

LEGISLATURE

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Summary

The legislature is one of the most important official organizations along with the court and the bureaucracy, and is composed of elected representatives. It performs functions such as legislation, recruitment and training of political officials, and selection of the prime minister. Performing such functions, a legislature serves to form the will of the state, and links the citizenry and the government. As a body of representatives directly elected by people, a legislature is accountable for the policies of the state.

Today, functions, which legislatures are supposed to perform, are actually performed by political parties. Political parties enjoy a wide range of control in the nomination of candidates, selection of prime minister, writing drafts of bills, and so on. Although the development of political parties has coincided with democratization, the enforcement of party discipline diminishes the autonomy of individual representatives.

It is no exaggeration to say that legislatures are arenas for the activities of political parties. Furthermore, in legislative activities, the role of the executive has become more and more important. The position of the executive has been elevated in the welfare state of the twentieth century. In most countries, the executive has more knowledge of policies. Legislative activities depend on that knowledge.

But it is important to appreciate that while there is only a limited role for legislatures to play in the processes of law- and decision-making, the parliament is the only institution that links the citizenry and the process of decision-making, legitimates decisions, and assumes responsibility for them. Whether a democracy will be successful or not depends on the institution to a significant degree.

1. Introduction

Legislature is one of the most important official organizations along with the court and the bureaucracy, and is distinguished from the court or the bureaucracy by virtue of their direct links with the population. Members of legislatures are formally equal, which is one characteristic of legislatures, and constitute a body making collective decisions through deliberations. As a body of representatives directly elected by people, it links the citizenry and the government. It assumes responsibility for the policies of government. Modern democracy closely associates itself with legislatures, and whether a democracy will be successful or not depends on the institution to a significant degree (see *Democracy, Constitutionalism*). While it goes without saying that parliament is not the invention of democracy, the history of parliament in Europe reflects that of democracy; this is because the democratization of legislative institutions has been most instrumental to the democratization of politics: the British Parliament after the revolution in the seventeenth century, the National Assembly after the French Revolution, and East European parliaments since the late 1980s, are cases in point. In the course of democratization, traditional parliaments were underwent reform or new ones were created. This holds true for some contemporary Asian countries too: an example is the parliamentary election in post-Suharto Indonesia in 1999. It is through the parliament composed of elected representatives that people exercise their sovereign power. It is true that the decline of parliament has been an important subject addressed by constitutionalists and political scientists since the early twentieth century. But if the theory of democracy is taken seriously, parliament should regain its traditional prominence.

With the worldwide spread of democracy, legislatures have been elevated to the position that they have held for roughly 200 years, in Europe. But the structure of legislatures has differed with country and time period; legislatures have varied in reputation and stability. As the argument about the decline of parliaments shows, although legislatures' constitutional status is high, they confront difficulties, and some of them call into question their *raison d'être*. In this article, following a survey of the diversity of legislatures, some difficulties which legislatures face today will be considered.

2. Functions of Legislature

Legislature (Parliament, Congress, Diet) is composed of elected representatives and performs functions such as legislation, selection of a prime minister, or recruitment and training of political officials, among others. In addition to these functions, they perform legitimation function. Although, as pointed out frequently, sometimes law-making is done, in substantive terms, outside legislatures and sometimes legislatures do things other than law-making, only legislatures have responsibility or are accountable for laws, by virtue of their links with the population. In this sense, legislatures are the most important means of democracy.

Modern democracy is mostly representative democracy. In most cases, people participate indirectly in government through their representatives. The representatives elected by the people act for them. Modern politics involves elective representatives.

What characterizes the representatives is the fact that they are elected. This fact elevates the position of representatives and distinguishes them from other governmental officials. Public business is conducted by elected representatives. Hence the electoral system's rule for determining winners is one of the most important issues in politics. With regard to election, it goes without saying that political parties, which link government and citizens, play a leading role. Today, there is no disputing the fact that political parties play an important role not only in election, but also in much of legislative activities.

Electoral systems have great influence upon the characteristics of legislatures. With regard to elections, the mechanism through which constituencies select their own representatives, the issue is “who elects whom, how”. “Who” has to do with the problem of franchise, which has expanded from one limited to property holders to universal suffrage without regard to gender, race, or ethnicity, although not in all countries of the world. The expansion of franchise has brought about organized election and development of the party system; as a result, the actions of representatives have come to be controlled by parties. This will be considered later. With regard to “how and whom”, the notion of representation and electoral system shall be considered.

What is representation? Is a representative a servant of an electoral district who works to fulfill local and individual needs or a free agent who works as a representative of national interest? In fact, a representative has both features. But differences in how representatives are viewed affect the electoral system. If representatives are, for example, agents of societal groups or constituencies, then, the parliament composed of them shall be a mirror of the society in all its diversity of interests or views. In Mirabeau's classic comparison, the Estates are to the nation as a map is to its physical extent; whether in whole or in part, the copy must always have the same proportions as the original. This conception of representation leads to proportional representation, which, for example, the German Bundestag adopts. Historically, proportional representation developed in Europe after the First World War to give various groups defined by sex, class, or race fair chance to express their interests or opinions. But the so-called 5% clause—according to which political parties must obtain at least 5% of all votes to share seats in parliament—is a notable example of a device for limiting proportional representation. A further example of an electoral system in which the parliament mirrors the society is the multi-members district system.

There is another view of representation. In this view, a representative acts for those represented, not as a mere conveyer of their interests, but according to the representative's own view of the best interests of the represented. From this viewpoint one may say that, as Burke pointed out, representatives are not mere delegates of constituencies but their trustees. According to this viewpoint, the constituents elect a person most fitting for their trust, or, to put it another way, the candidate who wins a majority of votes assumes office, representing constituency will. This is the rationale of the single-seat district electoral system. In this system, the will of majority is the will of the constituents. Broadly speaking, proportional representation is a system, which gives diverse subgroups of society a fair chance to send their delegates to parliament, whereas the single-seat district system is suitable for decision making from the viewpoint of “national interests”. Which system shall be adopted depends on how parliament is

viewed. Some countries (such as Germany, Japan, and the Republic of Korea) adopt both systems, which is an attempt to make the best of both worlds. In countries such as the United States, the theory is that the president represents national interest, and Congress represents local interests.

Electoral systems affect articulation of national interest and local or particular interests, mode of decision-makings, majoritarian or otherwise, and chances for various subgroups to participate in politics.

Today, in elections, political parties enjoy a wide range of control in the nomination of candidates, and conducting of election campaigns. Voting behavior is affected by political parties; under the proportional representation system, it is political parties that compete, and in single-seat district electoral systems the political party, which a candidate belongs to influences the voters. In considering the relation between the legislature and political parties, it is important to note that political parties are independent of the government and have their own disciplines and rules. This independence can be said to be a hallmark of democracy. The parliament cannot be an institution representing national will and legitimating the measures of government unless political parties enjoy freedom of action.

Whether or not parliaments function as an instrument of democracy depends on the activities of political parties, which link the government and the citizenry (see *Election and Voting, Political Parties*).

3. Unicameral and Bicameral Systems

Although, as mentioned above, legislatures do not have a monopoly of legislative activities, they have inner structures and procedures that facilitate legislation and legitimation. With regard to structure, a legislature consists of floor(s) and committees. Needless to say how they function varies among countries.

Legislatures can be classified into two groups: unicameral and bicameral. In bicameral systems, members of the two houses are elected or appointed in different ways. For example, the House of Lords of the United Kingdom is composed of Hereditary Peers, Life Peers, Lords of Appeal, and Lords Spiritual, whereas the members of House of Commons are elected from single-seat districts only.

In Japan, members of the House of Representatives are elected by a mixed system consisting of proportional representation system and single-seat constituency system, whereas the House of Councilors of Japan is composed of members elected from national proportional representation districts and prefectural districts. Generally speaking, under the bicameral system, the houses adopt different electoral systems, because that enhances the relation of checks and balances between the two houses, and thus the democratic, deliberative process.

The members of the German Bundestag are elected by a mixed system consisting of proportional representation system and single-seat electoral district system. It appears similar to Japan, but in Japan, each system elects different sets of members; 300 are

elected from single-seat districts and 200 from regional proportional representation districts. In Germany, all seats are allocated through the proportional representation system, and some are held by members elected from single-seat districts. The German Bundesrat is not directly elected, but consists of delegates sent and directed by the state governments. Thus the Bundestag is an apparatus that maps the views of citizens on the parliament, whereas the Bundesrat represents the component states.

In France, members of the National Assembly are chosen by the double-ballot system, in which anybody may stand for election in the first round where absolute majority is required for election, but the second, where plurality suffices, is closed to those failing to win a minimum percentage of votes in the first. The members of the Senate, on the other hand, are chosen by electoral assemblies made up of the mayors of communes, National Assembly deputies, members of departmental assemblies, and members of regional assemblies elected in departments. Delegates from municipal councils are also appointed to the electoral assemblies.

This system gives the senatorial electoral colleges more of a rural than an urban cast, and more of a conservative than a progressive slant. The Senate is expected to exercise restraint over the National Assembly. In the case of the United States, the House of Representatives is composed of members chosen in single-member districts, and the seats are apportioned among the states by population size; on the other hand, the Senate is composed of two Senators from each state, elected by the people thereof. This system is a product of the “Great Compromise” between large states and small states. In Thailand, the members of the House of Representatives are elected directly, whereas the Senators, until 1997, were appointed by the King to represent the entrenched military and oligarchic and bureaucratic interests.

The unicameral system is adopted in Sweden, New Zealand, Denmark, and Republic of Korea, among others. The electoral system in the first three countries is the proportional representation system, while the Republic of Korea has a single-member district system. Most post-communist countries of central Europe also adopt the unicameral system (although the parliament of Poland has two chambers), and the electoral systems of these countries mostly involve multi-member districts. The reason for having a unicameral system is that the will of the people is expressed through parliamentary election, and that a second chamber is superfluous.

It is debatable whether the unicameral or the bicameral system is more democratic. If the chamber composed of representatives of privileged classes or members chosen through a non-democratic process keeps a check on the other chamber, which is composed of democratically elected members, there remain some problems to be solved from the viewpoint of democracy.

In the United Kingdom, the House of Commons has predominance over the House of Lords, as has been noted, which is a product of democratization. In 1999, Prime Minister Tony Blair decided to downsize the House of Lords by reducing the number of hereditary peers to 92. On the other hand, it seems reasonable to suppose that the unicameral system is saddled with the problem of “tyranny of majority” which Tocqueville and J. S. Mill warned against.

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Biographical Sketch

Dr. Hironori Ito is a professor in political theory at the Faculty of Law, Kumamoto University, Japan. He has been working on the political philosophy of Hannah Arendt and published a book on her thought. His interests extend to empirical analysis of some important aspect modern politics, particularly connected with normative sides of politics like citizenship in modern society.