

Forms of Government: a political analysis

1. Introduction: the powers' three-way split and the forms of government

The separation of powers, cornerstone of every democracy, consists in finding three main public functions in the context of the state sovereignty and in their attribution to three separate State bodies. In the history of political thought it is possible to find the contribute of many thinkers to what is nowadays considered one of the rule of law's cornerstones.

By citing some, we cannot exclude John Locke and Charles de Secondat, Baron de Montesquieu.

The famous english thinker, in his *Second Treatise on Civil Government* (*Second treatise on civil government*, chapter XII, pp. 143-146),¹ claims that the power must be divided into: the legislative power, as supreme but not absolute power (XIII, 150); << The executive power, placed any where but in a person that has also a share in the legislative, is visibly subordinate and accountable to it, and may be at pleasure changed and displaced >>. The executive power theorized by John Locke incorporates the judicial power (XIII, 152); and at the end, the federative power, namely the foreign policy management (XVI, 176-177). This three-way split does present many differences compared with that enshrined in the modern constitutions.²

In *The Spirit of the Laws* by Montesquieu (1748) we instead find a theory of the powers' separation much closer to the one tested in today's democracies. The author writes: <<Anyone

¹ Due trattati sul governo, col Patriarca Robert Filmer, a cura di L. Pareyson, Torino, Utet, 1982.

² C. Galli, *Manuale di storia del pensiero politico*, Edizioni Il Mulino, pagg. 211-212

who has power is led to abuse it; and to expand it until he finds limits [...]. For we can not abuse power, must [...] power checks power. >>. With these words, Montesquieu introduces the crucial concept of *Balance of Power*, of fundamental importance for every democracy's constitutional engineering and that has place in the most ancient written Constitution, the American one. The three powers – legislative, executive and judicial – are described in his work in this way: << By virtue of the first, the prince or magistrate enacts laws [...]. By the second, he makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals.>>, because << an illimitate and indivisible sovereignty is always tyrannical.>>³

According to the modern constitutionalism's canons, the function of identifying the political goals and then translating them into general and abstract controls (laws), the function of execute such controls by administrative and executive means, and finally the function of guaranteeing their application in case of disputes and objections by judicial means must be assigned to different bodies, in order to avoid an excessive concentration of power typical of the absolute State.⁴

The strict division, actually, is not achievable between the legislative power and the executive one: leading politically a community means that it is necessary to affect the production of the normative controls and to have them executed, public policies need the coordinated work of both Parliament and Government.

³ Montesquieu, *Lo spirito delle leggi*, trad. it. a cura di B. Boffito Serra, Milano, 1967, p. 207 e ss.

⁴ A. Barbera e C. Fusaro, *Corso di diritto pubblico*, Edizioni Il Mulino, pag. 195.

The form of government is the organisational model that a State takes in order to exercise the sovereignty.

With specific regards to, within an organized political community's bodies, how the power that addresses it towards specific political goals is distributed.

2. The forms of government: a diachronic analysis

The diachronic analysis makes us understand how and why some political systems do have their own constitutional settlement. It all starts after the Glorious Revolution⁵, which takes place in England between 1688 and 1689, after which the British Parliament draws up the *Bill of Rights*⁶, one of the British constitutional system's cornerstones. The Revolution broke out because the *Whig* party wanted the Parliament to have the decisional power upon the royal succession (*Exclusion Bill*), it ended with the defeat of the despotic power (represented by James II) and with the conquest, by the Parliament, of major powers such as: freedom of speech and debate in Parliament; ban of the King to impose fees without it; repeal of laws; free elections. The Glorious Revolution is a watershed in this historical period, because, since 1689, no other King will oppose the Parliament.

Montesquieu, in his work *The Spirit of the Laws* (book XX, chapter XXII) won't fail to praise the British post-revolutionary *Balance of Power*. England, from being an absolute monarchy became a constitutional one. However, the pure separation of powers had not yet been reached: in the

⁵ <http://www.treccani.it/enciclopedia/gloriosa-rivoluzione/>

⁶ http://www.treccani.it/enciclopedia/bill-of-rights_%28Dizionario-di-Storia%29/

House of Commons (the lower and elective chamber, while the *House of Lords* is the higher) interests different compared to those of the administrative system represented by the crown and its ministers, were served.

Locke and Montesquieu's idea of the separation of powers will be followed by those men that in 1787 in Philadelphia draw up the most ancient Constitution still in force, the American one. The American constitution unequivocally stipulates the concept of separation of powers and *Balance of Power*: by looking at the British constitutional settlement and observing the clear separation between executive and legislative power (but without taking into account the ongoing evolution in the United Kingdom), they created an executive (not a King, since they had not one but instead a president) completely separated from the Parliament (the US Congress). Under no circumstances, the US President can dissolve the Houses and they can not get rid of the President with the exception of the indictment against him (*impeachment*).

On the contrary, in England, the constitutional monarchy that inspired the Americans in drawing up theirs, evolved into a monistic parliamentary government (since the political guidance, depended on the relationship between parliament and government, excluding the crown, in a dualistic framework). The reason of this evolution is the accession of King George I to the throne, founder of the house of the Hanover. Stranger in his own country, without no knowledge of English language and not interested in government issues, he gave his ministers the performance of his duties: this choice helped the affirmation of the first great Premier's figure, Robert Walpole. In addition, the Parliament created the basis for a solid trust relationship with the Government through the frequent use of the *impeachment*, that allowed the election by

the King of a prime minister who was not in contrast with the Parliament.⁷

The words of Walter Bagehot, well-known founder of the Economist, fit very well the *Westminster* model that appeared at that time. He identifies the Premier as the real holder of the political power and he underlines that the first function of the British Parliament is purely elective: the Parliament elects the government, in the sense that it allows its birth, its transformation and even its dissolution.⁸

In continental Europe, during the Restoration, written constitutions dominate, inspired by the British monarchist-constitutionalist settlement after the Glorious Revolution (by making the same mistake of the United States). For over half a century, in the continent, until the end of the First World War, there was the idea that the true parliamentarism was dualistic, where on one side the Parliament is place of representation, and on the other the crown. An example is given by the Constitution France gave itself in 1830 where the government responds both to the King and the Parliament.

Within the European continent, parliamentarism has been dualistic for over half a century while in its homeland had already become monistic (the government is responsible only in front of the parliamentary majority).

Between the end of the First World War and the beginning of the Second, there was a rationalisation of the parliamentarism according to the English model (with the exception of the 1919 Weimar Republic, which presented a strong dualism), but it was only after the Second World War that many States, such as Italy, Germany and France, gave

⁷ A. Barbera e C. Fusaro, Corso di diritto pubblico, Edizioni Il Mulino, pag. 197.

⁸ G. Pasquino, Nuovo corso di scienza politica, Edizioni il Mulino, pag. 179

them their definitive constitutional settlement, based on the monism.

Except for France, that in 1958 passed from the Fourth Republic to the Fifth, seeking, as general De Gaulle wanted, a clear dualism, and creating what is nowadays the french semi-presidentialism.⁹The french Fourth Republic's constitutional asset had, in fact, a weak and divided parliamentarism that was replaced by a stronger semi-presidential system.

As Manlio Corselli, professor of Political Philosophy at the University of Palermo, in his work *Democracy and Plebiscite* underlines, <<Germany and France at different times- but anyway linked by the post-war's context- found themselves in a situation traceable to that covered by the "state of emergency". Max Weber and Charles De Gaulle considered the use of the plebiscitary instrument as faster answer to the overhaul of the free-democratic state through the strengthening of the Head of State's authority as result of his legitimation due to the popular direct vote.

According to them both, democracy on the basis of universal suffrage, reserved for the election of the Reich's President (as regards Weber) or for the election of the french Fifth Republic's President (as wanted by De Gaulle), would have counterbalanced the indirect representation procedure of the democracy for what concerns the MEPs' elections [...]. The Plebiscite Democracy was fully compatible with the representative one [...]. Plebiscitarianism might serve as a parliamentarism's effective corrective because it slipped under the employment of the political representation by the partitocracy [...]. The Gaullist semipresidential regime is the closest to the application of the plebiscitarian canons to the democracy because it enhances the people's direct election of

⁹ A. Barbera e C. Fusaro, *Corso di diritto pubblico*, Edizioni Il Mulino, pag. 199

the Head of State while it reserves to the parties the role of majority and parliamentary opposition.>>¹⁰

3. The forms of government: political-synchronic analysis

3.1 The USA presidential form of government

In order to analyse the presidential form of government i will use the american example.

As i have previously said, the Constitution of the USA, dated back 1787, has been written after the english post-Glorious Revolution's constitutional settlement, and it defines the main american public institutions as *separate institutions sharing powers*.¹¹

The executive power, embodied in the USA President, is directly elected by the people (even if his election happens through the big electors) and it has so a strong and personal legitimacy. The United States Congress (the american bicameral parliament) represents the legislative power and even this one is elected by people with a one-day shift majority system.

Why do we define the President and the Congress as separate institutions? The american founding fathers, who signed the Constitution in Philadelphia, didn't want to create no trust relationship between the executive and the legislative power: so, the President, cannot in any way prorogue the Parliament and this latter cannot discharge the President. Both bodies must coexist until the end of

¹⁰ M. Corselli, *Democrazia e plebiscito*, Carlo Saladino editore, pagg. 48 e ss.

¹¹ G. Pasquino, *Nuovo corso di scienza politica*, Edizioni il Mulino, pag. 221.

their mandate, by following a *checks and balances* logic, where a power controls the other.

Only by the institution of the *impeachment*- extreme measure of indictment for attack on Constitution- the Congress can discharge the President. And, why do we affirm that these separate institutions share the power? The power we are referring to, is the legislative , but it is not the only one. The President can use his veto power to make a draft law, that his administration does not like (or its eventual amendments), come back to the Congress, and the Congress can overcome this veto by revoting the law in question but with the achievement of a qualified majority (certainly difficult to obtain). In turn, the Congress, may reject or modify legislative proposals that come from the President.

This checks and balances logic can also be tracked in the President of the Republic's wide power of appointment, since he cannot nominate judges, top State officials, ministers, ambassadors without the Senate's favourable opinion and he cannot authorise the ratification of the international treaties.¹²

In the light of this clear separation of powers, let's see how the american political system works.

Presidentialism is often defined as a "strong" form of government, but the issue is much more complex.

If the party to which the President belongs does not have the majority in the two branches of the Congress, we will obtain the so called divided government. But if the party does have such majority in parliament, the President has a too favourable position because he can clamp down on

¹² A. Barbera e C. Fusaro, Corso di diritto pubblico, Edizioni Il Mulino, pag. 202.

every opposition, creating an “imperial presidency” (term adopted during Nixon’s administration¹³).

So, presidentialism is on one hand too strong and it risks an authoritarian degeneration and, on the other hand it is too weak and it goes towards a decision-making powerlessness.

Nevertheless, it is important to underline that the President, in case of divided government, can adopt different solutions to overcome the difficulties coming from the opposite party’s majority in the Congress. The President can adopt a crony strategy, sharing resources with parliamentarians not very hostile in exchange of votes; or he can turn directly to the electorate, adopting a rhetoric strategy (as Ronald Reagan did) to make them put pressure on their representatives in order to make them support the administration policy; or as a last resort he can put pressure on the security and military bodies to threaten the parliamentarians who obstruct his work.

The biggest flaw of presidentialism, in its divided government version – where the administration and the parliamentary majority are opposed but are not bound by a trust relationship- gives rise to a period in which the political system works in low rates of return and it does not give the electorate the possibility to identify who is the responsible of this, between the President and the Congress.¹⁴

¹³ https://it.wikipedia.org/wiki/Richard_Nixon

¹⁴ G. Pasquino, Nuovo corso di scienza politica, Edizioni il Mulino, pag. 222.

3.2 The semi-presidential form of government of France

The semi-presidentialism is a form of government that requires a dual executive. It is not a weakened presidentialism, nor a strengthened one (Sartori, 2000). It is a stand-alone form of government, expressly wanted and created to remedy the observable and observed problems of other forms of government. This constitutional framework, wanted by Charles de Gaulle, gave birth to the Fifth French Republic in 1958. The President of the Republic, as it happens in the American presidentialism, is directly elected by the people and he cannot be toppled by the will of the parliamentary assembly, except through legal proceedings of indictment (*impeachment*). But he is not alone in exercising the government's functions: beyond the president, in fact, there is a Prime Minister bound by trust relationship with the parliament (as it happens in the parliamentary forms of government). The prime minister is named by the President of the Republic: this causes the premier not only to be linked to the parliament but also to the President. The Prime Minister can require the President of the Republic to dissolve the legislative assembly (presidential prerogative), that can, in turn, hold new elections, or appoint another minister; if it is the Parliament that discredits the premier chosen by the President of the Republic, he is obliged to hold new elections (not more than once per year¹⁵).

¹⁵ G. Pasquino, Nuovo corso di scienza politica, Edizioni il Mulino, pag. 223.

Contrary to the American presidentialism, where the *checks and balances* system wanted by the founding fathers doesn't allow the Congress to interrupt the presidential administration and, viceversa, it doesn't allow the President to dissolve the houses, in the semi-presidentialism the President of the Republic can hold new Parliament's elections and this one can discredit the government.¹⁶

In practical terms, when the parliamentary majority belongs to the prime minister's party, this one won't ask the president of the republic to dissolve the chambers in advance; the president of the republic, for his part, by knowing or predicting that the chambers' dissolution and the prime minister's replacement will lead to a return to a parliament with a majority unfavourable to him, would suffer a considerable political defeat, and he therefore won't act against the premier.

The example I am mentioning, namely the President of the Republic that doesn't have the majority in Parliament (contrary to the prime minister), describes what is the so-called "cohabitation government", which is traceable to the American divided, weak and underperforming government.

The cohabitation, under some aspects, offers some nexus point that overcome problems which affect the divided government typical of the presidentialisms.

In fact, there are two different factors that temper tensions and conflicts in case of cohabitation: a personal factor and a political one.

The first one, lies in the ambitions of both the president and the premier, which are obviously opposed: the

¹⁶ A. Barbera e C. Fusaro, Corso di diritto pubblico, Edizioni Il Mulino, pag. 205.

president, not wanting to be re-elected at the end of his mandate, won't seek confrontation with the premier who has the majority in parliament, because, by doing so, he would disrespect the electorate who had preferred a party different to his during the formation of the legislative assembly; at the same time, the premier, wanting to run at next president of the republic, won't take the risk of causing troubles to his party going against the President. <<These two opposite ambitions will virtuously achieve counterbalance without inducing a political-institutional paralysis>> (Pasquino), typical situation of the american divided government. The party-political factor will also be traced in the example i have previously illustrated to introduce the cohabitative government: in fact, there is always the fair supremacy of whom- between premier and president of the republic- has the majority in Parliament. In the presidentialism might be deadlock while in the semi-presidentialism or cohabitation this doesn't happen, since there is always someone who has the power to rule.¹⁷

In the history of the Fifth Republic of France, there has been cohabitation only for nine years (1986-1988, 1993-1995, 1997-2002) and, thanks to the reduction of the presidential mandate (from 7 to 5 years), its repetition in 2002 and 2007 has been averted.¹⁸

To conclude, we can affirm that neither the most complicated cohabitations had produced deadlock problems which are typical of presidentialism (with divided government) and that the semi-presidential forms of government had guaranteed the executives' stability

¹⁷ G. Pasquino, *Nuovo corso di scienza politica*, Edizioni il Mulino, pag. 224.

¹⁸ A. Barbera e C. Fusaro, *Corso di diritto pubblico*, Edizioni Il Mulino, pag. 206.

and even their functionality better than the presidential ones.

3.3 The parliamentary form of government

In order to introduce the parliamentary form of government, the most widespread throughout Europe, I will use two different countries as examples: Italy and the United Kingdom.

This form of government owes its name to the centrality that the legislative assembly has in the process of formation and life of the government: in the parliamentary republics, in fact, the government's duration depends on the parliament's readiness to keep it alive.

In substance, the executive and legislative are tied up together and this bond is represented by the institution of the parliamentary trust.

Even the Parliament can dissolve itself before the end of the legislature, facing early elections: this happens if, once the government has fallen, the parliament is not able to constitute a new one.

Even in the parliamentary form of government there is the figure of the Head of State, but his prerogatives vary from State to State. This one, as in the contemporary monarchies, does not have political weight (think about the United Kingdom), while, in other political systems, he has the power to appoint the government (or only the premier), to dissolve the parliament and he also can have great influence in times of great governmental instability (such as in Italy). In UK, by increasing the Parliament's centrality, since 2010 the early dissolution of the

chambers is no more the premier's prerogative but it is up to the legislative assembly itself: the *House of Commons* (the lower house) can impose the early dissolution of the chambers with qualified majority voting, or it can avoid the formation of a new government after two weeks from the motion of no-confidence that dismissed the previous government.

The executive of the parliamentary forms of government is mostly collegial, but in most of the systems the figure of the prime minister emerges (such as the chancellor in Germany), transforming itself into a monocratic executive. Among all the forms of government until now analysed, the parliamentary one is surely the most sensitive to the party-political system's shape and mechanism, which is in turn influenced by the electoral system. Think about the United Kingdom. The English electoral system is a majority in single-member constituency (defined by English expressions as *plurality* or *first past the post*), where who wins is the candidate that, in the college, has the majority referring to the votes.

This electoral system generates a bipartisan competition, since the elector, by knowing the two main parties' strength (conservatives and labourists), will hardly give his vote to the third party. The party that, at the end of the elections, has the majority even in parliament, will go straight to the government, by creating continuity between party-representation-executive that characterises the party's governments (according to the English model). In the proportional representation systems, such as the Italian one, the parliament is highly representative (but also highly fragmented), where it is difficult for a party to obtain the necessary votes to rule alone so the government is born of a subsequent bargaining between parties, which

generates a multi-party government¹⁹. This dynamic just described is one of the biggest differences between the parliamentary form of government and the presidential one, because in the first government and parliament are the expression of the same party (or the same parties) while in the second they can be expression of different parties (divided government).²⁰

Stability and effectiveness of decision-making represent the main problem of the parliamentary governments and, as already said, they depend on the electoral and party-political system.

A two-party system (that in the vast majority of cases is preceded by a majority electoral system, as Duverger claims) generates party governments, while a proportional one generates multi-party governments, which can have different performance and durability. It is important to underline that with the term durability of a government it is not intended the presence, for the entire mandate, of the same premier- for example in England there is a big ministerial staff turnover (think about the recent replacement of Cameron with May, without changing the ruling party); a government is considered to be collapsed when there is the dissolution and then the formation of a new one. In Italy, for example, from 1945 to 1999, governments had a median duration of 10 months (Pasquino, 2002), while the duration of the serving ministers was about 3 years and 8 months (Blondel e Thiébault, 1991). Even now, in our country, the procedures by means of which a stable and successful

¹⁹ G. Pasquino, *Nuovo corso di scienza politica*, Edizioni il Mulino, pag. 122-133.

²⁰ A. Barbera e C. Fusaro, *Corso di diritto pubblico*, Edizioni Il Mulino, pag. 204.

government can be created, haven't been found.

By observing Germany (and subsequently Spain), we finally find an instrument of constitutional engineering able to give the government stability: the constructive vote of no-confidence. The *Bundestag* (the German parliament's lower house), according to art. 67 of its fundamental law (the German constitution) can distrust the government only after a double voting with absolute majority and only if it has already a new government team.²¹ In the history of the German Federative Republic, since 1949 up to now, a motion of no-confidence has been presented only two times and only one of them succeeded.

Despite this, it is important to remind that we are talking about a context facilitated by its own electoral and party-political system, with a multi-party political system geared towards the parties of the middle.

To conclude, it is fair to present which are the three possible degeneration of the parliamentary government: the first one, is made up of decision-making excesses by the government which has strong control upon its majority in parliament; the second degeneration verifies when the weak government has little control upon his parliamentary majority and it tends therefore to rule by abusing the decrees; the third and last one degeneration is represented by the presidentialisation, i.e. the increasing centralisation of powers in the hands of the government or its leader.²²

²¹ www.wikipedia.org/wiki/Sfiducia_costruttiva

²² G. Pasquino, Nuovo corso di scienza politica, Edizioni il Mulino, pag. 225 e ss.

3.4 The swiss directorial form of government

In this particular form of government, who has the executive power is the Directory, not directly elected by the people but by the parliament. This executive body, such as in the american system, cannot dissolve the houses or it can't be mistrusted.

The reference model is Switzerland, where the federal assembly (Bundesversammlung) elects the federal Council (Bundesrat), made up of seven components. It is a directorate form of government since there is no hierarchical difference between the seven components of the directorate: the president is chosen according to a rotation and he is in charge for a year. It is a form of government that fits very well to those countries which have internal differences in terms of language, culture and religion.

Written by Davide Farone

Translated by Alessandra Falzone