

1993

The Presidential and Parliamentary Models of National Government

Thomas O. Sargentich

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>

 Part of the [Law Commons](#)

Recommended Citation

Sargentich, Thomas O. "The Presidential and Parliamentary Models of National Government." *American University International Law Review* 8 no. 2/3 (1993): 579-592.

This Symposium or Conference is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University International Law Review* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE PRESIDENTIAL AND PARLIAMENTARY MODELS OF NATIONAL GOVERNMENT

Thomas O. Sargentich*

One of the major topics for contemporary drafters of constitutions involves the structure of government at the national level.¹ Two primary models have emerged: those of the presidential and the parliamentary systems. In this discussion I will first clarify the key differences between these models. Second, I will address overgeneralizations often encountered in discussions of the two models. Third, I will consider the situation in the United States with reference to debates carried on between advocates of presidential and parliamentary-style arrangements.

I. TWO MODELS OF NATIONAL GOVERNMENT

There are, of course, a variety of constitutional structures of national government throughout the world. Despite this variety, the most frequently noted distinction involving national structures in democratic systems is between "presidential" and "parliamentary" arrangements. What are the central characteristics of each of these models?

Among the most important variables are the methods of selecting and removing the head of government.² In general, in a presidential system the head of government—the president—is popularly elected, either directly by the people or by means of an electoral college system such as in the United States. By contrast, the head of government in a parlia-

* Professor of Law, Washington College of Law, The American University. A.B., Harvard College; M. Phil., Oxford University; J.D., Harvard Law School. Professor Sargentich served in the Office of Legal Counsel of the United States Department of Justice before joining The American University law faculty.

1. This topic is commonly referred to as involving the "horizontal" division of powers at the national government level, as opposed to the "vertical" division of powers between national and subnational governments.

2. See PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT 2-5, 31-47 (Arend Lijphart ed., 1992) (discussing the differences between the presidential and parliamentary systems by comparing the methods of selecting and removing the head of government).

mentary system—often called the prime minister or premier—is selected by the legislature. This process of selection can involve actual election by members of parliament or selection by the majority party, or a coalition of parties, followed by appointment by a head of state. The crucial point is that the head of government in a parliamentary system is chosen by members of the national legislature. For this reason, in a parliamentary system there is no true separation of powers between the legislature and the executive, at least in the sense in which there is in a presidential system. In the latter, the president has his or her own electoral base, and thus the president is separate from the legislature.

In addition, in a presidential system the head of government is elected for a fixed term of office. For example, in the United States the president's term of office is for four years. In normal circumstances, the president cannot be removed during the term of office except by a specially prescribed, politically exceptional process of impeachment. Under the United States Constitution, impeachment can occur only when the House of Representatives votes to impeach a president for "high crimes and misdemeanors" and the Senate votes to convict the president of such dereliction. It has been established that the impeachment of a president cannot occur simply as a result of political disagreement between the branches of government.³

By contrast, in a parliamentary system the head of government and the ministers of state depend for their continuation in office on the confidence of the legislature. The executive officials can be removed from office as a result of a no-confidence vote by the legislature, and such a vote can be premised on mere political disagreement with the government. Moreover, a prime minister depends either on the support of his or her party if it has a majority in the legislature, or on the support of a coalition of parties if it has been necessary to develop a coalition to form a government.

These different methods of selecting and removing the head of government have been widely seen to support certain basic distinctions between the two systems of government. In particular, the parliamentary system involves a certain fusion between the legislative and executive branches of government.⁴ Also, the supremacy of parliament is often

3. See WILLIAM H. REHNQUIST, *GRAND INQUESTS* (1992) (examining the impeachment trials of Supreme Court Justice Samuel Chase in the early 1800s and President Andrew Johnson in the 1860s, neither of whom was ultimately impeached).

4. See DOUGLAS V. VERNEY, *THE ANALYSIS OF POLITICAL SYSTEMS* (1979), excerpted as *Parliamentary Government and Presidential Government*, reprinted in

viewed as characteristic of the parliamentary system. After all, if the parliament can select and remove the head of government, it would seem to follow as a logical matter that parliament is supreme.

However, this latter expectation is not always borne out in reality. The real power of the parliament versus the head of government will depend on a number of variables other than the formal constitutional structure. Two factors of tremendous significance include the nature of the parties in a particular state and the electoral system. For example, in Britain with its strong tradition of two dominant parties and a winner-take-all electoral system, there has tended to be majority support in parliament for the prime minister. The prime minister has become the dominant political authority in the nation, for party discipline and majority rule have generally guaranteed that whatever the prime minister desires will in fact be enacted.⁵ In sharp contrast, in multi-party parliamentary systems, there often have been weak governments with very little stability or strength. Classic examples of such governments include Italy as well as France during the Third and Fourth Republics.

Accordingly, one cannot make determinate conclusions about the relative power of the executive or legislative branches simply on the basis of a nation's formal type of governmental system. Once again, key

PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT, *supra* note 2, at 31, 33 (noting that "parliamentary government implies a certain fusion of the executive and legislative functions . . .").

5. See Arthur M. Schlesinger, Jr., *Leave the Constitution Alone*, excerpted in PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT, *supra* note 2, at 90-94 (discussing the role of the prime minister). As Schlesinger wrote:

Parliament's superiority over Congress in delivering whatever the executive requests is a function of weakness, not of strength

Thus, the prime minister appoints people to office without worrying about parliamentary confirmation, concludes treaties without worrying about parliamentary ratification, declares war without worrying about parliamentary authorization, withholds information without worrying about parliamentary subpoenas, is relatively safe from parliamentary investigation and in many respects has inherited the authority that once belonged to absolute monarchy.

Id. at 91.

These observations about the British system are meant to draw sharp contrasts with the situation in the United States. See also Seymour Martin Lipset, *The Centrality of Political Culture*, J. DEMOCRACY, Fall 1990, at 80-83, reprinted in PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT, *supra* note 2, at 208 (noting that "much of the literature wrongly assumes . . . that a president is inherently stronger than a prime minister" and that "[a] prime minister with a majority of parliament behind him has much more authority than an American president").

empirical phenomena like a government's basic stability will depend on a number of political factors in addition to the constitutional arrangement that has been chosen.

II. OVERGENERALIZATIONS ABOUT THE MODELS OF GOVERNMENT

Discussions of presidential and parliamentary models frequently include generalizations that need to be qualified in ways in which they often are not. Partly, this is a result of focusing single-mindedly on constitutional structure, which can only partially explain any given political system. In addition, one should bear in mind that the literature on parliamentary and presidential governments has become a battleground for advocates of different constitutional arrangements. In this context, it is not surprising that overgeneralizations occur.

I would like to highlight two kinds of overstatements. The first involves the dichotomy between presidential and parliamentary systems itself. After all, it is possible for a system to have a popularly elected president as well as a prime minister responsible to the parliament. Maurice Duverger referred to such a system as "semi-presidential government," which he defined as follows:

A political regime is considered as semi-presidential if the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them.⁶

Duverger identified the following countries as having such a system: France after 1958, Finland, Austria, Ireland, Iceland, Portugal, and the Weimar Republic from 1919 to 1933. He noted that the practice in some of these countries was more parliamentary than presidential in the sense that the president had relatively little power. These nations included Austria, Ireland, and Iceland. He argued that modern France represented a strong presidential system. However, he wrote before the experience of 1986-1988 when the president of France lost a majority in the National Assembly and was required to appoint his adversary to the office of premier. During this period the power of the French president

6. Maurice Duverger, *A New Political System Model: Semi-Presidential Government*, 8 EUR. J. POL. RES. (1980), reprinted in PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT, *supra* note 2, at 142.

shrank considerably.

The larger points to underscore are that a nation's constitutional structure can borrow elements from different models and that such borrowing can take complex forms. Hence, the models should be seen as ideal types, not descriptions of inevitable reality. This qualification needs to be borne in mind throughout one's consideration of differing structures of national government.

A second sort of overgeneralization can occur when commentators assert that a particular system is necessarily more or less accountable, effective or rigid. These highly charged terms can be used to critique many different systems of government in various circumstances. It is dangerous to use such one-sided adjectives as general labels for an entire structure of government without regard to the specific circumstances or issues with which a given country is chiefly concerned. I will illustrate my critique of such overgeneralization with reference to contemporary parliamentary critics of the constitutional system in the United States.

III. THE CONTEMPORARY PARLIAMENTARY CRITIQUE OF THE STRUCTURE OF NATIONAL GOVERNMENT IN THE UNITED STATES

In this section I will first lay out major arguments of contemporary parliamentary critics against the system of separation of powers and checks and balances in the United States. At bottom, the critics believe that the United States government is not effective or accountable in ways in which it could be if certain constitutional amendments were adopted. After describing key commitments of the parliamentary critique, I will note its empirical and normative limits.⁷

To begin, it bears underscoring that parliamentary critics of the constitutional structure in the United States have emerged during many periods of intense political debate. Woodrow Wilson famously developed the major arguments in the 1880s.⁸ He wrote that the United States government tended to be fundamentally ineffective because power is lodged in two different and competing political branches, the legislature and the executive. He also argued that the separation of powers fostered

7. For further discussion, from which this section is drawn, see Thomas O. Sargentich, *The Limits of the Parliamentary Critique of the Separation of Powers*, 34 WM. & MARY L. REV. (1993).

8. WOODROW WILSON, *CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS* (Johns Hopkins University Press 1981) (1885).

unaccountability in government. In contrast, he praised the parliamentary system because it made possible the turning out of a government on specific issues when the legislature has lost confidence in the executive.

Wilson's model of an effective and accountable government borrowed directly and heavily from the analysis of Walter Bagehot's study of the British constitution.⁹ Bagehot strongly praised the fusion of power between the British executive and legislative branches as it existed in the mid 1860s when he wrote. Central to Bagehot's argument was the idea that the British cabinet had the dominant role in setting governmental policy. Members of the cabinet were drawn from the parliament. He called the cabinet "a committee of the legislative body selected to be the executive body."¹⁰ Bagehot also strongly condemned the presidential system of the United States Constitution as he understood it. Prefiguring the arguments of successive generations of parliamentary critics, Bagehot claimed that the presidential system was fatally prone toward ineffectiveness and unaccountability.

One of the most striking features of the parliamentary critique in the United States is the extent to which arguments stated by both Bagehot and Wilson in the 19th century have been repeated over and over. Very little attention has been paid to the obvious facts that Bagehot in the 1860s and Wilson in the 1880s wrote in specific historical circumstances, and those circumstances have changed during the 20th century.¹¹

During the 20th century, numerous parliamentary critics have advanced the basic claims of Bagehot and Wilson. Any list of such critics in the United States should include William MacDonald, who wrote in the 1920s;¹² William Yandell Elliott, who wrote in the 1930s;¹³ Henry Hazlitt¹⁴ and Thomas Finletter,¹⁵ both of whom wrote in the 1940s; and Charles Hardin, who wrote in the 1970s.¹⁶

9. WALTER BAGEHOT, *THE ENGLISH CONSTITUTION* (Collins/Fontana 1971) (1867).

10. *Id.*, at 66.

11. *See generally* Sargentich, *supra* note 7.

12. WILLIAM MACDONALD, *A NEW CONSTITUTION FOR A NEW AMERICA* (1921).

13. WILLIAM YANDELL ELLIOTT, *THE NEED FOR CONSTITUTIONAL REFORM* (1935).

14. HENRY HAZLITT, *A NEW CONSTITUTION NOW* (1942). An updated version of this work was published in 1974.

15. THOMAS FINLETTER, *CAN REPRESENTATIVE GOVERNMENT DO THE JOB?* (1945).

16. CHARLES HARDIN, *PRESIDENTIAL POWER AND ACCOUNTABILITY: TOWARD A NEW CONSTITUTION* (1974).

During the 1980s, the parliamentary critique came to prominence as a result of the work of a privately organized group called the Committee on the Constitutional System.¹⁷ Members of this group decried the lack of cohesion in American political parties as well as tendencies towards ineffectiveness and accountability that they discerned in the constitutional structure. In this way, they combined their political concerns about divided government, in which the President and Congress are dominated by different parties, with their constitutional concerns. They proposed a number of changes in statutes, party rules, and the Constitution that they believed would move the United States in the direction of a parliamentary system without totally sacrificing the underlying structure of a separately-elected Congress and President. In this respect, the 1980s critics tended to be reformers; they did not call for the radical changes of some earlier critics, such as Henry Hazlitt.

For example, Douglas Dillon, co-chair of the Committee on the Constitutional System, argued that divided government in the system of separated powers leads to a condition of "stalemate whenever important and difficult issues are involved."¹⁸ Lloyd Cutler, another Committee co-chair, stressed that the president faces serious difficulties in making agreements with foreign nations because of the possibility of congressional opposition.¹⁹ More generally, Cutler decried the lack of an ability in the United States to "form a government" that will promote unity between the legislative and executive branches in the manner of parliamentary systems.²⁰

17. COMMITTEE ON THE CONSTITUTIONAL SYSTEM, A BICENTENNIAL ANALYSIS OF THE AMERICAN POLITICAL STRUCTURE: REPORT AND RECOMMENDATIONS OF THE COMMITTEE ON THE CONSTITUTIONAL SYSTEM (1987).

18. C. Douglas Dillon, *The Challenge of Modern Governance* (1982), in REFORMING AMERICAN GOVERNMENT: THE BICENTENNIAL PAPERS OF THE COMMITTEE ON THE CONSTITUTIONAL SYSTEM 24, 26 (Donald Robinson ed., 1985) [hereinafter REFORMING AMERICAN GOVERNMENT]. Douglas Dillon served as Under Secretary of State for Economic Affairs in the Eisenhower Administration and Secretary of the Treasury in the Kennedy Administration.

19. See Lloyd Cutler, *To Form a Government*, 59 FOREIGN AFF. 126 (1980), reprinted in REFORMING AMERICAN GOVERNMENT, *supra* note 18, at 11, 12-13 (challenging requirement of two-thirds Senate approval for treaty ratification). Of course, Presidents often have made executive agreements with foreign governments and thereby have avoided the constitutional requirements that apply to treaties. See *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (noting that the President has the power to enter into executive agreements without obtaining Senate advice or consent). Lloyd Cutler served as Counsel to the President during the Carter Administration.

20. See Cutler, *To Form a Government*, *supra* note 19, at 12-13 (criticizing the

James Sundquist, a member of the Committee's Board of Directors, also embraced the basic parliamentary critique of the separation of powers.²¹ He argued that federal budget deficits have resulted from a structural tendency toward endless bickering between the President and Congress.²² For these various critics, such bickering has been a regular feature of modern presidencies, including those of Presidents Ford, Carter, Reagan and Bush.²³ To be sure, the critics have acknowledged that President Reagan achieved striking changes in national policy during his early years in office.²⁴ They have insisted, however, that this was a short-lived period and that the customary pattern is one of institutional deadlock.²⁵

It bears noting that recent parliamentary critics in the United States have continued to refer admiringly to earlier authors, including Woodrow Wilson,²⁶ Henry Hazlitt²⁷ and Charles Hardin.²⁸ Also, many of the specific constitutional proposals made in earlier periods have continued to be advanced.²⁹ Such proposals include, but are not limited to, amending the United States Constitution to allow the President or

lack of unity between the legislative and executive branches in the United States).

21. JAMES L. SUNDQUIST, *CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 75-78* (1986) [hereinafter SUNDQUIST, *CONSTITUTIONAL REFORM*]; James L. Sundquist, *Needed: A Political Theory for the New Era of Coalition Government in the United States*, 103 *POL. SCI. Q.* 613-35 (1988-1989).

22. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 78 (stating that "[t]he government's impotence was reflected most dramatically in its incapacity to cope with gigantic and unprecedented budget deficits").

23. See *id.* at 77-78; Cutler, *To Form a Government*, *supra* note 19, at 12-13 (discussing President Carter's difficulties with Congress over the SALT II Treaty).

24. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 78 (noting that President Reagan was initially successful in passing his economic plan through a Democratic House).

25. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 106 ("After the initial year [of the Reagan administration], the dismantling of governmental agencies and programs came to a halt. The president could lead the Congress no further in the direction he had set for it . . .").

26. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 69 (referring to Wilson as "still among the most trenchant and pertinent" critics).

27. See, e.g., SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 71 (discussing the work of Henry Hazlitt).

28. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21, at 72 (noting the proposals advanced by Charles Hardin to strengthen "party government").

29. See SUNDQUIST, *CONSTITUTIONAL REFORM*, *supra* note 21. My goal in the present discussion is not to discuss specific constitutional proposals—which vary in their particular details—but rather is to discuss the parliamentary critique in general.

Congress to call a special election, to allow members of Congress to sit in the President's cabinet (which they cannot do now), and to limit the Senate's power to block treaties.

Despite its undeniable interest, the parliamentary critique has significant empirical and normative limitations. I will briefly summarize them.

A. EMPIRICAL LIMITATIONS

First, as an empirical matter, the parliamentary critique's claim that the United States Constitution has led to deadlock and stalemate to such a degree that the government has been ineffective in responding to major problems is wide of the mark. In fact, recent studies have shown that there is no difference in the amount or complexity of legislation that has been produced during periods of "unified" government as opposed to periods of "divided" government.³⁰

In general, in each case in which parliamentary critics have decried the inability of the government to work, action of some sort has been taken. It may be that certain critics do not like the results of the political process in the United States. Perhaps they do not think that the policies pursued have been adequate to the problems that needed to be addressed. But that is a very different claim than the argument that the constitutional structure renders the United States government incapable of governing.

Moreover, examples of conflict in American politics cited by parliamentary critics can be explained by a number of factors other than the constitutional structure.³¹ Take, for example, the critics' concern during the 1980s about large budget deficits at the national level. The suggestion has been made that the structure of government in the United States is at the root of the deficits.

In fact, however, policies that have been consciously adopted by political actors created and sustained the national budget deficits during the 1980s and more recently. In particular, Congress and the President agreed on a program of reducing income taxes, spending massively on defense, and supporting social programs in the domestic sphere. Accordingly, policy *decisions* are at the root of the deficits.

Moreover, there has been widespread disagreement in the United States about what to do about the deficits. Some would raise taxes,

30. See DAVID MAYHEW, *DIVIDED WE GOVERN: PARTY CONTROL, LAWMAKING, AND INVESTIGATIONS, 1946-1990* (1991).

31. See Sargentich, *supra* note 7.

others would reduce spending, and others believe that the problem is not as severe as many claim.³² Accordingly, there has been substantial and continuing policy disagreement. Such a diversity of political views cannot be laid at the door of the constitutional structure of government.

B. NORMATIVE LIMITATIONS

Among the normative limitations of the parliamentary critique is its tendency steadfastly to avoid taking any position on controversial substantive issues in politics. To a degree, this supposedly neutral approach may have been calculated to win adherents from across a wide spectrum of ideological perspectives. However, any structural critique will have substantive effects, and those effects should be discussed openly. Such substantive implications are carefully averted in the parliamentary literature. This approach has become especially problematical given that many different critics have adopted parliamentary arguments in divergent historical circumstances and from diverse political perspectives.

In addition, the parliamentary critique does not answer a number of questions inevitably arising about the theory of governmental accountability that it seeks to invoke in criticizing the separation of powers. One of the strongest arguments for a presidential system is that it maximizes the accountability of government by providing for limits imposed by two separate branches, the executive and the legislative. The two branches can bring to bear different perspectives that will need to be debated and negotiated in order for policy to be made. This makes it more difficult for improvident, hastily conceived, or poorly-thought-out policies to be enacted. In particular, it can promote better decisions by encouraging fuller consideration of significant alternatives.³³

There also is a strong argument in favor of a system of separation of powers and checks and balances in a country in which there is a multiplicity of political views and competing interests. Among the fundamental values served by checks and balances are expanded access to

32. See, e.g., ROBERT EISNER, *HOW REAL IS THE FEDERAL DEFICIT* (1986); PAUL KRUGMAN, *THE AGE OF DIMINISHED EXPECTATIONS* (1990); ROBERT ORTNER, *VOODOO DEFICITS* (1990).

33. See James Ceaser, *In Defense of Separation of Powers*, in *SEPARATION OF POWERS—DOES IT STILL WORK?* 168, 186 (Robert Goldman and Art Kaufman eds., 1986)(arguing that “[i]t may well be that the information relevant to making decisions can best become known under a system of multiple checks and diverse points of entry that allows the effects of any proposed policy to be gauged in an intensely political process”).

power and broadened political dialogue. The possibilities of expanded access and dialogue follow directly from the fact that the constitutional structure is more decentralized, less unified, and thus less managerially neat than many parliamentarians in the United States would prefer. Because different institutions share power, individuals and groups may have a greater chance of winning the ear of some powerful official in their efforts to achieve representation. The significance of this fact is highlighted by taking the perspective of those who might not otherwise gain a political hearing, for instance because they do not have majority support in the legislature and are not likely to achieve it in the future.³⁴

Expanded access and dialogue seem to be intelligent responses to the social diversity of the United States. Having multiple pathways to power can assist in channelling social conflict in an internally riven social context.³⁵ Indeed, since the United States is so diversified, it is not surprising that people in this country are often reluctant to embrace the idea of unity in government.³⁶

The Constitution's structure also is reassuring on the level of day-to-day partisanship. After all, for those who oppose the policies of a given administration, the value of institutional checks on the executive is obvious.

In addition, separation of powers and checks and balances can help to prevent the dominance of government by particular factions or special interests.³⁷ A major theme of contemporary discussions of liberal de-

34. Cf. HARDIN, *supra* note 16, at 141 (contending that people "can also have a sense of ongoing participation in government *if* they are members of an effective and reasonably steadfast majority—or of a minority with a good chance of becoming a majority") (emphasis added).

35. See Erwin Chemerinsky, *The Question's Not Clear, But Party Government Is Not the Answer*, 30 WM. & MARY L. REV. 411, 415 (1989) ("No group wins or loses all the time. As a result, no group need feel completely disenfranchised and better off working to overthrow the system of government. This stability is probably the most notable and desirable feature of the American system"); Peter M. Shane, *Independent Policymaking and Presidential Power: A Constitutional Analysis*, 57 GEO. WASH. L. REV. 596, 621-22 (1989) (discussing the value of the diffusion of power in the United States constitutional system in terms of its contribution to liberty and stability in the polity).

36. See DON K. PRICE, *AMERICA'S UNWRITTEN CONSTITUTION: SCIENCE, RELIGION, AND POLITICAL RESPONSIBILITY* (1983), excerpted as *Words of Caution About Structural Change*, in *REFORMING AMERICAN GOVERNMENT*, *supra* note 18, at 39, 43 (noting that "[e]specially in a larger federal system, with a diverse population, it is inevitable that the electorate will want to draw back from the idea of a tightly unified system").

37. For a classic definition of "faction", see *THE FEDERALIST* NO. 10, at 57

mocracy has been that factions frequently threaten to gain more power than their numbers warrant.³⁸ The overriding question has been how to control or limit the negative effects of factions on governmental decisionmaking.

Increasingly, commentators in the United States have noted that a healthy system of checks and balances, fostering debate about the predicted impacts of governmental action as well as about competing public values, can help to ameliorate the problem of faction.³⁹ This notion does not have to be cast only in terms of having certain selfish interests check other selfish interests.⁴⁰ More generally, the contest among competing public visions, resting on larger commitments to the general good, can play out openly in a scheme of active checks and balances.⁴¹ To be sure, a focus on the amelioration of factional dominance should not lead one to romanticize political debate in the United States. Yet the point remains that the promotion of checks and balances can have a moderating influence on the factional control of government.

One might say in response that the broader the dialogue, the harder it will be to make any decision that sticks. One can understand the impulse for clarity that informs such a response. A system of separation of powers and checks and balances does carry with it a considerable poten-

(James Madison) (Jacob E. Cooke ed., 1961) (defining "faction" as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community").

38. For criticism of interest group liberalism, see THEODORE LOWI, *THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES* 62 (2d ed. 1979) (arguing that "[i]nterest group liberal solutions to the problem of power provide the system with stability by spreading a *sense* of representation at the expense of genuine flexibility, at the expense of democratic forms and, ultimately, at the expense of legitimacy"). For general discussion of interest groups in politics, see *INTEREST GROUP POLITICS* (Allan J. Cigler & Burdett A. Loomis eds., 3d ed. 1991).

39. See, e.g., Cass R. Sunstein, *Interest Groups in American Public Law*, 38 *STAN. L. REV.* 29, 44 (1985) (noting that "[t]he system of checks and balances within the federal structure was intended to operate as a check against self-interested representation and factional tyranny in the event that national officials failed to fulfill their responsibilities").

40. Checks and balances are often defended in terms of selfish interests checking other selfish interests. See *THE FEDERALIST NO. 51*, at 349 (James Madison) (Jacob E. Cooke ed., 1961) ("Ambition must be made to counteract ambition").

41. See Sunstein, *supra* note 39, at 47 (concluding that "[t]he federalists . . . achieved a kind of synthesis of republicanism and the emerging principles of pluralism. Politics rightly consisted of deliberation and discussion about the public good").

tial for messiness and untidiness. Whatever else one might say about the United States Supreme Court's opinion in *Immigration and Naturalization Service v. Chadha*,⁴² the Court put well the basic point relevant here: "Convenience and efficiency are not the primary objectives—or the hallmarks—of democratic government" as envisioned in the United States Constitution.⁴³

Without meaning at all to suggest that the system of separation of powers and checks and balances in the United States represents some universal ideal, I do want to stress that it advances significant values and that these values are not sufficiently acknowledged by the parliamentary critique. After all, unity and effectiveness can exist in an autocratic system of government that is hostile to the norms of open dialogue. If we see broadened political debate as an important public aim, then we should expect, and embrace, some trade-offs in terms of managerial neatness.

CONCLUSION

To summarize, I would caution against certain overgeneralizations often made in discussing presidential and parliamentary models of government. On the one hand, one must question the idea that presidential government is in some sense inherently stronger than parliamentary government. In fact, the prime minister of Great Britain has more power than the United States president. On the other hand, one should question the broad assertion that a presidential system with checks and balances

42. 462 U.S. 919 (1983).

43. *Id.* at 944. *Chadha* raised the question of the constitutionality of legislative veto devices, by which Congress, or a portion of it, adopts resolutions that are not presented to the President and that purport to have the force and effect of law. The United States Supreme Court held that such resolutions are legislative actions for purposes of Article I, and therefore they need to conform to the Constitution's requirements of bicameral passage and presentment to the President for approval or veto. *Id.* at 944-51. The Court's emphasis on the need to follow the plenary legislative process reinforces the importance of broad-based dialogue in the enunciation of legislative policy. See Sunstein, *supra* note 39, at 53 (discussing *Chadha* and the conception of deliberative democracy). In another decision, the United States Supreme Court noted:

That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.

Bowsher v. Synar, 478 U.S. 714, 722 (1986).

necessarily leads to debilitating stalemate. In the United States, such an assertion lacks empirical grounding. In fact, what will happen will depend upon many factors other than the constitutional structure, such as a nation's political culture, its party system, and its electoral arrangement. Politics is much more complex and multi-dimensional than a single-minded focus on constitutional formalities acknowledges.

One also should question the assertion that a presidential system of checks and balances is unaccountable to the people. This suggestion has been made repeatedly over the past 100 years by parliamentary critics in the United States. In my view, the system that has evolved in the United States is considerably more accountable than the dominant executive model represented by Great Britain. In any event, the system of checks and balances makes factional control of government more difficult. Moreover, a system of separation of powers and checks and balances can make the government more responsive to divergent views in society.

What, if any, are the larger implications of this discussion for constitution builders in emerging democracies and nations facing dramatic change such as South Africa? In significant measure, my main suggestion is to avoid the tendency to oversimplify the discussion. A given system will evolve in complex ways over time. Moreover, the constitutional structure of any political system will have only a limited role in determining the directions of change and the possibilities of reform in a particular political culture. A nation's history, traditions, social conditions, and political institutions, such as parties, exert a powerful influence on the course of development.

In addition, commentators in the United States who are most familiar with our own system of government must express caution and modesty as we address the momentous questions of constitution-building in other, very different parts of the world. What is most exciting is to observe the force of the democratic desires that motivate the modern movement for new constitutional structures. The tasks of developing and maintaining a broadly representative democratic system are shared challenges, however they are pursued in particular by different nations.