An analysis of the Commonwealth Latimer House Principles

Much of the discussion on the ‘independence of parliament’ has focused on the importance of the separation of the legislature, executive and judiciary. This is to limit the arbitrary excesses of executive power to protect our democratic systems. Where did this notion come from and why has it been so staunchly preserved within our Westminster system of government?

To answer this, one must understand the importance of good governance and the key political theories surrounding the separation of powers: the independence of the executive, legislature and judiciary in Westminster systems; the Commonwealth Latimer House Principles; and parliament’s fundamental role of holding the executive to account.

Modern democratic systems of government are based on several essential elements: representative government; rule of the majority; free and fair elections; citizen participation; protection of human rights and minorities; rule of law; and the separation of powers - a system whereby checks and balances are in place to ensure that power is not vested in any single person, institution or branch of government.

To guarantee this balance, it is essential that the parliament or legislature remains independent and does not become a tool or appendage controlled by the government. Through a proper separation of powers, abuses of power, such as tyranny or oppression experienced under a dictatorship or undemocratically elected government, are prevented from occurring.

The three branches of government - the legislature, executive and judiciary - act as separate checks and balances on each other to prevent one branch of government overreaching its power or infringing on the rights of citizens. In the Westminster system, these checks and balances exist between the executive and legislature. For example, Ministers are subject to the scrutiny of Members of Parliament and the opposition, and the executive is not always able to control both Houses of Parliament.

To protect and preserve the democratic system, the three branches of government must remain separate and independent and be respected for their independent status. Any incursions of power by one body over another diminishes the fabric of democracy. An independent parliament is considered a necessity for the protection of democracy, just as an independent judiciary is needed to apply a check upon the powers of the executive and the legislature.

What is remarkable is that the Westminster system of parliamentary democracy, which has existed for hundreds of years, has remained so resilient in the face of a rapidly changing world. This system of government has survived revolutions, a gunpowder plot, hung parliaments, executive dismissals and a host of other threats, and yet the essential elements that have ensured its continuation have remained steadfast and strong. The separation of powers, which has been maintained between the legislature, executive and judiciary, has undoubtedly played a significant role in preserving our Westminster democracies.

Commonwealth Latimer House Principles

In June 1998, a group of distinguished Parliamentarians, judges, lawyers and legal academics joined together at Latimer House in Buckinghamshire, England, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium endorsed what is known as the Commonwealth Latimer House Principles on Parliamentary Supremacy and Judicial Independence.¹

After substantial debate by Commonwealth law ministers, legal experts and judges, the Principles were endorsed by Commonwealth Heads of Government in 2003, who recognised a balance of power between the executive, legislative and judiciary as being an integral part of the Commonwealth’s fundamental political values.

The Commonwealth Latimer House Principles are a set of agreed Commonwealth of Nations principles on the accountability of, and relationship between, the three branches of government.² They underline the fundamental values that should govern the relationship
between the three branches of government. The objective of the principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth’s fundamental values.

The Principles state that: “Each Commonwealth country’s parliaments, executives and judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.”

The Principles play an important role in defining how the legislature can hold the executive to account. Executive accountability is described in the Commonwealth Latimer House Principles, in that parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament. These should include:

- a Committee structure appropriate to the size of parliament, adequately resourced and with the power to summon witnesses, including Ministers. Governments should be required to announce publicly, within a defined time period, their responses to Committee reports;
- Standing Orders should provide appropriate opportunities for Members to question Ministers and full debate on legislative proposals;
- the Public Accounts should be independently audited by the Auditor-General, who is responsible to and must report directly to Parliament;
- the Chair of the Public Accounts Committee should normally be an opposition Member; and,
- offices of the Ombudsman, Human Rights Commissions and Access to Information Commissioners should report regularly to Parliament. In July 2008, an important follow-up to the Commonwealth Latimer House Principles came in the form of the Edinburgh Plan of Action, which sought to give more practical guidance and meaning to the Principles. The Edinburgh Plan included a significant resolution on the Independence of Parliamentarians, which called for the following actions: “Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.”

Action:

- Remuneration packages for Parliamentarians should be determined by an independent process;
- Parliamentarians should have equitable access to resources commensurate with their responsibilities; and,
- Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances. This final action reinforces the importance of parliaments managing and controlling their own fiscal arrangements and opens the door to parliaments introducing their own Appropriation Bill, rather than having their appropriation presented to them by the executive.

Both the Commonwealth Latimer House Principles and Edinburgh Plan of Action are extremely important in upholding the independence of parliament. They provide a set of specific guidelines, which allow Westminster governments to function effectively and responsibly. Importantly, the principles set in place mechanisms of accountability that are an attempt to ensure that no branch of government can dominate or apply disproportionate pressure within the governance system.

Parliamentary corporate bodies

Many Parliaments have constitutional or legislative constraints and are effectively at the mercy of executive financial initiative. The establishment of parliamentary corporate bodies (PCB) - similar to the House of Commons Commission, Scottish Parliamentary Corporate Body (SPCB), Canadian Board of Internal Economy and Australian Capital Territory’s Office of the Legislative Assembly - can play an integral role, not only in determining and managing the parliamentary budget, but also in drafting the parliamentary Appropriation Bill, outside of executive control. This system could also include associated parliamentary bodies that are sometimes funded by the executive rather than the parliament, such as Independent Officers of Parliament and the Office of the Opposition.

The Commonwealth Parliamentary Association and the World Bank Institute (CPA/WBI) Report in 2005 found evidence that the establishment of such PCBs to improve the resourcing and financial management of parliaments enhanced their independence from the executive.

The CPA/WBI Report made the following recommendations:

- Parliaments should, either
by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service;
• There should be an unambiguous relationship between the Speaker, the corporate body and the head of the parliamentary service;
• Members of corporate bodies should act on behalf of all Members of the Legislature and not on a partisan or governmental basis;
• The corporate body should determine the range and standards of service to be provided to Parliament, e.g. accommodation, staff, financial and research services;
• Corporate bodies should promote responsible governance that balances the unique needs of Parliament with general legal requirements, e.g. employment law, freedom of information and occupational health and safety.

Parliamentary financial independence
Westminster Parliaments must be wary of governments wielding too much control over parliamentary funding. One need only look at the Parliament of Victoria in Australia, which currently has a funding model described by the President of the Legislative Council, Hon. Bruce Atkinson, MLC, as being “radically unsuited to the funding of a separate and equal democratic institution.”

In July 2016, the President and Speaker of the Parliament of Victoria, delivered their strongest rebuke of the Victorian Parliament’s funding model to the Public Accounts and Estimates Committee’s Inquiry into the 2016–17 Budget Estimates. Some of their criticisms were that:
• the Executive, by purchasing outputs from Parliament, was acting inappropriately as this was contrary to the Westminster principle of the separation of powers;
• Parliament was being forced to fit into the state funding model and its proxy output measures were unrelated to the core business of Parliament (making the law);
• section 40 of the Financial Management Act (FMA) requires the Treasurer to prepare annual budget estimates in estimation of the annual appropriation Bills, but separate budget papers are never tabled for the Parliamentary Budget;
• the Treasury had no regard for the fact that the Appropriation (Parliament) Bill was a separate Bill for constitutional reasons;
• parliamentary departments are not government service delivery departments, yet they are treated in the same manner – for example, Section 29 of the FMA is not applicable to the parliamentary departments as these are not departments within the meaning of the Public Administration Act 2004 - as parliamentary departments are statutorily prescribed departments of the Parliament;
• section 3 of the Appropriation (Parliament) Bill states, ‘The Treasurer may issue out of Consolidated fund in respect of the financial year 2016–17 the sum of …’, the use of the word ‘may’ is frequently taken to mean that the allocation of the amount appropriated is entirely at the Treasurer’s discretion ‘up to’ the amount specified. This has led to circumstances where Parliament’s funding has been reduced after the appropriation has been passed by both Houses and assented to as law.

This situation reflected in Victoria is not an isolated one. Many Westminster parliaments have found that their funding has been at the expense of a growing imbalance between the parliament and the executive.

The Commonwealth Latimer House Principles, which were endorsed by nations, including Australia in 2003, were initiated and agreed to by the executive arms of governments. These Principles, among other things, formally set down the notion that a PCB, an all-party committee of parliament, should review and administer parliament’s budget and should not be subject to amendment by the executive.

This paper is based on a longer research paper published by the Parliament of Victoria in May 2017, titled, Independence of Parliament. To access this paper please visit http://apo.org.au/node/90326.

References:
2 Ibid., p. 10.
3 Ibid., p. 41.
6 This is currently the case at the Parliament of Victoria, Australia, where its Independent Officers of Parliament and Office of the Opposition are all funded by the Executive – see J. Breukel et al (2017) Independence of Parliament, Melbourne, Parliament of Victoria, pp. 19–29, 38–39.
8 Ibid., p. 13.