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Parliamentary Systems

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A. Definition

1. The term ‘parliamentary system’ forms part of a dichotomy widely used in political science in order to categorize the main forms of democratic government. From this perspective, parliamentary systems are opposed to → *presidential systems* as the other main form of democratic government (Lijphart 2). Based on the propositions first advanced by Douglas Verney, three major characteristics are retained by most authors as distinguishing features of parliamentary systems (Lijphart 2–5). First, the head of government in parliamentary systems (→ *Prime Minister*, President of the Council, → *Chancellor*, Taoiseach etc.) and his or her → *cabinet* are dependent on the confidence of parliament and can be dismissed from office by a parliamentary vote of censure or a → *no confidence vote*. By contrast, the head of government in presidential systems, who is almost always called president, is elected for a constitutionally fixed term and cannot be removed from office by parliament except in the highly unusual and cumbersome procedure of → *impeachment*. Second, the parliament plays a central role in the selection of the head of government. This selection, however, may take very different forms, from formal election in parliament to the informal emergence from inter-party bargaining in the legislature followed by an official appointment by the head of state. By contrast, chief executives in presidential systems are popularly elected, either directly or via an electoral college. Third, in parliamentary systems, the → *executive powers* are exercised by a collegial or collective body: the cabinet. The head of government’s constitutional position can vary from pre-eminence to virtual equality with the other ministers, but there is always a relatively high degree of collegiality in decision-making, which forms the basis of the concept of collective responsibility, or cabinet solidarity, a key feature of parliamentary government. By contrast, the members of presidential cabinets are mere advisers and subordinates of the president.

2. This dualism is sometimes complemented by a third category, semi-presidential (→ *semi-presidential systems*) or hybrid systems, which combine major features of both presidential and parliamentary systems. These systems usually display the following features (Duverger 7): first, the president is elected by → *universal suffrage* and thus enjoys a distinct democratic → *legitimacy* which is not derived from parliament; second, the president possesses a number of executive and governmental powers, including the competence to appoint the prime minister and the members of the cabinet; third, the bulk of the executive powers are exercised by the cabinet, which is dependent on the confidence of parliament. In practice, hybrid systems may function either as parliamentary systems or as presidential systems, depending mainly on whether the parliamentary majority recognizes and supports the prime minister or the president as its supreme political leader. Austria is an example of the former category; France an example of the latter.

B. Historical Evolution and Contemporary Relevance

3. According to Verney (18–23), three major stages can be distinguished in the historical evolution of parliamentary systems. During the first stage, the still undivided governmental powers (including what in modern terminology would be categorized as legislative, executive, and judicial functions) are exercised in their totality by the monarch, based on the theory of Divine Right of Kings. This period lasted in England roughly until the end of the Tudor period. In the second phase, the hegemony of the King was increasingly challenged by an assembly representing the estates of the realm. In particular, the assembly took advantage of the fact that the King needed its support to levy taxes and contributions on his subjects in order to sustain the military expenses generated by his ambitious foreign policies. It was by establishing their power over the purse that the assembly was ultimately able to claim its own area of jurisdiction. In the process, the role of the monarch was transformed from that of a King ruling by Divine Right into that of a chief executive dependent ultimately on the good will of the legislature. In England, this division

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of executive and legislative power between the King and the two Houses became explicit as a result of the English Civil War and the 'Glorious Revolution' of 1688. This division of responsibility was widely celebrated in the writings of eighteenth-century commentators as the → *separation of powers*. However, even as the separation of powers became fashionable and emerged as one of the pillars of modern constitutionalism at the end of the eighteenth century, the third and final phase in the evolution of modern parliamentary government was already under way. In the eighteenth century, the English King was losing his power to ministers, who came to regard the assembly, not the Monarch, as the sovereign to whom they were ultimately responsible. Ministers were increasingly chosen from among the members of the assembly and resigned when the assembly withdrew its confidence from them. This change was slow and gradual, and it was only in the reign of Queen Victoria that parliamentary government in its modern form was fully established in Britain. Similar trends were discernible in parts of northern and Western Europe in the nineteenth century. In Sweden, the *Riksdag* established the power over the purse, and passed from the first to the second phase with the Constitution of 1809 which, while recognizing that the 'the King alone shall govern the Realm', made the *Riksdag* solely responsible for taxation. Due to the formalization of the separation of powers in the new Constitution, however, it would take until the beginning of the twentieth century before the principle of ministerial responsibility was fully established in practice and the King effectively ceased to take part in the exercise of executive power.

4. The British model of parliamentary government was exported to many of Britain's former colonies, where it still functions today along similar lines as in the UK, particularly in Canada, Australia, and New Zealand. It has also served as a model for the establishment of parliamentary regimes in continental Europe, where most countries adopted the principle of an executive responsible to parliament during the nineteenth and twentieth centuries and became, to this extent, epigones of Westminster (Le Divellec 99). The basic structure of parliamentary systems in Europe and elsewhere thus is still broadly similar to the Westminster system. However, the fragmentation of party systems, sharp ideological polarization, the rise of extremist political parties, and weak coalition governments resulting from the application of proportional voting systems have all contributed to a high degree of political instability and have obstructed the smooth functioning of parliamentary government in much of continental Europe in the first half of the twentieth century. In response to this negative experience, the drafters of the post-war constitutions in Western Europe tried to improve the conditions for the proper functioning of the parliamentary system by means of constitutional regulation, establishing parliamentary systems whose functioning, while still basically similar to the British model, diverges from it in many aspects (see section titled Main Constitutional Issues) At the end of the twentieth century, many new democracies in central-eastern, Eastern, and south-eastern Europe adopted hybrid systems of government, ie systems which combine a popularly elected presidency with the institution of cabinet government. In practice, most of these hybrid systems—eg Czech Republic, Slovak Republic, Poland, Bulgaria—function as parliamentary systems, with the popularly elected president reduced to a primarily ceremonial role. Others, like Russia, have veered off in the direction of hyper-presidentialism, while a third group of countries like Ukraine and Georgia seem to constantly alternate between presidential and parliamentary patterns of government, often accompanied by constitutional reforms trying to recalibrate the institutional balance in favour of one or the other. Outside of Europe, the parliamentary system has often struggled to establish roots in countries which were not shaped by the experience of the British Empire. The most notable exception is Japan.

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5. By contrast, Switzerland is neither a genuine parliamentary nor a hybrid system (there is no popularly elected presidency), but an atypical parliamentary system, as the seven members of the Federal Council which functions as the collegial government of the Swiss Federation are elected by the Federal Assembly for a fixed term of four years and cannot be removed from office before the end of their term by vote of no confidence or impeachment. South Africa, on the other hand, is closer to the presidential system: although the President is elected by the National Assembly from among its members and nominally shares the executive powers with the rest of the cabinet, he or she effectively dominates the executive by virtue of the power to appoint and dismiss the ministers freely without the approval of Parliament.

6. Parliamentary systems with a federal structure tend to reproduce the parliamentary system at the subnational or state level. This applies to India, Canada, Australia, and the Federal Republic of Germany. A similar observation can be made with regard to federal states with presidential government: the presidential form of government is normally replicated at the subnational level, with the governor discharging the role of popularly elected chief executive at state level in countries like the United States of America, Mexico, Brazil, and Argentina.

C. Main Constitutional Issues

7. The distinction between parliamentary and other forms of government is primarily a classification problem which as such has little relevance to constitutional lawyers confronted with issues of positive law. The answer to a specific constitutional question, ie whether parliament has or does not have certain powers, has to be found by interpreting the pertinent constitutional provisions on the distribution of powers between the legislature and the executive, and will only exceptionally be influenced by general considerations on the nature of the governmental system established by the constitution. The other main aspect of the distinction, ie the debate on the respective advantages and disadvantages of parliamentary and presidential government, is of interest mainly to the drafters of constitutional texts who have to decide on the form of government they want to adopt; it concerns issues of political expediency and desirability at least as much as issues of legal coherence or constitutional propriety. There are, however, two general issues which have featured greatly in the debates on the constitutional regulation of parliamentary systems, one of a conceptual and the other of a more practical nature. The first debate concerns the relationship between parliamentary government and the separation of powers, the second concerns the role and effectiveness of constitutional regulation as a means to ensure governmental stability.

1. Separation of Powers

8. One of the keystones of modern constitutional thinking since its formulation by the French enlightenment philosopher Charles de Montesquieu in the eighteenth century, the concept of separation of powers rests on the distinction of three basic functions of the state, defined in very general terms as the lawmaking function (→ *lawmaking and legislation*), the function of execution and implementation of laws (→ *implementing legislation*), and the function of interpretation of the law and the → *administration of justice*; and their distribution among the corresponding branches of government, ie the legislature, the executive, and the → *judiciary*, in a way which enables them to control and check each other in the exercise of their respective powers (‘*le pouvoir arrête le pouvoir*’). The principle of separation was also meant to apply—and even primarily so, since the power of the judicial branch in Montesquieu’s view was not really a ‘power’ (‘*en quelque facon nulle*’, as he put

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it)—to the relations between the executive and the legislature, which had to be 'balanced' to allow the system as a whole to function properly.

9. From this view arose a 'dualist' interpretation of the parliamentary system, in which on the one hand the holder of the executive power—the hereditary monarch in the constitutional monarchy and later the elected President in the Republic—and on the other the legislature, acted as checks on each other in the exercise of their respective powers: a dualist view which was the dominant strand in French political thinking in late nineteenth century and staged a comeback following the ignominious collapse of the seemingly 'unbalanced' parliamentary regimes of the Third and Fourth Republic. The French Constitution of 1958 goes to great lengths to implement a 'true' separation of powers between the executive and the legislature, establishing in the process a hybrid model of government which has proved influential in northern, western, and central Africa, and the Middle East, but also in many parts of Eastern and south-eastern Europe after 1989. It does so by emancipating the government to the largest extent possible from parliament and the parliamentary majority. Membership in the government is incompatible with membership of parliament (Art. 23 French Constitution; → *incompatibility of office*), which means that a French MP has to vacate his parliamentary seat if he/she is appointed as government minister. The government—through the prime minister—has the right not only to initiate legislation to the same extent as members of parliament, it also has the constitutional right to set the parliamentary agenda and determine the order in which legislative bills are discussed in the chambers (Art. 48). Even more draconian, the prime minister may decide at any stage of the proceedings to make the vote of a bill a matter of confidence before the National Assembly. If that happens, the discussion stops and the bill is considered to have passed unless a censure motion against the government is tabled within twenty-four hours and adopted by the majority of members of the house (Art. 49(3)).

10. But the French Constitution does not limit itself to 'rationalizing' the → *legislative procedure* and the exercise of parliamentary control powers. In addition, it establishes a popularly elected presidency which through the exercise of its various independent powers shall arbitrate in conflicts between the government and the legislature, especially by using the presidential power to appoint and dismiss the prime minister and other members of the cabinet (Art. 8 French Constitution), and the discretionary competence to dissolve the National Assembly in case of institutional deadlock (Art. 12). In essence, this means that the parliamentary system of the Third and Fourth Republic has been replaced by a semi-presidential or hybrid system which in practice puts the president in a dominant position as long as he or she is supported by a majority in parliament—which has been the rule since 1958, and especially since the synchronization of the presidential and parliamentary terms in 2002. In doing so, the French Constitution has effectively succeeded in giving a new lease of life to older concepts of a 'balanced' or 'dualist' parliamentary system which had been largely discredited following the dismal failure of the Weimar Republic in Germany in the interwar period.

11. The 'dualist' concept of parliamentarianism has been criticized for its lack of understanding of how modern parliamentary systems function. The latter's defining characteristic is not the strict separation of executive and legislative powers, but close cooperation between the government and the parliamentary majority in the exercise of both executive and legislative powers, on the basis of a competitive multi-party system in which the parties represented in parliament are either part of the government or of the opposition. As Walter Bagehot, who wrote in the second half of the nineteenth century at the height of the Victorian age, pointed out:

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> The efficient secret of the English constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers … The connecting link is the cabinet. By that word we mean a committee of the legislative body selected to be the executive body … The legislature chosen, in name to make laws, in fact finds its principal business in making and in keeping an executive (Bagehot 9, 10).

12. It might seem as if the foregoing definition of the modern parliamentary system can hardly be reconciled with the principle of separation of powers, at least not in its traditional version. However, most political scientists and constitutional scholars agree that separation of powers, understood as checks and balances, also has a role to play in a parliamentary system operating on the basis of close cooperation between the government and the parties forming the majority in parliament. This is uncontroversial with regard to the relations between the political branches and the judiciary, whose independence and impartiality are indispensable prerequisites of a functioning rule of law. But → *checks and balances* also have a useful role to play in the relations between the government and parliament in a parliamentary system. However, in this respect it is important to recognize that a fundamental distinction exists within parliament between the majority, which has as its main political mission the support of the government and its agenda, and the opposition parties whose role consists in monitoring and criticizing the government's policies and in proposing alternatives. This suggests that one of main challenges of the constitutional regulation of parliamentary government today is the recognition and proper definition of the role and the rights of the opposition, so as to allow it to present its political alternatives freely and to become and remain a credible alternative to the government and its parliamentary majority. The special status and the corresponding rights of the parliamentary opposition are increasingly recognized and explicitly guaranteed in recent constitutional regulation (Art. 10 of the Constitution of Morocco; Art. 18 Constitution of Bhutan).

2. Governmental Stability

13. As the government is dependent on the confidence of the legislature and can in principle be dismissed from office by a vote of censure or no confidence at any point of the legislature, governmental stability raises more difficult problems in parliamentary than in presidential systems where the head of government is elected for a fixed, constitutionally prescribed term and may only be removed from office before the end of term in exceptional circumstances. However, this problem emerged fully only in the twentieth century, as parliamentary systems started to develop in the context of stable constitutional monarchies and in some cases, namely in the British case, enjoyed a gradual and rather smooth transition to a fully democratic system based on majority voting and a stable party system organized around two big parties which could alternate in government. Thus, the British parliamentary system was able to evolve on the basis of uncodified conventions and practices most of which have never been laid down in any statute, but are recorded in treatises and manuals on parliamentary practice, of which Erskine May's treatise on the 'Law, Privileges, Proceedings and Usage of Parliament' has been the most influential, acting as a rule book for parliamentarians.

14. The situation was fundamentally different in countries in continental Europe, which introduced parliamentary forms of government in a context where the stabilizing role of the monarchy had already been weakened or even disappeared totally; starting with France, which experienced chronic governmental instability throughout much of the period from 1870 to 1958. France and other continental countries often used a proportional voting system in parliamentary elections, which resulted in a fragmented party system and unstable multi-party government coalitions which rarely lasted a full legislature. The

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fragmentation of party systems, sharp ideological polarization, the rise of extremist political parties, and weak coalition governments all contributed to a high degree of political instability and obstructed the smooth functioning of parliamentary government in many places during the interwar period. In response to this disastrous experience, the drafters of the constitutions adopted in Western Europe after World War II have also tried to improve the conditions for the proper functioning of the parliamentary system by means of constitutional regulation. They have included detailed rules on the formation of the government, the position and the prerogatives of the head of government, and the circumstances and procedures in which the principle of ministerial responsibility may be invoked by parliament in the constitutional texts, thereby seeking to 'rationalize' the way in which the parliamentary system functions in order to achieve a higher degree of governmental stability. To this end they use several devices, the most important of which are: the strengthening of the position and the powers of the prime minister, detailed rules on the formation of a new government to make sure it enjoys the support of a parliamentary majority, and the introduction of restrictions on parliament's power to topple a sitting government by (simple) majority vote.

15. The strengthening of the position of the head of government has in many instances led to the express constitutional recognition of his/her leadership role in the cabinet. The prime minister 'directs the work of the government' (eg Art. 21(1) French Constitution; Art. 98(2) Spanish Constitution; Art. 55(1) Constitution of Poland; Art. 107(2) Constitution of Romania), and the chancellor 'determines the general guidelines of policy' (Art. 65 German Basic Law). Moreover, it is the head of government with whom the final decision rests whether to ask parliament for a vote of confidence and thus to put the government's existence on the line (Art. 49 French Constitution; Art. 112(1) Spanish Constitution; Art. 68 German Basic Law). If the prime minister resigns, the other members of the government also lose their offices and a new government has to be appointed (Art. 69(2) German Basic Law; Art. 101(1) Spanish Constitution; Art. 70 Constitution of Japan; see also Art. 8(1) French Constitution).

16. Secondly, constitutional provisions on the formation of the government are much more explicit with regard to the level of parliamentary support needed for a new cabinet to enter office, thus stressing the link which in a functioning parliamentary system ties the government to its parliamentary majority. This is reflected in constitutional regulation in two ways: at the procedural level, the constitution may require the person in charge of proposing/appointing the prime minister—normally the head of state, in some cases the speaker of parliament—to consult with the parties represented in parliament before he/she exercises the right of appointment (eg Art. 99(1) Constitution of Spain; Art. 187(1) Constitution of Portugal; Art. 61(2) Constitution of Finland). The constitution may also explicitly limit the discretion of the head of state by asking him to appoint the candidate of the party or the coalition of parties with a majority in parliament (eg Art. 76(1) Constitution of Nepal; Section 37(2) Constitution of Belize). Moreover, the constitutional provisions frequently require a formal vote of parliament demonstrating its support for the new government, either in the form of the election of the designated candidate for the office of prime minister or chancellor, by the directly elected chamber as a necessary condition for its appointment (Art. 61(1) Constitution of Finland; Art. 63 German Basic Law), or in the form of a parliamentary confirmation vote on the government and/or its political program immediately following its appointment (Art. 154(2) Constitution of Poland; Art. 103(2) Romanian Constitution). Some constitutions go to great lengths to ensure that the new government disposes of a stable majority in Parliament: the election or conformation vote must take place by absolute majority, and only if several attempts to elect or to confirm a new head of government by absolute majority have failed may the election or confirmation

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proceed with a relative majority of votes (Art. 63 German Basic Law; Art. 61 Constitution of Finland; Arts 153 and 154 Constitution of Poland).

17. By contrast, Swedish constitutional regulation reveals a more relaxed attitude towards minority governments which is often referred to as ‘negative parliamentarianism’. It is in the rules governing the appointment and the dismissal of the government that the principle of negative parliamentarianism is most visible. According to Chapter 6, Article 4 of the Instrument of Government, the Speaker summons for consultation representatives from each party group and confers with the deputy speakers before placing a proposal before Parliament which shall then proceed to vote on the proposal within four days, without consultation of any parliamentary committee. If more than half of the MPs (ie 175) vote against the proposal, it is rejected; in the opposite case, it is deemed to have been adopted. This means that from a strictly constitutional viewpoint no positive vote in favour of the prime ministerial candidate is needed, provided more than 174 MPs vote against him. Typically, this procedure takes place after a parliamentary election, but it is applicable also on other occasions on which a vacancy in the office of Prime Minister occurs. In essence this means that, in Sweden, a government must not necessarily enjoy the support of more than half of the MPs, as long as the majority of the MPs (ie 175) is not going to vote against it. Swedish authors see in this internationally unusual kind of parliamentary regulation the core of the modern Swedish parliamentary system (Nergelius 72).

18. Finally, contemporary constitutions try to make it more difficult for opposition parties to bring down a government before the end of the parliamentary term by formalizing the procedures in which the principle of governmental or ministerial responsibility may be invoked. Whereas in the early stages of the history of parliamentary government such questions were largely left to parliamentary practice and the rules of procedure adopted by the respective parliamentary assembly, the conditions in which parliament may withdraw its confidence from the government is now often subject to strict constitutional regulation. The head of government normally has a wide discretion in deciding whether, and on which issue, to ask the parliamentary assembly for a vote of confidence. By contrast, the confidence or censure motions brought by members of parliament are subject to a number of strict procedural requirements: they must be signed by a minimum number of MPs to be admissible; a vote on the motion may not take place immediately, but only after a ‘cooling off’ period’ has lapsed, which allows MPs to reflect properly on the potential consequences of their decision, for themselves, and the country; confidence can only be withdrawn from the government by qualified majority vote (absolute majority of the house membership). Additionally, some constitutions prescribe that for a censure motion to proceed, it must contain the name of the person which shall replace the incumbent head of government, so that it is not possible to turf out one government without naming its replacement (constructive vote of no confidence, see Art. 96(2) Constitution of Belgium; Art. 67(1) German Basic Law). MPs that have signed a censure motion which has been rejected may be barred from bringing a new one before the end of a constitutionally prescribed waiting period (Art. 49(2) French Constitution).

19. In addition to the above-mentioned constitutional reforms which were introduced after World War II to improve the functioning of parliamentary regimes and to enhance governmental stability, other measures have been taken by way of constitutional legislation with the aim of curbing parliamentary malpractices and their negative effects on stable government. These include the so-called anti-defection laws which are particularly popular in South Asia (Tenth Schedule to the Constitution of India; Art. 63-A Constitution of Pakistan; Art. 98(e) Constitution of Nepal) but have also been embraced by other parliamentary regimes old and new. Under these provisions, MPs are barred from switching their party loyalty during the legislative term: if they opt to leave the party on whose list they were elected and/or switch to another party, they automatically lose their

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parliamentary seat. In the Indian and other cases, the relevant constitutional provisions go even further. If a direction is issued by the leadership of the parliamentary party to vote in a particular manner on a matter before the assembly, the party member is under a constitutional duty to comply with the direction of the leadership. If the MP abstains or votes contrary to the instruction given by the leadership, he/she may be expelled from the party and lose his/her parliamentary seat. While these measures are designed to combat rampant horse-trading and corruption in daily parliamentary life, they also strengthen the hand of the party leadership in the enforcement of party discipline, and thus reduce the risk to government stability resulting from 'fleeting' parliamentary majorities (Khanna and Shah 105). However, they do so at significant cost, calling into question the principle of free speech of the individual members of parliament, which is one of the cornerstones on which parliamentary democracy was originally built.

D. Assessment

20. Together with presidential and semi-presidential or hybrid systems, parliamentary systems today constitute the main form of democratic government. Parliamentary systems have known a gradual and rather smooth evolution in Britain, most of the countries of the former British Empire—which have retained or adopted this form of government following independence—and also in Scandinavia. As a result, constitutional regulation and constitutional jurisprudence have played a relatively minor role in the functioning of parliamentarism in these countries.

21. By contrast, negative experiences with governmental instability generated by malfunctioning parliamentary systems have triggered major reform efforts in different parts of continental Europe during the twentieth century, which are frequently summarized under the heading → *rationalized parliamentarism*. Two main approaches to the constitutional reform of the parliamentary system after World War II can be distinguished. On the one hand, reformers have tried to restore some kind of balance between the 'executive' and the 'legislative' branches of government, based on a traditional reading of the separation of powers principle. The hybrid presidential-parliamentary system created by the 1958 French Constitution is the most important example of this approach which has influenced numerous presidential-parliamentary systems, especially in Africa, Eastern Europe, and Central Asia.

22. The alternative approach is the strengthening of the constitutional framework, in which a parliamentary system, understood as a contest between the government supported by its parliamentary majority and the parliamentary opposition, can function effectively, ie produce stable government while at the same time preserving the option of a democratic alternation in power. The most important measures to this effect include the strengthening of the constitutional position and authority of the prime minister, the strict regulation of the procedures in which the principle of ministerial responsibility can be invoked, the enforcement of party discipline in parliament by the whips through anti-defection laws, and the granting of a special status and special minority rights to the parliamentary opposition. They are often combined with reforms of the laws on political parties and the voting system, designed to avoid fragmentation by reducing the number of parties which get into parliament (eg by fixing a minimum share of the total vote which a party has to obtain if it is to take part in the distribution of parliamentary seats) and to facilitate the formation of stable governing majorities (eg awarding the party or alliance of parties which comes first in the parliamentary polls a number of extra seats). As with all democratic systems of government, parliamentary systems keep evolving and must constantly strive to achieve a balance between, on one the hand, the imperatives of broad democratic representation and

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full public debate of the main issues facing the nation, and on the other, effective government action and governmental stability.

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