

PARLIAMENTS' SENSE OF TIME¹

[Draft]

1. Premise

In the public perception Parliaments are institutions unable to react quickly to what is happening in the world around them. Despite this belief time is one of the fundamental variables of parliamentary action, maybe the scarcest resource among those available to legislative bodies. To give depth to this statement we can mention the allocation of time among the different issues of the parliamentary agenda, the maximum time allocated to interventions of single members of Parliament or parliamentary parties, the time available to the Government, and the time at the disposal of the opposition parties, the deadline for tabling bills, amendments, questions and motions. The dilated time of filibustering practices and the time interrupted by "radical" instruments as the guillotine.

The Agenda setting is the procedure through which parliamentary activity is organized. It implies scheduling the meetings of the Assembly and the issues that the Chamber must examine, setting out the priorities of parliamentary and distributing the time between the different locations (Assembly and committees) and functions (legislation and control) of representative bodies. In the decision on programming parliamentary work instances of representation (of all parliamentary parties sitting in the House) and those of the decision (of the Government in office) are compared. For these reasons, the balance achieved in the course of that procedure is indicative of both the features of the Parliament, and the balance of the form of government and, more specifically, of the relationship between the legislative and executive powers².

In my paper I intend to compare the agenda setting procedures of the Parliaments of United Kingdom, France and Italy. These countries share the

¹ PALERMO, Francesco *Il senso della politica per il tempo* che Francesco Palermo <http://palermofrancesco.wordpress.com/2014/02/13/il-senso-della-politica-per-il-tempo/>

² MANZELLA, Andrea. *Il parlamento*. 3^a ed., Bologna: il Mulino, 2003, p. 144; GIANNITI, Luigi; LUPO, Nicola. *Corso di diritto parlamentare*. Bologna: il Mulino, 2008, p. 138-139; MARTINES, Temistocle SILVESTRI, Gaetano DE CARO, Carmela LIPPOLIS, Vincenzo MORETTI, Roberto. *Diritto parlamentare*. Milano: Giuffrè, 2005, p. 139.

existence of a confidence rule between Parliament and Government and a relatively recent reform of rules on setting parliamentary agenda. The analysis will be carried out on the basis of the following questions: which subject decides the organization of the parliamentary work and how? what are the limits imposed by the Standing Orders to the agenda setting procedures? such as guarantees are foreseen by Standing Orders in favour of the Government? such as those in favour of the opposition parties? what is the role of the Speaker in the implementation of parliamentary agenda? The aim is to understand whether the changes of agenda setting procedures are able to "reveal" the balance of powers within the form of government and its changes.

2. United Kingdom

Pursuant to Standing Order 14(1), the Government business shall have the precedence at every sitting. According to this principle, the Government sets the parliamentary agenda and the order of the day of the House of Commons, albeit ensuring the spaces that the Standing Orders provide for the question time, the adjournment debates, the estimates days, the private members bills and, finally, the business determined by Opposition (whether official or non-official) and backbenchers. Therefore, the parliamentary agenda is settled by the Government in compliance with the reserve of time allotted to some procedures – all of them resulting from Parliamentary action – and to some Parliamentary actors. In particular, in the above list, the last two exceptions are the most relevant ones since they assign the choice of the business to be analysed during the activity to another party than the executive one.

Twenty days shall be allotted in each session for proceedings on opposition business, seventeen of which shall be at the disposal of the Leader of the Opposition and three of which shall be at the disposal of the leader of the second largest opposition party; and matters selected on those days shall have precedence over government business [S.O. 14(2)]. The Standing Order provides for a space dedicated to all minor political parties, even though the official Opposition shall be assigned the predominant space. This is the outcome of the institutionalization of political opposition and of the preference

assigned to the party that, at the next elections, most probably will become the majority party³.

Moreover, in each parliamentary session, thirty-five days shall be allotted to the backbench business [S.O. 14(3A)]⁴. The backbench days were introduced in 2010, following the general elections and the installation of the coalition Government led by David Cameron, with the purpose of balancing the predominance of the Government in the agenda setting of the House of Commons. Nonetheless, the (critical) analysis on the quasi-monopoly of the Government was started in the previous legislatures, becoming deeper and deeper following the scandals of 2009 on the reimbursement of expenses by the Members of Parliament⁵.

The House of Commons Backbench Business Committee has responsibility for scheduling non-ministerial business in the new Parliament. It schedules business on 35 days or their equivalent, at least 27 of which take place in the House of Commons Chamber and the rest in Westminster Hall. The Backbench Business Committee also has responsibility for choosing the number and subjects and format of topical debates. This Committee, which is established and regulated under Standing Orders 122D and 152J, shall consist of eight members. The Assembly shall elect the Chair by secret ballot, according to the rules regulating the election of the Chairs of the Departmental Select Committees. The Committee consists of a chair and seven other members, elected at the beginning of each session. In March 2012, the House passed a motion to require the chair to come from a party not in Government. The House also agreed that Members of the Backbench Business Committee should be elected by their own party, in the same way that members of select committees

³ DE VERGOTTINI, Giuseppe. Lo «Shadow Cabinet»: saggio comparativo sul rilievo costituzionale della opposizione parlamentare nel regime parlamentare britannico. Milano: Giuffr , 1973.

⁴ HOWARTH, David. The House of Commons Back-bench Business Committee. Public law, 2011, pp. 490 ss.

⁵ KELSO, Alexandra. Parliament on its knees: MPs' Expenses and the Crisis of Transparency at Westminster, Political Quarterly, 2009, pp. 329 ss.; MAER, Lucinda KELLY, Richard. Establishment of the Select Committee on Reform of the House of Commons, London: House of Commons Library, 2010; RUSSELL, Meg. 'Never Allow a Crisis To Go To Waste': The Wright Committee Reform to Strengthen the House of Commons. Parliamentary Affairs, 2011, pp. 612 ss.

are elected. There has been provision to permit members of the smaller parties in the House to take part in discussions of the Backbench Business Committee. The establishment of the Backbench Business Committee represents a novelty within the structure of the House of Commons, since it is the first parliamentary body involved in the agenda setting. It does not only introduce a different organizational model in the parliamentary agenda setting, but also enhances an alternative division line of the House of Representatives with respect to the one existing between majority and opposition. It is the division between frontbenchers and backbenchers that within main parties separates the members of the Government (or of the shadow government) from the others⁶. The establishment of the Backbench Business Committee and the debate that preceded it might lead to a wider reform of the Parliamentary agenda setting procedures, which could go as far as the establishment of a Business Committee. Some scholars⁷ and the parliamentary debate fall into this framework, in particular following the unsuccessful reform on the scheduling of Government bills, as well as the agenda of the coalition Government, which deemed the Backbench Business Committee as an intermediate stage before the formation of a committee appointed to organize the activities of the Assemblies. Nevertheless, at the end of the five-year legislature, this further reforming stage was not accomplished.

3. France

The Constitution of 1958 provided the Government with the possibility of defining the (priority) agenda of the House. According to the art. 48 "precedence shall be given on the agendas of the assemblies, and in the order determined by the Government, to the discussion of government bills and of Members' bills accepted by the Government. At one sitting a week at least precedence shall be given to questions from Members of Parliament and to answers by the

⁶ KING, Anthony. *Modes of Executive-Legislative Relations: Great Britain, France and West Germany*. *Legislative Studies Quarterly*, vol. 1, pp. 11 ss. 1976.

⁷ RUSSELL, MEG PAUN, Akash. *The Houses Rules? International lessons for enhancing the autonomy of the House of Commons*. London: Constitution Unit, 2007.

Government. At one sitting a month precedence shall be given to the agenda determined by each assembly.”.

In addition to this, the Standing Orders [Rules of procedures] of the National Assembly set out that the Conference of Presidents was entitled to approve a complementary agenda in order to organize the House activities during the time left available by the Government agenda. Nevertheless, the Government prevalence in the formation of the parliamentary agenda ended up neutralizing the possibility for the Houses of defining, even partially, their agenda. For this reason, in 1995, a reform of parliamentary sessions was approved, thus reducing the space at the disposal of the Government within the parliamentary activity. From then on, the planning of a week per month has been allotted to the Assembly.

The constitutional reform of 2008⁸ further influenced the Parliamentary agenda setting, by amending the article 48 of the Constitution in relation to four aspects. Firstly, without prejudice to the priority of the Government proposals, the agenda had to be determined by the Assemblies. Secondly, a more balanced distribution over time between the proposals of the Government and those of the Assemblies was identified. The reason is that, unlike in the past, the weeks dedicated to the main priorities indicated by the executive are now two, instead of three, thus equally distributing time between the two bodies, at least from a theoretical point of view. Thirdly, the constitution addresses the activity of Parliament towards the control, establishing that one week of sitting out of four shall have the precedence - and in the order defined by each Assembly - on the control of the Government activity and on the evaluation of public policies. Moreover, at least one sitting per week shall be dedicated to the parliamentary questions. Finally, the constitution allotted one monthly sitting of the parliamentary activity to the proposals coming from the Opposition and minority parties.

⁸ VOLPI, Mauro. La forma di governo in Francia alla luce della riforma costituzionale del luglio 2008. *Diritto pubblico comparato ed europeo*, 2008, vol. 4, pp. 1961 ss.; CAVINO, Massimo. La fine del mito della sesta repubblica in DI GIOVINE, Alfonso GROSSO, Enrico CAVINO, Massimo (cur.). *La Francia dopo la riforma costituzionale del 2008*. Torino: Giappichelli, 2010, pp. 7 ss.

The new constitutional structure of the agenda setting enhanced the role of the Conference of Presidents, the purpose of which is to define the agenda in both Assemblies and to monitor the compliance of the current rules for the submission of parliamentary bills. In both Houses, it consists of the President and the Vice-Presidents of the Assembly, the Chairs of the standing committees, the Chairs of select committees (if they ask to sit), the Chairs of parliamentary groups, the general speaker of the Finance Committee and the Chair of the European Affairs Committee. The Government – usually represented by the Minister in Charge of Relations with the Parliament – is invited to take part in the discussion of particularly relevant issues.

In order to set the order of the day, the Standing Order of the National Assembly foresees that, after the formation of the Government and before the opening of the parliamentary session, the Government has to notice the Conference on the weeks allotted to the exam of the documents to be included in the Government agenda. Then, in compliance with the restrictions that Constitution provides for and according to the guidelines set down by the Government, the Presidents of the Committees and the Parliamentary parties Chairs, the Conference sets a bimonthly schedule that allows it to fulfil the weekly agenda.

The Standing Orders expressly provide for the compliance with the weighted voting principle at the Conference, according to which the vote of each Parliamentary party President has the same “weight” as the number of deputies or senators who are members of the parliamentary group (articles 47 r.A.n. and 29 r.S). Since qualified majorities are not provided for, the agenda setting depends on the “availability” of the parliamentary majority.

The Parliamentary agenda is then published and communicated to the Government, to the Presidents of the Committees and to the Presidents of Parliamentary groups. During the first sitting of the Assembly following its definition, the President submits the section of the agenda within the competence of the Parliament to the vote of deputies. The House is not entitled to propose any amendment but it may accept or reject the proposal of the Conference. In the National Assembly only the Government can ask for (and

obtain) the amendment of the agenda. In the Senate also single groups are entitled to this option⁹.

4. Italy

The agenda setting method was introduced in the Italian Parliament by the Standing Orders adopted in 1971 following the debate concerning the economic planning, which took place in the 60s. As a consequence, the principle according to which the agenda of the Houses was set out by simple majority (that is to say the Government majority) on the President's proposal at each sitting, was overcome.

For the Italian Parliament, therefore, the introduction of a committee (The Conference of Group Chairpersons) with the task of organizing the activity of the Houses (Assembly and committees) and of single deputies dates back to 1971.

Even though significant, this decision turned out to be actually ineffective for three reasons. The first one is that other measures set out by the Standing Orders of the two Chambers were applied, due to the political impossibility of achieving the unanimous agreement - deemed as the only way able to ensure the balance between the needs of majority and those of the opposition - in the Conference of Group Chairpersons, which was necessary to decide the agenda setting and the schedule. At the Senate a weekly agenda arranged by the Speaker – according to the needs arisen during the Conference meetings – was submitted to the Assembly (which could amend it), whereas at the Chamber of Deputies the definition of the order of the day was rooted to a day by day approach. In practice, it was just a little change compared to the past. The second reason is that the executive had not the centrality required to implement its programme within the setting agenda decision process. Finally, because there were no instruments by which to ensure the compliance of the deadlines that the agenda setting provided for, easily turning into a declaration of intent

⁹ BENETTI, Julia. Les rapports entre gouvernement, groupes de la majorité et groupes d'opposition. *Jus Politicum. Revue de Droit Politique*. 2011, vol. 6, pp. 1 ss. LE DIVELLEC, Armel. Vers la fin du «parlementarisme négatif» à la française? Une problématique introductive à l'étude de la réforme constitutionnelle de 2008-2009. *Jus Politicum. Revue de Droit Politique*. 2011, vol. 6, pp. 1 ss.

without producing tangible effects on the activities carried out by the two Assemblies.

In such a context, in 1988 the Senate made an instrument mandatory that until then was only optional – the so-called *contingentamento dei tempi* – allowing the Assembly to organize the activity on a bimonthly basis. On the contrary, the Chamber passed a series of Rules of Procedure amendments according to which, at first, in the absence of unanimous agreement at the Conference of Group Chairpersons, the President established a bimonthly agenda and a biweekly schedule of the activities to be submitted to the Assembly for approval (1981). It was thus adopted a measure that at the Senate was already foreseen, assigning a significant role to the President, in particular for the political synthesis he is called to achieve. Subsequently the approval of the Assembly – which strengthened the presidential role in the agenda setting – and the principle of unanimity within the Conference (1997) were repealed¹⁰.

Today, for the approval of program and schedule it is required the agreement of the Conference of Group Chairpersons with an overall number of members equal to at least three quarters of the members of the Chamber. At the same time, in order to give effect to the decision made on the schedule, the principle of the rationing of time was generally applied, with a significant exception: the bills to convert law decrees.

The qualified majority required by the Standing Orders of the Chamber of Deputies is the result of the balance between two different needs: to allot to the Parliament the decision on the organization of its activity and to allow the Government to implement its programme through the activity of the elective

¹⁰ MANZELLA, Andrea. Il Parlamento. pp. 145 ss. MARTINES, Temistocle DE CARO, Carmela LIPPOLIS, Vincenzo MORETTI, Renato. Diritto parlamentare. pp. 139 ss.; GIANNITI, Luigi LUPO, Nicola. Corso di diritto parlamentare. pp. 138 ss.; LIPPOLIS, Vincenzo. Maggioranza, opposizione e Governo nei regolamenti e nelle prassi parlamentari dell'età repubblicana. AA.VV. Storia d'Italia. Annali. 17. Il Parlamento. Torino: Einaudi, 2001, pp. 613 ss.; LASORELLA, Giacomo. La programmazione dei lavori parlamentari alla Camera: la riforma del 1997 e la prassi attuativa. in ROSSI, Emanuele (cur.). Maggioranza e opposizioni nelle procedure parlamentari: atti del ciclo di seminari svolto in collaborazione con il Senato della Repubblica e la Camera dei Deputati. Padova: Cedam, 2004, pp. 13-48; ID. La programmazione dei lavori ed i suoi protagonisti: Governo, gruppi e Presidente. Luci ed ombre. Il Filangieri. 2007, pp. 57 ss, ID. Assemblee elettive ed esecutivi: la questione dei tempi della decisione: i tempi della Camera. in ROSSI, Emanuele (cur.). Studi pisani sul Parlamento V. Pisa: Plus-Pisa university press, 2012, pp. 69-84

Assemblies. This way the agenda setting documents shall be approved by the Parliament majority (backing the Government) as well as by some minorities.

Rules of procedure provide for the setting of the schedule and of the agenda according to a series of limitations: the guidelines set down by the Government and all the parliamentary groups (articles 23, 4 and 24,2 r.C.) together with those of the dissident groups (that is the ones voting against the program and/or the schedule). Once the President has defined both the program and the schedule, which is quite a frequent event in practice, one fifth of the matters is defined according to the proposals of the opposition groups (articles 24,3 and 23,6 r.C.). A similar provision is foreseen by the rules of procedure of the Senate (article 53,3) which, on the other hand, enhances also the proposals from single senators and expressly specifies the inspection and monitoring activities.

Such rules are subject to at least three remarkable exceptions. The first one corresponds with the possibility to amend the program, the schedule – and consequently the order of the day – according to the same procedure provided for their approval. The second one implies the inclusion of new matters in the schedule – usually linked to urgent issues rather than to the political priorities – by the Conference of Parliamentary group Chairs in the Chamber and by the Assembly in the Senate. Finally, some matters can be automatically included in the schedule. Such exceptions are able to deeply change the agenda setting, which in practice is significantly variable.

5. Conclusions

From the organizational point of view, the parliamentary decision on the agenda setting exerts an influence on the internal structures of the Assemblies. France and Italy share the decision of creating a committee – though with a different composition – appointed to set the agenda. It is a *sui generis* committee also for the “continental” Assemblies: it does not numerically reflect the dimension (the number of deputies or senators) of each political party within the Assembly even though the vote inside is “unequal” since it is weighted on that relationships. Until 2010, in the United Kingdom the parliamentary agenda setting did not

influence at all the House of Commons structures since – within the ambit of the restrictions set out by the Standing Orders – any decision was made by the Government, the opposition (whether official or not) or other internal structures (Selection Committee) already appointed to perform other tasks. Nevertheless, since 2010, the introduction of an agenda setting space dedicated to the proposals of a politically non-cohesive category of members of Parliament (the backbenchers) crossing all the parties sitting in the Assembly, has opened a consideration on the identification of the most suitable subject to select the matters analyzed within the time allotted to backbenchers, leading to the formation of a specific committee. The composition of the committee is proportional to the dimension of every political party in the Assembly and the simple majority principle is applied to its decisions.

The British reform features two remarkable new elements. On the one hand, with the introduction of spaces at the disposal of the backbenchers, it enhances a working approach of the Assembly that is different from the partisan approach, an approach developing within the main parties and separating the frontbenchers from the backbenchers. This evolution does not have any parallel in the other experiences, since it is closely linked to the institutionalization of the official opposition and to the formation of the shadow government that allows dividing the members of Parliament between those belonging to the (in charge or shadow) executive and all the others members of Parliament. On the other hand, it enhances this approach through the formation of an ad hoc committee with the task of deciding, partially, the agenda setting. As a matter of fact, until the formation of the Backbench Business Committee, the space that the Standing Orders allotted to the backbenchers was set out according to the decisions made by political parties or other parliamentary bodies, but not by committees created with this specific target. Therefore, it can be noticed that the British Parliament matches with the continental model, albeit with a specific difference in relation to its composition and task.

With regard to the power relationship, it can be noticed that the British model – based on the Government setting of the parliamentary agenda – was implemented by the French constitution in 1958 and amended in the next years

in favour of a definition of the agenda more focused on the Parliament's needs. Contrariwise, in Italy, the instances of the executive have become more and more crucial in the agenda setting since the end of the 90s, following to the process aimed at abandoning the "collectivist" approach. This timing highlights a connection between the centrality of the Government as to the agenda setting and the majoritarian character of the form of government that, in the United Kingdom, finds its highest expression. This trend is emerging also in France and Italy, albeit with variations and a different strength. In France, the Government approach to the agenda is established by the advent of the Fifth Republic, founded with the aim of overcoming the limits of the Third and Fourth Republic, which were characterized by a parliamentary system "based on the predominance of Parliament". In Italy, leaving the Constitution unchanged, the progressive centrality of the Government instances started by the approval of quasi-majority electoral laws (1993) and by the amendments of the Parliamentary Rules of Procedure.

Such conclusion is not in conflict with the events of the most recent years, even though what happened in the United Kingdom and in France has more points of contact than the Italian case. Between 2008 and 2010, both these countries decided to moderate the most radical aspects of the agenda setting with the aim of rebalancing the legislative and executive powers in the setting of Parliament activities and, chiefly, of enhancing the parliamentary instances. Without prejudice to the principle of the priority of the Government business, the space of the agenda determined within (and by) the Parliament was increased. Once again, this evolution reflects the "movements" of the form of government and of the balances of the powers in an attempt to mitigate the hypermajoritarian trends of the form of government by strengthening the Parliament.

On the contrary, in Italy, the framework is contradictory and the agenda setting is changeable. Such changeability is the result both of the instability of the Governments, implying a recurrent "shake-up" of political priorities, and of the abuse of the legislation by decree laws, which, together with the arguments that can automatically be included in the schedule, is able to change the organization of the Parliamentary agenda. As it is known, scholars do not agree

on the interpretation of this situation. Some of them think that the transition to the majoritarian parliamentary system is not accomplished yet and since the Government has no “current” institutional instruments to implement its program (suffice it to think of the so-called *vote bloqué* in France or the possibility of selecting the order of the day), it would have gained them through the abuse of institutions provided for by the Constitution and the Standing Orders, albeit aimed at other purposes. Suffice it to think of the mix of legislation by decree laws, maxi-amendments and motions of confidence. Contrariwise, according to other scholars, the transition to the majoritarian parliamentary system would have come to the utmost limits and the Government, instead of being further empowered, should be limited. I think that the former is a more realistic interpretation with regard to the relationships between Parliament and Government, especially focusing on two considerations. The first one is that in Italy the Government has no parliamentary instruments, apart from the motion of confidence (articles 116 r.C. and 161,4 r.S.), to “claim” the conclusion of the parliamentary process of its proposals. The second one is that the abuse of the above-mentioned instruments can be noticed in all Governments installed one after the other (regardless of the political complexion) from the end of the 90s until now. It should be therefore considered the possibility that providing the executive with suitable instruments to implement its program may be useful to the organization of a more transparent and effective decision-making process within which to include the arguments of all the involved actors and that, at the same time, their political responsibilities are evident to citizens.

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