International IDEA

LEGISLATURES: ORGANIZATION, ADMINISTRATION AND PRIVILEGES

International IDEA Constitution-Building Primer 24

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INTRODUCTION

No political system can work well if the legislature is unable to perform its functions effectively. The legislature's rules of procedure, its resources and its internal administration may all increase or undermine its effectiveness. Who controls these matters—whether they are subject to majoritarian or more broadly balanced control, for example—can be fundamental to the operation of representative and responsible government, and to the system of checks and balances in the polity as a whole.

This primer examines matters of legislative organization, privileges and administration in democratic constitutions. This includes the rules, practices and conventions that govern meetings of the legislature, its leadership and officials, its committees, the privileges and immunities of its members, and how the legislature as an institution is resourced and managed.

The primer does not consider the law-making process more broadly, such as who can propose bills, the timing and process for considering them, the means of addressing differences between legislative chambers, or the rules for giving assent to bills. Some of these matters are covered in other International IDEA primers in the series, including those on bicameralism, presidential veto powers, and presidential legislative and agenda-setting powers. Since the focus is on constitutional design, this primer also omits other aspects of internal procedure that are not amenable to constitutional regulation.

Almost all written constitutions provide at least a basic legal framework for legislative organization, privileges, procedure and administration, even if only to confer powers upon the legislature to

regulate these matters for itself. However, self-regulation in a body divided into parties and run on majoritarian lines can often mean domination by the incumbent majority. Many constitutions therefore go further and include detailed provisions for the legislature's organization, procedure, privileges and administration. Putting such structural and procedural provisions into the constitution involves a sacrifice of flexibility, but it may help to protect the procedural rights of minorities and create mechanisms of internal deliberation and accountability. It might also be a way of preventing the moral hazard of self-regulation: that if matters of privileges, immunities, salaries, allowances, and conflicts of interest are entirely in their own hands, members of the legislature may be tempted to serve their own rather than public interests.

Structure and content of this primer

Chapter 1 of the primer, 'What is the issue?', discusses the principles at stake in determining matters of legislative organization, privileges, procedure and administration. It explains three key tensions at the heart of this area of constitutional design:

- First, majority rule vs minority protection: the balance to be struck between empowering the legislature to independently regulate itself, and checking the legislature's power via external actors.

- Second, flexibility vs resilience: the balance between flexible rules and counter-majoritarian resistance to manipulation.

- Third, efficiency vs deliberation: the tension between: (a) designing procedure so as to facilitate the efficient and effective passage of legislation; and (b) providing thorough scrutiny of proposed legislation and of the executive's actions.

Together, these three axes help to determine the answer to a fundamental question: How much to put into the constitution, and how much to leave to sub-constitutional rules such as statutes or standing orders?

Chapter 2 sets out some contextual considerations including the historical performance of the legislature in the country, the size of the legislature and the party system. It also covers matters such as openness to the borrowing of constitutional ideas and the risk of over-correction (i.e. over-strengthening a marginal legislature to the point of causing deadlock, or over-weakening a dominant legislature to the point where it can no longer perform effectively).

Chapters 3 to 11 take a closer look at particular aspects of procedural design. Chapter 3 addresses presiding officers (speakers) and other leadership institutions within a legislature, including parliamentary bureaux. How are these leaders chosen? Should they be chosen from inside the House or from outside? Should they be partisan, or expected to resign from active party membership? Chapter 4 covers the instruments of self-regulation by legislatures: statutes and standing orders or rules of procedure.

Chapter 5 discusses parliamentary committees: their functions, the constitutional framework, their role in the legislative process, their membership and their chairs. It also addresses other types of groups in the legislature, including all-party groups and party caucuses. Chapter 6 discusses the legislative timetable, agenda-setting and order of business: Who decides what the legislature discusses and votes upon, and when? Is it the government, the legislative majority, or a more cooperative process of agenda-setting? Chapter 6 also covers the sessions of the legislature (when it meets, and how it is convened), methods of voting, and rules on matters such as public access and reporting. Chapter 7 analyses scrutiny and accountability mechanisms, including procedures for questions, interpellations, and votes of no confidence or censure.

Chapter 8 deals with parliamentary privilege and immunity. Chapter 9 addresses the way in which legislatures discipline members—and sometimes non-members in the precincts of parliament—for breaches of parliamentary rules. Chapter 10 looks at parliamentary administration: the governing bodies of the legislature, its clerks and other officers, the security of the legislature, record keeping, and the budget of the legislature. The final substantive part, Chapter 11, considers legislators' pay and allowances. The primer concludes (Chapter 12) with some decision-making questions, tables of selected example provisions (Chapter 13) and references.

A note on terminology

In this primer, the term 'legislature' is used to refer to representative and legislative assemblies regardless of whether they operate within a parliamentary or presidential system. It includes terms such as 'Congress', 'Parliament' and 'National Assembly', and these terms are used interchangeably with 'legislature'.

Similarly, members of a legislature are interchangeably referred to as 'deputies', 'members of the house, 'parliamentarians', or 'legislators',

except when referring to specific national examples. For ‘member of Parliament/MP’, read also ‘congressperson’ or ‘deputy’ if required.

The same flexibility applies to other nomenclature. For example, the senior administrative officer of the legislature may be called clerk of the House, secretary general, or Secretary. The chair of the legislature may be known as the presiding officer, speaker, or president of the assembly. These and other terms are used interchangeably, except if otherwise noted or as required by the national context referred to.

Chapter 1

WHAT IS THE ISSUE?

Questions of parliamentary organization, privileges, procedure and administration (here also collectively to referred to as the 'internal affairs' of a legislature) influence how the legislature works. That is to say: how decision making takes place, who will have influence on that process, and when. The rules and structures of a legislature have considerable influence on how effectively it discharges its key functions, namely representing the people, enacting laws, approving budgets, debating policy and scrutinizing the executive.

A legislature's internal affairs can therefore shape the balance of power in politics—between government and opposition, or between party leaders and ordinary rank-and-file ('backbench') members. Internal rules can also determine the strength and effectiveness of the legislature externally, vis-à-vis the executive and other branches and institutions of the state.

If the legislature is too weak, or if the majority within it is excessively powerful (in a way that denies the rights and voice of the minority), the result can be executive dominance, a lack of moderating checks and balances, and a lack of accountability. On the other hand, if the legislature is too strong, or if minority voices within it have too much power to stop decisions being taken, the result may be a disordered and weak political system characterized by gridlock, instability, and a lack of coherent governance.

Getting the balance right is therefore vital to the health and balance of the constitutional system as a whole. There are three axes along which this balance must be struck if a legislature is to carry out its duties effectively: (a) the balance between the ability of the legislative majority to regulate itself, and the ability of the legislative minority to

restrain the majority; (b) the balance between flexibility, in responding to changing needs and circumstances, and resilience against regressive or manipulative change; and (c) the balance between getting legislation passed and ensuring the efficient despatch of public business and deliberation (allowing the legislature to fully debate and consider matters, to take its time in digesting bills, and giving voice and recognition to a wide variety of perspectives). In practice, these three axes tend to align. Rules which enable majority control will also allow flexibility and swift decision making. Rules which reinforce minority voices within the legislature will tend to also encourage resilience and deliberation. The crucial question, in all cases, is to what extent does the majority get its way, procedurally and substantively, in the legislature?

1.1. **MAJORITY RULE AND MINORITY PROTECTION**

Constitutions vary considerably in how far they allow the legislature—or rather, to the majority in the legislature—to regulate their internal affairs. To protect the independence of the legislature from the other institutions of government, a common starting point is to recognize the legislature's right to make its own rules and to control its own proceedings. These rights, together with the associated privilege of freedom of speech in the chamber, are fundamental to the legislature's ability to perform its functions.

However, the majority in the legislature does not generally speak for the whole population, and allowing it to dominate the legislature, in ways that exclude minority voices or criticism, is not in the public interest. There may therefore be (more or less detailed) constitutional provisions binding upon the legislature and its members, for example defining the quorum, election procedures for presiding officers, agenda-setting, privileges and remuneration, the rights of opposition members, and other such matters. The enforcement of these rules might be done internally—through the presiding officer and clerks, for example—or might require external enforcement, principally by the courts.

1.2. **FLEXIBILITY AND RESILIENCE**

Second, parliamentary procedure needs to strike a balance between flexibility and resilience. Flexibility means the ability to be changed in order to suit different needs and circumstances. However, it is necessary to consider *who controls this flexibility*, and who this empowers to diverge from or change rules, and when and why they can do so. In particular, excessively flexible rules can be misused by the majority to limit scrutiny and to ensure that alternative viewpoints are not adequately presented. This is why resilience also matters. *Resilience means being resistant to manipulative, one-sided, majoritarian changes that could undermine the work of the legislature.* Combining flexibility with resilience might mean, for example, that some changes to the rules require a super-majority, or two successive majorities, or a majority with a level of multiparty consensus.

1.3. **EFFICIENCY AND DELIBERATION**

Third, legislative organization and procedure needs to balance two often competing functions. On the one hand, legislatures have a *deliberative function*, which includes their representative and scrutinizing roles. They have to give voice to various interests and opinions, and ensure that laws and policies are properly debated and considered before being passed. On the other hand, they have a decision-making or *governance function*. There needs to come a point where discussion gives way to decisions, laws are passed, and budgets are approved. Getting the manifesto commitments of the majority through the legislature and onto the statute book is also an expression of electoral democracy. People expect the legislature to 'get stuff done'. Otherwise, public business grinds to a halt (Malloy 2023).

The internal rules of a legislature have to recognize and balance these two functions. The majority should (all things being equal) get its way; but the minority must get its say.

A crucial question in this regard is the pace, or timing, of the legislative process. How much time is allocated to those who want to scrutinize and debate a bill, before the moment of majoritarian decision-making arrives? Is the general tendency to speed things up and bring them to a resolution, or to slow them down until they are

fully considered? Small things, which are rarely included in the text of a constitution, can make all the difference: are draft bills published for public comment before being introduced to the House? Who controls the timetable of business? Who decides which amendments are selected for debate?

1.4. **DO CONSTITUTIONAL RULES MATTER?**

It should not be assumed that merely writing procedural rules into a constitution will secure compliance. Genuine constitutionalism is a matter of political culture as well as formal rules. In cases of deliberate malfeasance by a determined and powerful majority leader, formal constitutional rules may be insufficient. The best human institutions can ultimately be overthrown or undermined. However, constitutional rules can provide effective protection in all but these extreme circumstances. They make it harder to change the rules. They provide clarity about what the rules are. They shape expectations about how people will (and ought to) behave, and increase the political costs of breaking the rules. So, while writing the rules down in a constitution is neither always necessary nor ever sufficient, it can be an effective way of increasing the visibility, legitimacy, resilience and strength of those rules.

Some high-quality democracies have 'thin' constitutions that give wide discretion to governing majorities; they rely on democratic traditions, unwritten rules and norms of good behaviour and reciprocity to ensure that this power will not be abused. On the other hand, where such traditions, unwritten rules and norms cannot be relied upon more constitutional regulation may be needed.
The textual content of what constitutions say can sometimes be inversely related, therefore, to the actual quality of institutions: more constitutional detail where the political culture is least supportive of them. From this, one might erroneously conclude that such constitutional rules are irrelevant. They are not. They can have an important effect at the margins. Poor quality democracy might be even worse, were it not for constitutional rules constraining it. High quality democracy, in the same way, might be more resilient, if good norms were reinforced by constitutional rules.

1.5. **HOW MUCH TO PUT INTO THE CONSTITUTION?**

When designing a constitution, it is necessary to consider where procedural rules should be set out: in the constitution, or elsewhere. If they are set out in the constitution, it is further necessary to consider in what form: in detail, or as general rules and principles. This will have consequences for how easily procedures can be changed, as outlined earlier in this chapter.

The regulation of legislative organization, administration, privileges and procedure exists on a spectrum. At one end are constitutions that grant the legislature the power to regulate these matters for itself, but with few if any provisions constraining the legislative majority. At the other end of the spectrum are constitutions containing detailed rules setting out, for example, the number of committees and their composition, how the agenda is set, or procedures for appointment of the presiding officer and clerks.

Whatever its position on this spectrum, a constitution can never say all that might be said about such matters. Often, even relatively detailed constitutions provide a baseline of principles, or a framework of rules, which then has to be added to by ordinary statutes, standing orders, or other sub-constitutional rules. These may include rulings from the Chair, authoritative manuals of parliamentary practice, or simply longstanding norms, customs, practices and conventions that are respected and adhered to. For example, many constitutions lay down a general rule that the speaker is to be elected by the House, but the House's standing orders will specify exactly how.

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Constitutions can also set boundaries within which other (sub-constitutional) rules are made, or principles these other rules must conform to. For example, some constitutions do not specify in detail the composition of committees, but do require them to be representative of the balance of political parties in the House.

One of the main advantages of detailed regulation in the constitution is that it sets clear and visible norms. The rules do not need to be looked up in secondary instruments like standing orders; they are plain for all to see in the constitutional text. That makes them easier to defend and harder for anyone to change for their own advantage. If the constitution says little or nothing about how power is exercised within the legislature, the majority party will tend to prevail—which might hinder the ability of other parties to deliberate, scrutinize, challenge and oppose. Consider, for example, the provision in the

These provisions are intended to prevent the majority from abusing its position of power.

Constitution of Trinidad and Tobago (article 119(2)) requiring the chair of the Public Accounts Committee to be an opposition member; the rule in the Constitution of Malta (article 67) requiring committees to be politically representative of the partisan composition of the House; and the provision in the Constitution of Tuvalu requiring the speaker to act impartially and to give each member a fair chance to be heard (article 108(7) in the 2023 revision). All these provisions are intended to prevent the majority from abusing its position of power. If they were not written into the constitution, and were instead dependent upon ordinary laws, standing orders, or other sub-constitutional rules that could be changed by the ruling majority for its own convenience, they would not have the desired effect.

However, constitutional regulation of the legislature's internal affairs can in other cases be designed (or applied) to limit legislative autonomy—not to protect political minorities or the rights of the opposition, but rather to reinforce executive power over the legislature (Lupo 2019: 349). This is the case in France, where the Constitution of the Fifth Republic, adopted in 1958, was explicitly intended to limit Parliament's power.

Perhaps the key difference, then, is not how much the constitution says about these matters (flexibility versus resilience), nor even whether rules are internally or externally enforced (by the Chair or by the courts), but the underlying design intentions. That is, whether the internal workings of the legislature are intended to reinforce the majority or the minority within it (majority empowerment versus minority protection); and whether to strengthen the executive in driving through decisions, or to strengthen the legislature in its scrutinizing and debating functions (decision making versus deliberation).

Chapter 2

CONTEXTUAL CONSIDERATIONS

2.1. LEGISLATIVE PERFORMANCE AND POLITICAL CULTURE

There is widespread public dissatisfaction with the way many legislatures around the world work in practice. In theory, they are representative, deliberative and legislative assemblies, in which the public interest is discerned and defended. In practice, they are often theatres of ineffective, ritual confrontation between competing parties or factions. Substantive discussion too often gives way to mere point-scoring. Parliamentarians may turn up to vote, as instructed by their party whips, on bills they have never even read (Hardman 2018). Committees may be weak, under-resourced, or simply uninterested in the matters they are supposed to consider. Votes may, with rare exceptions, be a foregone conclusion, as members vote on party lines. Supposedly the centre-point of public life in a democracy, the legislature might be rather removed from power. It might have long recesses. Its members might be primarily concerned with local constituency matters, rather than focusing on their role as national legislators who are supposed to pass laws and hold the government to account.

Alternatively, members may primarily be concerned with other occupations, using their parliamentary seat mainly as a platform from which to aid careers in the private sector, as a stepping stone to executive office, or as a base for illicit transactions. Almost everywhere, the reality of what the legislature is, what it does, and how it does it, falls short of legitimate public expectations. That is not, of course, an argument for weakening legislatures, but for

Almost everywhere, the reality of what the legislature is, what it does, and how it does it, falls short of legitimate public expectations.

ensuring, to the extent that it is possible, that they are able to perform their functions well.

Formal rules can be changed, sometimes almost overnight. It can take decades or generations to change a political culture.

Political culture is 'stickier' than institutions. Formal rules can be changed, sometimes almost overnight. It can take decades or generations to change a political culture. If it is true that 'Committees may be weak, under-resourced, or simply uninterested in the matters they are supposed to consider', then rules, both constitutional and sub-constitutional, can fix the powers and resources of committees, but they cannot—at least not in any direct way—stimulate their interest. That depends on a much more complex set of incentives, norms and virtues. This does not mean, however, that one should abandon attempts to change political cultures through formal rules. Formal rules, whether constitutional or sub-constitution, set the boundaries and the expectations within which informal norms operate. Indeed, the 'stickiness' of political culture may encourage constitutional designers to seek tighter, more explicit, more resilient, formal rules, because only by setting the boundaries narrowly can the informal rules and norms be brought into conformity with them.

2.2. **CONSTITUTIONAL INHERITANCE AND BORROWING**

Parliamentary working cultures are often related to patterns of colonial and other historical influence. England, France and the United States have been particularly influential in shaping the customs, organization and procedures of legislatures elsewhere. Many countries which were once British colonies or dominions, for example, have to varying extents adopted 'Westminster model' customs and traditions. This includes the majority of Commonwealth member states, many of which are Small Island Developing States (SIDS) of the Caribbean and Pacific regions. The rules and customs of the United States Congress—which were also derived, at an earlier point in history, from British antecedents—have been influential in presidential systems including Indonesia, Mexico, the Philippines and South Korea. In the same way, countries with experience of French rule tend to have parliamentary norms and customs that derive from French practices. Recently there has also been more deliberate borrowing of legislative practices from countries such as Germany and Sweden, especially in central, eastern and south-eastern Europe. Of course, despite these historical influences, each jurisdiction tends

to absorb, adapt, and modify, institutions in its own way, forming its own distinct national traditions over time.

Importing one aspect of procedure from one system to another needs to be done with caution. It can sometimes be helpful to go with the grain of the existing political culture, rather than against it. That does not mean that borrowing across traditions is impossible. There are many examples of successful borrowing. For example, the concept of a 'constructive vote of no confidence' was developed in the German Basic Law of 1949, but has since been copied to good effect in Spain, Hungary, and elsewhere (Bulmer 2017c). It is simply that care must be taken, when undertaking such borrowing, to maintain some coherence, and to look at how the new system will work in its entirety.

2.3. **THE RISK OF OVER-CORRECTION**

Where the performance of parliament has in the past been unsatisfactory, there will be an understandable desire to correct it. For example, if parliament has been focused primarily on the prompt and efficient despatch of public business—getting legislation through the House—there might be a desire to move to a more deliberative process, greater opportunities for scrutiny, discussion, and consideration of opposing views. If parliament has hitherto been subject to excessive gridlock and inefficiency, there might be a desire to move in the opposite direction, towards simplifying and streamlining decision-making processes and giving more power to the majority. In all such cases, it is wise to be aware of the risk of over-correction. Too many reforms, all with the same purpose, may push things too far the other way.

It is wise to be aware of the risk of over-correction. Too many reforms, all with the same purpose, may push things too far the other way.

2.4. **SIZE OF THE LEGISLATURE**

The size of a legislative chamber affects how the legislature functions. Big chambers (those numbered in the hundreds of members) feel, and act, differently from small chambers (those numbered in the tens of members).

In a small legislature, there might only be a handful of people able to perform committee functions. There are examples of parliaments

in the Caribbean where the opposition has been reduced to one member, or even to none at all (Bulmer 2020). In such circumstances, there are just hard, practical, human limits to what can be achieved. Reforming legislative organization, privileges and procedure and administration, without an increase in the number of members, might not be an effective remedy. On the other hand, a small legislature can often work through 'Committees of the Whole House', can allow members to work more informally, and can provide more opportunities for each member to speak in debates.

2.5. **PARTY SYSTEM, LEGACIES AND FUTURE RESILIENCE**

Another contextual consideration is the party system. Similar constitutions—with similar rules on legislative organization, privileges and procedure and administration—might behave very differently depending on whether there is an electorally dominant party, a tightly competitive two-party system, a moderate multiparty system, or a fragmented system of small parties. The roles and rights of political parties, and constitutional rules on their regulation, will be discussed in another forthcoming primer in this series.

In designing constitutional (or sub-constitutional) rules on legislative internal affairs, especially at times of transition from one regime or political system to another, it is important simply to acknowledge that the party system will have a profound effect. The party system existing before or during that change might not endure beyond it, especially if there is a change to the electoral system, or to the state's boundaries and electorate. It is necessary, as far as possible, to 'future proof' the rules, by thinking through how they might work in different circumstances. Some key questions are presented in Box 2.1.

Separation of formal powers, or institutions, is unlikely to have much effect, if they are controlled by the same party. The most effective distribution of power is often a 'separation of parties, not powers'.

It is also necessary to be realistic about how parties control legislatures. Separation of formal powers, or institutions, is unlikely to have much effect, if they are controlled by the same party. The most effective distribution of power is often a 'separation of parties, not powers' (Levinson and Pildes 2006), meaning that rules are designed in such a way that no one party, and certainly not a governing party, can get its way in procedural matters that undermine scrutiny.

Box 2.1. **Key questions about the source of parliamentary rules**

- What rules, procedures and practice should be written into the constitution and what should be kept in sub-constitutional documents? Should procedural rules to empower parliamentary opposition and minorities be included in the constitution?
- Where should parliament have the power to determine compliance with its own procedure without review, and where should an external actor like a court be able to review parliament's actions?
- Who should interpret parliamentary rules? Is an appeal mechanism necessary or is it enough that parliament can amend rules?
- How easily should procedural rules adopted by parliament be suspended, revoked or amended? Should parliament have discretion to do so quickly and flexibly, or should amendment or revocation require slower and more detailed committee review? Who should be consulted?

Chapter 3

PRESIDING OFFICERS AND BUREAUX

The presiding officer's role is multifaceted: it typically includes a constitutional function, a chairing role and an administration function.

3.1. FUNCTIONS AND DUTIES OF PRESIDING OFFICERS

All parliaments feature a presiding officer—who might be known as the president of the assembly, speaker or chairperson. The presiding officer's role is multifaceted: it typically includes a constitutional function, representing and embodying the House as an institution; a chairing role (presiding over debates, keeping order, and ruling on points of procedure); and an administrative function, being responsible for the House's staff and property.

The office of presiding officer is normally established and defined in the constitution, which generally provides for the free election of presiding officers by the members of each House. However, constitutions vary in the extent to which they deal with the election, tenure, role, functions and powers of the presiding officer:

- In Japan, at one extreme, the Constitution mentions the existence of the presiding officer only in passing, leaving all details—including the election of the presiding officer—to be prescribed by a Diet Law (article 58).

- In Spain, which is more typical, the Constitution prescribes that 'the Houses elect their respective Speakers and the other members of their Bureaus' and that 'the Speakers of the Houses shall exercise on their behalf all administrative powers and disciplinary functions within its premises' (article 72).

The powers of the presiding officer are more than symbolic and can influence the conduct of politicians, even the outcome of decisions. In the words of a former British MP, Tony Benn:

> Apart from keeping order, which is not as difficult as it might appear, the Speaker can allow or disallow parliamentary questions to Ministers, and thus expose or protect them; accept or refuse closure motions, which can prolong or stop debates; select or reject back-bench motions or amendments, and thus deny a minority view in the House from ever being put in the lobbies; permit or deny private notice questions or emergency debates; call or not call individual Members; and give or withhold precedence to Privy Councillors, which is the source of much anger. He [sic] can determine which bills are hybrid and which are not; use a casting vote if there is a tie; recall the Commons in a recess—a formidable power—in the event of some international crisis; certify a money bill; and rule on matters of privilege. (Tony Benn MP, House of Commons, 27 April 1992)

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In bicameral systems there is a presiding officer for each House. The principles outlined in this chapter apply to both Houses. Usually—although it depends on the specific form that bicameral takes—the presiding officer of the Upper House has more prestige (reflected, for example, in their rank in the official order of precedence) even if the presiding officer of the Lower House might have more political influence. When the two Houses meet in a joint session, it is normally the presiding officer of the Upper House who chairs the meeting—although there are exceptions (see e.g. Constitution of Italy, article 63).

As well as their duties in relation to the House over which they preside, presiding officers in republics often have a place in the order of succession to the presidency. In bicameral systems, the duty to stand in for an absent president often falls, in the first instance, on the presiding officer of the Senate (see e.g. Constitution of the Fifth French Republic, article 7). Perhaps the most well-known example is in the United States, where the vice-president presides over the Senate. The day-to-day duties of presiding over the US Senate are, however, performed by the president 'pro tempore' (for the time being), who is elected by the senators, and who is third in the order of succession to the presidency.

3.2. **HOW SHOULD THE PRESIDING OFFICER BE CHOSEN?**

Historically, when Upper Houses developed out of advisory councils to a monarch, the presiding officer was often a high officer of state, or officer of the royal court, chosen by the king. For example, the 1814 Constitutional Charter of France provided (article 29) that 'The Chamber of Peers is presided over by the chancellor of France, and in his absence, by a peer appointed by the king'. However, such provisions have become rarer in modern democratic constitutions. Some vestiges remain in cases where the presiding officer (especially of the Upper House) is an ex-officio senior office holder. As noted above, the US vice president presides over the Senate (Constitution of the United States, article 1, section 3). The same principle applies in Argentina (Constitution of Argentina, article 57). In the same way, in India, the vice-president is ex-officio chairperson of the Council of States (Rajya Sabha) (Constitution of India, article 89).

More usually, however, the presiding officer is elected by each House. Where the election is regulated by the constitution, it is normally required that this election be among the first acts of a newly convened parliament following a general election (e.g. Constitution of Australia, section 35). South Africa requires that the election take place at the first sitting of Parliament, which must take place not more than 14 days after the election result is declared (Constitution of South Africa, article 51).

Unwritten conventions may also play a role in deciding the election of a presiding officer. For example, in the UK the speaker has historically alternated between the two major parties regardless of the election results.

Constitutions may lay out nominations and voting procedures, but more often these matters are left to standing orders or other sub-constitutional rules. Generally, ministers are explicitly excluded from acting as speaker; some countries like the Bahamas constitutionalize this requirement.

Unwritten conventions may also play a role in deciding the election of a presiding officer. For example, in the United Kingdom the speaker has historically alternated between the two major parties regardless of the election results.[1] In Finland, the presiding officer customarily comes from a different party than that of the prime minister. In India, a convention has developed that the candidate supported by the ruling party will be elected unopposed, and that the deputy speaker

1 There is a convention that a speaker will be re-elected to office should they return to parliament after a general election, even if the government has changed. There is no formal contested parliamentary election for the new speaker (who in any case sits as an independent). Instead, a resolution appointing the outgoing speaker is moved straight away. Few other countries follow this approach.

will be drawn from the opposition (Singh and Singh 2011). If such conventions are valued, and there is a fear that they might be broken, there could be a case for constitutionalizing them.

Generally, the procedure for electing the presiding officer now differs from ordinary resolutions. Many countries provide for a secret ballot for the election, including Germany, Kenya, Pakistan, Singapore and the UK. Often countries employ successive rounds with the lowest vote-winner eliminated each time until a candidate receives a majority. Some have special majority requirements; in Pakistan the winner must receive a majority of the total membership of the assembly, not just of those present (Standing Order 279).

Many countries provide for a secret ballot for the election. Often countries employ successive rounds with the lowest vote-winner eliminated each time until a candidate receives a majority. Some have special majority requirements.

Often constitutions also specify who should serve as acting speaker for the new election, in order to ensure impartiality and avoid political contests for control. Commonly the outgoing speaker presides (as in Pakistan), or the senior permanent administrative official (as in New Zealand, Nigeria and Japan). In some cases, a veteran member of parliament presides (as in Spain and the UK). South Africa constitutionally requires the chief justice to preside over the election and determine its time and date (article 52(2)).

The importance of these differences (further explored below; see Box 3.1 for a summary) will vary depending on the composition of parliament. In parliaments with a majority government and strong party control, the choice of the speaker is often simple, being settled within the majority party in advance. That can result in a subservient and partisan speaker, unless majority control is mitigated by a secret ballot. In countries where a multiparty coalition must be formed, the speakership may be one of the 'prizes' open to negotiation in a coalition deal.

3.3. SHOULD THE PRESIDING OFFICER BE A MEMBER OF THE LEGISLATURE?

Usually, the presiding officer is elected from among the members of each House. At least, this in the norm in countries with relatively large parliaments, such as France, Germany, India, Nepal, Nigeria and Pakistan. Countries with very small parliaments tend to elect a speaker from outside the House (e.g. the Cook Islands and Fiji). There are some exceptions: Kenya, with a comparatively large National Assembly of 349 seats, requires the speaker to be elected

Box 3.1. **Key questions: Presiding officer**

- Is the presiding officer supposed to be non-partisan? How will this be conveyed? Will the presiding officer be expected to sever ties with their political party? Will they have a vote, and under what conditions?
- Will the presiding officer be elected for subsequent terms even if the government changes?
- How far will the presiding officer's role be detailed in the constitution or left to procedural rules?
- Will the presiding officer come from among elected members or outside parliament?
- How many deputy/assistant presiding officers are appropriate? Should there be a requirement that some of these come from outside the governing party?
- Should some responsibilities be handed to a board or committee rather than the presiding officer alone?
- Should the speaker's decisions be subject to review?

from outside the members of Parliament; the Bahamas, with a comparatively small House of 39 members, requires election of a speaker from within.

Some countries allow the presiding officer to be chosen from either inside or outside the legislature. For example, the speaker of the Parliament of Ghana may be chosen by the (unicameral) House either from among members of the House or from among non-members who are eligible for election to the House (Constitution of Ghana, article 95(1)).

With a small Parliament, appointment of a speaker from within existing membership reduces the pool of members available for other responsibilities.

With a small parliament, appointment of a speaker from within existing membership reduces the pool of members available for other responsibilities, especially as speakers cannot be ministers. Electing the speaker from among the members can also upset the balance of power in a small House, when majorities may be very thin. There is also the matter of constituency representation: a speaker under the obligation of non-partisanship and other burdens of that office may be unable to represent their constituents appropriately; electing the speaker from outside the House means they are free to concentrate on their duties as presiding officer. Obviously, however, this applies only where a constituency-based electoral system is applied: it matters less, or not at all, in proportionally elected assemblies with multi-member constituencies.

3.4. SHOULD THE PRESIDING OFFICER BE PARTISAN?

Countries vary in the extent to which presiding officers are expected to separate themselves from their political party.

Countries vary in the extent to which presiding officers are expected to separate themselves from their political party. In some presidential systems, following the US example, the speaker of the House of Representatives is the head of the lower chamber—a political, partisan figure who leads their party caucus and sets the legislative agenda.

In some parliamentary systems, following the British example, the speaker resigns from their party and sits as an independent, carefully severing former party ties. The Constitution of Nepal, for example, requires the speaker to 'discharge his/her duty in a neutral manner and without taking sides to any political party' (article 299(5)). There is no similar convention in most other Westminster-style parliaments, though there are infrequent examples of speakers choosing to resign and sit as an independent (e.g. two speakers in Australia, one in Canada). In many countries, the speaker continues to attend party caucuses and meetings (see e.g. Australia, New Zealand). However, there are varying degrees of non-partisanship even where the speaker does not quit membership of their party. In most Westminster-style parliaments, the speaker does not, by convention, take part in debates, nor speak on party-political issues except at election time in their own constituency. There may be an expectation of impartiality when in the chair. The 2023 Constitution of Tuvalu, for example, states that 'the Speaker shall perform his functions impartially, and has a duty to ensure that in the conduct of the business of Parliament there is a reasonable opportunity for all members present to be fairly heard' (section 108(7)).

3.5. SHOULD THE PRESIDING OFFICER BE ABLE TO VOTE IN THE HOUSE?

Parliamentary rules and practice vary in the extent to which the presiding officer is allowed to vote in the House, but what follows here applies primarily to countries in which the presiding officer is supposed to be an impartial chairperson, and not the leader of the legislative majority.

In the UK and many countries influenced by its parliamentary tradition, the speaker does not vote on any motion, except to resolve ties. A vote in the rare event of a tie is governed by convention:

Speaker Denison's rule provides that a majority should not be created by the speaker's tie-break, so the speaker will always vote in favour of the status quo or further debate. This rule is followed by many countries, although it is not universal. In Israel, New Zealand and Singapore, the speaker can vote along with other members. Countries differ in the extent to which the speaker's special voting role is constitutionalized. In Canada, it is governed only by convention. On the other hand, the Nigerian, Indian and South African constitutions formally grant the presiding officer a casting vote and not a deliberative vote.[2]

Alternatively, the speaker might have no vote at all. In Spain, the presiding officer cannot vote; if a vote remains tied after three attempts, the standing orders deem it rejected (Standing Order 88).

As a principle, limiting the presiding officer to a casting vote only reflects an expectation of their non-partisanship.

As a principle, limiting the presiding officer to a casting vote only reflects an expectation of their non-partisanship: the presiding officer is not there to pass laws or to make policy decisions, but rather to facilitate the House in discharging those functions. This is most valuable in parliamentary systems, since the absence of an impartial presiding officer would, in those systems, undermine the ability of the legislature to perform its scrutinizing and accountability roles. It is different, of course, in presidential systems where the presiding officer, instead of being a non-partisan chairperson, is effectively leader of the majority in the House. In such circumstances it makes sense for the presiding officer to cast a vote, and this need not impede the legislature—being institutionally separate from the executive—from holding the executive to account. Each system has its own logic.

3.6. **REMOVAL OF PRESIDING OFFICERS**

As well as providing for the election of the presiding officer, the constitution might also deal with their removal. The basic questions here are: (a) on what grounds a speaker might be removed from offices; and (b) by what procedure the removal is to be carried out.

In designing these rules, again much depends upon whether the speaker is supposed to be a partisan leader of the legislature or

2 South Africa's Constitution grants the speaker a casting vote but no deliberative vote, except where a super-majority is required, in which case the speaker may have a deliberative vote (article 53).

non-partisan chairperson. If the former, they should be removable and replaceable, depending upon the political will of the majority. If the latter, they should have protection from arbitrary removal and replacement by the majority, in order to give them the security of tenure needed to safeguard their impartiality. In this case, removal might be only on stated grounds such as incapacity or misbehaviour, and perhaps only by a super-majority decision. In Botswana, for example, the speaker can be removed only by a resolution of the House passed by a two-thirds majority (Constitution of Botswana, section 59(3)(d)).

3.7. **DEPUTY SPEAKERS**

Most presiding officers are assisted in the role by one or more elected deputies. Deputies often share a significant part of presiding duties and exercise the same powers as the speaker while presiding. Having deputy speakers not only shares the workload, but also provides an opportunity for representing parties other than the party of government in the leadership of the House. In Australia, for example, the standing orders require one of the two deputy speakers to be a government member, and the other to be a non-government member (Standing Order 14). In Nepal, under article 91(2) of the Constitution, the speaker and deputy speaker must be members of different political parties.

Having deputy speakers not only shares the workload, but also provides an opportunity for representing parties other than the party of government in the leadership of the House.

3.8. **BUREAUX OF THE LEGISLATURE**

In some parliaments, powers over organization, administration and procedure are held by a collective leadership body, usually known as the ‘Bureau’ or ‘Presidium’. This is frequently found in parliamentary and semi-presidential systems coming from continental European traditions, usually characterized by coalition governments and multiparty politics. Such bureaux allow for powers over procedure and administration to be shared among different parties. Bureaux are generally chaired by the presiding officer, who continues to have primary responsibility for presiding over meetings of parliament.

In Spain, the Bureau is made up of the president of the chamber, four deputy presidents and four secretaries. The Bureau as a whole, rather than the president alone, is entrusted with the management of the

House and 'vested with the collective representation thereof in all acts at which it is present' (Standing Order 30). The speaker, however, still 'directs and coordinates' the action of the Bureau. Similarly, in Demark the body with overall authority over Parliament (the Folketing) is the Presidium. The Presidium is made up of the speaker, elected by the Folketing, and four deputy speakers (elected by the four political parties with the most seats, excluding the speaker's party) (Danish Parliament n.d.).

Many countries have explicit rules ensuring different parties are represented, often dividing the positions among different parties according to their strength in parliament.

Members of the bureau tend to be elected in much the same way as the presiding officer, with one key difference: many countries have explicit rules ensuring different parties are represented, often dividing the positions among different parties according to their strength in parliament. For example, in France the Bureau of the National Assembly is required by the Rules of Procedure (chapter 3, article 10) to reproduce the configuration of the National Assembly, with positions allocated according to each party's share of seats in the Assembly.

Chapter 4

LEGISLATIVE SELF-REGULATION

4.1. RIGHT TO SELF-REGULATION

Most constitutions include a provision enabling the legislature to regulate its own organization, privileges and procedure and administration. For example, the Constitution of Angola (article 160) states that 'Within the sphere of its internal organization, the National Assembly shall be responsible for … legislating on internal organization'. The Constitution of India provides (article 118) that each House may make 'rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business'. The Constitution of Ireland states that:

> [e]ach House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.
> (Constitution of Ireland 1937 (rev 2019), article 15(10))

Similarly, the Constitution of Romania (article 64) states 'The organization and operation of each chamber are determined by its rules of procedure'. Without further specification as to required majorities or certain procedural rules, these powers are usually exercised by the majority party or coalition. What looks like a broad grant of legislative autonomy might, in effect, produce executive—or at least majoritarian—dominance.

Without further specification as to required majorities or certain procedural rules, a broad grant of legislative autonomy might, in effect, produce executive—or at least majoritarian—dominance.

Sometimes, to mitigate the risk of such dominance arising, the constitution places limits around this self-regulatory power. The Constitution of South Africa (article 57), for example, states that the National Assembly, in making 'rules and orders concerning its business', must have 'due regard to representative and participatory democracy, accountability, transparency and public involvement'. The same article goes on to list what these internal rules and orders must provide for, including, crucially, 'the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy' and 'the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition'. In other words, the constitution binds and constrains parliament to the extent necessary to protect minorities and recognize the legitimate role of the opposition. The Constitution of Portugal has interesting rules to protect the opposition and minority parties in the allocation of parliamentary time, providing (article 176) that 'Every parliamentary group shall possess the right to set the order of business of a certain number of sittings in accordance with criteria to be laid down by the Rules of Procedure, in which respect the position of minority parties and parties that are not represented in the Government shall always be safeguarded'.

Putting such provisions into the constitution is more than just a procedural protection: it is also a way of signalling a commitment to a certain type of inclusive politics in which political minorities are acknowledged as part of the constitutional order, even if most decisions are ultimately made on majoritarian lines.

Putting such provisions into the constitution is also a way of signalling a commitment to a certain type of inclusive politics in which political minorities are acknowledged as part of the constitutional order.

4.2. **SELF-REGULATION BY STATUTE**

The power of self-regulation by a legislature can be exercised in various ways. One common way is by means of a statute: an Act of Parliament (or Act of Congress, etc.), enacted under the constitution, and forming part of the law of the land. For example, Canadian legislation (Parliament of Canada Act 1985) sets out rules for the privileges and immunities of Canada's Parliament, the examination of witnesses, conflicts of interest, the internal administration of the two Houses, the remuneration of members, the parliamentary library, and the parliamentary budget office, among others. The Act has little to say, however, about internal parliamentary procedure, which is covered by the standing orders of each House (see below).

Sometimes the constitution will prescribe a special procedure for the enactment of such acts. The Constitution of Estonia (article 104) requires the enactment of a Parliamentary Procedure Act and a Parliamentary Administration Act. Unlike most other statutes, for which a simple majority suffices, these acts require an absolute majority vote in parliament. A similar form of 'weak entrenchment'—less than that required for a constitutional amendment, but more than that required for an ordinary law—can be seen in Sweden. Here, the legislation setting out the privileges, internal organization and procedures of the Swedish Parliament (Riksdag), can be amended only by a decision taken in two successive sessions with an intervening general election, or with a three-fourths super-majority (Riksdag Act, chapter 8, article 17).

In many Francophone countries, the legislation concerning the internal organization of parliament takes the form of an 'organic law', a type of law which is below the constitution but above ordinary laws, requiring approval by an absolute majority in parliament. The Constitution of Senegal (article 78), for example, requires organic laws to be adopted by an absolute majority of the National Assembly, referred by the president to the Constitutional Council, and to be certified by that body as conforming to the Constitution. In France too, all organic laws are so referred for constitutional review. The French Constitutional Council has interpreted the Constitution as requiring that a significant majority of procedural provisions be implemented by organic law rather than directly by parliamentary rules (Bell 1995; Boyron 2013).

4.3. SELF-REGULATION BY STANDING ORDERS OR RULES OF PROCEDURE

All legislative assemblies need rules of internal procedure in order to perform their functions. Rules of procedure[3] give structure and clarity to the legislature's deliberations: they determine what is discussed, when, and for how long. They mark the difference between what is, and is not, orderly. They also contribute to the legitimacy of its decisions: in the absence of clear rules—how a question is to be put, how amendments are to be taken, how the votes are to be

Rules of procedure give structure and clarity to the legislature's deliberations: they determine what is discussed, when, and for how long.

3 In this primer, the terms 'rules of procedure' and 'standing orders' are used interchangeably. However, it is worth noting that in most cases standing orders can be set aside by a specific rule adopted by the House, for a specific circumstance. In turn, these specific rules deviating from or suspending standing orders also become part of the rules of procedure.

counted—it would be hard to determine when a decision has been made. In parliaments with a British historical influence, these rules of procedure are usually known as 'standing orders'.

Procedural rules and standing orders are not enacted, as statutes are. Rather, they are generally adopted by resolution of the House—usually a less onerous procedure. While enacting a statute might normally require three readings, a change to standing orders might be adopted in one vote. Usually, a majority vote suffices. The process of deciding upon procedural rules can differ from statutes in other ways, too. For example, in a Westminster parliamentary system, it is normally the government which introduces the majority of public bills, but resolutions to change standing orders might be proposed by a procedural committee (see Erskine May 2019: 20.96). In Finland, the Speaker's Council (comprised of the speaker and deputies) can initiate enactment or revision of the procedural rules and related acts. In some legislatures, such as the German Bundestag and the Nigerian National Assembly, each newly elected parliament must decide anew on rules of procedures, although usually this is simply a matter of carrying over the rules from the previous parliament.

Some legislatures have rules to prevent the amendment, revocation or suspension of standing orders in arbitrary ways that enable the abuse of majoritarian power.

While it is technically open to many legislatures to enact and amend standing orders on an ad hoc basis, many have developed permanent committees to review and report on standing orders, procedures and practices, and to make recommendations for their alteration or addition. Examples include Canada's Standing Committee on Procedure and House Affairs, Ghana's Standing Orders Committee, Japan's Committee on Rules and Administration, and New Zealand's Standing Orders Committee. Such committees may have a regular cycle for review of the standing orders, receiving suggestions and submissions from members and the general public. Some parliaments have conventions against contentious changes to standing orders. In New Zealand, the Standing Orders Committee recognizes 'that the Standing Orders are effectively constitutional rules, and endeavours to reach a consensus on its proposals, rather than making recommendations supported by a simple majority of its members' (House of Representatives of New Zealand 2014: 4). This does not require agreement by every party on every recommendation or change, but rather general consensus on the overall proposal.

Similarly, some legislatures have rules to prevent the amendment, revocation or suspension of standing orders in arbitrary ways that enable the abuse of majoritarian power. In particular, there are rules preventing a parliamentary 'ambush' (forcing an unexpected vote,

with few members present). For example, in South Africa a special quorum of one-third of members applies where there has been no notice of a proposed rule suspension, while amendment or adoption of rules requires a quorum of a majority of members (Standing Order 4). In Australia, a motion to suspend a standing order requires a larger majority if it is moved without notice (Standing Order 47). In Spain, the Constitution (article 72(1)) expressly requires that reform 'shall be subject to a final vote over the whole text, which shall require the overall majority'.

4.4. INTERPRETATION AND ENFORCEMENT

Historically, constitutions have usually protected their internal affairs from review by the courts.

A consequence of permitting parliaments to regulate themselves is that, historically, constitutions have usually protected their internal affairs from review by the courts. Allowing the legislature sole control over its internal affairs remains the norm in many countries, especially those influenced by the Westminster parliamentary system. Conversely, a decision to include more regulation of the legislature in a written constitution enforced by the courts will erode this principle, increasing the scope for judicial review of parliamentary affairs for compliance with the constitution. This underscores at the highest level the need for the judiciary to be trustworthy, neutral and independent. The role of the judiciary in relation to parliamentary privilege is discussed further in Chapter 9 of this primer.

Given the principle of self-regulation, speakers—rather than judges—are normally granted power (by the constitution, by statute, or by standing orders) to interpret rules of procedure.

While the presiding officer's power to interpret is fairly uniform, there is more diversity as to whether the decision can be reviewed or appealed. In many countries, the ruling of the presiding officer is final, even if made by a deputy or assistant speaker. Others have internal appeal mechanisms. For example, in the Israeli Knesset, every member has the right to appeal a ruling of the chairperson to the Interpretations Committee, which is made up of the speaker of the Knesset and eight other members selected by the House Committee (rule 143(b)).

Many legislatures also permit the speaker to rule on the appropriate procedure where the standing orders do not dictate the correct approach. The first two rules of Kenya's standing orders are

illustrative. The speaker may rule on any procedural question 'not expressly provided for', and their decisions 'shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures, traditions and practices of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya' (National Assembly of Kenya (6th edition, 2022), Standing Order 1).

Other parliaments have more formal mechanisms, or review provisions. In Israel, if there is no provision in the Rules of Procedure the matter is to be decided by the House Committee, the decision of which will be a binding precedent subject only to amendment of the Rules (rule 141). In Spain, if the speaker makes a ruling to fill any omission in the standing orders that is of general effect, it must subsequently be approved by the Bureau (consisting of the speaker, four deputy speakers and four secretaries) and the Board of Spokespersons (the Spokespersons of each parliamentary group).

Speakers' rulings, precedents and the conventions and customs of legislatures may be compiled into handbooks or manuals, having official or semi-official status.

Speakers' rulings, precedents and the conventions and customs of legislatures may be compiled into handbooks or manuals, having official or semi-official status. The most famous of these is Erskine May—the manual of British Parliamentary Practice—which remains influential in many countries with a historical connection to British institutions (see Erskine May 2019).

Chapter 5

LEGISLATIVE COMMITTEES

All democratic legislatures have some kind of committee system. A committee is a group of members who work together on a particular topic. By splitting a large assembly into smaller working groups, committees allow more work to be done at once, increasing the overall capacity of a legislature. They enable deeper and more specialized scrutiny of draft legislation, among other issues of government and administration. Committees enable members to develop expertise in a particular policy area, and experts to contribute—as witnesses testifying before committee hearings—to law-making and scrutiny. Working together on a common project, committees also encourage the formation of informal bonds between legislators from different parties, enabling them to work in a 'cross-party' rather than 'inter-party' mode.

Committees can be the workhorses of legislative bodies. As former US President Woodrow Wilson put it: 'Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work' (Wilson 1981). Even in countries where committees have a less active policymaking role, they can have an important role to play in parliament's scrutiny and accountability functions. Their design, and their capacity to provide constructive engagement—rather than just to mimic the adversarial party politics of the plenary assembly—can be a key element in the design of the effective legislature as a whole.

Committees can have an important role to play in parliament's scrutiny and accountability functions.

It is usual for each House, by its standing orders, to determine the number and remit of committees. There might be a general principle that committees should shadow the structure of the executive—that each Cabinet member should be overseen by an appropriate legislative committee. However, it is also possible for the

remit of committees to span more than one ministry. The balance struck between having a small number of large committees, or a larger number of smaller committee, will influence the degree of specialization that each committee can have. In addition, some constitutions specify certain committees that must be established as permanent or standing committees—including, for example, a privileges committee, or a standards committee, with responsibility for aspects of internal administration.

5.1. **CONSTITUTIONAL FRAMEWORK FOR COMMITTEES**

Written constitutions vary in how much they have to say about legislative committees. Committees are often mentioned, but not necessarily in much detail:

1. *In some, especially older constitutions, committees might be mentioned incidentally, but not required nor defined*. This includes Australia, India, Japan, the Netherlands and Singapore. In these countries, the creation and regulation of committees is simply a corollary of parliament's power to regulate its own procedure.
2. *A second group of constitutions empower or explicitly require the legislature to create committees* and make standing orders for their conduct. This includes Algeria (article 142), Iceland (article 54), Israel (Basic Law article 21(a)), South Africa (article 57(2)) and Spain (section 75). Some constitutions of this category, such as Argentina's, set out what role committees play in the legislative process (article 79) or, such as Fiji's, specify committee functions (article 70). Some, such as Denmark's (article 51) and Kenya's (article 125), specifically empower committees to access information.
3. *A third group of constitutions themselves create specific committees*, generally foundational committees like the finance committee or the public accounts committee. These constitutions also empower the assembly to create further standing committees. This includes Germany (articles 44–45d) and Pakistan (articles 71 and 88).

The strength of committees can fundamentally alter the balance of power in a legislature.

There are good reasons to consider including at least the basic framework for committees in a constitution. The strength of committees can fundamentally alter the balance of power in a legislature and by extension, a state—the balance of power between

the parliamentary majority and the minority, the degree and quality of scrutiny, the means of accountability, and the overall tone of political life. So although overly specific provisions may be inappropriate, because they reduce flexibility, there may be strong reasons to constitutionalize the essentials of a committee structure. Box 5.1 contains key questions to be considered in designing committees, whether or not they are explicitly provided for in the constitutional text.

5.2. **COMMITTEES IN BICAMERAL LEGISLATURES**

In many bicameral constitutions, the second chamber has its own separate legislative committees, much like the first chamber's, with similar powers. Rare exceptions include the UK House of Lords, where the committee stage of legislation takes place in a committee of the whole house (although the House of Lords does have its own select committees).

Some bicameral constitutions allow for appointment of joint committees where appropriate. Irish committees include members of both the Lower and Upper House. India's dual function standing committees draw their membership from both the Lok Sabha (the Lower House) and the Rajya Sabha (the Upper House). The Parliament of Australia has around 20 joint committees, made up of members of both Houses. The Constitution of South Africa (article 45) requires the creation of several joint committees, including to scrutinize constitutional amendments (articles 74 and 75) and to provide an annual review of the constitution. Further examples of constitutional provision for joint committees can be found in the constitutions of Germany (article 53A) and Belgium (article 82).

5.3. **MEMBERSHIP OF COMMITTEES**

In most cases, membership of committees is allocated in proportion to each party's strength in the legislature.

In most cases, membership of committees is allocated in proportion to each party's strength in the legislature. This is often mandated in procedural rules, but in order to protect and enshrine the principle it might also be incorporated into a written constitution, as in Denmark (article 52) and Malta (article 67(3)). The Constitution of South Africa does not require proportionality, but it does specify that the rules and orders of the National Assembly must provide for 'the participation

in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy' (article 57(2)(b)). Such rules, whether broadly or narrowly prescribed in the constitution, serve two functions. Firstly, they ensure a variety of voices have input into the work of committees. Secondly, they enable committee decisions to act as microcosms of the whole House. Additionally, the election of members (or chairs) by the House, as compared with appointments by party whips, may serve to strengthen committees, giving them greater prominence and independence.

Aside from partisan composition, constitutions could require other forms of inclusion and proportionality to be considered: for example, ensuring that committees are gender balanced, or reflective of regional, ethnic or linguistic diversity.

Aside from partisan composition, constitutions could require other forms of inclusion and proportionality to be considered: for example, ensuring that committees are, to the extent reasonably practicable, gender balanced, or reflective of regional, ethnic or linguistic diversity.

An important determinant of committee strength is its permanence. Ad hoc committees, where members are assigned for a particular bill, without the opportunity to develop subject-matter expertise, tend to be weaker than permanent committees whose members have the time to familiarize themselves with the issues in a particular area of policy.

Dual purpose committees—where the same committee is responsible for both scrutinising legislation and overseeing administration in a particular policy area—tend to have more expertise, and therefore more collective voice as a committee, and as a check and balance against the executive, than single-purpose committees that are put together, on an ad hoc basis for the consideration of a particular bill. In the British House of Commons, the difference in approach between Select Committees (which are permanent and more specialized) and Standing Committees (which are non-specialized and deal with whatever bills come before them), in particularly stark (Dunt 2023).

5.4. **CHAIRS OF COMMITTEES**

It might seem logical for the chairs of committees to be elected by the members of each committee. However, if committees proportionally reflect the party composition of the House, this generally results in election of a government or majority party member to chair every committee—thereby placing the committee system as a whole under majority control. To counteract this,

there may be a rule reserving the chairpersonship of at least some committees to non-government members. In Canada, under standing orders, the chairpersonships of five major committees are reserved for non-government members: (a) Public Accounts; (b) Status of Women; (c) Access to Information, Privacy and Ethics; (d) Government Operations and Estimates; and (e) Joint Committee for the Scrutiny of Regulations.

Two additional rules may help in this regard. The first is to require that if the chairperson of a committee is from the government or majority side, the deputy chair must be from the opposition or minority side. The second is to identify certain key committees, the chairpersonship of which must be reserved for the opposition. In Trinidad and Tobago, for instance, the Constitution requires the Public Accounts Committee be chaired by a member of the opposition party (section 119).

These further factors to consider in the design of parliamentary committee structures are summarized in Box 5.1.

5.5. **PARTY CAUCUSES**

Another important internal institution within legislatures is the party caucus.

Another important internal institution within legislatures is the party caucus, or the group of all legislators (or in some cases, all backbench legislators) of a party. Party caucuses provide a means for parliamentarians of each party to consult together. Meeting usually in private, they are a forum for communication between party leaders and rank-and-file MPs. They are also a place where different internal factions of a party can resolve their differences, and where collective policy positions can be worked out. Despite the appearance of strict party discipline, the reality might involve real debate, and important concessions being made behind closed doors in the party caucuses. In parliamentary systems, the party caucus may have a decisive role in selecting and removing the leader of the party. When in government, that means selecting and removing the prime minister.[4]

4 In the United Kingdom, for example, the so-called '1922 Committee' of Conservative backbench MPs is responsible for initiating both the election and removal of the Leader of the Conservative Party. The Chair of the 1922 Committee, although not a Minister, became a figure of national importance between 2016 and 2022 when no fewer than four Conservative leadership elections took place.

Box 5.1. **Key questions: Committees**

- How many committees will there be, and of what size?
  - Will certain parameters be set out in the constitution, or will it be up to the legislature to determine its own committee structure?
  - Will committees be permanent or ad hoc?
- How will members of committees be selected?
  - Will all committees be proportionally representative of the balance of parties in the House?
  - Will government ministers and other senior party figures be permitted to sit on committees?
  - Will subject expertise and/or personal preference be a factor in assignment to committees?
  - Will there be any provision for gender balance or regional balance in committees?
- How will the chair of committees be appointed?
  - Elected by the whole House?
  - Selected proportionally according to share of the seats?
- Functions:
  - Will committees be dual purpose, scrutinizing draft legislation and overseeing government action, or will these functions be split?
  - When will committees perform legislative scrutiny—before or after the House as a whole has voted on a bill?
  - How can committees be encouraged to work in a cross-party manner, rather than imitating the oppositional format of the House?
- Decision making and procedures:
  - How can the committee stage be directed towards constructive and systematic scrutiny?
  - How much control should the committee have over its own procedure, and how much should be subject to control by the chair or the House instead?
  - Should the committee be expected to operate by majority or consensus?
  - Will committee members be whipped, or will free votes in committee be the norm?
  - What will the role of the minority be? How will they be permitted to ask questions, express dissent in a report, affect the selection of witnesses etc.?
- How will committees be resourced and staffed?
- Which (if any) of these factors will be included in a written constitution, and which will be reserved for procedural rules?
- How should the constitution refer to committees? Should the constitution give committees powers to receive and gather evidence independent of parliament? To what extent should it mandate or regulate committees rather than leaving it to parliament?

Some constitutions, such as Kenya's, make explicit provision for leaders of the majority and minority caucuses. However, this is relatively rare. In most cases party caucuses have informal or implicit recognition—for example, particular rooms or other facilities may be set apart for them. Facilities—office space, secretarial support, funding—may be available to leader of the largest opposition party, and sometimes to other parties, too. For more on the leader of the opposition, see Constitution-Building Primer 22 in this series: *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition* (Bulmer 2021).

These physical, material considerations can have an important effect on how legislators operate—how they spend their time, what they can and cannot do. In some legislatures, members do not have offices, or even adequate desk space. Such restrictions obviously undermine the effectiveness of the legislators, and of the legislature as a whole. A constitutional rule requiring adequate provision for legislative office space, staff and so forth, while it might appear a matter of detail, can be beneficial to include. There is also the argument that if members of the legislature lack such resources on an official level, they will seek them out unofficially, through potentially corrupt special interests. It would be very easy for a well-funded lobby organization to offer free office space to MPs, with no (visible) strings attached. To prevent this, responsibility to provide such facilities should ideally be vested in an adequately resourced, politically neutral parliamentary administration. Further discussion of this topic can be found in Chapter 10: Legislative Administration.

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Chapter 6

AGENDA-SETTING AND ORDER OF BUSINESS

Control over scheduling and organizing parliamentary work can be of considerable importance. The power to determine when and for how long a House will sit, what business has priority, what questions will be put to a vote (and of what kind), determines how members of the legislature can influence outcomes.

While many aspects of procedure are contained in sub-constitutional rules, it is possible to formally set out minimum requirements in written constitutions. This chapter does not seek to exhaustively compare different rules around timetabling and voting. Rather, it outlines some dynamics in common that can impact a legislature's capacity to perform its role, with a view to informing discussions on whether, and how, to constitutionalize procedural rules.

A crucial design choice is whether control and influence over the agenda is given to the executive, or the leaders of the majority party only; or, more inclusively, non-government and minority actors too.

Many legislatures have a daily agenda (sometimes called an order paper or notice paper) indicating the order of business for each sitting day. A crucial design choice is whether control and influence over the agenda is given to the executive, or the leaders of the majority party only; or, more inclusively, non-government and minority actors too (see Bulmer 2021). This is part of placing the legislature on the *self-regulation versus oversight* axis and on the *deliberation versus decision making* axis, and, in turn, can influence political outcomes.

6.1. **GOVERNMENT CONTROL OF THE AGENDA IN WESTMINSTER-DERIVED SYSTEMS**

In most parliamentary systems, especially most of those influenced by the British tradition, the House determines its own agenda. Because the government usually has the support of a disciplined partisan majority in the House, this effectively means that the government sets the legislative agenda. That is, most of the legislature's time is taken up with 'government business' (including government bills and motions, and ministerial statements), which is given priority on most sitting days. Generally, the leader of the House (usually a minister appointed to manage relationships with parliament) can arrange the order of government business as they see fit (see e.g. Australian House of Representatives Standing Order 45). Traditionally, the leader of the House would do this in consultation with the 'whips' (party business managers) on both sides of the House, respecting the unwritten rules of conduct between government and opposition. Increasingly, however, those traditional restraints are under threat (Blick and Hennessy 2019).

As an exception to this general rule, certain sitting days may be reserved for non-government business. In the UK Parliament, 20 sitting days in each session are allocated to opposition parties, of which 17 are given to the official opposition (the largest opposition party) and the remaining three are shared between all other opposition parties. This means, in effect, that the leader of a minor British party can only control the agenda of the House on one sitting day in each session. In 2010, the UK House of Commons adopted rules (an amendment to Standing Order 14) allocating 35 sitting days in each session to backbench members via an all-party 'Backbench Business Committee' (see Box 6.1). This provides a way to raise issues that the front bench teams of both major parties would probably rather keep off the agenda, or would not otherwise find time for. Although bills initiated by backbenchers ('Private Members' Bills') are unlikely to pass, they do offer an opportunity to publicize issues, and perhaps to encourage the government to bring in its own bill in response.

Certain sitting days may be reserved for non-government business.

Box 6.1. **What is a 'backbencher'?**

In the UK and British-influenced parliamentary systems, members typically sit on rows of benches facing each other, with the government members on one side and the opposition parties on the other. Ministers sit on the government front bench. Opposition 'shadow ministers', or 'critics'—the spokespersons for particular policy areas—sit on the opposition front bench. Other members, who are neither government ministers nor opposition shadow ministers, sit on the rows of benches further back, and are known as 'backbenchers'.

Traditionally, backbenchers were expected to have relatively little policy influence and were supposed to vote, except in exceptional cases, in support of their respective front bench teams.

In recent years, as part of a general move towards empowering the legislature in response to previous policy failures and ethical scandals, backbenchers in the UK have become more active, with some scope to set the agenda.

6.2. **COOPERATIVE CONTROL OF THE AGENDA IN MULTIPARTY PARLIAMENTARY SYSTEMS**

In countries where parliamentary government is combined with proportional representation and multiparty politics, the control of the agenda is usually in the hands of a parliamentary committee. This might be known as the business committee, or bureau, or by other names.

This approach is found in Germany, where the 'Council of Elders'—representing all the major parties—is tasked by the Bundestag's procedural rules with deciding on the internal affairs of the Bundestag (rule 6). This includes setting the date and agenda of each sitting (rule 20).

The efficacy of a business committee depends on its composition and culture. Cross-party inclusion is a must.

The efficacy of a business committee depends on its composition and culture. Cross-party inclusion is a must, but there are variations. Are all parties represented, or only those above a certain threshold in size, which might exclude the smallest parties? (In the latter case, there might be a 'mixed group', in which the smaller parties have a representative shared between them). Are parties represented according to their voting strength, or according to a fixed formula? The latter might over- or under-represent certain parties, but might also ensure a balance between government and opposition. Is an ordinary majority sufficient, or do certain decisions require a super-majority?

The Scottish Parliament's Bureau (not to be confused with its Corporate Body, which manages administration) consists of one member from each party of at least five members. It votes according to party strength in the Parliament which means in effect that the government has control, through the Parliamentary Bureau, of Parliament's agenda. This is mitigated only by standing orders mandating a minimum number of days where committee and opposition business is given priority.

New Zealand's Business Committee, created after the country moved to a multiparty electoral system, operates similarly. It consists of one member of each party, nominated by its leader, and is chaired by the speaker (New Zealand House of Representatives Standing Order 77). Decisions of the Business Committee should be made on the basis of unanimity or, if unanimity cannot be reached, then 'near-unanimity' (Standing Order 78(1)). It is for the speaker to determine whether unanimity can be reached, and if not, whether 'near-unanimity' has been achieved (Standing Order 78(2)). In making this determination, the speaker must consider whether the proposed course of action 'is fair to all parties and does not discriminate against or oppress a minority party or minority parties' (Standing Order 78(3)).

It is worth noting that wherever it is only standing orders only that give non-government parties a say in determining the agenda, these requirements ultimately depend upon whoever can amend standing orders—usually, a simple majority in the House. To protect the rights of the opposition, minor parties and backbenchers against a majority that does not wish to respect these requirements, it might be worth putting such rules—or at least general principles—into the constitutional text.

To protect the rights of the opposition, minor parties, and backbenchers against a majority that does not wish to respect these requirements, it might be worth putting such rules—or at least general principles—into the constitutional text.

6.3. CONTROL OF THE LEGISLATIVE AGENDA IN PRESIDENTIAL SYSTEMS

In some ways, presidential systems have the same choices with regard to agenda-setting and the organization of legislative business as parliamentary systems. Namely, to let the majority decide, or to establish rules and mechanisms that share agenda-setting power more broadly in the legislature—whether guaranteed time for the minority, or through an all-party committee.

However, there is an additional complication. In a presidential system, the president is an additional, external actor, who may have his or her own agenda-setting powers. The same is true of those semi-presidential systems in which the president is the real leader and policymaker. The separate election of the president means that the leaders of the legislative majority might not belong to the same party as the executive. Instead of an internal dynamic within the legislature, it is possible for a triangular dynamic to develop, with the president as one point of the triangle, and the majority and minority leaders (or equivalent) as the other two points.

The extent of presidential powers varies. In the United States and other presidential systems modelled upon it, such as Liberia, formal presidential agenda-setting powers are minimal: the president can propose legislation by message or address, but the legislature is firmly in control of its own agenda, and the speaker of the House of Representatives and majority leader in the Senate have key roles in determining what is debated and voted upon. This reflects an older concept of separation of the powers, in which the president as chief executive does not necessarily control the legislative programme and may be unable to advance their own legislative agenda unless the congressional leadership is supportive. In other presidential and some semi-presidential systems, the president may have various powers over the legislative agenda: to get items of presidential business on to the agenda, and to fast-track certain pieces of legislation over others. Constitution-Building Primer 15 in this series, *Presidential Legislative Powers* (Bulmer 2017b), provides many examples of such powers.

In political systems built on a division of power between the president and the legislature, the real extent of the president's power depends upon the partisan composition of the legislature.

It is worth remembering that in political systems built on a division of power between the president and the legislature, the real extent of the president's power depends upon the partisan composition of the legislature. When it benefits from a working majority in the legislature, presidential power is likely to be much greater in practice than the bare text of the constitution might suggest. If the president's party has no such majority, then the practical powers of the president in relation to the legislature will be very much reduced.

6.4. **LEGISLATIVE PROCESS**

The process by which bills are introduced and how they become law is another factor in legislative capacity. In systems with executive

presidencies, the president may have the right to introduce, veto and even fast-track legislation. This is covered in Constitution-Building Primers 14 (*Presidential Veto Powers*) and 15 (*Presidential Legislative Powers*) (Bulmer 2017a, 2017b).

Even in parliamentary systems, however, the details of the legislative process may make the legislature more or less effective as an institution of moderation, scrutiny and accountability. One possibility is a requirement on the government to publish bills in draft form before they are formally submitted to the legislature, thus enabling legislators, civil society organizations, the media and the general public to consider and provide feedback on the bill before it begins its parliamentary stages. This would enable legislators to be better briefed and equipped to scrutinize legislation—to martial the facts and the arguments—before it is debated. It would be wise to provide a waiver to this process in emergencies, but with super-majority support.

The details of the legislative process may make the legislature more or less effective as an institution of moderation, scrutiny and accountability.

Legislators can sometimes be bewildered when dealing with amendments to legislation, especially if these are executive-backed amendments of a seemingly technical (but potentially important) nature. Unable to understand what they are voting on, they are at the mercy of party whips in these circumstances. One solution is to require all amendments to a bill to be accompanied by a memorandum, in plain language, explaining the purpose and effects of the amendment (Dunt 2023).

6.5. **SESSIONS**

A legislature cannot do its job unless it is in session. Control over when—and sometimes where—a legislature sits, is thus a potentially powerful political tool. Control over the timing and duration of sessions is usually shared in some way between the legislature and executive, subject to constitutional rules which constrain their discretion.

A legislature cannot do its job unless it is in session. Control over when—and sometimes where—a legislature sits, is thus a potentially powerful political tool.

In general, this constitutional constraint is most noticeable in presidential systems, which incline towards having fixed dates for legislative sessions prescribed by the constitution. The Constitution of Argentina (article 63), for example, specifies the dates of each session, while also allowing the president to call special sessions or to extend sessions. Similarly, sessions of the US Congress begin at

noon on the third day of January, unless Congress by law otherwise determines (Constitution of the United States of America, 20th Amendment, section 2). The US Congress sits until 31 July of each year, when—under the terms of the Legislative Reorganization Act 1970—it adjourns sine die (that is, without appointing a date for the end of the adjournment).[5] The Constitution of Panama (article 149) requires the National Assembly to meet for two sessions, each of four months duration, during each calendar year.

In parliamentary systems it is more usual to allow the executive (normally the head of state, acting upon the binding advice of the prime minister) to determine when parliament meets. However, this power is normally subject to at least some of the following constitutional limits:

- *Annual sessions.* Annual sessions are a relatively common minimum requirement. The Constitution of Japan (article 53), for example, requires an ordinary session of the Diet to be convoked once per year.

- *Prompt summons after elections.* Many constitutions include a rule for the legislature to meet promptly after a general election. In Mauritius, for example, a session of Parliament must be summoned to meet within 30 days (Constitution of Mauritius, section 56(4).

- *A maximum period between sessions.* For example, no more than three months can pass in Antigua and Barbuda (Constitution of Antigua and Barbuda, section 59(2)), between the last sitting day of one session of Parliament, and the first sitting day of the next session.

- *A requirement to call the legislature into session at request*. For example, Japan's Constitution requires the Cabinet to call an emergency sitting when a quarter or more of either House so demands (article 53). Similarly, the German Basic Law requires the presiding officer to convene the Bundestag if so demanded by the president, the chancellor, or one-third of its members (article 39(3)). In Fiji, Parliament must be summoned if the president receives a request in writing from one-third of the

5 This is subject to two further constitutional restrictions. First, neither House may adjourn for more than three days (except for Saturdays, Sundays and holidays) without the agreement of the other. Second, the president may call Congress into session at any time when it is adjourned.

members of Parliament, 'to consider without delay a matter of public importance' (Constitution of Fiji, section 67(4)). The fact that this power to call parliament rests with a minority may be an important check and balance: it means the opposition can force the government to come before parliament and give an account of itself.

- *A minimum number of sitting days* each year. The Constitution of Pakistan (article 54(2)), for example, requires the National Assembly to sit for at least 130 days each year.

These provisions are not mutually exclusive and may be combined as required. For example, in addition to the minimum number of sitting days mentioned above, the Constitution of Pakistan also provides for the summons of the National Assembly within 14 days at the request of one-fourth of its members.

6.6. **VOTING REQUIREMENTS, MAJORITIES AND QUORUMS**

Legislatures vote in different ways: by division (members walking into different 'lobbies' and being counted as they come out), by sitting and standing, by roll-call, by electronic voting, by acclamation (members shouting 'yes' or 'no'), or in certain circumstances, by secret ballot. In general, the method of voting is determined by custom and practice, or perhaps by standing orders or procedural rules, rather than by the constitution.

It may be wise to constitutionalize the process for certain types of voting.

However, it may be wise to constitutionalize the process for certain types of voting. For example, if the aim is to strengthen committees by allowing the free election of committee chairs by the whole House, a secret ballot may help to reduce partisanship in such elections. Likewise, there might be a strong case for constitutionally prescribing that the speaker or other presiding officer must be elected by a secret ballot. By contrast, a vote of no confidence or a vote of investiture (a formal vote to confirm the appointment of the prime minister) will generally have to be by a recorded open vote, so that the public can see how members have voted. Constitutional designers might need to consider which emphasis is appropriate—party discipline and public accountability through open voting; insulation of members from partisan control through secret ballot—for different purposes. The Constitution of Belgium, for example, requires the final vote on

laws to be conducted by roll call, whereas elections by Parliament are conducted by secret ballot (article 55).

Some types of decisions—those which need to be protected against majoritarian abuse—may require super-majorities.

Another matter for constitutional regulation is the size of the majority required for the legislature to take decisions. The normal rule is a majority of votes cast, although certain types of decisions may require clearer majorities: a majority of all persons present, or a majority of the total membership of the House. In the latter cases, abstentions essentially count as 'no' votes. Some types of decisions—those which need to be protected against majoritarian abuse—may require super-majorities. A super-majority, such as a two-thirds or even three-fourths majority, is normal for constitutional amendments. (See *Constitutional Amendment Procedures*, Constitution-Building Primer 10 (Böckenförde 2017)).

However, super-majorities can also be used for other types of decision. The Constitution of Bulgaria, for example, requires that a treaty conferring powers upon European institutions must be approved by a two-thirds majority of the National Assembly (article 85). Bulgaria also requires a two-thirds majority in the National Assembly for the impeachment of the president (article 103), for the removal from office of a senior judge (article 129), and for the election of certain members of the Supreme Judicial Council (article 130). In Costa Rica, laws on party finance must be approved by a two-thirds majority (article 96). In Japan, a two-thirds majority is required to unseat any member (article 55). In Nigeria, a two-thirds majority is needed to pass legislation creating new states (article 8). There are many more examples. Putting these rules in the constitution is necessary, if the aim is to prevent an ordinary majority from dominating these decisions. Leaving it up to the legislature to determine its own majorities would not be sufficient.

The ***quorum*** is the number of members who must be present in order for a legislative body to transact business. In some countries, the legislature may determine the size of its quorum. In Estonia, for example, the quorum of Parliament is determined by a Parliament Procedure Act (Constitution of Estonia, article 70) which can be passed and amended by an absolute majority (article 104). Elsewhere, the constitution directly prescribes the size of the quorum. In Denmark, the Constitution states that more than half of the members must be present and voting in order for Parliament to take a decision (article 50).

Sometimes the quorum can be much less than half. In Jamaica, for example, the quorum is set at just 16 members, other than the person presiding (Constitution of Jamaica, section 53). With Jamaica having 63 members of the House of Representatives, that means one-fourth of the membership is a sufficient quorum. Also, the quorum requirements in Jamaica, in common with many other Westminster-influenced constitutions, only come into effect if a member makes an objection that a quorum is not present. There is also a time delay, allowed by standing orders, during which a quorum might be found. The advantage of this arrangement is that it allows uncontroversial and unopposed business to pass in a very quiet House, freeing members to attend to other business (ministerial, party, constituency or committee duties) outside the debating chamber. However, too low a quorum can result in legislative 'ambushes' where the result does not reflect the true views of the chamber, because so many members were absent from the vote.

6.7. **TRANSPARENCY, PUBLIC ACCESS AND REPORTING**

The sittings of the legislature should normally be open to the public, so that people can hold their representatives to account.

In a democracy, the sittings of the legislature should normally be open to the public, so that people can hold their representatives to account. The same goes for access to the press, who should be able to report on the activities of the legislature. This is a basic principle of public transparency.

However, there might be times when public and press access must be limited. This might include, for example, the discussion of military operations during times of war, or perhaps certain matters of diplomatic sensitivity. Many constitutions therefore allow parliament to hold a closed session, by its own decision. For example, the Constitution of Romania states (article 68) that 'The sessions of the two Chambers are public', but 'The Chambers can decide to hold certain sessions *in camera*'. At the same time, these exceptions must not be misused by the majority to evade public scrutiny. One way to strike that balance is to require super-majority approval for a closed session. In Ireland, for example, the Constitution states (article 15(8)), that sessions of Parliament are public, but that either House may hold a private sitting, 'in case of special emergency', with the approval of two-thirds of the members present. The Constitution of South Africa (article 59) creates a positive duty upon Parliament to facilitate not only public access, but public involvement. Parliament

is allowed to restrict public or press access to a committee, but only 'if it is reasonable and justifiable to do so in an open and democratic society'.

When committee meetings are open, members play to the audience – which means sticking to their partisan talking points, rather than working constructively across party lines.

Legislative committees also present a special case. An argument can be made that when committee meetings are open, members play to the audience—which means sticking to their partisan talking points, rather than working constructively across party lines. In some democracies, such as Germany, having closed committees is seen as essential to encouraging this kind of low-profile, cross-party working. In some other legislatures, such as that of Ireland, committees are open to the public, and indeed proceedings are broadcast. Internationally, there has been a shift over time to open committee meetings (France, for example), but debate is ongoing about the advantages for transparency versus the disadvantages (a loss of compromise and cooperation across partisan divides).

Chapter 7

SCRUTINY AND ACCOUNTABILITY MECHANISMS

7.1. ORAL AND WRITTEN QUESTIONS

Many parliamentary systems allow for regular time to be allocated to asking oral questions of government ministers or the prime minister.

Many parliamentary systems allow for regular time to be allocated to asking oral questions of government ministers or the prime minister, known as 'question time'. This originated in the United Kingdom, where standing orders allocate an hour of question time Monday to Thursday when Parliament is sitting, and an additionally weekly period for questions to the prime minister. Similar procedures have been adopted elsewhere: standing orders allocate daily time for oral questions in Canada, India, New Zealand and Singapore, and weekly time in Finland, Germany and Japan.

A regular question time is rarer in countries with a presidential system, but it does occur in some. For example, in the Philippines both chambers of Congress can demand that members of the executive branch appear to answer questions one day a week. Elsewhere, the usual means of accountability in presidential systems is through congressional committees, which may have the power to summon members of the executive to answer questions.

In either system of democracy, to ensure committees can exercise these 'powers' it might be helpful to specific in the constitution that they are enabled to conduct enquiries, to summon witnesses, to hear evidence on oath and to produce reports, among other actions necessary for the purpose. In Ireland in 2002, a parliamentary committee was found by the Supreme Court to lack the inherent constitutional power to conduct enquiries (*Ardagh v Maguire* [2002] IESC 21). A constitutional amendment was proposed to remedy the

defect; however, this (30th Amendment to the Constitution of the Republic of Ireland Bill, 2011) was voted down in a referendum.

Question time on the floor of the House, in a plenary session, is often a theatrical event. It is a means of debating the issues of the day and forcing the government to explain and defend its actions, rather than a place for detailed scrutiny of government policy or performance. For the latter, written questions may be more appropriate, allowing ministers to reply in more detail than might be appropriate in an oral answer (for example, by providing statistics and other evidence requested by members).

While the matter of parliamentary questions has traditionally been left to procedural rules, there are examples of constitutional provisions. The Constitution of Armenia, for example, makes provision for both oral (article 112(1)) and written (article 112(2)) questions to ministers.

Interpellations differ from ordinary questions in that they are intended to launch debate, and sometimes a vote of censure or a vote of confidence on the government's reply.

7.2. **INTERPELLATIONS**

An interpellation is a formal request in parliament for information or clarification about the government's policy. Interpellations differ from ordinary questions in that they are intended to launch debate, and sometimes a vote of censure or a vote of confidence on the government's reply.

The constitutional requirements to raise an interpellation vary. In many countries, these things are left to be decided by procedural rules or legislation. However, some constitutions do set out specifics:

- The Constitution of Bulgaria (article 90) allows members of Parliament to address interpellations to the Council of Ministers and individual ministers, and obliges the latter to respond; one-fifth of the parliamentarians can raise an interpellation on which a resolution shall be passed.

- Finland's Constitution (section 43) requires a group of at least 20 members to address an interpellation to the government or the minister. The Constitution requires a reply within 15 days, with a vote of confidence in the government or minister to follow.

- Romania's Constitution (article 112) simply provides that the government and its members are under a 'duty to respond' to interpellations complying with procedural rules, but does not give a timeline.

7.3. **VOTE OF NO CONFIDENCE (CENSURE)**

In parliamentary and semi-presidential systems there is provision for a vote of censure or vote of no confidence against the government.

This allows parliament to initiate procedures with the potential to replace all or part of the government. Procedures whereby a legitimate motion can be brought against the will of the government are crucial to ensure parliaments can take steps where the government has lost the support of the House. Procedure varies, but generally aims to enable swift consideration of legitimate motions while minimizing trivial ones.

In many countries a motion of no confidence takes precedence over other business. In some, like Canada, this is governed only by convention; in others a procedure is set out by standing orders. In Australia, once a motion is accepted by a minister as a motion or amendment of censure or no confidence, the standing orders (Standing Order 48) provide it 'shall have priority of all other business until it is disposed by the House'. Alternatively, an explicit timeframe may be set by the constitution to prevent the government avoiding the motion. In the Constitution of Romania (article 113) a censure motion requires initiation by at least one-fourth of the members of both chambers, and is discussed three days after it is tabled. For additional information on votes of censure and no-confidence, see Constitution-Building Primer 17, *Government Formation and Removal Mechanisms* (Bulmer 2017c).

In many countries a motion of no confidence takes precedence over other business.

Chapter 8

LEGISLATIVE PRIVILEGE AND IMMUNITY

All democratic legislative bodies must enjoy certain legal privileges, powers and immunities. This is necessary to enable them to carry out their work freely and independently.

8.1. PARLIAMENTARY PRIVILEGE IN COMMON LAW TRADITIONS

In common law countries, these are normally expressed in terms of 'parliamentary privilege'. Stemming from the English Bill of Rights 1688, which is still in force in the United Kingdom, parliamentary privilege means that 'the Freedom of Speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament' (Bill of Rights Act 1689: article 9). In other words, Parliament has control over its own rules, procedures and precincts, and its members are protected from legal action over views expressed in the House and its committees, either orally or by vote. These privileges attach to the House collectively rather than to individual members, who have privilege only by virtue of their membership of the House (UK Joint Committee on Parliamentary Privilege 1999: 242).

Constitutions influenced by the British tradition typically allow their legislatures to define, by law, their own privileges.

Constitutions influenced by the British tradition typically allow their legislatures to define, by law, their own privileges. The Constitution of the Solomon Islands, for example, simply states (section 69) that 'Parliament may prescribe the privileges, immunities and powers of Parliament and its members'. Sometimes, this is done by explicit reference to British privileges; for example, the New Zealand Parliamentary Privilege Act 2014 reaffirms and clarifies privileges

by reference to those exercised by the House of Commons as of 1865, rather than by providing a comprehensive codification. The Constitutions of Australia (section 49), Nauru (section 90) and Trinidad and Tobago (section 55), likewise state that the privileges of parliament shall be those of the British House of Commons at the time of independence, until the parliament otherwise provides. Australia provides comprehensive statutory definition of privileges (Parliamentary Privileges Act 1987). The Powers and Privileges (Senate and House of Assembly) Act in the Bahamas confirms the privileges enjoyed by members of the British House of Commons, but then also explicitly affirms freedom of speech, freedom from arrest and restrictions on service (Bahamas 1969).

As well as MPs, it is common for witnesses and others who participate in parliamentary or committee proceedings to also be protected under parliamentary privilege. The extent of protection is often confirmed by statute. For example, Fiji, Ireland and New Zealand each have statutes which provide that witnesses, experts and officials appearing before committees are protected from legal action. Such immunities can also be constitutionalized, as in Nepal, where speech protections shall also apply to 'any person … entitled to take part in a meeting of the House' (Constitution of Nepal, article 103). The Constitution of South Africa extends privilege to cabinet ministers and deputy ministers speaking in the National Assembly and its committees, even if they are not members (section 58).

The British notion of parliamentary privilege insulates all proceedings in Parliament from judicial review. The courts can enquire into whether a parliamentary privilege exists, and what its boundaries are, but within those boundaries the exercise of that privilege is an internal parliamentary matter and immune from judicial review (*Bradlaugh v Gossett* (1884) 12 QBD 271; *Stockdale v Hansard* (1839) 9 Ad and El 1) (see UK Joint Committee on Parliamentary Privilege 2013).

The courts can enquire into whether a parliamentary privilege exists, and what its boundaries are, but within those boundaries the exercise of that privilege is an internal parliamentary matter and immune from judicial review.

Some countries that draw upon this tradition, but which have included parliamentary privilege in a written constitution, have granted the courts a wider power to review its application. In India, for example, the Supreme Court has held that the courts can review the exercise of a privilege where fundamental rights set out in the Constitution are implicated (*Raja Ram Pal v The Honourable Speaker* (2007) 3 SCC 184; see also Kishore 2007). Thus, parliamentary proceedings tainted by substantive illegality or unconstitutionality will not be protected from judicial scrutiny. Similarly, in South Africa the courts have been

prepared to review a speaker's ruling—that certain parliamentary utterances were unparliamentary—for unconstitutionality. On review, the court held the speaker had materially misconstrued the scope of the parliamentary rules (*Malema v Chairperson of the National Council of Provinces* 2015 4 SA 145 (WCC)).

Although members cannot be prosecuted or sued for their speeches and votes in Parliament 'in any Court or place out of parliament', each House is able to discipline its members for abuse of the privilege, and has power to resist attempts by others to interfere with their privilege.

Constitutions in this tradition generally provide legislators with no general immunity for acts committed outside the legislature, and no general immunity against criminal prosecution. In many (though not all) such jurisdictions, privilege extends only to matters which are necessarily connected to proceedings in parliament (UK Joint Committee on Parliamentary Privilege 1999: 22–25). In Canada this is called the 'doctrine of necessity' (*Canada (House of Commons) v Vaid* [2005] 1 SCR 667 at [4]).

Constitutions that have been influenced by Napoleonic or civil law traditions tend to recognize a broader concept of parliamentary immunity.

8.2. **PARLIAMENTARY IMMUNITY IN CIVIL LAW TRADITIONS**

Constitutions that have been influenced by Napoleonic or civil law traditions tend to recognize a broader concept of parliamentary immunity. This approach has been adopted and variously adapted across much of continental Europe (e.g. Bulgaria) and in countries with experience of European colonial rule (e.g. Algeria). In its fullest form, immunity goes beyond protection for speeches and votes in the legislature, and protects the members from all criminal liability during their time in office.

This very broad immunity from prosecution is intended to protect legislators from partisan prosecutions, whereby false charges might be brought against them as a means of intimidation. However, the danger is that it essentially puts legislators above the law, and facilitates corruption and other illegal practices (Venice Commission 2014). To guard against this, various protections can be put in place, including mechanisms for waiving immunity and limitations on its scope.

8.3. **LIMITING THE SCOPE OF IMMUNITY**

Immunity may be limited to activities directly connected to the role and duties of a member of the legislature, without granting wider immunity from criminal process:

- In Luxembourg, the Constitution (article 68) protects members of Parliament from any action, civil or penal, 'as a result of the opinion or vote cast by him in the exercise of his functions,' but article 69 makes it clear that in other cases they 'may be prosecuted in penal matters'.

- The Constitution of the Netherlands (article 71) establishes that MPs and ministers addressing Parliament 'may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing'.

In some countries, while immunity extends beyond strictly legislative duties, certain offences are never protected. The three most common categories of exemption are: (a) where a member of the legislature is caught in flagrante delicto (i.e. in the act), as in Andorra, France and Portugal; (b) where the alleged crime is particularly serious (e.g. where it can attract a prison sentence over a certain duration), as in Brazil, Croatia, Finland and Portugal; and (c) where the alleged crime is minor, as in France (where administrative fines are not protected).

Another approach—adopted in France since 1995—is to limit the extent of immunity, so that it does not protect members of the legislature against investigation or trial, only against arrest or imprisonment. An exception applies where the member is caught in flagrante delicto, or where there has been a final conviction by a court of law.

8.4. **WAIVING IMMUNITY**

If immunity can be waived, then who exercises the power to do so can thus make a big difference to whether or not immunity is misused. Many countries allow the legislature, by majority vote, to waive immunity. The Constitution of Greece (article 62), for example, states that permission to waive immunity may be granted by the legislature, with no special majority requirement specified in the

If immunity can be waived, then who exercises the power to do so can thus make a big difference to whether or not immunity is misused.

Some countries have detailed rules covering the criteria and procedure for lifting immunity.

Constitution. Likewise, the Constitution of Latvia (articles 29 and 30) has no special majority requirement. But selective removal of immunity by political majorities holds the potential for misuse, to the extent of facilitating selective (partisan or otherwise corrupt) intimidation or prosecution—with clear implications for the rule of law. For this reason, some countries have detailed rules covering the criteria and procedure for lifting immunity. One way to remove the mechanism from partisan control is by requiring a super-majority. In Finland, for example, a decision to lift immunity requires a majority of five-sixths of votes cast in Parliament (Constitution of Finland, section 30). Another way is to require judicial approval, as in Belgium, where 'coercive measures requiring the intervention of a judge cannot, during a session and in criminal matters, be instituted against a member of either House, except by the first President of the Appeal Court at the request of the competent judge'.

Further protection may be achieved by the establishment of an independent, non-partisan prosecutorial service. In France, the decision to waive immunity is taken by the parliamentary bureau alone, with no debate or vote held in the plenary chamber. A parliamentary ordinance requires requests be made to the Assembly by a general prosecutor (*procureur général*), through the Minister of Justice (Ordonnance no. 58-1100 (1958), article 9). The request must precisely state the scope of the waiver and set out the reasons. The bureau's determinations state they do not comment on the alleged facts or crimes, but assess only whether the request from the Attorney-General is precise, appears sufficiently motivated, and is serious, loyal and sincere, and grant waiver if these conditions are met.

Chapter 9

INTERNAL ORDER AND DISCIPLINE OF THE LEGISLATURE

9.1. KEEPING ORDER AND ENFORCING THE RULES

Normally, responsibility for keeping order in the legislature (or in each House, if there is more than one) rests with its speaker, or presiding officer, whose task includes enforcing standing orders or rules of procedure. Their task is ensuring the legislature functions in an orderly and peaceful manner, and disciplining members who break the rules. For example, the speaker may be able to require remarks they deem to be 'unparliamentary' to be withdrawn (such as one member calling another a liar); if the speaker is not obeyed, further sanctions may escalate—ultimately leading to the temporary expulsion of the member.

Responsibility for keeping order in the legislature rests with its speaker, or presiding officer, whose task includes enforcing standing orders or rules of procedure.

In many countries a 'sergeant-at-arms', armed with a ceremonial mace representing the authority of the House, is responsible, under the speaker's direction, for keeping order and enforcing the speaker's rulings—by physical means if necessary. The sergeant-at-arms is an officer of the House, and not of the executive. This is important from the point of view of the separation of powers.

9.2. ENFORCEMENT MECHANISMS

If parliamentary privilege means that external, non-parliamentary actors (such as the courts) cannot punish MPs for violations of the rules, the legislature must have the ability to take action—either collectively or through its officers. In countries recognizing parliamentary privilege this is part of the legislature's 'exclusive

If the legislature retains all control over its own internal discipline, its members are effectively acting as judges in their own cause, which is problematic for public trust.

cognisance', that is, its sole jurisdiction over internal matters. However, if the legislature retains all control over its own internal discipline, its members are effectively acting as judges in their own cause, which is problematic for public trust. In particular, the legislative majority has control over who to sanction, and there is no clear mechanism for appeal. It is easy for majorities to manipulate this in order to exclude minority or dissenting voices. On the other hand, if a legislature establishes independent bodies to perform enforcement functions, it potentially gives unelected officials power over the behaviour, and careers, of elected representatives.

Germany provides an example of enforcement mostly by internal mechanisms. The Code of Conduct is approved by the legislature, as required by the Members of the Bundestag Act (1996), and is appended to the Rules of Procedure. Allegations of a breach of the Code of Conduct will be investigated by the presiding officer of the Bundestag (the Lower House of the German federal Parliament) (Code of Conduct, rule 8). The presiding officer deals with breaches that are considered minor and refers others to the Presidium and the chairpersons of the parliamentary groups. The latter publish any finding of breaches and may impose a fine.

In France, an independent Commissioner for Ethical Standards (the *Déontologue*) is charged with ensuring compliance with the parliamentary code of conduct. The *Déontologue* is appointed by the Bureau of the National Assembly. He or she notifies the Bureau of allegations of breaches of the code, investigates and makes findings, and informs the Assembly. In the event the sanctioned parliamentarian fails to comply with the *Déontologue*'s decision, or wishes to appeal, the matter is referred to a committee of the National Assembly.

The United Kingdom has a hybrid model of enforcement. For general breaches of the Code of Conduct, a Parliamentary Commissioner for Standards, appointed by the House of Commons under Standing Order 150, carries out investigations. For minor breaches, an admission and apology to the standards commissioner may be sufficient. If not, the commissioner hands the matter over to the Committee on Standards. Chaired by an opposition member, the Committee on Standards consists of seven members of Parliament, chosen on a cross-party basis, and seven lay persons (non-parliamentarians). The committee recommends the appropriate sanction to the House. However, there is a facility to appeal to an Independent Expert Panel, consisting of non-members, who also

hear complaints of bullying and harassment under a separate, parallel, Independent Complaints and Grievance System. For serious breaches of the code of conduct, sanctions recommended by the Committee on Standards or the Independent Expert Panel are subject to approval by the House (by majority vote). That, however, opens up the possibility of partisan outcomes, with the government using its majority to protect its own side while penalizing the opposition.

Chapter 10

LEGISLATIVE ADMINISTRATION

Capable clerical support is essential if a legislature is to perform its duties.

10.1. REGULATING LEGISLATIVE ADMINISTRATION

Capable clerical support is essential if a legislature is to perform its duties. This includes giving technical advice to the speaker or presiding officer; preparing order papers; publishing and circulating legislation and reports; providing research and legislative drafting support to members; estate and facilities management and security; records and archives; public information, education and outreach; media relations; and arrangements for high-profile events such as official visits and ceremonial occasions in the parliamentary calendar. In countries with bilingual or multilingual parliaments, there will usually also be a staff of interpreters and translators. There is a general trend for legislative staff to grow in size and function, in response to growing demands for improved public access, online presence, and support to parliamentarians (Christiansen, Griglio and Lupo 2023).

These myriad tasks also have potential political significance. They have to be carried out fairly and impartially if they are not to be abused. So parliamentary administration, as well as technical competence, must: (a) not favour or disfavour any party; and (b) be independent of the executive branch. This is in order to preserve the legislature's institutional autonomy and public standing, and to prevent the executive from undermining the legislature.

A key marker of independence is control over budget proposals and allocations for the internal administration of parliament, without executive influence. Another consideration is whether the staff are independently employed by the legislature itself, or whether they

are civil servants (who are ultimately part of the executive). Either approach can work, if those who work for the legislature understand their role as being in the service of the whole House.

Constitutions vary in the extent to which parliamentary administration is constitutionalized. The role of the clerk or secretary general is frequently included in a written constitution, and perhaps their method of appointment. The functioning of these offices tends to be developed in ordinary law or by rules of procedure, but some constitutions contain specific or even detailed provisions.

Constitutions vary in the extent to which parliamentary administration is constitutionalized.

The Constitution of India (article 98), for example, provides that each House of Parliament shall have its own secretariat, without necessarily prohibiting the establishment of offices common to both Houses. Parliament is empowered to make laws to 'regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of either House', and until Parliament makes such provision by law the president, on the advice of the presiding officers, may make regulations for those purposes. While recognizing the need for a parliamentary secretariat, the overall tone of article 98 of the Indian Constitution is deferential to Parliament. There is no explicit requirement, for example, for the secretariat to be politically impartial. In practice, the head of the secretariat—the secretary-general—is appointed by the speaker of the Lok Sabha (Lower House), and the current secretary-general is a former senior civil servant (Negi 2020). To underline the status and importance of the role, the Secretary-General has the same rank as the Cabinet Secretary—that is, the most senior civil servant in the country.

In Fiji, by contrast, the Constitution (section 79) provides for the secretary general of Parliament to be appointed by the president acting on the advice of the Constitutional Offices Commission. The latter consists of the prime minister, two persons appointed on the advice of the prime minister, the Attorney-General, the leader of the opposition and one person appointed on the advice of the leader of the opposition (Constitution of Fiji, section 132). Since a majority decides, this means in effect that the government can make the appointment—it has four out of six members in the Constitutional Offices Commission. However, the Constitution of Fiji, compared to that of India, does make more detailed provision for the role of secretary general, setting out the scope of his or her authority.

The Constitution of Papua New Guinea (section 132) establishes a Parliamentary Service, separate from the other state services, to

run the administration of Parliament. The head of the Parliamentary Service is not a secretary general, but rather goes by the older title of clerk. Crucially, Papua New Guinea's Constitution (section 132(3)) requires the Parliamentary Service to be nevertheless 'under the direction and control of the speaker', and to 'perform its functions impartially'.

The Constitution of Kenya (section 127) establishes a Parliamentary Service Commission, consisting[6] of the speaker of the National Assembly, four government-supporting and three opposition-supporting MPs, and two persons who are not members of Parliament but are 'experienced in public administration'. The clerk of the Senate is secretary to the Parliamentary Service Commission. The functions and duties of the Commission are out in detail (section 127(6)). The clerk of each House is appointed by the Parliamentary Service Commission with the approval of the relevant House (section 128(1)). This arrangement is designed to protect, at a constitutional level, both the independence and impartiality of the Parliamentary Service.

Even where there is little perceived risk democratic backsliding, there may be some advantage in constitutionalizing certain principles (such as non-partisanship) or the basic roles of parliamentary administration.

At the other end of the scale, some countries' constitutions say little or nothing about parliamentary administration. In France, for example, the status of the parliamentary administration derives from a 1958 Order, which is treated as an organic law. In Germany, the legal framework of the Bundestag's internal administration is derived from House rules in combination with general statutes applying to all public bodies. However, even where there is little perceived risk of democratic backsliding, there may be some advantage in constitutionalizing certain principles (such as non-partisanship) or the basic roles of parliamentary administration, so that expectations are clear.

10.2. **GOVERNING BODIES**

The governing bodies responsible for legislative administration can take various forms. Often it is a collective body. Kenya's Parliamentary Service Commission has been mentioned above. Similar institutions may exist on a statutory basis: Canada's Board of Internal Economy 'takes decisions and provides direction on financial and administrative matters of the House of Commons, specifically

6 This composition involves gender balance requirements—see Table 13.5.

concerning its premises, its services, its staff and Members', and consists of the speaker and a cross-party membership with an equal number of government and opposition members (Parliament of Canada n.d.a). In the French National Assembly, the Bureau includes three '*quaestors*', drawn from it, who are responsible for financial and administrative services. As the Bureau must reflect the political balance of the Assembly, generally at least one *quaestor* is an opposition member (Rules of Procedure, article 10-2). In Sweden a Riksdag Board, consisting of the speaker and 10 members chosen to represent the various parties, 'directs Riksdag Administration and deliberates on the organization of the work of the Riksdag' (Riksdag Act, Chapter 14, article 4).

Alternatively, the responsible authority can be a sole individual, normally the speaker or presiding officer—as in Germany. However, while giving the speaker a leading role (for example, as ex-officio chair of the governing body), it may be wise to remove the power over parliamentary administration from any one person, and place it in a collective body that can be cross-partisan and more transparent in its decision making. There is also the question of effective time management. The more time the speaker is required to spend on parliamentary administration, the less time they have to preside over debates, or to represent parliament.

10.3. **THE CLERK OR SECRETARY GENERAL**

Almost without exception, legislatures appoint a senior administrative officer responsible for ensuring administrative business runs smoothly and without partisan bias. They are usually known as the secretary general or the clerk of the House. The core duties of this officer are to provide clerical and procedural assistance to the legislature: record-keeping, custody of legislative documents, and advising the speaker and members on questions of procedure. They also typically have a broader remit to manage the legislature's operations, finances, staff, buildings and facilities on a day-to-day basis—under the general direction of the governing body.

Almost without exception, legislatures appoint a senior administrative officer responsible for ensuring administrative business runs smoothly and without partisan bias.

The appointment process for the clerk or secretary general varies. They may be appointed by the speaker or presiding officer, as in Australia, Germany, India and the Republic of Korea. While this ensures appointment by a legislative actor rather than the executive, there is still a danger—depending on the prevailing political culture,

and the degree of partisanship or non-partisanship that is expected of the speaker—that the appointment could still be partisan. For this reason, many countries may require the speaker to consult with the leader of the House and the leader of the opposition, as in India (Kaul and Shakdher 2016: 180).

The clerk or secretary general may be appointed by a vote of the House, but to protect against majoritarian misuse, a super-majority vote may be required.

In some Commonwealth countries, the clerk or secretary general is technically appointed by the Crown (that is, by the government). While this suggests executive interference, in practice there may be restraints upon the government's power. For example, in Canada the clerk of the House of Commons is appointed by the government, but the proposed nominee must be vetted by the House's Standing Committee on Procedure and House Affairs, and then endorsed by a decision of the House, prior to appointment (Parliament of Canada n.d.b). These rules, being dependent upon standing orders rather than upon the constitution, are relatively 'soft'; a determined government, with a majority in the House of Commons, could change them at will. Such arrangements may not be sufficiently robust in all situations. In Fiji and Sri Lanka, the secretary general is nominally appointed by the president but in practice chosen by a Constitutional Offices Commission (Fiji) or Constitutional Council (Sri Lanka).

Alternatively, the clerk or secretary general may be appointed by a vote of the House, but to protect against majoritarian misuse (as mentioned, this ought to be an independent, non-partisan office[7]) a super-majority vote may be required. In Sweden for instance, the secretary general is nominated by a panel consisting of the speaker and the leaders of the party groups, and then elected by a three-fourths majority vote of the members of Parliament. This is not laid down in the Constitution, but in a specially entrenched organic law regulating Parliament (Riksdag Act, Chapter 14, articles 4–5).

In bicameral legislatures, each House usually has its own clerk, secretary general or *quaestors*. (There are some rare exceptions with fully combined administrative apparatuses, including Austria and Switzerland.) In small parliaments, flexibility may be permitted: the Constitution of Antigua and Barbuda (section 43), for example, provides for the separate offices of clerk of the House of Assembly

7 One example of where the secretary general is a political post is in the USA, where the clerk of the House and the secretary of the Senate are each elected by members at the beginning of each term, usually after nomination by the majority caucus. Even so, the clerk tends to have a public service rather than political background, and recently has been retained across subsequent Congresses notwithstanding a change in majority. (Cheryl Lynn Johnson remained Clerk of the House of Representatives during the 115th–118th Congresses across Democratic and Republican party majorities.)

and clerk of the Senate, but allows these two offices to be held by one person. In Kenya, the two Houses share a Parliamentary Service Commission, but a separate clerk is appointed for each chamber. In South Africa, there is a secretary to Parliament, who oversees combined budgetary, audit, legal, research and corporate services for both Houses, in addition to individual secretaries general for each chamber with responsibility for table and committee support (Parliament of South Africa 2021: 13).

Increasingly, recruitment for clerks or secretaries general is carried out by an open, merit-based application process. Understanding of the necessary skills is also evolving. Historically, a focus on providing procedural advice favoured the recruitment of specialist lawyers, but this is changing as the role has developed more managerial and organizational aspects. Some constitutions (e.g. Constitution of Zambia, article 84; Constitution of Nepal, article 106) require the clerk or secretary general to have certain qualifications or experience prescribed by law.

Historically, a focus on providing procedural advice favoured the recruitment of specialist lawyers, but this is changing as the role has developed more managerial and organizational aspects.

The clerk or secretary general might also have some protection against arbitrary removal from office. To continue with the Swedish example, the secretary general serves for the duration of each Parliament and may only be removed by a vote in it, held 'at the request of the Riksdag Board' (the governing body), and only on the grounds that he or she 'has grossly neglected his or her commitments to the Riksdag' (Riksdag Act, Chapter 14, article 6).

In Fiji, the secretary general to Parliament holds office for a renewable term of five years (Constitution of Fiji, section 135), and may only be removed from office for 'inability to perform the functions of his or her office' or for 'misbehaviour'; this must be determined by a judicial tribunal established by the Constitutional Offices Commission (Constitution of Fiji, section 137). The secretary general of the Parliament of Sri Lanka serves with security of tenure until retirement at age 60, subject to 'good behaviour' (the same standard that traditionally applies to judges in most Commonwealth member states). Removal for breach of good behaviour may be effected by the president upon an address from Parliament (Constitution of Sri Lanka, article 65). In Australia, the clerk is appointed for a 10-year, non-renewable term. Long, non-renewable terms are an intermediate position; unlike in Sweden and Fiji, they insulate the office from the electoral cycle, without (as in Sri Lanka) allowing anyone to monopolize that office for an indeterminate period.

10.4. **BUDGET OF THE LEGISLATURE**

Budgetary autonomy is central to the institutional independence of the legislature, allowing it to access and manage its own funds without executive influence. This prevents the executive from coercing the legislature, or retaliating against it, by reducing its resources.

Constitutions may provide specific mandates for funding the parliamentary administration. The Constitution of Fiji (section 79(10)) is a good example: 'Parliament shall ensure that adequate funding and resources are made available to the Secretary-General to Parliament, to enable him or her to independently and effectively exercise the powers and perform the functions and duties of the Secretary-General to Parliament.'

10.5. **LEGISLATIVE STAFF**

In addition to clerical, legal, research, archival and communications staff, a functioning legislature will also need employees in security, cleaning, catering and maintenance—as well as a financial and human resources staff.

Legislatures are usually supported, under the leadership of the clerk or secretary general, by a professional staff. These staff are at the service of the House or the legislature as a whole as an institution, and do not have any partisan affiliation. In addition to clerical, legal, research, archival and communications staff, a functioning legislature will also need employees in security, cleaning, catering and maintenance—as well as a financial and human resources staff to recruit, manage and account for all of the above.

Some of these staff may be 'public officers' or civil servants, and therefore nominally and formally part of the executive branch—although if employed on legislative duties they should be under the direction and control of the clerk or secretary general. Others may be outside the civil service, directly recruited and employed by the clerk or secretary general, or by parliament's governing body. The Constitution of Fiji (section 79(7)), for example, states that the secretary general has the 'the authority to appoint, remove and discipline all staff in Parliament'. In Scotland, the Parliamentary Corporate Body has a statutory power (Scotland Act 1998, Schedule II) to appoint staff, enter into contracts, and 'determine the terms and conditions of appointment of the staff of the Parliament'.

In addition, party groups and members of a legislature might well employ their own employees who work in and around the legislature,

but are not part of the legislature's own staff. These may be researchers, office assistants, policy advisors or media advisors. They are not under the direction of parliamentary administration but serve an MP or party on a partisan basis. This means they usually do not have the same kind of employment protections that apply to the legislature's own staff. However, this does not mean that MPs' or parties' workers are completely beyond the scope of public regulation. For example, they might be publicly funded, if the law allows a staff allowance to be paid to members or to party groups. Practically speaking, the effectiveness of party groups may be decisive in how well the legislature as a whole functions, and the constitution may take notice of this. The Constitution of South Africa, for example, provides for 'financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively' (section 57(2)(c)).

10.6. **LEGISLATIVE SECURITY**

Security staff require special mention. As noted above, some legislatures have a sergeant-at-arms who is responsible for security and for keeping order in and around the legislative estate: the principle is one of parliamentary privilege, ensuring that the legislature is not interfered with by the executive. Even where there is no sergeant-at-arms, the parliamentary governing body (or the clerk or secretary general) may maintain their own parliamentary bodyguard or security force, independent of executive control. For example, the Constitution of Hungary (article 5(9)), establishes a Parliamentary Guard responsible, under the authority of the speaker, for security of the National Assembly.

The parliamentary governing body (or the clerk or secretary general) may maintain their own parliamentary bodyguard or security force, independent of executive control.

In some countries, legislatures have been forcibly interrupted by the armed forces, under executive command. If there is a concerted intent to subdue the legislature by military means, a small legislative security force is unlikely to be able to resist. Reducing the risk of military coups is a broader topic requiring holistic treatment, in terms of not only constitutional design but also security sector reform, which falls outside the scope of this primer. However, there are examples of constitutions seeking to dissuade people from interfering with the legislature by force in this way. In Norway, for example, the Constitution states (article 85) that 'Any person who obeys an order, the purpose of which is to disturb the liberty and

security of the Parliament, is thereby guilty of treason against the Country'. This provision would make an individual ordinary soldier guilty of treason for obeying an order to commit a coup against the legislature; 'only obeying orders' would be no defence.

In any organization, good records are the foundation of transparency and legislatures are no exception.

10.7. **RECORD KEEPING**

In any organization, good records are the foundation of transparency and legislatures are no exception. Without authoritative records of decisions taken, the law could be uncertain. Without an accurate record of debates, accountability would be very difficult to enforce. This vital area of work is normally the ultimate responsibility of the clerk or secretary general.

Most legislatures publish two sets of records: first, a record of all decisions taken (often called the journal or the gazette); and second, a record of debates (often known as 'Hansard' in common law countries, after the first official printer to the Westminster Parliament). These records are often constitutionally required. Some constitutions require only that a journal will be kept (e.g. Papua New Guinea), others only that it be kept and published (e.g. the United States; Micronesia), but without specifying content. Others require a 'complete record' of debates and parliamentary documents (Senegal, article 66; Congo, article 122), or a 'verbatim report of the debates' (France, article 33). Portugal and Cabo Verde each provide an example of particularly detailed constitutional provisions listing all matters to be published in the official journal. Where such requirements are not included in constitutional provisions, they are generally laid out in procedural rules.

Chapter 11

SALARIES, ALLOWANCES AND REMUNERATION OF LEGISLATORS

11.1. REMUNERATION OF MEMBERS

A final point of legislative organization to be considered is the payment of members. In most countries today, members of the legislature receive payments for their service. However, there are a few legislative bodies that are unpaid. In Belgium, for example, the senators do not receive a salary—although they have a right to be compensated for out-of-pocket expenses and are entitled to free travel on the public railways (Constitution of Belgium, article 71).

In general, constitutions make provision for the salaries and allowances of members of the legislature to be determined by law. The Constitution of Malaysia (section 64) is very typical in this regard, stating simply that 'Parliament shall by law provide for the remuneration of members of each House'. The Constitution of Italy (article 69) likewise declares that 'Members of Parliament shall receive an allowance established by law'. The Constitution of Bulgaria (article 71) says 'The National Assembly shall establish the emoluments of its Members'. In Ireland, the Constitution empowers Parliament to determine the 'payment of allowances to the members of each House', as well as 'free travelling and such other facilities … as the Oireachtas [Parliament] shall determine' (article 15).

In general, constitutions make provision for the salaries and allowances of members of the legislature to be determined by law.

When a constitution is adopted, an initial sum may be specified pending the enactment of a law defining the salary and other allowances and benefits of members of the legislature. The Constitution of Australia (section 48) provides one such example. In another transitional arrangement, the Constitution of Nepal (article 108) allows Parliament to determine the allowances of its members,

but until that law is enacted, gives the government power to make that provision. A potential problem with the latter approach is that it provides the government (which is likely to control much of the legislative agenda) with a disincentive to prioritize such a bill, as this would limit its discretionary power.

11.2. **RESTRICTIONS ON REMUNERATION POWER**

The power of a legislature to determine the remuneration of its own members is subject to both political manipulation and public pressure. Some countries establish constitutional rules to protect against such influences. In the United States, for example, the 27th Amendment prohibits any change in the remuneration of members from taking effect until after a general election has intervened. A similar rule is found in the Philippines (Constitution of the Philippines, article 6, section 10). The effect of that rule is limited, of course, if members have a high expectation of re-election, or enhanced if there is a high turnover of legislators.

Another approach is to establish independent commissions or tribunals to determine or advise on salaries and allowances.

Another approach is to establish independent commissions or tribunals to determine or advise on salaries and allowances. Two considerations are: (a) the composition of such a body; and (b) its powers. Here Kiribati and Solomon Islands provide a contrast. In terms of composition, such a body might be primarily official, and non-partisan, as in Kiribati, where the Members' Salaries Tribunal is appointed by the chair of the Public Service Commission after consultation with the speaker (Constitution of Kiribati, section 65). Alternatively, it might be a more politically appointed body, as in Solomon Islands, where the Members of Parliament (Entitlements) Commission consists of three members appointed by the governor-general on the advice of the prime minister, the minister of finance, and the chairperson of the Public Accounts Committee.

Kiribati's Members' Salaries Tribunal is limited to making recommendations on the remuneration of members—the actual decision is for Parliament to take. While such an arrangement does not necessarily prevent Parliament from acting irresponsibly, it does make it easier to follow the recommendation of the Tribunal as the default. In contrast, the Members of Parliament (Entitlements) Commission in Solomon Islands actually sets the levels of

remuneration, according to certain criteria—the state of the national economy and the financial position of the government, general pay levels in comparable sectors and the cost of living (Constitution of Solomon Islands, section 69B).

Chapter 12

QUESTIONS FOR DISCUSSION

1. What is the current or historical condition of the legislature? Has it been too weak, or too dominated by the executive or by the majority, to effectively scrutinize legislation and to hold the government to account? Or has it exercised a kind of 'disruptive power', to hinder necessary reforms or to cause instability without improving the quality of legislative or governmental outcomes? Correcting either of these past deficiencies, how can you avoid the opposite problem arising?

2. The constitutional design choices featured in this primer will make a difference to how the legislature performs its functions, the balance of power between the legislature and the executive, and the balance between different parties within the legislature. However, other constitutional design choices (such as the electoral system) as well as socio-political factors (such as the party system) will also have a profound effect. How well integrated are proposed reforms to the organization, procedure, privileges and administration of the legislature with other constitutional reform proposals that are likely to be adopted? Does the whole fit together in a coherent way?

3. To what extent can the legislature be trusted to self-regulate? Should the legislature (that is, the legislative majority) have maximal freedom to arrange its own order of business, or should constitutional safeguards for minority rights, or for certain procedural protections beyond the reach of majority rule, be included?

4. If minority safeguards are included, how specific should the constitution be? What are the advantages and disadvantages

of relying primarily upon: (a) procedural rules (e.g. requiring a two-thirds majority for certain decisions, or requiring delay and deliberation before a decision on the rules is taken); and (b) substantive rules (specified in the constitution, in more or less detail)?

5. Should the speaker or presiding officer be (a) openly partisan; or (b) strictly non-partisan? If the former, what other provision will be made for upholding the rules of the legislature in a fair, impartial way? If the latter, what safeguards will be included to ensure that the speaker abstains from party-political activity?

6. What provision should be made at a constitutional level for parliamentary committees? How can the constitution help to promote committees that are effective, inclusive and well-resourced?

7. If changes are envisaged, how will the new rules be explained to members of the legislature? What provision will be made to consolidate rule changes with changes to the culture of politics? What else needs to be considered, as part of the transition and constitutional implementation process, in order for the legislative culture to change?

Chapter 13

EXAMPLES

Table13.1. **Parliamentary committees**

Country	Constitutional provisions on establishment, roles and powers
Bangladesh	**76**. Standing committees of Parliament 1. Parliament shall appoint from among its members the following standing committees, that is to say: • a public accounts committee; • committee of privileges; and • such other standing committees as the rules of procedure of Parliament require. 2. In addition to the committees referred to in clause (1), Parliament shall appoint other standing committees, and a committee so appointed may, subject to the Constitution and to any other law: • examine draft Bills and other legislative proposals; • review the enforcement of laws and propose measures for such enforcement; • in relation to any matter referred to it by Parliament as a matter of public importance, investigate or inquire into the activities or administration of a Ministry and may require it to furnish, through an authorized representative, relevant information and to answer questions, orally or in writing; • perform any other function assigned to it by Parliament. 3. Parliament may by law confer on committees appointed under this article powers for enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; compelling the production of documents.
France	**43.** Government and Private Members' Bills shall be referred to one of the standing committees, the number of which shall not exceed eight in each House. At the request of the Government or of the House before which such a bill has been tabled, Government and Private Members' Bills shall be referred for consideration to a committee specially set up for this purpose.
Iceland	**39.** Althingi may appoint committees of its Members in order to investigate important matters of public interest. Althingi may grant authority to such committees to request reports, oral or written, from officials as well as from individuals.

Table13.1. **Parliamentary committees (cont.)**

Country	Constitutional provisions on establishment, roles and powers
Kenya	**124**. Committees and Standing Orders 1. Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees. 2. Parliament may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of those committees… **125**. Power to call for evidence 1. Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information. 2. For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court: a. to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise; b. to compel the production of documents; and c. to issue a commission or request to examine witnesses abroad.
Malta	**67(3)**. Any provision made … for setting up Committees of the House to enquire into matters of general public importance shall be designed to secure that, so far as it appears practicable to the House, any such Committee is so composed as fairly to represent the House.
South Africa	**56**. Evidence or information before National Assembly The National Assembly or any of its committees may: a. summon any person to appear before it to give evidence on oath or affirmation, or to produce documents; b. require any person or institution to report to it; c. compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and d. receive petitions, representations or submissions from any interested persons or institutions. **57**. Internal arrangements, proceedings and procedures of National Assembly … 2. The rules and orders of the National Assembly must provide for: a. the establishment, composition, powers, functions, procedures and duration of its committees; b. the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy; …

Table 13.2. **Self-regulation of privileges**

Country	Constitutional provision	Related instruments
Australia	**49.** The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.	Parliamentary Privileges Act 1987
The Bahamas	**53.*** (1) Without prejudice to the generality of art 43(1) of this Constitution and subject to the provisions of paragraph (2) of this Article, Parliament may by law determine the privileges, immunities and powers of the Senate and the House of Assembly and the members thereof. (2) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Senate or the House of Assembly while it is sitting, or through the President or the Speaker, the clerk or any other officer or either House.	Powers and Privileges (Senate and House of Assembly) Act 1969
Singapore	**Privileges of Parliament** **63**. It shall be lawful for the Legislature by law to determine and regulate the privileges, immunities or powers of Parliament.	Parliament (Privileges, Immunities and Powers) Act 1962

***** *Note that article 48 of the Constitution of Barbados includes near-identical wording.*

Table 13.3. **Defined parliamentary privileges**

Country	Constitutional provisions granting specified privileges
India	**105**. Powers, Privileges, etc., of the Houses of Parliament and of the members and committees thereof 1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. 2. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. 3. In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. 4. The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.
South Africa	**Article 58**. Privilege (1) Cabinet members, Deputy Ministers and members of the National Assembly: (a) have freedom of speech in the Assembly in its committees, subject to its rules and orders; and i. are not liable to civil or criminal proceedings, arrest, imprisonment or damages for: ii. anything that they have said in, produced before or submitted to the Assembly or any of its committees; or anything revealed as a result of anything they have said in, produced before or submitted to the Assembly or any of its committees. (2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.
United States	**Article I, Section 6, Clause 1**: The Senators and Representatives … shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Table 13.4. **Parliamentary immunity**

Country	Constitutional provisions granting immunity
Denmark	**57**. No Member of the Folketing shall be prosecuted or imprisoned in any manner whatsoever without the consent of the Folketing, unless he is caught in flagrante delicto. Outside the Folketing no Member shall be held liable for his utterances in the Folketing save by the consent of the Folketing.
France	**26.** No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties. No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorization of the Bureau of the House of which he is a member. Such authorization shall not be required in the case of a serious crime or other major offence committed flagrante delicto or when a conviction has become final. The detention, subjecting to custodial or semi-custodial measures, or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires. The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.
Italy	**68.** Members of Parliament cannot be held accountable for the opinions expressed or votes cast in the performance of their function. In default of the authorization of his House, no Member of Parliament maybe submitted to personal or home search, nor may he be arrested or otherwise deprived of his personal freedom, nor held in detention, except when a final court sentence is enforced, or when the Member is apprehended in the act of committing an offence for which arrest flagrante delicto is mandatory. Such an authorization shall also be required in order to monitor a Member of Parliament's conversations or communications, or to seize such member's mail.

Table 13.5. **Constitutional provisions relating to parliamentary administration**

Country	Provisions
Fiji	**79**. Secretary-General to Parliament 1. This section establishes the office of the Secretary-General to Parliament. 2. The Secretary-General to Parliament shall be appointed by the President on the advice of the Constitutional Offices Commission. 3. The Secretary-General to Parliament has the same status as that of a permanent secretary and shall be responsible to the Speaker for the efficient, effective and economical management of Parliament. 4. The Secretary-General to Parliament is the principal procedural advisor to the Speaker, and to all members of Parliament and committees of Parliament. 5. The Secretary-General to Parliament is responsible for all the functions as may be conferred on him or her by the standing orders of Parliament. 6. In the performance of the functions or the exercise of the authority and powers, the Secretary-General to Parliament shall be independent and shall not be subject to the direction or control of any person or authority, except the Speaker, a court of law or as otherwise prescribed by written law. 7. The Secretary-General to Parliament shall have the authority to appoint, remove and discipline all staff (including administrative staff) in Parliament. 8. The Secretary-General to Parliament has the authority to determine all matters pertaining to the employment of all staff in Parliament, including: a. the terms and conditions of employment; b. the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit; c. the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and d. the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament. 9. The salaries, benefits and allowances payable to the Secretary-General to Parliament and any person employed in Parliament are a charge on the Consolidated Fund. Parliament shall ensure that adequate funding and resources are made available to the Secretary-General to Parliament, to enable him or her to independently and effectively exercise the powers and perform the functions and duties of the Secretary-General to Parliament.

Table 13.5. **Constitutional provisions relating to parliamentary administration (cont.)**

Country	Provisions
Kenya	**127**. Parliamentary Service Commission 1. There is established the Parliamentary Service Commission. 2. The Commission consists of: • the Speaker of the National Assembly, as chairperson; • a vice-chairperson elected by the Commission from the members appointed under paragraph (c); • seven members appointed by Parliament from among its members of whom – - four shall be nominated equally from both Houses by the party or coalition of parties forming the national government, of whom at least two shall be women; and - three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and • one man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament. 3. The Clerk of the Senate shall be the Secretary to the Commission. … 6. The Commission is responsible for: a. providing services and facilities to ensure the efficient and effective functioning of Parliament; b. constituting offices in the parliamentary service, and appointing and supervising office holders; c. preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service; d. undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and e. performing other functions: i. necessary for the well-being of the members and staff of Parliament; or ii. prescribed by national legislation. **128**. Clerks and staff of Parliament 1. There shall be a Clerk for each House of Parliament, appointed by the Parliamentary Service Commission with the approval of the relevant House. 2. The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary Service.
Papua New Guinea	**132**. The Parliamentary Service 1. An Act of the Parliament shall make provision for and in respect of a Parliamentary Service, separate from the other State Services. 2. Within the Service, there shall be an office of Clerk of the National Parliament who shall, subject to Subsection (3), be the head of the Service. 3. The Service shall be subject to the direction and control of the Speaker and shall perform its functions impartially.

Table 13.5. **Constitutional provisions relating to parliamentary administration (cont.)**

Country	Provisions
Nigeria	**51**. There shall be a Clerk to the National Assembly and such other staff as may be prescribed by an Act of the National Assembly, and the method of appointment of the Clerk and other staff of the National Assembly shall be as prescribed by that Act.

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