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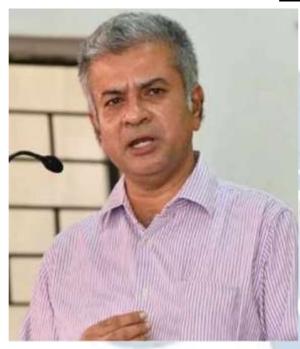
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PRESIDENTIALISM AND PARLIAMENTARISM: THE NEW PERSPECTIVE

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Prof. Richard Albert in *The Fusion of Presidentialism and Parliamentarism[1]* published in The American Journal of Comparative Law in 2009, talks about the situations when two different system of governance, the Presidential and the Parliamentary behaves like each other. It is a piece that really makes you think differently about how democracies actually work. It's so fascinating how we try to put political systems into these unique little boxes i.e. Presidential and Parliamentary but in reality, it's way more complex than that. The title, fusion is in itself intruding. I always thought these were totally different system, in fact opposites. Well, that's what we all are taught, right? Presidential is separation of powers and Parliamentary fusion of powers. But Prof. Albert's arguing it's not. It's not a black and white and so there's more overlap, more than we actually realizes. For example, let's look at the. U.S. Presidential system which is the prime example of separation of powers, think about the presidential veto power. The President actually gets to directly shape the lawmaking and not just a passive check on Congress. It blurs the lines between the executive and legislative branches. Then think about the impeachment process, in there the congress is using judicial power. So, in the system that's designed for separation you get this fusion and the flip side is that the Parliamentary systems also separate powers many times. Look at the UK, Westminster system, you got the Executive and the Crown which includes the Judiciary and Parliament. They check each other's power, so checks and balances too. Then we've got this concept called "constrained Parliamentarism" by *Prof. Ackerman[2]*. It describes Parliamentary systems with features we usually think of as Presidential, the independent Judiciary. Think about India, the Supreme Court is totally independent, often pushes back against Parliament to maintain separation of power. So even

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[1] The Fusion of Presidentialism and Parliamentarism, RICHARD ALBERT, The American Journal of Comparative Law, SUMMER 2009, Vol. 57, No. 3 (SUMMER 2009), pp. 531-577 Published by: Oxford University Press Stable URL: https://www.jstor.org/stable/25652657

[2] The New Separation of Powers, Bruce Ackerman, Harvard Law Review, Jan., 2000, Vol. 113, No. 3 (Jan., 2000), pp. 633-729 Published by: The Harvard Law Review Association Stable URL: https://www.jstor.org/stable/1342286

though it's Parliamentary, it got these safeguards to keep the legislature and executive in check and then we got a written constitution quite similar Bill of Rights that further limits Parliament's power. We see this in other countries too like Canada and South Africa. They also lean on independent agencies to hold the executive branch accountable like Election Commission, Human Rights Commission, CAG, etc.

Thus as Prof. Richard argues in his another article ***Presidential values in Parliamentary democracies[3]*** that British Parliamentarism with its reliance on political accountability, Constrained Parliamentarism with its added safeguards, Semi Presidentialism with its balancing act within the executive branch and the unique case of the Iraqi Presidency Council, all demonstrate that Parliamentary systems can absolutely deliver on the values of separation of powers, even if they don't have the same structure as that of Presidential model. It's like they found different paths to the same destination. They've adapted the principle of separation of powers to fit their own needs and circumstances. And in doing so, they've created systems that are both stable and responsive to the needs of their citizens.

This brings up a question that if both systems can borrow like this, what does that say about our traditional understanding of differences between them? The textbook definitions are good places to start, but they don't always capture the nuances of real-world systems, for example we assume that Presidential systems are all about fixed terms and Parliamentary systems are all about flexible elections. The President serves a set period and Parliamentary says you can have elections anytime. There's a vote of no confidence in theory, but lots of Parliamentary democracies also actually have fixed terms built right into their systems and they still allow for votes of no confidence. So, you can have the stability of fixed terms as well as you can and the flexibility of early elections in a Parliamentary system. It's like best of both worlds. Romania, Sweden. Finland, Estonia, Spain, they've all got fixed terms for Parliament, but they can still have early elections. Germany has a unique system, the constructive vote of no confidence. They can kick out the chancellor only if they agree on a replacement at the same time, so no power vacuums. That's smart a system that prioritizes both accountability and stability. Canada which is known for its Parliamentary system recently moved toward fixed terms. Contrary to that the Presidential systems always do not stick to those fixed terms; some Presidential systems

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[3] Richard Albert, Presidential values in parliamentary democracies, *International Journal of Constitutional Law*, Volume 8, Issue 2, April 2010, Pages 207–236, https://doi.org/10.1093/icon/moq008

actually allow for early elections. The constitutions of Peru, Slovakia, Kazakhstan, Mongolia, all give their Presidents the power to dissolve the legislature and call new elections. So even in a Presidential system if things get really gridlocked there's a way to reset. What about semi-Presidential systems then? Did they do this too? Semi-Presidential like France, Russia, Croatia often use early elections to resolve gridlocks so they break the tension and let the people decide.

These categories are way more fluid than we think, much more adaptable than we realize. We usually associate one system with the other like the vote of no confidence. We think of that as a Parliamentary tool. It's how they get rid of a Prime Minister who's lost the support of the legislature but some Parliamentary systems also have a provision for impeachment. So, a Prime Minister could face both a vote of no confidence and the impeachment as a whole other layer. Thailand is a good example. So, impeachment isn't just a Presidential thing but it's about holding leaders accountable regardless of the system. The fun facts are impeachment started in England in their Parliamentary system in 14th century so the system we think of as Presidential borrowed a key tool from the system we think of as Parliamentary. But then if Parliamentary systems can have impeachment can Presidential systems have something like a vote of no confidence and the answer is sometimes yes. The vote of no confidence in a Presidential system as some scholars in the US have argued could be more democratic and efficient. So instead of going through impeachment, which is really long, really political, there could be a direct vote to see if Congress still supports the President. Slovakia does it, they can recall the President by popular vote. Venezuela also has something similar; they allow recall elections. So even in systems with fixed terms, there are ways to be flexible and respond to public opinion. It's amazing how these systems adapt and borrow from each other. *Prof Harold C. Havighurst in his essay, Doing Away with Presidential Impeachment: The Advantages of Parliamentary Government[4]*, in fact argues that U.S. can think about bringing something as no confidence or popular recall to enhance the accountability of executive and that the situations like Watergate Scandal would have been better handled if there was Parliamentary kind of mechanism in U.S. Now let's talk about accountability because some argue that a Parliamentary system is inherently more accountable because the Prime Minister can be removed so quickly if they lose the legislature supports like. But doesn't a system of checks and balances too? Well as *Prof Thomas O. Sargentich in his essay The Presidential and Parliamentary Models of National*

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[4] Harold C. Havighurst, Doing Away with Presidential Impeachment: The Advantages of Parliamentary Government, 1974 ARIZ. ST. L.J. 223 (1974).

Government[5] portrays that Presidential system also enhance accountability of executive in its own ways. As it has those two other branches, with potentially different viewpoints, it can kind of force it more thorough deliberation. It can help prevent those really hasty, ill-considered decisions that maybe a more streamlined system might kind of rush into. It's like having a second set of eyes on a project which can help you catch mistakes and avoid costly errors. Also, in both the systems they are ultimately accountable to people when they face the elections.

There's more about this blurring of lines, we often think Parliamentary systems are more efficient than Presidential ones, because the executive branch directly comes from the legislature. So, in a Presidential system you could have the President and Congress from different parties, the classic example leading to gridlock, divided government, and that's inefficient with all those checks and balances, all this veto points, more disagreements, more time spent negotiating, compromising. But one must not forget that they're there for a reason. It's about preventing tyranny, preventing one branch from getting too powerful. That's the classic Montesquieuine argument and the main idea behind separating powers; that the absolute power corrupts absolutely. You make the branches work together, you get more thoughtful policies, even if it takes longer. So, it's a trade-off, less efficiency but more protection, more safeguards against abuse of power. But the idea that Presidential systems are always inefficient is not always true, if the President and Legislature are controlled by the same party things can move pretty fast. So, it's not just the structure but a political context which also matters. A system with lots of checks and balances can still be efficient if everyone's on the same page and working together.

But then one can ask that if Parliamentary systems are often seen as more efficient, are there downsides to that or is it a double-edged sword? That's a great question and people don't often consider that though efficiency can be good and we want things to work well, but think about what happens if you move too fast. There are the downsides, one concern is that a really efficient system could lead to not giving the enough careful thought when the laws are getting passed. You rush through a project without double checking mistakes that could happen. The other downside is elective dictatorship. One party with a big majority in Parliament can basically control everything. The majority just steamrolls. They can just push through their

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[5] Thomas O. Sargentich, The Presidential and Parliamentary Models of National Government, 8 AM. U. J. INT'l L. & POL'y 579 (Winter-Spring 1992-1993).

agenda, and if that agenda is narrows or extreme or ideologically driven or without enough checks and balances, they might go too far or do things that aren't good for everyone. So, it seems like the balance is also important between efficiency and safeguards and it's not just about speed. In fact, Parliamentary systems being more efficient is not always true too, and it largely dependent upon the political context of the country. Think about the England where we have 2-party system, in that context this argument might hold true as one party will always dominate the legislature but what about the countries which have multi-party system. Take India for example where often we see a coalition or alliance governments. In such a case the government has to be more accommodative and cannot rush through its agenda without taking all of its alliance's partner on board. This may sometimes cause a sacrifice in efficiency where all coalition parties do not necessarily agree upon the same page.

Thus, it's about doing things thoughtfully, in a way that benefits everyone, in a way that works for everyone. That's where this fusion of ideas gets really interesting from both Presidential and Parliamentary systems. It becomes so important we can learn from each other; we can take the best of both, we can learn from each other's mistakes and successes and design systems that are both efficient, right and responsive. There other areas too where our assumptions about Presidential and Parliamentary might be misleading. People often overlook the role of informal institutions and norms. Informal institutions can affect how a system works. They can have a huge impact regardless of its structure. So even if a constitution has very specific rules there's this other hidden layer of unwritten stuff that shapes how things really work. For example, Think of it like traffic laws. You can have the best traffic laws in the world but if drivers ignore them or the police don't enforce them, they're not going to do much. They're useless. So, it's like the letter of the law versus the spirit of the law. The rules are important but how people actually behave matters too. In fact, it matters more and that's where, political culture comes in, social trust, historical context, all of that stuff, it all matters. Political culture can sometimes trump the actual structure. These informal things like power sharing arrangements in countries with deep divisions like ethnic or religious sometimes create arrangements that aren't in the Constitution but they're essential to keep the peace. So even though the rules don't say that you have to share power there's this norm that you have to include different groups to avoid conflict. In that context the role of political parties in some systems is important. In some systems they're really disciplined, centralized and in others, they're more loose, more decentralized, and that affects how they work with each other, how they interact with the government. A disciplined party can probably push through their agenda more effectively and a decentralized

party might be more open to compromise. Those differences come from history, from culture, not just from the rules on paper. So, to really understand political system sometimes you got to go beyond the written rules. You have to look at the informal stuff, the norms, the practices, the human element that brings it to life. That's what makes comparative politics so fascinating. It's not just about comparing constitutions; it's about understanding all those layers. But if these systems are so fluid, adaptable, always borrowing from each other, and continuously evolving, then does it not takes us to a bigger question? beyond just Presidential, and Parliamentary systems? about how democracy works in a world that's rapidly changing? The biggest challenges in that regards are how to balance efficiency and decisiveness with an inclusivity and liberation, that the tension between getting things done and making sure everyone is on board. It's a constant struggle and as the world gets more complex, more interconnected, those challenges are just going to get bigger. What are some of the things that are making that balancing act harder is that we are seeing more populism, more nationalism and that leads to a more polarized world. It feels like the volume is way up on political discourse and it's hard to find common ground and that makes it harder for democracy to work when people are so divided. It's hard to agree, to compromise and to make progress. It feels like we're stuck in a cycle of outrage and reaction and it's more about scoring points than finding solutions or solving problems. Social media makes it worse. These echo chambers make you see only what you already agree with. Information that confirms your biases. It feels like we're living in different reality, different facts, and interpretations. It's really hard to have a conversation when you're starting from such different places, when you can't even agree on basic facts.

So how can democracy adapt to that? I think one key is trust in institutions, in each other, in the process itself. If we don't trust system, we don't trust that the people running it and then it's hard to believe that your voice matters, like you can make a difference and then people just get apathetic, cynical, they disengage and that just weakens democracy even more. So how do we rebuild trust is a huge challenge. I think it starts with a more informed and engaged citizenry. We need to help people develop critical thinking skills so they can tell fact from, evaluate their sources, engage in constructive dialogue. It's about empowering people to participate, to be active participants. We also need to make institutions more responsive, more accountable to the people. People need to feel like their voices are heard and that the system is working for them and not just for the elites or for the people with special interests. That might require some new ways of doing things. The ways to participate, new forms of democracy or democratic participation. We're seeing some of that already like participatory budgeting, citizen

assemblies, where people have a direct say and are really involved in making decisions that affect their lives. we need to be open to new ideas, new ways of doing things. Democracy is not static but it's a process and it's got to keep evolving. It has to evolve to keep up with the times, to meet the challenges. In this context by challenging our assumptions about these Presidential and Parliamentary system. Let's encourage ourselves to think outside the box, to think differently about how we govern ourselves. It's not just about these two categories but about finding what works for the people. It's about learning from each other, adapting and innovating. To create systems which is more responsive, that actually work, more inclusive, more effective and not just about different political systems. It's about realizing that democracy is the ongoing experiment and for that we have to keep learning, keep adapting to create a more just and equitable world.