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