

SYNOPTIC LEGISLATURES

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INTRODUCTION

Legislatures

- Legislatures, executives and judiciaries make up the principal institutions of any government.
- Traditionally legislatures, also referred to as parliaments, congresses and assemblies, are highly regarded by democrats, at least in principle, because they usually represent the will of the people.
- Most legislatures today, at least in democratic countries, are directly elected and this is the principal source of their legitimacy.
- Not only are legislatures regarded politically superior to other branches of government for this reason, they also tend to act as the forum in which major issues of the days are discussed - and sometimes resolved.
- Perhaps more importantly, at least in a formal sense, most legislatures have the power to make and unmake law and often act as a check on the executive, scrutinising, criticising and publicising its decisions. Further, in parliamentary systems the executive is drawn directly from the legislature.
- There are exceptions to all these generalisations however, but one feature of all modern legislatures is the widespread belief that they are in decline and no longer effectively fulfil their traditional roles.
- A final point worth noting is that legislatures vary enormously in their composition, role, responsibilities and powers and that generalisations inevitably require frequent qualification.
- One feature that all seem to have in common, however, is that they conduct much of their public business through open debate, although the work of committees is also usually very important.

Parliamentary Systems and Presidential Systems

- One of the key initial distinctions to make is between the position of legislatures in parliamentary systems and their role in presidential systems.
- In essence, the basis of this distinction is the relationship between the legislature and the executive.
- The key feature of parliamentary systems is the fusion of the legislature and the executive branches of government. Members of the executive branch are drawn from the legislative branch to whom they remain accountable, both individually and collectively. Further, all members of the executive must normally be members of the legislature.
- Presidential systems, on the other hand, are marked by a much more formal separation of powers which usually insist that members of the legislature cannot be members of the executive.
- This separation of personnel does not necessarily imply a separation of function, however, and the different branches may share responsibility for the same function, for example, in the USA all three branches of government share some responsibility for legislation, be it generating it, shaping it, agreeing to it or interpreting it.
- The obvious examples of parliamentary systems are the UK, Sweden, India and New Zealand. Presidential systems are to be found in the USA and parts of South America, for example, Brazil.

N.B. Be careful not to confuse the distinction between parliamentary and presidential systems with that between unitary and federal systems. The UK and Japan are both parliamentary and unitary, but Germany is parliamentary and federal, the USA presidential and federal. And some parliamentary systems have a largely ceremonial president as Head of State, although political power is held by the Prime Minister as Head of Government (e.g. Ireland, India, Germany, Israel).

Types of legislature

There are a number of other ways of categorising legislatures.

Philip Norton for example, distinguishes between legislatures in terms of their policy-making role and identifies three different types:

1. *Policy-making legislatures*, for example, the US Congress, which can formulate and substitute their own policy as well as modifying and rejecting proposals from the executive branch.
2. *Policy-influencing legislatures*, for example, the UK parliament and the German Bundestag, which can modify and sometimes reject measures proposed by the executive, but cannot formulate or substitute their own policy. The European Parliament would also fit in here.
3. *Legislatures with little or no policy effect*, for example, China's National People's Congress, legislatures in former European communist states, which had no power to formulate, modify or reject executive proposals and met when they are required to formally approve policy that has already been agreed.

Another distinction that is sometimes made is between *unicameral* and *bicameral* legislatures.

- *Unicameral* means a single chamber, for example, Israel's Knesset and New Zealand's House of Representatives, but also the devolved assemblies in the UK, such as the Scottish Parliament. In the USA, uniquely the Nebraska state legislature is unicameral. Globally, the majority of legislatures are unicameral, but not all of these would be counted as full democracies.
- *Bicameral* means two chambers, for example, the UK, the USA, Canada, Australia and most other developed democracies, including 49 US state legislatures; typically the lower chamber has the more popular representation and wields the most power.

Other distinctions are possible, for example between *fixed-term* parliaments (USA, Israel, New Zealand, the UK since 2010) and legislatures with more *flexible terms*, like the UK historically, or Canada, in which the legislature serves for a fixed term unless dissolved earlier.

Presidential systems usually have fixed terms, to prevent the executive branch of government manipulating the election (and so composition) of the legislative branch.

Parliamentary systems may have flexible terms where a parliament has a maximum term in office (this was 5 years in the UK), but the Prime Minister can call an election at their own discretion within this period (e.g. Canada, Australia). Usually this involves seeking permission from the Head of State, whether a monarch or a ceremonial president, but this is almost always granted. In the UK Tony Blair chose to call elections after four years in 2001 and 2005, but John Major (1992, 1997) and Gordon Brown (2010) chose to wait to the end of the full five year term. If a motion of no confidence in the executive is passed in the legislature an election is also usually triggered (as happened in the UK in 1979 and Canada in 2010). Canada had four elections in the seven years from 2004 to 2011.

Some parliamentary systems have fixed terms (e.g. Germany, UK since 2010) but this runs the risk that deadlock in a multi-party system results in a situation where no government can be formed with a reliable legislative majority (usually after the collapse of a coalition). Usually such countries have a procedure where an election can be held early to prevent the collapse of government. In Germany this can only be done when the Chancellor has lost a vote of no confidence and when the (otherwise largely ceremonial) President agrees. However, early elections were called in 1972, 1983 and 2005 by governments that had secure majorities in the Bundestag but which hoped to increase their legislative majorities, showing that such rules can be manipulated by politicians.

Change in the UK – the Conservative-Lib Dem Coalition formed in May 2010 put into its Coalition Agreement a commitment to a five-year term, and passed legislation (September 2011) to fix all future parliaments at five-year terms (and so removing what had been a key prerogative power of the Prime Minister on behalf of the Crown). Early elections may be held within this period only if a vote of no confidence is passed in the government (by a simple majority in the House of Commons, following House of Lords rejection of the original Coalition proposal to set a 55% threshold), or if two-thirds of the House of Commons votes for an early dissolution. This is controversial and repeal of the Fixed Term Parliament Act is quite possible after the 2015 election.

FUNCTIONS

General

Legislatures can fulfil a number of functions. Consider the range of functions identified by a number of leading writers.

- Andrew Heywood (1997) suggests the following functions:
 1. legislation
 2. representation
 3. scrutiny (of the executive)
 4. political recruitment
 5. legitimacy
- While Mény and Knapp (1998) list:
 1. representation
 2. making decisions
 3. control of the executive
- Joyce's (2001) choice is much broader:
 1. law making
 2. scrutiny (of the executive)
 3. confirmation of governmental appointments
 4. investigation (of issues unrelated to the actions of the executive)
 5. supervision (oversight in the USA: the monitoring of the bureaucracy)
 6. a forum for raising issues of local and national importance
 7. judicial (for example, impeachment)
 8. initiating constitutional change
- Hague, Harrap and Breslin (1998) list the following functions:
 1. representation
 2. deliberation
 3. legislation
 4. authorizing expenditure
 5. making governments
 6. scrutiny
 7. recruitment and socialisation
- Clearly it is very difficult to generalise in this area.

UK

- There is no agreed list of parliament's functions.
- Most writers on British politics would probably agree that it is not the role of parliament to govern, but to hold to account those who do and to subject them to scrutiny.
- Malcolm Punnett (1994) says that, in classical Constitutional terms, the functions of the House of Commons are:
 1. to legislate
 2. to approve the granting of finance to the government
 3. to examine and criticise the activities of the government.

Punnett notes, however, that government control of the Commons' timetable, and the normally assured majority that the government has means that the legislative function of Commons is limited mainly to discussion.

The same is true of the Common's financial role in granting supply and approving the government's financial proposals.

- In addition to the above, the Commons also exercises further functions:
 4. representing the people and expressing their grievances
 5. sustaining the government in office and legitimising its activities
 6. acting as a forum for debate on national issues
 7. informing and educating the electorate
 8. providing a recruiting and training ground for ministers.

- It is useful to remind ourselves at this point that when discussing the functions of a legislature we need to be clear whether we are talking about the whole of the legislature or part of it.

- If we are analysing the formal functions of the UK parliament, rather than just the Commons, we would also need to consider any different or additional functions possessed by the Lords, for example, in its judicial capacity up until the creation of the UK Supreme Court (2005, effective 2009).

- Bentley, Dobson, Grant and Roberts, suggest the following functions:
 1. legitimation
 2. scrutiny and influence
 3. representation
 4. recruitment of government ministers
 5. law making
 6. deliberation

- Norton, on the other hand, (Jones, 2001), while conceding that there are several other minor functions, identifies four main ones:
 1. legitimisation
 2. recruitment
 3. scrutiny and influence
 4. expression

- He argues that the function of legislation has been lost by the House, and is now a function of the UK executive. For this, and other reasons, he considers legislation under the heading of scrutiny and influence.

USA

- David McKay (1997) identifies three main functions of Congress:
 1. representation, including legislation
 2. oversight of the executive branch including the control of finance, approval of presidential appointments and approval of treaties
 3. the right to veto all administrative reorganisation of the executive branch
- Alan Grant (1997) prefers to separate legislation from representation and lists the following functions:
 1. legislation
 2. oversight of the executive branch
 3. representation
- Further, in Chapter 2 of *The American Political Process* (1997) Grant argues that, while in most democratic countries, effective initiation of policies and laws has generally been taken over by the executive branch and the legislature has generally become a body which reacts to and passes proposals put forward by the government, in the USA, Congress is truly a “law-making body”, enjoying an independent capacity to mould and transform law its own proposals into law.

Congress, he continues, has, to a large extent, retained its powers over the initiation and passage of laws.

- Robert McKeever (McKeever, Zvesper and Maidment, 1999), citing Keefe and Ogul (1993), lists seven functions of Congress listed in order of their importance thus:

Primary	law-making finance
Major	oversight (scrutiny) political education for public representation
Minor	judicial function (impeachment) leadership selection (= preparation for higher office/recruitment)

EUROPEAN PARLIAMENT

Functions

- Legislative – policy influencing role – policy making remains with Comm
- Budgetary – link to legitimising role?
- Scrutiny – oversight of commission, accountability
- Representation - Redress of Grievances
- Deliberative

Legislative

- largely a Policy-influencing role
 - policy-making remains with Commission – neither Parl nor Council can propose legislation but the European Parliament can ask the Commission to act

- originally only consultative but real powers have been gained through new EU Treaties (e.g. Lisbon)
- now midway between the House of Commons and Congress in influence?
- Co-decision - In many policy areas, decisions on new European laws are made jointly by Parliament and the Council of Ministers.
 - e.g - environmental protection, consumer rights, equal opportunities, transport, and free movement of workers, capital, services and goods.
 - Areas over which the EU parl has power were extended recently in the Lisbon Treaty, including agriculture, energy policy, immigration and EU funds.
- On 'sensitive' questions (e.g. taxation, industrial policy) the European Parliament gives only an advisory opinion (the 'consultation procedure').
- But policy influence can be substantial
 - The European Parliament can reject proposed directives entirely – e.g. on software patents and liberalising port services.
 - It can ask Commission to develop policies in new areas, e.g. pressured to lower mobile phone roaming charges 2007. Other e.g.s – new stricter regulations on use of chemicals in industry watered down in the Parliament (impact of lobbying from industry), strict labelling of food products with genetically modified ingredients.
 - It can substantially amend proposals from the Commission – e.g. on bankers bonuses; tracking terrorist financing (the Parliament initially rejected it and then extracted major concessions re. rights, checks and transparency)
- Major European legislation - examples passed in 2011:
 - **January** – patient mobility rules, allowing EU citizens to be paid back for healthcare they get in another EU country.
 - **February** – rules covering bus and coach passengers, guaranteeing compensation in cases of delay/cancellation.

Pollution limits on vans' CO2 emissions tightened up – although original proposal watered down a lot after lobbying.

Tougher penalties for counterfeiters of fake medicines.
 - **June** – new rules protecting consumers buying over internet.
 - **July** - clearer food labelling rules.
 - **September** – “Six Pack” measures – 6 major pieces of legislation addressing the economic governance of the EU – e.g. on budget discipline within Eurozone, backed by semi-automatic sanctions on member states.

EU Border Agency (FRONTEX) given new powers, with demand attached for better human rights monitoring.
 - **October** – tougher measures to tackle online child pornography.
 - **November** – new rules restricting short selling in financial markets – aimed to limit speculation in government debt.

2012 EU budget went through on time – MEPs largely accepted national governments demand for a spending freeze.
 - **December** - European protection order agreed for women threatened with violence.

– MEPs passed a new code of conduct to address criticisms that some of them are too willing to be influenced by lobbyists (journalists trapped three MEPS in a “Cash for amendments” scandal in March 2011, resulting in two resignations.

+ new rules to give the EU more transparency by improving public access to EU documents.

Budgetary – a legitimising role?

- Parliament has joint power with Council over the annual budget of the European Union
- Parliament has the last say on the EU budget – can keep EU accountable to its citizens (highly disputable in reality?)
- How the EU budget is adopted
 - Each spring the Commission submits a preliminary draft budget for the following year – has to comply with multi-year overall ceilings set at European Councils.
 - Initial vote is taken by the Council on this draft
 - Parliament has its first reading in early autumn.
 - Second reading is held in the Council and then in Parliament to arrive at an agreement between the representatives of the governments and the citizens.
 - Parliament has the power to reject the budget if it believes that it does not meet the needs of the Union. In that case the entire budget procedure has to start again.

Oversight & Scrutiny

Confirmation of Appointments – legitimising role?

- Commission President can only be appointed with the approval of the European Parliament.
- MEPs question individuals nominated by governments to be Commissioners on their suitability for the relevant post
 - MEPs can force withdrawal of nominees whom they regard as unsuitable (which they did in 2004 with Italian nominee Rocco Buttiglione, over his views of equality issues, and in 2009 with Rumiana Jeleva, the Bulgarian nominee over alleged non-disclosure of financial interests)
- Parliament votes to approve the Commission en bloc in a vote of confidence.
- In 2009 after the passing of the Lisbon Treaty the European Parliament used budgeting process as leverage to promote its involvement in foreign policy matters including confirmation of ambassadors.

Accountability

- The European Parliament may force the whole Commission to resign by means of a vote of censure.
- However, a censure of the Commission (requiring an absolute majority of MEPs and two thirds of the votes cast) is viewed as a ‘last resort’ and has yet to occur
- But in 1999 the prospect of Parliament passing a vote of no-confidence in the Santer Commission over fraud allegations led to it resigning.

Treaties

- Parliament participates in EU foreign policy. Its assent is required for any international treaty the EU signs up:
 - a number of financial deals with non-EU countries have been rejected by Parliament on human rights grounds
 - MEPs make recommendations to the Commission concerning trade negotiations – their recommendations carry weight as Parliament has to approve the outcome of negotiations
- Assent also needed for any enlargement of the EU; MEPs also monitor the accession process

Scrutiny

- Parliament keeps a close eye on the Commission's work, scrutinising its reports on EU policies, legislation and the budget.
- Commissioners (including the High Representative for Foreign and Security Policy) are often required to appear at committee meetings or in plenary sessions, to defend their policies, explain what action they intend to take and answer questions.
- **Financial Scrutiny** – along with European Court of Auditors, Parliament checks that budget is being properly managed and ensures that action is taken should any fraud be discovered.
- **The Euro** - MEPs scrutinise management of Europe's single currency by inviting the President of the European Central Bank (ECB) to come and explain his policies before its Economic and Monetary Affairs Committee; the ECB President and all the other members of the executive board must also be approved by Parliament.

Representation - Redress of Grievances

- **Petitions** - Citizens can petition Parliament with requests or complaints concerning the application of European law.
- The European Parliament can press for action through debates, resolutions & detailed recs – can result in important action, e.g. a directive in 2003 on the safety of silicon breast implants.
- MEPs elect a European **Ombudsman** who investigates citizens' complaints against the EU for maladministration.
- They can set up a Committee of Inquiry if they believe EU law has been broken.

Deliberation

- The European Parliament can pass resolutions on important/ topical issues
- Plenary sessions may be attended by heads of state and eminent persons from all over the world.
- European Parliament especially concerned to promote/protect human rights:
 - At each plenary MEPs review the human rights situation in various parts of the world.
 - adopts resolutions calling on EU institutions /govts to take immediate action to end violations of fundamental rights.
 - publishes annual report on the human rights situation around the world. These have condemned e.g. the genocide in Darfur, violations of freedoms in China and crimes committed in Chechnya.”
 - awarding an annual prize for freedom of thought“

INSTITUTIONAL ARRANGEMENTS

General

If it is difficult to generalise about the functions of legislatures, it is equally difficult to generalise about their organisation.

Only two things can be said about every assembly in the world, claimed Jean Blondel (quoted in Hague, Harrop and Breslin, 1998): how many members it has and how many chambers it has - though **HHB** add committee structures to this list.

Assembly Size

- The smallest legislature in the world is that of Tuvalu (population 10,800 in May 2000) which has a unicameral Parliament, or Fale I Fono (also called House of Assembly), with 12 seats whose popularly elected members served fixed four year terms.
- The largest legislature is the 2,979 strong Chinese National People's Congress.
- However, although legislatures vary considerably, most are less than 500 and many less than 300.

State	Lower House	Upper House
UK	650 in the House of Commons	822 in the House of Lords (Nov 2015) N.B. excludes c50 members on leave of absence or disqualified as active judges)
USA	435 in the House of Representatives	100 in the Senate
France	577 in the National Assembly	321 in the Senate
Ireland	166 in the House of Representatives	60 in the Senate
South Africa	400 in the National Assembly	90 in the National Council of Provinces
India	545 in the People's Assembly	Up to 250 in the Council of States
European Parliament	766 members in one chamber	

Methods of selection and length of service

- Members of legislative assemblies are usually either appointed or directly or indirectly elected for varying lengths of time. The UK and Lesotho are unique in finding a role for hereditary members, the formal justification for whose presence is that their families had previously been members. (In Lesotho, the Senate of 33 members comprises 22 principal chiefs and 11 other members appointed by the ruling party).
- Examples of the range of selection methods include:

France: The 348 strong Senate is indirectly elected by an electoral college to serve six-year terms, with one half seeking re-election every three years, and is made up of representatives of metropolitan France (326), the overseas departments and territories (10) and French nationals abroad (12). The lower house, the National Assembly has 577 members and is elected by popular vote under a single-member majoritarian system (second ballot) to serve five-year terms.

Ireland: The 60 members of the Senate serve for five years and are made up of 11 senators nominated by the prime minister and 49 elected by the universities (the National University

of Ireland and the University of Dublin [Trinity College) and from candidates put forward by five vocational panels - Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration. The lower house of 166 members (Dail Eireann) is elected by popular vote on the basis of proportional representation (STV) to serve five-year terms. In September 2013 the Irish Government sought to abolish the Senate but narrowly lost a referendum vote.

South Africa: The National Assembly (lower house) of 400 seats is made up of members elected by popular vote under a system of proportional representation .to serve five-year terms. The National Council of Provinces (upper house) has 90 members - 10 members elected by each of the nine provincial legislatures for five-year terms.

India: 543 of the 545 members of the People's Assembly are elected for five years. The other two are appointed by the President. The Council of States has up to 12 members appointed by the president, with the remainder - no more than 238 - chosen by the elected members of the state and territorial assemblies for six year terms.

Germany: The Bundestag is the lower house, with c600 members elected under an Additional Member electoral system which combines single-member constituencies with regional lists. The party or coalition with a majority in the Bundestag becomes the government, with its leader as Federal Chancellor (Prime Minister).

The German upper house is the Bundesrat, a Federal Assembly representing the governments of the 16 Lander (states); its members are not directly elected but are delegates from the elected Lander administrations (and so change every time a Lander government is replaced following an election or coalition deal). Although Lander vary greatly in size, each gets between 3 and 6 votes in the Bundesrat (totalling 69) depending on population; in practice this means the smallest Lander are over-represented. Each Lander's votes are cast *en bloc* and cannot be split (often only one person attends to cast all a Lander's votes).

Voting behaviour is such that an incumbent party in the Federal government will frequently lose Lander elections over two or three years, and so be faced with an opposing majority in the Bundesrat. As the Bundesrat has to agree legislation affecting the Lander, and as this covers the large majority of domestic policy, legislative gridlock often resulted. Constitutional reforms implemented by the Christian Democrat-Socialist coalition in 2006 addressed this problem by reducing the areas in which the Bundesrat has competence (from c60% to c35% of legislation), strengthening the power of the Federal government to legislate effectively, most notably in reforms to the German welfare system and employment benefits.

Chambers

Most legislatures are unicameral.

- Derbyshire and Derbyshire (1996) calculate that 75% legislatures fall into this category and this proportion has increased in the last 50 years.
- Unicameral states include New Zealand, Israel, Denmark, Sweden, Bulgaria and Finland.

The most popular basis for second chambers is direct election. Appointment by the government and indirect election from regions are also common.

Committees

In order to work effectively nearly all legislatures have a system of committees which carry out detailed work on behalf of the main assembly.

These committees have a number of roles, usually related to the functions of the particular institution.

Common functions are:

1. To consider legislation, including financial proposals, in detail, for example Public Bill Committees in the UK and Standing Committees in the USA, as well as the Conference Committees that may be used to produce a final version of a bill; the Standing Committees of the European Parliament.
 2. To exercise scrutiny over the executive, for example, Select Committees in the UK and Standing Committees in the USA. This may involve a role in confirming executive appointments (an important function of Senate committees in the USA, becoming significant in the UK, part of the role of Standing Committees in the European Parliament).
 3. To investigate matters of public concern, a role also sometimes carried out by Select Committees or Royal Commissions in the UK, and by Special or Select Committees in the US Congress. Such investigations may have members drawn from both chambers.
- These committees may have sub-committees and often their budgets allow for the appointment of specialist advisors (notably in the USA, although UK committees have few resources or staff to assist them in their work)
 - The effectiveness of committees will depend upon the circumstances in which they operate. The tight party discipline which is a feature of the British Parliament, restricts the power of committees, while in the USA, the relative weakness of parties and the separation of powers has acted to enhance their influence.
 - **Change** - However, in the last few years the USA has seen much tighter party discipline in both chambers, somewhat limiting the power of committees, while the Wright reforms in the UK have strengthened the independence of committees from the party whips.

Features of the UK Legislature

1. Part of a parliamentary form of government

- The executive is chosen from, and sits in, the legislature.
- The Head of Government is normally the leader of the majority party in the House of Commons (**Change** - or leader of the larger party in a coalition, as with the Conservative-Lib Dem coalition formed in May 2010).
- Holding members of the executive to account personally for their and the government's actions is therefore not only practical but also a major feature of parliament's work. (NB the conventions of collective and individual ministerial responsibility.)

2. Legally supreme (parliamentary sovereignty)

- Parliament is sovereign, that is, it is legally supreme, but where it exists, European law is superior to British law.
- Judicial review is limited to the interpretation of the law and whether ministers have, for example, acted *ultra vires* (= beyond their powers). Judges cannot question the constitutionality of the law itself.
- **Change** - Human Rights Act 1998 undermining this supremacy? e.g. Votes for Prisoners, DNA database policy (strictly ECHR issues), Sex Offenders Register.
 - Devolution 1997-> could also be seen to erode parliamentary sovereignty, as the powers of the UK Parliament to overrule devolved assemblies in Scotland, Wales and Northern Ireland, and to unilaterally take back powers devolved to them could be seen as purely theoretical rather than actual (e.g. the SNP government's demand for a referendum on Scottish independence may have to be accepted by the UK parliament, even if the Scotland technically lacks the power to call a binding referendum).
 - and the increased use of referendums 1997-> implies a *popular sovereignty* at odds with the traditional supremacy of Parliament. There is now a widespread consensus that some constitutional changes are too important to be decided entirely by elected representatives and unelected lords (e.g. European treaty changes, now subject to referenda under legislation passed by the Coalition, voting reform, major changes to devolution – will there be irresistible demands for reform of the House of Lords to be subject to a referendum?).

3. Bicameral

- Lower house of 650 members of parliament elected in single member constituencies by a simple majority to serve for up to five years.
- Upper house of 822 members (Nov 2015, excluding c50 ineligible peers - the figures do vary monthly) made up of hereditary peers (75 chosen by the parties and 17 elected office holders or appointed Royal office holders), 26 bishops and archbishops of the Church of England, and life peers, appointed by governments past and present.

4. Unrepresentative?

- No government since 1935 has been elected with a majority of the popular vote. The 2005 Labour government was elected with 55% of the seats in the Commons by 35 % of the electorate on a 61% turnout.

- **BUT Change** – the advent of a Coalition government for the first time since 1945 meant that the combined vote for the government parties was c60% of the UK electorate, arguably giving the government a strong mandate to carry out its programme.
- The House of Commons is not typical of the electorate. Only 22% of those elected in 2010 were women, only 4% are from an ethnic minority background (although both figures represent *significant improvement* on pre-1997). Most MPs are white, male, middle-aged and middle class – in fact the *trend* is for ever fewer MPs to have a manual work background or not to have attended university.
- The House of Lords is unelected and still contains hereditary peers.
N.B. Change to largely elected HoL pledged in Coalition agreement, as it was in all three main parties' manifestos in 2010, but progress on this collapsed in September 2012 when Conservative backbenchers and Labour non-cooperation forced its abandonment.

5. Five year maximum term

- Parliament has a maximum life of five years but could previously be dissolved at any time by the monarch on the advice of the Prime Minister.
- Few parliaments last their maximum permitted term. The 1974 February parliament was dissolved in September the same year (election in October).
- **Change** - In 2010 the Coalition Agreement promised a move to five-year fixed term parliaments (see note above).

6. Annual sessions

- Legislation that has not received the Royal Assent by the end of a session (usually a year) normally falls. If the government wanted to reintroduce the bill in the next session of parliament, until 1997 it had to start it from scratch and take it through every stage again. Under reforms agreed in 1998 and 2002, it is now possible for Parliament to agree that a bill can be “carried over” from one session to the next, although this remains unusual.
- There is often congestion at the end of a session with many bills still needing to complete their final stages in limited parliamentary time (“wash up”). In such circumstances the government usually needs to reach agreement with the Opposition (through “the usual channels” “behind the Speaker’s Chair”) as to which bills will be considered non-contentious and nodded through, which will be debated and contested, and which will be dropped. These pressures and the need to prioritise, negotiate and make concessions are worse in the short period at the end of a parliament before the Commons is dissolved and a new election held.

7. Dominance of the lower house

- The lack of a written constitution clearly setting out the powers of each house means that convention and political factors are important features in this relationship, but the Lords does not usually introduce major or controversial legislation and cannot reject financial legislation. NB Parliament Acts, Salisbury Convention.
- The Lords cannot force the resignation of the government.
- The upper house retains some power to amend or reject Commons proposals but lacks the legitimacy to do so. If the Lords does insert amendments against the wishes of the government, these are normally (c60% of the time) overturned in the Commons in “ping pong”, whereupon the Lords normally gives way – e.g. on votes at 16 in the EU Referendum Bill 2015.

- **Change – New Labour reforms** – However, in the 13 years after reform in 1998 the Lords has become considerably more willing to defy the Commons, presumably because with most of the hereditary peers gone they felt more legitimate. From 1998-2010 the Lords inflicted c550 defeats on the Labour government (of which about 60% were removed in ping pong, meaning the government were forced to accept nearly 200 amendments it had originally opposed – major defeats included 42 days detention, super-Casinos and restrictions on jury trials). In this period the Government lost six votes in the Commons (four of which were substantive).
- **Change – The 2010 Coalition** – Commons-Lords relations were put under further strain by the arrival of Coalition government. On the one hand, the combined Conservative and Lib-Dem peers (329 out of 787 active peers in March 2015) were in a stronger position than Labour (216 peers) was to win votes - given that some crossbench and Labour peers hardly ever attend, the Coalition was close to a working majority in the Lords. In part this was deliberate policy: in his first 11 months in power Cameron created 118 new peers, more than any of his predecessors in such a short period.

On the other hand, the Coalition Government could not rely on the loyalty of Conservative and Lib-Dem peers, many of whom are unhappy about aspects of the Coalition's policies. Cameron's creation of many new Conservative and Lib Dem peers in a short period led to protests from both Labour and crossbench peers. And for the first time since 1945 the Salisbury Convention often didn't seem to apply, as much government policy was only announced in the Coalition Agreement, not in the party manifestos (e.g. AV referendum, five-year fixed parliaments, NHS changes), so the Lords might be emboldened to oppose key parts of it. Early in 2011 Labour peers used a range of procedural tactics (filibustering?) to drag out debate on the Referendum and Constituencies Bill; in the end the government got its way but the passage of other legislation was disrupted and it served as a warning that other bills may face similar treatment. Overall in the 2010-15 Parliament, the Coalition lost 99 votes in the House of Lords.

- **Future Change?** – the move to a largely elected House of Lords promised in both the 2010 manifestos and the Coalition Agreement would have focused attention on the relationship between the two Houses. If it had been passed, the enhanced legitimacy that election would give the Lords seemed likely to increase their assertiveness and make life for future governments even more difficult. It has even been suggested that an upper chamber elected by proportional representation may come to regard itself as more legitimate than the lower chamber elected by first-past-the-post. New Conventions or new Parliament Acts may be necessary in order to define Commons-Lords relations in these circumstances. Arguments over all these issues contributed to the build-up of opposition that resulted in the Reform Bill's abandonment in 2012.
- **Change: The 2015 Parliament** – The new Conservative Government elected with a Commons majority in May 2015 in some ways signalled a return to business as normal, in terms of the operation of the Salisbury Convention. However, for the first time in history a Conservative government is now faced with a House of Lords in which it does not have a majority. Lib Dem peers in particular have been keen to assert their opposition to the new Government, while Labour have used the opportunities the Lords provides to check their agenda. By 17th December 2015 the new government had already been defeated 23 times, including notably on tax credit reductions and votes at 16 in the EU referendum, as well as 6 amendments to the Cities and Local Government Devolution Bill.

The November Lords' defeat of the Government on tax credit reduction caused considerable controversy, as this was the rejection (technically the requirement for a delay while transition measures for claimants were put in place) of secondary legislation (a statutory instrument whereby ministers are able to issue regulations under powers given them in previous Acts of Parliament). This was only the 6th time in 50 years such an instrument had been voted down, and the only one which was a financial measure. As under the Parliament Act the Lords cannot amend or block "money bills", this was highly controversial and the Conservatives argued that the financial privilege of the Commons had been infringed; Labour and Lib Dems responded that this didn't

cover statutory instruments. Cameron set up a review under Tory hereditary peer and former Leader of the Lords, Lord Strathclyde, which reported in December 2015 with recommendations to remove power to reject statutory instruments from the Lords, replacing it with the power to send them to the Commons for another vote.

8. Parliament's business is determined by the executive

- The business of both houses is effectively determined by the executive (“executive dominance”), though normally after negotiations “through the usual channels” with the Opposition and government backbenchers (e.g. Parliamentary Labour Party, 1922 Committee).
- There is some provision for opposition and private members to raise issues – backbench power has been enhanced by the Wright reforms of 2010, with opportunities for backbenchers to demand debates on issues embarrassing to the government (e.g. the 2011 debates on prisoners’ votes and on an EU referendum, the 2012 defeat on the EU budget proposals). This has also allowed debates to be scheduled on select committee reports.

Very unusually, the Brown Government was defeated on an Opposition Day motion in 2009 (on the treatment of retired Gurkha soldiers). The 2011 EU referendum debate vote was won by the government, but nearly half of all Conservative backbenchers rebelled to vote in favour. Over 50 Tories rebelled on the EU budget proposals vote.

Future reform is supposed to involve more power for backbenchers via their business committee, so that they have more say in the programming of government business in future. Whether the government will accept this is currently unclear, but business managers and whips in both Coalition and Opposition are not keen.

9. Power lies in the chamber

- Power is concentrated in the chambers, but there are concerns that much business now takes place away from both houses in committees.

10. Committees are used extensively to conduct business

- Committees are used both for oversight (the Public Accounts Committee, departmental Select Committees) and detailed consideration of legislation (Public Bills Committees, which were previously called standing committees).
- There are some joint committees of the Commons and Lords (e.g. on the draft Bill on reform of the House of Lords, on Human Rights).
- Party and all-party committees also exist in many areas.
- *Change* – in recent years Select Committees have gained independence and powers, as they now elect their Chairs and membership without whipping (but within party groups), can engage in pre- and post-legislative scrutiny of legislation, and can hold hearings on some executive appointments (e.g. the Chair of the BBC Trustees; in 2011, Chancellor of the Exchequer George Osborne allowed the Treasury Select Committee a veto over the appointment of the Head of the new Office of Budget Responsibility, in October 2012 the Health Select Committee declined to pass Dominic Dodd to Chair the NHS Monitor organisation.)

BBC article on Select Committees – Now too powerful? - <http://www.bbc.co.uk/news/magazine-31961356>

11. Strong party discipline

- Most divisions take place on party lines with sanctions for those who don't follow the party whip.

- *Change – Rebellions* – Philip Cowley (<http://www.revolts.co.uk/>) has shown that every parliament since the war has seen more backbench rebellion than the previous one, although party unity has overall been the norm. The 2010 parliament was even more rebellious, with signs that party cohesion was breaking down under the strains of coalition (e.g. major Tory rebellions on the proposal for an EU referendum and on the proposed EU budget, the threatened rebellion that led to the House of Lords Reform Bill being abandoned, and the 2013 vote against possible action in Syria). Overall, the Coalition Government suffered 6 defeats in the House of Commons 2010-2015, although only three of these were on legislation.
- The boundary review process, necessitated by the 2011 Constituencies and Referendum Act, would have reduced the number of Commons seats to 600 (from 650) and aimed to equalise the population size of each constituency. This looked likely to further erode parliamentary party discipline as MPs fearful of not winning selection for a newly-redrawn seat might strike out more independently in the Commons in order to make them more attractive to ideological activists in local parties. However, this process was halted in 2012 following withdrawal of Lib Dem support after the Conservatives were unable to deliver the House of Lords Reform Bill, so the 2015 election was fought on the same boundaries as the 2010 vote.

12. A policy influencing rather than policy-making assembly in Norton's typology (Jones 2001)

- *But Changes and Future Changes noted above indicate that the UK Parliament has changed substantially since 1997 and is likely to change more in the next few years; executive dominance and Commons-Lords relations seem particularly fluid at present.*
- In 2015 the UCL Constitution Unit released the results of a major study which found that Parliament has considerably more legislative influence than has been thought previously. A summary of the paper is below:

Does the Executive Dominate the Westminster Legislative Process? Six Reasons for Doubt

Meg Russell, Daniel Gover & Kristina Wollter, Dept of Political Science, University College London

The Westminster parliament is frequently dismissed as a weak policy actor, in the face of dominant executive power. The UCL group analysed

- 12 recent Govt bills
- 4361 proposed amendments to those bills
- and carried out > 120 interviews with ministers, MPs, peers, civil servants involved with those bills

to test how true this common generalisation actually is.

The research finds that Parliament actually has substantial influence in making policy and shaping bills.

3 areas where Parl's influence may be missed:

- overstating government success in making amendments
- overstating non-government failure
- overlooking parliamentary influence before and after the formal passage of bills.

The Data

Case study bills
2005-10
Identity Cards Bill (2005-06)
Health Bill (2005-06)
Corporate Manslaughter and Corporate Homicide Bill (2005-06)
Further Education and Training Bill [HL] (2006-07)
Employment Bill [HL] (2007-08)
Saving Gateway Accounts Bill (2008-09)
Energy Bill (2009-10)
2010-12
Identity Documents Bill
Savings Accounts and Health in Pregnancy Grant Bill
Budget Responsibility and National Audit Bill [HL]
Public Bodies Bill [HL]
Welfare Reform Bill

Note: '[HL]' indicates that a bill was introduced via the House of Lords

Number of amendments proposed ranged from 47 on the Identity Documents Bill to 1076 on the Welfare Reform Bill.

Of 4361 proposed amendments:

- 22% agreed (mostly without an actual vote)
 - but some of these cancelled out other amendments – real success rate is 18%
- 3% rejected in votes
- 75% never put to a vote – either not chosen by the Speaker/Cttee Chair in HoC or withdrawn by the proposer without a vote in either House

Of successful amendments, nearly all tabled by Govt ministers:

- Only 19% of all amendments proposed came from Govt ministers
 - but 94% of these were successful (and none of the the other 6% saw actual govt defeats in votes – if one outlying bill, where Govt withdrew many of his own amendments, is excluded then Govt success rate 99.5%)
- By comparison 81% of all amendments proposed by non-Govt members – and < 1% were successful (just 24 / 3374 over the 12 bills examined)

6 reasons Parliament is more influential than has been appreciated

Overstating Govt Success

- 1) Most Govt amendments lack real substance – most clean up technical wording – only 29.5% of Govt amendment proposals substantial in impact
cf Non-Govt amendment proposals where 71.2% were substantive
- 2) Most Govt substantive amendments respond to Parl pressure – non-Govt amendments are often dropped after ministers indicate in debate that they will consider the issue and perhaps bring their own similar amendment forward later. This can happen multiple times in HoC and HoL before Govt brings an amendmt forward in HoL at Report stage or 3rd reading.

Other sources of parl influence incl Select Cttee reports (sometimes also the source of non-Govt amendmt proposals – big e.g. wd be toughening up the ban on smoking in public to exclude any exceptions), incl HoL Delegated Powers & Regulatory Reform Cttee, and concerns expressed in debates. 10 amendments could be traced as responses to concerns from the Scottish Parl (e.g. on Welfare Reform) or Welsh Assembly.

Of successful Govt amendments, 41% cd be identified as responses to Parl pressure of some kind – and this was true of 60% of substantial govt amendments – so real policy influence shown. Only 11% of all successful Govt amendments were both substantive and unattributable to parl pressure of some kind.

N.B. We shouldn't take all cases where govt appear to give way to parl pressure at face value – there may simultaneously be pressure group, public campaign, media pressures on govt over the same issue (e.g. BMA pressure on Health Act under Coalition, which was substantially rewritten after its HoC committee stage).

Overstating Non-Govt Failure

- 3) There may be multiple non-Govt amendment proposals on the same issue - but Govt amendments are only offered once.

Most non-Govt proposals are repeated at two or more stages as a way of keeping pressure on the govt to respond; sometimes very similar amendmts offered at the same stage by both opposition party (or parties) and govt backbenchers; occasionally related amendmts offer the govt a range of options (e.g. to soften the impact of a policy).

- 4) Many Non-Govt amendment proposals don't aim to change the bill – many are “probing amendments” designed to get an issue debated/a govt response – there's never an intention to bring the amendment to a vote

Other proposals are simply to make a political point, signalling to public and pressure groups outside parl the position of the opp party, or forcing govt members to vote for something unpopular.

Sometimes amendmts raise concerns about implementation of a policy in the bill – and are withdrawn when ministers give commitments about how they will issue secondary legislation or guidelines.

Parliament's Influence at Other Policy Stages

- 5) Parliament influences legislation before first reading begins – Ministers and civil servants spend a lot of time when preparing a bill anticipating the reactions of HoC and HoL, incl Select Cttees and the govt's own backbenchers (PPSs imp here) in each house. Ideas ministers like will be left out of a bill if they are thought likely to run into trouble.

A few Bills and some elements of Govt bills may actually be brought forward in response to demands within parliament – shown through Select Cttee reports, attempted Private Members Bills, internal party pressures, etc.

- 6) Parliament influences policy after Royal Assent to a Bill – As noted, sometimes issues raised in debate on a bill may feature in secondary legislation and Govt regulations as an Act is implemented.

More broadly, Parl Scrutiny mechanisms allow a lot of opportunities to review and challenge the implementation of an Act – e.g. Qs, Select Cttee investigations, Opposition Day debates.

Features of the US Legislature

1. Part of a presidential system of government

- Separate elections and so separate mandates for executive and legislature
- Members of the legislature cannot be members of the executive

2. Part of a federal system of government

- Congress forms part of the national tier in a federal system of government.
- As in all federal systems, sovereignty is divided between the national and regional governments and Article 1 of the Constitution, as well as the 10th Amendment, apparently limit what Congress can do.
- However, the development of the ideas inherent in the constitution and of its implied powers in the earliest days of the Republic, along with the growth of cooperative (and coercive) federalism in the 20th century, have all increased the competence of both Congress and the federal government.
- Some developments since the 1970s have checked federal power and re-emphasised the power of the states – e.g. New Federalism, a conservative swing in the Supreme Court (e.g. Lopez decision 1995). But no clear pattern – federal power increased under Bush (War on Terror, No Child Left Behind), some parts of the conservative coalition seek to impose values at federal level (Schiavo case, gay marriage bans); the financial crisis/recession have stressed the role of the federal government and Obamacare has extended its reach.

3. Subject to judicial review

- Federal courts, and the Supreme Court in particular, have the right to review acts of Congress and to declare them void and unenforceable if they are judged to be in conflict with the Constitution (e.g. *Citizens United vs FEC* 2010, *DC vs Heller* 2008, *Boumediene vs Bush* 2008, *Windsor* 2013).

4. Bicameral

- Lower house of 435 congressmen and women elected by a simple majority to serve for two years.
- Upper house of 100 senators, two per state, elected by a simple majority (since 1913 – 17th Amendment) to serve for six years with one third being elected every two years.

5. Fixed terms

- Each Congress lasts for two years. The current (114th) Congress met for the first time in January 2015 (two months after the Nov 2014 election) and will end at the start of 2017.
- Although each congress is divided into two annual sessions, legislation is biennial.
- Legislation that has not received presidential approval by the end of a Congress falls and must be re-introduced in the next Congress.

6. It decides its own business

- What is discussed in Congress is decided by Congress itself, but the importance of the President as a legislative leader ensures that the wishes of the executive are usually taken into account.

7. Power lies in committee

- Committees dominate nearly all congressional processes, existing for the purposes of oversight and detailed consideration of legislation (Standing Committees) and its reconciliation when the two houses disagree (Conference).
- Power has been concentrated in Congressional committees for much of its history, but changes since 1971 and during the 1990s have reduced the power of committee chairs in particular and increased the power of the Congressional party leadership.

8. Weak party discipline

- Both houses are organised on party lines, but party loyalty in both houses is weak by British standards.
- *Change* –From a low point in the early 1970s partisanship in Congress increased substantially over 25 years, as measured both by the number of “party unity votes” (where most Democrats voted differently to most Republicans”) and by the percentage of Congressmen voting with their own party in party unity votes. Since the mid-1990s partisanship has been high (often around 90% on average), although there are still many more non-partisan votes than is seen in the House of Commons.

Most recently, in 2013-15 the Republican party has split on a number of occasions, with Tea-Party conservatives in the House Freedom Caucus defying the leadership in Senate and House on key votes such as the Fiscal Cliff, Debt Ceiling Extension, Violence Against Women Act renewal, Aid for Hurricane Sandy victims, and the 2015 Budget. All of these votes only passed the House with Democrat votes and Republicans split, meaning that Speaker Boehner had his majority “rolled”. This ultimately contributed to dissatisfaction with Boehner’s leadership and his resignation as Speaker in September 2015; it is unclear as of December 2015 whether new Speaker Paul Ryan will be able to enforce greater discipline on the House GOP.

9. Congress is a Policy-making assembly, in Norton's typology.

- Not only can it modify and reject proposals from the executive branch, but it can formulate and substitute its own as well.

10. Neither house dominates: houses share power in many areas & have exclusive power in others

- Equal power over legislation (and equal pay for Representatives and Senators)
- House alone can impeach and originate money bills (although Senate can still amend and defeat these)
- Senate alone can try impeachments, approve treaties and presidential appointments
- Senators could claim that longer terms, larger constituencies, more demanding qualifications and lower membership enhances their status
- but the House is closer to the people and arguably more legitimate by virtue of its more frequent election.
- Senate rules allowing filibusters effectively require 60 votes for any major legislation (although not money bills), giving it greater leverage in Conference negotiations (e.g. Affordable Healthcare Act) and ensuring that the minority party can still exercise considerable influence (e.g. Cap and Trade, DREAM Act).

- And the Senate's power to confirm or reject Presidential appointees (by supermajority) is increasingly used as a lever to frustrate executive action (e.g. Republican refusal to bring Obama nominees for the Consumer Finance Protection Agency and the National Labour Relations Board to a vote in 2011).
But *Change* – in November 2013 the Democrats in the Senate changed the rules governing filibusters of executive appointments, so that all appointments other than Supreme Court justices can be made by simple majority. The long-term impact of this remains unclear.

Features of the EU Legislature

- 751 Members from 28 countries (min 5, max 99 per member state)
- elected once every five years - usually by list system but varies by member state
- 28 Member States of the European Union (28th = Croatia, joining in 2013) - 500 million citizens
- Based in Strasbourg (plenary sessions) and Brussels (committee work)
- Debates in all the EU's official languages – many expert real-time translators required

1. 4 week schedule

- Pink weeks for the parliamentary committees
- red weeks for plenary (full parliament) sessions
- blue weeks for the political groups
- + time to visit home country, meet constituents, liaise with national parliaments, undertake foreign visits with their committee, etc.

2. 20 Standing Committees

- Committees very important in work of European Parliament – more like US than UK given role in legislation, greater resources?
 - each specialising in a policy area – largely mirrors Commission portfolios – e.g. environment, industry, transport, budget:
<http://www.europarl.europa.eu/activities/committees/committeesList.do?language=EN>
 - Committee membership varies, but reflects the balance of political groups in the E Parl as a whole
 - Committees scrutinise Commissioners, examine and recommend amendments to directives, draft their own reports, recommend Commission or member states take action.
 - *Rapporteurs* - An MEP, working in a committee, draws up a report on a proposal from the Commission. The committee votes on this report, possibly amending it.
 - Committees have staff to support their work
 - Committee chairs coordinate the work of the committees in the Conference of Committee Chairs.
- Special temporary Investigative **Committees of Inquiry** can be set up.
e.g.- after sinking of oil tanker Prestige, MEPs set up a committee in 2003 to look into ways of improving maritime safety.
e.g. - In 2006 a committee investigated the CIA's activities in Europe following press revelations

about extraordinary rendition / illegal detention of suspected terrorists in a number of European countries by US secret services.

3. President of European Parliament

- elected by the MEPs to serve a two-and-a-half-year term
- directs Parliament's activities, chairs plenary sittings and signs the budget and laws
- President represents Parliament in the outside world and in relations with other EU institutions.
- Parliament elects 14 Vice-Presidents, each with a specific area of responsibility.
- President with Conference of political group Presidents organises and schedules the work of Parliament, including the calendar and agendas for plenary sessions and the composition of committees and delegations.

4. Plenary sessions:

- Debate committee reports, amending and voting on them
- adopt resolutions
- question Commission or Council representatives.
- May be addressed by heads of state and other eminent persons (e.g. Dalai Llama)

5. Secretariat of 5000 supports MEPs (1/3 are translators) + 1000 more staff to support political groups

6. Unicameral

No second chamber - or is the Council of Ministers equivalent to a second chamber? – co-decision applies in legislation and budgets.

ROLE AND POWER OF SECOND CHAMBERS

General

The role and power of second chambers varies as widely as legislatures do, however, as we noted earlier, most legislatures are unicameral and therefore in many political this is not an issue.

Where second chambers do exist, there is an apparent paradox: as one 18th century writer put it: “if the second chamber agrees with the first, it is useless; and if it disagrees, it is dangerous”.

There are a number of roles a second chamber might play in any political system:

- They can share the work of the first chamber. In the USA, for example, each chamber is able to propose, discuss and amend legislation. Also, each house can conduct its own investigations (oversight function).
- They can complement the work of the first chamber. In the USA the lower has the sole right to impeach while the upper house has the sole right to try impeachments.
- They can supplement the work of the first chamber. In the UK the House of Lords is often regarded as a revising chamber, giving more thought to proposals already agreed in principle in the Commons. It also gives first consideration to bills deemed non-controversial, thus allowing the Commons more time to discuss politically contentious legislation.
- They can act as a check and balance on the first chamber. In the UK it has been frequently argued that, for much of the period since 1983, the House of Lords was the only effective check on governments with large majorities - of both parties. Some chambers may fulfil this role on a regular basis, others, like the Lords, may be regarded as more of a constitutional long-stop, only exercising its power in times of crisis.
- They can be used to ensure the representation of regions (as in France and South Africa) or specific groups (Ireland), or to ensure that particular points of view are heard (bishops of the Church of England in the House of Lords), thus making the whole system more representative and legitimate.
- They can also be used to represent different 'Estates of the Realm' or to provide a wider range of counsel (usually older and wiser).
- Finally, some second chambers exercise additional functions in their own right, as was the case with the House of Lords in its previous role (until 2009) as the highest domestic court of appeal. The Senate's power of ratification of treaties and confirmation of executive appointments is important here.

UK: Role of the House of Lords

The power of the House of Lords has diminished over the centuries, but despite the reduction in its power, it remains an essential part of the legislature.

According to Coxall and Robins (1998) the main roles of the Lords today are to:

- legislate
 - revising Common's bills
 - giving ministers the opportunity for second thoughts
 - initiating non-controversial legislation, both government and. private
 - considering delegated legislation
- deliberate
 - debating matters of current interest

- scrutinise
 - Submitting government policy, and the administration of that policy, to discussion and investigation
- *Change* – the Lords lost its judicial function in 2009, when it ceased to be the highest domestic court of appeal
- To this list one could add:
 - Acting as "the only Constitutional counterweight to elective dictatorship" (Brazier, 1991)

Norton (*Jones, 2001*) approaches the issue slightly differently listing the following functions:

- Legitimation, on a modest scale and limited in the recent past by its lack of legitimacy
- Recruitment, providing some of the personnel of government (c25 ministers or whips)
- Scrutiny and influence, enhanced by the fact that, although the Lords may lack the legitimacy of the Commons, it has a distinguished and experienced membership and the time to devote to detailed consideration of non-money bills. (The relative weakness of party organisation in the House may also be an advantage in fulfilling this function, at least from the viewpoint of the electorate) .
- Expression, raising issues that are not, for a number of reasons, discussed in the Commons.
- Legislation, original through private members bills and the revision of Commons bills
- Constitutional, acting as a safeguard, through its right to veto Commons legislation, against governments behaving in an unacceptable or dictatorial manner.
- *Change* – the Lords previously had a Judicial function

Power

In constitutional and legal terms, the House of Lords has the power to:

- Reject outright any bill to extend the life of Parliament, any private bill, any bill that started in the House of Lords itself (although most more controversial bills start in the Commons) and any delegated legislation.
- Reject, subject to the Parliament Acts of 1911 and 1949, any public bill which is not certified by the Speaker of the House of Commons as being a money bill. This rejection amounts to a delay of one year (technically, until the next session but it will usually take several months to go through all Commons stages again) if the bill is subsequently passed under the 1911 and 1949 Acts (= suspensory veto).
- Delay any money bill for one month
- Amend, subject to the Parliament Acts of 1911 and 1949, any bill except a money bill. An amendment which forces the government to resort to the Parliament Acts to pass the legislation amounts to a delay of one session.

However, politically, the power of the Lords is circumscribed by its lack of democratic legitimacy. Without the popular approval that election bestows, the House is limited in what it can actually do (N.B. the Salisbury Convention).

Further, unlike the Commons, the Lords cannot, for reasons of law, convention or sheer practicality:

- Force the resignation of a government as the Commons did in March, 1979

- Hold senior ministers to account unless they are members of the House
- Introduce significant or controversial legislation
- Amend or reject any legislation which is certified as a money bill (*the certification of Ian Duncan Smith's Welfare Bill as a money bill in 2012 as late as its Report Stage in the Lords was resented by peers who were pushing for significant amendments at that point, as was the 2015 rejection on money bill grounds of the Lords' Votes at 16 amendment to the EU Referendum Bill during ping-pong*).
- Sustain any attempt to undermine key parts of a government's programme without serious constitutional consequences (*although the Lords came close with its long-drawn out debate over the Constituencies and Referendum Bill in 2011*)

However the Lords does:

- Act as an important revising chamber
- Afford an opportunity for the government to think again
- Act as an important scrutineer of, and occasional check on, both the government and the EU
- Offer an opportunity to discuss issues which the main parties or MPs are unwilling to address
- Represent interests other than those of party
- Provide a repository of experience
- Provide a limited safeguard against elective dictatorship

USA: Role of the Senate

It is generally agreed that the Senate has a number of formal roles which are mainly constitutional in origin. Senators have:

1. A representative function, representing, and therefore speaking for, a whole state and responding to the needs of their constituents. Critics argue that this ensures that representatives put constituency interests before the interests of the state. They also act as case workers, dealing with individual requests for help.

2. A legislative function

- generating, discussing, amending and approving the its own legislation
- considering, amending and approving legislation originating in the House
- discussing, amending and approving the legislative proposals of the president

3. An oversight function, ensuring that the executive branch does abuse its power, for example by:

- confirming presidential appointments
- confirming presidentially negotiated treaties
- holding public investigations into the activities of the executive branch
- use of the 'legislative veto'

- trying impeachments

4. A range of other constitutional functions including:

- choosing the vice president in the event of no candidate receiving a majority of electoral college votes
- approving, with the House, all proposals for constitutional amendment
- acting as a check and balance on the other branches of government, including the house.

It is often argued that the Senate has also traditionally protected minority interests and that the convention of Senatorial courtesy, that is the right to be consulted on executive appointments to their state, amounts in practice to the right to make recommendations for those appointments to the president

Power

Constitutionally the Senate shares a number of powers with the House of Representatives. Together they have the power to:

- Legislate (propose, discuss, amend, approve), though the Senate may not originate bills for raising revenue
- Override a presidential veto by a 2/3rds majority in both Houses
- Approve proposals for constitutional change by a 2/3rds majority in both Houses
- Exercise all powers enumerated in Section 8 of Article 1 of the Constitution, including the power to lay and collect taxes, regulate commerce, coin money, declare war, as well as implied and inherent powers allowed by the Supreme Court, but not the powers denied to Congress by Section 9 of Article 1, for example, the power to pass ex post facto laws or grant titles of nobility.
- Exercise oversight of the executive branch

The Senate on its own also has the power to:

- Try all impeachments
- Choose the vice president if no candidate wins a majority in the electoral college
- Approve the appointment of "ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States".
- Approve, by a 2/3 majority, all treaties made by the president.

UK-USA Comparison

Politically, the Senate is a much more powerful house than the Lords:

- Not only is Congress (of which the Senate is obviously a part), unlike the British parliament, a 'policy-making legislature', able to formulate and substitute their own policy as well as modifying and rejecting proposals from the executive branch.
- It is also more legitimate because it is elected and therefore more justified in using its powers.

- The Senate has important powers, both with the House and in its' own right - to approve appointments and treaties, to impose its legislative proposals on an unwilling executive, the right to declare war, the right to try impeachments - which, despite their occasional evasion by the executive branch, are significant.
- And, importantly, it is willing to use them, for example by refusing to approve treaties or appointments.
- Further, the separation of powers requires all branches of government to co-operate which provides the legislature with influence over the executive in particular.

However, the Senate is limited by:

- The Constitution, which sets out what it cannot do and to some extent, what it can.
- The federal nature of American government, which limits the areas in which it is sovereign
- Judicial review - the right of the courts to review of its acts and actions - which gives the judiciary the right to declare them unconstitutional and therefore void
- The separation of powers which ensures that it must share its power, for example in the area of legislation, with the executive branch (N,B. the right of the president to veto legislation)
- The president's de facto role as chief legislator, including the potential use of executive orders, signing statements, recess appointments, etc.

ROLE OF POLITICAL PARTIES WITHIN THE LEGISLATURE

General

Parties perform a number of functions in politics. In their broader role they are often regarded as linkage institutions "translating inputs from the public into outputs from the policymakers" ensuring that "public preferences are heard loud and clear" (Wilson, 2001).

In this role parties select candidates, raise money, fight elections, organise campaigns, encourage voter registration (in some countries) and turnout and develop and publicise their policies. In doing so they provide choice for the voters and ensure competition.

The role of parties inside a legislature is more restricted, but no less important and is clearly related to the role of the actual assembly. If the role of a parliament is to deliberate on legislation, then the role of parties within the parliament is often to organise such deliberation.

A broader role in government often played by parties is to coordinate policymaking among the various branches of government and to ensure that there is continuity and consistency.

UK

It is difficult to underestimate the role of parties in parliament. Parties:

- translate the electorate's wishes into the choice of government
- represent the views of groups united by common beliefs
- provide a legislative programme
- provide ministers
- organise the business of parliament
- provide scrutiny and accountability
- sustain (or not) the government in power

It is the activities of parties that ensure that the governing party can govern - that is, secure regular support for its policies, including legislation, from the House of Commons.

It is also the activities of parties that ensure that regular scrutiny of that government is effectively carried out and that there is always an alternative government willing to take over.

Parties, and party activity, therefore dominate Parliament.

However, as parliament in the UK. is not a policy-making body in the strict sense of that term, what parties other than the governing party don't do is to generate policy. That is the responsibility of the governing party.

USA

In some ways, parties in Congress play a similar role to those in the UK., but with important differences:

In the USA, parties:

- represent the views of both constituents and groups
- organise the business of Congress

- provide scrutiny and accountability
- They also assist in the making of policy

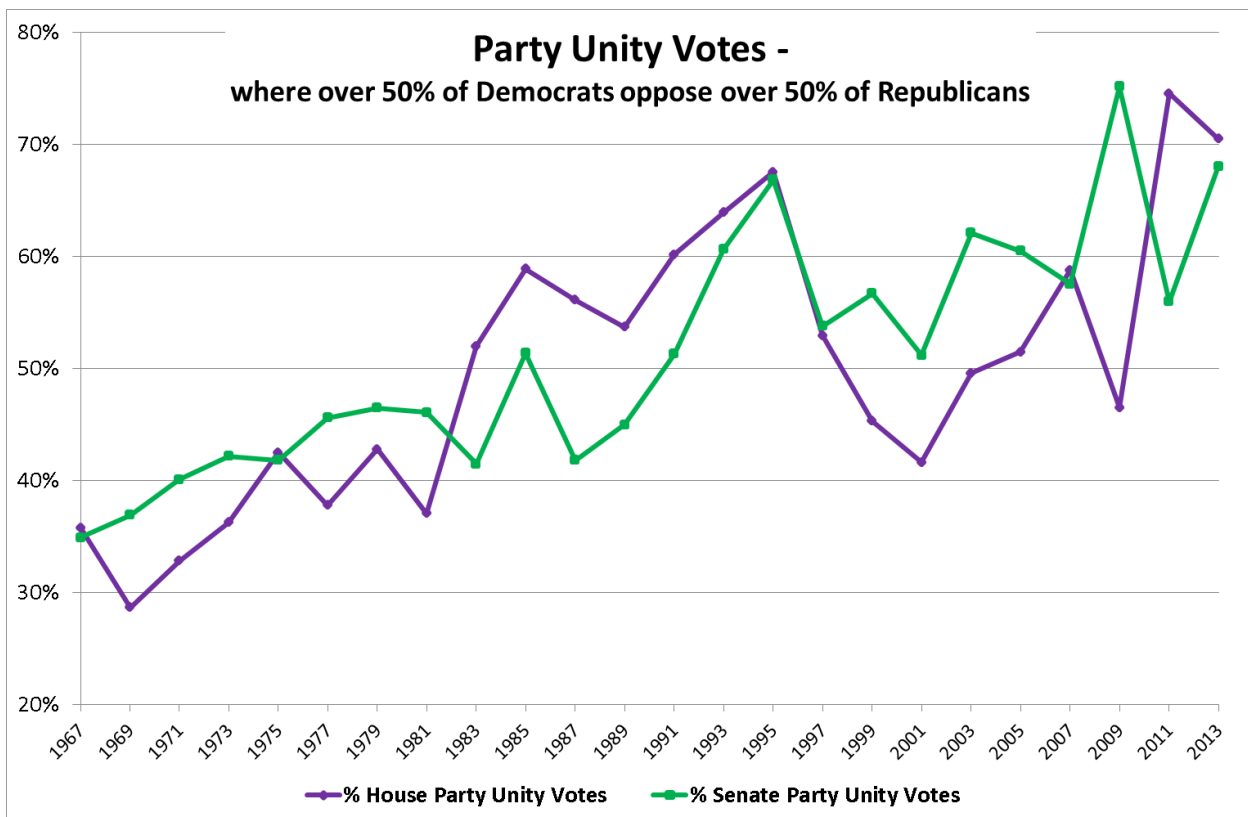
What they don't do is:

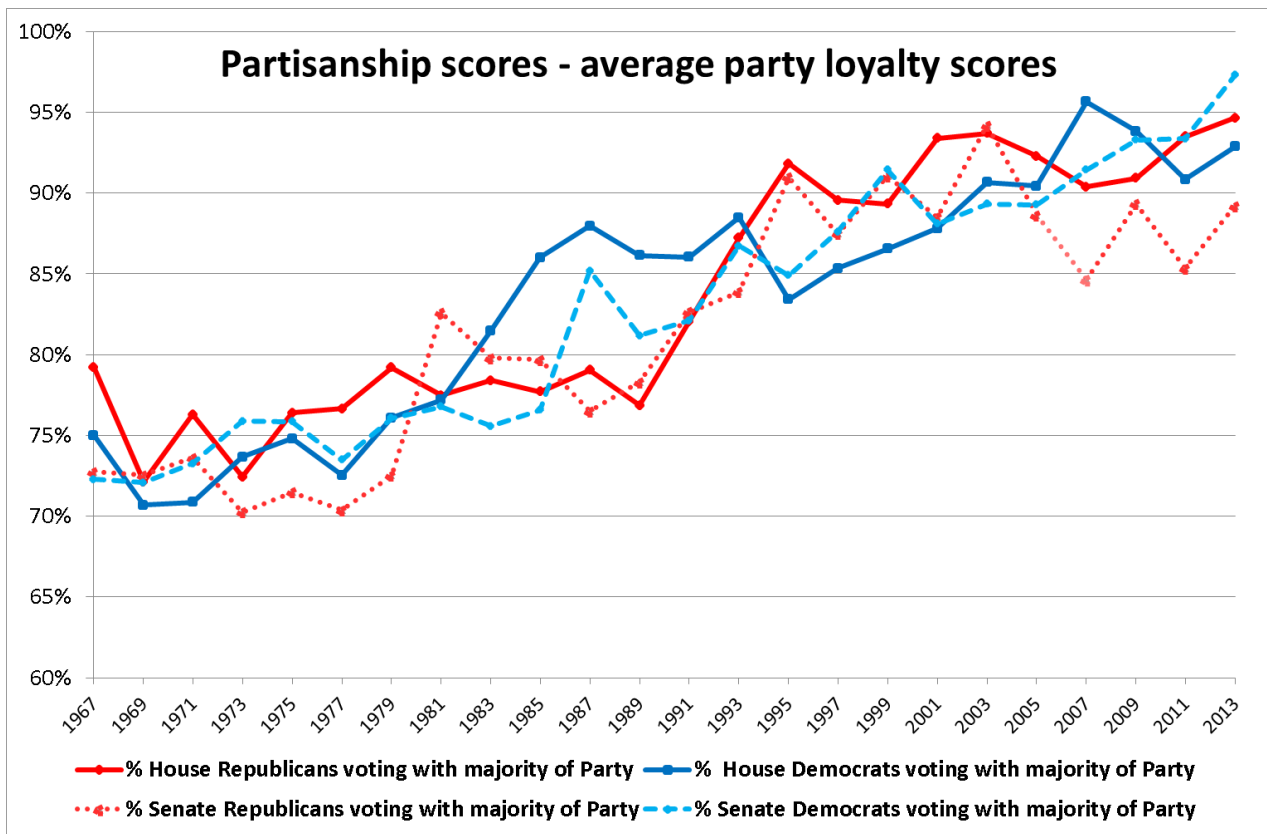
- translate the electorate's wishes into the choice of government
- provide a legislative programme (although the Republicans in 1995-6 aimed to bring every element of their *Contract with America* to a vote)
- provide ministers
- sustain the government in power

Further, the role of parties in Congress is influenced by a number of other factors including the nature of the parties themselves and in particular:

- The range of beliefs in each party which makes it difficult to agree and enforce a party line.
- The importance, for most representatives, of local, rather than national, interests.
- The consequently relatively low levels of party loyalty. Between 1966 and 1983 the number of votes in which a majority of voting Democrats faced a majority of voting Republicans (= *party unity votes*) never rose above 50% in either House. Even in the 1990s, a high point of party cohesion, this figure rarely reached 60%.
- *Change* – Partisanship has continued to increase in recent years, as the graphs below illustrates. The dip in party unity voting in the 107th Congress reflects responses to the 9/11 attacks and the launching of military action in Afghanistan and Iraq.

The second graph shows average *party loyalty scores* in these party unity votes and illustrates the sustained high levels partisanship has reached in Congress since the 1990s.





- The failure in recent times of either party to control both the executive and legislature, with nearly 26 of the past 34 years seeing divided government of some kind (although note that in the 5 Congresses from 2003 to 2013 divided government was actually less common). Table from: http://en.wikipedia.org/wiki/Divided_government#Unified_and_Divided_Party_Control_of_the_U.S._Government_since_1901







Year	President	Senate	House
1981-1983	R	R	D
1983-1985	R	R	D
1985-1987	R	R	D
1987-1989	R	D	D
1989-1991	R	D	D
1991-1993	R	D	D
1993-1995	D	D	D
1995-1997	D	R	R
1997-1999	D	R	R
1999-2001	D	R	R
2001-2003	R	D	R
2003-2005	R	R	R
2005-2007	R	R	R
2007-2009	R	D	D
2009-2011	D	D	D
2011-2013	D	D	R
2013-2015	D	D	R
2015-2017	D	R	R

In effect, politicians represent and serve their constituents by remaining loyal to their party and its policies rather than acting on their own initiative or in their constituents particular interests.

European Parliament

- MEPs sit in political groups – they are not organised by nationality, but by political affiliation.
 - 7 political groups in the European Parliament at present, the latest being the new-ish European Conservatives and Reformists Group
 - Groups appoint a chair and receive funds to appoint support staff
 - 25 Members are needed to form a political group, and at least one-quarter of the Member States must be represented within the group. Members may not belong to more than one political group.
 - Some Members do not belong to any political group and are known as non-attached Members.
- Before every vote in plenary the political groups
 - scrutinise the reports drawn up by the parliamentary committees and table amendments to them.
 - Position adopted by the political group is arrived at by discussion within group.
 - No Member can be forced to vote in a particular way.
- The Conference of Presidents is made up of the chairs of the political groups and the President of the European Parliament.
 - organises practical aspects of Parliament’s work
 - decides on all questions relating to legislative planning, including the timetable and agenda for plenary sittings,
 - decides on composition of the committees and delegations, and their remits
- Key decisions often agreed in advance by leaders of the three biggest political groups (EPP, PES, ALDE)
 - together they can command over ½ MEPs and so ensure their agreements are passed
 - e.g. renomination of Barroso, sharing out election of Parl Presidents, major legislative decisions
 - can also strongly influence Council decisions – e.g. sharing jobs for new Council Pres & High Rep between centre-right and centre-left

EU PARLIAMENT FOLLOWING 2014 EUROPEAN ELECTIONS – BY PARTY GROUP

	Group of the European People's Party (Christian Democrats)	221 MEPs
	Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (incl UK Labour Party)	191 MEPs
	Group of the Alliance of Liberals and Democrats for Europe (incl UK Liberal Democrat Party)	67 MEPs
	Group of the Greens/European Free Alliance	50 MEPs
	European Conservatives and Reformists Group (incl UK Conservative Party)	70 MEPs
	Confederal Group of the European United Left - Nordic Green Left	52 MEPs
	Europe of Freedom and Direct Democracy Group (incl UKIP)	48 MEPs
	Non-attached to any group	52 MEPs

ROLE OF LEGISLATORS AS DELEGATES OR REPRESENTATIVES

General

There are a number of models which seek to describe the role of those elected to a legislature. (And, confusingly, the term 'representative' is used to describe both the general idea of one person or a small group representing a larger group, and a specific theory of how this should be done.)

1. The 'delegate' theory.

In this view, those elected to an assembly are delegates acting and voting on behalf of, and in accordance with, the views of those who elected them.

- One version of this theory suggests that the delegates have been mandated (in the sense of being given a binding instruction) by the electorate and must act according to previously agreed decisions, but generally the expectation is that they should carry out their election promises and act as the mouthpiece for their constituents.
- According to delegate theory, a delegate's personal views are unimportant and should play no part in their decisions.
- However, McKay (1997) argues that the idea of a representative being a direct delegate of the people has relatively few applications in modern industrial societies. Although in small communities such representation might be possible, modern representatives cannot "accurately and continuously carry out the wishes of diverse and volatile electorates. Even if he or she knew what the electorate wanted, the individual member ... has but limited powers to influence what is a complex national policy process."

2. The 'representative' theory

An alternative view is that, although those elected to an assembly have been chosen to act on behalf of those who elected them, once selected they should be free to make up their own minds in the interests of their constituents but according to their own judgement.

- In this model representatives act as trustees for the electorate: the electorate entrust them to use their own judgement to look after their interests. For this reason it is also known as the trustee model of representation.
- Representatives have a duty to consult and to take into account the opinions of their constituents, but their primary duty is to their conscience.
- In a famous speech made to the electors of Bristol in 1774, Edmund Burke argued that MPs were representatives, and while he had to take into account the views of the people he represented, he should be able to exercise his personal judgement on their behalf.
- The original justification for this view was that not everyone in society had the same level of education and understanding of the issues, but today this sounds dangerously elitist and, indeed, anti-democratic.

3. The 'mandate' theory

A third model goes part of the way towards resolving this problem by recognising that representatives are no longer independent actors chosen for their personal qualities and talents, but elected because they are members of a particular party.

- The mandate model of representation is founded on the idea that, "in winning an election, a party gains a popular mandate that authorises it to carry out whatever policies or programmes it outlined during the election campaign" (Hayward, 1997).
- Hayward notes that, while "the strength of the mandate doctrine is that it takes account of the undoubted practical importance of party labels and party policies", it has been the subject of criticism because:
 - It suggests that voters select parties on the basis of policy but we know that voters are not always rational and well informed and are influenced by a range of other factors, such as the personalities of leaders and the images of parties.
 - Even if voters are influenced by policies they are unlikely to agree with every part of a party's manifesto.
 - Logically the government should only pursue those policies listed in its manifesto, leaving no room for future flexibility when faced with changing circumstances.
 - Governments which fail to win more than half of the popular vote cannot really claim to have such a mandate.

A slightly different model is the 'analogue' or 'resemblance' model.

4. The resemblance model

- According to some, particularly socialist, theorists, legislatures should represent or reflect society. In other words, they should be typical and contain a cross-section of the electorate in terms of the patterns of class, gender, age and ethnicity.
- This belief is often based on the view that only people who come from a particular group can fully express its interests.
- An obvious objection to this model is the problem of deciding which characteristics should be reflected in the legislature. Should it also include religion? Marital status? Sexual orientation? Trade union membership? The list is endless. And how would this be achieved?
- Hayward argues that this model also has its limitations because:
 - If all representatives simply advance the interests of the groups from which they come, the result would be social division and conflict, with no one being able to defend the common good or advance a broader public interest.
 - A government that is a microcosm of society would reflect that society's weaknesses as well as its strengths. What would be the advantage, he wonders, if the legislature resembled the ill-informed and poorly educated?
 - To achieve such representation it would be necessary to limit electoral choice and individual freedom. "In the name of representation, political parties may be forced to select quotas of female and minority candidates, constituencies may be set aside for candidates from particular backgrounds, or, more dramatically, the electorate might have to be classified".

UK: Delegate, representative or trustee?

The House of Commons

Most MPs regard themselves as representatives of both a constituency and a party, though a substantial minority (mainly Labour MPs) may see themselves sometimes as delegates.

- In practice, MPs are closer to being party delegates than trustees, being tied, because of strict party discipline, to the policies of the government or opposition: an MP's electoral survival depends on securing the party's endorsement at the next election.
- In either capacity, MPs act as both case workers on behalf of individuals and as representatives (in the broader sense of the term), but who do they represent?
 - their constituents?
 - the local area?
 - the national interest?
 - the local party?
 - the national party?
 - the parliamentary party?

And can they also represent groups who did not select, endorse or elect them, for example commercial interests (the tobacco industry, small businesses etc.) or broader community interests (the police service, nurses, teachers etc.)?

- Certainly, MPs are directly accountable in some form to:
 - their local party (who selected them and campaigned for them).
 - the electorate (who elected them).
 - the national party (without whose approval they would not have been elected)
 - the parliamentary party (to which they belong)

Change 2015 – For Labour MPs following the overwhelming victory of Jeremy Corbyn as Labour Leader, these are very real questions: they were originally selected as candidates by a local party that may now have become much more left-wing as a result of Corbyn supporters joining, they were elected on a centre-left Miliband manifesto that Corbyn now rejects, and they themselves did not support him for leadership. These tensions are clearly reflected in Labour splits in the autumn of 2015 on issues such as Trident and airstrikes on Syria.

- But what about:
 - their own conscience?
 - their God?

Whatever they decide, when these loyalties conflict MPs must remember that:

- The British system of government rests upon party discipline. No government can govern effectively unless it can rely upon a parliamentary majority most of the time. Without an assured majority there can be no coherent or consistent policy and MPs who regularly defy their party run the risk of undermining the system of government.
- Voters vote for parties, not candidates. Voters expect elected candidates to follow the party line they pledged themselves to at the general election. Thus, once elected, an MP has a moral duty to support his party and to do otherwise would be to betray the electorate.
- The House of Commons may represent the people, but it also has other functions which at times may conflict with this role.
- *Change* – with coalition government, Conservative and Lib Dem MPs were called upon by their party managers to support a programme of legislation and action different from the manifesto on which they were elected. As noted above, this strained loyalties, with a high rate of rebellions during 2011-15, including in 2012 defeat on EU budget proposals and the abandonment of House of Lords reform, and in 2013 the defeat of the Government over proposed action in Syria. Over the 5 year Parliament, 64 votes (out of 1239 divisions) saw 30 or more rebels.

The House of Lords

Members of the House of Lords are not delegates or representatives, though many take a party whip.

- In a real sense, members of the House of Lords represent no one because they are elected by no one and responsible to no one, indeed, as Norton has pointed out (Jones, 2001) according to *Erskine May* “Lords may indicate that an outside body agrees with the substance of their views, but they should avoid creating the impression that they are speaking as representatives of outside bodies”.
- However some would argue that membership of the Lords is a form of virtual representation, that is, although a legislator may not be chosen by a group of people to represent them, they may still do so. The same, after all is true of MPs who are elected by only a proportion of the electors in their constituency, but who would claim to represent the entire electorate including those who didn't vote, couldn't vote or did not vote for them.

Typical?

The British parliament is clearly not typical of those that elected them. An overwhelming majority of MPs and peers are white, well-educated, middle aged, middle class and male.

- In 2001 18% of MPs and 16% of the Lords were women. In the 2010-2015 Parliament 22% of MPs were female (31% of Labour MPs are women, 16% of Conservatives – a rise of 7% over the previous parliament – and 14% of Lib Dems). The 2015 election returned a record 191 female MPs, 29% of the Commons. c21% of the Lords are now women.
- In the 2010-2015 Parliament there were 27 ethnic minority MPs, who constituted 4.1% of the House of Commons (up from 1.8% of the House of Commons in 2001), compared with about 12% of the UK population. In 2015 that rose to 43, 6.6% of the Commons, compared to c14% of the UK population.
- In 2015 33 MPs are openly gay, c5% of the Commons.
- 32% of MPs in the 2015 parliament had been to private school, compared to c7% of the UK population. 1 in 10 of privately-educated MPs went to Eton.
- The vast majority of MPs now have a least a first degree (in 1945 33% of Labour MPs and 66% of Conservative MPs were graduates, but by 1997 it was 72% and 80%) and in 2015 graduates comprised 89% of all MPs. 26% of MPs in the 2015 parliament attended Oxford or Cambridge.
- The average age of Conservative MPs in 2010 was 48 and for Labour and the Lib Dems it was 52. The average age of the Lords was 62.
- Lawyers (14% of the Commons in 2011) and business people (c40%, broadly defined to include finance, marketing and PR) continue to dominate the Commons, but over the last 50 years there has been a decline in the number of manual workers who have become MPs and increase in the number of journalists, teachers and 'professional politicians' (in 1945 28% of Labour MPs were former manual workers but in 2011 the figure was 9%).

But does it matter?

USA: Delegate, representative or trustee?

McKay (1997) argues that members of congress are clearly not delegates, “either in the sense of being slaves to a party programme or in the sense that they are mandated by their constituents to carry out specific policies.”

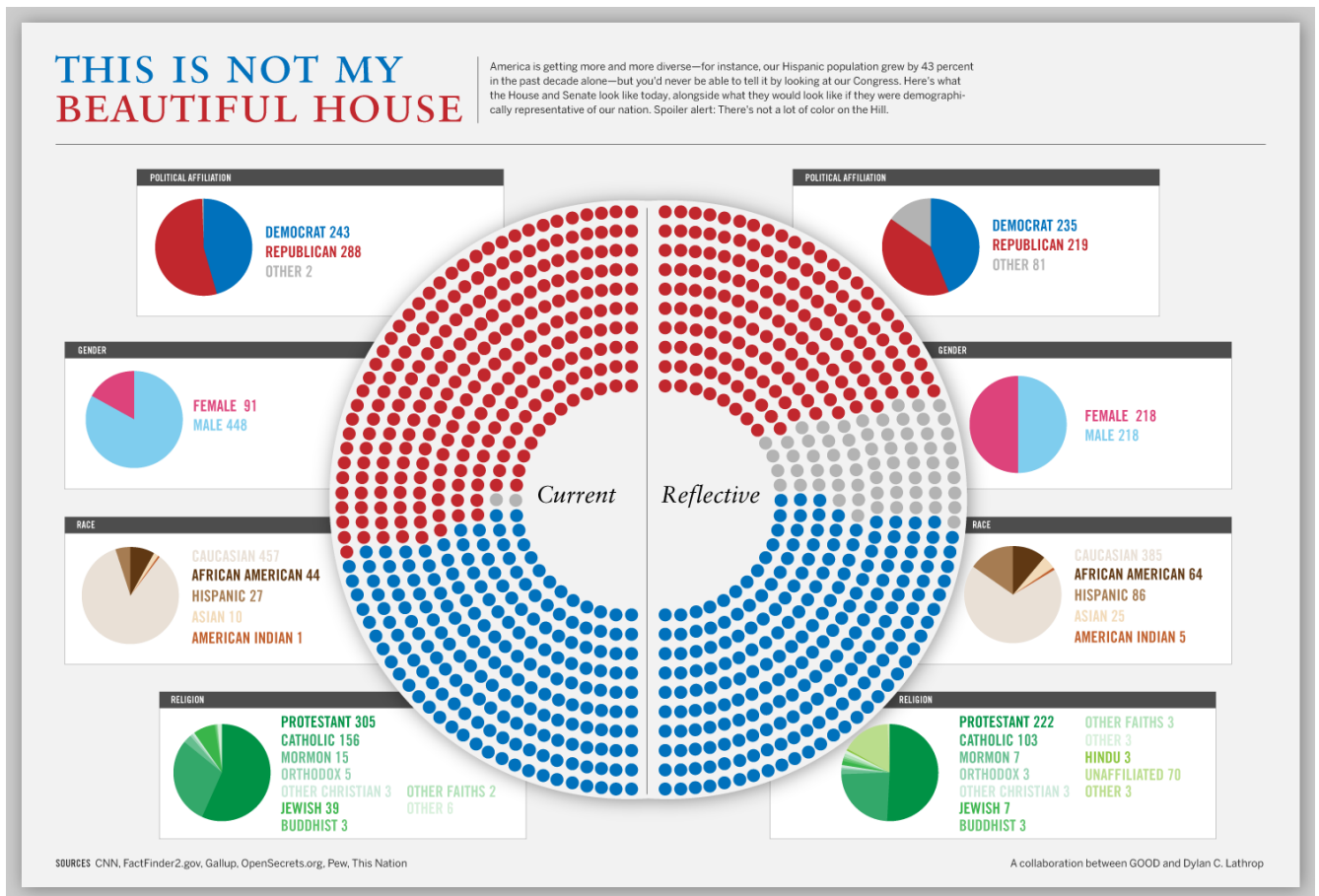
- The size, diversity and volatility of the electorates that members of Congress must represent - which range from the smallest congressional district to 32 million Californians - means that no member of Congress can accurately and continuously carry out the wishes all their constituents, even if they wanted to.
- Further, even if he or she knew what the electorate wanted, the individual member of Congress has limited powers to influence the national policy process.
- In practice senators, congressmen and congress women are much closer to being trustees of their electorates, says McKay. “They are elected on the promise that they will exercise their judgement on behalf of their constituents' interests. And, in the opinion of the electorate, should they fail to defend and promote these interests, they are punished in subsequent elections.”

Typical?

Congress is not more typical of those that elected it than parliament. It too is overwhelmingly white, well-educated, middle aged, middle class and male.

- In the 107th Congress (2001-2003) there were only 59 congresswomen and only 13 women Senators. In the 112th Congress (2011-12) there are 75 congresswomen and 17 female Senators.
- In the 112th Congress, there are 5 Asian members of the House, 25 Hispanic, 42 African-Americans, 1 Native American and 362 white. There are two Asian senators, 2 Hispanic senators, 1 Black senator and 95 white senators.
- The average age of members of Congress in 2011 was 57.4, with lawyers (202/535) and college graduates (517/535) greatly over-represented among the members in both houses. The average member of the House is worth \$5 million, the average member of the Senate \$13.4 million, compared to \$96 000 for the average American.
- In 2011, 57% of the House and 56% of the Senate are Protestant Christians (compared to 51% of American adults). 30% of the House and 24% of the Senate are Catholic (compared to 24% of American adults). 6% of the House and 12% of the Senate are Jewish (compared to 1.7% of American adults).

- This infographic shows the social representation of the 112th Congress (on the left) vs what Congress would look like if it truly reflected US society (on the right). See <http://awesome.good.is/transparency/web/1104/congress/flat.html>



- For the 113th Congress, see also - http://www.pewtrusts.org/our_work_report_detail.aspx?id=85899440886 and <https://www.fas.org/sgp/crs/misc/R42964.pdf>

But again, does it matter?

European Parliament

The European Parliament currently has 37% female MEPS, although this varies very widely from country to country. In 2009-14 35% of MEPs were women; in 2004-2009 it was 31%; only 17% of MEPs were female in 1979 when the first direct elections were held.

It is hard to find figures for ethnic minority representation in the European Parliament, as no official attempt is made to categorise MEPs' backgrounds. It appears that in the 2004-09 European Parliament only 9 out of 785 MEPs were non-white (5 of whom were British) – only 1.1% compared to c5% of the European Union population who belong to an ethnic minority group. This seems to have gone up to 15 in the 2009-14 Parliament. Since the 2009 elections there have been calls from a number of MEPs and outside groups for European political parties to do more to promote ethnic minority candidates, for example by putting them higher on their party lists used in the proportional election system.

Useful weblinks:

<http://5050campaign.wordpress.com/resources/facts-and-figures/>

<http://www.jcm.org.uk/blog/?p=1484>

<http://www.guardian.co.uk/uk/2007/feb/14/race.eu>

http://cms.horus.be/files/99935/MediaArchive/publications/ENARgy_08_2010_EN_LR.pdf

<http://www.romadecade.org/news/reflections-on-the-2014-european-parliament-elections/9755>

THE RELATIONSHIPS WITH THE EXECUTIVE AND JUDICIAL BRANCHES OF GOVERNMENT

General

In any one country, the relationship between the legislature, the executive and the judiciary will be determined by a number of formal factors including:

- the particular constitution in force at the time
- the interpretation of that constitution

For example, in a state where there is a written constitution which vests all legislative power in the legislature and there is a strict separation of powers, as in the USA, the executive branch will have a different relationship with the legislature than in a system where the opposite is true.

Similarly, the relationship between the legislature and the executive in a parliamentary system where the executive is drawn from, and is responsible to, the legislature, will be different from that in a presidential system, where this is not the case.

The relationship will also be affected by long-term factors such as the political culture

And it will also be influenced by a number of other, shorter term, factors including:

- The specific issue, or set of issues involved
 - The particular political circumstances, both domestic and international
 - The personalities and political skills of those involved
 - The balance of power in the legislature
 - The degree of party loyalty that can be expected
- As well as, for example,
- The closeness of an election
 - The attitude of the mass media
 - Popular perception

UK

The relationship between the legislature and the executive, and the legislature and the judiciary in the UK is influenced by a number of key features of the British system of government including:

- the unitary nature of British government
- the absence of a written constitution
- the nominal sovereignty of parliament
- a parliamentary form of government
- the partial separation of powers
- British membership of the EU and European Council (including the ECHR)

Legislature-Executive

Essentially the role of the executive is:

- to devise policy
- to carry out policy

And, as we have seen, traditionally the role of the UK legislature might be said to be:

- to represent the people
- to provide members of the executive branch
- to scrutinise and hold the executive to account
- to approve legislation
- to act as a forum for debate on national issues
- to sustain the government in power (or not) and to legitimise its activities

However, while the unitary and parliamentary nature of British government with its partial separation of powers and formal sovereignty of parliament ensures that all major policy issues usually come before parliament for discussion and, if necessary, approval, and that therefore ministers can be held to account, the dominance of the executive over the legislature through the party system, the weaknesses of the second chamber, devolution and Britain's membership of the EU have together ensured that Parliament is essentially a policy-approving, not policy-making body, and, in the view of some commentators, not a very good one at that.

Specifically:

- Its representative function is limited by executive requirements for loyalty.
- Its scrutiny function, although impressive in the formal array of opportunities for questions, debates and committee investigations it parades, is limited by the existence of single party government based on tight discipline and an unelected second chamber which lacks the legitimacy to use its power. The range of resources available to the government and its control of the Commons is usually sufficient in most circumstances to prevent it from serious embarrassment (N.B. the Scott report) but note the troubles faced by the 1976-79 and 1992-97 governments when faced with a resurgent opposition, a lack of unity on their own benches and a small and reducing majority.
- Its legislative function is similarly limited. The vast majority of successful legislation is sponsored by the executive and little of it is significantly amended by parliament unless the government consents. Backbench rebellions may make the headlines and have a temporary impact on government plans, but most of the time the government gets its own way.
- As for being a forum for debate on national issues, parliament has been in decline for decades as the executive has sort to pre-empt it by deft news management, for example, by giving advanced notice to the mass media of important statements and by exhibiting a preference for discussing policy in TV and radio studios rather than the Commons chamber.
- Despite the occasional set piece debate (Falklands 1982, Westland 1986, Maastricht 1993, Afghanistan 2001, Iraq 2003), for most people it is the newspapers and TV to which they turn for such discussion.
- Clearly the Commons can refuse to sustain the government in power, but apart from the obvious example of March 1979, and the need for some governments to behave with caution because of their minority status (1974 February-October, 1976-1979) or small and/or unreliable majority

(1964-66, 1992-97), most governments in the last seventy years have not had to worry unduly about defeat on a major issue or on a vote of confidence in the Commons and therefore being forced into holding a general election.

Change – the Conservative-Lib Dem Coalition following the 2010 election was new in Westminster post-war politics and saw considerable strains over issues such as tuition fees and the Referendum and Constituencies bill, where government backbenchers were prepared to rebel in substantial numbers against Coalition policy, sometimes claiming they had to be loyal to the manifesto they stood on where it conflicted with the Coalition Agreement.

- The only function that, the Commons seems to have unarguably retained is to act as the main source of members of the executive branch.

Nonetheless, parliament ultimately still retains the power to hold the government to account, to reject its legislation and to force it to resign if the circumstances allow.

Legislature-Judiciary

Although the UK does not possess a written constitution, the independence of the judiciary is a key feature of the British system of government, and one witnessing considerable evolution over the past decade or so.

In relation to parliament, the main function of the courts are:

- to interpret the law (statute law, the common law, European law, etc)
- to decide what the law means in specific cases
- to dispense punishment if the law has been broken.

Formally, therefore, parliament makes law and the judiciary applies it.

Further, parliament does not discuss matters which are *sub judice* and individually judges are not criticised unless the subject of a particular motion.

Likewise, judges and law lords refrain from comment on political matters, though on occasions they have done so, particularly on proposed legislation relating to sentencing policy, court structures or civil rights and liberties.

However, this relationship is not that clear cut.

- Until recently there was only a partial separation of powers in the UK: judges sat in the House of Lords as law lords, as did the head of the judiciary, the Lord Chancellor.
Change – In 2005 the Constitutional Reform Act gave the judiciary substantially more independence, with the Lord Chancellor's role much reduced and judges now appointed by a Judicial Appointments Commission. It also removed the law lords from the House of Lords and created a new Supreme Court (effective 2009).
BUT – although these changes formally protected judicial independence, it could be argued that in practice they have made little difference, as both the political and judicial cultures of the UK effectively ensured already that politicians did not interfere with the judiciary.
- In addition, since 1981 judges can be removed from office by an address presented to the Queen by both houses of parliament (though this is unlikely) and their pay is fixed by statute, although it is not the subject of annual parliamentary debate.

- By interpreting the law, judges are, in a real sense, making it, and may do so in ways not intended or wished by parliament.
- During the 1945-51 Labour majority government, one leading socialist politician asserted that the new government would not allow the “judicial sabotage” of Labour's programme, but the growth of European law and the consequences of the *Factortame* and other cases, and of the 1998 *Human Rights Act* (which allows judges to declare, in certain circumstances, that an Act of Parliament is incompatible with ECHR rights) has ensured that the courts now have the potential to thwart the wishes of parliament - intentionally or otherwise.
- Sometimes this power has had a significant effect upon both the application of a law (for example, the re-interpretation of what is meant by ‘the public interest’) and also the relationship between the judiciary and the legislature (as in the 1992 case of *Piper vs Hart* in which the House of Lords significantly weakened the principle that courts could not use what was said in Parliament as a guide in interpreting the law).
- Since the 1998 Human Rights Act came into force 18 final (i.e. after appeals) Declarations of Incompatibility had been issued by UK courts up to 2010. These are not binding but the UK government with every Declaration that has become final chosen to put remedial measures before parliament. Declarations of Incompatibility have affected anti-terrorism legislation, as well as the rights of prisoners, mental health patients, transsexuals. In 2011 political controversy surrounds a final ruling that there should be a mechanism of appeal for removal from the Sex Offenders Register.
- The European Convention of Human Rights is binding upon the UK, and so judgements by the European Court of Human Rights against the UK must be implemented by parliament. Normally this has been done quite promptly. However, in 2005 in *Hirst vs UK* the Court ruled that prisoners could not automatically be denied the right to vote but as of 2013 the UK has refused to abide by this judgement (in the meantime the Law Lords have issued a Declaration of Incompatibility on the same issue). The Coalition government announced in 2010 an intention to legislate to allow some prisoners the vote, but parliament heavily rejected the idea in an indicative vote during a backbench business debate. In 2012 the UK government attempted to use its role in chairing the Council of Europe to reform the operation of the ECHR, so that the Court confines its judgements to the most egregious infringements of human rights, but there has so far been little progress. In 2013 a number of serving and retired senior judges have gone on record saying that the UK need not, and should not automatically be bound by ECHR decisions.
- Ultimately, because of the sovereignty of parliament, parliament can decide what the relationship should be, but there would be considerable political difficulties if it chose to dramatically alter the balance of the relationship.

USA

As in the UK; the relationship between the legislature and the executive and the legislature and the judiciary is influenced by a number of key features of the American system of government including:

- the existence of a written and entrenched constitution which lists the powers that Congress and other branches may or may not exercise (though not always in detail or unambiguously)
- a federal form of government in which the states have significant responsibilities which the national government is constitutionally precluded from interfering in.
- the separation of powers which not only ensures that the various parts of government cannot exercise the powers of another branch and that the personnel in one branch cannot be members of another, but that also provides for each part of government to check and balance the others.

- a presidential form of government

Congress and the Executive

Essentially the constitutional role of the chief executive, and hence of the executive itself, is, explicitly or otherwise:

- to administer policies agreed by Congress
- to direct US foreign policy
- to act as commander in chief of the armed forces

However, in the 20th century, the role of president has developed into much more than the “chief clerk” with foreign policy responsibilities that some of the Founding Fathers had intended, and he has become, amongst other things, an important legislative leader, exercising extensively his right to “recommend to (Congresses) consideration such measures as he shall judge necessary and expedient”. This in turn has made him truly the head of government as well as the head of state.

Essentially, then, the executive today:

- devises policy in a number of areas
- initiates legislation, when necessary, to implement this policy
- carries out policy.

Traditionally the role of the US legislature might be said to be:

- the initiation, consideration, amendment and approval legislation
- the oversight of the executive branch
- the representation of the people

So while the federal nature of the constitution restricts the areas of policy for which Congress and the president are responsible, and the separation of powers ensures that not only are they responsible for different aspects of government but they must also co-operate in order to ensure “good government” (“separate institutions sharing power”), and the written and entrenched nature of the constitution has made it difficult, at least formally, to change this relationship, the growth in presidential power in the 20th century has succeeded in altering the balance of the relationship, though not to the extent of undermining Congress as a policy-making legislature with significant powers.

Formally, therefore, Congress has a number of constitutional powers which it still exercises and which have a important impact of the relationship between itself and the executive branch. In particular Articles 1 and 2 of the Constitution:

- vest “all legislative powers” in Congress (including the power to approve or reject budgets and appropriations)
- give Congress the power to override a presidential veto of its legislation by a two-thirds majority in both houses
- give the House the power to impeach and the Senate the power to try impeachments

- require many presidential appointments (“ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States”) to be made the “advice and consent of the Senate”
- require Senate approval for treaties
- require Congressional approval for any declaration of war
- gives Congress the power to "raise and support armies" and to “provide and maintain a navy”

In addition, Congress has secured further powers of oversight including those over the president as:

- chief diplomat, for example, the *Case Acts*, 1972 (executive agreements)
- commander in chief, for example *War Powers Act*, 1973, and the Boland amendments (military aid to the Contras), 1982-84
- chief executive, for example the *Budget and Impoundment Control Act*, 1974
- chief legislator, for example, the legislative veto (N.B. *Immigration and Naturalisation Service v. Chadha*, 1983)
- Neither has Congress been afraid to use its powers, for example, to block appointments (Robert Bark 1987, John Tower 1997, John Bolton 2005, Elizabeth Warren 2010) and impeach the president (Clinton 1998).

It has also developed institutions not envisaged in the constitution to enhance its role, for example, committees.

However, the relationship is not one-sided and the president clearly remains:

- head of state
- chief executive
- commander in chief
- chief diplomat
- a major legislative leader
- a major figure in his party

Further, the president can, in addition to his other powers already mentioned,:

- veto legislation
- convene extraordinary sessions of Congress to consider matters he believes to be important.

He also has the opportunity to influence Congress through his use of:

- appointments, both executive and judicial (patronage)
- “pork barrel” favours
- his willingness to campaign (or not) for party members
- his willingness to solicit large amounts of 'soft' money for his party and fellow party members by appearing at fund-raising events

What makes the president's task more difficult though is:

- the lack of party loyalty in Congress which limits his ability to force through his legislation and which, in Neustadt's famous phrase, makes the “power to persuade” absolutely vital to his success. This is particularly problematic in a President’s second term, as the November 2013 revolt of 39 Democrats over the implementation of Obamacare underlined. It can also be seen in the small number of votes (only 20) on Obama’s priority issues in the 2013-14 Democrat-controlled Senate. On the other hand, the success of Minority Leader Nancy Pelosi in maintaining high levels of Democrat unity among her caucus contributed to Speaker Boehner’s problems, as he was generally unable to peel off any moderate Democrat votes to make up for defections from the right of his own conference, and ultimately resigned in September 2015.
- the apparent preference amongst voters for divided government and the consequent possibility of gridlock: for only nine years since 1981 have the president and both houses of Congress come from the same party. Some of Obama’s key legislative priorities have fallen by the wayside as a result of partisan divisions – e.g. anti-Climate Change action, Immigration reform, tighter gun laws.

Congress and the Judiciary

Congress has a number of formal constitutional powers in relation to the judiciary.

- Article 2 requires the Senate's approval for all federal judicial appointments
- Article 4 gives Congress the power to “ordain and establish” a federal court system
- Article 1 gives Congress the power to impeach a judge and remove them from office.

Importantly, not only does Congress have these powers, it has used them:

- The convention of senatorial courtesy notwithstanding, the appointment of senior judges’ in the last thirty years has been the focus of many confirmation battles and this is likely to continue. In 1969 the Senate twice failed to ratify Nixon's Supreme Court nominees Clement Haynesworth and Harrold Carswell, while in 1987 it did the same to Robert Bork. Reagan's second nominee, Douglas Ginsburg was forced to withdraw before the confirmation hearings had finished. Bush Snr’s choice of Clarence Thomas in the early 1990s was successful, but only after a close Senate vote (52-48). And George W Bush had to withdraw Harriet Meiers from consideration in 2005.
- The *Judiciary Act* of 1789 and subsequent legislation, notably in 1881 (end of “circuit riding”), 1925 (Supreme Court given discretion to issue writs of certiorari) and 1988 (ended most mandatory review requirements) illustrate Congress's complete authority over federal court organisation, jurisdiction and procedure.
- The House has impeached 19 office holders since 1789, mostly judges; the Senate has convicted 8 - all of them judges, most recently Thomas Porteous, a federal District Judge in Louisiana in 2010.

Like all judiciaries, the US courts have the power of statutory interpretation and can decide the meaning of Acts of Congress, thereby influencing the extent of their application and impact:

- Classic example: *Regents o/University of California v. Bakke*, 1978 (affirmative action admissions policy violated the 1964 *Civil Rights Act*).

However, all courts in the USA also have the power of judicial review (established by *Marbury vs Madison*, 1803), that is the power to declare acts of the legislative branch (and the executive branch for that matter) “unconstitutional” and thus null and void.

- Over 1,000 state laws and more than 150 federal laws have suffered this fate (most of them since 1868), and although this is small proportion of the total number of laws passed, the courts have played a major role in the development of public policy as a result.
 - Classic example: *Brown vs Board of Education, Topeka, Kansas*, "1954 (racially segregated schools violated the 14th Amendment)

In different periods of American history certain issues have dominated the court's docket.

- 1789-1865 - the supremacy of federal law, slavery
- 1865-1937 - the scope of government and then regulation of the economy
- 1937 -> political and civil liberties

Both of these powers have enabled the Supreme Court to have an enormous influence of Congress and its activities, so much so that it has been referred to as 'the third house of the legislature'.

European Parliament

Keeping an eye on the Council's work

The Council Presidency regularly meets the chairmen of Parliament's political groups and attends part sessions to explain its programme, report on the results and debate them with MEPs. The Presidency also often attends meetings of the parliamentary committees. Parliament's President states its key policy recommendations at the start of each EU summit (or 'European Council'), where national leaders agree on overall policy guidelines.

At a plenary session or in writing, MEPs may put questions to the Council Presidency on any topic, including the need for urgent action to remedy breaches of human rights, democracy and the rule of law.

Relations with the Commission: scrutiny of nominees

In 1999, Romano Prodi was approved by the overwhelming majority of MEPs from the three largest groups, as well as many Greens and UEN members, but excluding the British Conservatives. In 2004, the support for Barroso was less overwhelming than for Prodi, and this was for ideological reasons and perhaps due to his appointment by a *de facto* qualified majority in Council, since some governments otherwise opposed to his appointment did not vote against it going forward.

During the early Autumn of 2004, the relevant parliamentary committees held hearings on the appointment of the new Commissioners-designate. Each government makes a nomination that is accepted by the President of the Commission, who assigns the portfolios. The entire Commission is then approved by a qualified majority in the Council and a simple majority in Parliament.

The Italian nominee, Rocco Buttiglione, who had been assigned a Commission Vice-Presidency and the Justice and Home Affairs portfolio expressed views on the rights of homosexuals and the role of women that were unacceptable to the Citizens' Rights and Freedoms Committee. Meanwhile Laszlo Kovacs, the Hungarian nominee for the Energy portfolio, was the subject of a negative opinion by the Industry Committee on the grounds of failing to master his brief. A bare majority of MEPs from the secular political groups of the left and centre made it clear that Buttiglione was an unacceptable candidate. Having calculated almost certain defeat, Barroso withdrew his team from the vote of approval by the Parliament in October.

In most cases the Parliament works by consensus, a characteristic preserved through avoiding a vote. However, the Buttiglione case illustrates the occasion when a party-based division could occur in the European Parliament, when exercising its powers of appointment over the Commission. While the Liberals normally vote with the EPP on economic questions, they vote with the left on civil liberties and environmental regulation. In this case, the weight of the ALDE was pivotal. The PES and ALDE groups had reluctantly accepted the appointment of Barroso in return for guarantees concerning social and environmental policy. The

statements by Buttiglione and his refusal to apologise broke the unwritten accord on which the consensus of the centre and left depended. Buttiglione was replaced by the more conciliatory Franco Frattini, while Kovacs was reshuffled to a different portfolio. This was sufficient to placate the three large groups. Parliament approved the appointment of the amended Commission in November, three weeks later.

Foreign Affairs

Under the Lisbon Treaty (2009) the EU's External Action Service was set up under the High Representative for Foreign Affairs and Security Policy (currently Catherine Ashton). The EEAS merges former responsibilities of the Council of Ministers and the Commission, implementing foreign and security policies agreed within the Council of Ministers. Although foreign affairs are not an area in which the European Parliament has many formal powers, the EP has successfully extended its scrutiny role to give it some oversight of the EEAS. In 2010 it was agreed that the EEAS' independent budget would be subject to approval by MEPs, as would provision for overseas missions; the EP's Foreign Affairs Committee would also vet major appointments and have access to some classified documents.

See - <http://euobserver.com/9/30342>

ISSUES CONCERNING REPRESENTATION, ACCOUNTABILITY AND SOVEREIGNTY

Representation

Many of the issues surrounding the idea and practice of representation have already been covered, but the following issues should be considered:

- To what extent should the electoral system accurately reflect the political wishes of the voters? Or doesn't it matter?
- To what extent should the composition of the legislature be an accurate reflection of the electorate? Or doesn't it matter?
- Should members of the legislature be delegates? Or should they be representatives?
- How responsive should the legislature be to the wishes of the electorate between elections?
- What mechanisms, if any, should exist for the people to express their opinions between elections? Referendums, initiatives, propositions, recalls?
- Who should the representatives represent? Individuals? A local area? A party? An interest?
- To whom do representatives owe their loyalty? Their constituency? Their party? Special interests? Their conscience? The national interest? Their God?
- Are representatives entitled to defy their party? In what circumstances?

Accountability

Accountability is a basic feature of democratic government.

- Heywood (1997) suggests that accountability is “the duty to explain one's conduct and (be) open to criticism by another” and as such it is an aspect of responsible government.
- The accountability of the legislature, as opposed to the accountability of the executive to the legislature, is usually achieved through the provision for frequent elections at which representatives have to explain their actions and answer for them.
- In fifteen US states there is also provision for 'recall' whereby voters can remove an elected official from office, though not an elected representative per se.

UK

- The most obvious issue in holding the legislature to account is that there is no way of holding the House of Lords to account at all because it is unelected. Members are appointed for life. *(Although the Coalition's 2011 proposals for Lords' reform would have involved largely elected members with 15-year terms)*
- Another issue is that members of the Commons have not served fixed terms and so the opportunity to hold them to account has been dependent on the willingness of the Prime Minister to call an election. *This has changed with the adoption of 5-year Fixed Term Parliaments in 2010, although how this will operate in practice remains unclear.* There is still no way the electorate can force an election.

- A third issue is that there has been no way of holding a local representative to account separately from the party to which they belong. An elector might feel that their local representative has done a good job, but may be less convinced about the performance of their party. What are they to do? Vote for the individual or against the party?

Change – the Recall Act of 2015 – one of the very last Acts of the 2010-15 Parliament allows a recall petition to be triggered if an MP is sentenced to prison or is suspended from the Commons for at least 21 sitting days. In either case, a petition would open for signing. If within 8 weeks 10% of eligible electors had signed the petition, the seat would be declared vacant and a by-election called, in which the MP who was recalled could stand. The Act has been criticised as very weak, with no way voters can trigger such a petition themselves.

- Fourthly, and similarly, because Britain has a parliamentary form of government, there is no way of holding the legislature to account separately from the executive. If parliament has done a good job but the government hasn't, how can an elector make this view known?
- Finally, while the accountability of the executive is secured through the conventions of collective and individual ministerial responsibility and through the use of questions, debates, committees in parliament, the legislature itself cannot be held to account between elections in the same way, though individual members are criticised and have sometimes sought to explain their behaviour, for example, Geoffrey Robinson, November 2001.

USA

As in the UK, individual members of Congress and parties can be held to account at general elections.

Unlike the UK system, however, “the duty to explain one’s conduct and (be) open to criticism by another” is less difficult in some ways because:

- Both houses are elected (the House every two years) and for fixed periods of time.
- The problem of distinguishing the performance of the local representative from the performance of their party is less of an issue because parties are relatively less important
- The problem of distinguishing the performance of the individual and their party from that of the government is less of an issue because the electors know that they are not electing the government.

This is not to say, of course, that sometimes the electorate either do not blame a party and its candidates for governmental problems (1994-95 budget dispute, 2008 Iraq war and response to the financial crisis, 2010 ongoing recession) or elect individuals because they support a particular party (1994 mid-terms, 2008 election, 2010 mid-terms – all “wave elections”).

However there are some issues of accountability which diminish the significance of elections as a means of holding Congress to account:

- The long terms served by senators
- The existence of safe seats combined with the lack of term limits
- The importance of incumbency as a factor in determining the outcome of elections
- The importance of money as a factor in determining the outcome of elections

- The **lack of a realistic choice** in a two-party system which makes it difficult to vote for another candidate or party
- The **lack of party loyalty in Congress** which makes it hard to blame an individual candidate for a party's performance in the legislature - or an opportunity to blame the party. *Is this changing with the rising party unity scores of recent years?*
- The **willingness of electors to blame Congress but not their local representative** who they often regard as fighting the federal government on their behalf.
- The lack of any means of holding Congress to account between elections.

Sovereignty

Heywood (1997) suggests that sovereignty is the “principle of absolutely and unlimited power”.

Distinctions are often made between:

- internal sovereignty - the location of supreme authority within a state
- external sovereignty - the capacity to act independently

but also between

- legal sovereignty - supreme legal authority within a state
- political sovereignty - the ability to command obedience

UK

The UK is a sovereign state within which parliament is legally sovereign.

It is also argued that, because they choose members of parliament, the people are politically sovereign.

However it has been argued that:

1. Britain's external sovereignty has been compromised by:

- membership of inter-governmental (as opposed to supra-governmental) bodies (for example NATO, the UN, the European Convention of Human Rights) and the obligations these impose, though the UK retains the right to withdraw from these organisations and cannot be compelled to obey their decisions.
- membership of the European Union with its mixture of supra-national and international institutions and obligations (see below)
- the UK's declining economic power
- globalisation

2. The sovereignty of parliament has been undermined by:

- the growth of the power of the executive branch to control the legislature, so that, as Lord Hailsham argued, “The sovereignty of parliament has become the sovereignty of the Commons, and the sovereignty of the Commons the sovereignty of the government, which, in addition to its influence in parliament, controls the party whips, the party machine and the civil service.”

- the devolution of some legislative and executive powers (in varying degrees) to Scotland, Northern Ireland and Wales
- the increased use of referendums
- the incorporation of the European Convention on Human Rights into British law
- the increased willingness of unelected groups to resort to extra parliamentary pressure to force parliament to act for example to repeal the 1972 *Industrial Relations Act*, to replace the Community Charge (poll tax) with the Council Tax and to cut the duty on petrol in 2000.

3. Both Britain's external and internal sovereignty have been eroded by membership of the European Union which means that the UK:

- has lost the power to make policy unilaterally in some areas (and that the number of these areas is increasing, with more powers to EU institutions as a result of the European Single Market, Maastricht Treaty, Nice Treaty and Lisbon Treaty)
- does not have the right to veto many EU decisions because they taken on the basis qualified majority voting (QMV)
- has to accept EU regulations
- has to accept that European law takes precedence over British law and that in any dispute over Community law, the European Court is the final authority and not a national court. A recent example is the European Court of Justice's 2010 ruling that insurance firms cannot discriminate on grounds of gender in setting premiums.

In response, others have variously argued:

- That sovereignty has not been lost because, for example, Britain retains the right to repeal the European Communities Act, 1972, which took Britain into the EC, or that it has been pooled.
- That the UK was never sovereign in the first place because the reality of international relations is that no state can act independently of all the others. It must always bear in mind the consequences of its actions. Sovereignty, therefore, is not an absolute: there are degrees of sovereignty.
- That countries outside the EU which wish to trade with it still have to abide by many of its regulations, for example Norway, Iceland and Switzerland ("government by fax"). The UK as an EU member state is at least able to participate in making these regulations.
- That even if some sovereignty has been lost, it has brought with it benefits, both political, in the form of greater influence, and economic.
- That the idea that devolution, the increased used of referendums and the incorporation of the European Convention on Human Rights into British law have reduced the sovereignty of parliament is not sustainable, at least in legal terms, because all referendums are advisory, the powers devolved to the new assemblies can, and have (Northern Ireland) been taken back by parliament without the consent of those bodies and the *Human Rights Act* has its limitations and may be replaced by the 2015 Conservative Government. However, whether this is politically possible or desirable is another matter.

USA

National sovereignty seems to be less of an issue in the USA. As the world's only remaining super power, America is perhaps the last country to worry about is independence, though it is subject to the same forces

of globalisation as other states and to the same limitations when it signs international treaties. (N.B. George W Bush's unilateral rejection of the Kyoto treaty, the International Criminal Court and arms limitation agreements).

Internal sovereignty is more of an issue because the federal system of government divides sovereignty between the national and state governments. In the USA the issue of internal sovereignty is, therefore, less about whether a particular body is sovereign, and more about what the balance of sovereignty should be between the national and state governments.

Linked to questions about the nature of the federal relationship, is the parallel issue of “states’ rights”, the political doctrine which advocates the strict limitation of the powers of the federal government to those explicitly assigned to it in the Constitution, reserving to the states all other powers not explicitly forbidden them.

“States’ rights” has been an issue since the first founding and continues to be so. From the doctrine of nullification, through the civil war and the *New Deal* to Wallace's presidential campaign 1968, the philosophy behind Nixon and Reagan's *New Federalism*, Bob Dole's 1996 campaign, Supreme Court decisions in the 1990s, the Tea Party in 2010, and the GOP’s Presidential candidates’ debates in 2011-12, the position of the states in relation to the national government continues to be a “hot button” issue.

European Parliament

Comment on representation and accountability issues from two Economist articles:

Charlemagne - Playing the parliamentary game

Jul 16th 2009 - From The Economist print edition

Its opening session reveals many flaws in the new European Parliament

PERHAPS it was the threat of rain. Perhaps it was the location: a car park in front of the European Parliament in Strasbourg. At all events, there was something downbeat about the ceremony held on July 13th to start a new five-year parliamentary session. Some reports called it “militaristic”, but that is too flattering. Before a sparse crowd, unarmed soldiers from the five-country Eurocorps hoisted the European

flag. A children’s choir sang the “Ode to Joy”, the European anthem. The children had to compete with MEPs from the United Kingdom Independence Party, who started singing “God Save the Queen”. This was meant to display British defiance but ended up sounding rude, which is not the same thing. It was all a bit depressing.

As a work in progress, the parliament invents its own flummery. This ceremony was supposed to mark 30 years of direct elections. But the pomp skirted round such awkwardnesses as the travelling circus between Brussels and Strasbourg, and the fact that average turnout has dropped at every election since 1979.



The world view of MEPs revolves around their direct election, which marks them out from rival European Union institutions. Because the parliament is democratic, goes the theory, when it accrues more power the EU itself becomes more democratic. This

line has served MEPs well. Their powers have grown with every treaty, and will increase again if the Lisbon treaty is ratified.

Yet the parliament's claims to legitimacy are being questioned as rarely before, and not just because of low turnout. On June 30th, in its ruling on the legality of the Lisbon treaty, Germany's constitutional court declared that the parliament enjoyed only a second-class form of democratic legitimacy when compared with national parliaments. A new law must now be passed to give the German parliament greater EU oversight. The judges found two structural flaws in the Strasbourg assembly. First, voters are not equal: under Lisbon, a Maltese MEP will represent only 67,000 voters, a Swedish MEP 455,000, but a German MEP 857,000.

Second, the court frets that the parliament "is not a responsive democracy", says Frank Schorkopf, a German constitutional law professor and former aide to the judge who wrote the ruling. Because the parties clump together in big coalitions that haggle with national governments and the European Commission, ordinary folk do not know how to vote if they want to influence EU laws. The ruling is a "heavy blow" to the European Parliament, concludes Mr Schorkopf.

Yet only a fortnight later, MEPs appeared set on showing that the parliament is a world unto itself. On its opening day, leaders of the three biggest groups—from the centre-right, centre-left and liberal centre—announced a "technical agreement" to share out the job of the parliament's president. In theory, a secret ballot still had to be held, but the leaders were able to announce the winner in advance: a Polish former prime minister from the centre-right, Jerzy Buzek. After two-and-a-half years, Mr Buzek will be replaced by an MEP from the centre-left.

The group leaders also leaked word of another compromise, to vote on the re-election of José Manuel Barroso as president of the European Commission at their next plenary in September. How that might work is less clear. Mr Barroso is from the centre-right, and his camp wanted a vote in July with a broad base of support. The left and centre can thwart that, but not install a rival. So they are indulging in the political equivalent of bossnapping, taking Mr Barroso's second term hostage to demand impossible concessions. One MEP predicts an "institutional impasse" if Mr Barroso is not approved in September. He is the only candidate: if he is rejected, nobody knows what will happen next.

On the face of it, this horse-trading is odd (though stitch-ups of the parliamentary presidency are quite normal). After all, liberal and centre-right politicians spent the recent European elections calling each other dangerous and wrongheaded. Centre-left parties did so badly that it is easy for centre-right MEPs and liberals to muster a simple majority on their own most of the time. Yet the tendency is for all three to vote together.

The circling vultures

The key to the mystery is power. The group leaders said that their technical agreement was intended to "guarantee the stability" of the parliament as the "deepest expression of European democracy and integration". That gobbledygook is code for something different: a wish to maximise the parliament's clout in future fights with the commission and the 27 national governments.

By banding together, the three biggest groups can wield an absolute majority of votes in the 736-strong parliament. An absolute majority is needed if the parliament wants to rewrite laws against the combined wishes of the commission and national governments. And nothing excites most MEPs more than defeating the other institutions.

In the minds of many, such a tripartite pact is also code for marginalising the British Conservatives, now that the Tories have formed a new antifederalist group, the "European Conservatives and Reformists", with a band of mostly east European allies. The group had a bumpy start. On July 14th a veteran pro-European Conservative was expelled from the group after he snaffled a parliamentary vice-presidency that had been promised to a Polish colleague, Michal Kaminski. Mr Kaminski was promptly given the new group's leadership as a consolation prize.

The Conservatives will still be sought after in votes. But most MEPs, especially on the centre-right, want the new group to fall apart and are hoping to pick them off one by one. “The vultures are out there, sitting on the wall,” says Geoffrey van Orden, a Tory MEP. And the voters? They will be consulted again in five years’ time. Their opinions may, or may not, be taken into account.

Charlemagne : The endless election round

Jun 11th 2009 - From The Economist print edition

Why do members of the European Parliament never learn from experience?

AT ONE point on his travels Captain Lemuel Gulliver visits an academy filled with mad scientists. Their experiments are all odd. But what makes them mad is that they are repeated, again and again, whenever they fail. One scientist has spent eight years attempting to extract sunbeams from cucumbers. Vowing to succeed in another eight years, he asks Gulliver for a donation, it being “a very dear Season for Cucumbers”.

Jonathan Swift, the author of this satire, would have felt at home in Brussels on June 7th, as the results of the European elections in 27 countries trickled in. The parliament has spent much time and money this year trying to reverse a 30-year trend of falling turnout at Euro-elections. Jolly posters were stuck up across the European Union. The parliament started its own Twitter feed, and put short films up on YouTube depicting the larky side of voting for Europe. One showed bank robbers stopping to cast ballots, mid-heist, under the slogan: “There’s always time to vote”.

It made no difference: average turnout was 43%, slightly down on 2004. Moments after the polls closed, members of the European Parliament (MEPs) fanned out across Brussels to explain to reporters why this was not their fault. The parliament does a terrifically important job, went one argument: alas, too few voters know this. Many MEPs accused national governments of taking credit for EU successes, while blaming Brussels for anything unpopular. The big problem is the media, others said: national television stations and newspapers do not spend enough time reporting on MEPs’ work. What is needed is more pan-European news coverage (maybe subsidised by the EU).

In fairness, some excuses offered by MEPs for low turnout are persuasive, though they are not so good at explaining why it keeps falling. National governments do use Brussels as a scapegoat. Press coverage of the parliament is skimpy, partly because much EU work is important but dull. Finally, MEPs point to other elections that do not lead to a change of government, from local elections in Europe to congressional mid-terms in America, and note that their turnouts are equally dismal.

All of these excuses for failure are reasonable. But like the scientists of Swift’s Grand Academy of Lagado, MEPs seem unable to take the next logical step and ask why they are left to explain failure every time they hold an election. Over the years the European Parliament has proved skilled at acquiring new legislative powers, arguing that it is the body that connects voters democratically with the EU. But that is not a proven fact; it is an experimental proposition. And when it is tested every five years, the evidence to support it seems decidedly weak.

Yet the response from MEPs is unvarying: more of the same. Graham Watson, leader of the parliament’s liberal group, says that the EU has succeeded in creating a “European democracy”. He concedes that it has failed to create a “European demos”. His answer is to give Euronews, an EU-funded television outfit, the resources and status of a public-service broadcaster in each country. He wants EU commissioners chosen from among MEPs. His group also plans to propose that a fifth of all MEPs be elected by Europe-wide electoral districts, to “get away from this awful tendency to have 27 different national campaigns”.

When to stop trying

But here is another thought: what if pan-European politics is an experimental cul-de-sac? Take Europe’s socialist parties, which made much noise about running on a single, pan-European manifesto. It did not do them much good, as the centre-left fared badly. And one obvious problem was incoherence, since European socialists are riven by divisions over globalisation. In places like France the talk is of Europe-wide minimum wages and rules to stop people moving factories. In eastern Europe socialists and conservatives alike defend the right to compete on wages.

Look at politicians who did well in the elections, and many ran campaigns tailored exclusively to national concerns, hinting that outsiders are to blame for making life miserable. Angela Merkel in Germany spent

the campaign saving German car factories belonging to Opel and arguing for tough regulation of hedge funds. No matter that hedge funds did not cause the financial meltdown. They are code for Anglo-Saxon capitalism, and thus a useful way of suggesting to German voters that their government is not to blame for the economic crisis.

Similarly, Nicolas Sarkozy of France painted a vision of a “Europe that protects”—the EU as a gigantic version of France, with an industrial policy and measures to penalise unfair foreign competition. Mr Sarkozy issued joint statements with Ms Merkel about the need to define the borders of Europe (ie, keep Turkey out) and the need for a common vision of EU economic policy (though, in reality, the French and German leaders strongly disagree about what to do over soaring budget deficits).

In Britain voters were also invited to blame their troubles on an outside menace, only in this case it was the EU itself. First place in the Euro-elections went to a Conservative Party that vows to claw back powers from Brussels; second to the United Kingdom Independence Party that simply wants to leave.

None of this is to deny that Europe could do with more democracy. The elections have shown that good things like the single market and open borders are under threat from populists and nationalists. Somebody must make the case to voters for preserving Europe’s openness. Perhaps the European Parliament is not up to the job—just as cucumbers are not a good source of sunbeams. Maybe something different is needed, such as a bigger role for national parliaments. Investing more and more power in MEPs was always an experiment. When experiments fail repeatedly, it is time to try something else.

BIBLIOGRAPHY

- Comparative Government and Politics*, Rod Hague, Martin Harrop; Palgrave Macmillan 2010
- Philip Norton, *Parliament in British Politics*; Palgrave 2013
- Vernon Bogdanor, *The New British Constitution*; Hart 2009
- British Politics*, Robert Leach Bill Coxall, Lynton Robins; Palgrave Macmillan 2011
- Parliament and Congress: Representation and Scrutiny in the Twenty-First Century*, William McKay and Charles W. Johnson; Oxford University Press 2012)
- It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism*; Thomas Mann and Norman Ornstein.; Basic Books 2012
- The European Union: A Beginner's Guide (Beginners Guides)*, Alasdair Blair; Oneworld 2012
- Political Systems of the World*, J. Derbyshire & I. Derbyshire; Palgrave MacMillan 1996
- Study Guide for Government in America: People, Politics, and Policy*, George C. Edwards III, Martin P. Wattenberg, Robert L. Lineberry; Longman 2010
- The American Political Process*, Alan Grant; Routledge 2003

OTHER SOURCES

- Politics*, Andrew Heywood; Palgrave Macmillan, 2011
- Key Concepts in Politics*, Andrew Heywood; Palgrave Macmillan 2007
- Politics UK*, Bill Jones and Philip Norton; Longman 2010
- The American Legislative Process*, W. Keefe & M. Ogul; Longman 2000
- Politics USA*, Robert J. McKeever and Philip John Davies; Longman 2005
- American Politics and Society*, David McKay; Wiley-Blackwell 2009
- Government and Politics in Western Europe: Britain, France, Italy, Germany (Comparative European Politics)*, Yves Mény and Andrew Knapp; OUP 1998
- British Government and Politics*, Duncan Watts; Edinburgh University Press 2012
- American Government*, John J. DiIulio Jr., James Q. Wilson, Meena Bose; Wadsworth 2012

WEBSITES

Students who want to find details of the constitutional arrangements of other countries can find brief descriptions of every legislature in the world in the CIA World Factbook.

<http://www.odci.gov/cia/publications/factbook/indexgeo.html#top>

More detailed descriptions can be found via the Inter-Parliamentary Union site, though not all countries have provided the information the IPU has suggested

www.ipu.org

For more details of Parliament and Congress start with:

www.parliament.uk

www.house.gov/

www.senate.gov/

Recommended academic sites with many links to other web pages include:

<http://www.ucl.ac.uk/constitution-unit/>

www.psr.keele.ac.uk/

www.leeds.ac.uk/law/teaching/law6cw1hc-1.htm