

## IS THE WESTMINSTER SYSTEM OF GOVERNMENT

### ALIVE AND WELL?

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**Abstract:** The Westminster system of government is one of the principal forms of government in the democratic world, yet has been subject to myriad definitions, or with a meaning taken as given, considered by many commentators to be a diminishing phenomenon, “unworkable outside the special circumstances of mainland Britain”, and lacking in legitimacy. Here, we offer a definition of the Westminster system as a culturally-based system of government, one that derives from an accepted view of government and modes of executive-legislative relations. *Pace* critics such as Beetham, we find that the system has attributes that have ensured its pervasiveness and endurance.

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**Key words:** adversary politics, British Parliament, chambers, consensus legislatures, executive authority, opposition, Speakers, Westminster system.

The “Westminster” form of parliamentary government is one of the principal forms of government in the democratic world. Agreement on its existence does not extend to how it is named and defined. The very fact that there is no common terminology, other than the use of the word Westminster, is an initial indicator of the difficulty in determining the phenomenon that is widely conceded to exist, but on which there is no agreed authoritative definition. Douglas Verney observed that, “It is important to distinguish between an idealized (and often outdated) Westminster model and the evolving practice of parliamentary government”.<sup>1</sup> We shall use the term system as denoting a particular type of government that exists rather than a model denoting an abstract or ideal type.

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What is the Westminster system of government? The name derives from the form of government that developed in the United Kingdom in the 19<sup>th</sup> Century, with parliament housed in the Palace of Westminster. The buildings that formed the Palace were destroyed by fire in 1834 and replaced by a purpose-built edifice. The new building was constructed in a period in which the nature of government changed paradigmatically, the enlargement of the franchise and development of mass-membership political parties resulting in a transfer of power from the monarch to an elected House of Commons. The formal constitutional framework, based on the Glorious Revolution of 1688 and Bill of Rights 1689, establishing the legislative supremacy of the crown-in-parliament, remained in place, but with the formal constitutional position being adapted to the new political reality through practice and the use of conventions of the constitution.<sup>2</sup> John Bright in 1865 referred to England “as the mother of Parliaments”. Whether or not the country begat any other parliaments before the 19<sup>th</sup> Century, the system that developed in Britain then is seen as having generated offspring around the globe; indeed, to follow the analogy, some writers have referred to a “Westminster family”. According to Rhodes, Wanna and Waller, “Westminster countries are part of a family of nations with a common though differentiated heritage”.<sup>3</sup>

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of the Centre of Legislative Studies, at the University of Hull. When appointed to his chair, in 1986, he was the youngest professor of politics in the UK. He was made a life peer in 1998 and was the first Chair of the House of Lords Constitution Committee. He is founder editor of *The Journal of Legislative Studies*, President of the UK Study of Parliament Group, and Chair of the History of Parliament Trust. His publications include 35 books, among them *Governing Britain*, *Parliament in British Politics*, *The British Polity*, and (ed) *Legislatures*, and over 300 scholarly articles and book chapters. He has been described in *The House Magazine* as ‘our greatest living expert on Parliament.’

<sup>1</sup> Douglas Verney, “Westminster model” in Vernon Bogdanor (ed) *The Blackwell Encyclopedia of Political Institutions* (Oxford: Basil Blackwell, 1987), 638.

<sup>2</sup> Philip Norton, *Governing Britain* (Manchester: Manchester University Press, 2020), 4-5.

<sup>3</sup> R A W Rhodes, John Wanna and Patrick Weller, *Comparing Westminster* (Oxford: Oxford University Press, 2009), 224.

But what are the defining characteristics of the Westminster system? For some, the system is so well established that its existence is taken as both given and so obvious as not to require specification. Others have sought to offer a definition, though in some cases only partially. Let us consider two ends of the definitional spectrum—no definition through to a highly-specific definition.

According to the Canadian Library of Parliament

an MP in the Westminster system of government has three traditional roles. The first is to consider, refine and pass legislation; in other words, to establish policy and pass laws. The second is to hold government accountable for its administration of the laws and to authorize the expenditure of required funds; that is, to ensure that the laws are being carried out properly, and that tax dollars are being spent responsibly. The third role is to determine the life of the government by providing or withholding support – voting for bills you favour and voting against those that you don't.<sup>4</sup>

The problem with this statement is that there is no explanation as to what constitutes the Westminster system of government. It is not apparent as to why the roles adumbrated are deemed particular to the Westminster system. We will explore in due course the position of the Westminster system as a sub-set of a parliamentary system of government, but it is not clear why the roles are not applicable to members of the legislature in any parliamentary system.

At the other end of the spectrum, we have Arend Lijphart, who defines the Westminster model as one comprising several characteristics. In *Patterns of Democracy*, he lists ten.<sup>5</sup>

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<sup>4</sup> Alison Loat and Michael MacMillan, *Tragedy in the Commons* (Toronto: Random House Canada, 2014), 86.

<sup>5</sup> Arend Lijphart, *Patterns of Democracy* (New Haven CT: Yale University Press, 1999), 10-21.

These include basic features of executive-legislative relations, such as a concentration of executive power in one-party and bare-majority Cabinets, as well core features of legislative-citizen relations, such as majoritarian and disproportional systems of elections. They also include a unicameral legislature, absence of judicial review, and a central bank controlled by the executive.

The difficulty with this definition is not so much the breadth of the nations included, but rather what is excluded. Indeed, it would appear to exclude the UK, given that it has a bicameral legislature (albeit with asymmetrical bicameralism) and in 1997 the central bank (the Bank of England) was granted operational independence over monetary policy. It is also not obvious why this last characteristic constitutes a defining feature of the Westminster system; the link to the other features is not that apparent. Lijphart himself concedes that outside the UK, the only nations to adopt the model in its entirety have been New Zealand, at least until it moved to a mixed-member proportional (MMP) electoral system for parliamentary elections, and Barbados.

In between these two, we have various definitions of a Westminster system. Some are basic or partial, others more developed, though lacking the specificity of Lijphart's definition. Some, as may be inferred from the observation of the Canadian Library of Parliament, are so broad as to be indistinguishable from a parliamentary system of government. Indeed, some sources do treat the Westminster system and the parliamentary system of government as synonymous. This, as we shall argue, is neither useful nor sustainable. Others identify particular characteristics, not least having a two-party system and the first-past-the-post electoral system, thus at least distinguishing it from some other parliamentary systems.

The Westminster system in short appears to mean different things to different scholars. The problem of definition here is of an extant system. It is concerned with the practice. For some, the Westminster system is defined in an idealized form, as something to which to aspire. Writing in 1966, Alan Burns, a former Under-Secretary for the Colonies, observed that “the general tendency throughout the Commonwealth has been towards greater political maturity and the British system of parliamentary government is still a model which most aspire to follow”.<sup>6</sup> In the eyes of some scholars, it is an unrealizable aspiration. Few nations accord to the ideal and if they did have in many cases departed from it.

The sheer range of definitions has given rise to debate as to whether the term retains any utility. As Rhodes, Wanna and Weller have noted, “Westminster has been relegated to the rubbish dump of history” by many an academic who sees it as departing from any basic principles or a stylized model. In the view of the critics, the “modern polity no longer deserves to be defined as Westminster; the term has lost its analytic rigour”.<sup>7</sup> Russell and Serban advance the argument that, as a model, it is a concept that has been stretched beyond repair.<sup>8</sup> Through an extensive literature research, they demonstrate the widespread use of the term and its different meanings as well as the absence of any definition at all. Of the 239 texts examined, 30 per cent offered no definition. Others offered a definition that was implicit (38 per cent) or partial (17 per cent). Only 16 per cent offered a full definition.<sup>9</sup> Where definitions were offered, differing and sometimes conflicting characteristics were advanced – the most cited attributes were the first-past-the-post electoral system (28 per cent), a parliamentary system (26 per cent), parliamentary sovereignty (26 per cent), followed by a two-party

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<sup>6</sup> Alan Burns, “The History of Commonwealth Parliaments” in Alan Burns (ed), *Parliament as an Export* (London: George Allen & Unwin, 1966), 37.

<sup>7</sup> Rhodes, Wanna and Weller, *Comparing Westminster* (n. 3), 222.

<sup>8</sup> Meg Russell and Ruxandra Serban, “The Muddle of the ‘Westminster model’: A Concept Stretched Beyond Repair” (2021) 56:4 *Government and Opposition* 744-764.

<sup>9</sup> *Ibid.*, 750.

system, a neutral civil service and Cabinet government. Only 14 per cent identified an adversarial political system, strong party discipline, and institutionalized opposition. Some (5 per cent) identified a unicameral legislature and others (4 per cent) a bicameral legislature.<sup>10</sup>

Not only were the attributes varied, but as Russell and Serban go on to show, many of the nations most commonly identified as falling within the category do not share the characteristics listed in the texts, other than that of having a parliamentary form of government. Not all are unitary states with single-party majority government and parliamentary sovereignty. They differ in whether they are unicameral or bicameral. The term, as Russell and Serban note, “appears to be a moveable feast”.<sup>11</sup> The conclusion they draw is that, while the term may have once had meaning (or meanings), “a combination of conceptual confusion among authors and real-world change have seen it stretched beyond recognition”.<sup>12</sup> Absent any effective justification for identifying a shared culture by a “family” of nations with a British heritage as the basis for claiming its continued existence and relevance, the Westminster model should be retired.<sup>13</sup>

Also taking aim at the notion of what he terms the Westminster model, Beetham argues that it has “proved largely unworkable outside the special circumstances of mainland Britain”.<sup>14</sup> He continues:

To say that this is because of the absence of a “democratic culture” or the insufficient integration of key political actors into a common “establishment” or political elite, as in Britain, is simply to restate the problem, since these essentially cultural conditions cannot be

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<sup>10</sup> *Ibid.*, 752.

<sup>11</sup> *Ibid.*, 758.

<sup>12</sup> *Ibid.*, 760.

<sup>13</sup> *Ibid.*, 761.

<sup>14</sup> David Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan, second ed., 2013), 147-148.

created overnight. Indeed they are themselves the product of an accumulated history of acceptance of electoral outcomes on the part of the losers. And that requires that not too much should be at stake in any one contest, that the costs to the losers in any competition for office should not be so high as to remove all incentive to abide by the outcome.<sup>15</sup>

These, he contends, are features peculiar to Britain. The nation relies on the self-constraint of the victors and tacit conventions that can easily be overridden. There is a lack of constitutional rules that minimize the cost of defeat to the losers. Not only is the “Westminster model” unworkable outside the United Kingdom, it is, on this line of argument, lacking in authority, with the potential for the losers, especially if in a permanent minority, to feel excluded. For Beetham, restraint on the part of the victors can be achieved through the use of proportional representation electoral systems, a separation of powers between the executive and the legislature, and federalism, all serving to limit the damage of electoral defeat and encourage a tradition of accepting electoral outcomes by key political actors.<sup>16</sup> For him, the Westminster model is deficient, both empirically and normatively, encapsulating a culture specific to the UK and one lacking in legitimacy.<sup>17</sup>

The Westminster system may thus be seen to suffer from both its friends, taking its existence as so obvious as to not require defining or else offering partial and sometimes conflicting definitions, and its critics, regarding it as a system that is diminishing in significance and not offering adequate constitutional restraints that are core to liberal-democracy.<sup>18</sup>

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, 148.

<sup>17</sup> *Ibid.*, 148-50.

<sup>18</sup> *Ibid.*, 147-8.

Critics of the utility of the Westminster system do not go unanswered. In response to Russell and Serban's critique, Flinders, Judge, Rhodes and Vatter argue that there is still relevance in identifying the Westminster system or inheritance.<sup>19</sup> Echoing Rhodes, Wanna and Weller, they note that the term is used widely by practitioners. "Inherited Westminster beliefs inform today's practices. So the claim that the expression 'Westminster model' perpetuates a false impression among practitioners that a meaningful 'family' of political systems exists might err on the side of overstatement."<sup>20</sup> The problem with the Russell and Serban analysis, they argue, is not to be found so much in failings with understandings of the Westminster system, but with the methodology, arguing that they employ a naturalist perspective or the positivist tradition, applying rigidity to concepts.<sup>21</sup> If, as Russell and Serban claim, it is a concept, then it is a contested concept and that, following Greenleaf and Gamble, it is best understood, not as a concept, but as an "organising perspective".<sup>22</sup> For them, an interpretative approach is more fruitful, allowing plausible conjectures to be drawn from fieldwork. Even if not permitting statistical generalizations, it can produce general statements. With Rhodes, Wanna and Weller, they believe identifying "most similar nations" is the most fruitful way to proceed. In short, if we follow the family analogy, it is a case of delineating family characteristics.

Here, we follow this approach. The fact that the term is used in different ways does not mean that there is not a system of government that can be identified as distinct from other systems and that can be termed the Westminster system. Furthermore, Russell and Serban argue that the term should be abandoned without offering any alternative to it. Absent a coherent substitute for the term, we are left

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<sup>19</sup> Matthew Flinders, David Judge, R A W Rhodes and Adrian Vatter, "'Stretched But Not Snapped': A Response to Russell and Serban on Retiring the 'Westminster Model'" (2021) *Government and Opposition* 1-17, 13.

<sup>20</sup> *Ibid.*, 13.

<sup>21</sup> *Ibid.*, 11-12.

<sup>22</sup> *Ibid.*, 4.



with all those nations which are seen, not least by themselves, as “Westminster” systems to be subsumed within the category of parliamentary systems—distinguishable only from presidential systems—and analysed as discrete institutions within that broad category. If they are not to be subject to an analytically broad-brush approach or treated as unique entities, what are we to make of them?

As for the criticism levelled by Beetham, there is the counter-argument that the Westminster system *is* rooted in a cultural inheritance. Sir John Fletcher-Cook distinguished between nations where the Westminster form of government went as “accompanied baggage” and those where it was sent as an export.<sup>23</sup> The former he identified as nations where there was no indigenous culture to offer competing ideas. These encompassed Australia, Canada, New Zealand and Caribbean states. The latter comprised nations where the system was initially imposed and where it was able to take root in a culture conducive to it, such as India, distinguishing it from other nations, especially in Africa, where the culture, based on collective decision-making, has not been conducive, facilitating instead in some cases single-party government.<sup>24</sup>

Beetham fails to appreciate the extent to which the rules of the game are accepted by players in Westminster legislatures. That acceptance is part of the intrinsic culture or one acquired and imbibed. Some of the terminology associated with the Westminster system derives not from the UK, but from Canada, notably that of Leader of the Opposition. Some constraints are formally enshrined, including in some cases through judicial review. The absence of judicial review is not a defining characteristic of the Westminster system. There are other constraints that are part of a nation’s constitution, without necessarily being embodied in a codified constitution or in statute.

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<sup>23</sup> John Fletcher-Cooke, “Parliament, the Executive and the Civil Service” in Alan Burns (ed), *Parliament as an Export* (London: George Allen & Unwin, 1966), 145.

<sup>24</sup> *Ibid.*, 145-8.

Practice and conventions of the constitution, that is, self-enforced rules of behaviour, are important components of a constitution, embedded within a culture of constitutionalism. Conventions are moral obligations and complied with because they are recognized as right behaviour.<sup>25</sup> Complying with the rule of law, accepting limits on authority and seeing the legal system as benefiting citizens, derives from popular acceptance as to its legitimacy. The English common law, according to Potter, is peculiarly English, “but not insular, as its reach has spread widely throughout the world.”<sup>26</sup> It is, he argues, a law unto itself. “It has permeated English society with notions of justice and fairness which cannot be legislated away, however self-important the body trying to do so.”<sup>27</sup> As former US Supreme Court Justice, Stephen Breyer, observed, “following the law is a matter of custom, of habit, of widely shared understandings as to how those in government and members of the public should... act when faced with a court decision they dislike.”<sup>28</sup>

Our starting point is that the Westminster system cannot be dismissed because of confusion over the meaning of the term. The fact that different definitions are offered is not sufficient for discarding the term, but rather constitutes grounds for more rigorous testing of the definitions that are advanced. Some may miss key family characteristics while others attempt a rather rushed or overly stylized identikit picture. Nor can it be dismissed on normative grounds. It is neither confined to the UK, nor lacking in legitimacy.

Here, we identify the core features of the Westminster system – the family resemblance sufficient to establish that one is a member of the Westminster brood – before addressing the case for Westminster as a particular system of government.

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<sup>25</sup> David Feldman, “Constitutional Conventions” in Matt Qvortrup (ed), *The British Constitution: Continuity and Change*, Oxford: Hart Publishing, 2013, p. 95; Philip Norton, *Governing Britain* (n. 2), 32.

<sup>26</sup> Harry Potter, *Law, Liberty and the Constitution* (Woodbridge: Boydell Press, 2015), 1.

<sup>27</sup> *Ibid.*, 319.

<sup>28</sup> Geert Corstens, *Understanding the Rule of Law* (Oxford: Hart Publishing, 2017), 3.

## DEFINING THE WESTMINSTER SYSTEM

What, then, are the key characteristics of the Westminster system? I begin by distinguishing the two basic types of government, the presidential and the parliamentary.<sup>29</sup> In the former, the executive is elected separately from the legislature and each exists independently of the other. The head of state and head of government is the same person. The term of the President is fixed and the occupant of the office cannot be removed by a vote of no confidence by the legislature. In the latter, the executive is determined through elections to the legislature. The posts of head of state and head of government are discrete. The executive rests on the confidence of the legislature for its continuance in office. There are also some hybrids, the premier-presidential system, such as France and Guyana and complemented now by some central and eastern European states.

Parliamentary government, as Baranger explains, denotes not only one or more constitutional mechanisms, but also a political culture. The culture is one where the relationship between the rulers and the governed is expressed in terms of confidence. Confidence is expressed through debate and vote and has an impact on power. Almost 100 nations have provision for a vote of confidence.<sup>30</sup> The outcome is one where power can change hands as a result of confidence being withdrawn. The relationship is thus denoted by accountability: “the account of the way in which power has been exercised is followed by a display of the sentiment of a deliberative body (‘confidence’), as a result of which it is known that power is either withdrawn or maintained”.<sup>31</sup>

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<sup>29</sup> See Douglas Verney, “Parliamentary Government and Presidential Government” in Arend Lijphart (ed), *Parliamentary Versus Presidential Government* (Oxford: Oxford University Press, 1992), 31-47.

<sup>30</sup> Philip Norton, “The Fixed-term Parliaments Act and Votes of Confidence” (2016) 69:1 *Parliamentary Affairs* 3-18, 4. See generally on Fixed-term Parliament Act, Philip Norton, “From Flexible to Semi-Fixed: The Fixed-term Parliament Act” (2014) 1:2 *Journal of International and Comparative Law* 203-220.

<sup>31</sup> Denis Baranger, “Parliamentary Law and Parliamentary Government in Britain” in Katja S. Ziegler, Denis Baranger and Anthony W. Bradley (eds), *Constitutionalism and the Role of Parliaments* (Oxford: Hart Publishing, 2007), 16.

The Westminster system is a sub-set of the parliamentary system of government. As Russell and Serban observe, I have distinguished the Westminster system from the continental system of government.<sup>32</sup> (I am not the only one to do so; Lijphart distinguishes majoritarian from consensus systems.)<sup>33</sup> The basis for this distinction will become apparent in what follows. My analysis derives not simply from desk-based analysis, but also from observation, including participant-observation. I have engaged with parliamentarians from nations around the globe, as well as speaking at legislatures and organizing a biennial international workshop of parliamentary scholars and parliamentarians.<sup>34</sup> Some years ago, I led a seminar in Strasbourg hosted by a committee of the Parliamentary Assembly of the Council of Europe. To enliven what was in danger of becoming a rather dull meeting, I argued that citizens had a right to know what legislators were doing on their behalf and that therefore meetings of legislative committees should normally meet in public. In Westminster, such meetings were public. This line of argument had the desired effect, with parliamentarians from some leading western European nations objecting strenuously and coming up with reasons as to why committees had to meet in private. There was a clear divide between Westminster and continental parliamentary systems, a distinction to which I shall return.

I shall now distil what I see as the characteristics of the Westminster system. The system derives from the long-established and core tenet, deriving from English experience, that the king's government must be carried on. This is a necessary, but not sufficient condition. It is complemented by other features that set it apart and create a configuration that is recognizable to those who form part of what we shall present as the Westminster family.

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<sup>32</sup> Russell and Serban (n. 10), 753. See Philip Norton, "The Changing Constitution", in Bill Jones and Philip Norton (eds), *Politics UK*, eighth ed., London: Routledge, p.269.

<sup>33</sup> *Ibid.*

<sup>34</sup> See Philip Norton, "Introduction: A Quarter-Century of Scholarship" in Philip Norton (ed), *The Impact of Legislatures: A quarter Century of The Journal of Legislative Studies* (London: Routledge, 2021), 5, and [www.wroxtonworkshop.org](http://www.wroxtonworkshop.org)

(a) *Executive-driven*

Core to understanding the Westminster system is that it is executive-centric. The onus for public policy rests wholly and exclusively with the executive. The executive comes forward with its proposals and the legislature responds. As long as the executive can maintain the confidence of the legislature, it governs. “The first business of a government”, wrote Bernard Crick, “is to govern.... The need for strong government can be taken as granted.”<sup>35</sup> The first part of the statement applies generally to governments. The second part is very much a Westminster perspective.

A parliament developed in England to accede to the king’s demand for supply (money). Although it used its capacity to refuse supply as the basis for acquiring other functions, including scrutinising the administration and spending of the king’s ministers, it remained a body that was summoned (which could be infrequently) to respond to the demands of the Crown.<sup>36</sup> “From the practice of Tudor government was derived the assumption that the administration should be firmly in the hands of the King, who would summon Parliament when he needed consent to the imposition of taxes or the introduction of laws, but would not expect Parliament to take the initiative in major questions of state”.<sup>37</sup> This remained the case in England following the Glorious Revolution of 1688. The king could no longer legislate without the assent of Parliament, but he remained the source of executive authority.<sup>38</sup> The beneficiary of the revolution, William III, “conducted negotiations abroad, and

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<sup>35</sup> Bernard Crick, *The Reform of Parliament* (London: Weidenfeld & Nicolson, second revised ed., 1970), 1.

<sup>36</sup> Philip Norton, *Parliament in British Politics* (Basingstoke: Palgrave Macmillan, second ed., 2013), 17-18.

<sup>37</sup> Anthony H Birch, *Representative and Responsible Government* (London: George Allen & Unwin, 1964), 25.

<sup>38</sup> G M Trevelyan, *The English Revolution 1688-89* (London: Thornton Butterworth, 1938), 13.

commanded armies in the field”<sup>39</sup> and the expectation that leadership would continue to be exercised through prerogative powers passed to the king’s ministers with the development of a ministry and emergence of a Prime Minister and Cabinet. “The British tradition of monarchical government carried with it certain assumptions about the power of the executive and these were passed on to the new Parliamentary governors... The duty of government was to govern. Parliament has the right to report on and approve governmental acts, but only with the strict understanding that the government should be allowed to get on with its job until defeated by a vote of the Commons or the electorate.”<sup>40</sup>

The executive is the driving force in setting the parliamentary agenda, a feature especially of the British and Irish parliaments.<sup>41</sup> Core to understanding the Westminster system is that parliament looks to the government for action. The relationship between leaders and supporters is characterized by hierarchy rather than bargaining.<sup>42</sup> This sets it apart.

*(b) Rules-based conflict*

The legislature is not, then, a policy-making body – it is law-effecting, not law-making – and responds to what is placed before it by the executive. Furthermore, and this is the other essential element of the Westminster system, it is an adversarial system, with that relationship being both structured and culturally embodied. The system is formally recognized, with a government facing an official opposition. Opposition may be fragmented, with several parties in opposition to the government, but the second largest party is designated as the official opposition, with the leader having the status of

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<sup>39</sup> Thomas Erskine May, *The Constitutional History of England*, Vol. 1 (London: Longmans, Green & Co., fifth ed., 1875), 6.

<sup>40</sup> Robert Pyper, “Parliamentary Accountability” in Robert Pyper (ed), *Aspects of Accountability in the British System of Government* (Wirral: Tudor Publishing, 1996), 48.

<sup>41</sup> Herbert Doring, “Parliamentary Agenda Control and Legislative Outcomes in Western Europe” (2001) 26 *Legislative Studies Quarterly* 145-65.

<sup>42</sup> Philip Norton, “Comparing Leadership Patterns and Dynamics in the Legislative Arena”, in Ludger Helms (ed), *Comparative Political Leadership* (Basingstoke: Palgrave Macmillan, 2012), 58-9.

Leader of the Opposition and certain privileges in the chamber. The opposition is recognized by statute, standing orders or convention.<sup>43</sup> A salary typically attaches to the position of Leader of the Opposition and sometimes other opposition posts.

The existence of a formal opposition serves to ensure that the executive is subject to critical scrutiny on a consistent basis. “Regarded as a parliamentary institution, it may be claimed for the Opposition that no better system has yet been devised for ensuring that the indispensable function of criticism shall be effectively coordinated and exercised in a constructive and responsible spirit.”<sup>44</sup> The opposition may not always be that constructive, but government proceeds on the basis that it will face a body that seeks to replace it in office and exploit the opportunity to highlight failings in its policies and actions. “The functions of an Opposition include unmaking the government.”<sup>45</sup> Government faces an adversary that is entitled to resources in challenging its actions and seeking to displace it.

The notion of an opposition—styled as Her Majesty’s Loyal Opposition, thus formally acknowledging it works within the existing constitutional framework—dates from the early 19<sup>th</sup> Century and “has long received practical recognition in the procedure of the Parliaments of the British Commonwealth”.<sup>46</sup> There is an acceptance by those engaged in this adversarial relationship of the rules of the game. Westminster systems proceed on the basis that the executive is entitled to get its business considered, but the opposition is entitled to be heard. As expressed in the context of the Australian House of Representatives, “While Government business dominates the agenda of the

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<sup>43</sup> See “Comparative Study: The role of the Opposition” (2019) 87 *The Table* 138-79.

<sup>44</sup> Norman Wilding and Philip Laundy, *An Encyclopedia of Parliament*, fourth revised edn. (London: Cassell & Co., 1972), 510.

<sup>45</sup> Michael Tatham, “Is the official Opposition official? Opposing opinions in the 13<sup>th</sup> Legislative Assembly of the Northern Territory” (2019) 87 *The Table* 50.

<sup>46</sup> Wilding and Laundy, *An Encyclopedia of Parliament* (n. 44), 508.

House, the Opposition has the opportunity to express its views on all legislation and other matters initiated by the Government.”<sup>47</sup>

There is an equilibrium of legitimacy in that each accepts the right of the other to carry out its role.<sup>48</sup>

The parties may seek to exploit the rules to their advantage, but there is a basic measure of agreement. As Donald Searing concluded, “Politicians are divided and strongly biased by party-political considerations, but they also exhibit areas of consensus and are constrained by beliefs about propriety of obedience and by prospects of failure which might accompany opportunistic adventures.”<sup>49</sup>

The rules themselves are well developed, contributing to a highly institutionalized body. Procedural tracts have long existed in Westminster.<sup>50</sup> The most prominent instance, drawing together rules and precedents in an authoritative and extensive volume of guidance, is that compiled in the 1840s by the assistant librarian in, and later Clerk of, the House of Commons, Thomas Erskine May. *Erskine May’s Treatise*<sup>51</sup> not only serves as an essential manual for the British House of Commons, but has also served as a reference point for many other Westminster parliaments.<sup>52</sup> If a situation arises not covered by a parliament’s standing orders and rules, reliance is placed on *Erskine May*. Most

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<sup>47</sup> “Comparative Study: The role of the Opposition” (2019) 87 *The Table* 138. See also Robert Blackburn, “The Politics of Parliamentary Procedure at Westminster”, (2017): 4:2 *Journal of International and Comparative Law* 291-4.

<sup>48</sup> Philip Norton, “Playing By The Rules: The Constraining Hand of Parliamentary Procedure” (2001) 7:3 *The Journal of Legislative Studies* 13-33.

<sup>49</sup> Donald D Searing, “Rules of the Game in Britain: Can the Politicians be Trusted?” (1982) 76:2 *American Political Science Review* 239-258, 256.

<sup>50</sup> Kari Palonen, *The Politics of Parliamentary Procedure* (Opladen: Barbara Budrich Publishers, 2014), Chapter 2; Paul Evans (ed) *Essays on the History of Parliamentary Procedure* (Oxford: Hart Publishing, 2017), Part II.

<sup>51</sup> Sir David Natzler and Mark Hutton (eds), *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (London: LexisNexis, twenty-fifth ed., 2019).

<sup>52</sup> See David Natzler, David Bagnall, Jean-Philippe Brochu, and Peter Fowler, “Controversy at the Antipodes (and Elsewhere)” in Paul Evans (ed.), *Essays on the History of Parliamentary Procedure* (Hart Publishing, 2017), 129-53.



parliaments have now developed their own sets of rules, but the influence has been extensive.<sup>53</sup> The key consideration here is the acceptance of rules ensuring a structured arena in which the parties can engage in adversarial combat, both sides accepting those rules and the rationale for their existence.

Government works, then, within a highly developed and complex process. There is a cost in seeking to employ its parliamentary majority to change the rules to its advantage. The price of change can be too much in terms of time and intellectual resources, as well as of legitimacy.<sup>54</sup> “Procedural limitations prevent a majority from altering the rules to its own advantage, that is, they serve to maintain fair chances for all candidates now and in future parliaments in relation to the incumbent majority.”<sup>55</sup> The executive does not seek to use its parliamentary majority to stifle the capacity of the opposition to express itself. The opposition accepts that the government is entitled to have its business considered. Each side relies on the other to comply with the rules.<sup>56</sup> A failure to co-operate undermines the system and what each has to gain from it. The legislature proceeds on the basis of consensus, but not a consensus on public policy, but on the process by which that policy is debated and legitimized.

*(c) Enforcing the rules—a neutral Speaker*

The rules within which the adversarial conflict between the parties takes place need to be interpreted and enforced. Rather like boxers in a ring, there is need for a referee.

Ensuring acceptance of the rules by the parties is their enforcement by a neutral presiding officer.

The concept of a neutral Speaker developed in the British House of Commons and was confirmed in

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<sup>53</sup> *Ibid.*, 128-9.

<sup>54</sup> P Norton, “Playing By The Rules” (n. 48), 25-6.

<sup>55</sup> K Palonen, *Politics of Parliamentary Procedure* (n. 50), 19.

<sup>56</sup> See Blackburn, “The Politics of Parliamentary Procedure” (n. 47), 288-9.

the 19<sup>th</sup> Century with the practice developing that, once elected as Speaker, the occupant of the post gave up party membership, was offered a peerage upon retirement from the post and made no return to party politics. Controversy was generated in the UK in the 21<sup>st</sup> Century when one Speaker, Michael Martin, was criticized for continuing to socialize with Labour MPs, his former party colleagues, after he took up the Speakership and even greater controversy was generated by his successor, John Bercow, accused of being partial in his rulings to assist opponents of the Government's policy for the UK exiting the European Union.<sup>57</sup> When he retired from the Speakership, he was not given the traditional peerage. The very fact that such controversy occurred was because of the acceptance that the House of Commons rested on the existence of a neutral referee and not someone who would be a participant in the conflict.

The Speaker exists to ensure the rules are applied and are done so fairly. The occupant of the chair thus not only exists to enforce the law, but also to dispense justice. According to Gilbert Campion, one of the core principles "worked by the practice of the House is that of fair play especially to the minority."<sup>58</sup> The Speaker presides and stands apart from debate and political activity.

The nature of the Speakership in Britain helped shape the role of Speakers in other Westminster systems. The speakership in most Commonwealth nations, according to Philip Laundy, was influenced by the British tradition "and the powers and duties of Commonwealth Speakers are in many respects similar".<sup>59</sup> Nor is the influence confined to powers and duties, but also encompasses form. The authority of the Speaker in the British House of Commons was exhibited in the holder of the office wearing formal robes and a wig. This mode of dress has been followed in other (though not all) Westminster legislatures,<sup>60</sup> some continuing to maintain the practice of wearing robes and a wig

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<sup>57</sup> See Sebastian Whale, *John Bercow: Call to Order* (London: Biteback Publishing, 2020), 295-306.

<sup>58</sup> Gilbert Campion, *An Introduction to the Procedure of the House of Commons* (London: Macmillan, third ed., 1958), 51.

<sup>59</sup> Philip Laundy, *Parliaments in the Modern World* (Aldershot: Dartmouth, 1989), 50.

<sup>60</sup> Wilding and Laundy, *An Encyclopedia of Parliament* (n. 44), 712-3.

after the Speaker of the British House gave up wearing a wig and also began wearing a plain gown when presiding over the chamber.

Complementing the authority of the Speaker as a neutral presiding office is the existence of a neutral parliamentary administration. A neutral civil service, as we have seen from the data compiled by Russell and Serban, is advanced by some texts as a feature of the Westminster system of government. It is a distinctive feature of the legislature. The Speaker is assisted by a professional body of clerks and other parliamentary officers, often career officials, who serve the chamber, under the direction of the Speaker, and not the government or governing party. They provide guidance and advice on a non-partisan basis. The Speaker and the clerks act as gatekeepers to the rules.<sup>61</sup> Members of the legislature are generally not experts on legislative procedure.

*(d) Dominant chamber*

The two sides fight it out in public debate in the legislative chamber. The combination of executive dominance and structured adversarial conflict give rise to two other characteristics of the Westminster system: a dominant chamber through which the executive exerts its authority and an emphasis on the plenary, enabling the opposing parties to pit their arguments against one another publicly.

As we have seen, some scholars consider that a defining feature of the Westminster system is a unicameral legislature. Others have specified bicameralism. Both miss the point, in that it is not a question of the number of chambers, but of the dominance of the primary (or only) chamber. There is a dominant chamber through which the executive is chosen and is answerable to electors. The dominance may be exclusive in that there is only one chamber or there may be asymmetrical bicameralism, where the second complements and/defers to the primary chamber.

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<sup>61</sup> P Norton "Playing By the Rules," (n. 48), 28.

The dominant chamber is the body through which government is chosen, and to which it is answerable, and through which it exerts its authority. It is also the body through which the government speaks, through the members, to the people and the people, through their representatives, speak to the government. Members are typically chosen through a constituency-based electoral system, usually though not always the first-past-the-post plurality system. The party label provides both the basis for electoral success and party cohesion within the legislature, but the mode of voting for a particular individual (or group of individuals) creates an incentive, and legitimizes, members speaking in the name of constituents.

Party cohesion is hardly a feature that is peculiar to Westminster systems – it characterizes presidential as well as consensus parliamentary systems – but Westminster systems appear on balance to exhibit even high levels than consensual systems.<sup>62</sup> The adversarial nature of the relationship between the parties reinforces party attachment through the “us” versus “them” nature of the conflict. One is seen as being disloyal, and assisting the other side, by dissenting publicly from the party line. It is a case not just of loyalty, but of tribal loyalty. It is instinctive. Parliamentarians gravitate naturally to vote with party colleagues. They do so even when there may be no disciplinary pressures or sanctions to bring them into line.<sup>63</sup> Whips facilitate cohesion, they do not create it. Some Westminster systems – the Canadian is a notable example – exhibit especially high levels of party cohesion and rigid whipping.<sup>64</sup>

*(e) Plenary debate*

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<sup>62</sup> Ulrich Sieberer, “Party Unity in Parliamentary Democracies: A Comparative Analysis”, (2006) 12:2 *The Journal of Legislative Studies*, 150-78.

<sup>63</sup> See Philip Norton, “Cohesion Without Discipline: Party Voting in the House of Lords”, (2003) 9:4 *The Journal of Legislative Studies*, 57-72.

<sup>64</sup> See Jean-François Godbout, *Lost on Division: Party Unity in the Canadian Parliament* (Toronto: University of Toronto Press, 2020).

The emphasis on a dominant chamber encompasses both parts of the description in terms of power (dominance) and form (chamber). The emphasis on the chamber is a defining characteristic of Westminster parliaments, but one notably absent from the list of such characteristics delineated by Russell and Serban. This notably distinguishes Westminster parliaments from continental, or consensus, parliaments. The emphasis in the German Bundestag is on committee deliberation. This is what is denoted by the description of the parliament as a “working parliament”. This is contrasted with Westminster as a “debating parliament”.<sup>65</sup> Members of the Bundestag neglect the plenary in favour of committee meetings. Committee meetings are the site of intra-party compromises or confirming positions taken beforehand in party working groups.<sup>66</sup> Attempts to place greater emphasis on plenary sessions have not been notably successful. Members are geared more to committee deliberation than to debate in the chamber.

For members in Westminster systems, the plenary is the arena for debate, for one side to pit its argument against the other (or others). It is very much a debating parliament, with an emphasis on engaging in verbal jousting with one’s opponents. There is a premium on chamber skills. A parliamentarian who can hold the House with the force of argument is more likely to be marked out for promotion to ministerial office than one who has managerial skills or the ability to generate policy ideas. Prime Minister’s Question Time in the British House of Commons is widely viewed as a gladiatorial contest between the Prime Minister and Leader of the Opposition. It is a test of both.<sup>67</sup> The introduction of television coverage of parliamentary proceedings has served to highlight the adversarial jousting between political leaders. The occasion is seen as the ultimate test of parliamentary skill. As one MP put it, “When discussing the big issues, and at PMQs, it is like a

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<sup>65</sup> Thomas Saalfeld, “The German Bundestag: Influence and Accountability in a Complex Environment” in Philip Norton (ed), *Parliaments and Governments in Western Europe*, London: Frank Cass, 1998), 53.

<sup>66</sup> *Ibid.*, 60-1.

<sup>67</sup> See Robert Borthwick, “On the Floor of the House” in Mark Franklin and Philip Norton (eds), *Parliamentary Questions* (Oxford: Clarendon Press, 1993), 86-7.

storm, a great crash on the rocks. No other forum delivers so much adrenalin and demands so much nerve. If you can command respect in the House, you have made it.”<sup>68</sup>

Though the partisan jousting in the UK House of Commons takes place in a chamber in which one side sits facing another, the physical layout of the chamber is not a defining feature of the Westminster system. Though the chambers with opposing benches – rather than organized in a semi-circle, horseshoe or classroom shape – are predominantly in Westminster legislatures, primarily the UK, Canada and Caribbean nations, not all Westminster legislatures adopt that layout.<sup>69</sup> Australia, India, Ireland, and New Zealand are among those utilizing a horseshoe configuration.

*(f) Public debate*

A corollary of the differences between Westminster and consensual systems is that legislative committees in the latter tend to meet in private, whereas committees in Westminster parliaments the practice is to meet in public.

The rules in some continental legislatures mandate privacy, but even when discretion is accorded committees to meet in public, the culture has favoured meeting away from the public eye. In Austria, despite some debate as to whether committees should be opened to the public, “nearly all meetings are still closed”.<sup>70</sup> In 1990, the internal regulations of the French National Assembly were changed to allow legislative committees, at their own discretion, to open their doors to the public. “However, except for a few highly publicized sessions, the practical effect on the legislative work of the

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<sup>68</sup> John Thurso MP, quoted in Emma Crewe, *The House of Commons: An Anthropology of MPs at Work* (London: Bloomsbury, 2015), 64.

<sup>69</sup> See David Mulder van der Vegt and Max Cohen de Lara, *Parliament* (Amsterdam: XML, 2016), 414-19.

<sup>70</sup> Edwin Rekosh (ed), *In the Public Eye: Parliamentary Transparency in Europe and North America*, (Washington DC: International Human Rights Law Group, 1995), 25.

parliament was minimal.”<sup>71</sup> In Germany, the rules stipulate closed meetings, though committees may permit the media or public to attend for particular discussions: “In practice, committee meetings are rarely opened”.<sup>72</sup> An attempt by the Green Party to open up committee deliberations generally to the public was rejected.<sup>73</sup>

The reasons for this stance is clear: “It is commonly thought that public attendance would interfere with efficiency and restrict candid debate at committee meetings”.<sup>74</sup> Contrast this with Westminster legislatures, such as Canada and the UK, where the opposite pertains and the culture is one of permitting public access, either because the rules mandate it or because committees exercise their right to admit the public. Again, the logic of the approach is clear, in that the committees, as an extension of what happens in the chamber, constitute an arena for each side to put its case. There is no bargaining or confirmation of deals, but one side seeking to get its way over the other.

#### A DOMINANT MODE

The Westminster system is thus characterized by what Anthony King characterized as the opposition mode of executive-legislative relations.<sup>75</sup> As he argued, the parties seek not accommodation, but domination. Other modes may come into play, the intra-party mode when government supporters are restless, the inter-party mode when there is a coalition or pact, or the cross-party or non-party mode for pursuing issues through non-legislative committees or private members’ legislation. But the

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<sup>71</sup> *Ibid.*, 82.

<sup>72</sup> *Ibid.*, 96.

<sup>73</sup> T Saalfeld, “The German Bundestag” (n. 65), 69.

<sup>74</sup> E Rekosh, *In the Public Eye* (n. 70), 96. See also 98, n. 30.

<sup>75</sup> Anthony King, “Modes of Executive-Legislative Relations: Great Britain, France and West Germany” (1976) 1:1 *Legislative Studies Quarterly* 11-34.

opposition is the dominant visible mode. As he records, other modes dominate in Germany and France.

The ideal is often deemed to be a two-party system, with two dominant parties fighting for victory, with one party gaining an absolute majority of seats,<sup>76</sup> but this is not a defining characteristic. Such an ideal two-party system is rare. The Government in a Westminster system faces an official Opposition, but there are typically parties other than those forming the government and opposition. As Kaiser has noted, “the constitutional recognition of a party as the official Opposition does not offer us valuable information about how the opposition works”.<sup>77</sup> Opposition takes different forms. There may be, and often are, minority or even coalition governments. In the absence of an overall majority, there is a tendency to prefer minority government to coalition government. The government does deal if necessary with one or more opposition parties to support it on a confidence or supply basis or simply soldiers on in the absence of a vote of no confidence.

The existence of an official opposition remains nonetheless a significant characteristic of Westminster systems. The opposition is defined as the body that could form a government in the event of the incumbent ceasing to govern. It enjoys certain privileges, both in terms of procedure and resources, and ensures that the government is subject to consistent and critical scrutiny. Its formal designation is also an acknowledgement of the rules of the game that operate. It serves to expose government to public challenge and oversight, but—relative to other forms of opposition—least likely to affect

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<sup>76</sup> Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis* (Cambridge: Cambridge University Press, 1976), 185.

<sup>77</sup> André Kaiser, “Parliamentary Opposition in Westminster Democracies: Britain, Canada, Australia and New Zealand” in Ludger Helms (ed), *Parliamentary Opposition in Old and New Democracies* (London: Routledge, 2009), 5.



outcomes of public policy.<sup>78</sup> It relies, as King noted, on “good reasons, and time.”<sup>79</sup> It is given the floor and may win the argument, but not the vote.

The key point, core to the Westminster system, is not the actual configuration of opposition, but the capacity of government to get its way in the face of opposition. As Kaiser concludes, “In institutional terms, the Westminster system are still at the bottom of the league table when it comes to opposition influence on parliamentary decision-making.”<sup>80</sup> The main adversarial activity, between government and opposition, takes place in the chamber—not necessarily exclusively, but predominantly—with that activity forming a platform for a continuous election campaign.

The opposition mode privileges debate in the chamber. Legislative committees have been used as extensions of the chamber, with the two sides, as we have noted, facing one another in adversarial conflict. Proceedings are generally controlled by the whips. Members are not necessarily chosen because of their knowledge of a subject. As one Canadian MP recalled, the interests and background of a Member did not matter much. “That wasn’t the way it worked. ‘You’re on a committee because that’s where we put you and don’t worry if you don’t know enough about it; we are going to give you notes anyway’.”<sup>81</sup> Committees have been established essentially to expedite government legislation rather than frustrate it.

Attempts at creating effective investigative committees, fairly common in continental legislatures, have proved difficult in Westminster legislatures. In Ireland, the weakness of investigation by committees of the *Dail* has led to reliance on judicial inquiries. In the UK, the establishment of

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<sup>78</sup> Philip Norton, “Making Sense of Opposition” in Ludger Helms (ed), *Parliamentary Opposition in Old and New Democracies* (London: Routledge, 2009), 225.

<sup>79</sup> A King, “Modes of Executive-Legislative Relations” (n. 75), 18.

<sup>80</sup> A Kaiser, “Parliamentary Opposition” (n. 77), 17.

<sup>81</sup> A Loat and M MacMillan, *Tragedy in the Commons* (n. 4), 144.

investigative select committees—a feature of Parliament in the days prior to the growth and dominance of party—was resisted by some MPs who stressed the centrality of the chamber. The use of such committees, it was argued, would detract Members from debating the great issues of the day in the chamber and absorb them in details. It would drain the energy of Members in committee and, in the words of Michael Foot, “destroy the distinctive qualities of the House of Commons”. It would be “cutting the main vein in which the whole thing operates”.<sup>82</sup> Although Foot, who was Leader of the House of Commons when the Procedure Committee report recommending such committees was published, was unable to prevent the creation of such committees, the committees lack the capacity of legislative committees and of the chamber to say no to government. Where committees combine the roles of scrutinizing legislation with examining policy, they have not always had a great impact on public policy. In Canada, MPs complained that “the work of committees wasn’t adequately integrated into the government decision-making process”.<sup>83</sup> Investigative committees may serve a valuable role in turning a spotlight on an important problem, but they rely on a persuasive capacity to have an impact.

Although committees are more prominent than before, the focus remains the public battle between the government and its opponents. The point was well encapsulated in King’s observation that, if the intra-party mode of executive-legislative relations can be likened to a marriage, “the opposition mode resembles a war game. There are rules which each side must observe, but both sides play to win.”<sup>84</sup> The public adversarial battle, played out in a sole, or dominant, chamber, typifies the Westminster system of government.

## THE FAMILY LIKENESS

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<sup>82</sup> Select Committee on Procedure, House of Commons, *First Report from the Select Committee on Procedure*, Vol. 2: Minutes of Evidence, Session 1977-78, HC 588-2, pp. 68-9.

<sup>83</sup> A Loat and M MacMillan, *Tragedy in the Commons* (n. 4), 145.

<sup>84</sup> A King, “Modes of Executive-Legislative Relations” (n. 75), 18.

Westminster parliaments are recognizable by the extent to which they exhibit these characteristics. As we have recorded, we concur with Rhodes, Wanna and Weller that identifying “most similar nations” is the most fruitful, certainly the most practical, way to proceed. A nation does not have to exhibit all the characteristic in pristine form to be classed as a Westminster system of government. Some will deviate from one or more. Opposition parties in the Bangladesh parliament, for example, have had some difficulty in accepting the need to play by the rules, occasionally staging walkouts.<sup>85</sup> In some Westminster parliaments, including recently, as we have seen, the British House of Commons, controversy has attached to the role of the Speaker and not all Speakerships distance themselves from partisan activity to the extent that the Speaker does in the UK.<sup>86</sup> The parliamentary administration may not be as rigorous in its political neutrality as in both chambers of the UK Parliament. The nation seen as a pristine Westminster system—that of New Zealand—has embraced a system of proportional representation for parliamentary elections. However, even in New Zealand, the key features—what may be deemed the DNA of the Westminster system—remain. “With the exception of a relaxing of collective responsibility MMP ‘has left untouched the essential ground rules of Westminster government’.”<sup>87</sup>

To pursue the analogy of a Westminster family, some nations will exhibit a stronger family resemblance than others. The key point is that there is a resemblance and, crucially, that this resemblance is stronger than any other. Despite some changes or pressures, there remain a substantial number of nations exhibiting a Westminster system of government rather than a continental, or consensual, system, a presidential or semi-presidential (or hybrid) system, or a non-democratic system. This five-fold typology may be rather broad, but it has greater utility than seeking to

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<sup>85</sup> Nizam Ahmed, *The Parliament of Bangladesh* (Aldershot: Ashgate, 2002), 188-218.

<sup>86</sup> Wilding and Laundry, *An Encyclopedia of Parliament* (n. 44), 710-12.

<sup>87</sup> Harshan Kumarasingham, “Exporting Executive Accountability? Westminster Legacies of Executive Power” (2013) 66 *Parliamentary Affairs* 579-596, 584.

obliterate the Westminster system. Furthermore, there is not only a family resemblance, but also some degree of familial attachment. The system is culturally embedded. Although some nations have departed from it, not least in Africa, most have no experience of another system and some that have left the family fold have returned to it. There is the equivalent of family gatherings, especially at the level of Speakers and clerks, primarily through, though not confined to, the Commonwealth Parliamentary Association (CPA). The CPA publishes a journal, *The Parliamentarian*. There is an Association of Clerks at the Table, publishing a journal, *The Table*. The publications speak to a common Westminster experience.

There is thus a powerful argument for retaining the category of the Westminster system, not only because of the absence of a coherent alternative, but also and more positively because they are discernible features that set the Westminster system of government apart. Although even some sympathetic to the concept of the Westminster system concede that it has changed or weakened over time – Payne refers to “Westminster adapted” systems<sup>88</sup> – it is more embedded and coherent than critics posit and remains one of the principal systems of government. Furthermore, the Westminster family has in recent years gained at least one new member.

## WESTMINSTER RECLAIMED

The Westminster system of government, as we have seen, has its critics. There are two distinct questions. Does it exist? Does it work? We have addressed the first, arguing that it does. Does it work? Critics such as Beetham argue that it does not, believing it to be flawed as a liberal-democratic mode of governing. The system loads power in favour of the party in government. Unless there is an alternation of power between parties, one party becomes over-mighty. If there is alternation, there is the danger of discontinuity in public policy, the incoming government reversing the policies of its

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<sup>88</sup> Anthony Payne, “Westminster Adapted: The Political Order of the Commonwealth Caribbean” in Jorge I Dominguez, Robert A Pastor, and R Delisle Worrell (eds), *Democracy in the Caribbean* (Baltimore: The Johns Hopkins University Press), 57-73.

predecessor.<sup>89</sup> The electoral system confers disproportionate power on the largest single party, often returned to power on a minority of the popular vote. Such criticisms have led to demands for reform, not least, but not exclusively, of the electoral system. In the UK, the liberal approach to constitutional change, advocated by a political party (the Liberal Democrats) and reform organizations such as Unlock Democracy, embraces a raft of reforms designed to fragment power and effectively transform Westminster from an adversarial to a consensual system of government.<sup>90</sup>

Advocates of the Westminster system argue both a pragmatic and a principled case for it. At a purely pragmatic level, the system has been widely embraced and it endures. Payne's argument is that Caribbean Commonwealth nations have inherited the Westminster system and adapted it "in a creative and distinctive way" and that "the resulting system, which can be described as democratic, offers the region a workable, although far from flawless, basis on which to defend its political practice..."<sup>91</sup> The system has some measure of adaptability. It has been molded to meet the conditions of the environment in which it exists.

At the heart of the Westminster system are five key attributes: accountability, transparency, responsiveness, flexibility, and effectiveness. Accountability is pre-eminent in that the system ensures that those in government are accountable, through elections, to those who put them in power. Governments are chosen through elections to the dominant chamber and govern through their position in that chamber. There is one body – the party or parties in government – responsible for public policy and answerable to electors for that policy. There is no divided accountability. Electors can reward or punish those in power at the next election. As Karl Popper argued, the essence of democracy is the capacity of citizens to get rid of the body in power and to do so in a peaceful way:

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<sup>89</sup> See S E Finer (ed), *Adversary Politics and Electoral Reform* (London: Wigram, 1975); David Owen, *Face the Future* (Oxford: Oxford University Press), 1981.

<sup>90</sup> P Norton, *Governing Britain* (n. 2), 12.

<sup>91</sup> A Payne, "Westminster Adapted" (n. 88), 58.

In the *Open Society and its Enemies* I suggested that an entirely new problem should be recognized as the fundamental problem of a rational political theory. The new problem, as distinct from the old “Who should rule?” can be formulated as follows: how is the state to be constituted so that bad rulers can be got rid of without bloodshed, without violence?<sup>92</sup>

The electoral system typically adopted in Westminster systems is central to ensuring that citizens can turn a government out of office. There is also no divided responsibility. Those responsible exist in plain sight. The system militates against post-election bargaining to keep the same people in office despite adverse election results. Having the executive answerable to the people through parliamentary elections is a defining feature of parliamentary, as opposed to presidential, systems, but it exists most starkly in Westminster parliamentary systems. A government in office with a large majority may find itself banished to the political wilderness, a fate most notably illustrated by the results in the 1993 Canadian parliamentary elections, the governing Progressive Conservative Party being reduced from holding a majority of seats (169) in the House of Commons to winning only two.

In between elections, government is accountable to electors through their representatives in the dominant chamber. High levels of party voting are seen by critics as rendering accountability nugatory, enabling the executive to control the legislature, rather than the other way round. Lijphart emphasized the concentration of executive power in Westminster systems. Formally, the executive is accountable to the legislature through having to maintain the confidence of the dominant chamber. However, in practice, the real accountability is more likely to be within the governing party’s own ranks. As King observed, “As far as the government is concerned, government back-benchers are the most important members of the House”.<sup>93</sup> The party caucus can be the medium for criticism within the ranks of the governing party. Ministers may be wary of upsetting their own supporters. If party

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<sup>92</sup>Sir Karl Popper, “The Open Society and its Enemies Revisited” *The Economist*, 23 April 1988.

<sup>93</sup> A King, “Modes of Executive-Legislative Relations” (n. 75), 16.

leaders fail to listen to their own supporters, then it may lead to public dissent by backbench MPs, as in the UK,<sup>94</sup> or to members peeling off to form their own parties, as in Canada.<sup>95</sup> Where the party is publicly united, then it contributes to having one distinct entity – the party in government – that can stand before electors and be held to account for the outcomes of public policy. This is also facilitated by the doctrine of collective ministerial responsibility.<sup>96</sup>

Transparency is also a feature. As we have seen, committee deliberations are more likely than in consensus parliamentary systems to be held in public. How members behave, as well as how they vote, is a matter of public record. More broadly, the system, whatever the flaws identified by critics, is transparent in the way it operates. Electors can see how their votes translates into seats. It also facilitates accountability in that by privileging the largest party, it militates against the need for post-election bargaining to form an administration. Post-election negotiations can and do produce governments, and certainly programmes, for which no one has definitively voted. If party A with 40 per cent of the popular vote goes into coalition with Party B with 20 per cent of the vote, the resulting coalition (A+B) has not been endorsed by 60 per cent of electors, but it has 0 per cent direct endorsement: no one has voted for A+B.<sup>97</sup> Coalitions are not unknown in Westminster systems, but they are less common than in continental, or consensus, systems of government. Parties in Westminster systems exhibit a decided preference for minority government whereas in consensus systems, by their very nature, the preference is to manufacture a coalition. Westminster systems

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<sup>94</sup> See Philip Norton, *Dissension in the House of Commons 1945-74* (London: Macmillan, 1975); Philip Norton, *Conservative Dissidents* (London: Temple Smith, 1978); Philip Norton, *Dissension in the House of Commons 1974-1979* (Oxford: Clarendon Press, 1980); Philip Cowley, *Revolts and Rebellions* (London: Politico's, 2002); Philip Cowley, *The Rebels* (London: Politico's, 2005); Philip Norton, "Coalition Cohesion" in Tim Heppell and David Seawright (eds), *Cameron and the Conservatives* (Basingstoke: Palgrave Macmillan, 2012), 181-93.

<sup>95</sup> J F Godbout, *Lost on Division* (n. 64), 9-10.

<sup>96</sup> P Norton, *Governing Britain* (n. 2), 165.

<sup>97</sup> Philip Norton, "Does Britain Need Proportional Representation?" in Robert Blackburn (ed), *Constitutional Studies* (London: Mansell, 1992), 141.

favour the largest single party. Consensus systems tend to give disproportionate weight to third parties.

This is not to assert that the accountability at the heart of the Westminster system is superior to the consensus and compromise that defines the continental system. The argument is that it has a different legitimacy, but, *pace* Beetham, a legitimacy nonetheless.

The system is also responsive, in that knowing it may be turned out of office at the next election, government pays heed to shifts in public opinion. A government may be elected on a manifesto and utilize the doctrine of the mandate to implement its policies,<sup>98</sup> enabling it to deliver on a coherent programme of public policy, but it may nonetheless deviate or adapt policies if the prevailing mood is particularly hostile. The onus still rests on government, but it is in its own interests to be sensitive in between elections to the preferences of the people. There is the capacity to adapt in that another feature of the system is that it is flexible, avoiding too entrenched rules that characterize and may gridlock some systems. “The leaders of the states that left the British Empire wanted the flexibility and freedom in their own lands and the Westminster system was commonly viewed as the best constitutional system to achieve these needs.”<sup>99</sup> A government may have a coherent programme of public policy to implement, but it may also deviate or introduce novel policies in response to crises or changed circumstances. The importance of conventions affords some latitude. As Rhodes, Wanna and Weller emphasized, “Conventions are inherently flexible, defined by practice, tradition, and oft-forgotten history. They are concerned with the iterative ways of the political system.”<sup>100</sup> Nor is the executive constrained by the need to reach agreement with other parties, though it may seek to achieve such agreement. The legislature looks to the executive to act. Concomitantly, the system facilitates effectiveness in that the executive can move quickly to tackle crises. The legislature is not

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<sup>98</sup> See A H Birch, *Representative and Responsible Government* (n. 37), 116-22.

<sup>99</sup> H Kumarasingham, “Exporting Executive Accountability” (n. 87), 581.

<sup>100</sup> Rhodes, Wanna and Weller, *Comparing Westminster* (n. 3), 227.



necessarily absent or supine, but its role is to react rather than serve as a partner with government. A willingness to support or at least defer to the executive in time of crisis is not peculiar to the Westminster system, but the system facilitates it.

The Westminster system may be advanced as offering a form of government that is coherent and one that maintains political authority through balancing effectiveness and consent. “An organization that cannot effectively influence the society around it is not a government”, wrote Richard Rose, “A government that acts without the consent of the governed is not government as we like to think of it in the Western world today.”<sup>101</sup> Government rests on the consent of the people and in between elections is able to govern, but with the consent of the legislature. On occasion, the merits of the system are most stark when they are threatened. In the United Kingdom, the very essence of the system came under threat in the period from 2017 to 2019, the result of a combination of unique events. A transient majority in the House of Commons sought, successfully, to wrest control of the timetable from government in order to enact legislation that would tie the government’s hands in negotiating the UK’s withdrawal from the European Union.<sup>102</sup> For two years, there was no accountability of decision-makers to the electorate.<sup>103</sup>

The various attributes we have adumbrated are not necessarily exclusive to the Westminster system of government. Some may be found in other systems and not all may be apparent in all nations within the Westminster family. For our purposes, the key point is that there are merits attributable to the Westminster system. It is entirely possible and rational to mount a defence of that system.

## CONCLUSION

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<sup>101</sup> Richard Rose, “Ungovernability: Is there Fire Behind the Smoke?” (1979) 27:3 *Political Studies* 353.

<sup>102</sup> Philip Norton, “Is the House of Commons Too Powerful? The 2019 Bingham Lecture in Constitutional Studies, University of Oxford”, (2019) 72:4 *Parliamentary Affairs* 996-1013.

<sup>103</sup> P Norton, *Governing Britain*, (n. 2), 81.

The Westminster system means different things to different people. Empirical studies demonstrate that systems described as Westminster systems frequently do not comply with the definitions offered and vary considerably in their attributes. Insofar as Westminster parliaments have existed, they have, according to critics, moved away from constituting clearly recognizable “Westminster” systems. As we have seen, there are attempts to consign the term to the dustbin of history.

However, the Westminster system is both recognizable and widely in existence. “Even outside of the 16 realms from Canada to Papua New Guinea where the Queen is still head of state the Westminster system as practiced in Commonwealth parliamentary republics from India to Malta is still the political system of choice despite many years since independence from British colonial rule.”<sup>104</sup> The problem has not so much been with the legislatures as with scholars rushing to offer an idealized model or seeking to generalize from a single case, almost invariably the Parliament at Westminster. Insofar as there is a Westminster system, it has been subject to criticism on normative grounds, power residing disproportionately in an executive not subject to the formal constitutional restraints to be found in other liberal-democratic systems. The imbalance, with limited protection of the liberal side of the equation, undermines the legitimacy of the system. In short, some scholars question whether the system does exist and others question if it should.

Our thesis is that the Westminster system not only exists, but also is justified in existing. And, despite reports of its demise, the direction of travel has not been one-way. The United Kingdom has acquired more than one “Westminster” parliament. The Scottish Parliament was designed to be closer to the continental, or consensus, system, looking more towards Scandinavia than to England. It was created as a unicameral legislature with members sitting in a semi-circular chamber. It was underpinned by an electoral system that was designed to prevent any one party achieving an absolute majority of

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<sup>104</sup> H Kumarasingham, “Exporting Executive Accountability” (n. 87), 579-80.

seats. In this aim, it failed and in practice it has become a Westminster legislature. “The modern parliament was not meant to be ‘under the thumb’ of the First Minister or even the Cabinet, but that is how it has turned out.”<sup>105</sup> It is, according to Mitchell, illustrated by “unthinking majoritarianism”.<sup>106</sup> There is intense partisanship, with rigorous whipping. Despite the intention of making the Parliament more of a working than a debating parliament, the emphasis has tended to be on debate in the chamber rather than detailed scrutiny in committee. According to Lord Hope of Craighead, members tend to take little interest in the detail of legislation.<sup>107</sup> Though the structure was designed to render it a different type of legislature to that of Westminster, those forming it were immersed in the culture of Westminster and it was this culture that overcame the intention of the founding fathers.

The Westminster system of government is thus not only alive, but also in better health than critics believe. It remains one of the most prominent forms of government in the democratic world. It has a coherence that renders it recognizable. Those in the Westminster family have characteristics that render them recognizable as members of that family, though the characteristics may be stronger in some cases than others; but even if existing in less pronounced form in some nations than others, they still render those nations as within the Westminster family rather than any other.

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<sup>105</sup> Ian Mitchell, *The Justice Factory* (Campbeltown: BS, second ed., Updated, 2020), 356.

<sup>106</sup> *Ibid.*, 356.

<sup>107</sup> *Ibid.*, 356.