CHAPTER 30

# PARLIAMENTARISM

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## I. The British Origins

A classical statement of the model of parliamentarism as it had developed in the United Kingdom was given in 1858:

> It is a distinguishing characteristic of Parliamentary Government that it requires the powers belonging to the Crown to be exercised through Ministers, who are held responsible for the manner in which they are used...and who are considered entitled to hold their office only while they possess the confidence of Parliament, and more especially the House of Commons.[1]

The long history of parliament in the United Kingdom may be said to have begun in 1265, when representatives of the cities and boroughs in England were summoned to join the feudal

[1] Earl Grey, *Parliamentary Government* (1958).

nobles, bishops, and knights of the counties in a gathering derived from the *Curia Regis*.[2] By the sixteenth century, the bicameral structure of Parliament was already established, and the two chambers of Lords and Commons authorized taxation, appropriated revenue to the use of the Crown, made new laws (eg creating the Church of England when Henry VIII broke from the Pope), and expressed the grievances of the people. During the seventeenth century, the struggle between Crown and Parliament involved the execution of one king, a bitter civil war, a period of republican government under Cromwell, restoration of the monarchy, and the removal of another king in the Glorious Revolution of 1688–89. The Bill of Rights 1689 left executive power with the monarch, but imposed conditions upon exercise of that power to protect the interests of Parliament. Those conditions, and the emergence of the office of Prime Minister from 1723, required the king to ensure that his ministers were supported by the two Houses of Parliament, in particular by the House of Commons which had the exclusive privilege of funding the policies of the government that were conducted in the name of the monarch. The continuing development of responsible as well as representative government was affected by reform of the electoral system from 1832 and by evolution of the party system. It became a firm convention of the unwritten constitution that ministers of the Crown were chosen by the Prime Minister but must command the confidence of the elected House, failing which the Prime Minister must either resign or advise the monarch to dissolve Parliament to enable a general election to be held.

The essence of parliamentarism in modern constitutions is that executive power is exercised by the Prime Minister and other ministers, who have the confidence of the legislature; if this confidence is withdrawn, the Prime Minister loses authority to govern and must either advise the head of state (monarch or president) that a general election be held, or must resign so that a different government can be formed. In the latter event, if a different government can be formed that has the support of a majority in parliament it will enter into office; if not, a general election must be held. The British model of parliamentarism emphasizes that (1) ministers must be Members of Parliament (mainly in the elected house, although in Britain a few ministers may sit in the House of Lords and may be granted peerages for this purpose); (2) ministers must account to Parliament for their policies and decisions, and are thus ultimately accountable to the electorate.[3]

The general features of parliamentary government are found in many countries today, but variants from the British model are also found.

(1) In some countries, Members of Parliament (MPs) who become ministers are required to give up that membership; the constitution or other law may provide for the election or appointment of a substitute member, and (possibly) for the original member to return to Parliament when he or she ceases to be a minister.

(2) In Britain, the decision that a government has lost the confidence of the Commons does not require that a motion to this effect has been adopted; a similar result will follow if a government motion seeking the confidence of the House fails, and possibly if the government is defeated on other essential issues—for example on a budget resolution or on a bill that the government insists is essential to its programme. In other countries, the constitution may

[2] Raoul Van Caenegem, *An Historical Introduction to Western Constitutional Law* (1995), ch 5, outlines the growth of parliamentarism in the late medieval ages. And also see Kaare Strøm, Wolfgang C. Müller, and Torbjörn Bergman (eds), *Delegation and Accountability in Parliamentary Democracies* (2003), 6–13.

[3] For an extensive survey of British parliamentary government, see Vernon Bogdanor (ed), *The British Constitution in the Twentieth Century* (2003), in particular ch 4 (the cabinet system, by Anthony Seldon), ch 5 (the House of Commons, by Paul Seaward and Paul Silk), and ch 8 (ministerial responsibility, by Diana Woodhouse).

specify the form of decision required if the government is to be held to have lost the confidence of the assembly.

(3) In the United Kingdom, following the appointment of a new government, ministers may take up their duties at once and no decision in Parliament is needed to confirm that the government is supported by a majority; if that support is in doubt, an opportunity for a vote on the matter may be provided or will in any event arise in relation to the government's proposed programme. In other countries, a formal resolution in parliament may be required before a new government is confirmed in office.

(4) While in the United Kingdom a general election must be held after five years from the previous election, an earlier election may be held at a date chosen by the Prime Minister. Whenever an election is held, the new Parliament may serve for the full five years. In some countries where the constitution provides for a fixed-term parliament, it may also provide that an early election does not affect the regular cycle of elections, thus creating a strong disincentive to hold an early election.

Some other underlying points may be noted.

(A) Since the United Kingdom has no written constitution, the parliamentary system is founded upon 'constitutional conventions'—customary practices affecting government, Parliament, and the political parties that have developed during the history outlined above. Disputes as to whether a convention has been observed are in principle outside the jurisdiction of the courts. Where a constitution contains the essential rules of the parliamentary system, it may also specify the circumstances in which the ministers are deemed to have lost the confidence of the legislature, and also such matters as the procedure to be followed while a new government is formed. In these cases the supreme court or a constitutional court may have jurisdiction to decide disputes on these matters, but in practice the court may avoid deciding questions that are essentially political in character.

(B) For the same reason that there is no written constitution, the British model of parliamentarism is linked with the legal doctrine of parliamentary sovereignty: in its classical formulation, as expressed by Dicey, there are no legal limits upon the laws that may be enacted by Parliament and there is no judicial review of Acts of Parliament.[4] We must emphasize that there is no necessary connection between parliamentarism and parliamentary sovereignty. As mentioned in the previous paragraph, constitutions that are founded on parliamentarism often provide for judicial review of legislation and a special procedure for constitutional amendment.

(C) Under parliamentarism, the ministers who form the government are themselves able to exercise executive powers (whether acting in their own name or in the name of the head of state in whom powers are vested *de iure*) and are accountable to parliament for use of these powers. Thus, there is no formal separation between legislative and executive powers, a matter that is of some importance from the standpoint of constitutional theory. It does not, however, follow that the legislative and executive powers may be said to be 'fused', a claim that was central to Bagehot's analysis of the British constitution. Nor is it correct to regard the ministers who form the cabinet as being a committee of the legislature. One reason for this may be found in John Stuart Mill's emphasis on the practical significance of parliamentarism:

> There is a radical difference between controlling the business of government, and actually doing it.... It is one question, therefore, what a popular assembly should control, another what it should itself do.... Instead of the function of governing, for which it is radically unfit,

[4] A.V. Dicey, *The Law and the Constitution* (10th edn, E.C.S. Wade ed, 1959), ch 1. See also Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (1999) and Jeffrey Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates* (2010).

> the proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts... and, if the men who compose the government abuse their trust,... to expel them from office, and either expressly or virtually appoint their successors.[5]

We now turn to consider the question of whether aspects of parliamentarism are found in other constitutions.

## II. Continental Europe's Original Version

While in the United Kingdom the parliamentary system was established and developed mainly through constitutional conventions, in other democratic countries in Europe it was based from the beginning on written constitutional provisions, albeit that these afforded only a general framework for the development of conventional relationships among governmental institutions. These relationships, together with parliamentary regulations, electoral laws, and the structure of the political system, play everywhere a major role in shaping the parliamentary model.

Before we address its main institutional mechanisms, it is worth recalling that in France, and in the rest of continental Europe, 'parliamentarism' was originally identified with democracy, being intended more as a principle of legitimacy for the exertion of public power than as a form of government. Such connection with democracy resulted from the reaction against absolutism. While under the *ancien régime* the monarch's legitimacy relied on the unchallenged tradition of the absolutist state, according to the revolutionary ideal of 1789 parliament's legitimacy derived from the people that it represented. But, although opposed to each other on the ground of their content, both these principles of legitimacy corresponded to an absolute conception of sovereignty: parliament was put at the top of the institutional machinery under the new democratic system, as the king had been under the *ancien régime*.

No other authority, be it the executive or the judiciary, could thus bind parliament, nor could any other act override legislation. Reflecting the political philosophy of the Enlightenment, the 1789 *Déclaration des droits de l'Homme et du Citoyen* presumed that legislation was per se aimed at pursuing the public good, both because it expressed the *volonté générale*, and because it was expected to consist of general and abstract rules. The authors of the *Déclaration*, as well as of the constitutional texts of the Revolution epoch, were driven by the presumption that legislation would ensure the best protection to citizens' rights, rather than by the suspicion that it might infringe them. Nor was the separation of powers, solemnly affirmed in Article 16 (stating that 'Any society in which the guarantee of rights is not secure or the separation of powers is not determined has no constitution at all'), interpreted in the sense that powers were put on an equal footing. Given the premise of parliamentary supremacy, judges were intended to act as '*bouches de la loi*', and the executive's functions were the same with respect to the parliamentary will.

The fact that, at that time, and throughout the nineteenth century, parliamentarism was understood to mean parliament's supremacy over the other powers, needs to be distinguished from developments in constitutional history. Under the German Empire, and to a certain extent under the Italian Kingdom and in France, the prevailing form of government was one of constitutional monarchy. It was grounded on the separation of powers between parliament

[5] John Stuart Mill, *Considerations on Representative Government* (1861), reprinted in John Stuart Mill, *On Liberty and Other Essays* (John Gray ed, 1991), 271, 282.

and the monarch, due to the compromise that the latter, heir to absolutism, was forced to accept with the former. In chairing the cabinet, and directing the whole government through a prime minister responding to his own will, the monarch was head of the executive. Parliament, in turn, would legislate on matters concerning liberty and property.

Exceptions to the separation of powers arose from the possibility of impeaching ministers for illegal acts, and this sometimes functioned as an indirect way of ascertaining whether the cabinet still had the confidence of the parliamentary majority. On the other hand, the monarch was entitled to participate in the legislative process through giving the royal assent, and, first and foremost, he had the power to dissolve the assembly at his discretion, namely whenever he reputed that the parliament was acting contrary to the state's interests. This institutional setting was intrinsically unstable, being strongly affected by conflicts concerning the very constitutional foundations of the state. In spite of their increasing popular legitimacy due to the progressive extension of the franchise, the assemblies were in fact threatened by the monarch's claim to represent the continuity of the state beyond the contingent parliamentary majorities.

It was only under the Third Republic in France (1875–1940) that a parliamentary system was established in continental Europe. Notwithstanding the Constitution's attempts to balance the assembly's power of designating the cabinet with the power of the president of the republic to dissolve the assembly whenever a parliamentary majority failed to be reached, in practice the power to dissolve was never exercised, with the consequence that the legislative branch gained an effective supremacy over the executive. A *tradition républicaine* recovering the ideals of 1789 was thus formed. However, given the scarce solidity of parliamentary majorities, governments were frequently forced to resign: it was as if democracy could flourish at the cost of a permanent instability in government. Parliamentarism, in the specific form of '*gouvernement d'assemblée*' practised under the Third Republic, thus revealed a gap between its democratic legitimacy and the capacity for decision-making that it sought to ensure. It was an extreme form of parliamentarism that has an unhappy record.[6]

## III. How a Common Consent was Finally Reached on the Meaning of 'Parliamentarism'

At the same time, a different version of parliamentarism demonstrated that the system was not per se condemned to governmental instability. Depicted in terms of 'the close union, the nearly complete fusion, of the executive and legislative powers'[7], the British version was grounded on the relationship between those powers, namely the confidence that the executive received from the legislature, whichever might prevail over the other in the exertion of political power.

Once the old suspicion towards the executive was left behind, both constitutional scholarship and the political elites of European countries gave attention to the already consolidated, and allegedly successful, British version, albeit in the awareness that its conventional sources were due to specific historical circumstances. The issue of parliamentarism thus shifted from an ideological to a technical dimension, that consisted of discovering how the same result might be achieved in the absence of such circumstances. This is the reason why most European

[6] See eg M.J.C. Vile, *Constitutionalism and the Separation of Powers* (1967), 190–6, 256–62.
[7] Walter Bagehot, *The English Constitution* ([1867] 1983), 65–8.

constitutions enacted throughout the twentieth century not only provide that the government's staying in office depends on its maintaining the confidence of parliament, but also afford institutional devices and procedures, conceived as alternative means to the British conventions.

Such attempt to ensure stability for governmental action, already afforded in the Constitutions of Weimar (1919), Austria (1920), Czechoslovakia (1920), Poland (1921), and Spain (1931), was called '*rationalisation du régime parlementaire*' by Boris Mirkine-Guétzevitch[8]. But these constitutions were overwhelmed with the rise of the Nazi or of fascist regimes.

Parliamentarism as such was then under attack, on theoretical not less than on political grounds. According to Carl Schmitt, parliamentarism was connected with the nineteenth century's liberalism rather than with democracy,[9] since its claim to legitimacy consisted in truth-seeking through discussion and openness, which might however be pursued even by a small group of disinterested persons. Democracy, to the contrary, required 'an identity between law and the people's will',[10] presupposing the maintenance of national homogeneity at the expenses of the outsiders, and, on the other hand, the superiority of a dictator's acclamation over the secret ballot for electing the MPs. Contrary to those of Mirkine, Schmitt's assumptions went far beyond a technical criticism of parliamentarism, and anticipated in many respects the Nazi regime's ideology.

After the Second World War, the model of rationalized parliamentarism was again introduced in a series of European constitutions. It may consist inter alia in establishing a certain quota of MPs for the proposal of a no confidence vote and in delaying the parliamentary debate on such a proposal in order to avoid a sudden withdrawal of support for the government (eg the 1948 Italian Constitution), or, according to the German Basic Law (1949) and the Spanish Constitution (1978), in binding the supporters of such a motion to propose at the same time the election of a new premier on the basis of an alternative majority ('constructive motion of no confidence').

Furthermore, while maintaining the position of head of the state, be it the president of the republic or the monarch, these constitutions generally do not designate him or her as head of the executive. Accordingly, provided that a definite parliamentary majority exists, the powers of appointing the prime minister and of dissolving parliament are exercised only as a formal matter by the head of the state. These powers, apart from the case of constructive motion of no confidence, might acquire a substantial meaning only in the face of a government crisis the solution of which appears uncertain. The role of the head of the state in managing these situations is not merely discretionary. Being driven by the aim of restoring a parliamentary majority, it is essentially an arbitral rather than a political role. Even in this respect, European constitutions broadly follow the British model, in particular the transformation in the monarch's functions since the advent of the parliamentary system.

Contrary to the failures encountered in the first half of the twentieth century, in the last decades the model outlined above succeeded in reconciling governmental stability with democracy, with the exceptions of the Fourth French Republic and of Italy. That success depended to a large extent on the changed historical context, given the apprehension of the evils of totalitarianism and the democratic commitment of major national parties, together with electoral laws that corrected purely proportional representation with a view to enhancing competition for government among two main political parties or coalitions. Constitutional

[8] Boris Mirkine-Guetzévitch, *Les nouvelles tendances du droit constitutionnel* (1936).

[9] Carl Schmitt, *The Crisis of Parliamentary Democracy* ([1923] 1988), 34ff.

[10] Ibid 15.

provisions alone, as we have already seen, afford no more than the general framework of a certain form of government.

This account matches the conclusion reached by Armel Le Divellec:

> The 'family' of parliamentary regimes is diverse yet united. It brings together governments emanating from a democratically elected parliamentary majority, and unable to work except in accordance with it. Dissimilarities arise in relation to the law, which in most European countries differs from the British model.[11]

In other words, the fact that, 'In the British version of democracy we rely mainly upon an elected House of Parliament to check, control, and call to account those who exercise the executive power', and that 'The doctrine of ministerial responsibility is an essential feature of the arrangements which exist for these purposes',[12] is common to most European countries, with the difference that the rules capturing the substance of parliamentarism, together with the devices already mentioned that aim at ensuring governmental stability, are there generally provided for in constitutional texts.

Far more significant diversities lie outside the mechanisms of parliamentary government. Unlike the British model, most European constitutions are not only rigid, but have introduced judicial review of legislation, a federal or regional structure, and, frequently, a referendum, with the effect that the machinery of government and even the very functioning of democracy, appear more complex than in the United Kingdom. These elements were introduced with a view to limiting the possible tyranny of parliamentary majorities, and, at the same time, to guarding against the excesses of a purely representative democracy, which had revealed its fragility with the advent of totalitarian regimes. But they were not believed to counteract the already mentioned devices aimed at ensuring the good functioning of parliamentarism, and therefore at achieving with partially different means the same results of parliamentarism as in the United Kingdom.

Bruce Ackerman has labelled the continental model as 'constrained parliamentarism', and distinguished it from that of Westminster on the ground that 'no single institution is granted a monopoly over lawmaking power'.[13] The notion of 'constrained parliamentarism' presupposes that 'parliamentarism' is per se 'unconstrained', namely sovereign in the Diceyan sense. Such presumption leaves on one side the essential meaning of parliamentarism as the mechanism through which the executive is able to stay in office through the consent of a democratically elected parliamentary majority. As we have already seen (Section I above), this meaning of parliamentarism is not necessarily connected with parliamentary sovereignty, and it appears not only more respectful of the historical background. It also serves, as we will see, to distinguish the parliamentary system from other forms of government.

## IV. The Waves of Democratization and the Worldwide Diffusion of the Parliamentary System

We must add that the recent waves of democratization have gradually engendered a worldwide expansion of parliamentarism. The new democratic states that followed the dissolution of European colonial empires, in particular those that achieved independence of British rule,

[11] Armel Le Divellec, 'The Westminster Model in Europe' in Katja S. Ziegler, Denis Baranger, and A.W. Bradley (eds), *Constitutionalism and the Role of Parliaments* (2007), 100.

[12] Colin Turpin, 'Ministerial Responsibility: Myth or Reality?' in Jeffrey Jowell and Dawn Oliver (eds), *The Changing Constitution* (2nd edn, 1989), 55. On the working of ministerial responsibility in Britain today, see Colin Turpin and Adam Tomkins, *British Government and the Constitution* (2007), ch 9.

[13] Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 685.

whether before or after the Second World War (including Australia, Canada, New Zealand, and India, as well as states in Africa and the Caribbean) were mostly established through a written constitution that provided for the parliamentary form of government. A similar phenomenon occurred later in Eastern Europe with the collapse of Communism, and in South Africa with the end of apartheid.

Nonetheless, in Africa, in Asia, in Latin America, and even in Eastern Europe, a significant number of young democracies have adopted the semi-presidential or the presidential model.[14] Some of these should be classified as 'illiberal democracies', given the unchecked violations of fundamental rights that occur and the scarce respect for the rule of law. But the number of fully democratic regimes adopting semi-presidential or presidential systems suffices to demonstrate that democracy is no longer to be identified with parliamentarism, as was sustained even by Hans Kelsen, the most important theorist of democracy in continental Europe.[15] Rather than on the ground of their capability in ensuring democracy, these systems of government differ in terms of the relationship between public powers, and of their respective legitimacy.

## V. Forms of Government and Separation of Powers

Contrary to parliamentarism, presidentialism is grounded on the separation between the legislative and the executive branches, each of which is occupied by a popularly elected authority. Accordingly, the executive's term of office is directly established by the constitution and the executive does not depend on the confidence of the legislature for staying in office. It is true that the legislature ('Congress' under the US Constitution) might remove the President by means of impeachment. But such possibility is very different from the power of a parliament to withdraw its confidence from a prime minister or from the whole government.

Conversely, the absence of a parliamentary majority to sustain the government in office does not mean that parliament is subject to dissolution. Given the separation, no impartial authority is needed to oversee the relationship between legislature and executive, and the president holds the office of head of the state together with that of chief of the executive; he or she has the power to appoint and dismiss ministers without the need for parliamentary approval (except that under the US Constitution, the appointment of key officials takes place with the advice and consent of the Senate). The presidential form of government differs therefore from the parliamentary, both because of the concurrent popular legitimacy of the legislative and executive branches, and because of the separation between them.

The semi-presidential model combines a popularly elected fixed-term president with a prime minister and a cabinet who are responsible to the legislature; this brings together the presidential system's type of legitimacy with the relationship among political institutions that characterizes the parliamentary system. This means that the term 'semi-presidential' fails to give an accurate account of the basis of the model, but despite scholarly criticism, it is still widely adopted due to the lack of consensus over an alternative formula.

In examining the costs and benefits of the parliamentary system vis-à-vis the presidential and the semi-presidential, attention should first be given to their respective basic structure. To the extent that it is grounded on a single popularly elected authority, the former tends not

[14] Sophia Moestrup, 'Semi-Presidentialism in Young Democracies. Help or Hindrance?' in Robert Elgie and Sophia Moestrup, *Semi-Presidentialism Outside Europe* (2007), 39ff.

[15] Hans Kelsen, *Vom Wesen und Wert der Demokratie* (1929), 85ff.

only to avoid conflict between political institutions, but also to concentrate power in the hands of one political authority, be it parliament or government. The opposite is true for the latter, given the concurrent popular legitimacy that characterizes these systems.

A caveat should, however, be added. 'Conflict' and 'concentration of power' are not necessarily an evil. Provided that it does not threaten the system's stability, conflict might ensure pluralism, thus enhancing democracy. And concentration of power might enhance the accountability of the rulers as well as the efficiency of the political process, and it should not be seen as paving the way to absolutism as far as the functions of non-majoritarian authorities, and of courts in particular, are respected. To some extent, then, both conflict and concentration of power are likely to pursue objectives that are compatible with constitutional democracy. The diverse objectives that these forms of government are respectively likely to achieve appear to be sufficiently balanced on normative grounds.

In discussing the merits and demerits of parliamentarism and presidentialism, James Bryce observed that the former is

> calculated to secure swiftness in decision and vigour in action, and enables the Cabinet to press through such legislation as it thinks needed, and to conduct both domestic administration and foreign policy with the confidence that its majority will support it against the attacks of the Opposition. To these merits there is to be added the concentration of Responsibility. For any faults committed the Legislature can blame the Cabinet, and the people can blame both the Cabinet and the majority.

On the other hand, presidentialism, 'by dividing power between several distinct authorities... provides more carefully than does the Parliamentary [system] against errors on the part either of Legislature or Executive, and retards the decision by the people of conflicts arising between them.'[16]

In descriptive terms, however, the above account gives only a preliminary idea of the costs and benefits of the diverse institutional models, and should be complemented with the analysis of their effective functioning, and of further structural features affecting contemporary democracies.

As for their functioning, conflicts arising from the concurrent popular legitimacy of the legislature and of government are differently managed according to various factors, among which are the structural differences between the presidential and semi-presidential systems, and the role of political parties. In the United States, given the separation of powers, the legislature is likely to paralyse the executive's political agenda to the extent that the party that does not occupy the White House may possess a majority in either or both houses of Congress. Nonetheless, party discipline in Congress may be sufficiently loose to give the President some chance of obtaining the support of single representatives from the party opposing his policy and thus limiting the existence of complete gridlock. Hence, it may be that an apparent political stalemate does not reach the point of threatening the system's stability.

Such a result is hardly imaginable in Europe, because of a traditionally far stricter party discipline in the assemblies. This is perhaps the most important reason why the presidential system has never been adopted there. Even the semi-presidential model's functioning usually resembles that of the parliamentary model, to the extent that previous agreements among parties and/or the country's tradition have created constitutional conventions that deprive the President of significant political power, in spite of his being popularly elected (see inter alia Austria, Portugal, and Finland). The same happens under the Fifth Republic in France,

[16] James Bryce, *Modern Democracies* (1921), 465ff.

whenever the presidential majority diverges from the parliamentary, thus bringing in a state of *cohabitation* between the two institutions. But where these majorities coincide, the President holds together the constitutional powers of head of the state with those of chief of the executive, resulting from his leading the parliamentary majority, with the effect that both the appointment and the dismissal of the Prime Minister are at his disposal. No higher concentration of political power is granted to a sole authority in the landscape of contemporary democracies, including those adopting the parliamentary model.

A wide concentration of power may also derive from unchecked resort to emergency powers by the elected president, as occurs frequently in Latin America irrespective of the formal adoption of a semi-presidential (Argentina) or of a presidential system (Brazil). That practice goes far beyond the need for remedying exceptional situations, tending to substitute presidential decrees for ordinary legislation and therefore extinguishing the role of parliament. Once again, an understanding of the functioning of the institutional machinery requires an examination of specific practices that goes beyond the distinction between forms of government.

Moreover, the territorial distribution of power in its various forms, in particular the unitary and the federal (or regional) systems, is also likely to have a crucial effect on that functioning. While the former presupposes a sole legislature within the state, and sometimes is even founded on a unitary administration, the latter enhances pluralism, and is likely to engender competition and conflict among diverse governmental authorities. Parliamentary systems, as well as other forms of government, correspond increasingly to federations, with important consequences for the national decision-making process, including the fact that a second chamber representing the regional components of the federal state is usually established (for the operation of parliamentary systems in such states, see the instances of Australia, Austria, Germany, India, and South Africa).

However, the traditional association of federalism with the ideal of divided government does not necessarily correspond to its functioning. Federal systems are inter alia differentiated according to whether powers among the federation and regional territories are strictly separated ('dual federalism'), or mostly shared ('cooperative federalism'). In countries adopting the cooperative system, the upper chamber is usually composed of regional representatives, with the effect that the majority may differ from that in the elected lower chamber. The political stalemate thus arising in Germany between the Bundestag and the Bundesrat led in 2006 to a major constitutional reform of the federal system.[17]

These references suffice to demonstrate that the territorial distribution of power is not less significant than the national form of government in ascertaining the degree to which power is concentrated or, by contrast, is subject to the coexistence of conflicting authorities. Following this criterion, the US system appears less concentrated than the German and the French, being founded on the presidential model and on dual federalism. The German system, combining a parliamentary model with cooperative federalism, appears more concentrated than the United States but less so than in France, that exhibits the greatest concentration of political power, since it combines a unitary state with the above-mentioned version of the semi-presidential model.

The above account is referred to the functioning of, and to the interplay between, political institutions. But, as already mentioned, concentration of power should not be seen as paving the way to absolutism as far as the functions of non-majoritarian authorities are respected.

[17] Fritz Scharpf, 'No Exit from the Joint Decision Trap? Can German Federalism Reform Itself?', EUI Working Papers, RSCAS No 2005/24, 2005, 8 ff, and Simone Burkhart, 'Reforming Federalism in Germany: Incremental Changes instead of the Big Deal' (2009) 39(2) *Publius* 341ff.

These authorities, namely courts, including constitutional courts wherever distinguished from the ordinary, and independent authorities, usually acting in the market field, are entrusted with the task of ensuring the fundamental rights of citizens, and more generally constitutional principles and rules that are believed to stand above the appreciation of parliamentary majorities. Hence derives the need for granting them independence from the political branches, which is commonly achieved in contemporary constitutional democracies irrespective of their forms of government.

In particular, the establishment of judicial review of legislation has deeply transformed the role of the judiciary, vis-à-vis its resilient definitions as a '*pouvoir en quelque façon nul*' (Montesquieu), or as 'the least dangerous branch' (Hamilton). As was already noticed in a general survey of constitutional justice in Western democracies, 'constitutional review proves to have become the irreplaceable counterweight to the supremacy of the majority principle.'[18] And the more recent waves of democratization (see Section IV above) were regularly complemented with the establishment of constitutional courts.

While taking account of the structural connection between the executive and the legislative power affecting parliamentarism (and to a great extent the semi-presidential system), and, on the other hand, the independence of the judiciary from the political branches, in our time the ultimate meaning of the separation of powers appears closer to that emerging from Henry de Bracton's distinction between *gubernaculum* and *iurisdictio*, or from the medieval dichotomy between *leges* and *iura*, than from Locke's and Montesquieu's celebrated theories.

## VI. The Status of Member of Parliament

The rules concerning the status of the individual members of the national parliament include their rights, privileges, responsibilities, immunities, and obligations. These rules are fundamentally related to the existence of Parliament as an institution, whether it functions within a parliamentary, semi-presidential, or presidential system. However, reference to the status of members is justified here, because many aspects of that status have resulted from the historical development of parliamentary government.

In the United Kingdom, the history of Parliament and the common law are the basis for the bundle of rights, responsibilities, and immunities that are together referred to as 'parliamentary privilege'. Since the granting of special privileges to any group of individuals is often questioned today on grounds related to the equality of all persons, the existence of parliamentary privilege must be justified as being in the public interest. In 1999, a committee of both Houses at Westminster declared:

> Parliamentary privilege consists of the rights and immunities which the two Houses . . . and their members and officers possess to enable them to carry out their parliamentary business effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.[19]

In the United Kingdom, parliamentary privilege has never been the subject of comprehensive legislation. The essential privileges include some that inhere in the collective body

[18] Alexander von Brunneck, 'Constitutional Review and Legislation in Western Democracies' in Christine Landfried (ed), *Constitutional Review and Legislation. An International Comparison* (1988), 250.

[19] Report of Joint Committee on Parliamentary Privilege, HL Paper 43, HC 214 (1998–99), para 3.

(including the exclusive right of a house to regulate its own proceedings)[20] as well as privileges of the collective body which confer a direct benefit on the individual member, notably the absolute freedom of speech in parliamentary proceedings, that has long been protected by Article 9 of the Bill of Rights 1689.[21] Arising from that freedom of speech is the protection that MPs enjoy as individuals for what they say or do in the course of parliamentary proceedings against certain aspects of the criminal law and civil law that might otherwise restrict the freedom of speech in Parliament.[22] However, the exercise by MPs of their freedom of speech in Parliament is subject to the control that the House of Commons exercises over the conduct of debates. Moreover, British MPs enjoy no general immunity from the criminal law, whether relating to arrest, prosecution, trial, conviction, or penalty; and disqualification from the Commons follows upon certain sentences of imprisonment.[23] In 2010, the UK Supreme Court held that, since the ordinary criminal law applies fully to MPs, the making by them of false claims for parliamentary expenses is outside the area of parliamentary proceedings covered by privilege.[24] In Australia, where the parliamentary system is derived from that in the United Kingdom, the law of parliamentary privilege has been placed on a modern legal basis by statutory codification.[25]

In nearly all constitutions (particularly in Europe), there is provision for the status and privileges of MPs. These privileges vary greatly, but they often include both a statement of non-liability for what is said or done in the course of parliamentary debate (*l'irresponsabilité*) and also some form of individual immunity from the criminal process (*l'inviolabilité*), especially in respect of personal liberty.[26] One aim of such immunity may be to protect members from being harassed by politically motivated prosecutions, and it may not apply when a member is arrested *flagrante delicto*. It is generally limited to the period of a member's electoral mandate; often the immunity may be taken away by a resolution of the parliament or by a parliamentary body. Even with these limitations, the existence of immunity from criminal process raises issues of principle as to the application of the ordinary law to elected persons.[27] This immunity can be abused in a corrupt political system, and not all parliaments have effective rules requiring the disclosure of a member's financial interests.

[20] This right includes the power to maintain order and discipline within the House. Issues of human rights may arise when non-members of the House are penalized for contempt of Parliament, as in *Demicoli v Malta* (1991) 14 EHRR 47.

[21] Absolute privilege for speech during a debate was held by the European Court of Human Rights in *A v UK* (2003) 36 EHRR 917 to be compatible with human rights, the Court placing weight on the established practice in many European states. In the United Kingdom, the privilege does not extend to statements made outside Parliament. eg in public speeches or in media interviews. Cf *CGIL & Cofferati v Italy* (ECtHR, 24 February 2009).

[22] Protection is not only against civil liability for defamation, but also against criminal liability for such matters as obscenity, incitement to disaffection, and racial hatred.

[23] Disqualification results from being sentenced to prison for more than a year (Representation of the People Act 1981) and disqualification also results from conviction for electoral offences.

[24] *R v Chaytor* [2010] UKSC 52, [2011] 1 All ER 808.

[25] Parliamentary Privileges Act 1987 (Australia).

[26] See eg Austria (Constitution of 1920, Art 57); Belgium (Constitution of 1994, Arts 58, 59); Cyprus (Constitution of 1960, Art 83); Czech Republic (Constitution of 1992, Art 27); Denmark (Constitution of 1953, s 57); Finland (Constitution of 1999, ss 28, 30, 31); France (1958 Constitution, Art 26, as amended in 1995); Italy (Constitution of 1948, Art 68); Turkey (Constitution of 1982, Art 83). On parliamentary immunity in Turkey, see *Kart v Turkey* (ECtHR, 3 December 2009).

[27] On the application of the criminal law of bribery to elected representatives, see *US v Brewster* 408 US 501 (1972) and contrast (in India) *Rao v State* (1998) 1 SCJ 529.

A wide variation exists in the extent of the protection from civil liability for the making of statements that would otherwise be defamatory. As we have seen, in the United Kingdom this protection is limited to statements made in Parliament itself. In other countries the protection may extend to statements by an elected member that concern matters of current political significance, even though they are made outside the course of parliamentary debate. This extension in its scope enhances the risk that this protection may conflict with the fundamental rights of the victim of the damaging statements.[28]

Another constitutional guarantee that, in the public interest, is intended to preserve the personal freedom of MPs to decide how to exercise their parliamentary functions derives from Edmund Burke's celebrated doctrine that MPs are not delegates of a local or political or economic caucus but represent the whole nation.[29] This doctrine has sometimes been seen as going to the heart of a representative system, in justifying the making of decisions in parliament that are based on the will, or sovereignty, of the entire people, and in giving members protection against attempts by local or other sectional interests to dictate how they shall vote. In various forms it is found in very many constitutions. Thus in France, the *mandat impératif* is excluded; in Germany, members of the Bundestag must be 'representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience'; in Greece, MPs 'enjoy unrestricted freedom of opinion and right to vote according to their conscience'; and in Italy, each MP 'represents the Nation and carries out his duties without constraint of mandate'.[30] It is difficult to reconcile these statements of principle with the constraints that arise from the system of political parties, the result of which is that a member will, except on rare issues that give rise to a question of personal conscience, be likely to support the position of the party on whose platform he or she was elected: and great pressure may be brought to bear on members by the party organization to vote as its leaders wish, especially on an issue upon which the continuance of the party in government may depend. However, one consequence of the principle is that members whose conduct in Parliament disappoints the expectations of their party or their electorate have constitutional protection against being removed from their seats during the period for which they were elected. These venerable rules are found in very many democracies, but it is arguable that their continuance today involves a wide degree of hypocrisy regarding the democratic process. It may be questioned whether they will preserve their significance and legitimacy in the future, as popular demands are made for securing the greater accountability of those involved in the political process. In some political systems, electors already have a right to recall their representative in some situations. In the United Kingdom, the coalition government formed in May 2010 undertook to legislate to introduce a power of recall, allowing a petition signed by 10 per cent of voters in a constituency to force a by-election where their member had been found to have engaged in 'serious wrongdoing'.

[28] As well as *CGIL & Cofferati v Italy* (above), see *De Jorio v Italy* (2005) 40 EHRR 42 and *Cordova v Italy (No 1)* (2005) 40 EHRR 43 (parliamentary immunity held to violate the right of access to the courts under Art 6(1), ECHR).

[29] In his *Speech to the Electors of Bristol* (1774) (reported in Philip Kurland and Ralph Lerner (eds), *The Founders' Constitution* (vol I, 1987), 447), Burke argued that while a representative ought to give great weight to the interests of his constituents, he owed it to them to exercise 'his unbiased opinion, his mature judgement, his enlightened conscience' in his parliamentary acts.

[30] In the respective constitutions see for France, Art 27; for Germany, Art 38(1); for Greece (Constitution of 1975), Art 60(1); for Italy, Art 67. And see eg Austria, Art 56(1) (no binding mandate); Bulgaria (Constitution of 1991), Art 67; Poland (Constitution of 1997), Art 104(1); Turkey, Art 80.

## VII. Differences and Analogies within the Family of Parliamentary Systems

parliament's functions are deeply affected not only by the adopted form of government, but also by differences emerging within each form, of which the following are the most significant with respect to parliamentarism.

### 1. Making and Unmaking Governments

In parliamentary systems, the parliament is rarely entrusted with the formal power of investing government with its functions. Once members of government are appointed by the head of the state, the confidence of the house is generally presumed to exist, except in the case of the Italian Constitution, according to which both the Chamber of Deputies and the Senate must approve the incoming cabinet in an investiture vote within ten days of its appointment.

Under the German Basic Law and the Spanish Constitution, the prime minister is elected from the elected house on the proposal of the head of the state, and he or she is then appointed by the latter together with the ministers. A further variation is afforded by the Japanese Constitution, which requires that the prime minister, after having been elected from the lower house and then appointed by the emperor, appoints, and may dismiss, the ministers. Finally, South Africa's Constitution provides that the republic's president, elected from the National Assembly, is head of the executive; members of the government are invested with their functions after being appointed by the president and 'are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions' (s 92(2)).

These differences need to be taken into account in considering the nature of parliamentary government. As already mentioned, the British convention that cabinet ministers should be MPs is not generally adopted. Even among countries strongly influenced by the Westminster model, that rule is not absolutely followed: under the Indian Constitution, there is no bar to the appointment as minister of a person from outside the legislature, although he or she is bound to secure within six months a parliamentary seat by election or nomination. In many democratic countries, the two positions are merely compatible as a matter of law, although, given the importance of being a MP for ensuring the minister's accountability before the electorate, in practice ministers are usually chosen from among MPs. Finally, some constitutions (such as the Belgian, the French, and the Dutch) provide that, once appointed minister, the MP is bound to resign his parliamentary seat in order to ensure the separation of powers.

A further significant difference is that under parliamentarism disequilibrium may occur between the parliamentary majority's power to force the cabinet to resign and that of the prime minister to dissolve parliament. Given all these diverging features, scholars tend to give a minimal definition of parliamentary government, as consisting of that system 'in which the Prime Minister and his or her cabinet are accountable to any majority of the members of parliament and can be voted out of office by the latter.'[31] Once having entered into office, can members of a government be voted out by parliament? And, if so, what are the consequences of such a crisis? Within the family of parliamentary systems, there are many diverse answers to these two questions.

[31] Kaare Strøm, Wolfgang C. Müller, and Torbjörn Bergman, 'Parliamentary Democracy: Promise and Problems' in Strøm et al (n 2), 13.

Concerning the former matter, the accountability of the government to parliament is in general secured through motions that expressly deal with the issue of confidence or no confidence. According to a widely diffused convention, that is codified under the Italian Constitution (Art 94(4)), a government should not have to resign because of the rejection of a government bill.

Motions of no confidence, namely the motions put before a parliament by the opposition with the intent of defeating the government, and thus distinguished from the constructive motions of no confidence, differ significantly on procedural grounds according to national experience. These differences include the quota of MPs required for proposing such motions, the time limit applying to such motions, and the majorities requested for the motion to be approved. The stricter these requirements, the more counterproductive a motion of no confidence on trivial matters may appear to its proposer.

The individual accountability of ministers is also attained in many parliamentary systems through no confidence motions, be they provided for in the constitution or established by convention as in the United Kingdom. Ministers are responsible 'in the sense that they are answerable to Parliament for their departments. In this way individual ministerial responsibility describes a "chain of accountability". Officials answer to ministers, who answer to Parliament, which, in turn, answers to the electorate.' However, in the United Kingdom, 'attempts to challenge the credibility of a minister are seldom successful when the government in power enjoys a substantial majority in the House of Commons.'[32]. The same occurs in other systems where a minister is called to account before Parliament.

Motions of confidence may be proposed by the government with the aim of ensuring that it has the support of the majority for its complete programme, or for a single bill or policy. Rather than challenging the opposition, these motions are likely to prevent dissident members of the parliamentary majority from voting against the government. Article 49(3) of the French Constitution goes even further, stating that the government may make the passing of a bill an issue of the government's responsibility to the National Assembly, with the effect that the bill shall be considered adopted unless a resolution of no confidence is introduced within the next 24 hours and adopted. Such provision appears unique on the ground of legislative procedure: its effect is to replace the ordinary approval of a bill by parliament with a challenge to a vote of no confidence issued by government.

In principle, a government must resign whenever parliament approves a no confidence motion, or rejects a confidence motion. This duty is inherent in the accountability rule, and is common to the whole family of parliamentary systems. The only exception is when, as an alternative to resignation, the government has power (as in the United Kingdom) to order the dissolution of parliament and the holding of a general election. The resignation of the government will be followed by the formation of a new cabinet, if that proves possible. The rules that apply in such situations usually result from constitutional conventions, but they may be explicitly laid down in the constitution, as in Japan. The hypothesis of a new cabinet following a governmental crisis demonstrates that parliamentarism does not require that fresh elections be held whenever a government has lost its parliamentary majority resulting from earlier elections. Indeed, the opposite possibility is presupposed where there is provision for the constructive vote of no confidence, notwithstanding the fact that this interrupts the 'chain of accountability' between the government and the electorate.

Finally, significant differences within the family of parliamentary systems emerge with respect to the dissolution of parliament, both on the ground of its limits and of its functions.

[32] Peter Leyland, *The Constitution of the United Kingdom. A Contextual Analysis* (2007), 129.

Dissolution is in some systems excluded for one year after early elections (France, Spain) or in the first period after a general election (Norway, Russia), or admitted only in the event of a deadlock in cabinet formation and after the loss of a vote of confidence (Germany), or is limited by the strong disincentive that a new parliament would be elected only for the remainder of the dissolved parliament's term (Sweden). In the United Kingdom, the power to advise the monarch to dissolve Parliament is accepted to be a strategic instrument in the hands of the prime minister that he may wish to use to remain in power; there would have to be highly exceptional circumstances before the monarch would be justified in rejecting that advice. By contrast, in Italy the dissolution of parliament may be required to maintain a parliamentary majority, whenever this is unavailable in the current legislature; in this case the head of state acquires substantial powers, to the extent that an impartial authority is needed for the final decision that the current composition of parliament fails to produce a majority.

## 2. Legislative Function

Most students of parliamentarism have recently noticed the declining role of parliaments in the process of legislation, in spite of the traditional pre-eminence of legislation among the functions of parliament. Two indicators of this decline are not only the increasingly rare approval of bills that are not proposed by the government but initiated within parliament, but, first and foremost, the huge number of government bills that pass through parliament without being amended (except possibly when ministers have been persuaded to amend their own original proposals).

It is difficult to generalize about this situation, but there is no doubt that in many countries the role of parliament in practice is to give the stamp of formal approval to the government's proposals. Even in the United Kingdom, this often appears to be the role of the elected House of Commons, and it is left to the appointed House of Lords to examine in detail bills that have been approved by the Commons without any scrutiny. This is possible in part because no single party has a majority in the Lords and members of the House hold their places for life and are not subject to being re-elected. By this central paradox of parliamentarism, while the majority in the elected House of Commons has the primary duty of maintaining the government in power, this necessarily diminishes their ability to scrutinize the government's proposed legislation. Accordingly, in the United Kingdom, and in countries where the Westminster model applies, the government's bills often pass through the House of Commons without having been modified, but subject to the ability of the upper house (if there is one) to make the government think again. Elsewhere, however, including many European democracies, parliaments may play a more active role. These differences are not simply due to the governing party's dominance over the legislative process that generally exists in the Westminster model, by comparison with the reduced power of coalition governments. Further elements to be taken into account include the British executive's monopoly on introducing financial measures, and the limited opportunities to introduce legislation on their own initiative which backbench MPs at Westminster may exercise.

On the other hand, the fact that certain parliaments play some role in amending governmental bills appears significant to the extent that their function in lawmaking is believed to consist in making autonomous decisions. This assumption presupposes, in turn, that the power of parliament vis-à-vis that of government is likely to be assessed as if the two institutions were structurally separated one from the other. But this hypothesis corresponds to the presidential system, and applies wherever the legitimacy of the government is not dependent on maintaining the confidence of parliament. It was for that reason that, until the Lisbon

Treaty, the European Parliament's powers were likely to be limited by those of the European institutions. The possibility of an autonomous role for parliament is, to the contrary, impeded by the very dynamic of the parliamentary model, which is founded on a constant connection between parliament and government that requires a parliamentary majority for maintaining government in office.

Given this premise, the better the parliamentary model happens to function, the more parliament is reduced to that of a forum where the cabinet's decisions are only formally discussed and approved. The obvious question that arises is why the legislative procedure is even in that case still followed, notwithstanding the common awareness of its merely formal nature. On that basis, what is the role that parliament is likely to play?

It is worth recalling that, in a parliamentary system, the representative assembly alone is provided with the resource of democratic legitimacy, which it exercises not only by voting on issues of confidence, but also while carrying out its other functions, including legislation and deliberation on matters of national importance. Democratic legitimacy is exercised through a process of deliberation that necessarily includes the opposition parties, and at the same time takes place in public. Contrary to decision-making within a closed system of government, where the absence of openness reflects the need for internal cohesion, the functioning of parliament is driven by the principle of publicity exactly because it is entrusted to a democratically elected institution. A century and a half ago, John Stuart Mill captured these features of parliamentarism by affirming:

> I know not how a representative assembly can more usefully employ itself than in talk, when the subject of talk is the great interest of the country, and every sentence of it represents the opinion either of some important body of persons in the nation, or of an individual in whom such bodies have reposed their confidence.[33]

However, the fact that contemporary politics is strongly conditioned by the media, if not media-driven, affects deeply the meaning of political representation, and the principle of openness that characterizes parliamentary procedure. It is in this respect, rather than for the loss of a decision-making capacity, that the issue of parliament's decline should properly be addressed. In a media-driven scenario, the core of the public debate shifts from the adequacy of governmental policies to the prime minister's capability in persuading the people of his own political, if not private, virtues. The content of parliamentary debates is in turn anticipated, and distorted, through the lens of the media. The traditional view that the debates shed light on the executive's most important decisions, and determine the public's support for the contending political parties, is thus challenged.

According to political scientists, the increasing personalization of government due to the media, together with the increasing importance of foreign policy and the related expansion of the executive's action, drive towards a 'presidentialization of politics'.[34] The fact that political leaders seek an informal popular legitimacy for their own actions through media exposure affects parliamentarism in particular, since democratic legitimacy pertains to a collective body which is traditionally less at ease than the presidential model with the personal element. However, it does not follow that the mechanisms of presidentialism are likely to be inserted within the structure of parliamentarism, as the formula of presidentialization might induce

[33] John Stuart Mill, 'Considerations on Representative Government' (1861) in *Collected Works of John Stuart Mill* (vol 19, Jean O'Grady and John Robson ed, 1991), 353.

[34] See inter alia Thomas Poguntke and Paul Webb, *The Presidentialization of Politics. A Comparative Study of Modern Democracies* (2005).

one to believe. Given their informality, media circuits appear rather juxtaposed to the mechanisms of the diverse forms of government. Their effects amount, therefore, to a 'personalization of politics', namely to a phenomenon that was designed in these terms half a century ago,[35] although it has become since then increasingly important.

## 3. Controlling Functions

The dynamic of the parliamentary system conditions the exertion of parliament's controlling functions no less than its role in legislation. Given that a majority backs the government, control or oversight of administrative activities is less significant than it is within a presidential system.

Differences emerge, however, even here according to different countries, and to different mechanisms of control. In some parliamentary democracies, ministers use reports not to respond to control but to anticipate possible criticism by efficient propaganda to show their efficacy.[36] But this is not always the case.[37]

As for the power to authorize spending, one of parliament's oldest functions, the fact that this has become nominal in most countries depends not only on the rules governing the parliamentary system, but also on the lack of effective parliamentary control over the budget: this would require inter alia an effective committee system, sufficient time, and access to essential information on revenue and spending.[38] Nonetheless, in the United Kingdom, the Public Accounts Committee, operating in a less partisan way than most other parliamentary committees, and being supported by an independent authority (the National Audit Office), is believed to provide the House of Commons with 'some degree of control over government finance'.[39] Similarly, in India the independence of the Comptroller and Auditor-General is assured.[40]

As regards the scrutiny of foreign and defence policy, the Bundestag is constitutionally provided with more significant powers than those usually conferred on parliaments, including the requirement to consent to the deployment of the military. These features, stemming from the constitutional climate in Germany since the Second World War, have shaped the whole relationship with the government in the field, although the Federal Constitutional Court has affirmed that it is not the exemption from parliamentary decision-making in foreign affairs that needs to be justified, but parliament's involvement.[41]

Questions and interpellations addressed to ministers relate to further, although less effective, forms of parliamentary control over the executive. While the former are exhausted with the minister's answer, the latter demand a prompt response which in some parliaments is followed by a short debate and a vote on whether the government's response is deemed

[35] Albert Mabileau, 'La personnalisation du pouvoir dans les gouvernements démocratiques' (1960) 10 *Revue Française de Science Politique* 39ff, and Otto Kircheimer, 'The Transformation of the Western European Party Systems' in Joseph LaPalombara and Myron Weiner (eds), *Political Parties and Political Development* (1966), 177ff.

[36] Klaus von Beyme, *Parliamentary Democracy. Democratization, Destabilization, Reconsolidation, 1789–1999* (2000), 82.

[37] Turpin (n 12), 57ff.

[38] Joachim Wehner, 'Assessing the Power of the Purse: An Index of Legislative Budget Institutions' (2006) 54 *Political Studies* 767ff.

[39] Leyland (n 32), 110.

[40] Durga Das Basu, *Introduction to the Constitution of India* (20th edn, 1989), 187.

[41] References in Katja S. Ziegler, 'Executive Powers in Foreign Policy: The Decision to Dispatch the Military' in Ziegler, Baranger, and Bradley et al (n 11), 148ff.

acceptable. This technique is sometimes linked to a vote of no confidence or a censure motion, although it seldom reaches the point of dismissing government. Furthermore, the purposes of such inquiries frequently consist in the elected member's aim of drawing attention to a certain interest of his or her constituency. Given these premises, the introduction of television cameras in some parliaments has revitalized the culture of control by question and has enhanced transparency, but it is also exploited for propaganda purposes.[42]

In general, parliamentary control of the executive is perceived as being particularly needed given the great expansion in the importance of international relations, and in governmental activities connected with the adhesion to supranational organizations. An example of this may be seen in the efforts of European parliaments to recover in terms of the scrutiny of governmental action what they have lost in terms of decision-making at the EU level (the European 'democratic deficit').[43] These efforts were rewarded in 2009 with the Lisbon Treaty, that significantly enhances the role of national parliaments within the EU decision-making procedures. But the issue must be seen in light of a wider range of phenomena, those relating to the structural gap between the still national dimension of politics and the global or continental scale of markets, media, and technocratic agencies. In that domain, states may have a chance of playing an active role through their governments, rather than through representative assemblies. Inevitably, the latter are left on one side, and even their potential for providing a checking function appears modest.

## VIII. Is Parliamentarism Declining?

These factors, together with those connected with the increasing mediatization and personalization of politics, are likely to deprive parliamentary deliberation progressively of its meaning. Hence there is emerging among the political elites of mature democracies a common concern for the decline of parliament, and for the consequences of this on the legitimacy of political institutions. In the United Kingdom, the Green Paper entitled 'The Governance of Britain', presented to Parliament by Prime Minister Brown in July 2007, aimed inter alia at 'limiting the powers of the executive', 'revitalising the House of Commons', and 'renewing the accountability of Parliament'. In the event, the legislation that emerged as a result of this initiative (the Constitutional Reform and Governance Act 2010) did not rise to this challenging rhetoric. It included changes affecting two areas of executive power, only one of which was expressly calculated to extend the functions of parliament;[44] and it seems unlikely that legislation alone will modify political attitudes that are based on long-seated practice rather than on law. However, a desire for change in the same direction of greater accountability appeared to drive both the ambitious constitutional reform in France in 2008 and the reform in 2006 of the German federal system (already mentioned). These various measures, arising in different political cultures and affecting different institutional mechanisms, may reflect a need to redress what has become an increasingly unbalanced relationship between parliament and government: but we cannot be confident that those who wield

[42] Von Beyme (n 36), 82.

[43] On this see among others Philipp Kiiver, 'The Composite Case for National Parliaments in the European Union: Who Profits from Enhanced Involvement?' (2006) 2(2) *European Constitutional Law Review* 227ff.

[44] The legal basis of the civil service and its management was removed from the royal prerogative but this was unlikely to affect ministers' control of the civil service. More significant was the conferment on Parliament of a role in approving approve treaties concluded by the executive.

executive power will willingly expose themselves to the prospect of more effective and transparent political challenge.

In discussing the main features of parliamentarism in this chapter, we have outlined the historical antecedents to forms of parliamentary government that exist today and we have explained that many differing forms of parliamentarism exist today. We have not examined the question whether, as a system of government, it is superior to or more stable than forms of presidentialism.[45] Nor have we sought to review empirical evidence on which an answer to this question might be based. In 1990, in a celebrated analysis of 'the perils of presidentialism', Juan J. Linz concluded that parliamentary democracies have had a superior historical performance and that parliamentarism is more conducive to stable democracy; among the difficulties posed by presidentialism is greater rigidity and the existence of dual legitimacies when executive and legislature are separately elected.[46] Criticism of this conclusion emphasized the possibilities for conflict that may exist in parliamentary systems, the variable stability of systems of political parties, the lack of legislative check on the executive when the government has a clear majority in the legislature, and the wide range of different versions of presidentialism and parliamentarism that exist.[47]

More recently, José A. Cheibub has argued that it is not the nature of presidential institutions as such that causes instability in presidential systems, since there are many other factors that determine how these systems operate: thus the instability of presidential regimes is seen most often in countries where in any event democracy of any type would be unstable.[48] This debate has often been based on the experience of countries in Latin America and to a lesser extent on that of new constitutional systems in Eastern Europe. In countries with a longer record of democratic government, as in Western Europe, the model of parliamentarism, with all its potential variants, is more commonly found than the model of presidentialism, despite the pressures in the modern world that work towards the personalization of political decision-making.

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[45] See Chapter 29 on presidentialism in this volume.

[46] Juan J. Linz, 'The Perils of Presidentialism' in Larry Diamond and Marc Plattner (eds), *The Global Resurgence of Democracy* (1993), 108–26. And see Alfred Stepan and Cindy Skach, 'Presidentialism and Parliamentarism in Comparative Perspective' in Juan J. Linz and Arturo Valenzuela (eds), *The Failure of Presidential Democracy: Comparative perspectives* (1994), ch 4.

[47] Scott Mainwaring and Matthew Shugart, 'Juan Linz, Presidentialism, and Democracy: A Critical Appraisal' (1997) 29(4) *Comparative Politics* 449–71. See also Scott Mainwaring and Matthew Shugart (eds), *Presidentialism and Democracy in Latin America* (1997).

[48] José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (2007), chs 1, 7.

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