Legislatures

1. **The Origins of Parliaments**

Political institutions become more differentiated and complex as they become more modern.

Feudalism is where balance of power between the various institutions of government begins in the evolution of parliaments.

Countries with limited government usually have experience with feudalism.

Balancing act is seen in the oath of loyalty in Aragon to a new king.

Political institutions become more differentiated and complex as they become more modern.

Absolutist monarchs begin to see their powers limited by fledgling parliaments in part because of their need for tax revenues.

In exchange for power of the purse, monarchs gave nobles limited influence on royal policy.

Serves as the basis for British, Swedish, and French parliaments.

French parliament soon forgotten as French monarchs turned to absolutism and the nobles in parliament failed to resist the solidification of governing power in the hands of the monarch.

By contrast, British and Swedish parliaments slowly expanded their powers and resisted monarchical attempts at absolutism.

The English Civil War was a bloody struggle between parliament and the king, with the parliamentarians gaining the upper hand, beheading Charles I in 1649.

Various political philosophers have written on the importance of parliaments.

* Locke said that the Parliament is the most basic and important institution.
* Montesquieu said that the only way to ensure liberty is to divide government into two branches.

The Magna Carta is sometimes regarded as the foundation of democracy in England. It retains enormous symbolic power as an ancient defence against arbitrary and tyrannical rulers (against King John at the time), and as a guarantor of individual liberties and its is today known as a symbol of liberty around the world.

The most famous clause, still part of the law today, gives free men the right to a fair trial (even if most of the population at the time was unfree man because they were slaves of feudalism).

It can be considered an inspiration for the United States Declaration of Independence and the Universal Declaration of Human Rights. its most important contribution to present law is that everyone, including leader, must obey the law.

1. **Presidential and Parliamentary Systems**
2. Presidential systems

DEF: *those systems with separate election of executive as opposed to symbolic president*

Presidential systems show most clearly the idea of separation of powers between legislative and executive branches.

Contrary to what most Americans believe, presidential systems are a minority of the world's systems.

President combines the roles of head of state and head of government, which in effect makes them the symbolic leader of the country in addition to the chief of public policy.

Presidents are elected (more or less) directly by the people.

The United States still retains the slightly archaic indirect method of selection through the Electoral College.

Presidents in general have a lot of power.

More importantly, they are not responsible to the legislature for their power or their term of office and as a result they are extremely difficult to remove from office.

Even impeachment does not guarantee results, as evidenced by efforts to impeach Bill Clinton.

1. Parliamentary systems

DEF: *those systems with election of parliament only, which in turn elects the prime minister*

In parliamentary systems, the head of state is weak, symbolic, and distinct from the head of government.

Citizens vote only for the legislature, not for the chief of government, who is a member of parliament and is the head of the party that holds a majority.

As a consequence, the government is directly responsible to the majority in the legislature and the government can fall if the majority does not support its policies.

**2.1 Separation and Fusion of Powers**

American system of separation of powers sets branches of government against each other and is an invitation to struggle (Corwin).

This has been useful in preventing tyranny as it has prevented any single branch of government from becoming too powerful.

It also makes government slow and unmanageable.

Some scholars think that executive-legislative deadlock is common in presidential systems, as competing parties will control different branches of government at different times with no direct responsibility to each other.

European systems that developed after the United States are more modern and are based on the principle of fusion of powers.

In this type of system, it is hard to distinguish the legislative branch from the executive branch, as the executive branch comes from the legislature.

Prime ministers are elected to parliament, like everyone else, before they can become the chief of government. Once their party is in the majority, they can become the chief of government.

They form the cabinet that constitutes the government and is made up of other members of parliament.

The cabinet is essentially a committee of parliament that oversees the formulation and implementation of government policy.

Question Hour in the British parliament: process by which the opposition challenges the government and the majority with an eye toward winning the next election.

This illustrates the link between the executive and the legislative branches.

**2.2 Advantages of Parliamentary Systems**

There are some advantages to the fusion of powers in a parliamentary system.

* The executive-legislative deadlock cannot occur what the majority wants the majority gets, because the executive and legislative branches are controlled by the same party.
* If there is a disagreement, a no-confidence vote can occur, which means no long, drawn-out political drama, which makes removing executives easier.
* No-confidence votes are rare though in most parliamentary systems nowadays.

Parliamentary systems do have some disadvantages.

* Votes in parliament can be closely predicted due to high levels of party discipline.
* Can be prone to coalition governments, which can be less stable in maintaining the coherence of the government.
* When no party has a majority, an alternative is to form a minority government that depends on the passive support of other political parties. Leadership positions in coalition governments are split. Even if the government falls, it is not as bad as it sounds. Cabinets can be put back together through negotiations with other political parties or new elections can be held.
* Parliamentary systems can be prone to immobilism because coalitions can get stuck over the same issues, which can lead to an inability to decide major issues.

1. **Bicameral or Unicameral?**

Two-thirds of legislatures in the world have bicameral systems.

In general, lower houses are much more powerful.

Only in the United States are the two houses of the legislature co-equal, and some would argue that the U.S. Senate is actually more powerful than the House of Representatives.

A small number of legislatures are unicameral (one house).

Some states, in an effort to deal with multi-ethnic and multi-racial populations, have experimented with multi-chamber legislatures.

Ex. South Africa with its three houses and Yugoslavia with five houses

The larger political development question is why would a state choose a bicameral system, which effectively divides governing power, over a unicameral system?

The main reason for bicameralism comes from the institutional choice of federalism.

In a federal system, the upper house represents component parts such as states or provinces while the lower house represents districts based on population.

Some states have upper houses that do not do very much, so the overall utility of upper houses in unitary systems is unclear.

Ex. the British House of Lords, which is a holdover from the early days of aristocratic privilege in the UK. Following the 1999 reforms, the Lords has been mostly a debating society with very little real governing power.

Some countries, such as New Zealand, Sweden, and Denmark, decided that their upper houses served no purpose and abolished them.

1. **What Legislatures Do**

Most important bills originate in the government or administration.

* 1. **The Committee System**

Most of the power of legislatures lies in the committee system, which can make or break legislative proposals.

Committees are critical to the ability of legislatures to function.

Public hearings are a mechanism for getting citizen and interest-group input on legislation.

United States has the most well-defined committee system, in part because of separation of powers.

Committees screen bills to help determine which ones are worthy of consideration.

Interestingly, in parliamentary systems, a "government bill" is automatically important and thus evades the committee screening process.

In the 1970s, U.S. reforms weakened the powers of the committee chairs, which had traditionally been appointed on the basis of seniority and ruled committees like small kingdoms, making the legislative process more difficult.

Standing committees, which are relatively permanent, in the United States are based on partisan balance.

* 1. **A Closer Look at Legislatures**

LAWMAKING:

Legislatures pass laws but rarely originate laws anymore, as those functions have shifted.

Most of the legislative initiative rests with executive departments and agencies.

This makes legislatures reactive institutions as they respond to the initiatives of others, as opposed to proactive institutions that initiate proposals.

Ex. in the United States the legislative power of the purse is a reaction to the budget proposed by the president, not by Congress.

As a result, law-making is not the most important thing that legislatures do.

CONSTITUENCY WORK:

Legislators spend a great deal of time on constituency casework (*attention legislators pay complaints of people who elect them*), in which they intervene on behalf of a constituent to help solve problems.

The standard complaint: "Where's my check?"

Constituency work is an important job for legislators as it is a mechanism to help legislators get re-elected.

SUPERVISION AND CRITICISM OF GOVERNMENT:

British Question Hour is an example of this function, where the opposition challenges and questions the government on policy.

U.S. administrations regularly change policy based on criticisms by Congress.

EDUCATION:

legislatures can work to keep citizens in the loop on matters of governance (should citizens choose to pay attention).

Ex. The televised Fulbright committee hearings on Vietnam provide a good example of how.

All countries now carry extensive press reports on legislative activities and often televise legislative proceedings.

REPRESENTATION:

A large part of representation is psychological, which means that while legislatures may not always represent the needs and concerns of citizens, at a minimum people need to feel like the legislature represents them.

1. **The Decline of Legislatures**

While Locke believed that legislatures would be the most important party of government, legislatures no longer work the way that Locke envisioned, and this trend of the decline in the importance of legislatures has continued and grown.

Some political scientists argue that expectations for legislatures were too high to begin with and the legislatures are prone to a range of problems that have contributed to this decline.

* 1. **Structural Disadvantages**

Parliamentary systems are very efficient in passing legislation, but their very institutional nature makes them predictable and boring institutions.

This efficiency has led to legislative atrophy.

By contrast, the U.S. system has no such problem with efficiency due to the near feudal nature of Congress and its ongoing struggles with the executive branch.

Congress is more important and livelier than most other legislatures, which is a good thing, but the U.S. system of separation of powers is also contributing to the decline of Congress because of conflict between the two houses in the legislative branch and partisan conflict within the houses themselves.

The 60-vote minimum to end a filibuster in the U.S. Senate is a clear structural disadvantage of the U.S. system.

Turns the U.S. system into a vetocracy and can paralyze government in the United States.

* 1. **Overspending**

Capacity for overspending is inherent within legislatures.

Everyone is generally in favour of a balanced budget, but all legislators want to spend money on their pet interests that are linked to re-election. What is good for the individual may not be good for the aggregate.

Congress has tried to impose limits on spending, but they have been less than successful.

Line-item veto transferred power to the presidency but was ruled unconstitutional by the Supreme Court.

Imposed spending caps were routinely ignored although the recent sequester should prove an interesting test of Congressional resolve.

* 1. **Incomprehensible Legislation**

The average U.S. law passed today is twenty pages.

The 2010 Affordable Care Act was 2,400 pages minimum.

Few Congresspersons read the bills for lack of time.

Legislation cannot be short and simple because modern society is complex, but practically nobody can understand it.

* 1. **Lack of Expertise**

Because most legislators are not technical experts in matters of policy there is a lack of expertise in most legislative branches.

This is not necessarily a bad thing as there is value in a citizen legislature.

However, a lack of expertise leads to a heavy reliance on experts from the executive departments, which diminishes the independence of the legislative branch. In fact, most legislatures have little independent research support.

Only U.S. Congress, due to separation of powers, can generate its own data.

* 1. **Psychological Disadvantages**

Citizens are more impressed with presidents and prime ministers than legislatures.

Parliaments are seen as groups of people who simply squabble with each other.

This can lead to presidential "worship" and a belief that presidents and executives are the most important political actors and are the engines of government.

* 1. **The Absentee Problem**

Most of the time, members of legislature are not present in the chamber; members are only really needed to vote, and often not even then.

British party whips can get high turnouts for important issues and the Swedish use an electronic voting summons.

U.S. legislators are required to be present to vote but can still be absent if their vote is paired with that of another absent legislator.

So, what explains absenteeism?

Some of it is workload, and legislators are busy doing other things such as constituency work, fundraising, committee service, and campaigning.

It is true that some legislators might just be lazy.

There is a bigger issue and that is legislators themselves do not regard legislating as their chief function and have allowed much of their legislative authority to be usurped by other political actors.

* 1. **Lack of Turnover**

Another contributing factor to the decline of parliaments is the lack of turnover.

Many members become career, lifetime politicians who are re-elected as often as they like, which means little new blood or fresh ideas.

Is this a problem of democracy?

Careerism in a legislative branch reduces the ability to innovate and respond to new trends in public opinion as members become increasingly out of touch.

Parliamentary systems do allow for small parties to compete, however, which reduces some of the effects of careerism.

* 1. **The Dilemma of Parliaments**

In the end, parliaments suffer from a dilemma that is well illustrated by the recent post-Soviet experience in Russia.

Russia needed reforms, but there was deadlock as Yeltsin wanted to go one way and the Duma preferred a different course of action.

Putin "solved" the problem by forming his own party, which now controls 2/3 of the Duma seats.

Parliament is responsive to the president and there is no longer deadlock, but Russia is also no longer a democracy.

In the end, legislatures have atrophied, and power has shifted to the executive branch.

To get things done, power must be concentrated; to keep things democratic, power must be dispersed.