

**THE PARLIAMENT: THE POLITICAL PHILOSOPHY OF CONFEDERATION****Sardor Jabborov Rustam ugli***Student of The University of world economy and diplomacy*

**Abstract :** *I guess that any human who interested in politics can get full information and my personal ideas and different political positions. This article clarifies the intellectual origins of Canadian parliamentary government by situating Confederation within a specific strand of liberal political thought. My argument is that the Fathers of Confederation adhered to the political theory of parliamentarianism. Though liberal constitutionalists, the Fathers of Confederation expressly defended a parliamentary political framework that they considered superior to the American system of checks and balances—one characterized by a powerful elected assembly restrained by an unelected upper house, responsible ministers serving in Parliament, and a constitutional monarch. In elucidating the theory of parliamentarianism that underlies the political project of Confederation, my goal is not only to examine a problem in nineteenth-century Canadian political thought but to ground our current political situation within a larger historical perspective.*

**Key words:** *Confederation, Edmund Burke, parliamentarianism, liberal constitutionalism*

**INTRODUCTION**

This article clarifies the origins of the Canadian political order by situating Confederation within a specific strand of liberal political thought. My argument is that in seeking to establish “a Constitution similar in Principle to that of the United Kingdom” (Constitution Act, 1867 (UK), 30 & 31, Victoria. The Fathers of Confederation adhered to the theory of parliamentarianism articulated by figures such as Edmund Burke, Benjamin Constant and John Stuart Mill. Recent scholarship has focused on the ideological opposition between liberal constitutionalism and civic-republicanism, with Confederation securing the predominance of liberalism in the Canadian polity (Ajzenstat and Smith, 1995; Ajzenstat, 2007; Ducharme, 2014; Smith, 1987). Though this analytical framework helps place pre-Confederation political debates within the context of Atlantic political thought, it not only exaggerates the antagonism between liberalism and republicanism

(Pangle, 1988; Rahe, 1992; Sullivan, 2004; Ward, 2004) but overlooks the significance of the disputes within the liberal tradition itself. Consequently, I contend that we have failed to grasp the importance of parliamentarianism for understanding the origins of the Canadian political order.

Contemporary liberal democracies face a political crisis characterized by questions of responsibility, representation and trust. Legislatures are no longer viewed as spaces of deliberation, while the strengthening of the executive, the courts and bureaucracies

have made government more opaque and engendered the rise of demagogic populists (Selinger, 2019). Yet while Burke and the Fathers of Confederation believed these problems were best addressed through a parliamentary framework, few contemporary scholars have returned to classical parliamentarianism. Indeed, in the Canadian context, some argue that the “democratic deficit” afflicting Canada’s political institutions can be traced to the decision of the Fathers of Confederation to perpetuate British parliamentary politics (Savoie, 2019). If we are to evaluate their relevance, we must first familiarize ourselves with the arguments of the drafters of the Quebec Resolutions. The chief obstacle to evaluating the Fathers of Confederation’s conception of parliamentary politics is a lack of scholarly analysis on the distinctiveness of parliamentarianism and why its proponents believed it superior to other forms of liberal constitutionalism. Most research on the constitutionalism of Confederation focuses, justifiably, on its theory of federalism (LaSelva, 1996; Romney, 1999; Smith, 1988; Vipond, 1991). But the Fathers of Confederation believed the distinctiveness of the political framework outlined in the Quebec Resolutions derived from its federal division of powers and parliamentary institutions characterized by the “monarchical principle” (Ajzenstat et al., 2003: 436–37). A notable exception has been Janet Ajzenstat, who emphasizes the form of government championed in the Confederation Debates. Ajzenstat’s intention is to refute the contention that the Canadian political order originates in an anti-Lockean political philosophy, an interpretation most notably articulated by Gad Horowitz and Peter Russell.

Horowitz argues that Canadian political culture is shaped by the dilution of liberal individualism by a premodern “organic” conservatism, with this “Tory Touch” providing the origin of the social values of collectivism, order and the common good, which distinguishes Canada from the liberal individualism of the United States (Horowitz, 1966). Russell, meanwhile, contends that the Canadian political order originated in a form of constitutionalism antithetical to the Lockean notion of a democratic social contract, claiming that Canadian constitutionalism is shaped by a tradition of “organic constitutionalism”—and presents Edmund Burke as exemplifying these political ideas (Russell, 2004: 10–11; 2017: 18). In contrast, Ajzenstat presents Confederation as owing its primary intellectual debt to John Locke. Ajzenstat argues that the Fathers of Confederation sought through the institution of Parliament to define a political identity reflecting Locke’s teaching on “equality, non-discrimination, the rule of law, and the mores of representative government” (2007: 6).

Though persuasively documenting the liberal constitutionalism of the Canadian Founders, Ajzenstat’s interpretation obscures two essential facets. First, while Lockean constitutionalism is compatible with a parliamentary framework, it is consistent with various models of limited government because Locke saw the right of dissolution as the guarantee of political liberty rather than any set of institutional arrangements (Locke, 1988: II, 142; Ward, 2004). Thus, a “Parliamentary Locke” overstates Locke’s

commitment to the British constitutional model. Second, in emphasizing the Lockean roots of Confederation, Ajzenstat gives the impression that the differences between American separation of powers and British parliamentarianism are superficial and that the systems are interchangeable. This, however, contradicts the repeated claims of the Fathers of Confederation themselves, who again and again insist on the distinctiveness and superiority of the Canadian political project. As William Selinger (2019) argues, parliamentarianism forms a unique constitutional tradition. Although all eighteenth- and nineteenth-century liberal constitutionalists were committed to securing civil liberties, political pluralism, and commerce against the danger posed by popular demagogues, they disagreed on the best political framework for achieving these aims. One of the most influential articulations of liberal constitutionalism was provided by French political philosopher Montesquieu, who presented the British Constitution as a system of three separate powers—the House of Commons, Lords and Crown—checking each other with their respective prerogatives (1989: 164). However, many thinkers found Montesquieu's account of the British Constitution unsatisfactory. Instead of focusing on checks and balances, these writers highlighted elements that Montesquieu overlooked: the presence of the Crown's ministers in Parliament, responsible government, and the role of the constitutional monarch, which created the conditions for a genuinely deliberative assembly (Selinger, 2019). Edmund Burke brought the various strands of this interpretation of the British Constitution together, propounding a theory of parliamentarianism further elaborated upon by nineteenth-century British and French liberal thinkers and politicians. For proponents of parliamentarianism, the collapse of the 1791 French Constitution and the perceived deficiencies of the American political system demonstrated the superiority of parliamentary government. Thus, the institutional differences between British and American constitutionalism were understood to be crucial, and its adherents believed it was necessary to demonstrate the superiority of the parliamentary model (Bagehot, 2001; Todd, 1867). Similarly, the Fathers of Confederation defended a parliamentary political framework characterized by a robust elected assembly, responsible ministers, the restraining influence of an appointed upper house and constitutional monarch, and parliamentary deliberation. By adhering to the theory of parliamentarianism, the Fathers of Confederation believed they were securing a political order that promoted parliamentary deliberation and constitutional liberty. By interpreting the Confederation Debates through the paradigm of parliamentarianism, we can revise the arguments of scholars such as Ajzenstat, Resnick and Russell. While the Fathers of Confederation were leery of universal suffrage and democracy, this reflects not a premodern organic conservatism but a specific strand of liberal constitutionalism. By situating Confederation within the tradition of parliamentarianism, the elitism and suspicion of popular sovereignty discerned by scholars such as Russell and Resnick can be put into its proper context. Similarly, recognizing the Fathers of Confederation as proponents of parliamentarianism confirms

Ajzenstat's contention that Enlightenment constitutionalism is at the foundation of the Canadian political order but emphasizes the distinctive nature of the political philosophy of Confederation that Ajzenstat passes over.

I will begin by examining the theory of parliamentarianism articulated by eighteenth- and nineteenth-century political thinkers, emphasizing the role of Edmund Burke. In doing so, I am not claiming that Burke was the patron political philosopher of Confederation. While scholars have discerned Burke's influence on the Fathers of Confederation and Canadian political culture (Preece, 1984; Resnick, 1990: 88–106), Confederation cannot be traced back to a single thinker. However, because of Burke's foundational role in developing the theory of parliamentarianism, examining the Fathers of Confederation's conception of legislative deliberation, responsible government and the role of a constitutional monarch alongside his arguments offers the best introduction to analyzing how Confederation is situated within the tradition of parliamentarianism. With this completed, I then examine how parliamentarianism defines the foundations of the Canadian political order and why the Fathers of Confederation believed parliamentary politics was distinct and superior to the American constitutional model. The article concludes with a consideration of the legacy of parliamentarianism in light of contemporary concerns with the state of representative institutions.

#### **USURPATION, LIBERAL CONSTITUTIONALISM AND PARLIAMENTARIANISM**

One of the most significant drawbacks of overemphasizing the uniformity of the liberal constitutionalist tradition is that we risk overlooking the differing liberal remedies to the disorders of popular government. Though more willing to endorse popular rule than ancient political philosophers, modern political thinkers did not believe that popular governments were immune to corruption and despotism. They sought a solution to this problem in representative institutions (Hamilton et al., 2001: 46). Even Rousseau qualified his democratic notion of sovereignty by insisting that the executive “cannot belong to the generality [of the people] in its Legislative or Sovereign capacity” (Rousseau, 1997: 3.1). Thus, arguing that an institutional separation between sovereignty and government was required to check abuse (Garsten, 2009: 96). The problem for thinkers such as Benjamin Constant, James Madison and Rousseau was that politicians would appropriate sovereignty for themselves by claiming to represent the people (Garsten, 2009: 112). As Burke observed, “the distempers of monarchy were the great subjects of apprehension and redress, in the last century; in this, the distempers of Parliament” (1999a: 142). For figures such as Rousseau and Thomas Jefferson, the impulse to “usurpation” could be resisted by subjecting government to periodic referenda in which citizens would vote on whether present officeholders and the current form of government should continue (Rousseau, 1997: 3.12–14, 18; Jefferson, 1958: 392–98). James Madison, however, argued that because the tendency in popular government is the aggrandizement of the legislature due to its closeness with the people, such

references would most likely result in the further strengthening of the legislature at the expense of the other branches at the cost of constitutional equilibrium (Hamilton et al., 2001: 262–63). For liberal constitutionalists such as Madison, the problem of usurpation required a solution in the “interior structure of the government” (Hamilton et al., 2001: 267).

Most eighteenth- and nineteenth-century liberal writers considered the British Constitution to be the best institutional framework for securing political liberty. In *The Spirit of the Laws*, Montesquieu presented the Constitution as consisting of three separate powers, each armed with their respective prerogatives. The House of Commons checked the Crown with its control of revenue and impeachment power, the Lords checked the House because legislation required its approval, and the Crown checked them both through its veto (1989: 164). According to Montesquieu, through this system of checks and balances, England had achieved the constitutional equilibrium necessary to maintain political liberty. Constitutional balance was maintained so long as the three prerogatives were roughly equal. However, the Constitution and political liberty would be endangered if the balance were upset (1989: 161–65)

Montesquieu’s account is often presented as the definitive interpretation of the British Constitution; however, as Selinger observes, other admirers of the British Constitution believed that Montesquieu’s account was insufficient (2019: 19). Montesquieu had feared that a weakened House of Lords and Crown would lead to the House of Commons seizing control of executive power and breaking free of constitutional restraints. But for many writers, the British Constitution did not consist of three “equal” powers. The House of Commons had grown in importance after the constitutional settlement of 1688. The Crown became increasingly dependent on Parliament for revenue, and the House of Lords began deferring more and more to the House of Commons. Indeed, despite Montesquieu’s claim that the prerogatives of the House were balanced against the Crown’s veto, the Crown last refused royal assent in 1708 (Selinger, 2019: 34). The eighteenth-century Scottish philosopher David Hume, therefore, claimed that “the share of power, allocated by our constitution to the House of Commons, is so great, that it absolutely commands all the other parts of the government” (1985: 44). Burke, meanwhile, insisted that “since the Revolution at least—the power of the Nation has all flowed with a full tide into the House of Commons” (Burke, 1981: 234). Rather than striking a balance, the British Constitution seems particularly susceptible to the aggrandizement of the legislature.

For followers of Montesquieu, a system of checks and balances remained the best option. Thus, in the early stages of the French Revolution, moderate liberals fought for a modified system of checks and balances to be established in the 1791 Constitution. More successful was the US Constitution. American Founders such as Madison were apprehensive that one branch of the government could become the locus of popular will, believing it would allow for the emergence of demagogues and despots. The Madisonian

solution to this challenge was multiplying representation claims within the constitutional order. Whereas the British House of Lords and Crown derived their legitimacy from hereditary right, under Madisonian constitutionalism, both the executive and legislative branches can legitimately claim to be representative of the people; thus, neither could become dominant (Garsten, 2009: 103–4; Hamilton et al., 2001: 267–72). Under the US Constitution, a Montesquieuan system of checks and balances could be maintained because each branch could draw upon democratic legitimacy and check each other.

However, this was different from many defenders of the British political framework. Instead of interpreting the British Constitution as a system of checks and balances, these eighteenth- and nineteenth-century writers emphasized the elements of British parliamentary government that Montesquieu had overlooked: ministers serving in and responsible to the legislature and a constitutional monarch who influenced the political system morally rather than through the exercise of prerogative (Selinger, 2019). While many eighteenth-century authors contributed to this interpretation of the British Constitution, as Carl Schmitt recognized, Edmund Burke provided the crucial articulation of the principles of the parliamentary regime (1988).

For Burke, liberty could only be achieved “under a system of constitutional restraint that reconciled the consent of the people with procedures for deliberation” (Bourke, 2016: 214). Burke believed that the British parliamentary government, with its powerful House of Commons, responsible ministers, constitutional monarch and practice of parliamentary deliberation, was the best framework for accomplishing this goal. As noted above, Burke believed that the British Constitution was no longer balanced between the three powers and that this was a change to be celebrated. He declared in *Reflections on the Revolution in France* that through “the constant inspection of Parliament,” the British had achieved “better security not only for their constitutional liberty but against the vices of administration” (1999b: 116).

In Burke’s most comprehensive account of the British Constitution in *Thoughts on the Cause of the Present Discontents*, he defended a powerful elected assembly that was an “express image of the feelings of the nation,” whose members “would feel a more tender and nearer interest everything that concerned the people, than other and more remote parts of Legislature” (1999a: 117). Burke, therefore, not only insisted on the necessity of parliamentary oversight and control of public finances but maintained that it was the “first duty of Parliament, to refuse to support Government, until power was in the hands of persons who were acceptable to the people, or while factions predominant in the Court which the Nation has no confidence in,” in order to ensure that ministers were kept “in awe of Parliament”

(1999a: 101). Because the Crown’s ministers were required to maintain the confidence of the House, the assembly could insure that “the discretionary powers” of

the Crown were “exercised upon public principles and national grounds, and not on the likings or prejudices, the intrigues or policies, of a Court” (1999a: 99).

While celebrating that the House of Commons had become the most powerful institution, Burke also recognized that the increase in the power of the House also increased the danger of corruption (Selinger, 2019: 64). Though relieved that the Crown’s veto had fallen into disuse, Parliament still required restraint. Burke argued that one form of restraint could be found by having ministers serve in Parliament. Just as requiring ministers to possess the confidence of the House ensured the legislature controlled the Crown, so too could the presence of ministers in the legislature allow for the establishment of harmony between the legislature and executive. Indeed, Burke argued that the practice of responsible ministers serving in Parliament was “the most noble and refined part” of the British Constitution (1999a: 101). By selecting ministers from the leaders of Parliament, the Crown had the power to shape the deliberations of the legislature.

Furthermore, Burke also insists that an appointed chamber such as the House of Lords played a vital role in restraining the excesses of the democratic chamber. Burke criticized the 1791 French Constitution for forgetting “to constitute a Senate, ministers or something of that nature or character . . . something to which, in the ordinary detail of government, the people could look up; something which might give a bias and steadiness and preserve something like consistency in the proceedings of the state” (1999b: 308). Viewed in the context of his critique of the French Revolution, Burke’s attempt to entrench the “aristocratic” branch in the architecture of the Constitutional Act, 1791, by establishing a hereditary aristocracy in Canada can be understood as an attempt to protect constitutional liberty by providing a further degree of restraint on the lower house. For Burke, the attempt of his fellow Whig and former friend Charles James Fox to strengthen the Canadian legislative assemblies’ power repeated the French revolutionaries’ error (Ajzenstat, 2007: 119; Ducharme, 2014: 44–46). The restraint of an aristocratic upper house was required to establish parliamentarianism in British North America.

Finally, like other parliamentary liberals, Burke argued that a constitutional monarch could restrain the legislature by exercising moral influence. Though differing from later parliamentarians such as Constant in approving an active role for a monarch, Burke insisted that the monarch’s indirect power was more important than the employment of prerogative powers: “He stands in need of nothing towards dignity; of nothing towards splendour, of nothing towards authority” (1992: 68). One of the causes of the corruption of classical republics was the rise of individuals to such levels of greatness that they would compete to become the ultimate power in the state. As the eighteenth-century Swiss political theorist Jean Louis de Lolme argued, no member of Parliament could ever become powerful enough to overthrow the monarch. Even the most extraordinary minister, having “acquired in a high degree the love of the people,

and obtained a great influence in the House of Commons,” would find that the best they could achieve was “a place in the administration, during the pleasure of the King” (de Lolme, 2007: 145). Similarly, for Burke, a constitutional monarch’s symbolic authority moderated the ambition of leading politicians. Without exercising power directly, the monarch could restrain Parliament.

These restraints ensured that Parliament was and remained a deliberative legislative body. Because the balance in the British Constitution had tilted toward the House of Commons, the Crown was no longer strong enough to impede legislation. With ministers sitting in Parliament, they could persuade legislators to follow the wishes of the Crown. While this could create a situation where the Crown was strengthened to the detriment of the House of Commons, the presence of political parties ensured that some representatives would always oppose the government of the day and the House would not become subservient. Therefore, the struggle for power between political parties in Parliament creates the conditions necessary for deliberation, as ministers are required to defend their actions to remain in office (Selinger, 2019: 3). Furthermore, a parliamentary structure would enhance deliberation because it ensures the legislature was representative of the community: a “mirror of the nation.” By this, Burke and his successors did not mean that representatives should be selected based on anything like universal suffrage. Indeed, proponents of parliamentarianism, such as Burke, opposed the extension of the franchise because they feared it would make legislatures less representative, giving too much predominance to the popular majority at the expense of minority interests, whether regional, economic or social. Tilting the balance too far in favour of the “democratic element” would make it far harder to resist calls for direct popular control of the legislature, which would undermine genuine deliberation because the interests of the people could only be served under conditions where representatives could carefully judge the merits of the legislation. Political actions must be decided “responsibly and deliberatively, rather than arbitrarily” (Selinger, 2019: 4).

The significance of parliamentary deliberation for securing constitutional liberty undergirds Burke’s conception of representation expressed in his Bristol Address.

It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their high respect; their business unremitting attention. . . . But, his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure—no, nor from the law and the Constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment, and he betrays, instead of serving you, if he sacrifices it to your opinion. (Burke, 1999c: 10–11).



Therefore, Burke's political career and intellectual oeuvre were dedicated to defending the parliamentary framework of the British Constitution. He criticized the French revolutionaries for adopting a constitution that failed to meet the requirements of parliamentarianism. The 1791 Constitution banned ministers from sitting in the legislature, thus preventing King Louis XVI's ministers from establishing a symmetry between the legislature and the executive; executive power was decisively weakened, relying entirely on the executive veto. Meanwhile, the National Assembly was deprived of a necessary restraint in creating a unicameral legislature. Consequently, the National Assembly did not "possess a deliberative capacity." Its form of representation left its members beholden to "the auction of popularity," forcing them to become "flatterers instead of legislators; the instruments, not the guides of the people" (Burke, 1999b: 362). The only restraint remaining was the King's executive veto, but Burke predicated that this "dreadful prerogative" would be unacceptable to the Assembly (Burke, 1992: 247). Indeed, when Louis XVI attempted to use his veto, it set off a constitutional crisis that culminated in the king's attempted flight and eventual execution. As Burke predicted, with its unrestrained National Assembly, France was destined to succumb to Terror and, finally, the military tyranny of Napoleon Bonaparte.

In the aftermath of the collapse of the 1791 Constitution, British and French political theorists were persuaded that parliamentarianism was the most compelling political framework for securing political liberty because it moderated the legislature without requiring an open confrontation with the executive. Benjamin Constant and Alexis de Tocqueville, therefore, followed Burke and encouraged the adoption of the tenets of parliamentarianism in France, including a constitutional monarch and responsible ministers, as the best means of avoiding the debacle of the Revolution (Selinger, 2019: 115–163). As the nineteenth century progressed, European liberal thinkers became even more convinced of the superiority of parliamentarianism. Although the American constitutional order continued to function throughout the nineteenth century and survived the cataclysm of civil war, proponents of parliamentary government were convinced the American constitutional model was deficient. For some, American republicanism was too susceptible to democratic excess (Tocqueville, 2012; Todd, 1867), but as Selinger observes, for writers such as Walter Bagehot and John Stuart Mill, the primary fault of the American system lay elsewhere (Selinger, 2019: 165–88). Whereas the 1791 French Constitution had created an executive too weak to restrain the legislature, for Victorian liberals, the American system of checks and balances failed to secure the supremacy of the legislature over the executive.

Because the president and cabinet members did not depend on or serve in the legislature, the executive was not controlled by it. While the separation of powers ensured neither power could usurp the constitutional order, it resulted in political deadlock. For critics of the American system, the lack of executive dependency on the

legislature produced a paucity of deliberation and discussion. Because the legislature could only block the executive's agenda and vice versa, legislators were disinclined to engage in meaningful debate and the public was discouraged from following it. Neither could a government fall or change leadership due to legislative debate, as only elections (barring impeachment) could bring about a change of office. Thus, for thinkers like Bagehot and Mill, the American constitutional model resulted in inadequate legislative deliberation, a politically uneducated public and poor political leadership (Bagehot, 2001: 149–70; Mill, 1977: 524–26). The example of the Andrew Johnson administration (1865–1869), hopelessly deadlocked between a hostile executive and legislative branch, resulting in chaos and impeachment, appeared to confirm the prognostications of parliamentary writers. In contrast, by achieving unity between the executive and legislature, proponents of parliamentarianism argued that British parliamentary government stimulated legislative discussion and encouraged the public to pay attention. This resulted in a more educated populace and a legislature better able to represent it (Selinger, 2019: 179). Though its admirers did not confuse the ideal with reality, parliamentary authors insisted that the British constitutional model, with its powerful House of Commons, responsible ministers, House of Lords, parliamentary deliberation, and the presence of Queen Victoria—the constitutional monarch par excellence—secured the conditions necessary for good government. Therefore, in the midnineteenth century, the paramount debate was not between liberal constitutionalism and republicanism but between the American separation of powers and British parliamentarianism. Consequently, fearing the increasing democratic spirit of the age, proponents of parliamentarianism believed that the superiority of parliamentary government over the American system required demonstration. Accordingly, Victorian liberals sought to explain the workings of the British Constitution and demonstrate its superiority to its American counterpart while describing how the parliamentary framework could be adapted to other nations. Otherwise, “its great competitor” would “outstrip it in the progress of the world” (Bagehot, 2001: 12). However, the collapse of the July Monarchy in 1848 and then the transformation of the Second French Republic into the Second Empire of Napoleon III (not to mention 1837–38 Rebellions) also demonstrated the difficulty of imitating parliamentary institutions that had evolved out in the context of British history. The Canadian proponents of parliamentarianism therefore sought not only to establish the superiority of the British model but to demonstrate that it could be successfully established in North America.

#### CONFEDERATION AND THE PRINCIPLES OF PARLIAMENTARIANISM

To summarize, the principal features of parliamentarianism elucidated by Burke and others were a powerful representative legislature, responsible ministers, an upper house, a constitutional monarch, and parliamentary deliberation. A powerful House of Commons meant power rested with the people's representatives. The practice of

responsible ministers not only provided for legislative control of the executive but established harmony between the two. An appointed upper house and the presence of the constitutional monarch meanwhile acted as a restraint on the legislature and moderated political contestation, thus ensuring that political decisions were preceded by parliamentary deliberation. For proponents of parliamentarianism, the British Constitution put the constitutional theory into practice. As British and Canadian political leaders intended to create a polity that was “the very image and transcript of that of Great Britain,” it should not be surprising that the political theory of parliamentarianism influenced the formation of the Canadian political order, whether in Burke and William Pitt the Younger’s attempt to introduce restraint in the form of a strengthened upper house in the Constitutional Act, 1791 (Ajzenstat, 2007; Ducharme, 2014) or Lord Durham’s conclusion that constitutional liberty would be best safeguarded by adhering to the “principles which are productive of harmony” by granting responsible government to the colonies (Durham, 2006: 139) . The most outstanding illustration of the influence of parliamentarianism on the Canadian political order, though, is found in the speeches and writings of the proponents of the political project of Confederation.

The authors of the Quebec Resolutions defended their draft constitution by appealing to the principles of parliamentarianism. The leader of the Parti Rouge, A. Dorion, accused John A. Macdonald and George-Étienne Cartier of desiring to create “the most illiberal constitution ever heard of in any country where constitutional government prevails” by seeking to ensure that the Crown is “strengthened and the influence of the people, if possible, diminished” (Province of Canada, 1865: 256). However, like other proponents of parliamentarianism, the pro-Confederates believed—and celebrated—that the House of Commons was the most powerful institution. Challenging the theory that British parliamentary government consists of a system of checks and balances or a balance of power, the tragically forgotten Alpheus Todd, the first librarian of the Dominion Parliament and nineteenth century Canada’s principal constitutional theorist, argued that power had concentrated in the House of Commons after 1688 (1867: 4–8). Further, like Burke, Todd defined the characteristics of parliamentary government as “the personal irresponsibility of the king, the responsibility of ministers, and the inquisitorial power of Parliament,” resulting in a harmonious union “between executive and legislative powers” (1867: 3).

We find these arguments echoed by the legislators in the Confederation Debates. In recognition of the centrality of the House of Commons, Macdonald affirmed that there “shall be no money votes unless these votes are introduced in the popular branch of the legislature on the authority of the responsible advisors of the Crown” (Province of Canada, 1865: 42). While the Senate certainly was intended to possess a legislative function, Macdonald expected it to defer to the House of Commons, just as developments in Britain had led the House of Lords to submit to assertions of the

popular will (Province of Canada, 1865: 36–37) Meanwhile, thanks to the practice of responsible government, the Crown would choose ministers that possess the confidence of the people’s representatives, giving the legislature to power to “make or unmake ministers” (Province of Canada, 1865: 36). Or in the words of New Brunswick’s John Mercer Johnson, “if placed in a position in which they cannot control it they must resign their seats” (Ajzenstat et al., 2003: 75).

However, like Burke, the Fathers of Confederation believed that the predominance of the House of Commons required restraint. “The great and increasing defect in all parliamentary governments, whether provincial or imperial, is the weakness of executive authority” (Todd, 1867: x). Therefore, the influence of the monarch, responsible ministers and the unelected Senate was required to safeguard the constitution. As with Burke, the presence of ministers in Parliament is not only a means for the legislature to control the executive but a way for the executive to shape the debate in the House of Commons. Responsible government was how the legislature controlled the executive and the mechanism for ensuring the executive or monarchical element restrained the legislature. As John Mercer Johnson argued, because ministers have both “executive and legislative duties to perform,” the legislature is “under their direction” (Ajzenstat et al., 2003: 75). Crucially, the conception of responsible government is not quite the “fusion” of the legislative and executive powers articulated by Bagehot. Though we should be careful not to overstate the similarities with the American separation of powers (Ajzenstat, 2007), what Todd and the Fathers of Confederation envision is perhaps best encapsulated by what Baker (2007) describes as co-ordination and interaction between the executive and legislature in Canadian parliamentary government. As we have seen, for theorists of parliamentarianism, the “close union” between the executive and legislative powers gave British parliamentary government its “peculiar vitality” (Todd, 1867: 3). The conception of the Canadian Senate is a further example of providing a restraint while maintaining the House of Commons as the dominant institution. Locke categorically rejected the notion that a legislature could exhibit a “distinct interest” from the “rest of the Community” (1988: II, 138). The US Senate was intended to represent the popular will found in the States. The Senate conceived at Quebec Conference and defended in the Confederation Debates is meant to represent distinct social interests in addition to regional ones. As Macdonald famously observed, in addition to its regional representation function, the Canadian Senate must “represent the principle of property,” because “the rich are always fewer in number than the poor” (Browne, 2009: 98). Thus, the property qualification and lifetime appointment are necessary to secure the independence required to exercise restraint on the popular House of Commons. As Macdonald elaborated in the ratification debates, “it must be an independent house having free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch and preventing hasty or ill-considered legislation which may come from that body”

(Province of Canada, 1865: 36). The Upper Canadian Reform leader George Brown echoed this by maintaining that “the desire was to render the upper house a thoroughly independent body—one that would be in the best position to canvass dispassionately the measures of this house [the legislative assembly] and stand up for the public interests in opposition to hasty or partisan legislation” (Province of Canada, 1865: 90).

Similarly, the future New Brunswick premier and senator Peter Mitchell argued “that without the check, which the upper branch has been, too hasty and reckless legislation in the lower house, our statute book would have been filled with injudicious and unwise statutes” (Ajzenstat et al., 2003: 96). Or as the pro-Confederation James Gray Stevens argued in the New Brunswick legislature, the reason the British Constitution received the plaudits of writers “is the admirable checks the branches have on another, and it would be a mistake to undermine the usefulness of the Legislative Council by taking away its ability to check” (Ajzenstat et al., 2003: 96). In a further departure from the American model, though, the unelected Senate possesses, on paper, many of the same prerogatives as the House of Commons, Macdonald expected it, in practice, to behave like the House of Lords. Observing that in modern times the hereditary House of Lords yields to the will of the popular branch without seeking to override the decisions of the Commons, Macdonald argued that because the members of the Canadian Senate will not be derived from a traditional aristocracy, it will be even less obstructionist and more in sympathy with the wishes of the people (Province of Canada, 1865: 37). The appointed Senate can restrain the popular branch thanks to its independence. Still, it will be deferential because it lacks the authority of the House of Commons—once again avoiding the potential deadlock arising between the US House and US Senate. The pro-Confederates made a point of declaring their loyalty to the Crown. Macdonald declared that under the new constitutional scheme, “executive authority shall be administered by the sovereign personally or by the representative of sovereign duly authorized” (Province of Canada, 1865: 34). Like their fellow British Victorians, they do not expect the monarch or governor general to direct the political process through the exercise of the Crown’s prerogative power but instead to act as a moral restraint. In Bagehot’s famous phrase, this was “the right to be consulted, the right to encourage, the right to warn” (Bagehot, 2001: 60). Significantly, the Canadians’ conception of the role of the constitutional monarch went further than Bagehot’s. Like Burke and Constant, they argued that the monarch, or their representative, acted as a barrier to usurpation. While not equal to the legislature’s power, the permanent character of a hereditary monarch, who transcended partisan divisions and derived their authority from the “reverence” of the people, could serve as a symbol of national unity that no party leader could hope to achieve. Thus, by wielding the power of dissolution, even as a last resort, the monarch dissuaded individuals and factions in the legislature from usurping sovereignty, with loyalty and deference to the monarch being just as important as responsibility to Parliament for securing good government (Todd, 1880:

593). Further, by placing the highest office beyond political competition, partisans would criticize the ministry of the day, not the political structure itself (Todd, 1867: 204). In contrast, Canadian legislators such as Cartier believed an elected president could not command suitable loyalty because as a party leader, that person would be “vilified as corrupt, ignorant, incapable, and unworthy by the opposite party” (Province of Canada, 1865: 62). With the monarch representing the entire political community, no popular leader could claim to do so. Thus, no individual or faction could usurp the state. Not surprisingly, legislators hoped that the Crown would appoint a member of the royal family or political figure capable of bringing sufficient moral authority and respect to the office.

Finally, the conception of legislative deliberation advanced by theorists of parliamentarianism is reflected in the Confederation Debates over whether the colonial legislatures have the right to ratify the Quebec Resolutions without a direct reference to the people. For many scholars, the opposition to consulting the public on the merits of Confederation indicates a rejection of popular sovereignty, thus adhering to an elitist Counter-Enlightenment ideology (Resnick, 1990; Russell, 2004). Indeed, Russell reminds us that members of the Canadian coalition government went so far as to assure the colonial secretary that, unlike the US Constitution, Confederation would be undertaken without deferring to the people (2004: 3–10). In contrast, Ajzenstat insists that, on closer analysis, the Confederation project is, in truth, founded upon the doctrine of popular sovereignty. In Ajzenstat’s interpretation, the legislators are divided between those who express an undiluted version of the doctrine originating in Locke’s defence of the right to revolution in the *Second Treatise*, while others in the “parliamentary camp” take the view that Parliament is the people (Ajzenstat, 2007: 34; Locke, 1988: II, 192). Though Ajzenstat rightly observes that legislators such as Brown, Cartier and D’Arcy McGee believe that they represent “the people,” scholars such as Resnick and Russell are undoubtedly correct to point out that there is a robust antidemocratic core in the Fathers of Confederation’s conception of parliamentary sovereignty. These positions can be reconciled by recognizing that their suspicion of popular sovereignty is grounded in the conception of parliamentary deliberation advocated by theorists of parliamentarianism. Macdonald notably articulates this conception in responding to calls for a plebiscite or election.

### IN THE SHADOW OF PARLIAMENTARIANISM

In renewing the intention of previous British and Canadian politicians to perpetuate parliamentary government with the British North America Act, the Fathers of Confederation followed the constitutional theory of parliamentarianism. For the authors of the British North America Act, the principal advantage parliamentary government held over its rivals was that it offered a way for the legislature to control the executive while allowing the executive to restrain the legislature, thus ameliorating the worst excesses of an unrestrained legislative assembly—as demonstrated by the

failure of the 1791 French Constitution—without resorting to a system of prerogative resulting in deadlock, as in the American model. Therefore, the British North America Act was intended to secure a political order framework that strengthened the monarchical principle by harmonizing the executive and legislature: The House of Commons has now become the centre of supreme political power in the state. A House of Commons wherein the executive is strong— and wherein the advisors of the crown can administer the government, and guide the course of legislation, upon a definitive policy, known and approved by an adequate majority of that chamber. (Todd, 1869: 419–20)

By following the tenets of parliamentarianism, politicians such as Macdonald, Cartier and McGee and theorists such as Todd argued that a space for parliamentary politics could be created that stimulated deliberation, encouraged the political education of the public and cultivated strong political leadership. Once we recognize how the Fathers of Confederation understood the relationship between their vision of parliamentary politics and the American constitutional order, it is possible to reconcile the positions of scholars such as Ajzenstat with proponents of the Tory Touch. Ajzenstat is undoubtedly correct to insist that the architects of Confederation were not seeking to promote a form of organic conservatism but were situated within nineteenth-century liberalism. Crucially though, as parliamentary liberals, they believed that parliamentary government was institutionally distinct from the American constitutional model and that it produced a fundamentally different political culture. Thus, commentators such as Russell and Resnick are correct that the authors of the Quebec Resolutions rejected the American constitutional model. At the same time, examining the Confederation Debates demonstrates that scholars such as Ajzenstat are correct that the British North America Act is a species of liberal constitutionalism and that the Fathers of Confederation believed the purpose of government to be securing individual liberty. These two positions can be reconciled by recognizing that parliamentarianism defines the political project of Confederation. Its eighteenth- and nineteenth-century proponents believed that parliamentary government, while a genus of liberal constitutionalism, possessed a distinctive institutional architecture and cultivated a unique political culture. For the Fathers of Confederation, the Canadian political order was superior to its American counterpart not because it maintained a tory conception of organic constitutionalism but because they believed parliamentary politics sustained institutions and practices that promoted liberty better than any alternative. With the principles of parliamentarianism and the Fathers of Confederation's commitment to them established, it is left to reflect on the legacy of the political project of Canadian parliamentarianism. On the one hand, Canada's Parliament has not experienced an unrestrained legislature or deadlock between the executive and representative assembly (nor has its provincial legislatures). Following the precepts of responsible government, harmony and unity between the executive and the legislature have been the rule, with the Crown determining policy and guiding legislation. On the other hand, few would

claim today that the House of Commons is the supreme site of political power, that Parliament remains a space for superior deliberation and discussion, or that the public is stimulated to follow parliamentary debates and, in turn, is instructed and educated. Canada, like other liberal democracies, has seen the development of a powerful executive and the displacement of legislative assemblies by constitutional courts. In many ways, this situation results from the evolution of democratic politics in the late nineteenth and twentieth centuries. The rise of mass democracy and modern electoral politics allowed party leaders to connect directly with mass opinion, culminating in the forming of a powerful plebiscitary executive. While Burke, Constant and Mill had hoped that party politics would strengthen the House of Commons' control of the legislature, representatives became, over time, more dependent on the party machine and party leader for their positions and less independent in Parliament, evolving into delegates of the executive. Due to the unity between the executive and the legislature under parliamentarianism, parliamentary governments proved particularly susceptible to the rise of powerful executive leadership. As Max Weber observed more than a century ago, prime ministers came to stand "above Parliament" (1994: 221). Meanwhile, following the Second World War, liberal democracies sought to better secure individual rights by placing them beyond political contestation, leading to courts supplanting the traditional role of representative assemblies. The evolution of Canadian political order, with the centralization of power in the prime minister's office (or premier's) and the entrenchment of strong judicial review through the Constitution Act, 1982, poses important challenges to the vision of parliamentary government advanced by the Fathers of Confederation. However, despite these challenges, we should not conclude that the theory of parliamentarianism can offer no answers to our contemporary political questions. For example, while the "valorization" of the executive was always going to be a consequence of the rise of mass democracy, the excessive strength of the executive and the decline of Parliament in Canadian politics was not an inevitable result of the Fathers of Confederation's intention to perpetuate British parliamentary government, as scholars such as Savoie (2019) maintain. Nor has centralization gone as far as conventional opinion holds (compare Savoie, 2019, with Brodie, 2018). After all, other Westminster systems, including federations, do not have systems dominated by the prime minister and party discipline to the extent Canada does. Similarly, while the entrenchment of the Charter of Rights and Freedoms certainly strengthened the courts, as Harding (2022), Russell (2009) and Sigalet (2021) observe, it is not so much that the courts have smothered parliamentary deliberation on normative issues but that legislators have used the Charter as an excuse to avoid deliberating. Nor, as Baker points out, does responsible government entail executive dominance (2007: 99–100).

In short, the political framework envisioned by the Fathers of Confederation remains intact, but the culture of parliamentary politics they advocated has decayed. Edmund Burke understood better than anyone that parliamentary politics could be



corrupted. After all, his articulation of parliamentary government was a reaction to what he perceived as George III's attempt to become independent of Parliament. For Burke, Parliament possessed the ability to control the executive so long as it was willing to exercise it. The survival of Lord North's ministry, despite its mismanagement, was possible only because the House of Commons had abdicated its responsibility to control the government. Parliamentary government, therefore, requires a distinctive political character in its representatives and the greater political community. If we seek to revitalize Canadian parliamentary government, the best place to start is by reconsidering the political project of Confederation and why the Fathers of Confederation found the account of political life offered by parliamentarianism so compelling.

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