating in a dominant party system, stating that GPL reform was possible “precisely because the ANC was dominant. [...] We were a very dominant party. [We were] a little bit assured of ourselves that what we were doing was the correct way of doing things within the policies of the ANC. There was no fear on our side, really.” However, this does not account for the National Assembly, which also existed in a dominant party system, with an ANC majority firmly in place. ANC national faced tremendous challenges in social transformation though it did operate in the national policy-setting sphere of government and not the provincial implementation sphere.
Only two interviews provide insights into National Assembly dynamics indicating why legislature strengthening through formal rules reform is unlikely despite also operating in a dominant party system like the GPL. The first relevant statement arose as an aside to discussions about ANC national-provincial dynamics. While dismissing the idea of ANC national exerting pressure on ANC provincial branches through national conferences, Interviewee A3 indicated that being provincial government is exactly:

That space to experiment and initiate new ideas. [...] If [provinces] make a mistake, I think it wouldn’t kill the entire nation. They wouldn’t embarrass the entire country. [...] That was the whole issue that encouraged us in Gauteng to start experimenting with the PEBA programme. It was because we are small. If we made a huge mistake there, those mistakes were not going to close the nation; we’re going to be corrected by national. At the national level, it’s absolutely difficult to experiment with new ideas, because if you try to do so and you make a mistake, those mistakes will be far-reaching. That is why I always thought that provinces must be allowed to be centres of creativity, experimenting with new ideas, implementing new views around the oversight function and accountability.

A virtue of some federal systems is the allowance for subnational government innovation and experimentation. This statement speaks to systemic properties of South Africa’s federal design. This was an element of the explanation taken into fieldwork. The interviewee explicitly affirms this explanatory element but it is dropped from the revised explanation for two reasons. First, interviews revealing the provincial origins and initiative behind PEBA negated the role of the National Assembly in approving ‘the Reform’ process as discussed in the preceding chapter.
Second, only one interviewee said anything to explicitly verify the causal relevance of federalism allowing for subnational experimentation.

A second insight gained through interviews as to why legislature strengthening consistent with PEBA is unlikely at the National Assembly focuses more on national-level partisan dynamics. Interviewee A17 dismissed the idea of PEBA’s practicability at the National Assembly due to party deployments and personalities at the national level of political representation. They argue that:

You have more parties at the national [level]. You had stronger people, in those parties, at national. You had your key players, in opposition, in national, which you didn’t in the provinces. [...] Provinces, compared to national, where the top dogs are, all of them. The presidents of all the parties [were at national] they weren’t in your provinces. They were right [at national]. Therefore, it [is] far more difficult to establish collegiality as a start. [...] People felt, I’m [at national]. You’re on public TV to your people . . . you’re here for your party’s points to come out and be achieved [...]; and so when the cameras come in [...] how often do the cameras come into a provincial legislature? How often are there TV cameras? Can you tell me? [At national] they’re there at most of the major laws that are coming about. [...]. People actually then, even stop talking to [the] Chair [they turn and start] talking to the camera.

The ANC nationally was operating in a dominant party system but the high stakes of being the national legislature fostered a form and intensity of political party contestation precluding legislature strengthening along PEBA’s design. The National Assembly, like WCPP and KZNL, conforms to the expectations derived from established legislative studies theory, discussed in Chapter Three, on accountability dynamics in parliamentary systems.
Comparing the GPL with the WCPP and KZNL suggests that a dominant party system bolstered ANC Gauteng political will to pursue ‘the Reform’. Comparing the GPL with the National Assembly, however, suggests that the existence of an ANC governing party in a dominant party system is not enough to produce significant legislature strengthening along the lines of PEBA. South Africa’s federal design created the political space in the provincial sphere to pursue ambitious reforms. Legislators with experience in both jurisdictions indicate that conditions at national are ill-suited for nurturing similar legislature strengthening measures. The statement by Interviewee A3 quoted above attests to the impact of a dominant party system and statements from interviewees A3 and A17 increase confidence that the GPL’s subnational position is causally relevant. This is not conclusive but it does mean a dominant party system at the provincial level cannot be dismissed in future efforts to test the hypothesis and further verify elements of the explanation.

Ultimately, these findings and the comparison increase confidence in asserting that South Africa’s federal system is causally significant. A dominant party system is not enough at the national level of politics but can become a factor at the subnational level. Testing the hypothesis through a rudimentary MSSD comparative exercise demonstrates that the hypothesis merits additional testing and refinement.


Chapter Seven: Conclusion

‘Governments deserve praise in so far as they expose themselves, willingly and helpfully, to influence, advice, criticism, scrutiny and publicity; and they deserve blame in so far as they try to hide from unpleasant discussions and to keep their reasons and actions secret.’

(Bernard Crick, 1964)

7(1) A Hypothesis Successfully Tested and the Paradox Explained

ANC Gauteng reformers pursued a legislature strengthening programme deserving of praise using the standard set by Bernard Crick over five decades ago. PEBA exposes the governing ANC in the GPL ‘willingly and helpfully, to influence, advice, criticism, scrutiny and publicity’. PEBA’s development and adoption is a paradox because it cannot be explained by existing legislative studies theory and other high-profile reforming parliaments have not come close to matching the GPL’s strengthening policy. This study developed and tested a hypothesis to understand why ‘the Reform’ occurred. An explanation was also developed to address aspects of ‘the Reform’ beyond the explanatory scope of the hypothesis. This chapter summarizes the process and findings of this project, discusses the implications of the findings for the theories and concepts used, and then contemplates future avenues of research prompted by this study.

Hypothesizing ‘the Reform’ required accounting for the source of ANC Gauteng political will. Political identity dynamics in the anti-colonial and anti-apartheid struggles of South Africa drew attention to the potential causal role of the ANC’s project identity. A hypothesis was constructed using elements of the theoretical structure advanced by critical liberalism to understand the impact of governance challenges on ANC Gauteng MPLs. Desktop research in advance of fieldwork hypothesized that ANC GPL legislators internalize failures in bringing about the social transformation of South Africa as an identity crisis to the extent that the ANC situates itself within an anti-colonial, anti-apartheid project identity. This ‘identity
accountability’ drove the ANC Gauteng MPLs into a determined search for governance solutions generating the necessary political will to develop and adopt an aggressive parliamentary strengthening reform package.

Testing the hypothesis was accomplished primarily through fieldwork. Elite interviewing and accessing primary source documents located in the GPL and other legislatures confirmed the hypothesis. ANC Gauteng political will to enact a remarkable parliamentary strengthening reform is indeed a result of challenges and shortcomings in bringing about the vision of social transformation at the heart of the ANC’s project identity which is conceptually rooted in the anti-colonial, anti-apartheid political identity formation processes of South Africa. ANC Gauteng MPLs experienced an existential crisis, conceptualized in this study as ‘identity accountability’, resulting from their institutional role as legislators responsible for holding the executive accountable, especially through budget oversight and scrutiny.

ANC GPL legislators confronted with the exceptional pressure generated by ‘identity accountability’ processed the challenge and discerned a solution as movement actors and did not resort to the types of calculations expected from political parties in times of political uncertainty or crisis. Legislative studies finds itself at a loss in trying to theorize this phenomenon, which is why ‘the Reform’ is paradoxical. Critical liberalism provides the means of coming to grips with ANC Gauteng MPL reactions. It directs attention to the very factors underpinning the ANC’s project identity and the sources of identity accountability to then recognize movement decision making and the absence of political party decision making. ANC decision making as a movement led the GPL to the next steps in responding to the delivery challenges of government.

Too many other aspects of PEBA’s development and adoption remained unaccounted for in explanatory terms by the hypothesis, however. Specifically, public participation processes and
the realities of being a subnational legislature were clearly relevant but needed to be rendered in theoretical terms for explanatory purposes. DDT and federalism studies proved essential complements to critical liberalism in the effort to understand the puzzling behaviour, from the perspective of legislative studies, of ANC GPL members.

Once the political will to strengthen the GPL crystallized, ANC MPLs set about identifying what to reform and how. One element of PEBA required developing an oversight model and technical budget analysis process. In-house GPL human capital as well as contracting external expertise to work within the GPL led to the development of the PSOM and BCM. These constitute the technical nuts and bolts of the PEBA oversight system. The PSOM and BCM empower departmental committees and MPLs with detailed budget analysis products at each stage of budget oversight. DDT helps appreciate this technical aspect of PEBA through the justificatory and processual normative ideals in the literature.

Public participation was also integral to ‘the Reform’ but was more than a simple technical development. DDT’s systemic turn helps explain what ANC MPLs did to enhance the deliberative quality of budget oversight and scrutiny processes. GPL reformers established mechanisms for the transmission of discourses, opinions, views and will formation in public space into departmental committees along a sequence defined by the annual cycle of budget oversight required by PEBA.

Theorizing the causal role of institutional capacity building in the ‘paradox of federalism’ literature as set forth by Erk and Anderson (2009) helps in recognizing the imperative to strengthen the GPL as a way of rising to meet the subnational delivery demands on the provincial sphere of government. Those demands in the South African constitutional framework focused on social transformation which the federalism literature accounts for in terms of the impact of
socioeconomic variables affecting federal system maintenance. Administrative federal design afforded GPL reformers the political space and authority to develop and institutionalize PEBA as the budget oversight and scrutiny system for the province. Federalism supplements the heavy-lifting of critical liberalism in explaining the source of political will but primarily explains how PEBA came about.

Critical liberalism provides the tools to construct a hypothesis but it cannot fully explain all aspects of ‘the Reform’. A full explanation of ‘the Reform’ extrapolates from the contribution by critical liberalism and relies heavily on theorizing in DDT and federalism. Theoretical eclecticism fits well methodologically within the heuristic case study design and this study demonstrates the hypothesis-building and explanatory value of the approach. It is important, however, to look at what this study gives back to each of these literatures given the contributions they make to hypothesizing and explaining ‘the Reform’.

7(2) Implications of the Findings in this Study for Critical Liberalism, DDT and Federalism Studies

Critical Liberalism: Critical liberalism helps to understand political identity formation taking place through forms of exclusion and persecution. State violence in its various forms of targeting groups concurrently provides the resources for contestation and agency on the part of the persecuted people while also assisting to identify the basis of state obligation in light of enduring injustices resulting from acts of persecution. This study uses the theoretical toolkit provided by critical liberalism to reverse the causal impact in terms of state oppression and persecuted people, to ask: ‘what happens to the levers of state power when an element of the persecuted group effectively becomes the government and accepts responsibility for resolving enduring injustices of the past?’
The answer, in terms of this study, is that the ANC Gauteng engaged in an exceptional legislature strengthening effort. Political institution reform as a reaction to identity accountability provides the basis for considering further avenues of research in the area of critical liberalism. Mouffe’s (1999) ideas about identity formation recognize the folly in approaching political identity as fixed and pre-constituted. Mouffe’s work demonstrates the precarious and vulnerable terrain underpinning political identities. Jung’s (2000) research in South Africa confirms the malleability of political identities in the post-apartheid period by discussing how new circumstances nonetheless provide the potential resources and conditions employed by political entrepreneurs to mobilize identities. This study explores how political entrepreneurs from previously oppressed groups alter political institutions exactly because of the unsettling impact of changing conditions on political identities. This line of inquiry need not draw critical liberalism away from its foundation as a normative theory if the focus remains on understanding how these dynamics impact on the state fulfilling its obligation to address enduring injustices.

Deliberative Democratic Theory: DDT scholarship on the systemic turn is addressing the concern that a research bias towards actualizing the deliberative ideal focuses too much on micro-designed forums diminishing the relevance of DDT for mass politics. This study suggests that research on legislature committee budget oversight and scrutiny processes may possibly reconcile the focus of some scholars on micro-designed forums and those researching the systemic turn with a focus on mass politics. Legislature committees are, by definition, micro-designed forums but institutional design innovation can devise mechanisms resonating strongly with the systemic turn.

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Parkinson’s (2006) research is referenced by Dryzek (2010) as an example of DDT’s progress in developing the systemic turn. Parkinson’s focus, however, is on stand-alone policy and legislation related to Britain’s National Health Service. Stand-alone legislation and policy issues produce a wide array of policy communities and interest groups focused on a variety of issues, such as health, education, equality, security, diversity. Steiner et al. (2004) look at deliberative quality in the legislative process but also focus on stand-alone legislation as cases. Interest groups and experts are ready to mobilize around the next proposed bill and legislative reforms in their specific area of interest. Particular policy and legislative issues, like national health policies, can easily galvanize widespread public opinion and action.

The arcane and technocratic nature of government appropriations processes tends to inhibit the same level of mobilization and activism. While this is understandable, it would be a mistake by DDT scholars developing the systemic turn to overlook the potential offered by research on government appropriation processes. Almost every significant issue-specific policy and piece of legislation has budgetary implications. Current expenditures encompassing personnel costs alone can affect policy and legislative implementation in profound ways. If ever there was a devil to be found in the detail, that devil would most probably be tucked away in a line item of a subprogramme out-sourcing a function, well out of reach of most experts, activists and especially the general public.

Unlike stand-alone legislation, government appropriations are recurring and follow an annual cycle. Government budgets operationalize legislation and policies on a constant basis and take on a systematizing quality as a result. Achieving the DDT normative ideal in the systemic turn during the development of stand-alone legislation amounts to very little without sustaining the DDT ideal during the necessary and possibly indefinite ‘step’ that is the natural terrain of
cyclical budget oversight processes. DDT scholars should be looking at legislature committees engaged in budget oversight as sites for developing those mechanisms being theorized in the systemic turn that make DDT relevant for mass politics.

It is conceivable that budgetary processes are avoided as navigable terrain for DDT because budgeting is dominated by research on participatory democracy and the development of participatory budgeting mechanisms. Research in that field tends to focus on the means of empowering marginalized, socioeconomically weaker segments of the citizenry to lay claim to portions of government budgets to meet group-defined needs. DDT might conclude that government budgets are driven by bargaining and epitomize the worst tendencies of liberal, pluralist notions of group contestation; precluding a chance at realizing DDT’s ideals. If so, DDT is doing itself a disservice. Developments such as those in the GPL cannot be subsumed under the ‘participatory democracy’ research project. ‘The Reform’ is focused solely on deliberation and does not allow for participation to become a vulgar contest between competing impoverished groups for scarce resources because departmental committees at the GPL cannot directly affect budget outcomes. GPL departmental committees can only indirectly change budget policy through ‘influence, advice, criticism, scrutiny and publicity’.

**Federalism:** Fieldwork revealed that pressure within the federal system felt by ANC Gauteng was not top-down but bottom-up. The pressure worked its way up from ANC branch levels to ANC Gauteng provincial leaders who were already feeling pressure to deliver on social transformation because of the particularities of South African federal design. Those ANC provincial leaders went on to pursue a strategy of provincial-level institutional capacity-building to meet the challenges of social transformation.
The paradox of federalism literature appreciates the causal significance of socioeconomic factors and institutional capacity. This study demonstrates the importance of grassroots-level reactions to federalism through the prism of socioeconomic outcomes. Federalism in South Africa was reluctantly accepted as a necessary compromise by ANC leaders to facilitate the transition to democracy. Federalism maintenance in South Africa is not under threat from those reluctant ANC leaders at the national level but is under intense pressure by the grassroots base, rooted in those communities feeling the lack of social transformation the most.

ANC National Conference pronouncements questioning the federal system cited in this study tend to fit with scholarly analyses of the paradox of federalism that zero in on political and societal elites who made, and presumably can unmake, a ‘federal bargain’. Focusing on national political elites in order to answer research questions about threats to the survival of federal systems can obscure other significant dynamics at work in post-colonial, post-conflict federations.

‘The Reform’ is evidence of institutional capacity-building, but not really for the purpose of federation maintenance. GPL reformers felt driven to make the province do what the federal system requires of it. Strengthening the legislature occurred in pursuit of that objective. Research on the paradox of federalism may benefit from a nuanced conceptualization of institutional-capacity building by recognizing it as a process to realize the intended benefits of federalism and not a means of avoiding failure. ANC reformers in Gauteng were as much reluctant federalists as anyone else in their organization. Despite their trepidation about federalism, they pursued a reform initiative predicated on the perceived benefits of their federal system and the desire to make it work better. Research on the paradox of federalism hopefully recognizes such phenomena and is capable of theorizing the impact on federalism outcomes.
7(3) Questioning the ‘Legislature Autonomy’ Research Question

Chapter Three discusses the impact ‘legislature autonomy’ is having on parliamentary studies as it dominates the research agenda by virtue of the agenda-setting strength of American legislative studies over the wider field. Research in the field fixated with legislature autonomy focuses on a legislature’s degree of autonomy, how a legislature can become more autonomous and what factors inhibit greater autonomy. This study contends that research questions revolving around the matter of legislature autonomy can obscure more than illuminate causal dynamics in cases of significant change in parliamentary systems.

A key premise guiding the scholarship focused on legislature autonomy is that adversarial relations between the executive and legislative branches are good for democracy and can be a source for constructive reform. Legislatures with the power and authority to transform executive proposals fall under the popular typology of: ‘transformative legislatures’. Legislatures contesting executive authority to the point of directly making or changing policies are seen as a check on centralized power. Power tends to be understood in zero-sum terms within this research paradigm. The U.S. Congress represents the teleological endpoint of this research question because it is seen by many scholars and practitioners alike as the epitome of an autonomous legislature. Westminster-based legislatures lack directly transformative authority. They are typologized as ‘arena legislatures’ because they facilitate debate and discussion on policy and legislation which can indirectly shape policy and legislative outcomes.

‘The Reform’ demonstrates that policies significantly enhancing legislature oversight and scrutiny systems in parliamentary settings can occur in the absence of conventional zero-sum, adversarial executive-legislature relations. PEBA’s development and institutionalization as part of a parliamentary strengthening policy indicates that parliaments can be strengthened if a
legislature sees itself as capable of instrumentalizing oversight with the explicit intention of improving government delivery. Finally, ‘the Reform’, as described in Chapter Two, demonstrates how an ‘arena’ legislature can engage in a substantial strengthening exercise without any pretense of pursuing the ‘transformative legislature’ typology.

GPL reformers were pursuing the strengthening of the GPL’s budget oversight and scrutiny systems by building upon their existing institutional design. There was no departure from the overall structure of parliamentary-based oversight and scrutiny frameworks. PEBA was not the product of a zero-sum power struggle that is deemed necessary if a legislature aspires to become ‘transformative’. Interviewee A10 articulated the non-adversarial orientation of GPL reformers, stating that, “I think sense prevailed, that the legislature is a meaningful partner to the executive, for us to deliver decisively, we need a very strong executive and a strong legislature; if one is strong and the other is not strong, we won’t achieve what we want to achieve.”

Strengthening the legislature through a non-adversarial process within the general framework of the existing oversight and scrutiny system suggests that path dependency can help scholars to understand ‘the Reform’. A discussion of the methodology for this project in the introductory chapter allowed for the possibility that path dependency may help illuminate certain aspects of ‘the Reform’ in an effort to explain it. PEBA did not abandon the core features of the existing oversight and scrutiny system. It expanded and deepened those systems; suggesting that GPL reformers were possibly bounded by previous decisions, including the adoption of a Westminster-based parliamentary form of government in 1994. Every interviewee made statements suggesting that ‘the Reform’ sought to enhance and build on existing institutional arrangements and constitutional frameworks. Box 21 contains a sample of interviewee
statements reflecting how pre-reform design of oversight served to define the way forward, ultimately culminating in PEBA.

Box 21: PEBA Progressed in a Path Dependent Process

| Interviewee A5: “We started to open our eyes, and see what is expected of us as public representatives. Before, I can say to you, we were shooting from the hip. We didn’t know exactly the systems that we should use to do the oversight.” |
| Interviewee A10: “It is something new in South Africa, this oversight, in terms of [a new] democracy coming into being. Then, secondly, there was no model. There was no model, just [a] concept of oversight as put in the Constitution. So the PEBA brought into being a model. [...] Created a model . . . how you do this thing [oversight], how you think, in a very organized and strategic fashion.” |
| Interviewee A20: “[‘Must’ in Standing Orders] is an indication of further institutionalization that . . . [oversight] is a useful process, it’s an important process, and we should institutionalize it, make it obligatory. [...] The rules were gone from being, if you like, ‘permissive’, to being ‘prescriptive’, and that I think is an indication of political as well as institutional evolution.” |

Interviewees indicate that pre-PEBA oversight systems were too ambiguous and that strengthening oversight and scrutiny systems meant removing as much ambiguity in oversight processes as possible. MPLs learned about the limits and insufficiencies of the pre-PEBA oversight systems during the first term in government from 1994 to 1999. Pursuing PEBA’s development at no time departed from the Westminster-based foundations of committee and plenary systems. GPL reformers were not trying to become more like U.S. congressional appropriations committees.

Appropriations committees in the U.S. Congress oversee departmental performance as well as appropriate funds for departments. Those congressional committees can and do alter budgets and develop their own budget proposals for the executive to implement. U.S. Congressional appropriations committees can and do directly transform policy and legislation. GPL departmental committees in the pre-PEBA system had to scrutinize the annual budget and could choose to scrutinize annual and quarterly reports. ‘The Reform’ made scrutiny, reporting and plenary debate mandatory for annual appropriations, annual performance reports and quarterly
reports. GPL reformers deepened and expanded the existing system but they did not change from one type of system to another. GPL departmental committees provided an arena for debate and deliberation of government budgets and policies before the reform. PEBA pursued a strategy of making departmental committees and the plenary better arenas.

Building on what already exists institutionally accords with path dependency in the origins and progression of PEBA’s development, but also fits within the framework of institutional layering developed by Thelen (2003). Interviewees indicate how PEBA filled gaps in the previous oversight system as well as added greater detail in the scope and scale of budget oversight and scrutiny. This fits the form of institutional change understood through Thelen’s idea of institutional layering which “involves the partial renegotiation of some elements of a given set of institutions while leaving others in place.”

PEBA reformed budget oversight systems and public participation systems. GPL reformers did not conduct a comprehensive reform of all the GPL’s Standing Orders.

Statements made by interviewees like those presented in Box 21 help in describing ‘the Reform’ as a process building on existing institutional arrangements. Path dependency and institutional layering are useful only in understanding the path of ‘the Reform’ once it was decided that legislature strengthening was needed. These theories, however, offer marginal explanatory value and do not assist in hypothesis-building. Path dependency and institutional layering do not help explain decisions regarding deliberative quality and public participation or the way federalism affected the incentives and opportunities for subnational legislature strengthening. Path dependency and institutional layering do not actually help to hypothesize

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‘the Reform’ but they are relevant for appreciating how PEBA did not depart from the Westminster-based foundations of the GPL.

The limited, but not entirely unhelpful, contribution by certain theories in the institutionalism literature is why these findings are being discussed in the conclusion of this project. Understanding how ‘the Reform’ made the GPL more robust in a truly parliamentary design, as opposed to making it something altogether different, has important policy implications. Parliamentary reformers in other jurisdictions, like Canada and the United Kingdom, have been unwilling to reform budget oversight and scrutiny systems to the same degree as the GPL. Canadian and British parliamentary reformers can learn from the GPL and should be engaging it to monitor the GPL’s experience and possibly support it if resource limitations impede continued operationalization of PEBA. It is possible that lessons for other reforming parliaments can be translated into new reform agendas suited for other parliamentary systems.

7(4) Questioning Legislature Development Agendas in Newly Liberated Polities

PEBA’s development and adoption can serve as a basis for revisiting the design and operation of international legislature development programmes in at least two respects. First, legislature development programmes in post-conflict, predominantly Global South countries, are intertwined with political party development programmes. Whether it is South Africa in 1994 or Iraq in 2003, a host of international development actors do show up and begin rolling-out a package of programmes that include support through training and empowerment for political parties in elections and in legislatures.

Political party development programmes tend to assume that liberation movements are ill-equipped and poorly purposed for the demands of liberal, democratic electoral systems and governance. A host of programmes, workshops and incentives developed by international
development actors seek to reprogram liberation movements to think and act like political parties and to also empower opposition parties to build stronger democracies. This study does not challenge all the axioms guiding those programmes. PEBA’s development does suggest the possibility that liberation movements can provide a source of dynamism that is also rooted in the experience of the domestic actors. International development actors rolling out the standard package of support programmes may want to become more sensitive to the potential in those domestic liberation movements that do not look or behave like prototypical political parties.

It was ANC ‘the movement’ that brought about PEBA, not ANC ‘the political party’. ANC ‘the movement’ brought about PEBA in a dominant party system. A second and widely held view by international development actors running political party and legislature support programmes is that dominant party systems are a threat to sustainable democratization. In the case of the GPL, however, a political party using the decision-making instincts of a liberation movement operating in a dominant party system was the source of a parliamentary strengthening policy unmatched by reforming parliaments in the Global North. PEBA’s development in a dominant party system in no way overturns research showing the ways dominant party systems can threaten democracy. ‘The Reform’ simply suggests that international development actors in the field of political party and legislature support should themselves develop the means to identify the potential for domestic ingenuity and to know when to get out of the way to allow such ingenuity to run its course.

‘The Reform’ does challenge the underlying bias of legislature support programmes driven by the LDN that are designed on the premise of the Global South learning from the Global North. The current manifestation of this hegemonic relationship is embodied in the LDN’s insistence on ‘Congressional/Parliamentary Budget Offices’ as the newest, ‘necessary’
institutional arrangement expected of ‘modernizing’ legislatures. PEBA represents a Global South innovation that challenges the hegemonic model being imposed on Global South legislatures. Greater attention to opportunities for Global South-to-Global South learning are necessary and ‘the Reform’ provides a firm basis to empower other Global South legislatures to more critically engage and rethink the Global North models being foisted on them.

7(5) Two Avenues for Further Research

Developing and testing a hypothesis and resolving the paradox created by ‘the Reform’ through a valid explanation is the primary purpose of this study. More testing of the hypothesis and elements of the explanation is necessary to explore the potential of developing a new theory of parliamentary change. Desktop research in advance of fieldwork for this study generated the potential for additional testing of the hypothesis and explanation with a view to working towards a new theory of parliamentary strengthening.

A second avenue of research branches off from the hypothesis-testing exercise to go back to the GPL and examine the impact of ‘the Reform’. GPL reformers had specific hopes and intentions for ‘the Reform’ and its impact on governance and social outcomes. It is worthwhile to evaluate the impact of PEBA to better understand whether parliamentary strengthening of budget oversight scrutiny produces the results intended by GPL reformers.

7(5)(a) Most Different Systems Design Comparative Case Studies

Most Different Systems Design (MDSD) approaches to comparative case studies are the opposite of the MSSD approach (used in Chapter Six). MDSD effectively looks at cases where the dependent variable is present but the cases are dissimilar in important respects. This contrasts with the MSSD approach that compares cases similar in important respects except for the
dependent variable. Desktop research verifying the claim that ‘the Reform’ is indeed a paradox required thorough study of the legislative studies field and in the process revealed three possible cases for MDSD comparative case study research.

Two of the three potential cases were discovered in reading David Docherty’s *Legislatures* (2005). Docherty and the team working on that project developed a table identifying the ‘resources and powers of committees’ in Canada’s fourteen legislatures. One of the columns in the table identifies whether departmental committees can set their own agenda. Six of the fourteen require approval from the legislature; three have broad authority but are not specified enough to indicate they can set their own agenda; two can try but require a majority vote in committee; one can but within a fixed budget. Only two Canadian legislatures possess the unqualified authority to set their own agendas: Quebec and Nunavut.

Parliamentary experts in the United Kingdom reveal a third potential legislature for an MDSD comparison with the GPL. The Hansard Society’s (2006) study, ‘The Fiscal Maze: Parliament, Government and Public Money’ studies failed reforms and ongoing weaknesses of budget oversight and scrutiny at Westminster. Over the course of the study, experts contrast the limitations of Westminster’s systems with the greater authority of the Scottish parliament at key stages in the budget oversight and scrutiny process. The report suggests “there should be a more formal role for Parliament [Westminster] in the spending review process, as is the case in Scotland.” The same study goes on to dedicate a special focus on the greater authority and capacity of the Scottish parliament in contrast to Westminster.

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509 Ibid. P. 168.
511 Ibid. P. 30.
Quebec, Nunavut, Scotland and Gauteng are vastly different from one another. For reasons that are currently unclear, legislative studies research indicates that legislatures in Quebec, Nunavut and Scotland possess greater authority in their committee systems or their budget oversight mandate when compared to other legislatures in their national systems. The possible presence of greater parliamentary strength for oversight and scrutiny occurs in these three subnational cases where the potential for identity politics to be a factor cannot be ignored. An MDSD comparison of legislatures in Quebec, Nunavut, Scotland and Gauteng is necessary for further hypothesis testing. The study must verify the presence of the dependent variable and then test the hypothesis along with other elements of the explanation verified in this study, especially the role of identity politics and federalism.

7(5)(b) Did ‘the Reform’ Work

Tracing GPL oversight outputs to establish the affect on government decision making and departmental outputs is not just possible but necessary to understand political outcomes following ‘the Reform’. Evaluating whether ‘the Reform’ generates its intended benefits requires a shift to the process verification method. This is a method of process tracing requiring tests to establish if variables behave as predicted by those theories underpinning the hypothesis. This means confirming the causal relationship between improved legislature oversight and enhanced government outputs and outcomes.

Confirmation of causal mechanisms and causal effects of legislature oversight on governmental outputs after fully operationalizing ‘the Reform’ through process verification can make a critical contribution to the legislative studies field in the area of measurement. In the late

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1970s, established scholars such as Michael Mezey were lamenting the inability to measure the influence of reactive (Westminster-based) parliaments.\textsuperscript{513} Musolf and Smith, writing at the same time as Mezey, encouraged legislative studies scholars to critically interrogate the presumption of weak policy-making influence of Global South legislatures given the lack of reliable means of measurement.\textsuperscript{514} Identifying the causal mechanisms and effects of post-PEBA GPL oversight work essentially directs attention to what needs measuring. Devising measurement techniques can then be explored.

‘Delayed drop’, a phenomenon whereby the executive implements or reacts to an oversight report without acknowledging, and even dismissing, committee influence, was verified by Hawes’ research in 1993.\textsuperscript{515} ‘Delayed drop’ provides a conceptual starting point for proceeding with this avenue of research at the GPL. Using process verification to qualitatively evaluate the effect of ‘the Reform’ on government decision making, outputs, and outcomes may illuminate causal mechanisms and processes that lend themselves to measurement and quantification. Moreover, process verification as a means to assess the impact of ‘the Reform’ is not encumbered by the myopic fixation on legislature influence and autonomy. Instead, it allows for a broader perspective that is capable of revealing how the legislature can contribute to governance outputs and outcomes without conforming to the adversarial, institutional autonomy-oriented model derived from American legislative studies.

7(6) Conclusion

Alexandra Kelso (2009) challenged the legislative studies field to focus on explaining, as opposed to describing, change in parliament. That challenge underpins the motivation for this project. Explaining ‘the Reform’ reaffirms research by Philip Norton who emphasizes the causal significance of political will. Norton is not alone in identifying political will as a causal factor. Unlike others, Norton goes beyond using political will tautologically and develops explanations looking at how legislature-executive contestation fuels the political will to then initiate reforms under very specific conditions. This study shows that political will is causally significant for legislature strengthening but not as a result of legislature-executive tension and not under the conditions set forth by Norton. Instead, this study shows that political will can be driven by the politics of identity to produce unmatched parliamentary strengthening reforms under the least likely conditions according to the legislative studies field.
### Appendix 1 – Interviewee Designations

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<tr>
<th>Interviewee</th>
<th>Designation</th>
<th>Role</th>
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<tbody>
<tr>
<td>A1</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<tr>
<td>A2</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<td>A3</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<td>A4</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<tr>
<td>A5</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<tr>
<td>A6</td>
<td>Senior Opposition Legislator</td>
<td>Tried interviewing early on, realized they offered almost nothing and so did not pursue further interviews with opposition members, but they will be central to future studies on impact of PEBA/the Reform</td>
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<tr>
<td>A7</td>
<td>ANC Legislator</td>
<td>Directly involved in PEBA development/piloting/implementation</td>
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<td>ANC Legislator</td>
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<td>A12</td>
<td>GPL Official</td>
<td>Control interview – corroborating development</td>
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