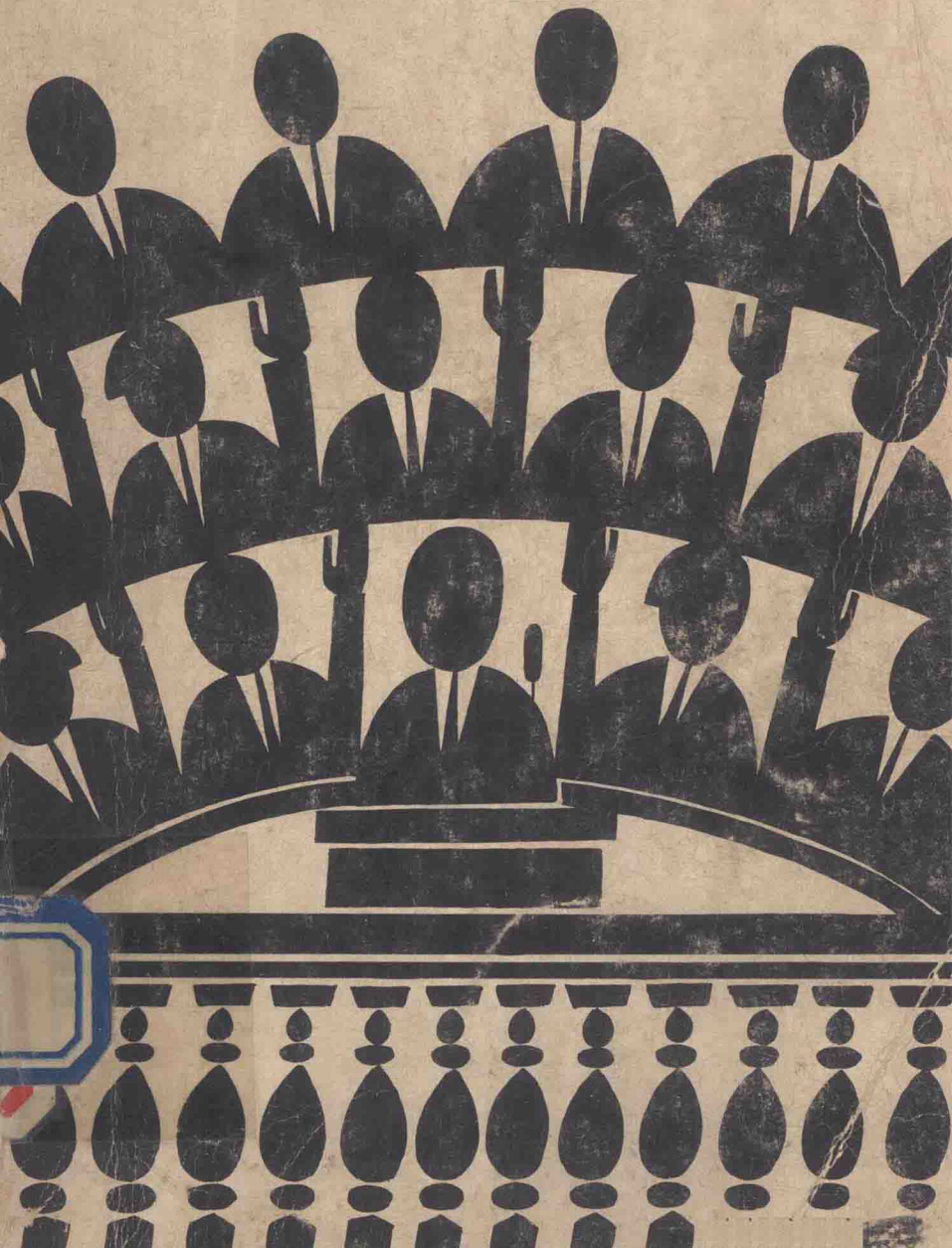


# LEGISLATURES

K.C. WHEARE



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K. C. WHEARE



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## PREFACE

THIS book is not a guide to the legislatures of all countries. It confines itself chiefly to countries where the legislature plays some significant part in the system of government, and has done so for a substantial period. Within these limits, moreover, it does not attempt to describe in detail the composition, structure and working of the legislatures concerned. It aims rather at the discussion, on the comparative method, of certain broad themes or issues which arise from a study of the place and purpose of legislatures in modern politics.

I am under a deep debt of gratitude to my friend Professor Peter Campbell of the University of Reading who has read my manuscript with meticulous care, and has made many suggestions for its improvement which I have been delighted to accept. And once again I wish to record how much I owe to my wife's encouragement.

*Exeter College, Oxford.*

K.C.W.

*24th September, 1962*

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## Chapter One

### MAKING COMPARISONS

#### I

*comparisons*

PARLIAMENTS and congresses and other similar assemblies are commonly called 'legislatures'. The use of the name is convenient and indeed justifiable, but it can mislead. For a large part of the time of these bodies is not devoted to law-making at all. One of their most important functions is to criticize the executive. In some countries they make or unmake governments. They debate great issues of public concern. They constitute 'a grand inquest of the nation'. They act as what John Stuart Mill called 'a committee of grievances', and 'a congress of opinions'.

This variety in the functions of these political institutions is recognized and illustrated by the variety in the names they bear. They are called 'parliaments'—places where talk is carried on, 'talking shops' in the opinion of their critics. They are called 'congresses' or 'assemblies'. They are composed of houses of representatives, houses of the people, houses of assembly, houses of commons, chambers of deputies, and senates. There is nothing in these names which suggests that their functions are even concerned with the making of laws, much less confined to it. And even in the United States, where the name 'legislature' is commonly used, the national legislature is called 'Congress', and only twenty-six out of the fifty states speak officially of the legislature, nineteen use the term 'General

Assembly',<sup>1</sup> three 'Legislative Assembly',<sup>2</sup> and two 'General Court'.<sup>3</sup> All describe their upper houses as 'Senates', and the use of 'House of Representatives' to describe the lower houses is almost invariable.

What we call 'legislatures', then, concern themselves with many important functions other than the making of laws. Moreover, even where law-making is concerned, they are not usually alone in the field. In the first place, they do not necessarily make all the laws. It is common for powers to make laws to be conferred upon the executive or the president, the monarch, ministers, or officials. Sometimes these law-making powers are conferred upon the executive by the constitution—they are original legislative powers. An example is the Constitution of the Fifth French Republic, which describes the matters upon which the parliament may make laws and leaves the rest to regulation by the executive. Sometimes these law-making powers are conferred upon the executive by the legislature—they are delegated legislative powers. The nature and extent of these powers of executive rule-making vary from country to country. The point of importance is that in most countries what we call the legislature does not do all the legislating.

In the second place, even when the legislature itself is engaged in the process of law-making, it is common to find that it is not authorized to complete this

<sup>1</sup> Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia.

<sup>2</sup> Montana, North Dakota, and Oregon.

<sup>3</sup> Massachusetts and New Hampshire.

process without the assent of the executive. Sometimes this is no more than a formality, as in the United Kingdom, where the assent of the Queen is necessary before a Bill can become law, and where that assent is not refused. Or it may be a reality, as in the United States, where the President is empowered to veto a Bill passed by the Congress, and where the President's veto can be overridden only by a two-thirds majority in each of the two houses of Congress. In all the American states, except North Carolina, the governor may veto measures passed by the legislature, and his veto cannot be overruled, in most cases, except by a two-thirds majority in each house. These veto powers are by no means a dead letter in the United States; they are exercised frequently and effectively. Legislatures thus cannot expect invariably to legislate alone.

Yet, when all this has been said, it remains justifiable to speak of parliaments and congresses and the like as legislatures. And the justification, shortly stated, is that these bodies are, if not actually, at least potentially superior to other law-making bodies. Where the executive has some original legislative power, it is common to find that its ordinances can be amended or overridden by the assembly. Where the executive exercises delegated legislative power, the parliament may withdraw the delegation and may override any exercise of the power delegated. Where the executive's assent is needed to complete the process of legislation, that assent, where it is not a formality, may, if the assembly is sufficiently united and determined, be dispensed with. The last word about what the law is to be rests with the assembly.

What is more, many of the other important functions



of a parliament or congress are connected with and arise from its function of law-making. The discussion of grievances and the criticism of the executive and the debating of great or small issues are naturally and necessarily linked with the process of making or amending the law. In particular it is proper that a representative assembly should seek redress of grievances before passing a law to authorize the spending of money by ~~the executive or the raising of taxes upon the citizens.~~ The occasion of law-making provides the opportunities for that debate and discussion and criticism which occupy so large a part of the time of many assemblies.

For reasons of this kind, it seems proper to speak of these institutions as legislatures. But, in the chapters that follow, while we shall describe the part which legislatures play in the making of laws, we shall devote more space still to the analysis and appraisal of the other important functions which legislatures perform.

## 2

Legislatures differ strikingly in size. At one extreme there are houses so large that, like the British House of Commons of 630, the French National Assembly of 482, the Italian Chamber of Deputies of 596, the Indian House of the People of 500, the German Bundestag of 499, or the American House of Representatives of 437, they seem like a mass meeting. At the other extreme there are houses so small that, like the Senates of Nevada or Delaware with 17 members, they seem like a committee. Some are surprisingly large—the House of Representatives of New Hampshire has 400 members for a population of about 600,000. New

York State, on the other hand, with a population of about 17 million is content with an assembly of 150 members. It may seem surprising also that the United States and India should have houses which are considerably smaller than those of Britain, Italy, or France, in spite of the fact that they seek to represent populations many times larger. It is true that the American and the Indian people are represented not only in their national legislatures, but in the legislatures of their constituent states. Even so, it is permissible to wonder whether it is the British, Italian and French houses that are remarkably large or the American and Indian houses that are remarkably small.

In general, the legislative houses—particularly the lower houses—of most national sovereign states range in size from 100 to 300 members. The Canadian House of Commons, for example, has 265 members, the Belgian lower house 212, the Swedish lower house 232, the Finnish house (it has one only) 200, the Swiss lower house 196, the Netherlands lower house 150, the Danish house (it also has one only) 179, the South African House of Assembly 160, the Irish lower house (Dail) 144, the Norwegian Storting 150, and the Australian House of Representatives 124. Among lower houses of less than 100 members may be mentioned the New Zealand House of Representatives of 80, and the Icelandic lower house of 40. Here again, if we are to get the picture in true proportion, we must remember that in some of these countries, the people are represented, as in the United States, in state or provincial councils as well. Canadians are represented in the legislatures of their ten provinces, Australians in the parliaments of their six states, the Swiss in the

legislatures of their twenty-two cantons, and the South Africans in their five provincial councils.

## 3

The size of a legislature has some interesting and important effects upon its organization and operation. A very large assembly produces problems of accommodation. If all the members are to be provided with seats a large chamber will be needed. That this can be done must be admitted, for most countries with large legislatures have done it. Britain, however, is an exception, and as it attaches importance and significance to being an exception, something must be said about it. The British House of Commons has decided deliberately that the Chamber in which it meets shall be too small to provide each of its 630 members with a seat.

The old chamber of the House of Commons, which was destroyed by bombing in the Second World War, could accommodate 346 members. It is true that there was room in the galleries for another 100, and on a crowded day members sat there. But that was a very different thing from having a seat on the floor of the Chamber itself, though it is said that at least one enterprising member (Mr. Pemberton Billing) asked a question in the House from the galleries. When the time came to consider plans for rebuilding the chamber, some members suggested that it might be so constructed that there could be room on its benches for all the members. This proposal strikes one, at first sight at any rate, not only as humane, but as inevitable, if not obvious. If a man is elected to sit in the legislature, ought he not to have somewhere to sit? But the

House of Commons rejected the proposal and the present chamber still fails by a long way to accommodate all the members. There can surely be no legislative chamber in any other country (which believes in parliamentary institutions) constructed deliberately on this principle.

How could it possibly be justified? A great House of Commons man said this:

'The characteristic of a Chamber formed on the lines of the House of Commons is that it should not be big enough to contain all its members at once without overcrowding, and that there should be no question of every member having a separate seat reserved for him. The reason for this has long been a puzzle to uninstructed outsiders, and has frequently excited the curiosity and even the criticism of new members.'

These are the words of Mr. Winston Churchill, speaking as Prime Minister in the House of Commons (then sitting in the Chamber of the House of Lords) on 28 October 1943, and commending the proposal to build the new chamber of the House of Commons on the same lines as the old. And he gave these reasons for his view:

'If the House is big enough to contain all its members nine-tenths of its debates will be conducted in the depressing atmosphere of an almost empty or half-empty chamber. The essence of good House of Commons speaking is the conversational style, the facility for quick informal interruptions and interchanges. . . . But the conversational style requires a fairly small space and there should be on great occasions a sense of crowd and urgency. There should be a sense of the importance of much that is said, and a sense that great

matters are being decided, there and then, by the House.'

This sounds, and no doubt is, something of an orator's attitude to the House of Commons. But the House agreed with Mr. Churchill and there is no doubt that in these words he expressed part of the British view of the purpose of a legislature. It exists to be a grand forum of debate, a sounding board for governments, an audience to be called together in a crowd on great occasions and to disperse when the excitement is over.

Let us look a little further into this question of the relation between size and seating arrangements in the British House of Commons. Suppose it were decided to give each member his own individual reserved seat, what consequences would follow? Immediately you would come into conflict with a strongly held British belief not only about whether there should be seats for all, but also about how such seats as there are should be arranged.

Seats in the British House of Commons are arranged in rows facing each other across the chamber, and separated by a gangway running the whole length of the Chamber, with the Speaker's chair at one end. To the right of the Speaker sit the supporters of the government; to his left those who oppose it. But if everyone is to have a seat, and if you have an equal number of seats on each side of the Chamber, the supporters of the government, being in the majority, are bound to overflow on to the opposition side. Is this a bad thing? After all, on a crowded day, government supporters seek accommodation on the opposition side and occupy it if they can find it. That, admittedly, is

temporary. But to have one's allotted seat permanently reserved on the opposition side and to have to speak from that side in support of the government apparently does violence to the feelings of many members of the House of Commons. Indeed, in the course of the debate in 1943 one member, Mr. Rhys Davies, said: 'I prefer meeting my political opponent face to face. I do not like turning at a slant to argue with him.'

To an 'uninstructed outsider' such delicacy might seem strange. And all the more so when he discovers that in the Canadian House of Commons, which has a chamber similar in shape and in the arrangement of seats to the British chamber, no such inhibitions apparently prevail. Each and every member has his own allotted seat, with the result that supporters of the government do sit on the same side as the opposition if the size of the government's majority requires it.

And what is the alternative? To provide more seats to the Speaker's right than to his left would produce a curiously shaped chamber. To be on the safe side it would be necessary to allow over 600 seats on the Speaker's right to provide for the eventuality of a government with a very large majority. On the speaker's left 300 seats at least would be needed for an opposition which came near to the government in numbers. Here is a larger chamber than ever. What is to be done? How can the idea of the government and opposition facing each other across the chamber be combined with the idea of seats for all? Are they irreconcilable

The fact is, that in an assembly of any size, it cannot be done, without producing too large a chamber. In a small assembly there is less difficulty. There can be

enough accommodation for a very large body of government supporters or for a very large opposition within a chamber of moderate size. The only way out, for a large legislature, is a compromise, and it is a compromise which the British House of Commons rejected in 1943. It is the semicircular chamber or amphitheatre. By this means the supporters of the government can be seated on the right of the Speaker and the opponents of the government on his left, but it is true that at a certain point somewhere past half-way round the semicircle, government and opposition supporters are sitting side by side. This is, in fact, the method of seating adopted in the parliament of Australia at Canberra, and it is found also in the chambers of some other legislatures in the Commonwealth. They have diverged from the model of Westminster in this matter. Outside the Commonwealth it is almost invariably adopted. It is the usual system in European legislatures. It is found in the chambers of the Senate and the House of Representatives in Washington, and most of the legislatures of the fifty constituent states of the United States. Why could not the House of Commons adopt it in 1943?

Here again the answer can be given in Mr. Churchill's words. Speaking in the same debate on 28 October 1943, he said:

'Its shape should be oblong and not semicircular. Here is a very potent factor in our political life. The semicircular assembly, which appeals to political theorists, enables every individual or every group to move round the centre, adopting various shades of pink according as the weather changes. I am a convinced supporter of the party system in preference to the group system. . . .

The party system is much favoured by the oblong form of chamber. It is easy for an individual to move through those insensible gradations from Left to Right, but the act of crossing the floor is one which requires serious consideration. I am well informed on this matter, for I have accomplished that difficult process, not only once but twice. Logic is a poor guide compared with custom.

Logic, which has created in so many countries semi-circular assemblies which have buildings which give to every member not only a seat to sit in, but often a desk to write at, with a lid to bang, has proved fatal to parliamentary government as we know it here in its home, and in the land of its birth.'

Though Mr. Churchill named no country, all his hearers knew which he meant. It was of France that they thought when they heard his words. And it is true that France has a semicircular chamber. The French have a large assembly—even if it is not now quite so large as the British House of Commons—and they seat them in an amphitheatre, ranged from left to right not only physically, but also politically, with the Communists on the extreme left of the presiding officer, the most conservative group on his right, and other groups in the centre. There they sit, graded and shaded. The language of politics owes part of its vocabulary to the seating arrangements of a semicircular chamber—left, centre, left of centre, right of centre, right and extreme right. And it is interesting to notice, in passing, that it was France which gave these terms to politics. In the French National Assembly of 1789, the nobles as a body took the position of honour on the President's right, and the Third Estate sat on his left. The significance of these positions, which was at first merely



ceremonial, soon became political. And it is in the modern French chamber that the arrangement of groups from left to right physically corresponds closely with the shade of their opinions politically.

The justification of the seating arrangements in the British House of Commons, then, is this. The members of the House cannot all have seats, for that would be practicable only in a semicircular chamber. A semicircular chamber would undermine the two-party system. You must be either for the government or against it; you must be on one side of the chamber or on the other. An oblong chamber not only assists you, but compels you to take sides. 'We shape our buildings', said Mr. Churchill, 'and afterwards our buildings shape us.'

It may be suggested that this argument is a little far-fetched. The oblong chamber may be a good symbol of the British two-party system, but we can hardly say that it causes it or is an essential pre-requisite of it, or even that it has a principal share in maintaining it. Can it be seriously suggested that if some Conservative and Labour members of parliament actually sit next to each other continuously, they will find it easier or tempting to change places? Is there much evidence that government and opposition members in the Australian parliament are encouraged by the semicircular arrangement of seats to change their allegiance? Not at all. The fact is that the essence of the British system lies not in the oblong chamber nor in the inadequate seating accommodation for members, but in the ranging of two sides behind their leaders, one forming the government and the other the opposition. The supporters of each side sit together, with the