

Is Parliament Declining?*

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Introduction

Legislative branch of Bangladesh is admittedly a weakened institution of the Republic. While dominance of the executive in Westminster parliamentary system is not quite unusual a norm, Bangladesh's problem is much more than concentration of power in the executive branch. Excessive omnipotence of the political parties over the legislature and serious concentration of power and authority in the hands of the party high-ups have substantially suffocated the parliament in Bangladesh. Given the declinist trend in Westminster system in general, it seems curious to investigate whether Parliament is "declining" in Bangladesh or not. A commoner's view would rather tend to ask whether Parliament is "dying" here or not. Matter of relief is that this paper does not attempt to answer the question straight. It rather attempts to frame out the issues that might prove useful in answering the question. Ultimate answer to the question forms the central focus of my ongoing PhD research and requires a thorough investigation of the doctrines outlined below. For now, I contend myself in mining of issues hanging over the "decline" question itself.

Decline of Parliament Thesis (DPT)

During the heydays of Parliamentary Sovereignty, Walter Bagehot found the House of Commons as an 'impressive' institute needing its 'efficient' use within the British political system.¹ Though Bagehot's idea was questioned time and again, its 'golden age of parliament'² relate to a time when the House of Commons was considered central in governance of the UK. In 1921, Lord Bryce forcefully questioned the centrality of House of Commons in British Political System. Generalising the developments from United Kingdom, United States, France and Italy, Bryce asserted that legislative bodies has declined in brilliance, acumen, importance and interest.³ Bryce's work gave birth to the celebrated Decline of Parliament Thesis (DPT) as the dominant interpretation of executive-legislative relations in modern day legislative studies. It has been widely understood that 'legislatures have declined particularly in powers in relation to the executive.'⁴ DPT became particularly relevant for the studies into Westminster style parliaments where executive dominance over legislature is a marked feature.⁵

The decline thesis draws heavily on the executive dominance over the parliament, increasingly ineffective parliamentary oversight, emergence of party system, increasing cohesiveness among party legislators, predominant media focus on executive at the expense of the legislature, diversion of political lobbying towards the executive, etc. Head of the Government pay close

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¹ Bagehot, Walter., (1968) *The English Constitution* (Oxford: Oxford University Press) quoted in Norton, P. (ed.) (1992) *Legislatures*. Oxford: Oxford University Press, p. 36

² Richard Crossman's 1964 Introduction to Bagehot's *The English Constitution*, 1873

³ Lord Bryce quoted in Norton, P. (ed.) (1992) *Legislatures*. Oxford: Oxford University Press., p. 47

⁴ Wheare, K.C. (1967), *Legislatures*, Oxford University Press , p. 148

⁵ Thomas, G.P. (2004) 'United Kingdom: The Prime Minister and Parliament', *Journal of Legislative Studies*, 10 (2-3), 4-37, p. 8; Baldwin, N. D. J. (2004) 'Concluding Observations: Legislative Weakness, Scrutinising Strength?', *Journal of Legislative Studies*, 10 (2-3), 295-302., p. 297

attention to ‘high politics’ – defence and foreign affairs – rather than the ‘low politics’ in parliamentary agenda. Even in the ‘low politics’ arena, most of the legislative and administrative policy making has increasingly fallen on the specialised knowledge of technocracy.⁶ Parliament thereby has become less appropriate forum to discuss and decide policies. Developments contributing to the alleged decline are long term as well as recent.⁷ Additionally, parliament may abdicate some of its powers or be limited by judiciary and changes in social circumstances.⁸

Parliament’s *legislative functions* declined for the volume, scope and complexity of contemporary law making. Emergence of specialisation in legislative drafting, involvement of large-scale bureaucracies, limitations of parliamentary time-table, pre-dominance of party agenda and electoral manifesto in legislative programs, constitutional and institutional restraints on private member initiatives etc. Parliament’s legislative authority has been compromised by the surge in domestic application of international law and European law.⁹ Parliament’s *financial functions* declined for the magnitude and intricacy of budgetary policies well beyond the grasp of individual legislators and non-financial experts in the committees. Non parliamentary agencies (such as Comptroller and Auditors General), have asserted more claims in financial management and oversight. Parliament’s *control function* declined by the emergence of mass based and cohesive political parties and their agenda predetermined in party caucuses. Party root of the government effectively prevents parliament as an institution from using its controlling devices like votes of confidence, motions of censure, impeachment, etc. Beyond the parties, mass media has overtaken the bulk of agenda-setting and discourse setting function in political debate.¹⁰ Interest groups also substantially relieved the MPs from their *representative functions* by establishing a direct link between the government and public concerns.¹¹ Decline in representative role of parliament is also marked by drift away from the concept of representative government towards the idea of plebiscitary government. In plebiscitary government decisions are taken, presented and shaped by a chosen few political elites effectively by passing the peoples’ representatives in parliament.¹²

Anti-Decline of Parliament Thesis (Anti-DPT)

⁶ Elgie, Robert and Stapleton, J (2006), *Testing the Decline of Parliament Thesis: Ireland, 1923–2002*, Political Studies: 2006 Vol 54, 465–485 at p 466

⁷ Norton, P., (2000) Reforming parliament in the United Kingdom: The report of the commission to strengthen parliament, *The Journal of Legislative Studies*, 6:3, 1-14; See also - Norton, P., & Olson, David M. (1996) Parliaments in adolescence, *The Journal of Legislative Studies*, 2:1, 231-243,

⁸ Goldsworthy, Jeffrey, *Abdicating and Limiting Parliament’s Sovereignty*, (Arguing from an Australian perspective, Jeffrey Goldsworthy claims that doctrine of parliamentary sovereignty has lost much of its golden age glamour in modern day contexts); Available in: <https://www.tandfonline.com/doi/abs/10.1080/09615768.2006.11427651?journalCode=rklj20>

⁹ Snyder, Ann E. (1991), *Britain and the European Economic Community: The Decline of Parliamentary Sovereignty in the International Legal Arena*, 18 Ohio N.U. L. Rev. 131 (1991) p 151-152

¹⁰ Herman, Valentine & Lodge, Juliet (1978), *The European parliament and the “decline of legislatures” thesis*, *Politics*, 13:1, 10-25, at p 11-12

¹¹ Richardson, J., and Jordan, A. G., *Governing Under Pressure The Policy Process in a Post-Parliamentary Democracy*, p 122 (“It is not surprising that most writers on pressure group tactics see attempts to influence Parliament as relatively low in terms of the priorities adopted by groups. Good contacts with the executive/bureaucracy come first, followed by good legislative contacts, followed by ability to mobilise mass opinion.”)

¹² Macintosh, John P (1979), ‘Introduction: Attitude to the Representative Role of Parliament’ in *People and Parliament*, Saxon House, at p 1-10 (It appears that there is a swing towards a plebiscitary approach to political decision-making which undermines the parliamentary authority. In a plebiscitary approach to politics and decision-making by negotiations with outside bodies (in additional to governmental agencies and bodies) might indicate that Parliament’s role in British government has diminished. Three examples may illustrate the trend towards plebiscitary approach: First, political leaders often prefer media and TV outlets to pronounce important policy decisions over the parliament. Secondly, parliament’s views are considered subordinate to that will of the people expressed and endorsed through political manifestos and elections. Thirdly, growth in the frequency of referendum means that majorities in the House of Commons lack sufficient authority or legitimacy to a decision when it was of the utmost importance. These decisions had to be made by the genuine sovereign power, the people.) For details on lobbyist and pressure groups in legislative business see, J.J. Richardson, A.G. Jordan, *Governing Under Pressure: The Policy Process in a Post-Parliamentary Democracy*, Martin Robertson, 1979.

DPT, however, did not go unchallenged. Seen from an institutional and structural point of view - critiques of DPT argue - Bagehot's 'golden age' of parliament is a myth.¹³ Westminster type executive's dominance over legislature was no less a reality during the professed 'golden age' either. Accepting the dominance, parliament retains at substantial influence in the system. It is not absolutely marginalised. Its capacity to influence the public policy - though 'slipped back' - has not collapsed totally.¹⁴

Branding DPT a too simplistic theory, Philip Norton calls for consideration of multiple 'external and internal environment in which legislatures operate.'¹⁵ Norton argues that declinist theory over emphasize the elitist and coercive aspect of legislatures. A comprehensive appreciation of the legislature in the policy discourse must look beyond the coercive authority of parliament and bring the pluralist, elitist and institutional perspectives together. Pluralist view of power comprises coercion and persuasion alike. Legislature may coerce by its voting power. It may persuade by its debating power. Elitist perspective might highlight the larger hold of the cabinet over parliament. Yet an institutional approach would show how structures (committees etc) and procedures (rules of procedure etc) may affect what is brought forward by the government.¹⁶ Legislative voting behaviour is far more complex than it is usually explained in party lines. Empirical works inspired by Anthony King's 'Modes of executive-legislative relations' in 1976 have shown that parliamentarians in Westminster-style democracies have divided and conflicting loyalties - to their constituents, to the legislature and to their party. Back-bench MPs have become more likely to vote against their parties.¹⁷

Nicholas Baldwin joins the discourse claiming:

[D]espite the fact that many legislatures may be weaker in their capacity to influence policy today than previously, they have been growing in importance in a variety of ways, namely, as the linchpin joining the people to the polity of a nation, as intermediaries in transition from one political order to another, as raisers of grievances, as agencies of oversight and, above all, as forums for scrutiny of the executive.¹⁸

KC Wheare, though not an Anti-DPT theorist comparable to Philip Norton, called for a refined reading of the DPT thesis in terms of efficiency rather than power:

The fact is that the decline of legislatures may be an interesting question to discuss in general terms, but it is difficult if not impossible to decide. If we try to make the question more precise, we may confine ourselves to a discussion of decline in efficiency. We must then ask ourselves: What are legislatures for? What functions ought they' to perform? The answer will not be the same in all cases. For one thing, the question of size intrudes itself once more. There are some things a legislature of 100 members or less can do which a legislature of 600 or more cannot do. But one or two assertions of general validity can be

¹³ Norton, P, (Report of the Commission to Strengthen Parliament, 2000, p. 8), Mezey, M. L. (1995), (Mezey argues "the theme of legislative decline was seldom supported by empirical data and seemed to be based on the largely unsubstantiated premise that at some time in the past a golden age of parliaments existed" See -n Mezey, 'Parliament in the New Europe', in J. Hayward and E. Page (eds.), *Governing the New Europe*, Cambridge: Polity Press, 196-223 at p. 196).

¹⁴ Norton, P. (1990) 'Parliament in the United Kingdom: Balancing Effectiveness and Consent?', *West European Politics*, 13 (3), 10-31., p. 31

¹⁵ Norton, P. (1998) 'Introduction: The Institution of Parliaments', in P. Norton (ed.), *Parliaments and Governments in Western Europe*. London: Frank Cass, pp. 1-15, 1998

¹⁶ Philip Norton, P, (2013), *Parliament in British Politics*, Second Edition, Palgrave, pp 5-7

¹⁷ Norton, P. (1983) 'The Norton view', in D. Judge (ed.), *The Politics of Parliamentary Reform* (London: Heinemann), 54-69 and Cowley, P. (2002) *Revolts and Rebellions* (London: Politico's)

¹⁸ Baldwin, N. D. J. (2004) 'Concluding Observations: Legislative Weakness, Scrutinising Strength?', *Journal of Legislative Studies*, 10 (2-3), 295-302., p. 302

made. It is not the function of a legislature to be the sole forum of debate or the sole committee of grievances in its country's political system; these functions must and should be shared with other bodies. It is not the function of a legislature to govern. These are truisms, yet it is the unwillingness of legislatures to give up the claim and the attempt to be and to do all these things that has resulted, in many countries, in a decline not in powers but in efficiency- To do less and, perhaps thereby, to do it better, may often prove to be the best safeguard against the decline of legislatures.¹⁹

Recent Anti-DPT thesis by Matthew Flinders and Alexandra Kelso has added an "expectation gap" analysis in the discourse. Flinders and Kelso argue that 'quasi-journalistic accounts' of DPT generated 'a simplistic and generally misleading view of legislative capacity'.²⁰ They claim that 1) "parliament was not designed, intended or resourced to play the kind of proactive scrutiny role that contemporary expectations appear to demand" and 2) "legislative control of the executive manifests itself in procedures and processes that lie beneath the visible lithosphere of parliamentary activity."²¹

Flinders and Kelso argue *firstly* that the simplistic approach of PDT has increased public expectations. It failed to accept that parliamentary government was explicitly intended to deliver 'strong government'. A constant and arduous role of scrutiny was not intended unless there was a serious and gross case of error. Failure of PDT theorists to acknowledge this fact raised the level of expectations and demands which parliament was not expected to meet. Demand in terms of legislative deliverables should have been lesser than the PDT propagated.²² *Secondly*, while inflating public expectations scholars failed to close the gap from below (parliament's capability). PDT failed to acknowledge the existence and capacity of 'informal, but no less important,' intra-party and inter-party avenues of legislative oversight. Supply in terms of legislative capacity was greater than the PDT acknowledged.

If the top bar is pulled down by accepting the more limited constitutional role of parliament, and the bottom bar is pulled up, by acknowledging the existence and importance of less visible intra-party and inter party control mechanisms, then the 'expectations gap' would have been narrower and PDT might have been less substantiated.²³

Scholarly onslaught on DPT has been bolstered by calls for a more pragmatic appreciation of the role and place of legislature in Westminster-style governments. To assert that the modern parliaments are far from decline, Robert Packenham identified a total of 11 functions of legislatures and tabled those functions into three major-categories – 1) legitimation (democratic legitimacy to the governance), 2) recruitment, socialisation and training and 3) decisional and influence functions (law making and oversight).²⁴ Prior to Peckenham, Walter Bagehot outlined five functions: elective (choosing the government); expressive (public perception of current issues);²⁵ teaching (letting the people know things that might otherwise left unknown); informing (raising the grievances of the people); and, law making – the most conspicuous one.

¹⁹ Wheare, KC (1963), *Legislature*, Second Edition, "Decline of Parliament," pp 147-157 at p 156-57

²⁰ Flinders, Matthew and Kelso, Alexandra; "Mind the Gap: Political Analysis, Public Expectations and the Parliament", at p 256 <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-856X.2010.00434.x>

²¹ *Ibid*, 261

²² *Ibid*, 262

²³ *Ibid*, 263-264

²⁴ Packenham, Robert (1970) "Legislatures and political development" in Allan Kornberg and Lloyd Musolf (eds.) *Legislatures in Developmental Perspective*. Durham: Duke University Press

²⁵ A year short of a century after Bagehot's work appeared, Samuel Beer identified another function - that of support mobilization. It is helping to raise popular support for a particular measure of public policy (Samuel Beer 1966, *British politics in the collectivist age*, Knopf). It is a function that, to some extent, marries Bagehot's informing and teaching functions.

Peckenham and Bagehot combined suggest that empirical study, appreciation and measurement of the Inform, Training and Influence Roles of parliament side by side with its Legislative and Elective Role might prove a practicable way to locate a parliament's position in the DPT and Anti-DPT discourse. If the parliament's apparent weaknesses in the legislative and oversight functions are recoverable at least in some extent through its Inform, Training and Influence Role, we might be able to make a case for giving a chance to the parliament as an institution of relevance to the overall body politic. Any attempt to categorise the parliament of Bangladesh within the modern parliamentary typologies would therefore require us to look into the broader picture of parliamentary activities and mandate.

Modern Typologies of Parliaments

Nelson Polsby proposed a transformative and arena type categorisation of legislatures. Transformative parliaments considers the governmental legislative proposals and capable of making substantial modification to the government proposal and thereby transform the laws. Arena type parliaments debate the governmental proposal in way things are debated in public arena but they do not possess a power to modify government laws. Polsby categorised the US Congress as a transformative parliament and the UK Parliament as an arena type parliament.²⁶ Polsby's typology was however criticised as too simplistic. Compared to that Mezey's typology²⁷ was more specific and it created a much broader details of typological criterion. Mezey took a negative way of questioning. Is parliament "strong" enough to constrain (reject or modify) a government's legislative ambitions? Or is parliament a "moderate" (modify not reject)? Is parliament a "Little or no (can't do either) policy-making" parliament? Mezey had a second criterion as well - Parliament's support base in populace and its capability to deliver up to the expectation. Under this "support and capability to deliver" criteria, Mezey divided parliament into five categories – active (The US), Vulnerable (Philippines), Reactive (UK), Marginal (Pakistan) and Minimal (Soviet Union).

Mezey's typology was refined by Philip Norton on the basis of legislature impact.²⁸ Philip Norton developed a trichotomy of influence factors:

- *Policy-making parliament* – modify or reject measures of the government, and formulate and substitute its own policies (e.g., through a Member's Bill).
- *Policy-influencing parliament* - modify or reject governmental measures but cannot formulate and substitute policies of its own.
- *Parliament with little or no policy effect* – neither modify or reject the government policies nor formulate and substitute its own policies.

Norton's typology is followed up by Blondel's theory of "parliamentary viscosity".²⁹ Blondel focuses on the likely responses the parliament may give to the government proposals. In that sense parliament may be "free" from government control or "compliant" to government demands. If government holds the majority of votes in parliament it may be a compliant one. If the government commands a minority, the parliament would be considered free. Legislation would pass comparatively easily in a compliant parliament and it would be no doubt difficult in free parliaments.

To bring together all the typologies within one spectrum we will see that Polsby's "transformative" parliaments are "active" and "strong policy-making" parliament of Mezey,

²⁶ Polsby, Nelson W. (1975), "Legislatures" in Greenstein, Fred I. and Nelson W. Polsby, eds., *Handbook of Political Science*, Vol. 5, Governmental Institutions and Processes.

²⁷ Mezey, Michael L (1979), *Comparative Legislatures*, Duke University Press

²⁸ Norton, Philip (1990), "Parliaments: A framework for analysis," *West European Politics*, 13:3, 1-9, DOI: 10.1080/01402389008424803 To link to this article: <https://doi.org/10.1080/01402389008424803> pp 4-5

²⁹ Blondel, Jean (1968), "Party Systems and Patterns of Government in Western Democracies," *Canadian Journal of Political Science*, Vol 2 Issue 2

“policy making” parliaments of Philip Norton and “highly viscous” parliaments of Blondel. These parliaments would routinely create and pass their own laws, routinely block or significantly change the government proposals.

Again, Polsby’s “arena type parliaments” might equal Mezey’s parliaments with “minimal or little/no policy-making capacity”, Norton’s “little or no policy effect” parliaments and Blondels’ “low viscous” parliaments. Here in this category we may place the parliaments that routinely rubber-stamp laws and discusses with no discernible impact over that.

Locating the Parliament of Bangladesh in DPT v. Anti-DPT Discourse

Typological analysis is warranted for drawing an initial stature of the parliament of Bangladesh. Though several authors in Bangladesh readily categorised the parliament of Bangladesh as an arena type, minimal or nominal parliament, those conclusions are not justified through specific mandate-performance analysis. An institutional mandate-performance analysis of the parliament of Bangladesh would help its appropriate placement within legislative typologies. Knowing typology of Bangladesh Parliament in its turn would help us understand properly whether the legislature is declining here or not. The preliminary question for investigation therefore would be what the Parliament of Bangladesh is doing and how it is doing those.