# ENCYCLOPEDIA OF GOVERNMENT AND POLITICS

## Volume I

*Edited by*

Mary Hawkesworth

and

Maurice Kogan

been the result of a variety of *ad hoc* experiments which have been more or less successful; not surprisingly, too, the conflict between the three goals or functions of government has been solved only to a rather limited extent.

## THE EVOLUTION OF GOVERNMENTAL ARRANGEMENTS

Contemporary governmental arrangements reflect the diversity and increasing complexity of the tasks that are being undertaken by executives. The variations in the structure of these executives are not a new phenomenon: the oligarchical arrangements of the Italian republican cities of the Renaissance were at great variance from those of the absolute monarchies which began to emerge during the sixteenth century, and even more from those of the theocratic and despotic governments which existed in the Muslim world at the same time.

Nineteenth-century developments have endeavoured to 'domesticate' governmental arrangements and give them a less haphazard and more rational character. Two constitutional systems have dominated the European and North American scene for a century. On the one hand, the *cabinet system,* which originated in England and in Sweden, is based on the notion that the head of the government, the prime minister, has to operate in the context of a collegial system, in which a group of ministers fully participates in the decision-making process, while also being in charge of the implementation of the decisions in a particular sector. Cabinet government extended gradually to western European countries. In central and eastern Europe, meanwhile, the remnants of absolutism were gradually undermined, to the extent that the cabinet system seemed likely at one point to replace old absolutist and authoritarian governmental structures everywhere.

In contrast to the cabinet system, the *constitutional presidential system* was first established in the United States and then extended gradually to the whole of Latin America. In this model, the executive is hierarchical and not collective: ministers (often named secretaries in this system) are subordinates of the president and responsible only to him or her. Although this formula is closer to that of the monarchical government than that of the cabinet system, it does imply some demotion for both the head of state (who is elected for a period and often not permitted to be re-elected indefinitely) and for the ministers (as these typically have to be 'confirmed' by the legislature). The formula has proved rather unsuccessful in Latin America, however, as many presidents have been uncomfortable with the limitations to their position, leading to *coups* and the installation of authoritarian and even 'absolute' presidential governments.

At least one of the two constitutional formulas had already encountered difficulties prior to 1914. The problems multiplied after the First World War,

with the emergence of the communist system in Russia; authoritarian governments of the fascist variety in Italy and later throughout much of southern, central and eastern Europe; and, after the Second World War, a large number of absolute presidential systems, civilian and military, in many parts of the Third World. These developments were characterized by the emergence or re-emergence of the role of the strong leader, which constitutional systems had sought to diminish, and the consequential decline of the idea, fostered by cabinet government, of collective or at least collegial government. Yet this period was also characterized by the 'invention' of a new form of executive structure, which was consequential on the development of parties but which had not been brought to its ultimate limits in either of the two constitutional systems: this was the intrusion of parties, and in authoritarian systems usually of the single party, into the machinery of government. This type of arrangement has since been used for decades in communist states and, subsequently, in parts of the Third World. Although many communist states have faced major difficulties since the late 1980s, the single party system remains important in accounting for the structure of government, if only as a transitional system. It also led to the development of dual forms of leadership and of government which have played an important part in the characteristics of executives in the contemporary world.

## TYPES OF GOVERNMENTAL STRUCTURES IN THE CONTEMPORARY WORLD

Governments can be classified according to two dimensions (Blondel 1982): on the one hand, they can be more or less collective or more or less hierarchical; on the other, they can be concentrated in one body or be divided into two or more. *Cabinet government* is nominally collective and egalitarian: as decisions have to be taken by the whole body, neither the prime minister nor any group of ministers is formally entitled to involve the whole government. The counterpart of this provision is 'collective responsibility', which stipulates that all the ministers are bound by cabinet decisions; in its most extreme form, the rule suggests that ministers are also bound to speak in favour of all the decisions made by the cabinet.

These principles are markedly eroded in practice in nearly all the countries which operate on the basis of cabinet government, i.e. in Western Europe, many Commonwealth countries (Canada, Australia, New Zealand, India, Malaysia, Singapore, most ex-British Caribbean and Pacific islands), Japan and Israel (Blondel and Müller-Rommel 1988:13–15). In the first instance, following British practice, collective decision making in many of these countries applies only to members of the cabinet *stricto sensu:* the government can be much larger (especially in Britain, where it comprises, in its widest definition, a hundred members or

more), because of the existence of substantial numbers of junior ministers. The latter are bound by the principle of collective responsibility but do not share in the decision-making process. Second, the number and complexity of decisions are such that the cabinet cannot physically, during what are normally short meetings of two to three hours a week, discuss all the issues which have to be decided on. As a result, while the cabinet formally ratifies all the decisions, many of these are *de facto* delegated to individual ministers (when they are within the limits of their department), to groups of ministers sitting in committee (the number of which has increased markedly in many cabinet governments), or to the prime minister and some of the ministers (McKie and Hogwood 1985:16–35). Cabinet government is at most collegial government and in some cases is even hierarchical.

Cabinet governments do vary, however. Some are truly close to being collective, because of a coalition, for instance, or because of political traditions. The prime minister has to rely on a high degree of interchange with colleagues before decisions are taken. In reality this is not a cabinet government in the strict sense, but a collective executive: the Swiss federal council provides the best example, although there are also cases of collective government in the Low Countries and in Scandinavia. 'Team' cabinets are more common among single-party governments, as found in Commonwealth countries, including Britain. In 'team' cabinets, the ministers have often worked together for a number of years in parliament and have broadly common aims and even a common approach. Much is delegated to individual ministers, to committees, or to the prime minister, but there is a spirit of common understanding. Finally, there are 'prime ministerial' governments, in which ministers are noticeably dependent on the head of the government, perhaps, for example, because he or she has considerable popularity arising from substantial and repeated election victories or from the fact that the head of the government has created the party, the regime, or even the country. Such cases have been frequent in the cabinet governments of the Third World (in the Caribbean or in India, for example); they have also occasionally occurred in Western Europe (in West Germany, France, or even in Britain, for example). The relationship between ministers and prime minister in such cases approaches a hierarchy.

The large majority of the other governmental arrangements are *hierarchical,* in that ministers—and any other members of the government—are wholly dependent on the head of the government and head of state: they are appointed and dismissed at will; their decisions are taken by delegation from the head of the government; they play no formal part in policies that do not affect their department. These arrangements were traditionally those of monarchical systems; the constitutional presidential system did not alter this model. The many authoritarian presidential systems which emerged in the Third World after the Second World War also adopted a similar formula: while about fifty

governments are of the cabinet type, as many as eighty countries–mainly in the Americas, Africa and in the Middle East–have authoritarian presidential executives.

There are variations in the extent to which these governments are hierarchical, however. In traditional monarchical regimes, members of some families may be very influential, or, in civilian or military presidential regimes, some individuals may have helped the successful head of government to come to power. Indeed, the president of the USA is freer in this respect than most other constitutional presidents, who are more closely dependent on party support. Moreover, the complexity of issues, especially economic and social, obliges many heads of government not merely to appoint some well-known managers or civil servants, but to pay attention to their views to such an extent that these may exercise influence well beyond their own department. This is why it is difficult to regard the US executive as truly hierarchical: it is more accurately described as atomized. Departments are vast and therefore naturally form self-contained empires. Moreover, any vertical relationships which might exist between departmental heads and the president are undermined by the horizontal relationships existing between each department and Congress, and especially with the committees of Congress relevant to the departments, as these want to ensure that they obtain the appropriations which they feel they need and the laws which they promote. Finally, the links which develop between departments and their clientele (the various interest groups that gravitate around each department) tend to reduce further the strength of the hierarchical ties between departments and president. Admittedly, presidents since Roosevelt in the 1930s have appointed increasingly large personal staffs in order to ensure that presidential policies are carried through (Heclo 1977:166–8). This has meant, however, that it has become difficult to discover what constitutes the 'real' government of the United States. By becoming gradually a government at two levels, the American government thus resembles in part the dual arrangements which prevail in some countries, and in particular in communist states.

The governments that we have considered so far are concentrated in one body. Indeed, traditional analysis always assumed that governments formed one body. Yet this view is questionable. It is questionable in the context of the modern United States; it is even more questionable in the case of communist states, in which the government has traditionally been closely supervised by the party and in particular by the Politburo, whose First Secretary has been generally regarded as the 'true' leader of the country. Indeed, in the Soviet Union, four distinct bodies have traditionally constituted the government, one of which, the Politburo, has been primarily in charge of policy elaboration and is helped by the Secretariat, while the Presidium of the Council of Ministers has been in charge of

co-ordination and the Council of Ministers has dealt with implementation. The links between these bodies are achieved through some of the more important ministers and the prime minister (normally a different person from the First Secretary of the party), who belongs at the same time to the Politburo, to the Presidium and, of course, to the Council of Ministers.

Multi-level governments have thus existed for decades in communist states; comparable systems have developed in some non-communist single-party systems and in a number of military regimes. Supreme Military Councils or Committees of National Salvation have been created to ensure that the regular government (often composed of civil servants) carried out the policies of the military rulers. This formula, which originated in Burma in 1962, was adopted by many African states (for example, Nigeria); it also existed for a period in Portugal after the end of the dictatorship in 1974. These arrangements have had a varying degree of longevity and apparent success; they typically have been less systematically organized than in communist states (Blondel 1982:78–93, 158–73).

## GOVERNMENTAL LEADERSHIP

Executives are fashioned by the role of their leaders. Political leadership is highly visible, much talked about, and complex to assess. The visibility of leadership has been markedly enhanced by the development of the mass media, in particular television, but it has always been prominent: great leaders of the Antiquity, of the Renaissance, and of the modern period were all well known to their contemporaries, despite the fact that they could only be seen and heard by relatively small numbers. Their qualities and defects were probably the subject of many conversations; scholarly work was at any rate devoted to them. Indeed, the studies of historians were primarily concerned with the description of their actions, while the concept of leadership began to be analysed.

Leaders can be judged to be good or bad, heroes or villains; but leaders are also seen as more or less successful, more or less effective. The distinction has been made, in this respect, between *leaders,* in the strong sense of the word, and 'mere' 'power-holders' or, perhaps more accurately, 'office-holders' (Burns 1978:5). It seems intuitively correct to claim that many rulers–probably the large majority–are not very influential, as they appear to do little to modify the course of events, while only a few are great 'stars' who, at least ostensibly, affect profoundly the destiny of humanity. A further distinction has been made in terms of 'great' leaders who shape their society entirely, who 'transform' its character, and of those who are primarily concerned with the functioning of the society and who make compromises and 'transactions' while accepting the framework within which economic, social and political life takes place (Burns

1978). Such a distinction should not be viewed as a dichotomy, but as two poles of a continuous dimension dealing with the 'extent of change' which leaders wish to bring about (Blondel 1987:10–26). It is in a somewhat similar context that Max Weber introduced the notion of 'charisma', a concept which has been devalued by comparison with the rather strict conception of Weber, but which has played a major part in the contemporary world. This is particularly because, in new countries, alongside the two other Weberian categories of traditional and bureaucratic-legalistic rule, personal rule has been widespread in order to help maintain regimes, and indeed states lacking basic support (Weber 1968:214).

The scope of activities of rulers is strongly regulated in the context of two types of rulers only, the prime ministers of parliamentary or cabinet systems and the constitutional presidents. The constitutional monarchs who comprise a third category now usually have a purely symbolic role. The position of prime minister is, ostensibly at least, less prestigious than that of president: it exists normally in conjunction with that of a symbolic monarch (as in Britain, most Scandinavian countries, or the Low Countries) or of a symbolic president (as in West Germany, Italy or India). Although these heads of state have few real powers, they exercise ceremonial functions which give them some authority that is denied to prime ministers; this is indeed the reason why a number of Third World prime ministers, in particular in Black Africa, brought about constitutional changes a few years after independence to allow them to become presidents (as in Kenya, Zambia or the Ivory Coast, for example).

Prime ministers have ostensibly limited power because they exercise it in the context of the cabinet which must concur in all decisions but, as we have already noted (p. 271), there are substantial differences in their influence. The power of presidents is also very varied, although, because they run hierarchical governments, presidents by and large exercise major influence. This is particularly the case in authoritarian presidential systems, which constitute the large majority of cases, since the constitutional presidency, apart from in the United States, has only had limited success. Authoritarian presidents—and in particular military rulers, of whom there are about two dozen at any one time in the contemporary world—either operate without any constitution or devise constitutions designed to suit their ambitions: they are sometimes allowed to be re-elected indefinitely (and sometimes are even appointed for life, as in Malawi and earlier in Tunisia). Authoritarian presidents are allowed to dissolve the legislature, and the government depends entirely on them. The spread of these absolute presidencies has coincided with the attainment of independence by many countries, especially in Africa, while in Asia leaders often remained constrained, to an extent at least, by the limitations imposed on prime ministers. Many authoritarian presidents were the first leaders of their country: they were able to build political institutions and to shape these in the way they wished.

Some were close to being 'charismatic' leaders in the full sense that Weber delineated (Weber 1968:214–15). In the main they relied on strong popular support, as well as on authoritarian practices; they were the 'fathers' of their countries and often remained in office for two decades or more, thereby forming a disproportionately large number of the longest-serving leaders in the contemporary world. The successors of these first leaders generally found it more difficult to rule in such a 'paternal' and absolute manner: in many cases (in Tunisia and Senegal, for instance) the result has been a more 'domesticated' presidency, albeit still rather authoritarian.

An interesting form of executive leadership is constituted by dual leadership (Blondel 1980:63–73). Single-leader rule is often considered as the norm, yet there are also many cases where it does not obtain. There are examples of government by council, to which the cabinet system is only partly related; there are 'juntas', in particular among provisional Latin American governments, in which a small number of military officers (often drawn from the three branches of the services) rule the country for a period; but there are, above all, a substantial number of cases of dual leadership.

Dual leadership has existed at various moments in history: for example, Republican Rome was ruled primarily by two consuls. Its modern development arose in the first instance from the desire (or the need) of kings to share a part of their burden with a first or prime minister. This occurred partly as a result of popular pressure, and also occurred in highly authoritarian states, from the early seventeenth century in France with Richelieu to the nineteenth century in Austria with Metternich and in Germany with Bismarck. It results both from legitimacy difficulties (when the king needs to associate a 'commoner' to his power), or as a consequence of administrative necessities.

This is why countries as diverse as France or Finland, on the one hand, and communist states on the other, the kingdoms of Morocco and Jordan at one extreme, and the 'progressive' states of Tanzania, Algeria or Libya at the other, have adopted dual leadership. It exists in both liberal and authoritarian systems, in conservative and 'progressive' systems, and in communist and non-communist systems, although in communist states the distinction between party secretary and prime minister makes the distinction particularly strong as it corresponds to the division between party and state which has traditionally characterized these countries.

Dualist systems are often viewed as transitional, but there are enough cases of dual leadership having lasted for many decades to raise doubts about the 'natural' character of single leadership: between a quarter and a third of the nations of the world are ruled by a system of dual rule and in most of these the system has operated in a stable manner. The two leaders may not be equals, indeed quite the contrary, as the distinction between a leader embodying the

national legitimacy and a leader embodying the administrative legitimacy suggests, but the complexity of the modern state is such that it is far from surprising that leadership should often have to be shared in order to be effective.

Thus leaders can play very different parts: it is clear that not all these differences stem from the character of the regime. The role of personal characteristics also appears intuitively to be large, but seems to elude precise measurement and even broader assessment (Bass 1981:43–96). Studies have begun to assess the impact of personality characteristics on national leadership, though much still remains vague. Intelligence, dominance, self-confidence, achievement, drive, sociability and energy have appeared positively correlated with leadership in a substantial number of studies undertaken by experimental psychologists. Recently, attention has been paid in particular to revolutionary leaders, who have been shown to have a number of traits in common, such as vanity, egotism, narcissism, as well as nationalism, a sense of justice and a sense of mission. They are also characterized by relative deprivation and status inconsistency; it was also found that these leaders had marked verbal and organizational skills (Rejai and Phillips 1983:37–8). Overall, two factors, drive or energy (labelled 'activity' or 'passivity'), and satisfaction with the job (a 'positive' or a 'negative' approach) appear to be essential, as has been shown in the context of American presidents (Barber 1977:11–14). Although it is difficult to assess the extent to which, under different conditions, leaders can modify the institutions that they need to exercise their power, and although the part that they play in this respect is often overshadowed by the durable and even ostensibly permanent character of these institutions, it is clear that personal factors account markedly in the development of leadership.

## THE IMPACT OF LEADERS AND OF GOVERNMENTS

The career of ministers and leaders is short: it lasts on average only four or five years; very few stay in office for ten years or more. Duration was traditionally longer in communist states than elsewhere, except in traditional monarchies, but the changes that took place in the 1980s markedly reduced it in communist countries as well (Blondel 1985). Such short periods in office make it difficult to measure the realization of governments. First, one needs to distinguish between what 'would' have occurred 'naturally' and what occurred because of what the government decided. Second, it is often not possible to relate particular outcomes precisely to particular governments: for instance because the duration of governments is too short (a year or less); because governments 'slide' into one another, so to speak, as with coalitions and with reshuffles; and because of the 'lag' between policy elaboration and implementation. Thus, not surprisingly, conclusions about the impact of governments have remained rather vague and

concerned certain broad characteristics of whole classes of executives more than individual cabinets. It has been possible to establish that social democratic governments have, at least in many respects, an impact on social and economic life, despite the view sometimes expressed that no difference could be detected any longer among governmental parties (Castles 1982). It also seems established that, contrary to what some had claimed, Third World military governments do not perform better economically than civilian governments (McKinlay and Cohan 1975). On the other hand, other generalizations often made about governments have not so far been confirmed; in particular, it has not been proved that the instability of ministerial personnel has the negative consequences for social and economic development that it is often said to have (though it may have a negative impact on the regime's legitimacy).

Nor is it easy to establish fully, for the same reasons, the impact of leaders. 'Great' revolutionaries appear to make a major impact; yet they are helped by the fact that the demand for change in their society is strong and thus provides opportunities that are denied to those who rule a society whose members are satisfied with the *status quo*. Thus the efforts of Lenin or Mao were helped by the turmoil prevailing in Russia and China at the time. The impact of leaders must therefore be assessed not only by examining the policies elaborated and implemented by these leaders, but by examining the demands made by the population and in particular by its most vocal elements. Rulers who administer the system as it is and who do not aim at altering policies may be regarded as having very little impact, even though they may be influential by thwarting a substantial demand for change. Meanwhile, rulers who introduce changes on a relatively narrow front need not necessarily have less impact than those who embark on policies designed to alter their society fundamentally. The role of leadership must therefore be assessed by relating the rulers to the ruled and the characteristics of personalities to the climate among the population. It must also be assessed over time: indeed, it may never be fully determined, as it may be exercised on generations as yet not born. It can also fluctuate, as what has been done by a leader can be undone by his or her successors. For example, Mao's policies have been substantially modified, even overturned by those who have followed him. Thus the impact of the founder of the communist regime in the world's most populated country does not appear as great in the 1990s as it was in the 1970s.

It may seem paradoxical to ask if governments matter when so much emphasis is placed on national executives by the media, organized groups and large sections of the public. This paradox is only one of the many contradictory sentiments that governments appear to create. Perhaps such contradictory views are understandable: governments and their leaders both attract and repel because they are at least ostensibly powerful and give those who belong to them an aura of strength, of *auctoritas,* which fascinates, tantalizes, but also worries and,

in the worst cases, frightens those who are the subjects and the spectators of political life. Yet there are also other contradictions and paradoxes of governments, from the great complexity of the tasks to be performed to the often ephemeral character of their members, from the many ways in which they can be organized to the ultimate paradox–namely that, in the end, it is almost impossible to know how much they affect the destinies of humankind.

## BIBLIOGRAPHY


Barber, J.D. (1977) *Presidential Character,* Englewood Cliffs, NJ: Prentice-Hall.

Bass, B.M. (1981) *Stogdill's Handbook on Leadership*, New York: Free Press.

Blondel, J. (1980) *World Leaders,* London and Los Angeles: Sage Publications.

––(1982) *The Organization of Governments,* London and Los Angeles: Sage Publications.

––(1985) *Government Ministers in the Contemporary World,* London and Los Angeles: Sage Publications.

––(1987) *Political Leadership,* London and Los Angeles: Sage Publications.

Blondel, J. and Müller-Rommel, F. (eds) (1988) *Cabinets in Western Europe,* London: Macmillan.

Burns, J.McG. (1978) *Leadership,* New York: Harper & Row.

Cammack, P., Pool, D. and Tordoff, W. (1988) *Third World Politics,* London: Macmillan.

Castles, F.C. (ed.) (1982) *The Impact of Parties,* London and Los Angeles: Sage Publications.

Cronin, T.E. (1975) *The State of the Presidency,* Boston: Little, Brown & Co.

Finer, S.E. (1962) *The Man on Horseback,* London: Pall Mall Press.

Headey, B. (1974) *British Cabinet Ministers,* London: Allen & Unwin.

Heclo, H. (1977) A *Government of Strangers,* Washington, DC: Brookings Institution.

Holmes, L. (1986) *Politics in the Communist World,* London: Allen & Unwin.

Hook. S. (1955) *The Hero in History,* Boston: Beacon Press.

Kellerman, B. (ed.) (1984) *Leadership,* Englewood Cliffs, NJ: Prentice-Hall.

McKie, T.T. and Hogwood, B.W. (eds) (1985) *Unlocking the Cabinet,* London and Los Angeles: Sage Publications.

McKinlay, R.D. and Cohan, A.S. (1975) 'A comparative analysis of the political and economic performance of military and civilian regimes: a cross national aggregate study', *Comparative Politics* 8 (1):1–30.

Neustadt, R. (1960) *Presidential Power,* New York: John Wiley.

Rejai, M. and Phillips, K. (1983) *World Revolutionary Leaders,* London and Los Angeles: Sage Publications.

Rose, R. (1984) *Do Parties Make a Difference?,* London: Macmillan.

Smith, G. (1972) *Politics in Western Europe,* London: Heinemann.

Verney, D.V. (1959) *The Analysis of Political Systems,* London: Routledge & Kegan Paul.

Weber, M. (1968) *Economy and Society,* 3 vols, New York: Bedminister Press.

# 18

# LEGISLATURES

G.R.BOYNTON

It is the century of the legislature. Before and after the Second World War, as colonialism failed and nations grew in number, constitutions incorporating a national legislature replaced extant governing institutions throughout the world. In the late 1980s, the political transformation of Eastern Europe was propelled by the rejuvenation of legislative institutions. Instead of control by the communist party, elections for membership in parliament were held in the first free elections since the Second World War. Legislative institutions have spread throughout the world and their influence appears to be on the rise as the twenty-first century approaches.

The vialibity of legislatures during this half-century has been mixed, however. In democracies with a longer history, legislatures have maintained or even increased their importance within the governing institutions of the country. In some new democracies legislatures have been stable, important institutions of governing. In many new democracies legislatures have suffered a different fate. In Korea, for example, a thirty-five-year period of Japanese colonial occupation was followed by a national election in 1948 to establish the first National Assembly. The president elected under the new constitution soon turned autocratic and suppressed political opposition. A student revolt in 1960 overturned the Syngman Rhee government, and was followed by free elections for the National Assembly. The new government lasted less than two years before it was overthrown by a military junta. Two years later the military junta held elections and had themselves elected to political office (Kim *et al.* 1984). This pattern of military government punctuated by return to democratic elections (principally elections for the National Assembly) has continued in South Korea, and is prevalent in other new nations as well. Pakistan is another example of punctuated military rule; the army has ruled Pakistan for twenty-four of the nation's forty-three years of independence.

This exceedingly brief excursion into legislative history is designed to make two points. First, legislative stability is as puzzling as is the instability of legislative

institutions in some of the newer democracies. Even though stability may seem the natural course of affairs for those of us living in relatively stable systems of governing, we are reminded of the presence of something here by its absence elsewhere. The puzzle is: what is present and absent that yields stability in one case and instability in another? The second point worth noting is that elections and legislatures have become the fall-back position. When the generals or colonels find themselves so divided they cannot rule or when they weary of ruling, as has happened at times in Latin America, it is elections and legislatures to which the country returns. Legislatures rarely control the guns, but they have been remarkably resilient in this half-century (Mezey 1985). The change of the fall-back position is a major change in world history. Around the world, legislatures have been elevated to the position that they have held for roughly two hundred years in Europe.

## HOW ELECTIONS MATTER

Some are born to office, some rise through military or civilian bureaucracies, and some are elected to office. Election is a distinctive route into the political elite; it is an avenue that distinguishes legislators from most other members of a nation's political elite. An important question to ask about legislatures is how they differ from other governing institutions of a nation because their members are selected by election.

### Who is elected?

Are members of legislatures drawn from segments of society different from those that produce other political elites? This question has been more thoroughly investigated and can be answered more confidently than any other question about legislatures. The answer is no. Most legislators are educated, wealthy men from the higher status sectors of society. Donald Matthews (1985) has drawn together the very large body of research on the social background of legislators and discovered that, in the United States, in Western Europe, in the communist nations, in Latin America, Asia and Africa the results are the same: members of the legislature are drawn from the advantaged classes of society. There are only two variations on this theme. In less developed countries with very small elite populations and large populations of poor, the status gap between legislators and electors is greater than in the more developed countries in which the income distribution is more equal. Only in Scandinavia (Skard 1981) and in some communist nations (Hill 1973) do women approach 50 per cent of the membership of legislatures. *Perestroika* has halved the percentage of women in the Supreme Soviet; before the election of 1989 women held approximately 33 per

cent of the seats in the Supreme Soviet, but in the 1989 election they won only 17 per cent of the seats (Mann *et al.* 1989).

Legislators are drawn from the very same sectors of society from which other elites are drawn (Matthews 1954; Bell *et al.* 1961; Putnam 1976). Elections produce a legislature that is quite different in its social experiences from the social experiences of the electorate, but legislators are not, in this respect, distinctive from other political elites. Elections may facilitate circulation of the elite, but it is the elite that is being circulated. The impact of elections must be sought elsewhere.

## Legislators and the concerns of constituents

In August 1990, the US military was suddenly mobilized to put a large contingent of troops into Saudi Arabia. A young Michigan couple, planning to be married, was separated when he was transferred to South Carolina in transit to Saudi Arabia. Senator Carl Levin of Michigan, a member of the Armed Services Committee and running for re-election, used his good offices to help the couple arrange to be married at the base where the soldier was temporarily stationed. Senator Levin, the couple and the wedding were featured on television in Michigan and on network news. The story is worth recounting as a reflection on the following statement about legislatures:

> Because in many non-Western cultures the political realm is not as well differentiated from the nonpolitical, Third World legislators have had to deal with requests that their Western counterparts seldom confront…. In Thailand, legislators reported that they were asked to act as go-betweens in arranging marriages
>
> (Mezey 1985:743)

Whether in the United States or in the Third World, elections focus legislators' attention on the concerns of their constituents. If the concern is arranging marriages, legislators become involved when only they have the stature required to provide the assistance.

In Tanzania, legislators said bringing the needs of their constituents to the attention of the government was one of their most important tasks (Hopkins 1970). Members of the Colombian Congress said helping their constituents deal with government offices, identifying regional problems and making them public problems, and working as a broker between their constituency and the government were among their most important tasks as legislators (Hoskin 1971). Chilean legislators invested much effort in assisting constituents with a bulky social security bureaucracy and getting local projects into the budget (Valenzuela and Wilde 1979). Legislators in Kenya, Korea and Turkey said they had been effective in channelling resources to their districts (Kim *et al.* 1984). The picture does not change for the United States (Olson 1967; Fiorina 1977) or Western Europe (Barker and Rush 1970; Cayrol *et al.* 1976).

Two themes characterizing constituents' concerns are found in the research. One theme is bureaucratic indifference. Getting the social security bureaucracy to acknowledge and deal with the special circumstances of a constituent is as much a part of the working life of members of the US Congress as it is for the Chilean legislator. The second theme is local economic development. Local development may be an access road or a well in Kenya (Barkan 1979) or it may be a nuclear fuel reprocessing plant in the United States. Whether Kenya or the United States, the best possible site is the concern of planners, but the economic development of the constituency is the concern of the elected legislator.

It is plausible that elections predispose legislators to focus on the concerns of constituents to a greater degree than do other political elites, but an unusual feature of the Korean constitution provides more direct evidence on the point. For a brief period the Korean constitution stipulated that two-thirds of the members of the National Assembly would be elected to their offices and one-third would be appointed. The provision virtually guaranteed that the party of the president would have a substantial majority in the National Assembly. It also made it possible for Kim and Woo (1975) to examine differences in the actions of elected and appointed members of the National Assembly. Elected legislators were substantially more likely to engage in constituency service activities than appointed legislators. Elections matter by focusing legislators' attention on the concerns of constituents.

## For whom you speak; to whom you speak

Representation is the Anglo-American way of framing this subject. *The Legislative System* (Wahlke *et al.* 1962), which traced its roots directly back to Edmund Burke, was the influential starting point for two strands of research on the connection between elections and government action. The basic conception is representation as the function by which the views of citizens are mapped into public policy; the views of citizens are represented in the policy-making process. One strand of research based on this conception examined the congruence between constituents' opinions and the voting of legislators. The most straightforward statement of this line of research was 'Congress and the public: how representative is one of the other?' (Backstrom 1977). The theme was most systematically carried through in a set of studies employing sample surveys of the electorate and voting in legislatures (Barnes 1977; Converse and Pierce (1986); Miller and Stokes 1963). The second strand followed Wahlke *et al.* (1962), who did not have access to surveys of citizens, by investigating more fully the representative role orientation of legislators. Since this second research strategy could be employed in countries where survey data were not available, a broader range of countries was included in

the research (see for example, Hopkins 1970; Hoskin 1971; Kim 1969; Kim and Woo 1975; Mezey 1972).

The result of the research is an understanding of the weaknesses of this way of framing the relationship between elections and governing. There have been many critiques and attempts at reformulation (Boynton and Kim 1991; Eulau and Karps 1977; Pitkin 1967). Three criticisms are particularly important. First, legislators do not seem to play the role in policy making assumed in the theory; this was one finding of the second strand of research. Second, citizens do not do their part; they do not carry around well-formulated views on the broad range of policy matters governments must handle; this was one finding of the first strand of research. Third, when constituents agree it is easy for legislators to represent agreement. When constituents disagree 'representation' is no assistance in specifying what a legislator will or should do, and constituents disagree more than they agree. What is needed is a reformulation that refocuses the importance of elections and that is more descriptively adequate.

The reformulation can begin by noticing that the arguments of elected officials about what the government should do are always made facing in two directions. They address each other; simultaneously they address the electorate. In addressing each other and the electorate they remember who supported them in the last election and they seek additional supporters in the next election. Instead of representation this formulation focuses on appeal for support. Instead of *acting out* the will of the electorate it is *acting to* create a will in the electorate. Frank Baumgartner (1987) argues for this understanding of policy arguments in the French parliament. By reframing issues, issues framed by the government as technical matters, in terms of equality, French cultural heritage and other important symbols in French politics, opposition parties change the focus of the debate, criticize the government, appeal to their supporters and appeal for new supporters. Boynton (1991) showed that even highly technical argument plays a role in forming views in the arguments about clean air. Shanto Iyengar (1990) showed that the framing and reframing of communication can have a substantial impact on how citizens respond. The important point is not the reframing, however. Reframing is rather rare, but it is a striking example of what elected officials do all the time in appealing to voters from the floor of the chamber. And citizens do respond. Elections are held, and in wealthier societies there are interest group organizations and public opinion polls which fill in between elections. Thus, conversation–the appeal of the official and the response of the electorate and the appeal of the electorate and the response of officials–is a better formulation than representation. Elections are important because they engage politicians in conversation with their constituents (Boynton 1990).

## How electoral systems matter

In asking how elections matter the organization of elections has not yet been taken into account. There are substantial differences in electoral systems and the differences have consequences for who the constituents are who receive the attention of legislators and for the conversations between legislators and electorates. Three features of electoral systems are particularly important: the rule for determining a winner; the geographic unit for candidates' election; and control of nominations (Duverger 1963; Rae 1971). The three features are combined in many different ways in the nations of the world, but the most important consequences of the three can be treated independently.

Three criteria are widely used in determining the winner of an election. A candidate may need a majority of the votes cast, or a plurality of the votes cast, or parties may be allocated seats based on the proportion of the vote received in the election. Systems requiring a majority or a plurality of votes result in the parties that receive the largest percentage of the votes nationally receiving a larger percentage of the seats in the legislature than their percentage of votes. Parties that receive smaller percentages of votes in the election receive an even smaller percentage of the seats in the legislature. Allocating seats on the basis of the percentage of votes received in the election, known as proportional representation, is less biased in favour of large parties and against small parties in translating votes into seats. The consequence of the counting procedure is reducing or increasing the number of conversations. Small parties do not survive in majority and plurality systems, and the ensuing conversations are limited to the few that do survive.

At one extreme the country may be divided into geographic units with a single legislator elected from each geographic unit; this requires a majority or plurality rule for determining the winner. The other extreme is using the entire country as the geographic unit for counting votes; this requires some form of proportional allocation of seats based on votes. Who the legislators' constituents are is altered by the geographic unit used for counting votes. Constituents will be geographically contiguous residents in one case. In this case local implies geography. If the nation is the geographic unit used, constituents and local have quite different meanings. For example, constituents might become everyone in the nation who is concerned about the state of the environment, wherever they live.

One cannot be elected without first being nominated. Political parties control nominations in almost every country, but there is great variation in how much control is exercised. It is relatively easy for a party organization to control nominations if the electoral system uses proportional representation because that system requires a national list of candidates. Who gets on the list and the placement on the list become very important for election. Election systems based

on smaller geographic units, especially if a primary election is used, minimize the control of nomination by parties. This reduces or increases the number of conversations. When parties exercise tight control the legislator who disagrees with the party is easily replaced in the next election, and the number of conversations is reduced. When parties exercise little control the number of conversations proliferate as individual candidates appeal to different groups in the electorate.

## LEGISLATURES AND THE ARGUMENT ABOUT WHAT WE SHOULD DO AS A NATION

Politics is the ongoing argument about what we should do as a nation and how it should be done, where the rules by which we argue may themselves become part of the argument. Legislatures, then, are part of the rules by which we argue. A legislature establishes a privileged status in the argument for a subset of the total population–the legislators. They speak in arenas where others cannot and their arguments are attended to in a way that the arguments of others are not. In becoming legislators they speak and listen where others do not go.

Characterizing legislatures as part of the arrangements by which we conduct arguments may thus seem rather odd. After all, it might be said, legislatures pass laws; legislators should busy themselves passing legislation rather than spending their time arguing. It is certainly true that, with few exceptions, constitutions establishing legislatures stipulate that legislation must be passed by the legislature to become law. In this formal sense legislatures throughout the world pass laws. However, if one expects those laws to be initiated by legislators, to be written by legislators, to be substantially modified during consideration and passage by legislators, or that legislators will fail to pass legislation that is initiated and written elsewhere, the expectation does not match what legislatures do. There is a consensus among legislative scholars that legislatures play only a modest role in initiating and writing legislation (Mezey 1985). Distinctions can be drawn, of course. The US Congress is substantially more influential in formulating policy than are other legislatures. The Costa Rican legislature was found to be more important in the formulation of legislation than the Chilean legislature (Hughes and Mijeski 1973). The German Bundestag is more influential in formulating legislation than the British House of Commons, and both are substantially more influential than the legislature of Kenya (Loewenberg and Patterson 1979). But these distinctions are drawn within a very narrow range. What is needed is a different formulation of the role of legislatures in political life of a country; one that is more descriptively adequate.

The earlier discussion of how elections matter leads to thinking about legislatures as the last election, legislators appealing for support from the floor,

and the next election–in other words, the argument about what we should do as a nation and how we should do it. In contrast, thinking about the legislature as a law-writing body de-emphasizes elections and the argument. Then scholars and other observers are surprised when 'politics', the next election, intrudes itself into law writing or not law writing in the legislature (Rockman 1985).

## Legislatures and the current state of the argument

An election registers the current state of the argument. All parties argue their position on what the nation should do and how it should be done, which in elections becomes who should do it. The current state of the argument, who is persuaded by whom, is registered when voters go to the polls, and the outcome is embodied in persons in offices. How the offices are arranged, particularly the relationship between the legislature and the executive, is important in how the current state of the argument becomes laws.

In some countries the executive, usually called the president, is selected separately from the election of the legislature, but in other countries the executive, usually called prime minister and cabinet, may, or in some cases, must, be members of the legislature. In a survey of fifty-six legislatures Herman and Mendel (1976) found that fourteen prevented members of the legislature from serving in executive offices, seventeen required some or all of the top executive officers to be drawn from the legislature, and that most did not require the executive to be drawn from the legislature.

Embodying the current state of the argument in persons in office is straightforward in a country with a president and an electoral system that produces few political parties in the legislature. The president is elected and appoints his or her administrative officers–cabinet, heads of ministries, etc.–and the executive is in place. Legislative elections usually produce a majority that organizes the legislature. The majority party in the legislature may or may not be the same as the party of the president, but the current state of the argument is registered in a set of officials to continue the argument. In a country in which the executive comes out of the legislature and with an electoral system that produces many political parties in the legislature there is another step in the argument. A government must be created by forming a coalition in the legislature. Only after a coalition government is established is the current state of the argument fully registered in persons in office. These are two widely used organizations of offices. The United States is a notable presidential system. Many of the European democracies are parliamentary systems with the configuration of offices described. But there are many variations on these themes. In Great Britain, for example, the prime minister and cabinet are drawn from parliament,

but the electoral system produces few parties in parliament; thus, there is normally a majority party in parliament and the majority party forms the government without the necessity of forming a coalition.

Research on coalition governments provides evidence for the contention that elections register the current state of the argument by embodying that state in offices. The early research, which traced its roots to Riker's (1962) theory of coalitions, assumed that office seeking was all that was at stake in forming the coalitions. From this perspective, the second step in forming a government would reflect the current (electoral) state of the argument only indirectly–only by establishing the distribution of seats before bargaining over the distribution of the spoils of office. But this conception of coalition formation proved inadequate. The inadequacy of the theory was clearest in failing to account for minority coalitions. If office was the major motivation in forming coalitions, the majority of legislators not in the coalition should have formed a government and split the offices between themselves rather than letting a minority have them. Thirty per cent of the cabinets studied were minority cabinets. There is now general agreement among scholars that forming a coalition government is, at least in part, a continuation of the argument about what the nation should do and how (Browne and Franklin 1986; Budge and Laver 1986; Peterson and De Ridder 1986).

Research on coalition governments also provides evidence that the argument is ongoing, that the argument–within and without the legislature–about what the nation should do does not stop with elections. There is great variation in the length of time coalitions survive; some last only a few months and most last fewer than fifty-two months (Dodd 1976). First, researchers attempted to explain the survival of a coalition based on its characteristics when it was formed. From this perspective, the state of the argument at the time of the election would explain how long a coalition lasted. After the election, governing would be a matter of passing laws representing the state of the argument at election time. This cannot be completely discounted, but it is, at best, a partial explanation. More recently researchers have used post-election events to improve their explanations of coalition durability (Browne *et al.* 1986; Cioffi-Revilla 1984). Events occur subsequent to the election, the argument continues, and the governing coalition is re-formed registering a new state of the argument.

The research on coalition governments is useful in establishing what happens in all legislatures. The need to form coalitions and the breakdown of coalitions puts in public view the processes going on in all legislatures. Go to any legislature and what you will find is ongoing argument about what the nation should be doing and how it should be done–on the floor, in the corridors, in committees or wherever legislators meet.

## The level of detail in the arguments

We can have clean air and a sound economy. That is one level of detail in an argument about the health effects of air pollution and the economy; it is roughly the level of detail found in headlines reporting political campaigns. Saying that vehicles are a major source of pollution that causes health problems for persons with asthma and other lung ailments adds more detail to the arguments about the extent of pollution due to vehicles and how debilitating the pollution is for how many people. More detail can be added by specifying the harmful chemicals emitted by vehicles, how much the chemicals would have to be reduced to reduce health effects to an acceptable level, the determination of an acceptable level, how much emission reduction is provided by current catalytic converters, how far emissions could be further reduced with improved catalytic converters, how much improving catalytic converters will cost, how the chemicals that escape in the sale of petrol contribute to the problem, how the pumps could be redesigned and at what cost, how vehicle petrol tanks could be redesigned to reduce the escape of the harmful chemicals, and so on.

The point is simple. Arguments can be, and are, carried on at all of these levels of detail. Laws can be characterized at all of these levels of detail, but law cannot be written at all of the levels of detail. A law that said 'Henceforth there will be clean air' would not tell anyone, vehicle manufacturers for example, what they must do to conform to the law. Laws are full of details that most citizens and most legislators do not know about and do not know enough to evaluate.

The level of detail in the argument is an idea that can be used to integrate the conception of legislatures as arenas of ongoing argument, the institutional arrangements for formulating legislation, and legislators' attention to the concerns of constituents.

Voters may be convinced it is important to clean the air even if it means some additional cost for vehicles or they may be convinced that the health effects do not warrant the costs to the economy, but it is an extremely rare voter who wants to learn about the chemistry of air quality and its regulation in full detail. The arguments in election campaigns are carried on at a modest level of detail, and votes are cast for the party and candidate who seems most likely to do something.

When a government is formed the argument at one level of detail must be transformed into argument at the much more detailed level of legislation. In most countries this is done by the executive and the experts working for government departments. The executive presents the law to the legislature and the majority party members in the legislature or the majority of members who form a coalition vote yes–most of the time. Legislators, generally, do not have the expertise to evaluate the law in detail. The US Congress is unusual because

in the permanent committees members develop enough expertise on a subject to argue about the detail (Boynton 1991; Loewenberg and Patterson 1979). Most of the interaction between Congress and the administration takes place in the committee consideration of the legislation. When legislation moves to the full legislature in the United States, as in other countries, the level of argument returns to the level of detail at which elections are conducted. And the prospects of passage of a bill reported by the committee is as high, 85 to 98 per cent depending on the committee, as in other legislatures (Lewis 1978).

Permanent committees also provide the chairman of the committee considering clean air legislation an opportunity to interject the concerns of the vehicle manufacturers in his Michigan constituency into the legislation. It should be noted, however, that the action of the Michigan congressman is not different in kind from the action of the Kenyan legislator who negotiates special arrangements for his district (Barkan 1979), even though the US Congress is taken to be a strong legislature and the Kenyan legislature a weaker one. Many concerns of constituents are *in the detail*. When that is the case legislators become involved in detail.

## CONCLUSION

Politics is the ongoing argument about what we should do as a nation and how we should do it. Elections of legislators matter because elections focus the attention of legislators on their constituents and the arguments that are convincing to constituents. Legislatures are a continuation of the argument at a different level of detail.

The arguments that are elections and the arguments that are legislatures are not idle matters. They are arguments that have major consequences for nations and the individuals and organizations that comprise them. Losing an argument may be exceedingly costly. Vehicle manufacturers in the United States, therefore, are prepared to pay as handsomely as the law allows to assist the member of Congress who takes their concerns seriously in his or her reelection campaigns. In other places guns are used to guarantee winning the argument. Bullets beat votes every time—at least in the short-run. Weapons have been used to win arguments throughout human history. What is unusual about this half-century is the spread of substituting votes for bullets in determining the winners and losers of the argument.

## REFERENCES

Backstrom, C.H. (1977) 'Congress and the public: how representative is one of the other?', *American Politics Quarterly* 5:411–36.

Barkan, J.D. (1979) 'Bringing home the pork: legislative behavior, rural development, and political change in East Africa', in L.D.Musolf and J.Smith (eds) *Legislatures in Development,* Durham, NC: Duke University Press.

Barker, A. and Rush, M. (1970) *The British Member of Parliament and His Information,* Toronto: University of Toronto Press.

Barnes, S.H. (1977) *Representation in Italy,* Chicago: University of Chicago Press.

Baumgartner, F.R. (1987) 'Parliament's capacity to expand political controversy in France', *Legislative Studies Quarterly* 12:33–54.

Bell, W., Hill, R, J. and Wright, C.R. (1961) *Public Leadership: A Critical Review,* San Francisco: Chandler.

Boynton, G.R. (1990) 'Our conversations about governing', unpublished paper.

––(1991) 'When senators and publics meet at the Environmental Protection Subcommittee', *Discourse and Society* 2:131–56.

Boynton, G.R. and Kim, C.L. (1991) 'Legislative representation as parallel processing and problem solving', *Journal of Theoretical Politics* 3 (4).

Browne, E.C. and Franklin, M. (1986) 'New directions in coalition research', *Legislative Studies Quarterly* 11:469–83.

Browne, E.C., Frendreis, J.P. and Gleiber, D.W. (1986) 'The process of cabinet dissolution: an exponential model of duration and stability in Western democracies', *American Journal of Political Science* 30:628–50.

Budge, I. and Laver, M. (1986) 'Office seeking and policy pursuit in coalition theory', *Legislative Studies Quarterly* 11:485–506.

Cayrol, R., Paroid, J.-L. and Ysmal, C. (1976) 'French deputies and the political system', *Legislative Studies Quarterly* 1:67–99.

Cioffi-Revilla, C. (1984) 'The political reliability of Italian governments: an exponential survival model', *American Political Science Review* 78:318–37.

Converse, P.E. and Pierce, R. (1986) *Political Representation in France,* Cambridge, Mass: Belknap Press.

Dodd, L.C. (1976) *Coalitions in Parliamentary Government,* Princeton: Princeton University Press.

Duverger, M. (1963) *Political Parties,* New York: John Wiley.

Eulau, H. and Karps, P.D. (1977) 'The puzzle of representation: specifying components of responsiveness', *Legislative Studies Quarterly* 2:233–54.

Fiorina, M.P. (1977) *Congress: Keystone of the Washington Establishment,* New Haven: Yale University Press.

Herman, V. and Mendel, F. (eds) (1976) *Parliaments of the World,* London: Macmillan.

Hill, R.J. (1973) 'Patterns of deputy selection to local Soviets', *Soviet Studies* 25: 196–212.

Hopkins, R. (1970) 'The role of the MP in Tanzania', *American Political Science Review* 64:754–71.

Hoskin, G.W. (1971) 'Dimensions of representation in the Colombian National Legislature' in W.H.Agor (ed.) *Latin American Legislatures: Their Role and Influence,* New York: Praeger.

Hughes, S.W. and Mijeski, K.J. (1973) *Legislative-Executive Policy-Making: The Case of Chile and Costa Rica,* Sage Research Papers in the Social Sciences, Comparative Legislative Studies Series no. 90–007, Beverly Hills: Sage Publications.

Iyengar, S. (1990) 'Framing Responsibility for Political Issues: The Case of Poverty', *Political Behavior* 12:19–40.

Kim, C.L. and Woo B.-K. (1975) 'Political representation in the Korean National Assembly', in G.R.Boynton and Kim C.L. (eds) *Legislative Systems in Developing Countries,* Durham, NC: Duke University Press.

Kim, C.L., Barkan, J., Turan, I. and Jewell, M. (1984) *The Legislative Connection: The Politics of Representation in Kenya, Korea, and Turkey*, Durham, NC: Duke University Press.

Kim, Y.C. (1969) 'Role orientations and behavior: the case of Japanese prefectural assemblymen in Chiba and Kanagawa', *Western Political Quarterly* 22:390–410.

Lewis, A.L. (1978) 'Floor success as a measure of committee performance in theHouse', *Journal of Politics* 40:460–7.

Loewenberg, G.L. and Patterson, S.C. (1979) *Comparing Legislatures,* Boston: Little, Brown & Co..

Mann, D., Monyak, R. and Teague, E. (1989) *The Supreme Soviet: A Biographical Directory,* Washington, DC: Center for Strategic and International Studies.

Matthews, D.R. (1954) *The Social Background of Political Decision-Makers,* New York: Random House

––(1985) 'Legislative Recruitment and Legislative Careers', in G.Loewenberg, S. C.Patterson and M.E.Jewell (eds) *Handbook of Legislative Research,* Cambridge, Mass.: Harvard University Press.

Mezey, M.L. (1972) 'The functions of a minimal legislature: role perceptions of Thai legislators', *Western Political Quarterly* 25:686–701.

––(1985) 'The functions of legislatures in the Third World', in G.Loewenberg, S. C.Patterson, M.E.Jewell (eds) *Handbook of Legislative Research,* Cambridge, Mass.: Harvard University Press.

Miller, W.E. and Stokes, D.E. (1963) 'Constituency influence in Congress', *American Political Science Review* 57:45–56.

Olson, K.G. (1967) 'The service function of the United States Congress', in A.de Grazia (ed.) *Congress: The First Branch of Government,* Garden City, NY: Doubleday.

Peterson, R.L. and De Ridder M.M. (1986) 'Government formation as a policy-making arena', *Legislative Studies Quarterly* 11:565–81.

Pitkin, H. (1967) *The Concept of Representation,* Berkeley: University of California Press.

Putnam, R.D. (1976) *The Comparative Study of Political Elites,* Englewood Cliffs, NJ: Prentice-Hall.

Rae, D.W. (1971) *The Consequences of Electoral Laws,* New Haven: Yale University Press.

Riker, W. (1962) *The Theory of Political Coalitions,* New Haven: Yale University Press.

Rockman, B.A. (1985) 'Legislative-executive relations and legislative oversight', in G. Loewenberg, S.C.Patterson and M.E.Jewell (eds) *Handbook of Legislative Research,* Cambridge, Mass.: Harvard University Press.

Skard, T. (1981) 'Progress for women: increased female representation in political elites in Norway', in C.F.Epstein and R.L.Coser (eds) *Access to Power: Cross-National Studies of Women and Elites,* London: Allen & Unwin.

Valenzuela, A. and Wilde, A. (1979) 'Presidential politics and the decline of the Chilean Congress', in L.D.Musolf and J.Smith (eds) *Legislatures in Development,* Durham, NC: Duke University Press.

Wahlke, J.C., Eulau, H., Buchanan, W. and Ferguson, L.C. (1962) *The Legislative System,* New York: John Wiley.

## FURTHER READING

Boynton, G.R. and Kim C.L. (eds) (1975) *Legislative Systems in Developing Countries,* Durham, NC: Duke University Press.

Fenno, R.F. (1966) *The Power of the Purse: Appropriations Politics in Congress,* Boston: Little, Brown & Co.

Fiorina, M. (1977) *Congress: Keystone of the Washington Establishment,* New Haven: Yale University Press.

Kim, C.L., Barkan, J., Turan, I. and Jewell, M. (1984) *The Legislative Connection: The Politics of Representation in Kenya, Korea, and Turkey,* Durham, NC: Duke University Press.

Loewenberg, G.L. and Patterson, S.C. (1979) *Comparing Legislatures,* Boston: Little, Brown & Co.

Loewenberg, G. Patterson, S.C. and Jewell, M.E. (eds) *Handbook of Legislative Research,* Cambridge, Mass.: Harvard University Press.

Matthews, D.R. (1960) *US Senators and Their World,* Chapel Hill: University of North Carolina Press.

Mayhew, D.R. (1974) *Congress: The Electoral Connection,* New Haven: Yale University Press.

Musolf, L.D. and Smith, J. (eds) *Legislature in Development,* Durham, NC: Duke University Press.

Polsby, N. (1968) 'The institutionalization of the US House of Representatives', *American Political Science Review* 62:144–68.

Rae, D.W. (1971) *The Consequences of Electoral Laws,* New Haven: Yale University Press.

Wahlke, J.C., Eulau, H., Buchanan, W. and Ferguson, L.C. (1962) *The Legislative System,* New York: John Wiley.

# 19

# COURTS

JOHN SCHMIDHAUSER

A court is a judicial institution created to decide legal disputes authoritatively. Modern courts are usually independent of other branches of government, but in historical perspective many of the attributes associated with judicial independence, legal professional competence and objectivity were absent or considerably modified during the many centuries of judicial institutional development which preceded the emergence of courts in the variety of contemporary legal systems of the world. Martin Shapiro has correctly observed that analysts of the attributes of courts frequently employ some sort of a model of an ideal judicial system (Shapiro 1981:1). Of these, Max Weber's conceptual model is seminal. In accordance with the major elements of his ideal model, a court will be staffed by specially trained judges whose professional integrity and independence is ensured by fundamental constitutional safeguards. Such courts are integral parts of bureaucratic systems designed to ensure predictability and rationality. Historians such as Charles Ogilvie have traced the origins of one of the major European families of law to monarchical influence (Ogilvie 1958). Thus law common to the realm in England was not only judge-made law; it was the monarch's law. In contrast, Weber classified courts in relation to three basic types of governing regimes–traditional, charismatic and 'legal' or constitutional. In Weber's view, courts within each of these categories would be organized in accordance with the nature of the governing regime. Law in a traditional regime would originate in custom, be administered in courts staffed by judges chosen ascriptively, and render decisions in accordance with custom. In a charismatic regime, law would originate in the will of a charismatic leader and decisions would conform to the particularistic approach of such a leader. Conversely, in a constitutional regime, law would originate objectively on the basis of impartial constitutional or statutory standards, in courts staffed by judges chosen on merit after extensive professional training, and decisions would be rendered objectively upon the basis of universally applied rules and fair procedures (Trubek 1972:735).

In reality, courts, judges and entire legal and judicial systems do not conform perfectly to such conceptual models either contemporaneously or historically. Modern courts and judicial systems often vary in accordance with legal cultural attributes rather than symmetrical conceptual models. The basic differences in court organization, judicial training, internal institutional procedures and professional organization among major families of law illustrate major cultural variations which do not conform to Weber's model. Similarly, the wide historic variations in the scope of executive authority over courts and in the presence or absence of legal professionals in courts in Western Europe modifies notions about centralized control (Dawson 1960:35–117).

The key attributes of courts vary among the major families of law in a number of important respects. Two such families originated in Western Europe and subsequently became influential in other countries when introduced as part of the conquests and colonial expansions of Spain, Portugal, France, Great Britain, the Netherlands and, to a lesser extent, other European nations. The common law system originated in Great Britain, while the civil law family was developed on the basis of vestiges of Roman law in portions of Western Europe. Civil law's emphasis upon codification received its greatest fulfilment early in the nineteenth century from Napoleon Bonaparte (Abraham 1986:267). Conventional analyses of the common law and civil law traditions generally emphasize certain fundamental differences between them with respect to the nature of courts, the role of judges, the significance of *stare decisis* or the rule that precedents are controlling, judicial independence, the role of lawyers, and the very sources of law itself (Zweigert and Kotz 1977).

In civil law systems, the source of law is the law-making authority, not the judges themselves. Conversely, in common law systems it is the judges operating independently. Thus in parliamentary civil law systems, law is the expression of legislative will. In an absolute monarchy, it is the expression of the monarch's will. The development of legal concepts in civil law, more often than not, reflected the significant influence of the law faculties of major universities: legal treatises were often very influential in medieval times. The advent of rigorous codification of the civil law in the Napoleonic era was expected to diminish the influence of legal scholars, but the role of law faculties in analysis of the modern codes and in commentaries on legislative reform of elements of the civil law is still important in most civil law nations, including France itself. In contrast, while scholarly commentary in common law nations is widespread, traditionally the main thrust of legal change or calculated continuity in most common law nations is still judge-determined or, in modern times, legislatively enacted and judicially interpreted. Historically, the universities in Great Britain had a far smaller role in legal commentary and virtually no role in training lawyers. The latter function was pre-empted by the Inns of Court for barristers and by provincial training

centres for solicitors. Barristers were the only lawyers qualified to take part in the adversary process before higher British judges and also the only lawyers eligible for selection as judges of the higher courts (Abel and Lewis 1988:1, 39).

The organization, procedures and composition of courts generally comprise attributes directly related to the characteristics of the major family of law from which a judicial system is derived. To illustrate the relationship of judicial system and historic family of law, some of the key attributes of the court systems of Great Britain and France, archetypes of the common law and civil law systems are described both in their nation of origin and in selected colonial and post-colonial settings. Court organization may mirror not only certain basic characteristics of the family of law, but of the fundamental political organization and historical experience of each nation as well. Thus the hierarchy of courts in Great Britain embodies organizational principles which reflect centuries of monarchical efforts at national unification, while the court system of Canada incorporates most elements of its colonial British heritage modified in certain limited aspects by its national commitment to federalism. Bora Laskin, a Chief Justice of the Supreme Court of Canada, suggested that there are five general court organizational models widely employed in modern judicial systems. One is the English model under a unitary system in which a national appellate court of general jurisdiction functions in a manner similar to a British criminal or civil Court of Appeal or, ultimately for domestic British cases, the House of Lords, 'not limited to any class of cases' (Laskin 1975:47). A second model, of which the Supreme Court of the United States provides an example, is a higher appellate court in a federal system in which there are explicit constitutional or statutory jurisdictional powers and limitations like those in Article III, section 2, of the Constitution of the United States. With this model a major jurisdictional responsibility involves cases or controversies between a government of an entire nation and governments of its political subdivisions such as the American states, Canadian provinces, or Swiss cantons. But, in addition, a court such as the Supreme Court of the United States has some designated original jurisdiction and broad appellate jurisdiction over all matters of constitutional import. Laskin cites a third model, based on British Commonwealth experience, in which a higher appellate court is 'purely federal', dealing only with constitutionally or statutorily designated issues but excluding other constitutional issues which could be dealt with by direct appeal to the Judicial Committee of the British Privy Council (ibid.: 47). The fourth model consists of 'a purely constitutional court', presumably with no jurisdiction embracing statutory interpretation. Laskin's fifth model is adapted from France's Court of Cassation, with one chamber devoted to issues of federalism and a second to other constitutional issues (ibid.: 47–8).

Laskin's emphasis upon distinctions between unitary and federal systems as a means of classifying courts underscores that courts were frequently created and

maintained to fulfil purposes more complex than the ideal of impartial dispute resolution. For example, the difficult task of choosing a final arbiter in American federal-state relations necessitated a series of compromises by the delegates to the Philadelphia Convention of 1787 which resulted in the creation of a Supreme Court designated as final arbiter after executive (Alexander Hamilton's recommendation) and legislative ('the Congressional negative' recommended by several Federalists) supremacy were rejected by anti-Federalist delegates. 'Judicial power' was defined in a manner to provide an enduring compromise between nationalist-oriented Federalists and states-rights-oriented anti-Federalists. Many of the former supported the concept of a Supreme Court as final arbiter, but feared it would be too weak to restrain states rights influence. Many of the latter also supported the Supreme Court but harboured misgivings as to whether a nationalistic Supreme Court would ultimately erode the rights of the states. The classic conflict of views between Alexander Hamilton in *Federalist* no. 80 (Cabot Lodge 1904:494–5) and Robert Yates in his 'Letters of Brutus', especially numbers 11, 12 and 15 (Corwin 1938:231–3, 237–43, 251–2), set the stage for decades of debate over the role of the American Supreme Court in federal-state relations and in governmental affairs in general (Corwin 1938).

Bora Laskin quite appropriately emphasized federalism as a key organizing principle for some higher appellate courts. From this perspective many of the characteristics of the courts chosen for the delicate task of maintaining a constitutional or statutory federal division of powers and responsibilities include jurisdictional power sufficient to maintain a constitutionally ordained delineation of the superior role of a national government in designated subject matter areas such as the provision of the Supremacy Clause of the Constitution of the United States stating that 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land' (Article VI, section 2, 1789). Or conversely, the jurisdiction of an appellate court may reflect a broad empire-unifying role such as that fulfilled for centuries by the Judicial Committee of Great Britain's Privy Council. Similarly, the composition of courts linked to federalism sometimes incorporates fundamental accommodations designed to protect or to reassure ethnic, linguistic populations, such as the requirement that three of the members of Canada's nine-member Supreme Court be members of the French-speaking minority (Snell and Vaughan 1985:12), or Switzerland's informal but consistently recognized policy of including members of each of the three major linguistic groups in the nation–German, French and Italian–on the Federal Court.

For many nations federalism is not an important organizing principle. Instead, courts are organized and operated in accordance with prevailing political, economic and social power. Nowhere is this more evident than in the long-term

legal cultural relationship of colonial nations and their former colonies. Conversely, the organization of courts in nations which remained free of external domination is determined largely by internal domestic experiences, often of long historic duration. Sweden provides a good example. In a lecture at the University of Lund in Sweden, Nils Stjernquist (1989), Professor Emeritus of Political Science and former *Rector Magnificus* of the University of Lund, analysed the historic and contemporary reasons why judicial review in Sweden is limited and, when asserted by Swedish justices and judges, utilized with great restraint. First, federalism is not a factor in Swedish political development. Sweden was and is a unitary system. Second, the role of Swedish courts is shaped by centuries of earlier Swedish monarchical absolutism under which the monarch was supreme in two major categories of law–as monarch in council, the origin of modern Swedish administrative law, and as monarch in court, the origin of the modern Swedish judicial system. After the fundamental constitutional changes of the nineteenth century, the Swedish monarch no longer had a significant role in either category of law, but the basic distinction between administrative and judicial decision making has been maintained in the modern Swedish legal system. To some extent, Swedish administrative and judicial decision makers generally continue to view themselves as enforcers of governmental administrative, statutory and constitutional authority. There has been a gradual and increasing emphasis upon individual rights. But the historic balance generally was toward governmental authority. In the context of such a tradition extending over several centuries, it is hardly surprising that most Swedish judges and administrative decision makers are strongly oriented towards restraint. Such restraint, more often than not, takes the form of deference to the Riksdagen, the Parliament of Sweden, the successor in ultimate legal authority to the absolute monarch of earlier centuries (Stjernquist 1989).

The ideal conception of a court or a system of courts embodies the notion of impartiality, but the relationship of litigants in many courts and legal controversies is sometimes determined by power rather than legal objectivity. Historically, military conquest and its immediate and long-term consequences have provided the most dramatic examples of judicial and legal bias and partiality. Modern analysts of courts such as Alan Christelow (1985) and Hans S. Pawlisch (1985) documented and critically evaluated the uses of law and courts as instruments of cultural imperialism. Pawlisch carefully examined the relationship of Western European legal development of thirteenth-century canon law doctrines of warfare and conquest to its applications by Spain, Portugal, France, the Netherlands and Great Britain in conquests of the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth centuries in which non-Western legal cultures were destroyed or seriously limited. He then examined the particular application of such legal doctrines by the British in

their conquest of the Irish in Tudor and Cromwellian periods (Pawlisch 1985). Christelow documents French legal imperialism in colonial Algeria in which law was used as an instrument of subjugation, of maintaining civil order, as a subtle means of religious and racial discrimination, and as a mode of property redistribution from the indigenous Muslim Arabic population to the nineteenth- and early twentieth-century Christian settlers from France (Christelow 1985). Similarly, courts which have been granted transnational jurisdiction have, on occasion, been charged with partiality to the legal and economic interests of the most powerful nations. In the post-Second World War era, jurists from Third World nations have not only challenged the law imposed by colonial nations such as Portugal (Isaacman and Isaacman 1982) but have also criticized the alleged Eurocentric, pro-colonial bias of international law (McWhinney 1987).

Whether a nation experienced long colonial domination or not is a key question in the determination of the organization and structure of courts, family of law, mode of training of judges and lawyers and supporting court personnel, and scope of judicial power or jurisdictional characteristics. For the relatively few nations largely free of external legal imperialism there are several major issues influencing the development of these judicial attributes. Chief among these are:

1 whether the nation is organized as a federal or unitary system as suggested by Laskin;
2 the characteristics of the internal structure of overall government organization;
3 the historical factors unique to each nation;
4 the relationship of the judiciary to democracy;
5 the relationship of judicial power to either parliamentary supremacy, or to excessive executive authority such as monarchical absolutism or military dictatorship; and
6 the special role of higher appellate courts in those nations in which judicial review, the power to determine the constitutionality of the enactments of legislature or actions of chief executives, is exercised.

The characteristic basic to all common law nations, that judges make law rather than apply a monarchically ordained (historic) or legislatively enacted (modern) code has, of course, been gradually modified in reality by the nineteenth- and twentieth-century growth of statutory law in these common law nations. Virtually all former British colonies, including Australia, Canada, India, Israel, New Zealand, Pakistan and the United States, utilize some variation of the common law. In some of these common law nations in which there has emerged a written constitution whose provisions are designated as superior to those of ordinary legislative enactments, judges and higher

appellate justices have exercised judicial power considerably greater than in most common law nations. The United States is the most important example, especially since Chief Justice John Marshall rendered his pivotal decision defining and justifying the doctrine of judicial review in *Marbury* v. *Madison* (1803:137). It has been suggested that Canada, after the adoption of its constitutional Charter of Rights and Freedom in 1982, will increase its judicial review activities (McWhinney 1982).

Judicial review, the power of judges to declare unconstitutional the enactments of legislatures and actions of chief executives and their subordinates and administrators, is the very highest exercise of judicial authority. Courts possessing such power thus play a much broader role in national governmental affairs than those which do not. Indeed, in a number of historic periods of considerable judicial activism in the United States such as the early New Deal era of the 1930s, the American Supreme Court was characterized as exercising judicial supremacy. By contrast, the British courts, including those at the apex of British judicial hierarchy, defer to the supremacy of Parliament. Within the common law family of law, judicial review is generally found in those nations which are federal rather than unitary, notably Australia, Burma, Canada, India and Pakistan. Historically, nations with courts organized in accordance with the civil law family of law rarely incorporated judicial review as part of the judiciary's power (see below). Perhaps the major pre-1940 exception was Switzerland, a civil law nation, which utilized judicial review in its Federal Court to assess cantonal legislation.

After the Second World War, several civil law nations, whether organized as federal or unitary systems, adopted some form of judicial review. Japan, a unitary system, and West Germany, a federal system, made the change under American influence during the post-war military occupation. Austria and Italy also responded with limited forms of judicial review in the aftermath of the war. France also made a post-war change toward limited review. All the later three are unitary systems. Japan's Supreme Court comprises fifteen members including a Chief Justice. Except for occasional *en blanc* sessions, the court meets regularly in three panels of five judges each. In accordance with centuries of tradition and practice in continental European civil law systems from which Japan's system was derived in the Mejii era (French to some extent, but primarily German civil law of the era of the Imperial German Empire), Japanese judges and justices (with a few exceptions among the latter) are trained separately from attorneys as career judges. Compulsory retirement of members of the Japanese Supreme Court at the age of seventy has resulted in an inadvertent limitation on the influence of Japanese Chief Justices. Because elevation to Chief Justice is determined by seniority of service on the Court, Japanese justices generally reach that office late in their careers, often near compulsory retirement age. Thus, long