

Lecture four: Legislatures

The legislature refers to the branch of government which is empowered to make law. The term also refers to the often elected bodies which consider public issues and give assent to measures of public policy. Sometimes they are known as assemblies or parliaments. In either case, they are forums of debate and deliberation. Legislatures perform an important representative function. They reflect the people's wishes, for they comprise the elected representatives of the voters. Legislatures have six main purposes:

- 1. Representation:** the elected representative acts to safeguard and promote the interests of the area represented. In Britain as in most Western democracies, representation operates via political parties. The successful candidate gets elected because of his or her party label, but he or she must seek to balance the sometimes conflicting pressures of representing the country, party and constituency, as well as being true to his or her own conscience and feelings. In America, the House of Representatives was originally seen as the body which represented the mass of the people although since the introduction of the direct election of the Senate it has lost that distinctive position.
- 2. Deliberation:** Members apply their knowledge, understanding and judgment to consider the nation's affairs, especially in the process of debate. In a talking assembly such as Parliament, discussion occurs on the floor of the chamber in formal debate. In Congress, it centres on the committee rooms and is more detailed and less stylised.
- 3. Financial control:** Raising taxation is a traditional function of parliaments, associated with the redress of grievances. In most countries, financial control is an area in which the legislature is at its weakest. Governments set out their budget before the assembly and with few modifications they are passed. This is untrue in America, for the Constitution specifically placed the duty of raising of money on the House of Representatives and money spent by

government departments has to be allocated under headings approved by Congress. The President's federal budget is subject to congressional agreement which may not be forthcoming. Since the early 1970s, the expertise of members of Congress in handling budgetary issues has been increased, following the establishment of the Budget Office.

Political recruitment: Assemblies often act as a recruiting ground for ministerial office. In parliamentary systems where the government is chosen from parliament, the performance of elected representatives can be assessed. Service in the House, showing up well in debates and voting loyally with the party, are admired virtues for those who wish to tread the career path to high office. This applies less in America, for the President and his Cabinet do not derive from the chamber.

5. Legislation: Law-making is a key function of legislatures, as the very word suggests (by derivation, *legis* means law, and *lator* means proposer or carrier, hence the idea of someone who proposes or carries law). The task of deciding what laws are needed and of preparing legislation has been largely surrendered to governments, and parliaments are more concerned with scrutinising what is proposed, making amendments and voicing objections, rather than playing a key role in the actual making of law.

Members of legislatures who wish to play an effective role increasingly need to be specialists rather than generalists, and for this reason they need to be equipped with assistants and facilities which enable them to find out information quickly and to develop a genuine expertise in their subject.

Law-making in Britain and the United States

Law-making is the main feature of Congress. It uses up most of the available time, a greater proportion than applies at Westminster. There is much more legislation to be handled than there is in Britain. In a typical session in Britain there may be approaching 100 public bills from the government or private members. This compares with some 1000 in America, many of which

will have a short existence before their life is terminated. Most British bills become law, because ministers impart a sense of direction to the legislative programme and steer their creation through the chamber in all its stages. The initiative in introducing legislation comes from the Executive and party organisation within the House is used to see that ministerial policies pass through the chamber. This is why Walles could describe the House of Commons as being more a **‘a legitimiser than a legislature’**.

Congress is a legislative body in the full sense of the term. It passes more legislation than the House of Commons, even if more laws today derive from the executive than used to be the case. There is no certainty that they will pass through the chamber. Executive influence in Congress is weakened by the separation of powers, an even more powerful factor when reinforced by a divided government in which different parties control the White House and Capitol Hill.

The method of examining bills is very different in the two countries. In Parliament there are eleven stages, five similar ones in each chamber, culminating in the Royal Assent. The role of the second chamber can be important in modifying the content of legislation or rather slowing it down, but the key work is done in the House of Commons.

In America, legislation is sometimes introduced into the two chambers at the same time. In whichever house it begins its existence, it must ultimately pass both of them in the same wording. Most of the work is done in standing committees which, unlike the British equivalents, are specialist bodies, comprising members who may have served for some years on the committee dealing with agriculture, education and labour or public works and transportation.

In Britain, much of the discussion of a bill is done on the floor of the House, in the second and third readings, although the detail is examined by a

standing committee. In America, committees are central to the legislative work of Congress as it tries to cope with the vast legislative burden placed upon it. After introduction, a bill is assigned by the Speaker to an appropriate standing committee. In the majority of cases it will get no further. The role of chairman is crucial in deciding whether or not the bill merits further consideration and if it does whether this should be in full committee or be carried out by one of the many subcommittees. At these hearings, interested parties will be present. Once agreement between the versions of the bill passed by the two houses has been achieved in the conference committee, the final version is sent before the two chambers for their approval before going to the White House for the President to sign. He or she may leave the bill unsigned or veto it, and Congress may override the presidential veto, although this is uncommon.

6. Control of the Executive: Scrutiny of the work of the Executive is perhaps the **key function of legislatures today**, as most have lost much their law-making as opposed to law-passing role. Via this **watchdog role**, those in government are held to account for their actions. In Britain, opportunities for criticism and control of executive action arise in the passage of legislation, in question time, debates, votes and via the select committee system. The Opposition party has the specific role of holding the government to account, throwing the spotlight of publicity on its acts, demanding a full exposition of the ministerial case and censuring ministers when it finds their policies and activities condemnable.

On the other hand, **American investigative committees are powerful organs of scrutiny** which are the more effective because the 'freedom of information' legislation makes it easier to gain access to key documents. They have the right of subpoena, which means they can force witnesses to appear and answer questions on the issue under investigation. Congress also has the key judicial power of **impeachment**. The House decides on whether the accused official has a case to answer and if it believes that he or she has, then the trial

takes place in the Senate. A verdict of guilty results in dismissal from public office.

Congress has two main advantages over the British parliament whether in scrutinising legislation or in holding members to account. The first is the doctrine of Separation of Powers, which was designed to prevent undue concentration of power in one location, and which denies members of the Executive the chance to sit in Congress. The second is the absence of strong party bonds, which mean that congress members can act more as free agents, acting and voting as they think it appropriate to do; they do not feel beholden to their party leaders for their advancement.

The decline of legislatures: British and American experience

Most legislatures are relatively weak. They are often thought to be much weaker than they were in some 'golden age' of the nineteenth century. The performance of the American Congress is much criticised by American commentators who often lament its lack of effectiveness and in particular its slowness to act. It does not perform its legislative and investigative functions as impressively as many would like, and at times it has seemed to surrender too much initiative to the White House.

Relations with the presidency are an important aspect of congressional power and influence. Congressional influence has varied over time. It is now a more powerful body vis-à-vis the White House than it was at the beginning of the 1970s. When the Founding Fathers devised the Constitution, it was always intended that Congress would act as a check upon the influence of the other two elements of government: the executive and the judiciary. The tendency towards the 'decline of legislatures' is certainly less true of presidential systems. Congress has more opportunity to modify proposals than most assemblies. But its main strength has usually depended more on blocking or frustrating presidential ambitions, or scrutinising the performance and membership of the

Administration, than in actually in determining policy. The power is one of delay rather than of initiative.

In Britain and many other countries, government may be dependent on parliamentary support, but party discipline ensures that this is normally forthcoming, and as a result it is governments which dominate parliament rather than parliaments which dominate government. In Britain the fact that about a third of the majority party and a sixth of all MPs are in the government further strengthens the position of government at the expense of Parliament. There is only one main opposition party, so that ‘Parliament simply becomes one of the forums where opposition leaders criticise government policy without being able to defeat it’.

After all, The US Congress is described as **Active**, an assembly which ‘makes policy autonomously’, whereas Britain is in the second category, a **Reactive** Assembly, which ‘reacts to but can influence government policy’.