CPA Learning System for Professional Development

Module on Parliamentary Democracy

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Contents

Foreword

I am very happy to contribute a foreword to this first module in the Commonwealth Parliamentary Association's Learning System created under its project on *Professional Development for Parliamentarians*.

Like the Commonwealth itself, the CPA over its almost 90 years of experience has developed a capacity for working from points of comparative advantage and providing for its members mechanisms for strengthening themselves through regional and global sharing and cooperation. One of the most highly subscribed of its professional development opportunities and certainly a point of comparative advantage is the regular series of practice and procedure seminars offered globally, regionally and nationally. The success of these ventures has required the adoption of new methods to ensure that a greater number of parliamentarians may share in their benefits. When therefore an Expert Group recommended that innovative methods be used to expand the outreach of the Association, I was very happy to take the matter to the Executive Committee and to seek the allocation of funds for this purpose.

This module is the first in a series which I hope will provide parliamentarians with the background knowledge required to assist in translating their aspirations into actions of direct practical value to themselves and those they serve.

We hope to produce up to ten modules by the end of 2002. They will be available in various forms, hard copy as well as electronic, permitting parliamentarians, parliamentary officials and members of the wider society to benefit from this specially created material. We intend to leave to each individual and Branch the decision how the material should be used but we shall issue guidance notes to ensure that this flexibility is put to good use.

This has been ground-breaking work. No such programmes with a distance learning base have been available to parliamentarians up to now. We have been fortunate that one of the members of the original Expert Group, Dr David McNeil, Clerk of the Legislative Assembly of Alberta, Canada, was willing to take up the challenge of laying the foundation in conjunction with academics from the University of Alberta and Athabasca University. They have created a template for further modules which are now being commissioned. The Association is very much in their debt.

I would like to take the opportunity to thank the Department for International Development of the United Kingdom Government for financial assistance in producing the first module and the Commonwealth of Learning for technical advice provided through Mr Patrick Guiton, Higher Education Specialist.

Arthur R Donahoe
Secretary-General

Preface

Professional Development for Parliamentarians is a project of the
Commonwealth Parliamentary Association (CPA) whose objective is to
develop a set of educational materials for elected members of Commonwealth
parliaments to assist them in adapting to and functioning effectively in their
complex and rapidly changing roles in the new millennium. The project
evolved from the recommendations of an Expert Group assembled by the
Secretary-General of the CPA in late 1998.

While the Expert Group recognized that individual parliaments expend
significant effort in providing training and orientation to their Members,
there were areas of more general interest and application where educational
materials could best be developed on a Commonwealth-wide basis.
Furthermore, they suggested that a wide range of resources and methods
including those of distance learning could be utilized.

As a result, the Expert Group identified a series of subject areas where they
believed the development of specific educational materials would be of
benefit to parliamentarians. These subjects were then assigned to specific
members of the Expert Group to develop more detailed learning objectives.
Upon completion of the learning objectives, the CPA Secretariat, in
conjunction with Expert Group members, determined the order of priority
for the development of the set of learning materials.

The module on *Parliamentary Democracy* is the first of the series of educational
materials evolving from the work of the Expert Group under the title *CPA
Learning System for Professional Development*. The purpose of this module is
outlined in the set of learning objectives given before Unit 1. The user is
encouraged to proceed through the material at his or her own pace. Each
section concludes with a series of questions that will help the user assess his or
her comprehension of the written material. Each section provides a series of
related readings as well as Internet references, for those users who wish to
explore a particular topic further.

Further development of this material will take the form of an Internet-based
learning module that will be available on the CPA web site as well as, it is
hoped, in CD-ROM format. Examination is also being made of the feasibility
of an audiotape/CD version of the material.

Comments from users are most welcome and should be addressed to
Mr Raja Gomez, Director of Development and Planning at the Headquarters
Secretariat, who is coordinating the project.

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Introduction

Welcome to the Commonwealth Parliamentary Association's *Module on Parliamentary Democracy*. The Association's aim in developing this module is to foster knowledge and a better understanding of the history, principles and practices of the Westminster model of parliamentary democracy, in the context of other democratic models of governance. It is hoped that the result among members of the Commonwealth Parliamentary Association will be a heightened awareness of issues affecting the evolution and future of parliamentary democracy.

The *Module on Parliamentary Democracy* is the first in a series of modules on various aspects of democratic governance. It has been developed by the Commonwealth Parliamentary Association in partnership with Athabasca University: Canada's Open University ™.

Commonwealth Parliamentary Association

The CPA is an Association of Commonwealth Parliamentarians who, irrespective of gender, race, religion or culture, are united by community of interest, by respect for the rule of law and individual rights and freedoms, and by pursuit of the positive ideals of parliamentary democracy. Its stated purpose is to promote knowledge and understanding of the constitutional, legislative, economic, social and cultural systems within a parliamentary democratic framework. It undertakes this mission with particular reference to the countries of the Commonwealth of Nations and to countries having close historical and parliamentary associations with it.

The CPA was founded in 1911 as the Empire Parliamentary Association, with the United Kingdom Branch administering its affairs. The original member Branches were Australia, Canada, Newfoundland, New Zealand, South Africa and the United Kingdom. Evolving with the Commonwealth, the CPA adopted its present name in 1948, changed its rules to enable all member Branches to participate in the Association's management, and established a separate Secretariat to manage its affairs. Association Branches now exist in 171 national, state, provincial and territorial Parliaments, with a total membership of over 16,000 Parliamentarians.

The Association provides the sole means of regular consultation among Members of Commonwealth Parliaments. It fosters co-operation and understanding among them and promotes the study of and respect for Parliament. Commonwealth Parliaments and Heads of Government endorse its role. For more information, see the Commonwealth Parliamentary Association's web site at **http://www.cpahq.org**.

Athabasca University

Athabasca University is Canada's premier distance education university. It is dedicated to the removal of barriers that traditionally restrict access to and success in university-level studies and to increasing equality of educational opportunity for all adult learners regardless of their geographical location and prior academic credentials. In common with all universities, Athabasca University is committed to excellence in teaching, research and scholarship and to being of service to the general public.

Athabasca University was created in 1970 by an order in council of the Government of Alberta. In 1978 a revision of the Alberta Universities Act granted the University permanent, self-governing status. Today, it is Canada's fastest growing established university. Athabasca University is a full member of the Association of Universities and Colleges of Canada, the Association of Commonwealth Universities, the International Council for Open and Distance Education, the Canadian Association for Distance Education, and the Canadian Association for Graduate Studies. For more information, see Athabasca University's web site at **http://www.athabascau.ca**.

Learning Objectives

When you have concluded this module, you should have developed knowledge and understanding of the following:

1. The basic principles of the Westminster model of parliamentary democracy.

2. The evolution of the Westminster model.

3. The Westminster model in the context of other democratic models of governance.

4. The legal/constitutional basis of a parliament in a given jurisdiction; its composition, functions and relationships with other parliaments.

5. The division of powers among the executive, judicial and legislative branches of government with emphasis on the accountability of the executive to the legislative branch and the role of the opposition.

6. The rights and immunities of members of parliament, their historical basis including the Bill of Rights of 1689, and the limits of those rights and immunities.

7. The roles of members of parliament inside and outside the legislature in a parliamentary democracy with a focus on the various models of representation.

8. The role of political parties in the parliamentary democratic model.

9. The role of the electoral process in the development and maintenance of the parliamentary democratic model.

10. The alternative electoral/representative models (first past the post, proportional representation, preferential vote, etc.) and their implications for the parliamentary democratic process.

11. The key issues for the effectiveness of parliaments in the new millenium.

Module Outline

This parliamentary democracy module is made up of eleven units as outlined below. Each unit contains an Overview, Learning Objectives, Commentary, Recommended Reading, Study Questions, and Internet Resources.

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    Parliamentary Modifications in New Zealand, Israel and South Africa
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    Functions of Parliament
    Relations between Legislatures in the Same State

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    Prime Ministerial Dominance
    The Decline of the Power of Legislative Assemblies

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Unit 8

Role of Parties
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    Electoral Boundaries

Unit 10

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    Electoral Systems in Action
    Proportional Systems

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    Globalisation
    Technology and the Future: e-democracy?

Unit 1
Introduction:
Principles of the Westminster Model of Parliamentary Democracy

Overview

The main objective of this unit is to outline and discuss the basic principles of the Westminster model of parliamentary democracy. To many casual observers the words 'parliament' and 'democracy' have similar definitions. However, not all parliamentary regimes today are democracies, and parliaments preceded democracy as it is understood today by centuries. One of the earliest parliaments, often described as the 'Mother of Parliaments,' is the Parliament of England. A form of parliamentary democracy known as "The Westminster Model" has evolved from this particular institution, located at Westminster in London. This system has been exported to many different countries and settings; both inside and outside the Commonwealth. Not all governing bodies that describe themselves as parliaments follow the Westminster model. However, developing a new understanding of parliamentary democracy begins with this model.

In this module we examine the Westminster model and parliamentary democracy broadly. We begin by defining 'parliament' and outlining some of its key characteristics. Next we explore the evolutionary development of the Westminster model and look at some other models of democratic government. Following that attention is given to the legal basis of parliament and the characteristics of the executive and legislative branches, and the rights and immunities of members of parliament. The roles of members and the roles of parties are studied next, then the electoral process and, more specifically, electoral systems. The module concludes by looking at some of the challenges ahead for parliamentary systems, including citizen desires for direct democracy, and the impacts of globalisation and technological change.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the three units that make up a parliament based on the Westminster model.

2. Give three uses of the term 'Parliament'.

3. Define the term 'Responsible Government'.

4. Outline the assumptions underlying Parliamentary Sovereignty.

Commentary

Parliaments and Legislatures

It is critical to launch this discussion by clarifying some of the key terms and concepts that underlie the Westminster model of parliamentary democracy. Parliament is composed of three different units: the Crown, the House of Lords and the House of Commons (also known as the Lower House). Tracing British parliamentary development involves explaining how the House of Commons became the dominant unit. However, the other two units remain part of the Westminster model. The word 'parliament' can be confusing because it is often used in different ways to refer to:

1. The Crown, House of Lords and House of Commons

2. The House of Lords and House of Commons

3. The House of Commons

All three references capture different parts of the parliamentary reality. Nonetheless, for the purposes of this study, the use of the word parliament as it applies to the British model should be understood as a reference to the House of Lords and the House of Commons.

In unicameral parliaments, the term 'legislative assembly' is also used to describe the House of Commons while the term 'legislature' refers to the Legislative Assembly and the Crown.

Representative Government and Responsible Government

Over time British parliamentary democracy has evolved in ways that have led to its association with the concepts of representative government and responsible government. Representative government is based on the notion that those who serve in government are placed in their positions as a result of citizen selection. Citizens choose people to represent them in the parliament. Some controversy underlies this seemingly simple concept. The word 'represent' means to make present something that, in fact, is not present. Representatives enable an indirect citizen presence in the legislative process. In general representative roles can take three forms: delegate, trustee and party. These forms of representation will be discussed later in more detail.

A representative who performs as a delegate subordinates his or her judgement to the views of the citizens he or she represents. In other words, representatives vote the views of their constituents regardless of their personal views. In contrast, a trustee takes the position that he or she has been elected to exercise his or her best judgement. Accordingly, the positions trustees take are based on their perceptions of what is most appropriate. Finally, the party representative votes as a loyal member of a particular party.

Representative government and approaches to representation are common to all elected legislatures, not just parliaments. Responsible government,

however, is found uniquely in parliamentary systems. Responsible government refers to a system in which there is a fusion of political power rather than the separation of powers that accompanies presidential systems. It signifies the presence of the executive within an elected legislative assembly and the power of that assembly to remove or confirm the executive in their position. A formal legislative vote that expresses a lack of confidence in the executive can remove them from their position or trigger a new election. Under the Westminster model the authority to remove a government from office or call a new election rests with the Crown. In practice the Crown acts on the basis of what has transpired in the House of Commons. Moreover, the executive is collectively responsible for the activities of government.

Parliamentary government is also associated with the presence of a dual executive. There is a ceremonial executive, which possesses some constitutional powers as well as performing symbolic functions, and a political executive, which performs the basic governing functions (see Magstadt and Schotten, 1999; O'Neill, 1999). In the British model, the Crown now serves as the ceremonial executive (or head of state) while the Prime Minister is head of government.

Shared Power and Parliamentary Sovereignty

The Westminster model is also based on two other important principles; those of shared power and parliamentary sovereignty. Shared power refers to the fact that the elected legislative assembly is not the only parliamentary actor. The Crown and the House of Lords are also part of Parliament and the approval of all three actors is necessary for the final approval of legislation. As we shall see, while the powers of the House of Lords and the Crown have weakened over time, they retain a role in the parliamentary process.

Parliamentary sovereignty is based on the assumption that the powers of Parliament are unlimited. Walter Bagehot, who authored a classic 19th century study of the English constitution, expressed this theory succinctly by noting that "Parliament is a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government, … interfere with the course of justice, extinguish the most sacred private rights of the citizen." He went on to indicate that in practise this authority had become concentrated in the Commons:

> The ultimate authority in the English Constitution is a newly-elected House of Commons. No matter whether the question upon which it decides be administrative or legislative; no matter whether it concerns high matters of the essential constitution or small matters of daily detail … a new House of Commons can despotically and finally resolve (313).

In theory, there is no higher authority than Parliament (in reality, than the House of Commons) and no external limits on what a Parliament can do. However, in recent years, a number of factors have resulted in new limits being placed on the authority of parliaments.

Recommended Reading

Dearlove, John and Peter Saunders. *Introduction to British Politics*, Cambridge, UK: Polity Press, 1991, Chapter 1.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the three units that make up a parliament based on the Westminster model?

2. What are the three uses of the term 'Parliament'?

3. What does the term 'Responsible Government' mean?

4. What are the underlying assumptions of Parliamentary Sovereignty?

Internet Resources

Parliamentary Democracy

Australia. "Palmer's Australian Politics: Overview of Australia's Political System"
http://members.dingoblue.net.au/~bdpalmer/institutions/ overview.htm

Australia. Parliament of Australia: "The Parliament: An Overview"
http://www.aph.gov.au/parl.htm

Australia. The Samuel Griffith Society: "Parliamentary Democracy in Australia"
http://www.samuelgriffith.org.au/v5chap10.htm

Parliament of Australia. Parliamentary Library Research Paper 23 1999-2000 "Australian Parliamentary Democracy After a Century: What Gains, What Losses?"
http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp23.htm

Canada. Library of Parliament: "How Canadians Govern Themselves"
http://www.parl.gc.ca/information/about/process/library/forsey/ how-e.htm

Canada. Public Service Commission Institute on Governance. How Government Works. Chapter 2: "What's Up on the Hill?"
http://learnet.gc.ca/eng/lrncentr/online/hgw/how-gov2.htm

India. "Indian Parliament: Introduction"
http://parliamentofindia.nic.in/

New Zealand. The Committee of Former Speakers of the House to the Association of Former Members of Parliament, "Restoring Public Confidence in Parliament"
http://www.mdl.co.nz/readingroom/parliament/execsum.html

South Africa. "Parliament of South Africa: How Our Democracy Works"
http://www.parliament.gov.za/particip/democ.htm

Suite 101.com. "Labour's Great Britain: Remodeling Westminster"
http://www.suite101.com/article.cfm/european_politics/30521

United Kingdom. "An Introduction to Parliament"
http://www.parliament.uk/parliament/guide/parliamt.htm

National parliaments
http://www.ipu.org/english/parlweb.htm
http://www.polisci.umn.edu/information/parliaments/

"A Concept Paper on Legislatures and Good Governance," based on a paper prepared by John K. Johnson and Robert T. Nakamura for UNDP, July 1999
http://magnet.undp.org/Docs/parliaments/ Concept%20Paper%20Revised%20MAGNET.htm

Electric Library Presents Encyclopedia.com. "Parliament"
http://www.encyclopedia.com/printablenew/09855.html

Victorian Electoral Commission. Government
http://www.vec.vic.gov.au/ Government/WP_ParliamentarySystem.htm

The Digital Agora. Parliamentary System
http://ace.acadiau.ca/polisci/aa/DigAgora/Glossary/glossaryhtml/ psystem.html

Unit 2

The Westminster Model of Parliamentary Democracy: A Millennium of Evolution

Overview

This unit examines the major events in the evolution of the Westminster model of parliamentary democracy. It begins with an examination of the notion of 'responsible government' and then moves to an examination of the broadening of the right to vote. This discussion of the extension of the franchise, to working class males and to women is followed by a look at some of the important 20th century parliamentary reforms. Finally, the unit ends with a discussion of the Crown's role in the evolving Westminster model.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. Discuss the evolution of the Westminster model of parliament, from the 13th century onwards.

2. List the steps that, taken over time, have made the British parliamentary system more democratic.

3. Name four ways in which today's British parliamentary model differs from the earliest model.

4. Explain the current role of the Crown in the Westminster model.

Commentary

The Development of Responsible Government

The modern parliament has deep roots in British soil. The term 'parliament' derives from words referring to conferences or discussions. The Saxons, a Germanic tribe, invaded Britain and took power about the year 450. Un-elected councils advised the Saxon Kings and also possessed the power to elect Kings (Wilding and Laundy, 675). The proclamation of Magna Carta in 1215 firmly established the notion that the royal prerogatives were limited and that the Crown would rule within the law, at least where the aristocracy were concerned. Ordinary people did not yet have full rights as citizens. In 1254 when King Henry III needed money, he instructed the sheriff of each

shire (county) to send, that is to say, ensure the election of, two knights to meet with the Crown, church officials and the leading aristocrats.

The Model Parliament of 1295 set in place structures that resembled the current parliamentary model. The Crown sought counsel from the leading elements of English society: representatives from shires, cities and boroughs, the clergy, earls and barons. (Individuals in this last category are also described as peers or the aristocracy. Their positions are based on the inheritance of a title.) The high clergy met with the earls and barons in a body that would evolve into the House of Lords, while the representatives of shires, cities and boroughs met in what was to become the House of Commons. Those who sat in the Commons were put there by local elections.

Parliament(s) met irregularly and for very short periods. Parliament was summoned when the Crown wanted more money for particular initiatives. The Crown explained to the assembled parliamentarians why it needed more money and provided a list of points on which the Crown desired their opinions. As well as responding to the Crown's issues, Parliament had the opportunity to present grievances. These grievances took the form of petitions asking the Crown to act in a certain area. Throughout the medieval period the practise evolved of sending the Crown a bill in the form of a statute instead of a petition. The Crown's responses were essentially the legislation of the day. Medieval parliaments were largely expressive bodies, telling the Crown the wishes of the nation. The Crown could choose to legislate on the basis of parliamentary input, or to ignore Parliament's advice.

The right of Parliament to impose taxes developed over time. With the civil war and revolution of the 17th century and the ensuing Bill of Rights in 1689, the Crown acknowledged limits to its authority. These limits included an agreement that the Crown could not make or unmake laws without parliamentary consent, that freedom of speech would be guaranteed in Parliament, and that the Crown could not raise money without authorisation from Parliament. This agreement significantly enhanced the role of Parliament in making important political decisions.

Parliamentary evolution in the 18th century resulted in the creation of a system of responsible government. In the early centuries of British Parliament, the Crown maintained complete executive power, selecting all ministers and deciding whether or not to take parliamentary advice. Over time, the Crown lost its ability to make independent policy decisions, but maintained its ability to designate ministers. However, following the American Revolution, the Crown effectively devolved the selection of ministers to Parliament and eventually to the primary representative of the Crown, the Prime Minister. It is often forgotten that at the time the United States established its presidential form of government, the notion of responsible government was relatively novel even in Britain. But as Bagehot notes, by the dawn of the 19th century "We have in England an elective first magistrate as truly as the Americans have an elective first magistrate" (No date: 83). That was because the British Prime Minister, while not elected directly by the people like an American president, was chosen by the majority of elected representatives in the legislative assembly.

It is easier to understand the development of responsible government by looking at its first manifestation in one of the British colonies. Nova Scotia

was the first colony to receive an elective legislative assembly, but in selecting a government the Crown-appointed Colonial Governor was neither bound nor limited to those who were elected to the assembly. Thus regardless of the outcome of elections, the governor could invite whomever he wished to form the council that advised him. Moreover, it was irrelevant if the elected members opposed the composition or the actions of the government. The government was responsible (answerable) to the Governor, not the legislative assembly. In the 1830s the colony demanded the same sort of responsible government that existed in Britain. The demand was finally met in 1848 when the British government granted responsible government to Nova Scotia.

From that point forward the government (or cabinet) of Nova Scotia was drawn from the legislative assembly and required the support of a majority in the assembly to remain in office. When the government lost the confidence of Parliament, meaning that it no longer enjoyed the support of a majority of the elected members, it had to resign. This was essentially the same evolution experienced in Britain almost 50 years earlier as the Crown gradually devolved the choice of the government to Parliament.

Although by the early 1800s the British parliamentary system was operating in ways that observers today would easily recognise, the system was far from democratic. The 19th and 20th centuries saw extensive reforms, resulting in the weakening of the power of the House of Lords and the participation of virtually all adult citizens in parliamentary elections.

Broadening the Right to Vote

Before the Reform Act of 1832 the election of members to the House of Commons was in the hands of a tiny group of affluent subjects. Punnett (1988: 41) estimates the proportion of the adult male population eligible to vote to be about 5 per cent. The ability to determine voting eligibility in the shires rested with the sheriffs and varied widely. There were no clear rules for the establishment of boroughs and therefore representation was haphazard. One of the ways that some monarchs tried to control Parliament was by creating new boroughs to ensure that solid men who supported the Crown's wishes were returned to the House of Commons. As well, members of the House of Lords, through their wealth and patronage, were, in effect, able to determine the holders of a significant number of Commons seats. At times borough seats were actually bought and sold. Some of these boroughs had fewer than 20 voters responsible for 'electing' the two members each borough was entitled to send to the House of Commons.

A growing discontent among the middle classes over their exclusion from power led to the Reform Act of 1832, which eliminated a number of the so-called rotten boroughs, redistributed seats more equitably based on population, created a more general entitlement to vote, and established a register of eligible voters. As a result, the vote was given to middle class males and the number voting grew significantly. Ilbert and Carr describe the Reform Act as "one of the great landmarks of English history" (1948: 36).

In the aftermath of this reform, the power of the House of Lords declined, even though Prime Ministers were still drawn from the House of Lords. Between 1832 and 1902, six out of thirteen Prime Ministers were drawn from

the House of Lords. Whereas previously a defeat of government-supported legislation in the Upper House would generate a vote of confidence in the Commons, after 1850, defeats of government legislation by the Lords had no impact on the government's tenure.

With the passage of the Representation of the Peoples Act in 1867 the right to vote was extended to the urban working class, enfranchising almost 2 million men. In 1872 secret ballots were introduced in the electoral process. In 1884 another Representation of the Peoples Act enfranchised male workers in rural areas and gave the great majority of males the vote in parliamentary elections, a privilege extended to all males by 1911. Succeeding Acts in 1918 resulted in first allowing some women to vote and then in 1928 extending voting rights to women on the same basis as men. These last two Acts eliminated property qualifications and ushered in an era of universal adult suffrage, a concept now an integral part of the Westminster model.

20th Century Reforms

Reforms throughout the 20th century effectively curtailed the power of the un-elected House of Lords, which appeared more and more as an anachronism. In 1911 the Parliament Act turned the House of Lords into a delaying body and demonstrated that the Crown acted only on the advice of the Commons. The House of Lords had a long tradition of refusing to pass Commons bills with which it disagreed. In 1909 its rejection of a key piece of legislation led the Prime Minister to limit the power of the second chamber. Accordingly, the Parliament Act of 1911 removed from the House of Lords the power to prevent legislation from going to the Crown for final assent. The House of Lords would only be able to delay passage. Of course, the House of Lords was not eager to have its powers restricted in this way. However, when it became clear that the Cabinet was willing to ask a sympathetic Crown to appoint enough new peers to ensure the passage of the Act, the House of Lords acquiesced in the reduction of its powers.

Another Parliament Act in 1949 dramatically reduced the period for which the Lords could delay legislation. Finally, the Parliament Act of 1999 eliminated the hereditary nature of positions in the House of Lords, allowed only a few of the existing hereditary peers to remain in the Upper House and ensured that all future appointments of life peers would be based on prime ministerial recommendations.

The evolution of the Westminster model of Parliament from the medieval period to the present follows four themes.

1. transfer of authority from the Crown to Parliament

2. transfer of authority from the House of Lords to the House of Commons

3. the development of a system of responsible government

4. the gradual broadening of the right to vote into universal adult suffrage.

From a model in which the Crown sought advice from aristocrats and representatives elected by only a handful of subjects, Parliament became an

institution marked by responsible and representative government and dominated by a Commons elected by virtually all adult citizens.

The Crown's Role

It would be a mistake to infer however that the Crown no longer has a role to play under the Westminster model. As in all parliamentary systems, the positions of head of state and head of government are divided and the head of state retains a role. Among other responsibilities, the head of state has the sole power to grant the dissolution of Parliament and the responsibility for determining whether a head of government enjoys the confidence of the elected legislative assembly. A head of state with independence from the Prime Minister is an important guarantor of parliamentary rights and privileges. Similarly, although the House of Lords possesses only the ability to delay legislation, its refusal to pass some Commons legislation has led the Commons to reconsider and, on occasion, to withdraw the legislation. It also undertakes valuable research on some issues and introduces some legislation.

Recommended Reading

Ilbert, Courtney and Cecil Carr. *Parliament*. London: Oxford University Press, 1948, 1-21.

Punnett, R. M. *British Government and Politics* (5th edition). Prospect Heights: Waveland, 1988, Chapter 6.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. How has the Westminster model of parliament evolved from the 13th century onwards?

2. What steps over time made the British parliamentary system more democratic?

3. How does today's British parliamentary model differ from the earliest model?

4. What is the current role of the Crown in the Westminster model?

Internet Resources

Parliamentary Evolution

Australia. Macquarie University: "A Comparison of the Australian, British, and American Political Systems"
http://www.humanities.mq.edu.au/Ockham/y67xan1.html

The Spartacus Internet Encyclopedia "British History,1700-1900: Parliamentary Reform"
http://www.spartacus.schoolnet.co.uk/PRparliament.htm

Parliamentary Reform Act 1867
http://www.spartacus.schoolnet.co.uk/PR1867.htm

1872 Secret Ballot Act
http://www.spartacus.schoolnet.co.uk/PR1872.htm

1884 Reform Act (extended franchaise to working class men in rural areas)
http://www.spartacus.schoolnet.co.uk/PR1884.htm

1911 and 1949 Parliament Acts
http://www.parliament.uk/parliament/guide/parlacts.htm

Qualification of Women Act of 1918
http://www.spartacus.schoolnet.co.uk/W1918.htm

Equal Franchaise Act of 1928
http://www.spartacus.schoolnet.co.uk/W1928.htm

Parliamentary Politics and Reform in South Asia (India, Pakistan, Sri Lanka, Bangladesh and Nepal)
http://www.surfsouthasia.org/NEW/SURF/GOV/workpapr/ parliam.shtm

Peter Weber, "Labour's Great Britain: Remodelling Westminster"
http://www.suite101.com/article.cfm/1894/30521

(University College London) The Constitution Unit. "Constitutional Update: House of Lords Reform"
http://www.ucl.ac.uk/constitution-unit/constupdate/lordsref.htm

"A House for the Future: Royal Commission on the Reform of the House of Lords"
http://www.official-documents.co.uk/document/cm45/4534/4534.htm

Unit 3
Other Democratic Models of Governance

Overview

The main objective of this unit is to analyse the Westminster model of parliamentary democracy in relation to other democratic models of governance. The unit explores various forms of governance in relation to the Westminster model. In particular it offers a comparative examination of the American Presidential model, the Mixed French system, as well as parliamentary modifications in New Zealand, Israel and South Africa, among others. Finally, the unit shifts to an examination of federalism and the adoption of a Charter (e.g. Canada) or Bill (e.g. Britain, South Africa) of Rights.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the distinguishing features of the American presidential model.

2. Discuss the features of the French mixed presidential and parliamentary models.

3. Explain how the Westminster model has been modified in New Zealand, Israel and South Africa.

4. Describe how federal systems and written constitutions can affect the operation of parliamentary systems.

Commentary

Although the British Parliament has been described as the 'mother of all parliaments,' many of the democratic systems in place today do not follow a parliamentary model, while others that can be described as parliamentary have not fully adopted the Westminster model. In this section we shall explore some of the competing models.

The American Presidential Model

The leading alternative form of government organisation is the presidential model pioneered with the American constitution. In the aftermath of the

American Revolution, the United States organised its government in a way that would ensure no individual component could dominate the system.

Legislative Branch (Congress)

Two Chambers

House of Representatives
(Direct election,
2 year term)

Senate
(Direct election,
6 year term)

Executive Branch

President
Head of State and Government
(Direct election)

Cabinet
(Chosen by President)

Judicial Branch

Supreme Court

U.S. Courts of Appeal

U.S. District Courts
(Federal and local
jurisdiction)

Administrative
quasi-judicial
agencies

U.S. District Courts
(Federal jurisdiction
only)
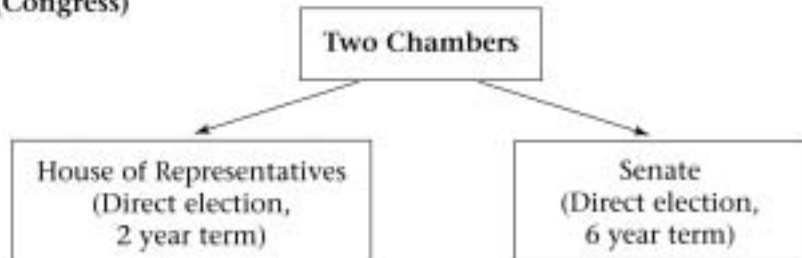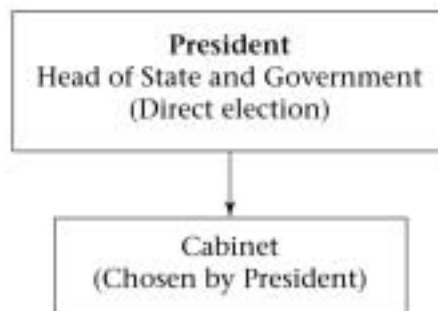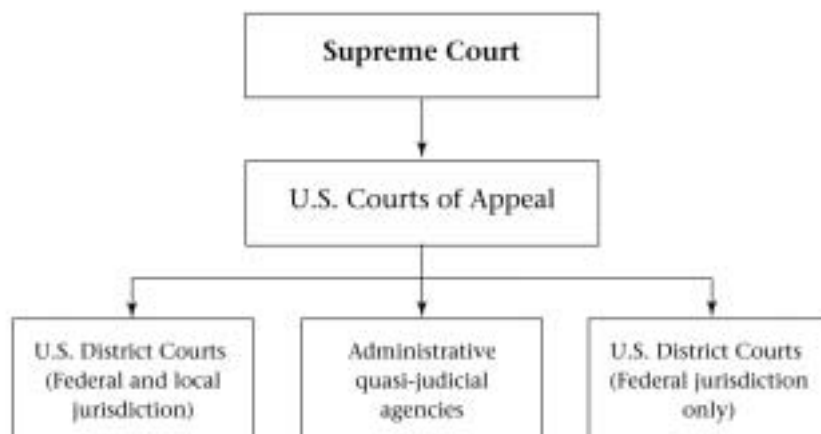
Figure 3.1 American Presidential Model

A great emphasis was placed on creating a network of 'checks and balances.' This model differs from the contemporary Westminster model in a number of important features. The same person, the President, fills the positions of

head of state and head of government. This position is filled on the basis of a direct election and is in no way dependent on the composition of the legislative assembly. (Actually the voters select members of an Electoral College and this college chooses the president. But this has become a formality since college members are simply individuals elected from slates committed to the various presidential candidates.)

The President alone chooses cabinet members. The Cabinet, who together with the President form the executive, are not drawn from the legislature, are not responsible to the legislature, and cannot be dismissed by the legislature. In essence, the executive is independent of the legislative branch. (Congress has the authority to remove a president from office if the Senate convicts the president on articles of impeachment approved by the House of Representatives. This has never happened.) However, in the postwar period two presidents have been challenged by impeachment. One of them, Republican President Richard Nixon, resigned rather than face impeachment. More recently, Democratic President William Jefferson Clinton survived a vote of impeachment, although it damaged the reputation of his presidency.

For the system to function effectively there must be a measure of cooperation between the executive and legislature, a cooperation that is a given in the Westminster model. The two Houses of Congress can introduce and pass legislation in whatever form they desire. However, the President has the constitutional authority to veto congressional legislation. This does not end the issue since if both Houses of Congress again pass the vetoed legislation with a two-thirds majority, the veto can be overridden.

In the case of a disagreement between Congress and the President, the President cannot call new congressional elections. The timing of all elections is based on the Constitution and could only be changed by an amendment to that document. When one party controls the presidency and another party controls Congress, a good deal of compromise is required to keep the system operating smoothly. Clearly no President has the same ability to get desired legislation approved as does the Prime Minister in a parliamentary model.

Finally, both executive decisions and congressional legislation are subject to a process of judicial review. American courts can review such measures to determine whether they are consistent with the constitution. If they are not, the courts can invalidate them. Thus, in the American presidential model, it is the Constitution which is sovereign, rather than the President or Congress.

	Legislative branch can be checked by:	**Executive branch can be checked by:**	**Judicial branch can be checked by:**
Legislative branch can check:	NA	• Can overrule veto (2/3 vote) • Controls appropriations • Controls by statute • Impeachment of President • Senate approval of appointments and treaties • Committee oversight	• Controls appropriation • Can create inferior courts • Can add new judges • Senate approves appointments • Impeachment of judges
Executive branch can check:	• Can veto legislation • Can convene special session • Can adjourn Congress when chambers disagree • Vice-president presides over Senate and votes to break ties	NA	• President appoints judges
Judicial branch can check:	• Judicial review of legislation • Chief justice presides over Senate during proceedings to impeach president	• Judicial review over presidential actions Power to issue warrants • Chief justice presides over impeachment of president	NA

NA= Not applicable
Source: Lowi & Ginsberg, *American Government*, Third Edition

Figure 3.2 Checks and Balances in the American System

The American model is not the only example of the presidential system in operation. Countries such as France, Finland and Russia have modified presidential systems. We will touch briefly on the French example.

The Mixed French System

In France, as in the United States, the President and the legislature are elected separately and the President's position is not threatened by the composition of the legislature. In recent years it has not been uncommon for the President to be from one party, while the other party controls the legislature. This has been described as 'cohabitation.'

The President possesses powers that are independent of the legislature, but unlike the American model, in France the positions of head of state and head of government are separate. The President, of course, is the head of state while the Prime Minister is the head of government.

The Prime Minister and his or her cabinet are drawn from the legislature and are in effect nominated by the legislature (subject to presidential approval) and they are responsible to the legislature. The legislature has only a limited ability to force Prime Ministers and cabinets from office and cannot insist on a vote on amendments it makes to government legislation. The President does not act as though he or she is bound by legislative desires in the composition of government. As former French President Georges Pompidou made clear: "The President of the Republic takes the composition of the Assembly into consideration [but] he is not its slave."

The President maintains a direct role in political decisions and possesses formidable powers, including the right to preside over meetings of the Council of Ministers. The President can dismiss and shuffle cabinet ministers, and in the face of clear conflict with the legislature, can dissolve it and hold new legislative elections. The legislature has no corresponding ability to force a presidential election. Finally, the President has an independent ability to force a referendum on legislative proposals, enabling the population to voice their views on subjects the president deems appropriate. The French model basically mandates a twin executive, with power shared between the President and the Prime Minister. The careers of prominent French politicians make clear that the position of President is more powerful than that of Prime Minister. Sitting Prime Ministers—including current President Jacques Chirac—have sought the presidency, indicating their assessment of which role is more desirable.

Figure 3.2 presents a comparison between parliamentary and presidential systems of government.

Parliamentary	Presidential
Strengths	
1. With a majority, the government has the power to govern.	1. Separation of powers discourages concentration of power.
2. The non-confidence vote provides a check on the government.	2. Checks and balances limit the power of branches of government.
3. The lines of responsibility for passage or defeat of legislation are clear. A voter can make decisions on the basis of party stance.	3. Without strict party discipline, members can be more constituency-oriented.
Weaknesses	
1. The system may be unstable if a majority is not obtained.	1. Separation of powers fragments the system, often rendering it immobile.
2. The power of a government with a large majority is very great – it is possibly insensitive to public desires.	2. Voters cannot pin responsibility on any one party.
3. Because party loyalty is necessary, individual members may have to vote against the wishes of their constituents.	3. Without a non-confidence vote, the electorate must wait for an election to unseat an unpopular President or member of Congress.

Source: Mark O. Dickerson and Thomas Flanagan, *An Introduction to Government and Politics: A Conceptual Approach,* Fifth Edition (Toronto, London, Singapore: Nelson, 1998), p. 292.

Figure 3.3 Parliamentary versus Presidential Systems

The Westminster model of parliamentary democracy is not fully reflected in other parliamentary systems. To illustrate this, we shall look at a number of different examples drawn primarily from the Commonwealth. These include the unicameral system of New Zealand, the system of direct prime ministerial elections in Israel, the role of the South African President, and the federal divisions in Australia and India. We will also discuss the importance of a Charter of Rights for citizens in Canada and the Bill of Rights for citizens in South Africa.

Parliamentary Modifications in New Zealand, Israel and South Africa

The Westminster model is bicameral; that is, there are two houses in Parliament. This bicameral arrangement has been widely copied—not only in parliamentary systems, but also in presidential systems. The division of the legislature into two bodies weakens the powers of the prime minister to a degree, since he or she must have legislation approved by the second chamber for it to become law.

A bicameral legislature is not an essential component of a parliamentary regime. Since 1970, New Zealand's parliament has been unicameral. The legislative assemblies in the Canadian provinces are also unicameral. Indeed, many of the parliaments in the Commonwealth have only one chamber.

A unicameral parliament can simplify the parliamentary process. It eliminates discussion between chambers about amendments and ensures

that a bill approved by the elected chamber will go to the head of state for assent quickly and without amendment. Prime ministers have one less impediment to their ability to have their wishes become law. As in the Westminster model more broadly, the Prime Minister and cabinet are drawn from the legislative assembly and are responsible to the assembly.

Like New Zealand, Israel has a unicameral legislature, a division of the positions of head of state and head of government, and a Prime Minister and cabinet drawn from the legislature. The Israeli system, however, modifies the general operation of a parliamentary system in a number of ways. Unlike the unwritten Westminster model, the powers of the Prime Minister are set forth explicitly in Basic Law and are not based on historical tradition or convention. More importantly the Prime Minister is elected directly by the people rather than being put in place by the legislature. The legislature cannot determine who the Prime Minister will be, but it can force new prime ministerial elections by expressing non-confidence in the incumbent. Candidates for Prime Minister must be members of the legislature, or head the list of party candidates for the legislature during an election campaign. Thus, in spite of their direct election, Prime Ministers sit in the legislature.

The Prime Minister submits a list of ministers to the legislature for approval and possesses the right (with the approval of the head of state) to initiate elections.

South Africa does not possess a prime minister and, in the absence of this position, there is some disagreement with respect to whether it possesses a parliamentary system or a presidential system. In South Africa the positions of head of state and head of government are combined in the person of the President. However, the President is elected by the National Assembly and can be removed from office by a motion of non-confidence. The cabinet is also drawn from and responsible to the House of Assembly. Thus although there is no independent head of state, the operation of the South African system generally follows the norms of a parliamentary model.

The Israeli and South African models provide examples of parliamentary systems that have altered the Westminster model by changing the relationship of the Prime Minister to Parliament.

Federalism and Charters of Rights

Australia, Canada and India are parliamentary regimes that function within a set of federal arrangements. This places a distinct limitation on the power of the national parliaments. Under a federal system, sovereignty is divided between the national and the regional levels and each level of government gets to make the final decisions in some areas. As a result the national parliament is restricted to passing legislation relating to areas within its jurisdiction. Federations require formal divisions of power between levels and a body to settle disputes between the levels. Essentially, a constitution and a court to interpret the constitution are necessary. The division of powers and the interpretation of those powers are enforced by a judicial body. Since no single parliament can change the authority of the other level, parliamentary sovereignty is not complete. However, in India as well as elsewhere in the Commonwealth, there is a greater limitation on the power

of the states since it is possible for direct rule to be imposed on the states by the national government in the event of a crisis.

Parliamentary sovereignty is reduced to a greater extent in Canada than it is in the other examples. A federal system restricts the ability of courts to review parliamentary actions only by the division of powers. If the authority to act in a certain area is within a parliament's discretion, the courts have no basis to restrict parliamentary action. This was the case in Canada until 1982.

In 1982 a revised Canadian constitution enshrined certain citizen rights in a Charter of Rights and Freedoms, and gave the Canadian courts the power to ensure that parliaments do not infringe on these rights. Courts can review the actions of Canadian parliaments in order to determine whether they are consistent with the written Charter of Rights. If they are not consistent, the court can strike down the legislation. Thus parliaments are not sovereign even within areas of jurisdiction in which they are permitted to legislate. The Supreme Court has the ultimate authority (subject to constitutional amendments) to restrict the actions of Parliament. This is in no way consistent with the parliamentary authority described by Bagehot with respect to the Westminster model.

In a discussion of the current South African system, David Welsh emphasises that the written constitution constitutes "a sharp break with the previous tradition of parliamentary sovereignty,… the constitution stipulates that it is the supreme law and that any act or law inconsistent with it is invalid" (1998: 616). Anirudha Gupta similarly notes the importance of a constitution for the functioning of the democratic system in India: "If democracy needs safeguards it is well served in India … through the protection of its laws under the constitution of the republic" (2000: 186).

In a ruling on electoral boundaries in Canada the Alberta Court of Appeal outlined why they believed an entrenched constitution was necessary. In their words:

> The essence of a constitutionally entrenched right is that it permits an individual to stand against even a majority of the people. Put another way, Canadians entrenched certain traditional rights for minorities because they do not trust themselves in all times and circumstances to respect these rights (Electoral Boundary Reference Case, 1994: 23).

From this perspective Parliament cannot be trusted to protect basic rights and therefore its authority must be legally limited. The principle of parliamentary sovereignty is substantially altered by the existence of constitutionally enshrined rights and a court that interprets those rights. Of course, as a Canadian Supreme Court Justice pointed out in a recent ruling, parliaments have acquiesced in this reduction of their authority. As Justice Iacobucci explained "it was the deliberate choice of our provincial and federal legislatures in adopting the Charter to assign an interpretive role to the courts and to command them under section 52 to declare unconstitutional legislation invalid" (*Vriend v. Alberta*, 1998, 38). This leads us into our next unit, which examines parliaments with respect to their legal basis.

Recommended Reading

Magstadt, Thomas and Peter Shotten. *Understanding Politics*. New York: Worth, 1999, 119-153.

O'Neill, Brenda. "Legislatures and Executives" in *Critical Concepts: An Introduction to Politics,* Janine Brodie (ed.) Scarborough, ON: Prentice Hall, 1999, 149-68.

Brzinski, J.B et al. "Federalism and Compounded Representation" *Publius 29* (Winter 1999).

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the features of the American presidential model?

2. What features comprise the French mixed presidential and parliamentary models?

3. How has the Westminster model has been modified in New Zealand, Israel and South Africa?

4. How do federal systems and written constitutions affect the operation of parliamentary systems?

Internet Resources

Other Models of Governance

The English Bill of Rights, 1689
http://wwlia.org/uk-billr.htm

South Africa Bill of Rights (1996)
http://www.polity.org.za/govdocs/constitution/saconst02.html

The American Presidential System
The House of Representatives: **http://www.house.gov/**
The Senate: **http://www.senate.gov/**

The South African System
http://www.parliament.gov.za/

The Mixed French System (Assemblée nationale and Senate)
http://www.assemblee-nat.fr/

The Israeli Parliamentary System (The Knesset)
http://www.knesset.gov.il/index.html

The French Declaration of the Rights of Man and of the Citizen (1789)
http://catalog.com/jamesd/french.htm

The United States Bill of Rights (1789)
http://Constitution.by.net/uSA/BillOfRights.html

The Canadian Charter of Rights and Freedoms (1982)
http://www.pch.gc.ca/ddp-hrd/canada/guide/index_e.shtml

Web sites on national parliaments
http://www.ipu.org/english/parlweb.htm
http://www.polisci.umn.edu/information/parliaments/

Australia. Macquarie University. "A Comparison of the Australian, British, and American Political Systems"
http://www.humanities.mq.edu.au/ockham/y67yan1.html

New Zealand Government Online
http://www.govt.nz/nzgovt/parli.php3

New Zealand Parliament
http://www.parliament.govt.nz/

UNDP. Parliamentary Strengthening Reference Manual. "Governing Systems and Executive-Legislative Relations"
http://mirror.undp.org/magnet/docs/parliaments/
governing%20system.htm

UNDP. Parliamentary Strengthening Reference Manual. "Legislative Chambers: Unicameral or Bicameral"
http://mirror.undp.org/magnet/Docs/parliaments/
Legislative%20Chambers.htm

Unit 4
Legal Basis of Parliament

Overview

This unit examines the legal/constitutional basis of a parliament in a given jurisdiction, its composition, functions and relationships with other legislative assemblies. The last unit raised two issues with regard to the legal basis of parliament, specifically the impact a written constitution has on parliamentary authority and the number of chambers that comprise a parliament. In this unit we will examine these issues in more detail and also look at the functions of parliaments and the relationship of parliament to other legislatures in the same country.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. Discuss the role and significance of constitutional conventions and written constitutions.

2. Outline the role of the upper house in bicameral legislatures.

3. List the basic functions of legislatures.

4. Describe the relationships between legislatures in a single state.

Commentary

Constitutional Conventions and Written Constitutions

As discussed above the presence of a written constitution dramatically affects the way a parliament acts. Constitutions can provide 'roadmaps' to explain where power lies in a particular system and to outline structures of government and the role of various actors. The Westminster model contains none of these features as Britain does not have a written constitution. The only written outline of institutions and actors is in various Acts of Parliament. This is, of course, the essence of parliamentary sovereignty, or as some prefer, parliamentary supremacy. With the British model the 'constitution' is based on precedents or what are termed 'conventions.' Conventions resemble British Common Law in that they are based on past practise and experience rather than legislation. Courts cannot enforce

conventions although they can identify whether a convention has been violated.

Many of the important elements of the Westminster model are based on conventions, such as the notion that a prime minister should be a member of parliament, that the Crown should call on the leader of the party with the most seats in the Commons to form a government and that a government should resign when it loses a vote of confidence in the Commons. These traditions have developed as Britain's parliament has evolved.

An unwritten constitution based on conventions has the advantage of being extremely adaptable or flexible. Since it is unwritten, it can be changed easily to deal with new situations. All that is necessary for the practises to be changed is for Parliament to agree that change is necessary. Old constitutional practises do not become 'millstones' that make it difficult to deal with changed circumstances.

This advantage also carries risks. If a constitution is to place limits on government or to set out the parameters within which governments must operate, then the fact that it can be adapted by government whim can be problematic. Earlier we noted Bagehot's warning words about parliamentary sovereignty, that on any matter "a new House of Commons can despotically and finally resolve." For example, some of the actions of the Thatcher government in the United Kingdom in the 1980s illustrate this principle. Among its actions in its efforts to deal with the Irish Republican Army (IRA) were modifications to the presumption of innocence and the right to remain silent when accused of criminal activity. These changes, implemented simply by parliamentary decision, may have made it easier for the government to deal with the problems of terrorism, but the price was a weakening of what many believed to be the basic rights of British subjects.

As we discussed above, the Canadian parliamentary tradition has moved sharply away from notions of parliamentary sovereignty or supremacy with a written constitution and judicial review. However, despite the existence of a written constitution, important actors like the prime minister and the cabinet remain based on unwritten conventions. This is not the case in every system that combines a written constitution and a parliamentary system. In Barbados, for instance, the constitution explicitly states that the prime minister will be the person who is best able "to command the confidence of a majority of the members of" the lower house. It gives the head of state the written authority to remove from office a prime minister who does not resign following a vote of non-confidence (Kurian, 1998: 50-51).

The ability of the Canadian Parliament to make final and binding decisions has been sharply reduced by the constitutional amendments of 1982. The role of Parliament versus that of the Court has subsequently become quite controversial in Canada, as courts have demonstrated a willingness to set aside parliamentary legislation they believe infringes on written (and to a degree unwritten) constitutional rights.

Critics of this new situation argue that courts should only interpret laws, not make them, and that it is dangerous to have such heavy responsibilities in the hands of un-elected judges rather than elected parliamentarians. Ontario Justice Rosalie Abella made one of the strongest defences of the changed role for the court. As she explains, the judiciary:

. . . is accountable less to the public's opinions and more to the public interest. It discharges that accountability by being principled, independent and impartial. Of all the public institutions responsible for delivering justice, the judiciary is the only one for whom justice is the exclusive mandate. This means that while legislatures respond of necessity to the urgings of the public… judges, on the other hand, serve only justice.

This position quite clearly illustrates the changed role of parliament and the judiciary created by a written constitution. It also indicates that parliament's definitive ability to make laws can disappear, with its both positive and negative consequences.

Upper Houses

Another key feature with respect to the legal nature of parliament relates to the number of Chambers that make up Parliament. As indicated earlier, the Westminster model provides a bicameral legislature, but other parliaments have dispensed with the second chamber.

The British second chamber has historically been based on inherited position, leavened with a selection of 'life peers', who are individuals appointed to the House of Lords for the duration of their lives. In the future this chamber will likely be composed solely of these life members. The reform of the House of Lords Act of 1999 reduced the number of hereditary peers to 92. A number of other Commonwealth parliaments have upper chambers; among them Canada, The Bahamas, Barbados, Jamaica, Australia, South Africa, and India.

•   In Canada the upper house, or Senate, is composed entirely of individuals appointed by the Governor General on the advice of the sitting Prime Minister, who hold their position until the age of 75.

•   In many Caribbean systems, some appointments to the Upper House are made on the advice of the Prime Minister, while other members of the Upper House are nominated by the major opposition party. In The Bahamas, half plus 1 of the Senate seats are appointed by the Governor General on the advice of the prime minister; the remainder are made on the advice of the Leader of the Opposition and by the Prime Minister in consultation with the Leader of the Opposition.

•   In India the Council of States or Rajya Sabha is largely composed of members chosen by the elected members of the state and territorial assemblies.

•   In Australia the Senate is elected directly by the people.

In most countries with a bicameral parliament, the approval of both chambers is necessary for ordinary legislation to become law. In Britain, as we have seen, the House of Lords has only a veto to suspend and in the end cannot prevent decisions made by the House of Commons from going to the head of state for assent. The House of Lords was originally more powerful than the Commons, but, over time, had its powers reduced as a result of a number of factors as previously discussed. The corresponding reduction of the power of the second chamber has ensured Commons domination of Parliament. The House of Lords retains some influence. It revises or initiates legislation, scrutinizes government activities through oral and written

questions and debate, provides a forum of independent expertise, and acts as a final Court of Appeal. Birch has shown that on a number of occasions between 1969 and 1985, the chamber either rejected or modified a number of Commons bills it saw as "excessively doctrinaire" (1986: 53). He goes on to maintain that the House of Lords exerts "a moderating influence" and "works reasonably well and is reasonably popular" (1986: 54).

Similarly, in Barbados the Senate possesses only a suspensive veto. If the Lower House approves a bill in two successive parliamentary sessions, it can be forwarded to the head of state without the support of the Senate. In Jamaica, the Lower House can overcome Senate opposition on non-constitutional matters by passing a bill three times by an absolute majority of members. A joint sitting of both houses can overcome an impasse between the two houses of the Indian parliament. In such a sitting, the Lower House has a substantial numeric superiority.

The Canadian Senate was to some extent modelled on the House of Lords and was intended to act as a chamber of sober second thought. It would be free to introduce all non-money bills and its approval was required for all legislation. This power was entrenched in the 1867 constitution, which prevented future governments from bullying the Senate into reductions in its role. The Senate in 1981 voluntarily approved a constitutional amendment taking away its power to prevent future constitutional changes including the revision or elimination of the chamber itself. While prime ministerial appointments have undermined the public credibility of the Senate, the Senate continues to make a meaningful contribution to the work of parliament. This is evident in the fact that the House of Commons usually accepts the amendments proposed by the Senate.

Canada currently has no legal restrictions on access to abortion, a situation created when the Senate failed to approve legislation supported by the House of Commons. Similarly, the Senate forced an election to be held on the issue of Free Trade with the United States. It has been suggested that hearings it sponsored on a constitutional accord agreed to by the House of Commons and all provincial premiers played a role in the eventual defeat of the Meech Lake Accord. The Senate can place significant limits on the power of the House of Commons (at least when a different party controls each chamber). The requirement that provinces assent to Senate changes prevents national governments from unilaterally eliminating the chamber and sometimes forces the government to accede to Senate wishes.

The Australian Senate is the most powerful of the upper houses examined, a stature clearly enhanced by its elective nature. Although Canadian senators have indicated an unwillingness to defeat legislation for which the government had obtained public approval (in the sense of winning an election after mentioning the item in the campaign), Australian senators have fewer reservations. The fact that they, like the members of the Lower House, have been elected by the people provides them with a willingness to involve themselves more directly in the amendment and defeat of legislation emanating from the Lower House. Impasses between the upper and lower houses are not invariably resolved in the way the Lower House desires.

The presence of an independent bicameral legislature reduces the autonomy of parliamentary executives and provides them with another hurdle to clear. It may not make for more efficient parliamentary functioning, but it

provides something of a check on executive dominance. Similar checks are not available in systems with a unicameral parliament.

Functions of Parliament

With this short introduction to the legal nature of parliaments in mind we will move on to discussing the functions of Parliaments. There are four basic functions of parliament.

1. To examine the proposal for new laws.

2. To provide, by voting on taxation, the means for carrying out the work of government.

3. To scrutinise government policy and administration, including proposals for expenditure.

4. To debate the major issues of the day.

These legislative functions can be summarised as the provision of legitimacy, legislation, supervision and investigation.

The first function, of providing legitimacy, is easily understood. The presence of an elected legislative assembly that provides formal approval for laws indicates to citizens that they have a role to play in the political system. Citizens can be deemed to consent to laws, to the degree that they participate in the selection of those that formally approve the laws.

Although the legitimisation function is obviously related to legislation, the legislative function transcends legitimisation. It is not simply the formal ratification of legislation, but the opportunity to express views on it in debates and to propose amendments to bills under consideration. Most parliamentary systems provide opportunities of this sort, although as we saw earlier, parliamentarians in France cannot force votes on amendments they support. Parliamentary systems generally distinguish between bills introduced by members of the executive (Government Bills) and those introduced by parliamentarians who are not part of the executive 'backbenchers' (Private Members' Bills). The ability of backbenchers to introduce legislation under the Westminster model is restricted in two ways. First, the amount of time available for the consideration of non-government bills means that the bulk of parliamentary time is devoted to the government's agenda, leaving little time for other issues. There is some variation among parliaments on this dimension with a few devoting more time to private members' bills. For example, the Legislative Assembly of Alberta has passed private members public bills since significant changes in standing orders were made in 1993. Second, the requirement that only members of the executive can introduce legislation that involves the spending of public monies reduces the range of issues that backbenchers can introduce. (The inability of backbenchers to introduce money bills is based on the fact that only the cabinet represents the Crown.)

As part of its legislative function the legislative assembly makes final decisions, disposes of public questions, and passes laws or refuses to pass laws. Nothing becomes law without being endorsed by the legislature. This

does not mean that the legislative assembly draws up bills or formulates them. In most cases the formulation of legislation is carried out elsewhere and then presented to the assembly.

Of more practical relevance than the introduction of legislation by backbenchers that will only rarely be approved, is the supervisory function. There are a number of elements involved in this area. The long tradition of parliamentary authorisation of spending and taxing is of great importance in the role of the assembly. Parliament has the right to both discuss and approve the cabinet's statements of how they will raise revenue and how that revenue will be spent. This function stems from one of the original powers obtained by the British Parliament and called the power of purse. (Many Kings were forced to summon Parliament because they needed money.) Money cannot be raised without the consent of the Commons and governments have no right to raise or spend public money without legislative approval.

Another part of Parliament's supervisory function involves not only the right to debate and make final decision on bills, but also the right to ascertain what people think of a bill, to determine what the government is planning to do with a bill, and to assess its probable and possible impact. To this end, legislative assemblies often hold parliamentary hearings on particular pieces of legislation. At these hearings citizens or interest groups have opportunities to present their views on the legislation and government officials explain the purpose and ramifications of the bill. Generally such hearings are not undertaken by whole legislative assemblies but by smaller 'committees' of the assemblies.

Such committees are composed of smaller groups of members who specialise in certain areas. Committee membership usually replicates that of the body as a whole, as parties are represented in the same proportion on committees as they are in the lower chamber. The influence of these committees is affected by a number of factors including the size of its budget, the availability of research staff, and the ability to summon participants, the permanence of membership, and the selection of the chairperson.

A relatively permanent membership allows parliamentarians to develop a level of expertise in a particular area. The overall size of the parliament is relevant as well. In a small parliament there may be only a handful of members as government backbenchers or in the opposition. They will have a heavy workload and not be able to supervise the executive as well as a larger committee (with a number of specialists serving on it) could. Permanence is also related to the turnover of members in elections. If a large proportion of MPs is defeated in each election, the opportunity to have long serving specialists on a committee is limited. (This may be one of the reasons why a number of governments call for reductions in the size of the legislature. Essentially, fewer members will make the performance of the 'watchdog' function more difficult.) Finally, if the committee can elect its own chairperson, it can choose someone who may be more willing to pursue inquiries that may embarrass the government than would a chair who has been placed in his or her position by the government.

One of the most interesting ways in which parliaments play a supervisory role is in directly questioning cabinet ministers and the prime minister. These opportunities are usually described as question times or question

periods. Question times are generally held every day parliament is in session. This period is one of the few portions of the parliamentary timetable in which the government is forced to respond to questions by other parliamentarians and defend actions they may have taken or not taken. In theory question time is an important event, but in reality it is sometimes more drama than substance. The focus of members opposed to the government is simply to make the government look weak or incompetent, while the ministers who respond may not actually answer the question but give a response that will reflect well on the government. The impact of the televising of parliament, especially the question period, is suggested to have had an impact on the value of this aspect of holding the government to account.

Relations between Legislatures in the Same State

Before we conclude this section a brief commentary on the relationship of parliaments with other legislative assemblies in the same country is necessary. These relationships differ according to the federal nature of the country. Even in countries that are not federal, such as Britain, other legislatures often exist. These can take the form of municipal or city legislatures or of more formal legislatures in a particular region. The British experience demonstrates vividly the subordinate nature of these institutions. Under Margaret Thatcher, the British government eliminated a number of local councils and there was nothing these councils could do to prevent their own demise. Under Tony Blair, the British government has created regional legislatures in Wales and Scotland and created, suspended and reactivated a legislature for Northern Ireland. The authority of such legislatures is limited to the areas that parliament is willing to assign to them and parliament can eliminate them any time it wishes. These legislatures, like city councils, possess only devolved authority from parliament, which means that in the final analysis they have no real independence.

In federal systems the relationship is quite different. Other legislatures at regional levels are mentioned in the constitution and cannot be eliminated by fiat of the national parliament. The regional legislatures possess a fair degree of autonomy and the national parliament cannot review their every action.

Another characteristic of a federal parliamentary regime is the special representation in the national upper chamber. In Australia for instance, the states are all guaranteed equal representation in the Senate and have the ability to express regional views vociferously. In India the state assemblies choose those who will sit in the Upper House and these representatives can influence legislation.

As we noted earlier, the existence of a federal regime limits the authority of the national parliament and places restrictions on the activities of the executive. A non-federal regime allows the national parliament much wider latitude in decision making.

Recommended Reading

Patterson, Samuel C., and Anthony Mughan. *Senates: Bicameralism in the Contemporary World.* Columbus: Ohio State University Press, 1999.

Shell, Donald R. "Second Chambers" in *World Encyclopedia of Parliaments and Legislatures*. George Thomas Kurian (ed). Washington: Congressional Quarterly.

Urquhart, Ian. "Constitutions" in *Critical Concepts: An Introduction to Politics and Government.* Scarborough, ON: Prentice Hall, 1999.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What is the significance of constitutional conventions and written constitutions?

2. What is the role of upper houses in bicameral legislatures?

3. What are the basic functions of legislatures?

4. Describe the relationships between legislatures in a single state.

Internet Resources

Constitutions

The Magna Carta, 1215
   http://wwlia.org/uk-magna.htm
   http://catalog.com/jamesd/magna.htm

The English Bill of Rights, 1689
   http://wwlia.org/uk-billr.htm

Privy Council. Intergovernmental Affairs. "A Constitutional File and the Unity File."
   http://www.pco-bcp.gc.ca/aia/
   default.asp?Language=E&Page=consfile

Matthew Hale: The History of the Common Law of England, 1713
   http://socserv2.socsci.mcmaster.ca/~econ/ugcm/3ll3/hale/common

Nelson Political Science: The Constitution of Canada
   http://polisci.nelson.com/constitution.html

Maton, William F. "Canadian Constitutional Documents: A Legal History"
   http://www.solon.org/Constitutions/Canada/English/index.html

Library of Parliament. Parliamentary Research Branch. "Constitutional Activity from Patriation to Charlottetown (1980-1992)"
   http://www.parl.gc.ca/information/library/PRBpubs/bp406-e.htm

Constitutional Law in Australia
   http://www.constitutional-law.net/australia.html

Constitutional Law in South Africa
   http://www.constitutional-law.net/safrica.html

Web site on constitutions around the world
   http://www.uni-wuerzburg.de/law/index.html

The Human Rights Directory: Commonwealth Constitutions
   http://www.echr.net/const/

Upper Houses

United Kingdom. "An Introduction to Parliament"
   http://www.parliament.uk/parliament/guide/parliamt.htm

The Parliament of Scotland
   http://www.scottish.parliament.uk/

Legislation of Scotland
   http://www.scotland-legislation.hmso.gov.uk/

The National Assembly for Wales
   http://www.wales.gov.uk/

Legislation of Wales
http://www.wales-legislation.hmso.gov.uk/

Northern Ireland Assembly
http://www.ni-assembly.gov.uk/

Legislation of Northern Ireland
http://www.northernireland-legislation.hmso.gov.uk/

The Senate of the Bahamas
http://www.senat.fr/senatsdumonde/english/bahamas.html

Parliament in India: Rajya Sabha
http://alfa.nic.in/

Parliament of Australia: Senate
http://www.aph.gov.au/senate/index.htm

Unit 5
The Executive and Legislative Branches of Government under the Westminster Model

Overview

This unit examines the distribution of powers among the executive, judicial and legislative branches of government. An emphasis is placed on the accountability of the executive to the legislative branch and the role of the opposition. After a brief commentary, attention shifts to the functions of cabinet, which together with the prime minister, forms the executive. Second, it discusses the responsibilities of cabinet ministers. Third, it explains the ways in which the prime minister may dominate the cabinet in parliamentary democracies. Finally, the unit reflects upon the declining powers of legislative assemblies and, whether a better description for parliamentary democracies is 'Cabinet or Prime Ministerial government,' as Ian Stewart has argued (1994: 154).

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the functions of the cabinet.

2. Outline the responsibilities of cabinet ministers.

3. Explain why the executive tends to dominate the parliament.

4. Give reasons why the power of legislatures has declined.

Commentary

Government is often discussed in terms of its three distinct branches: the executive, the legislature and the judiciary. In this unit we will discuss the respective roles of the executive and legislature. We noted in an earlier unit the more political role played by the judiciary when a written constitution exists. In the absence of such a constitution, the role of the judicial branch is limited to the enforcement of laws. Under the Westminster model developed in Britain, the courts lack the power to overturn parliamentary decisions unless parliament has not acted in accordance with other laws that it has passed.

The Functions of the Cabinet

The executive (Prime Minister and Cabinet) is without question the dominant actor in the Westminster model. It is drawn from the legislative assembly and can be understood as a committee of the assembly, but it is unquestionably a committee without peers. The executive, as discussed above, is responsible to the assembly.

The executive performs a number of crucial roles in the parliamentary system. It sets government priorities in that the cabinet decides what problems or issues deserve consideration and the order in which the problems should be dealt with. Cabinet also decides how much in the way of resources can be devoted to a particular problem. Cabinet makes most of the important policy decisions. For example, it is impossible for an ordinary member of parliament to introduce a bill calling for public money to be spent—only members of cabinet can propose spending legislation. As well, in a majority government situation cabinet essentially runs the House of Commons. Members of the house do not normally reject measures the cabinet supports. The bulk of parliamentary time is spent considering cabinet proposals and then ratifying them.

Cabinet takes responsibility for government decisions. This is most appropriate since it, in reality, makes these decisions. Cabinet ministers carry the responsibility for defending and explaining the decisions of the government. Another critical role cabinet performs is the supervision of the bureaucracy. It is essential in a democracy that there be somebody looking over the bureaucracy and under the Westminster model only cabinet has the right to look into everything the bureaucracy is doing.

As we can see, the functions the cabinet performs are very important ones. Thus it is something of a surprise to recall the sparse constitutional status afforded the cabinet in the Westminster model. The cabinet as such has no legal or constitutional status. Basically, the cabinet masquerades as the Privy Council, which has the responsibility of advising the crown. In reality however, just the cabinet that does this as the Privy Council rarely meets. Still, it is necessary to be sworn in as a member of the Privy Council to become a cabinet minister. Privy Councillor is a largely honorific title, carrying with it the designation 'honourable.'

The Responsibilities of Cabinet Ministers

A cabinet system places a variety of demands on ministers. The actions of cabinet ministers are governed by the traditions of parliamentary government in two ways: cabinet solidarity and ministerial responsibility. Ministers are bound by the concept of cabinet solidarity, which means that the decisions cabinet makes are treated as collective decisions from which no deviation is tolerated. A cabinet minister may have opposed a particular measure vociferously when it was before the cabinet for discussion, however, once a decision was reached by the cabinet as a whole, each individual minister is expected to publicly support and defend that position. Ministers who disagree with the decision must either stifle their opposition or resign. There have been very few resignations on principle in recent years. Related to the notion of cabinet solidarity is that of cabinet secrecy. All ministers swear an oath to keep the discussions of what has gone on in cabinet

confidential. The belief is that if there were public disclosures of what goes on in cabinet, the ability to fully discuss and consider all options would be lost. Cabinet ministers cannot, or at least are not supposed to tell their constituents, or disappointed voters, 'look, I fought for your position in cabinet but I lost.' The actual cabinet discussions are shrouded in secrecy, at least for many years.

Ministers are also responsible for what goes on in their departments. Traditionally, this meant that ministers accepted personal responsibility for their departments and if something went wrong in their departments the minister was expected to submit his or her resignation. Such resignations have become rare since ministers can argue, with some justification, that in modern governments, the departments they administer are too large for them to possibly know what is going on. The notion of ministerial responsibility now means basically that ministers will answer for what goes on in their departments, promise to look into the matter, and take steps to prevent misadventures from recurring. This deals something of a blow to the notion that ministers are in charge of their departments.

Prime Ministerial Dominance

The prime minister generally dominates cabinets. In most parliamentary systems the prime minister chooses who will serve in cabinet and the positions they will hold. The prime minister has the concomitant ability to dismiss members of cabinet and to redistribute responsibilities. The prime minister controls the cabinet's agenda. Former British Prime Minister Harold Macmillan once postponed a cabinet attempt to suggest he step down, by stating that such a matter was not on the agenda for that cabinet meeting and would have to be dealt with later. The prime minister's arsenal of power includes a degree of control over the flow of information available to cabinet ministers and the right to determine the order in which cabinet ministers will speak. The prime minister is also accorded the right to sum up cabinet discussions, and in effect, to declare what was decided. Ministers who do not agree with the position have the option of resigning.

The dominance of a prime minister varies from parliament to parliament and is influenced by external factors such as the way in which party leaders are determined. In a system in which this determination rests outside of Parliament the power of the first minister is even greater. It is also influenced by the availability to the prime minister of non-bureaucratic advice. Prime ministers are even more powerful if they have central agencies reporting to them directly. This is not the case in Britain, as Anthony King explains: "It is a comment on the essentially collegial character of government in Britain that PMs so far have not sought as regards staff support, to emulate their opposite numbers even in such similar parliamentary systems as Canada, Australia, Germany and Japan."

It must be noted that the present British Prime Minister has received significant criticism for allegedly creating a Prime Minister's department of personal advisors and for politicizing the civil service.

The Decline of the Power of Legislative Assemblies

One of the clear trends in parliamentary systems is a shift of parliamentary power to the executive. As Ian Stewart notes: "The twentieth century has witnessed a steady decline in the power of most legislative assemblies. Rare indeed is the parliament that regularly has an independent impact on the affairs of the state, on the making of laws or the unmaking of governments" (1994: 154). A more accurate contemporary description of parliamentary government might well be 'Cabinet or Prime Ministerial government.'

Parliamentarians who are not part of the executive retain the right to propose amendments to government bills or to introduce their own private members bills. However, these rights appear more important in theory than they are in practise. Many amendments are offered to government bills but, as Punnett reveals in reference to the British parliament, "The vast majority of changes that are made to Government Bills during their passage through the Commons are a result of amendments proposed by Ministers themselves" (1988: 259). He goes on to note that while Government Bills are almost always approved, the fate of most private members bills is failure leading him to question even the limited amount of parliamentary time given to non-government bills.

Because the role of parliament in making governments is robust, it requires thinking of parliament in a different way. In many contemporary parliamentary regimes the primary role of the elective chamber replicates that of the American Electoral College. In theory the legislature determines who forms the government and of course retains the power of dismissing government. In reality, the House of Commons, and other lower houses, partially serve as an electoral college for the selection of a prime minister. The leader of the party that elected the most people to the Commons almost automatically becomes prime minister and forms a government. To remain in office, the government must enjoy implicit confidence of legislative assembly. As noted above, if the assembly explicitly declares lack of confidence in the government, it must resign. When one party holds a majority of seats in the assembly this ability is largely academic, but in a coalition situation or under a minority government, real power exists. As we will note later, the electoral system can play a dramatic role in creating majority governments.

The legislative branch also plays a role in the selection of its presiding officer. Legislative assemblies are distinct political bodies that are run according to established rules and therefore require someone to enforce and oversee these rules. The assembly chooses who will preside over it and calls this person the Speaker. The Speaker has a variety of responsibilities including scheduling special debates, presiding over debate, recognising speakers (all comments in the parliament are to be directed through the Speaker rather than to other members), protecting the rights of the legislative assembly against executive infringement, deciding procedural questions and ensuring decorum. The position of Speaker emerged in 14th century Britain and became more important in the 17th century. The Speaker was initially responsible for communicating the wishes of the Commons to the Crown, a responsibility that in the early years carried some risk to his person. The Speaker retains a right of access to the Crown.

It is seen as important to keep the selection of Speaker out of the realm of partisan politics. In the British system the election of a new Speaker was usually uncontested and the lone candidate emerged after private interparty discussions. In recent years, however, the contest for the Speakership has become highly competitive, with twelve candidates vying for the position in the 2000 election. Upon election the Speaker is expected to sever his or her partisan ties and is usually not opposed in the next election. Some parliaments, Canada for example, have placed the election of the Speaker firmly in the hands of ordinary members. The Speaker is elected by a secret ballot of the entire house. The secrecy of the ballot is intended to assure the Speaker's independence from the executive as well as the leadership of the various parties.

As we conclude our discussion of the legislative branch it is necessary to devote some attention to the role of the 'Opposition'. The opposition is composed of members of all parliamentary parties other than that of the executive. The opposition is regarded as integral to the system and the leader of the opposition is often accorded a salary equal to that of a cabinet minister. The opposition is not seen as disloyal but rather as a way of strengthening executive accountability to the legislative assembly and indicating to citizens how an alternative government might approach political questions.

The opposition takes the lead in question time and functions as the leading critic of the executive. In some parliaments the opposition is assigned a certain number of days each session during which their proposals take precedence over government business. Opposition tactics include formal motions of non-confidence, work to rule campaigns in which every parliamentary procedure is followed to the fullest extent possible, and filibustering, an activity that involves opposition parliamentarians speaking in the chamber for as long and as often as they are allowed under the rules. Motions of non-confidence are an opportunity to remove the government from office while work to rule campaigns and filibusters are attempts to delay government action and focus public attention on the issue involved.

Nonetheless an overall assessment of the relationship between the executive and the legislative branch must acknowledge the dominance of the executive. As Van Loon and Whittington explain of the parliament in the Canadian context,

> . . . all that it does is to pass on the measures the Cabinet chooses to offer, within the time the Cabinet chooses to allow, to raise and spend the money the Cabinet desires without the opportunity of increasing either revenue or expenditure, to fall in constantly behind the majority, which in turn automatically falls in behind the Cabinet. Responsible government would appear to have suffered a strange and alarming inversion: the Cabinet is no longer responsible to the Commons, the Commons seems instead to have become responsible to the Cabinet (Ward: 365).

Recommended Reading

Birch, Anthony. *Representative and Responsible Government*. Toronto: University of Toronto Press, 1964, 131-165.

Stewart, Ian. "Scaling the Matterhorn: Parliamentary Leadership in Canada," in *Leaders and Leadership in Canada*, Maureen Mancuso, Richard G. Price and Ronald Wagenberg (eds). Toronto: Oxford University Press, 1994.

Weller, Patrick. "Party Rules and the Dismissal of PMs: Comparative Perspectives from Britain, Canada and Australia," *Parliamentary Affairs* 47 (January 1994).

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the functions of the cabinet?

2. What are the responsibilities of cabinet ministers?

3. Why does the executive dominate the parliament?

4. Why has the power of legislatures declined?

Internet Resources

Distribution of Powers

Commonwealth Parliamentary Association. "Role of the Opposition:
   Workshop Report"
   http://www.comparlas.co.uk/opposition/report.htm

Institute for International Economic Studies (IIES). "Separation of Powers
   and Accountability: Towards a Formal Approach to Comparative
   Politics"
   http://www.iies.su.se/ftpserver/sempaper/pdf/tp612a4.pdf

Iowa General Assembly, Legislative Service Bureau. "Legislative Guide to
   Separation of Powers"
   http://www.legis.state.ia.us/Central/LSB/Guides/lgseppwr.htm

"Separation of Powers" (Queensland Parliamentary Association)
   http://www.parliament.qld.gov.au/education/history/separpow.htm

"Separation of Powers" (University of New England)
   http://www.une.edu.au/arts/Politics/separati.htm

"Separation of Powers and Political Accountability" by Torsten Persson,
   Gérard Roland and Guido Tabellini
   http://www.iies.su.se/data/home/perssont/papers/sepabs.htm

South Africa: Separation of Powers (Constitutional Court of SA)
   http://www.polity.org.za/govdocs/constitution/cert.html

Canada. Cooper v. Canada (Human Rights Commission)
   **http://www.lexum.umontreal.ca/csc-scc/en/pub/1996/vol3/
   html/1996scr3_0854.html**

List of Ministerial Responsibilities (UK Cabinet Office)
   http://www.cabinet-office.gov.uk/central/2000/lmr9911frp.pdf
   http://www.cabinet-office.gov.uk/1998/memo/

Government of Jamaica, Cabinet Office
   http://www.cabinet.gov.jm/organization.htm

New Zealand Cabinet Office Manual
   http://www.dpmc.govt.nz/cabinet/manual/contents.html

India. The Executive Branch
   **http://www.britannica.com/eb/
   article?eu=121165&tocid=46432#46432.toc**

"The Separation of Powers: Doctrine and Practice" by Graham Spindler (This article originally appeared in *Legal Date*, March 2000)
http://www.parliament.nsw.gov.au/prod/web/ PHWebContent.nsf/1cb4957331f940abca2568170016396e/ 31aeed1097592aa0ca25693000316ab1?OpenDocument

Parliament of Australia. Senate. "Westminster Democracy and the Separation of Powers: Can They Co-exist?"
http://www.aph.gov.au/senate/pubs/pops/Pop%2026/ Pop%2026%20-%20Chapter%206.pdf

"Shifting Control? Aspects of the Executive-Parliamentary Relationship"
http://www.parliament.uk/commons/lib/research/rp2000/rp00-092.pdf

Parliament of Australia. Parliamentary Library. "Power: Relations between the Parliament and the Executive"
http://www.aph.gov.au/library/pubs/rp/2000-01/01RP14.htm

Unit 6
Privileges and Immunities of Members

Overview

This unit identifies and explains the rights or privileges and the immunities of Members of Parliament, their historical basis, and their limits. As discussed in the previous unit, one of these rights is that of choosing a presiding officer (the Speaker) who could ensure that parliament had a direct right of access to the head of state. This is part of a parliament's right to control its own internal procedures. Procedural rights include the setting of the parliamentary timetable, expelling members from the chamber, expelling and excluding non-members from the parliament buildings, instituting and conducting inquiries, summoning witnesses and documents, and administering oaths. As well, parliaments have the right to publish their own proceedings; materials which, if published elsewhere, might be subject to civil libel laws. Protection does not extend to statements in other publications such as press releases, interviews or communications with constituents.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the basic privileges and immunities of members.

2. Outline the reasons for these privileges and immunities.

3. Explain the limitations on privileges and immunities.

Commentary

Rights and Immunities of Members

The rights and immunities of members have evolved over time. The Bill of Rights in 1689, for example, provided an acceptance from the head of state of the right of parliamentarians to exercise free speech in their debates. This not only frees speakers from potential repercussions from the Crown, but also protects them from civil charges of slander. Nothing said in the House can be used as a basis for legal proceedings, a protection that sometimes allow parliamentarians license to say things about their political opponents they would not dare to repeat outside the chamber. It is not uncommon for parliamentarians (and other actors) who have been the subject of attack on the floor of the legislature to challenge the attacker to repeat the charges

outside of the chamber where civil law can be enforced. The guarantee of free speech is absolute with respect to external consequences. The freedom of speech is deemed critical to guaranteeing full and free debates on the issues of the day.

The House of Commons also possesses the privilege of excluding the head of state from the chamber. The Crown is unable to enter the Lower House in bicameral parliaments. Instead when the Crown wishes to address Parliament, members of the House of Commons move themselves to the upper house.

The right of the Commons to prevent the entry of the Crown dates back to 1642 when Charles I accompanied by armed soldiers entered the Commons and attempted to arrest five members for treason. He demanded that the five members be identified for arrest. The Speaker, protecting these members of parliament, refused to point them out despite the King's demands. Although the Commons attempted to bar the doors of the chamber the King and his officers forced their way in. Parliament subsequently declared that this entrance of the King and the concomitant demands were a breach of parliamentary privileges. These events helped launch the English civil wars, after which the powers of the Crown were further limited (Wilding and Laundry 1961). From this has evolved the tradition of barring the Crown from the Commons chamber. A few years ago Australia opened a new Parliament building and Queen Elizabeth II was invited to officially open the new edifice. The day before the official opening the Queen requested a tour of what would shortly be designated as the Lower House of the Australian parliament. Once that designation was made, the Queen would be unable to enter the chamber. During her reign she had never entered a lower chamber. These events also demonstrate the critical role of the Speaker in upholding the rights and privileges of members of parliament.

Another example of parliamentary privilege for which the Speaker carries responsibilities relates to the institution's right of prior consultation from the executive and its right to determine its own rules of procedure. In other words the Speaker is charged with seeing government does not overstep its bounds. An example from the Canadian parliament may clarify this right. In 1991 the Canadian opposition leader John Turner asked the Speaker to determine whether the government of the day was in contempt of Parliament because it was running television advertisements explaining a new tax before the bill had been presented to the House, let alone voted on.

The Speaker, despite being elected as a candidate for the governing party called the running of such ads "ill conceived and doing a great disservice to the great traditions of this place." He went on to declare that the government was not an executive or administrative democracy and called on ministers in the future to show greater respect for "parliamentary tradition and the absolute and ultimate right of parliament and only parliament to pass laws regarding taxation."

A further example of the protection of the rights of Parliament occurred in 1982. Normal procedure in the Canadian House of Commons provided for a bell to ring to summon members into the Chamber for a vote. Parliamentary tradition dictated that voting did not begin until representatives of the government and Opposition both indicated to the Speaker that they were ready to vote. In this instance the government was presenting a huge piece

of legislation that the Opposition wished to have broken into smaller pieces for more debate and consideration. The government refused, so the Opposition refused to report to the House for the vote. Hence the representative of the Opposition was not present to indicate to the Speaker that they were ready to vote; the bells continued to ring for 15 days and no vote took place. The government urged the Speaker to hold the vote in the absence of the Opposition since this was obviously an attempt at obstruction and an abuse of Commons tradition. The Speaker, who had been appointed by that government, refused to hold the vote, and also refused to intervene in the matter. The point of these examples is to indicate that parliamentarians have rights and that the government cannot unilaterally change the rules of procedure. Parliamentarians must approve changes to parliamentary procedure and governments must respect these traditions.

Another important element with respect to the rights and privileges of members of parliament is immunity from arrest. This right has changed over time. It developed to protect members of parliament from imprisonment arising from debts or civil matters. Such arrests would deprive Parliament of the contributions of some of its members so this immunity was established to protect members from arrest in civil cases for the duration of parliamentary sessions, and for a period of time on either side. It does not now, although it did at points in the past, provide immunity from arrest on criminal matters. Parliamentary immunity also enables parliamentarians to avoid serving on juries or from being required to act as a witness in judicial proceedings. This right however is generally waived in criminal cases.

Members of parliament also have privileges protecting them against external shows of disrespect to a member, or general disrespect to parliament itself. These include a variety of activities including the refusal to obey a summons to parliament, attempts to bribe or intimidate members, and violence or threats of violence against members.

In most Westminster model parliaments the privileges and immunities are based on tradition. However, in others they may be either part of the written law (Australia) or not even part of the written constitution (Canada). A famous 1993 Canadian case *(New Brunswick Broadcasting Co. v. Nova Scotia Speaker of the House of Assembly)* affirmed the constitutional status of the assembly's inherent privileges. The issue in this case was how the media's constitutional right to freedom of expression worked in relation to the right of a parliament to control its internal operations. Essentially, the case involved a television station claiming a right to film legislative proceedings in contravention of the Assembly's rules. The Supreme Court ruled against the television station, in part because other sections of the constitutions gave Canadian parliaments the same rights possessed by the British Parliament. The preamble to the Constitution Act, 1984 states that Canada is to have a constitution similar in principle to that of the United Kingdom. The majority of the Supreme Court held that the inherent privileges of an assembly were "constitutionalized" by the preamble. One limit on the extent of parliamentary privilege set by the Supreme Court is that those privileges must be "necessary to the capacity of the legislature to function." One part of the constitution then could not be used to override another part. In the absence of such constitutionally enshrined parliamentary privileges, it is not clear how the court would have ruled (see Marleau and Montpetit, 2000).

In all parliaments, the rights and immunities of individual parliamentarians and parliament as a collectivity rest on the willingness of the chamber and its speaker to assert these rights.

Recommended Reading

Marleau, Robert and Camille Montpetit. *House of Commons: Procedure and Practice,* 2000, Chapter 3.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the basic privileges and immunities of members?

2. Why have these privileges and immunities been given?

3. Are there limitations on privileges and immunities?

Internet Resources

Parliamentary Privilege

Parliament of Australia. House of Representatives Factsheet No. 5:
"Parliamentary Privilege"
http://www.aph.gov.au/house/info/factsht/fs05.htm

Parliament of Australia. Parliamentary Library Research Paper 1 2000-01:
"Parliamentary Privileges"
http://www.aph.gov.au/library/pubs/rp/2000-01/01RP01.htm

Australia. Legislative Assembly of the Northern Territory: Information Paper
No. 7: "Parliamentary Privilege"
http://www.nt.gov.au/lant/pub/ip7.shtml

Interparliamentary Union (IPU): CANADA: "Status of Parliament Members"
http://www.ipu.org/parline-e/reports/2056.htm

Parliament of Tasmania. Library Fact Sheet No. F3: "Parliamentary Privilege
and Bar of the House"
http://www.parliament.tas.gov.au/TPL/f3.htm

UK Parliament. House of Commons. House of Lords. "Parliamentary
Privilege–First Report"
http://www.parliament.the-stationery-office.co.uk/pa/jt/jtpriv.htm

New Brunswick Broadcasting Co. v. Nova Scotia
**http://www.lexum.umontreal.ca/csc-scc/en/pub/1993/vol1/html/
1993scr1_0319.html**

Parliament of Australia. Senate. "Parliamentary Privilege: The Meaning of
Parliamentary Priviege" Brief No. 11
http://www.aph.gov.au/senate/pubs/briefs/brief11.htm

India. Rajya Sabha. Parliamentary Privileges
http://alfa.nic.in/rs/rajya/19/94/i5/94I50901.htm

House of Representatives Practice, 3rd. ed. "Parliamentary Privilege"
http://www.aph.gov.au/house/pubs/horpract/chap.245.htm

The Selection and Role of the Speaker

Parliamentary Speaker

Parliament of Australia: House of Representatives: Factsheet No. 3
http://www.aph.gov.au/house/info/factsht/fs03.htm

Parliament of Tasmania: Parliamentary Library Fact Sheet No. H4
http://www.parliament.tas.gov.au/tpl/h4.htm

UK Parliament. The Speaker of the Commons
http://www.parliament.uk/parliament/guide/speaker.htm

UK Parliament. House of Commons Information Factsheet M2.
"The Speaker" (November 2000)
http://www.parliament.uk/commons/lib/fs21.pdf

Election of a Commons Speaker (2nd edition)
**http://www.parliament.uk/commons/lib/research/rp2001/
rp01-030.pdf**

The Independence of the Speaker
http://www.aph.gov.au/library/pubs/rn/1997-98/98rn38.htm

Limits to Rights

Parliament of Australia. House of Representatives Factsheet No. 17:
"Protection of Persons Referred to in the House"
http://www.aph.gov.au/house/info/factsht/fs17.htm

Parliament of Australia. Library Research Paper 2 1998-99: "A Code of
Conduct for Parliamentarians"
http://www.aph.gov.au/library/pubs/rp/1998-99/99rp02.htm

UK Parliament: Disciplinary and Penal Powers of the House of Commons
http://www.parliament.uk/commons/lib/fs62.pdf

Unit 7
Roles of Members

Overview

This unit examines the roles of Members inside and outside the legislature in a parliamentary democracy, with a specific focus on the various models of representation. Issues regarding the functions of the executive and the legislature have been discussed previously. Thus, in this section, we will look more specifically at individual members and the kinds of roles they have adopted as parliamentary representatives. In particular, the unit focuses on constituency service, the composition of parliaments and discusses whether the makeup of parliaments reflect society as a whole. The last section examines three conceptions of agency representation: trustee, delegate, and party.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. Explain the role of constituency service.

2. Relate the effect of their electorates on legislators.

3. List the different types of agency representation.

4. Discuss how parties may affect role performance.

Commentary

Constituency Service

One of the most important roles of members of parliaments involves constituency service. In our earlier discussion of the functions of the legislative assembly we examined it as a collective body and implicit in that examination was the understanding that individual members may not participate in all aspects of the legislative process. For example, not all members can be on every committee, participate in every debate and pose questions in each question time. The basic functions of the assembly are carried out by a smaller number of leading parliamentarians. However, each individual member does play a role in constituency service if elected on a constituency basis.

For many legislators this is the most rewarding part of their work as it is an aspect through which they can see concrete results. It is also an aspect of the

job that takes an ever-increasing amount of their time. In this role, members serve as a kind of ombudsman for their constituents. Citizens who have difficulties with government or bureaucracy often contact their MPs for assistance with their problems. These problems may include issues such as the immigration of a relative, welfare or employment benefit or pension entitlement.

MPs often receive and deal with problems of this sort. In Britain such activities are referred to as 'surgery' while in some other countries it is described as 'case work.' The effective performance of this role contributes directly to the legitimacy of the political system by providing examples of elected officials working directly on behalf of constituents. It may also enhance the chances members have for re-election as even unknown backbenchers can develop reputations as good 'constituency people.' Legislators often enjoy this role as it provides them with an opportunity to make a positive contribution, accomplish something and serve their constituents. Unfortunately, the other portions of the job do not always provide such tangible rewards.

Other aspects of representation are more controversial; how, for instance, can one person represent another? There are a number of answers to this: they can in some way resemble the person being represented, they can act on behalf of those they represent, in the same way a lawyer would, or they can do precisely what those they represent would do if they themselves were present. Representation means making present in some sense, something that is not in fact present. In theory, parliamentary representatives make society at large present in the parliamentary chamber. Jean Jacques Rousseau provided an early example of the controversy regarding representation by asking if representation could ever truly take place and whether representation eliminates freedom. His answer was clear and related specifically to the Westminster model. In his words "The English Nation deceives itself when it imagines itself free, it is so in fact, only during the election of members of Parliament; for as soon as a new one is elected, it is again in chains and counts for nothing." From this viewpoint, voters are electing governors rather than representatives.

Who Are the Representatives?

One way in which representation rarely takes place in parliament is in relation to descriptive representation or microcosmic representation. This concept holds that parliament should be a sort of miniature replica of society, a mirror image, if you will. Elected parliamentarians should reflect societal characteristics in terms of race, religion, language, gender, class, or occupation. This approach focuses on the overall composition of the parliament and not on individual members. It answers the question of what the representatives must be like to represent society by concluding that they must closely reflect society.

In practice those who sit in legislatures do not provide such representation. Representatives are not fully representative of their society with respect to (among other things) education, occupation, and gender. The vast majority of parliamentarians are well educated, middle class males from professional occupations. As Zimmerman and Rule point out "A prominent characteristic of most parliaments and legislatures throughout the world is the gross

under- representation of women and minority groups" (1998: 872). Moreover, as Copeland and Patterson explain, "The pattern of representation for workers, less educated citizens and those with generally lower status is very similar to the pattern described for women... It is well known that individuals in the professional, managerial, white-collar and business occupations account for the vast majority of the members of parliaments" (1998: xxiii).

Some scholars have questioned whether the apparent elite bias to representation is negative or positive. More than a century ago Walter Bagehot lamented the 1867 Reform Act indicating that the newly enfranchised voters were incapable of thoughtfully reflecting on public issues. From this perspective a chamber whose members are better trained and more highly educated is a positive feature. On the other hand one could ask whether a chamber dominated by people incapable of experiencing childbirth or never having experienced poverty is capable of making informed decisions on these sorts of issues. Who is in the chamber may make a difference in how the chamber operates and what the chamber does.

Agency Representation

The other major approach to representation focuses on the representative acting as the 'agent' for the represented. There are three distinct conceptions surrounding this sort of 'agency' representation.

Representatives may act on behalf of those they represent as a 'trustee'. In this role representatives see themselves as elected to exercise their own judgement on behalf of those they represent. They act, as would a lawyer on behalf of a client. Such members rely on their own personal judgement about what should be done and the role of those represented is restricted to determining whether to elect or re-elect.

A Member of Parliament thus maintains his or her independence in the exercise of what they see as their best judgement. The 19th century British philosopher and parliamentarian Edmund Burke provides the classic defence of this role. As Burke put it: "Your representative owes you, not his industry only, but his judgement, and he betrays instead of serving you if he sacrifices it to your judgement." A trustee considers an issue and, after hearing all sides of the debate, exercises his or her own judgement in making decisions about what should be done.

In stark contrast to the trustee role is that of representatives who see themselves as a 'delegate'. Delegates are representatives who subordinate their own views to those of their constituents. They act on the belief that they have been elected because of what they said they would do and as a representative they must act on that support or act as if they have a full set of instructions from those who elected them. In essence they try to determine what their constituents want done, and do it. They act according to the judgement of their constituents, not on the basis of their personal views. It is useful to think of these representatives as realtors, who may provide advice to their clients, but in the end accept and act on their clients' desires.

The trustee and delegate roles assume a legislative role that may be somewhat misleading. These roles assume that representatives are chosen on their own merits and free to vote as they wish in parliament. This accords rather poorly with the decline of parliament thesis discussed earlier.

Most parliamentarians today represent parties as much as they do their constituents. In this role the parliamentarian acts and votes as a loyal member of a party. They take and follow the instructions of the party and its leadership. They do not take independent stands either on the basis of their own opinions or according to the wishes of their constituents. As Saalfeld notes "party is the single most important factor influencing voting patterns in any parliamentary system" (1998: 795). There is much justification for this role after all; elections are contested and organised around parties and leaders. The effective functioning of parliament makes it necessary for those who form the government to do what is needed and have stability in the operation of Parliament. Parliament operates on the principle of majority rule and in order for legislation to pass, and for a government to remain in office, it must have the support of 50 per cent + 1 of the legislators. Representatives who are acting as delegates or trustees do not provide this sort of stability. Moreover, it is often the case that members are elected more because of their party or party leader than as a result of their own qualifications or attractiveness to voters. Acting on an independent basis thus partially distorts the existing political reality.

Despite this, citizens in many countries have expressed dissatisfaction with this form of representation and a desire for more independent actions on the part of their representatives. Unfortunately for members, who try to act in this way, the constituents may have short memories and fail to reward such actions at the ballot box. In 1990 Alex Kindy, a Conservative member of the Canadian House of Commons, voted against a controversial tax his party sponsored. He was expelled from the Conservative Party but it was clear that the vast majority of his constituents supported his actions. Nonetheless, in the next general election Mr. Kindy was decisively defeated.
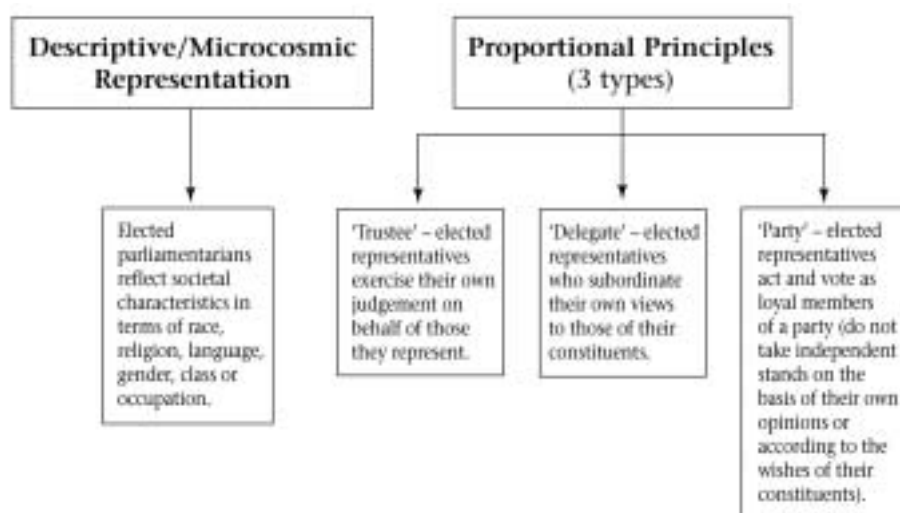
Figure 7.1 Two Major Approaches to Representation

Issues of representation are controversial for members of parliament. Although they may wish to act independently, although their constituents may wish them to act independently, independent action can carry consequences which may benefit neither the system nor the member who does so. This is in large part due to the domination of parliamentary systems by parties.

Recommended Reading

Pitkin, Hanna. *The Concept of Representation*. Berkeley: University of California Press, 1967, 112-144.

Zimmerman, Joseph and Wilma Rule. "Women and Minorities in Parliaments and Legislatures" in *World Encyclopedia of Parliaments and Legislatures*.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What is the role of constituency service?

2. To what degree do legislators resemble their electorates?

3. What are the different types of agency representation?

4. How do parties affect role performance?

Internet Resources

Roles of Members

Parliament of Australia. House of Representatives Factsheet No. 4: Committees
http://www.aph.gov.au/house/info/factsht/fs04.htm

Parliament of Australia. House of Representatives Factsheet No. 6: Opportunities for Private Members
http://www.aph.gov.au/house/info/factsht/fs06.htm

Parliament of Australia. House of Representatives Factsheet No. 7: Making Laws
http://www.aph.gov.au/house/info/factsht/fs07.htm

Parliament of Australia. House of Representatives Factsheet No. 15: The Work of a Member of Parliament
http://www.aph.gov.au/house/info/factsht/fs15.htm

Parliament of Australia. Library Research Note 50 1995-96: Parliamentarians, Outside Employment and Outside Income
http://www.aph.gov.au/library/pubs/rn/1995-96/96rn50.htm

Library of Parliament. Parliamentary Research Branch. "Members of the House of Commons: Their Role"
http://www.parl.gc.ca/information/library/PRBpubs/bp56-e.htm

Parliament of Western Australia. Commission on Government. Elected Officials
http://www.wa.gov.au/cog/html/Report3/report3/c7s1.html

UNDP. Parliamentary Strengthening Reference Manual. "Internal Organization of the Legislative Branch" (February 2000)
http://magnet.undp.org/docs/parliaments/notes/ Organization%20of%20Legislatures%20.htm

UNDP. Parliamentary Strengthening Reference Manual. "The Legislature and Constituency Relations" (February 2000)
http://magnet.undp.org/docs/parliaments/notes/ Constituency%20Relations%205%20.htm

Unit 8
Role of Political Parties

Overview

This unit examines a number of key issues in relation to political parties: first, it looks at the role of leaders and leadership; second, it examines the notion of party discipline; and, third, it explores the relationship of parties to legislative leadership, in particular, House Leaders and Party Whips. Political parties play an important role in democratic systems because they provide the structures that select the individuals who hold institutional positions at the apex of authority in the various governments. When we look at parties we are also looking at organisations whose leaders are likely to lead governments. Political parties are particularly important in parliamentary systems because they structure the government and the opposition. Benjamin Disraeli, a former British prime minister, suggested that "without parties parliamentary government is impossible."

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. Describe the roles played by political parties in selecting prime ministers and parliamentary candidates.

2. Outline how party discipline affects the operation of parliaments.

3. Explain why the prime minister is the dominant parliamentary actor.

Commentary

Parties go beyond the simple organisation of parliamentary government. Party mechanisms determine who can serve as candidates and who will be the competitors for the position of prime minister. In virtually every parliamentary system, parliamentarians who do not represent a party play very limited roles. Parties thus provide the pool from which voters can draw their representatives and leaders.

The way in which parties choose their candidates and leaders affects the way these people function. The importance of these party selections was highlighted by an American politician (Boss Tweed) who stated "I don't care who does the electing so long as I can do the nominating." Although the specific rules for choosing candidates and leaders vary extensively, they can

be captured under a few wide categories. We will look briefly at some of the basic methods for selecting leaders and candidates.

Candidates

Parliamentary candidates are often chosen by a vote open to all party members in the constituency. The central offices of a party or the leader may have some authority to reject the selected aspirant, but such rejections are generally rare. Canada provides a good example of this sort of candidate selection. A more restricted form of candidate selection leaves the real choice of candidates in the hands of a specific party committee (be it national or in a particular constituency). Examples of this can be found in countries such as Ireland, Germany and Australia.

Leaders

The selection of candidates virtually always involves party members who are not elected parliamentarians. This is not always the case with leadership selection. Some parties restrict the choice of leaders to elected parliamentarians. In some cases the elected members have the sole discretion in choosing the leader while in others they have a disproportionate voice. Placing such power in the hands of the caucus weakens the authority of the leader in that it allows for the caucus to depose leaders when they wish. In recent years, sitting prime ministers, such as Margaret Thatcher in Britain and Robert Hawke in Australia have been overthrown by their caucus in spite of electoral success.

The dismissal of Margaret Thatcher as Tory leader was marked by some discussion of the propriety of the Conservative Party's dismissing a leader who had been elected PM by the votes of millions of British voters. The Tories were able to overcome any feelings they might have had that this was improper. They were able to do this in part because the Leader was unable to claim any special mandate from the party. That is, Thatcher owed her position as Tory leader to the fact that Tory MPs had chosen her for that position. What the Tory caucus could give, the Tory caucus could take away.

Caucus selection, and the potential threat of de-selection, obviously weaken the authority of party leaders. The Labour leader in the United Kingdom is in a somewhat stronger position as he or she can claim a special partisan mandate. Leaders are chosen through a complicated electoral college in which elected members of the party exercise only a minority influence on the selection. As leaders do not owe their position to their elected colleagues, the caucus cannot take away what it did not give.

The role of elected party officials in choosing the leader has serious implications for leadership tenure. For instance of the 18 British prime ministers in the 20th century, seven were basically forced to resign because they had lost the support of their parliamentary followers. This would be unthinkable in systems where parliamentarians do not dominate the leadership selection process.

Most parties do not use such a simple mechanism and have devolved leadership choice to some sort of party assembly. Such an assembly brings

together party activists with parliamentarians in a setting in which the activists constitute a clear majority. The leader can be elected with very little parliamentary support (in Canada in 1976 Joe Clark was elected leader with the initial support of only three MPs) and cannot be deposed by his or her parliamentary colleagues. Former Canadian Liberal leader John Turner was asked by a majority of his caucus to resign before the 1988 election. Turner simply ignored the request and carried on. Under this method the leader possesses a clear independence from other parliamentarians and is in a much greater position of dominance. Parties not only create the short-lists from which parliamentarians and prime ministers are drawn; they also organise the operation of Parliament.

Party Discipline

Party discipline is the basic operating principle of elective parliamentary chambers. This discipline allows the legislature to operate effectively, ensures stability of government and eliminates suspense from parliamentary votes. Once you know how many members each party has and what each party's position is on an issue, you can accurately predict the outcome of almost every vote.

Party discipline ensures that individual members behave and vote as part of a group rather than as individuals. As the word discipline implies, those who do not vote with their party risk punishment. As Punnett explains in reference to Britain, "MPs are, of course, limited in their freedom by their ties with their parliamentary party and have to bear the consequences of any action that offends this body" (1988: 280). These consequences vary considerably. They could involve mild rebuke, reduced chances of promotion within party ranks or indeed demotion, and at the most extreme, expulsion from the party. Under the interim South African constitution the importance of party membership was such that members who ceased to be a member of the party for which they were elected had to vacate their seats. Consequently, the vast majority of time, the vast majority of members vote the party line, advance party positions in debate, and are circumspect in their criticism of party policy and leadership.

Party discipline is not always enforced by punishment; patronage and persuasion are also used to convince parliamentarians to support their party. Nonetheless, the usual toeing of the party line by elected parliamentarians has led some to deride MPs as 'trained seals'. On some occasions members who cannot agree with their party's policies simply decide to change parties, a decision which further indicates the limited role available for independent members of parliament.

Many parliamentarians reject the charge that they do not voice their opinions or vote according to their consciences. However, party discipline is underpinned by the notion of 'caucus', the term given to meetings of elected members. At these meetings, which are conducted without outsiders and media coverage, polices are discussed and bills announced and discussed. For parties forming the government, these discussions supposedly inform the decision making on the part of the cabinet. Cabinet ministers either attend these meetings personally or receive reports of the discussion. Free debate and discussion in caucus meetings allows members who vote the party line

to feel that they have nonetheless had the opportunity of expressing their views on the issues of the day.

At times party members may break with the party line in a parliamentary vote. The British parliament quite often sees party discipline violated by MPs abstaining or even voting against their own party in the Commons. It is by no means rare for over 20 backbencher MPs to abstain in a vote as a means of expressing dissatisfaction. Prime Ministers however take these defections seriously. One example occurred in February 1967 when 63 Labour MPs abstained from voting on an important defence bill. It became famous because of how the Labour Prime Minister of the day, Harold Wilson, responded in caucus.

> All I can say is 'watch it'. Every dog is allowed one bite, but a different view is taken of a dog that goes on biting all the time. If there are doubts that the dog is biting not because of the dictates of conscience but because he is considered vicious, then things happen to the dog. He may not get his license renewed when it falls due.

One of the other weapons in the hands of prime ministers is the power of dissolution, the right to advise the Crown to call an election. Elections always involve the potential loss of a position and MPs do not want to see elections held when their party is in turmoil. The threat of dissolution is more serious in some countries than in others. For instance in Britain, the overwhelming majority of seats are considered as safe for the two major parties. Almost 85 per cent of British MPs are re-elected in each election and few backbenchers can be forced into line with threats of dissolution. By contrast in Canada, there is close to a 40 per cent turnover of seats in an election, and each candidate (including the sitting MPs) are required to have their nomination papers signed by the party leader. Canadian party leaders then have a much stronger ability to enforce party discipline. Party discipline is often viewed negatively by citizens, but it should be kept in mind that parties structure elections as much as they structure parliament. As Dearlove and Saunders note, it was common in Britain to assume that

> MPs are in the House of Commons because they stood in the name of a party; they owe the party everything; and so they are best seen as collectively responsible to the electorate as part of their party team in a way which should preclude their exercising individual judgements and voting according to their own views on a policy (1991: 53).

The importance of parties in elections can be seen in a number of ways. In election campaigns the focus is often on party leaders rather than local candidates. Policy manifestos are generally issued in the name of a party and voters often do not know the views of individual candidates. Parties conduct extensive media and advertising campaigns that would be beyond the reach of most independent candidates. Parties help candidates campaign more effectively, sponsor candidate information clinics, and by the inclusion of a party name on the ballot simplify the voting choice for citizens by not requiring them to collect extensive information about each individual candidate. The role of parties is clearly important.

Parties and Legislative Leadership

After an election parties carry a responsibility for the structure of the legislature. Members of Parliament virtually always sit in party groups rather than mixed in with other members. Parties, through their leadership, are

responsible for deciding which issues require more time for debate, who will participate in the debate, who will ask questions during question time and who will serve on which committees.

Key party officials basically negotiate these activities. As we have seen, parties determine leaders and candidates, but they also put in place the officials who make the legislature function. Two such examples are House Leaders and Whips. House Leaders are the officials with the direct responsibility for organizing the parliamentary timetable. In this capacity, determinations are made about the time devoted to various issues. More importantly, these decisions require a good deal of interaction among the various parties represented in the legislature so that the two basic needs of the legislature can be met. The basic need of the government is to have its legislation discussed and voted on as expeditiously as possible while for the opposition, the need is to ensure that they will have the opportunity to make the points they wish in debate, and focus public attention on issues deemed important. Agreements on the composition of committees are also negotiated among house leaders.

Party whips have a number of responsibilities. These include ensuring that a sufficient number of members are in the house to constitute a quorum and in the case of the government whip, making sure that enough members are available to prevent the government from losing a parliamentary vote. The whips must also make the party position on items under discussion clear to party members, approve absences and serve as an early warning indicator as to the possibility of vote defections. In short, these jobs involve managing the party participation in parliament and serving as a conduit of information between ordinary members and the party leadership (Walkland, 1979: 11).

Although Disraeli's comments about the impossibility of parliamentary government without parties are somewhat overstated, it is now certainly the case that, for most citizens, not only is parliament inconceivable without parties, but so are elections. Parliament and elections are too important to be left to individuals.

Recommended Reading

Saalfeld, Thomas. "Legislative Voting Behaviour" in *World Encyclopedia of Parliaments and Legislatures*.

Stewart, David. "The Evolving Leadership Electorate" in *Canadian Journal of Political Science* 1997.

Thomas, Paul. "Caucus and Representation in Canada." *Parliamentary Perspectives* 1 (May 1998).

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What roles are played by political parties in selecting prime ministers and parliamentary candidates?

2. How does party discipline affect the operation of parliaments?

3. Why is the prime minister the dominant parliamentary actor?

Internet Resources

Role of Political Parties

Center for the Study of Democracy, UC Irvine: "Do Parties Matter?"
http://www.democ.uci.edu/democ/papers/sinclair.htm

Center for the Study of Democracy, UC Irvine: "Women's Representation in
Parliament: The Role of Political Parties"
http://www.democ.uci.edu/democ/papers/caul.htm

United States. Dept. of State International Information Programs: "United
States Political Parties"
http://usinfo.state.gov/usa/infousa/politics/govworks/na24.htm

United States. Dept. of State International Information Programs: "Political
Parties Play Vital Role in Democratic Societies"
http://usinfo.state.gov/usa/infousa/politics/govworks/na31.htm

UNDP. Parliamentary Strengthening Reference Manual. "Political Parties in
the Legislature"
http://magnet.undp.org/docs/parliaments/partysystem1.htm

Political Parties Around the World
http://polisci.nelson.com/introparty.html

Unit 9
Role of the Electoral Process

Overview

This unit examines the role of the electoral process in the development and maintenance of the parliamentary democratic model. The crucial difference between democratic and non-democratic states is the kind of election they hold. In liberal democracies, elections go beyond simple voting—they reflect popular sovereignty, the notion that political power ultimately derives from the people, that public participation is essential in choosing governments and that elections provide a direct link between rulers and the ruled. This unit discusses the components of free and fair elections in a parliamentary democracy, followed by a discussion of electoral boundaries as they relate to fair elections and effective representation of constituents.

Learning Objectives

After you have completed this unit you should be able to achieve the following objectives.

1. List what constitutes a 'democratic' election.

2. Outline the functions of elections.

3. Explain what is meant by 'representation by population.'

Commentary

The electoral process lies at the heart of democratic government. It provides the institutional means of changing rulers without bloodshed. Elections, if they are competitive, provide the basis of democratic legitimacy. They provide opportunities for voters to participate in choosing leaders, and they confer an obligation on citizens to obey the laws approved by those they select. Citizens, it is believed, may be presumed to consent to laws to the extent that they have participated in choosing their leaders. Free and fair elections make representative government possible.

As we saw earlier, the Westminster model of parliamentary democracy did not always involve free and fair elections, as until 1832 less than 5 per cent of the adult male population was eligible to vote. Two former clerks of legislatures in Rhodesia and Nyasaland authored one of the most valuable reference books on Parliament, *An Encyclopaedia of Parliament*. Given the denial of full voting rights to the majority African population in those

former British colonies, one could not possibly describe them as democracies, but their legislatures could be described as parliaments.

Free and Fair Elections

A number of features must be present to ensure free and fair elections and the existence of democracy. In democracies, elections must be competitive. Elections ensure that those who seek to direct public affairs defend their records and convince voters that the policies they propose are feasible, desirable and best carried out by them. Their opponents try to show that these same policies are ill conceived and their proponents are unable to manage government, while they themselves are competent. Having some meaningful choice between candidates and parties and policies legitimises the activities of government.

The following features mark democratic elections.

1. Universal adult suffrage.

2. Regular elections, limited tenure.

3. Freedom to form parties and contest elections.

4. All legislative seats can be contested.

5. Fair campaigns, no legal or violent impediments.

6. Secret and free balloting.

7. Votes counted and reported fairly.

In democratic elections, the government stands a chance of being replaced through the ballot box and the results are not predetermined. The results of the election will influence the composition of the next government and a clear choice exists between parties.

Elections decide who will govern and provide representation. In parliamentary systems this is more of an indirect effect as the election has no direct say in the composition of the executive, and no say at all in terms of the civil service. Elections determine only the members of the legislative assembly; they only fill legislative seats. At times the formation of the government results from bargaining among the parties with members elected to the legislature. The elections simply set the parameters within which the parties negotiate. Moreover, the formation of government need not be related to the election. In parliamentary systems it is possible for governments to change hands without an intervening election.

Elections give the political system legitimacy. They provide those elected with the expectation that their decisions will be obeyed. The electoral process also influences the structure of the party system. It determines which parties will have representation in the legislative assembly and how much representation each will have. Elections send messages to political parties indicating whether changes in policy, leadership or strategy are required. Governments returned with weaker numbers may be sufficiently chastened to change any of the

above, as may opposition parties. A strong showing by a third party may have an impact on other parties even if power is never achieved.

The electoral process helps keep governments accountable because elections can force a change in government. At the very least an election is a retrospective judgement on the incumbent government, a post mortem if you will. Governments know that they will eventually have to face the electorate to defend or justify their performance.

The holding of elections has an indirect policy impact as well. The knowledge that government must answer in the future and that they desire re-election supposedly leads them to rule responsively. Elections then can constrain policy choices. There is some notion that elections provide mandates. Really, the basic mandate provided by an election is simply the mandate to govern (legitimacy) rather than to implement proposals. Elections may have implications for public policy, but they are not referendums on policy issues and the only policy mandates they provide are murky at best.

There are a number of important factors relating to the democratic nature of parliaments and the electoral process that will be explored in more detail below. These are the duration of parliaments, the question of equal voting rights and the drawing of constituency boundaries.

The amount of time that can pass before another election is held is critical to an assessment of the electoral process. As we know, the existence of a parliamentary system prevents the establishment of a minimum period between elections. A minimum time period or fixed election dates are incompatible with parliamentary government, because the defeat of the government on an issue of confidence requires either a new government or a new election. In Britain the maximum parliamentary length has changed over time. Initially, there were no limits to the duration, between 1695 and 1716 the limit was three years, from 1716 to 1911 it was seven years, and since then it has been five years. Extending the amount of time between elections remains completely in the control of Parliament. In a number of regimes the maximum length is entrenched in a constitution and for most parliaments the length is three to five years. On average, elections are held every four years.

Electoral Boundaries

A fair electoral process requires that the size of constituencies be reasonably equal. Democracies are based on the notion of universal adult suffrage. This should not merely imply voting rights but include an acceptance of representation by population or an equality of voting power. This can be difficult to achieve. In Britain the apportionment of parliamentary seats has been devolved to four boundary commissions. The average size of constituencies is around 65,000 voters. An act of parliament requires that the boundaries be re-examined every ten to fifteen years but there is no requirement that constituencies be of equal size. In 1944 a maximum deviation from the average of 25 per cent was permitted, but this was soon withdrawn as impractical.

The boundary commissions are charged with keeping discrepancies in size relatively small while respecting issues of administrative convenience, local

government boundaries, and regional factors. Despite the historical problem of rotten boroughs, concerns in Britain about the inequality of constituency sizes and the inequality in voting power that accompanies it have not been vociferous. In part this stems from the British notion that MPs represent the nation as much as they represent a particular constituency. Such concerns may also be reduced by the inability of courts to pass judgements on deviations. Where courts have that power the application of maximum allowable deviations have taken root. In Canada, for instance, the Supreme Court has made clear that constituency sizes must not vary beyond a certain point since citizens have a Charter right to "effective representation" and should not have the force of their vote "unduly diluted."

Equal apportionment is only one of the factors caught up in the maintenance of a free and fair electoral process. It is also important that boundaries not be drawn in a way that favours one party or interest over another. The drawing of boundaries in such a fashion has been called 'gerrymandering'. Gerrymandering refers to the drawing of boundaries in ways that create a partisan advantage. The term is derived from the activities of a former Massachusetts governor named Gerry who, in order to enhance the possibility of a favourable electoral outcome, approved a set of boundaries that resembled a salamander. A fair electoral process then must go beyond representation by population and focus on boundary drawing.

The drawing of constituency boundaries and the apportionment of seats vary widely by country. In some cases there are commissions that make recommendations to parliament, in others parliament has devolved the authority to make decisions on these matters to a commission and defers to their judgement. In other cases parliament looks after these matters itself, but given the nature of the partisan interests involved, the full devolution of these matters to independent commissions is desirable. Ideally, the selection of commissioners should not be in the hands of the government, but divided among the most relevant political actors, or given to non-political actors.

The actual number of parliamentary seats is of more than mathematical significance. Constituents must have reasonable access to their representative and representatives must not have caseloads that are unmanageable. Moreover, the size of the legislature has an effect on the way it functions. Party discipline may be somewhat harder to enforce in larger legislatures (other factors also play a role) and it is impossible to have either an effective opposition or committee system when there are only a handful of eligible participants. The April 2000 election in the Canadian province of Prince Edward Island resulted in the election of 27 members, only one of whom did not represent the governing party. An effective committee process is not likely to work in a legislative assembly of this size. Another result of such small assembly may be the election of a government whose cabinet ministers outnumber 'government' backbenchers in caucus. This also reduces the effectiveness of the committee system to say nothing of the inability of caucus to serve as a check on the executive.

The way in which votes are translated into seats is a key component of the electoral process that will be addressed in the next unit.

Recommended Reading

Carty, R.K. "The Electoral Boundary Revolution" *American Review of Canadian Studies. Reforming Electoral Democracy* (Volume 1). Report of the Royal Commission on Electoral Reform and Party Financing. Ottawa: Minister of Supply and Services, 1991, 1-36.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What constitutes a 'democratic' election?

2. What are the functions of elections?

3. What is meant by 'representation by population'?

Internet Resources

Role of Electoral Process

Australia: Australian Electoral Commission
    http://www.aec.gov.au/

Canada. Elections Canada
    http://www.elections.ca/content.asp?section=
    gen&document=index&dir=bkg&lang=e&textonly=false

Democracy Design Forum. A Review of Consensual Electoral Systems
    http://www.democdesignforum.demon.co.uk/ConsensualESs.html

Democracy Design Forum. Two Electoral Systems for Westminster
    http://www.democdesignforum.demon.co.uk/TwoESsWestm.html

Electoral Systems/Sistemas Electorales (Political Database of the Americas)
    http://www.georgetown.edu/LatAmerPolitical/Elecdata/elecdata.html

Elections Around the World
    http://www.agora.stm.it/elections/home.htm

IDEA: International Institute for Democracy and Electoral Assistance
    http://www.idea.int/
    http://www.aceproject.org/main/english/pc/pcb/default.htm

Elections Commission of India. Elections India
    http://www.eci.gov.in

Latin America and the Caribbean "Calendar of Elections/Calendario de Elecciones"
    http://www.georgetown.edu/LatAmerPolitical/Elecdata/elecalen.html

New Zealand. Elections New Zealand
    http://www.elections.govt.nz/elections/index.html

South Africa. Elections
    http://www.gov.za/elections/

United Kingdom. British Politics Page-Elections
    http://www.club.demon.co.uk/Politics/elect.html

World Policy Institute. "Democracy: Electoral Systems"
    http://worldpolicy.org/americas/democracy/democracy.html

"Ballots not bullets: Testing the Consociational theories of ethnic conflict, electoral systems and democratization"
    http://ksghome.harvard.edu/~.pnorris.shorenstein.ksg/acrobat/
    bullets.pdf

Unit 10
Electoral Systems

Overview

This unit discusses the main alternative electoral/representative models (first past the post, proportional representation, preferential vote, and the like) and their implications for the parliamentary democratic process. In addition to a commentary, this unit provides an analysis of the most significant electoral systems used in parliamentary democracies. First, the unit discusses two forms of electoral systems (majoritarian and proportional). Second, it examines six types of electoral sub-systems that are subsumed under the majoritarian or proportional systems.

Learning Objectives

1. Explain how electoral systems can structure the composition of governments and legislatures.

2. Consider the differences between majoritarian and proportional systems.

3. Discuss how a number of different electoral systems work in practice.

Commentary

For many students of voting and elections the critical variable is the manner in which votes are translated into seats. This has major ramifications for the structure of both the political system and the party system as electoral arrangements can have both long and short term effects on electoral and party behaviour. The electoral system conditions the number of parties and the continuity of government. It can determine whether governments will be single party majorities or minorities, or whether a coalition government will be put in place. The choice of an electoral system can also affect the internal cohesion and discipline of parties.

An interesting illustration of the role of the electoral system can be seen by contrasting the roles played in national politics by the German Free Democrats (FDP) and the British Liberal Democrats (known in the past as both the Liberals and the Alliance). The FDP have long played a significant political role in German politics, having been decisive in determining the composition of all but two of the post-war German governments. During the same time period the British Liberal Democrats and their predecessors have never participated in government. From this information one might assume that the Free Democrats receive much higher support from the voters than

the Liberal Democrats do and their more significant role is based on that. Such an assumption would be in error: both parties receive roughly the same level of support; in actuality British Liberal Democrats have an average vote share that is higher than that of the FDP. The differences do not lie in popular support but rather with the systems for translating votes into seats.

Majoritarian or Proportional?

There are basically two forms of electoral systems, one based on majoritarian principles and another based on proportional principles. We will look at examples of each system in practise. There is an extensive debate as to which is superior. Historically, majoritarian systems have been favoured because they have been associated with two-party systems, stable majority governments, and centrist parties. In contrast, proportional systems have at times been criticised as the Trojan Horse of Democracy because of their association with multi-party systems, cabinet coalitions and government instability. Critics deplore a system that exaggerates the influence of small parties and allows extreme parties to secure representation and point in particular to the Weimar republic in Germany that culminated in the Nazi acquisition of power.

The Proportional–Majoritarian debate deals with questions such as wasted votes and whether all votes count. It deals with issues such as minority representation and splinter parties. It reflects on the accuracy of representational outcomes and finally on the comparative advantages of stable one-party majorities and coalition governments.

The reality is that proportional systems are hardly a Trojan Horse in that many democratic systems use proportional rather than majoritarian arrangements. The balance of contemporary opinion favours proportional systems that engender legislative representation that more closely mirrors voting and reduces what are termed wasted votes.

Electoral Systems in Action

We will look at six different electoral systems that have been used in parliamentary systems. Each is a variant of either the majoritarian or proportional type. (See Figure 10.1)
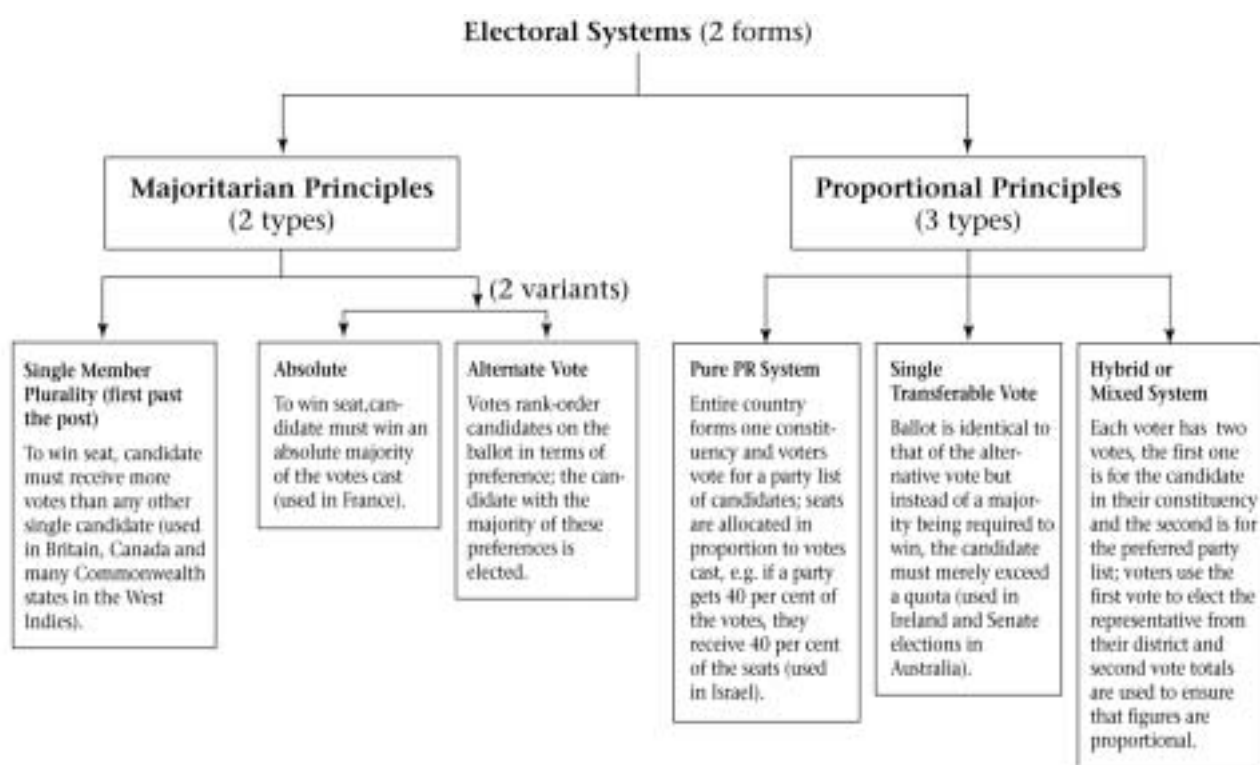
Electoral Systems (2 forms)

Majoritarian Principles (2 types)

(2 variants)

Proportional Principles (3 types)

Single Member Plurality (first past the post)

To win seat, candidate must receive more votes than any other single candidate (used in Britain, Canada and many Commonwealth states in the West Indies).

Absolute

To win seat, candidate must win an absolute majority of the votes cast (used in France).

Alternate Vote

Votes rank-order candidates on the ballot in terms of preference; the candidate with the majority of these preferences is elected.

Pure PR System

Entire country forms one constituency and voters vote for a party list of candidates; seats are allocated in proportion to votes cast, e.g. if a party gets 40 per cent of the votes, they receive 40 per cent of the seats (used in Israel).

Single Transferable Vote

Ballot is identical to that of the alternative vote but instead of a majority being required to win, the candidate must merely exceed a quota (used in Ireland and Senate elections in Australia).

Hybrid or Mixed System

Each voter has two votes, the first one is for the candidate in their constituency and the second is for the preferred party list; voters use the first vote to elect the representative from their district and second vote totals are used to ensure that figures are proportional.

Figure 10.1 Electoral Systems

Majoritarian Systems
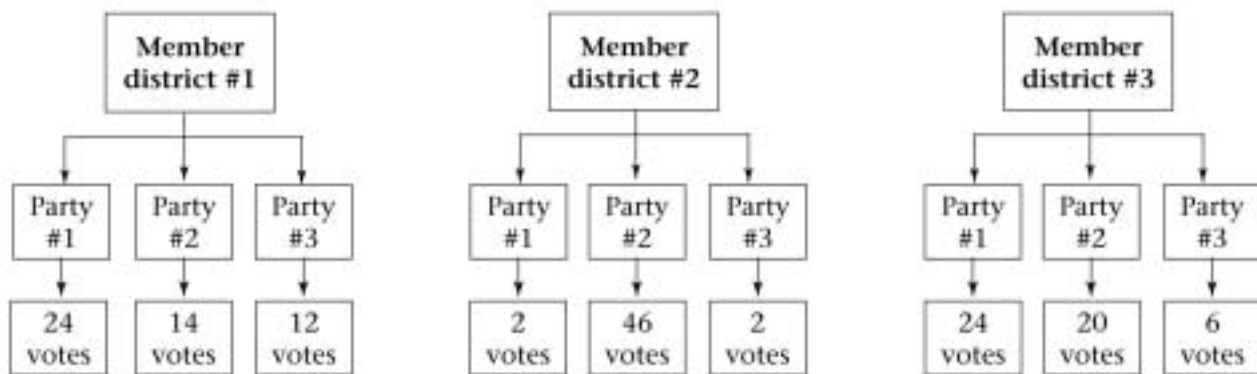
The plurality system

The plurality system is one of Britain's most significant contributions to world parliaments. Countries that have had no connection with Britain or its empire do not currently use it. Britain continues to provide the leading examples of this system in practice. The same system is also used in Canada and many of the Commonwealth states in the West Indies.

The single member plurality (or first past the post) system is composed of a large number of single member constituencies. Each constituency has its own representative in parliament. In these constituencies, voters have a direct relationship to the members elected from their locality. This system fosters strong parties—two parties are likely to predominate while minority parties are likely to be under represented. The government is usually based on a single party and alternation of governments is also likely.

In this system the translation of votes into seats can be haphazard. To win a seat, all a candidate needs is more votes than any other single candidate. The size of the vote is irrelevant, and more often than not there is no majority. Rather than the size of the margin of victory in an area, what is important for a party is to have its vote efficiently distributed, because it is quite possible to win control of the government with not only a minority of the votes but with fewer votes than another party. In Canada in 1979 the Progressive

Conservative Party won control of the government despite its trailing the Liberal party by 5 percentage points in overall vote share.

An example will make this clearer. (See Figure 10.2) Suppose there is a system with three single member districts and three parties contest the election in each constituency. The result in Constituency A is 24 votes for party 1, 14 votes for party 2 and 12 votes for party 3. In Constituency B, party 2 receives 46 votes while parties 1 and 3 receive two votes each. Finally, in Constituency C, party 1 receives 24 votes, party 2 receives 20 and party 3 receives 6. When these results are combined we find that party 1 forms a majority government despite its having received fewer votes than party 2, and that party 3 has no representation at all. This is, of course an extreme example but it illustrates how the single member plurality system can create majority governments when there is no majority disposition among the electorate, how the size of the winning margin is irrelevant and how some parties can be denied representation in parliament.

Party #1 would form the majority.

Figure 10.2 Single Member Plurality (or first past the post)

The single member plurality system does a superb job of creating single party majority governments. Since the end of World War II, not once has a British party received a majority of the popular vote, but majority governments have been elected after every election but one. Moreover, in 1983, although the Labour party and the Liberal-SDP Alliance received quite similar vote shares (Labour receiving 28 per cent of the vote and the Liberal-SDP Alliance garnering 25 per cent), Labour ended up with 32 per cent of the parliamentary seats and the Liberal-SDP Alliance with just 4 per cent.

The two variants of the absolute majority system are the run off system currently practised in France and the alternate vote system currently in use in Australia.

The run off system

Within the absolute majority system, there are two other variants, which focus on ensuring that all candidates elected to parliament have the support of a majority of their constituents. The first is the run off system currently used in France. Once more the election is based on single member constituencies but in order to be elected in France one candidate must win an absolute majority of the votes cast. With many candidates this does not always happen on the first ballot. So a second ballot, or run off election, is held. This is in essence an additional round of voting. After the first round some parties are forced off the ballot, others voluntarily withdraw and like-minded parties stand down in each other's favour. On the second ballot, there is usually a majority, but a plurality is sufficient. Although this system increases the number of parliamentarians chosen by a majority of constituents there are still wasted votes, small parties are penalised and the first ballot voting preferences can be heavily distorted. As well, single party governments have been quite rare.

The alternative vote system

The second variant is the alternative vote system used in Australia. Once more there are single-member constituencies and an absolute majority is needed for election. Instead of voters just putting a mark by the candidate they prefer, each voter rank orders the candidates on the ballot in terms of preference. Once this is done, the first preferences are counted. If one candidate has a majority of these preferences, that candidate is elected. If not, the candidate with the least first preference support is eliminated and the second preferences marked on their ballots are counted. This process continues until the point at which one candidate has an absolute majority of the vote. It ensures that the victor in a particular constituency is in the end preferred by a majority but again, it has no nationwide effect and the problem of wasted votes remains. It is said to discriminate against the second place finisher and to reduce the influence of extremist parties. In recent years this system has resulted in both the election of single party Labour governments, and coalition governments composed of the Liberal and National parties.

Proportional Systems

The second of the two major variations of electoral system is that of proportional representation, of which there are several common variations.

The pure proportional representational system

The pure PR system is used in Israel, where the entire country forms one constituency and voters vote for a party list of candidates. The seats are allocated in strict proportion to votes cast. In the Israeli parliament there are 120 seats, so in order for a party to get a seat in the legislature only .83 of 1 per cent of the national vote is required. The number of legislative seats is directly related to the popular vote: if a party gets 40 per cent of the votes it will get 40 per cent of the seats. Such a system eliminates the problem of wasted votes. Majority governments are possible, but they will not be manufactured and the result is that coalition governments are normal. The

formation of a government can require extensive negotiations among the parties who have secured election. Small parties can be very powerful in this system. In the most recent Israeli election 31 different parties contested the election and 15 secured parliamentary seats. The leading party received 26 seats. There is no direct relationship between a parliamentarian and a particular constituency. If such a system had been used in Britain in 1997, Labour, instead of winning a huge majority, would have received 290 seats while the Conservatives would have won 204 seats, the Liberal Democrats 112 and other parties 46. Parliamentary dynamics would have been changed dramatically as the Liberal Democrats and small parties would have been highly significant actors.

There are a number of key issues to consider in list systems of PR.

- how the party lists will be composed

- whether there will be a single constituency or regional constituencies and

- whether small parties will be required to surpass a threshold of popular support in order to qualify for representation.

In New Zealand, for example, the threshold is 5 per cent, while in Sweden it is 4 per cent. In most of the countries using this system there are a number of multi-member constituencies and parties prepare lists of candidates from which voters cannot deviate. The South African system involves two lists, a national list and regional lists, and half of the parliamentarians are chosen from each.

The single transferable vote system

Another proportional system is the single transferable vote system used in Ireland and for Senate elections in Australia. As a proportional system it requires multi-member constituencies but it retains a geographic relationship between the voters and specific representatives. Parties run multiple candidates in these constituencies and the ballot is identical to that of the alternative vote system. Voters rank-order their choices, but instead of a majority being required to win, the candidate must merely exceed a quota.

Once a candidate has received the quota any additional votes received are considered surplus and redistributed to other candidates. If no candidate met the quota on the first count, the last place candidate is removed and the second preferences counted. The results of this system are more proportional than that of majoritarian systems. Further, coalition governments are the most likely outcome. As with majoritarian systems the problem of wasted votes remains. The transfer of votes between candidates is incredibly complex and it can take some time for election outcomes to be clear. Some suggest that this sort of system is most likely to increase the independence of parliamentarians. In the most recent Irish election, independent candidates received almost 10 per cent of the first preferences and seven of them were elected to parliament.

The hybrid or mixed system

The final system we will discuss is used in New Zealand. This system is often described as a hybrid or mixed system but in reality it is proportional. Slightly less than half of the legislature seats are filled by proportional representation based on party lists while the remaining seats are based on a plurality system. Each voter gets 2 votes, first for the candidate in his or her constituency, and, second for the preferred party list. With the first vote voters get to elect, on a plurality basis, the representative from their district. The second vote is used to correct the deficiencies of the first, that is the second vote totals are used to ensure that the figures are proportional. For instance, in the last election (27 November, 1999), the Labour party won 41 constituencies, the National party 22 and the Alliance, ACT and Green parties each won a single constituency. However, in terms of second votes, Labour had 39 per cent, the National party 31 per cent, the Alliance 8 per cent, ACT 7 per cent, the Greens 5 per cent, New Zealand First 4 per cent, Christian Heritage party 2 per cent. The few other parties received much lower levels of support. The parties that received less than 5 per cent of the vote were not entitled to representation based on their share of the popular vote.(The New Zealand First party was actually entitled to receive list seats because even though it had not reached the 5 per cent plateau, it had won a constituency seat.) As Labour won 39 per cent of the vote it was entitled to 39 per cent of seats or 49. Because it had won 41 in the constituencies it was given 8 list seats. The National party was entitled to 39 seats; it won 22 constituencies and was therefore given another 17 from the list. The ACT party that was entitled to 10 seats won none of the districts so all of their representatives came from the party lists. Finally, the single constituency seats won by the Alliance, Greens and New Zealand First parties were topped up, with 9, 6 and 4 list seats, respectively.

This system avoids one of the critiques of PR, namely the appearance that it removes local representation and close ties between voters and representatives. However, like other proportional systems it prevented a majority government and resulted in a coalition government. The 6 per cent of New Zealanders who voted for other parties received no representation.

Despite the variety of electoral systems and their different effects on the construction of majority governments or their propensity for creating coalition governments, they all share one feature. Each is associated with strong party discipline. Changes in electoral systems are in themselves unlikely to increase the independence of ordinary members of parliament. The proportional systems have however, been associated with the election of an increasing number of women to parliament.

Recommended Reading

Blais, Andre and Louis Massicotte. "Electoral Systems" in *Comparing Democracies: Elections and Voting in Global Perspective*. Lawrence Leduc, Richard G. Niemi and Pippa Norris (eds). Newbury Park, CA: Sage, 1996.

Benjamin, Gerald. "Systems of Representation for Legislatures in Democracies" in *World Encyclopedia of Parliaments and Legislatures*. George Thomas Kurian (ed). Washington: Congressional Quarterly, 1998.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. How can electoral systems structure the composition of governments and legislatures?

2. What are the differences between majoritarian and proportional systems.

3. How do the different electoral systems work in practice?

Internet Resources

Electoral Models

Canada. Elections Canada: "Review of Political Systems"
http://www.elections.ca/content.asp?section=
loi&document=index&dir=sys&lang=e&textonly=false

International Committee for Research into Elections and Representative
Democracy (ICORE). "The Comparative Study of Electoral Systems"
http://www.umich.edu/~nes/cses/papers/stimulus.htm

International Foundation for Election Systems (IFES). Administration and
Cost of Elections (ACE) Project: "Electoral Systems"
http://www.aceproject.org/main/english/es/default.htm

PR Library. "Readings in Proportional Representation"
http://www.mtholyoke.edu/acad/polit/damy/prlib.htm

Richard Kimber's Political Science Resources. "Elections and Electoral
Systems Around the World"
http://www.psr.keele.ac.uk/
http://www.psr.keele.ac.uk/election.htm

United Kingdom. Electoral Reform Society: "Voting Systems"
http://www.electoral-reform.org.uk

United Kingdom Parliament. Library Research Papers 1998: "Voting
Systems: The Government's Proposals"
http://www.parliament.uk/commons/lib/research/rp98/rp98-113.pdf

United Kingdom Parliament. Library Research Papers: "Voting Systems:
The Jenkins Report"
http://www.parliament.uk/commons/lib/research/rp98/rp98-112.pdf

Center for Voting and Democracy
http://www.fairvote.org/

Represent Domocracy
http://www.represent.org.uk/

Coalition Government and Satisfaction with Democracy: An analysis of
New Zealand's reaction to Proportional Representation
http://www.nzes.org/papers/wpsa_2000r.pdf

Twilight of Westminster: Electoral Reform and its Consequences
http://ksghome.harvard.edu/~.pnorris.shorenstein.ksg/acrobat/
apsa2000bpg.pdf

Women's Prepresentation and Electoral Systems
http://ksghome.harvard.edu/~.pnorris.shorenstein.ksg/acrobat/
womenele.pdf

Proportional Represenation Society of Australia
http://www.cs.mu.oz.au/~lee/prsa/

Unit 11
The Future of Parliamentary Democracy

Overview

This last unit in the parliamentary democracy module reflects upon the future of parliamentary democracy, specifically on some key trends that may have an impact on the effectiveness of parliaments in the new millennium. One of the most significant trends that will shape the future of parliamentary democracy throughout the Commonwealth is the increasing push by citizens for a local voice. This trend is manifested in demands for direct democracy initiatives such as referenda, plebiscites, and recall. A second important trend discussed in this unit is the impact of globalisation, particularly on state sovereignty. Citizens fear that actors beyond their local level—international organisations such as the World Trade Organisation—are making important decisions over which they have no control. In the late 20th and early 21st centuries, this has led to widespread protests against international organisations in Seattle, Vancouver, Quebec City, and elsewhere. Finally, the unit reflects upon technology and its possible effects on parliamentary democracy. Electronic democracy and e-governance may affect industrialised economies more than those of emerging democracies.

Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the main instruments of direct democracy.

2. Outline the potential impacts of globalisation on governments and parliaments.

3. Discuss e-democracy/e-governance in terms of the possibilities and pitfalls of technology in impacting parliamentary government.

Commentary

One of the clear trends in all elective democracies has been an increase in citizen dissatisfaction. There is a growing sense among ordinary voters that the institutions of representation are not functioning as they should. Citizens are less willing to defer to their political elite than they were 20 years ago. The Canadian Royal Commission on Electoral Reform and Party Financing stressed that "Our system of government is essentially an 'indirect' democracy. Citizens do not govern themselves directly; instead, they elect representatives to govern them. In this way, the consent of

citizens is secured" (1991: 26). A large number of voters are no longer happy with this system of 'indirect' democracy.

Dissatisfaction with the political elite and representative democracy has created a fertile soil for 'anti-system' parties. Parties of this type have usually stressed, among other things, the need to bring political decisions closer to grass roots voters and lessen the influence of so-called special interest groups as well as the public sector. These 'populist' parties have enjoyed some electoral support in many different settings and often the vote shares of the two leading parties have declined. The existence of these parties helps to deepen citizen dissatisfaction as they provide a forum for ongoing criticism of the way politics is conducted. Such parties often call for a lessening of party discipline, but their own records, when they have been elected to legislatures, serve to indicate the importance of party discipline in a parliamentary system and, again, strengthen citizen unhappiness with their existing institutions.

Direct Democracy

As a result of this trend, demands for direct citizen involvement have grown. Such demands usually include a call for one or more of three different mechanisms of 'direct democracy.' In contemporary societies, direct democracy usually refers to measures which eliminate or reduce the mediating role of representatives and involve voters either more directly in decision making, or in holding representatives accountable for their actions on an ongoing basis. There are three mechanisms of direct democracy whose use has been advocated. In seems clear that each of these mechanisms would further reduce the role of elected representatives and consequently erode parliamentary sovereignty.

Referenda or Plebiscites

The first is the use of referenda or plebiscites. With these mechanisms citizens are given the opportunity to approve of certain pieces of legislation directly, or to express their views about some political issues. The fact that time and complexity mean that not all issues can be decided by the people directly does not mean that some issues cannot be decided in this manner. There are two forms of referenda.

Binding referenda, which have been used in France and Australia (constitutional issues), force the government to accept the decision of voters. With a referendum of this sort parliament does not make the final decision because their role is restricted by the constitution. In a non-binding or consultative referendum voters answer a given question to provide the government with advice. This has been used a number of times in Canada (Prohibition, Conscription, Quebec sovereignty and the constitutional Charlottetown Accord) and Britain (Devolution in Scotland and Wales). At times their governments have not accepted the decision of the people. Refusing to abide by the wishes of the majority carries obvious risks for a government that must face re-election. On some occasions these forms of direct democracy offer governments a means of avoiding responsibility for controversial decisions.

The Initiative

Another mechanism of direct democracy is called the initiative. While with a referendum citizens are responding to government actions, with an initiative they are attempting to force the government to act in a particular area. Initiative requires the government to put an issue forward for citizens to decide in a referendum, following the submission of a petition by a specified number of voters. This mechanism ensures that voters are not simply reactive; that is, they can make demands to force governments to deal with their issues. Currently legislation permitting initiative has been approved by two Canadian provincial legislatures but it has not been used extensively outside the United States. The American experience indicates that money and organisation play crucial roles that render initiative's claims to advancing democracy questionable.

Recall

In all parliamentary democracies voters are entitled to elect their representatives, but they are limited to elections. With the third mechanism of direct democracy, recall, voters are not only able to elect representatives, but they are able to remove representatives between elections. Under a system of recall, if a certain percentage of the electorate requests a new election, a sitting representative can be removed from office and a new election held. Recall legislation was approved in Alberta during the 1920s when the United Farmers party held power. However in 1932 it was removed from the books, after a petition for recall began circulating in the premier's constituency. In a 1991 referendum, British Columbia voters called for the introduction of legislation allowing for recall. Such legislation was eventually approved by the legislature and a number of attempts have been made to remove members from office, thus far unsuccessfully. Under this legislation, recall can take place only after an MLA has been in office for 18 months. To initiate the process 40 per cent of voters must sign a recall petition within a 60-day period. If this level is reached and verified, the MLA loses his or her seat. If it is not, the MLA cannot be challenged again until after a general election. Recall has been criticised for failing to appreciate the role of party discipline. A member conceivably could be recalled for following the party line. On the other hand, it could make members more responsive to majority opinion and less willing to protect the rights of minorities.

Globalisation

The discomfort citizens feel with the indirect democracy that accompanies parliamentary government is enhanced by the perception that the ability of national governments and legislatures to make important decisions has been weakened by 'globalisation'. As Ronald J. Deibert explains,

> Whereas once political authority was parcelled and segmented into territorially distinct and mutually exclusive sovereign states, today such authority is dispersing and decentralising to multiple, non-territorial domains—to corporations, bond-rating agencies and non-governmental organisations and activists, as well as states (1998: 24).

Among other things, globalisation involves the development of world, rather than domestic markets, reduces the ability of states to protect

industries within their borders, and restricts the power to control multinational corporations. Globalisation is also marked by an increase in the financial vulnerability of individual national states to world stock and bond markets. More than 130 states are members of the World Trade Organisation (WTO), which promotes competition and free trade and includes a dispute resolution mechanism. The globalisation of politics is also associated with a growth in regional trading arrangements. Many of these are based on treaties or contracts between two or more states. These treaties require states to observe certain obligations and responsibilities to the other signatories.

The most developed form of these regional arrangements is the European Union. It has moved beyond a simple trading arrangement to encompass a customs union and an attempt to create an economic and monetary union as well as shared governmental institutions. The European Union and its institutions have clearly reduced the power of the British parliament. For instance, the European Court of Justice insures that community laws are applied to all citizens of the union, regardless of the views of a particular member state. Thus despite the absence of a written British constitution, British subjects are protected by a European Human Rights Code and the sovereignty of the British Parliament is thus lessened.

States have not, of course, completely lost their sovereignty as they generally retain the right to terminate these international arrangements. Other international organizations, such as the World Bank and the International Monetary Fund, exert more of a direct influence. States wishing to receive funds from these organizations must agree to implement specific economic policies to qualify, which circumscribes the choices that legislatures can make.

Recently, citizen disenchantment with such international institutions has emerged. There have been calls for forgiving debts and protests have disrupted meetings of the WTO. Citizen action was most evident in the protests against the Multilateral Agreement on Investment (MAI). These protests, which made extensive use of the Internet and e-mail, and paid little attention to national legislatures, resulted in the abandonment of the MAI, at least temporarily.

Technology and the Future: E-Democracy?

The successful protest against the MAI and the power of the world trade and bond markets indicate the role modern technology plays in contemporary politics. As Ed Black notes, "Computers are changing our governments as well as our electoral politics. Not only do they change the way parties conduct elections and the way we watch election returns, they are changing the choices our elected representatives make for us and the way public servants deal with us in implementing those choices" (1998: iii).

As citizens have much greater access to information, they expect governments and parliamentarians to be increasingly responsive. Many legislatures and legislators are making information available on the Internet and corresponding with constituents via e-mail. Sir Francis Bacon's insight that knowledge is power leads some to believe that the proliferation of information technology will empower citizens. It is important to be cautious in such assumptions for a number of reasons. First, access to this technology is not universal either in all states or within any state. As Alexander and Pal

warn "the gap is widening between the 'information rich and poor'." They advance their argument by citing a 1997 study that found that 13 of the 14 countries with the highest per capita Internet hosts were in Australia, New Zealand, North America, and Europe. (Alexander and Pal, 1998: 5). Within countries access to computers and the Internet is obviously easier for the rich than it is for the poor.

Second, attempts to involve citizens more directly in political decisions through technology have not been completely successful. Attempts to broaden citizen participation in parties through telephone voting have been mixed, and citizen video and Internet forums have involved only tiny minorities of voters. Moreover, since these participants are self-selected, there is no way to determine whether these participants are representative of society in a descriptive sense, and they have no mandate to act on behalf of other citizens.

Finally, while Bacon was undoubtedly correct that knowledge is power, it is not as clear that access to information equals knowledge. Knowledge suggests reflection and discussion, while access to Internet and video information can take place in an atomised environment, leading to the acquisition of information that is devoid of context and to opinions that may not be tempered by exposure to alternative explanations.

This is not to say that the changes to modern politics engendered by changes in technology are negative. Governments, legislatures, and parties are increasingly making more information available to citizens, and more and more information is available without the media filter. The availability of more information has the potential to create a more informed citizenry and foster a sense of ownership of its political process. It can also make representatives more responsive to the public. However, it would be extremely dangerous to replace representative parliaments with electronic town halls or referenda.

Parliamentary democracy remains important in that it provides the forum for competition among parties, which remain one of the primary vehicles for citizen participation. Parliamentarians have broad access to information, the ability to analyse and reflect on it, and a forum for voicing their views and focusing public attention.

Parliamentarians in a democracy have a mandate to 'represent' more than just their own opinions. Many of the issues with which they deal are too complex for the kind of simple 'yes' or 'no' answers which a reduced reliance on representative government would produce. Even if decisions are going to be made outside of parliament, parliaments should retain a role in setting the questions. Parliamentary democracy has evolved significantly in the last millennium. It will undoubtedly continue to evolve in the current millennium and continue to make important contributions to representation and governance. It is hoped that the next series of changes will make the words *parliamentary* and *democracy* synonymous, and increase citizen support of this historic institutional arrangement.

Conclusion

The future will undoubtedly see more variation in the manifestations of parliamentary democracy. The recent South African constitution introduced a president as the major political actor within its parliamentary system. Indeed, throughout the 20th century parliaments in many countries have adapted the Westminster model to fit more comfortably with local requirements.

Recent adaptations included the occasional substitution of a ceremonial president for the Crown, federal systems with written constitutions, upper houses with different powers and means of selection, charters of citizen rights, experiments with direct democracy, variations in electoral rules, and more of a role for private members. If parliaments are to both retain and regain the confidence and respect of their citizens, such adaptations must continue. In the 21st century Britain may well adapt its parliamentary structures in the light of successful examples from other commonwealth parliaments. The era of evolution is far from over.

Recommended Reading

Black, Edwin R. "Digital Democracy or Politics on a Microchip" in *Digital Democracy Policy and Politics in the Wired World*, Cynthia J. Alexander and Leslie A. Pal (eds). Toronto: Oxford University Press, 1998.

Coleman, S. et al. "Parliament in the age of the Internet." *Parliamentary Affairs* 52 (July 1999).

Reforming Electoral Democracy (Volume 1). Report of the Royal Commission on Electoral Reform and Party Financing, Ottawa: Minister of Supply and Services, 1991, 229-249.

Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the main instruments of direct democracy?

2. What impact could globalisation have on governments and parliaments?

3. What are the possibilities and pitfalls of technology in impacting parliamentary government?

Internet Resources

The Future of Parliamentary Democracy

Berner Oberland News. "Can 'computer shocks' activate democracy?"
    http://www.beo-news.ch/nov97/Hug.htm

Cyber-Democracy: Truth or Fiction (Kirsten Hall)
    http://hoshi.cic.sfu.ca/~cm/issue5/schreck.html

Electronic Democracy Sites World-wide
    http://www.naturespace.co.nz/ed/edwww.htm

European Tele-work Development Initiative. Tele-cooperation: Enhancing
    the Democratic Process
    http://www.eto.org.uk/etd/policy/DEMOC01.htm

European Commission. "The Future of Parliamentary Democracy:
    Transition and Challenge in European Governance"
    http:/europa.eu.int/comm/governance/docs/doc3_en.pdf

G8 Democracy and Government Online Services Publication
    http://www.statskontoret.se/gol-democracy

G8 GOL (Government On-line)
    http://www.governments-online.org/

Democracy Forum. Archived Discussion: Electronic Democracy
    http://www.democracyforum.org.uk/edemocracy.asp

Hansard Society: Promoting Effective Parliamentary Democracy
    http://www.hansard-society.org.uk

Hansard Society: E-democracy programme
    http://www.hansard-society.org.uk/eDemocracy.htm

Internet Tools for Politics
    http://www.politicsonline.com/

The E-Democracy E-Book by Steve Clift
    http://www.publicus.net/ebook/

New Zealand. Electronic Democracy
    http://www.naturespace.co.nz/ed/

Sweden. Uppsala University: "The Evolution of Parliaments and Societies in
    Europe: Challenges and Prospects"
    http://www.soc.uu.se/staff/texts/tb_parla.html

Union of International Associations. The Challenge of Cyber-Parliaments
    and Statutory Virtual Assemblies
    http://www.uia.org/uiadocs/cyberass.htm

United Kingdom. Democracy, Community Involvement and Campaigning
http://www.communities.org.uk/resource/democ.htm

United States. The League of Women Voters' Democracy Network
http://www.democracynet.org/

United States. Minnesota: e-democracy
http://www.e-democracy.org/

University of London Seminar. Political Parties and Trade Unions in the Electronic Age. Transcript of Proceedings. "Political Parties and the Challenge to Democracy: From Steam-Engines to Techno-Populism"
http://www.urbsoc.org/guides/ukseminar/Lipow-Seyd.html

World Wide Web as a Universal Interface to Government Services. (Centre for Technology in Government, University of Wisconsin-Madison, 1998)
http://www.ctg.albany.edu/projects/inettb/univ/itttoc.html

Center for the Study of Technology and Society: Government and Politics
http://www.tecsoc.org/govpol/govpol.htm

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Brzinski, J. B et al. "Federalism and Compounded Representation" *Publius* 29 (Winter 1999).

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Zimmerman, Joseph and Wilma Rule. "Women and Minorities in Parliaments and Legislatures" in *World Encyclopedia of Parliaments and Legislatures*.

Online Newsletters, Articles and Journals

Democracies Online Newswire
http://www.e-democracy.org/do

Hansard Society
http://www.hansard-society.org.uk

International Foundation for Election Systems (IFES): Elections Today
http://www.ifes.org/newsletter/eltodind.htm

Institute for Democracy and Electoral Assistance Reports
http://www.idea.int/2000df/dfreports.html

Suite 101.com European Politics
http://www.suite101.com/articles.cfm/european_politics

United Nations Development Programme. Management and Governance
Network (Magnet) Democratic Governance
http://magnet.undp.org/

Parliamentary Democracy Module Partners' Web Sites

Commonwealth Parliamentary Association
http://www.comparlhq.org.uk/aims/about.htm

Athabasca University
http://www.athabascau.ca

Additional Readings

Laundy, Philip. *Parliament and the People: The Reality and the Public Perception.*
London: CPA, 1997.

A Guide for Election Observers. London: CPA, 1995.

A Joint Colloquium on "Parliamentary Supremacy and Judicial
Independence . . . towards a Commonwealth Model." London: CPA, 1999.

Wijesekera, Priyanee, and Diana Reynolds. *Parliaments and Governments in
the Next Millenium.* London: CPA, 1999.

Barnhart, Gordon. *Parliamentary Committees: Enhancing Democratic
Governance.* London: CPA, 1999.