

## A 'variable-geometries system'. Theory and practice of opposition in the UK\*

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### 1. *Introduction*

Within the British political system, the concept of opposition is inherent in the conduct of politics and government, and in more recent times it should be noted at how increased institutionalisation has been manifested in practical terms through state support and recognition.

The notion of opposition as an inherent feature of the political system is more sharply defined in Britain than anywhere else and has been for a far longer time<sup>1</sup>. In Britain, the opposition is as definitely organised as the government itself; His Majesty's Opposition is second importance to HM government, and it is officially recognised: it is HM opposition, which is given an official status, a so-called “shadow cabinet”<sup>2</sup>.

Opposition is not only dissent to actions or policies, and criticism of those in power. It is established as “loyal” opposition<sup>3</sup> and it has been institutionalised for the modern electorate as the standing possibility of an alternative government to replace the one in power: “[w]hen the system works as it is expected to and produces

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<sup>1</sup> A. Potter, *Great Britain: Opposition with a Capital “O”*, in R.A. Dahl (ed.), *Political Opposition in Western Democracies*, New Haven, 1966.

<sup>2</sup> R.M. Punnett, *Front-Bench Opposition: The Role of the Leader of the Opposition, the Shadow Cabinet and the Shadow Government in British Politics*, New York, 1973.

<sup>3</sup> T.A. Hockin, *The Roles of the Loyal Opposition in Britain's House of Commons: Three Historical Paradigms*, in 25 *Parliamentary Affairs* 22 (1971). For a comprehensive insight regarding the historical evolution in the practice of “loyal” opposition see G. Webber, *Loyal Opposition and the Political Constitution*, in 37 *Oxford Journal of Legal Studies* 361 (2017).

alternation in office, this can be taken to mean that the opposition has successfully discharged political control in relation to the preceding governing party”<sup>4</sup>.

Geometrically, it is in the House of Commons that the clearest evidence of the special role of the opposition in Britain can still be found. The physical structure of the Chamber encourages adversarial debate with government and opposition facing each other across the floor of the House<sup>5</sup>. And, of course, proceedings on the floor of the House continue to be dominated by the procedure of debate on a formal motion which must in principle be voted on to bring the debate to a conclusion.

Whilst the government has a decisive voice in the control of time in the House of Commons and thus in the management of public business, these powers are counter-balanced by the rights of the opposition and by the government’s frequent need of some degree of opposition cooperation if it is to get its business through smoothly.

The recognition of opposition goes, however, well beyond the procedural rules of the House and the consolidation of the practices summarised has had effects far beyond the boundaries of the Parliament. That is why we have assumed the idea of a ‘variable-geometries system’.

We have therefore identified two aspects that may deserve further investigation.

First, reference will be made to the politico-legal aspect regarding the opposition *in* Parliament. The practice of opposition as alternative government, indeed, imposes constraints as well as opportunities on any party.

Secondly, it will be analysed the ability to extend the concept of opposition to one not strictly bound to the parliamentary institution. The concept of opposition, in fact, seems today to expand its effects well beyond the strictly institutionalised meaning, manifesting itself as a method of political opposition sometimes capable of crossing jurisdictional boundaries. In the case of the United Kingdom, the territorial oppositional instances, for example those coming from Scotland or other devolved authorities, seem well suited to this concept of opposition.

Hence, the idea of ‘variable-geometries system’, in which the sharp boundaries of parliamentary opposition no longer seem sufficient to fully explain opposition in the UK constitutional system<sup>6</sup>.

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<sup>4</sup> N. Johnson, *Opposition in the British Political System*, in 32 *Government and Opposition* 488 (1997).

<sup>5</sup> R.M. Punnett, *Front-Bench Opposition*, cit.

<sup>6</sup> For more on the different narratives that characterize English constitutional history see M. Nicolini, *Turning Vanity Fair into The Celestial City: England’s Legal Narratives of the Body Politic from Bunyan to Thackeray*, in 12(1) *Pólemos* 123 (2018).

## 2. *The Opposition between Institutional and Functional Status*

Before proceeding with the outlined analysis, it is appropriate to hint and necessary briefly outline the coordinates of the pairing between political opposition and democracy.

If there is one characteristic that distinguishes democratic regimes, it is that they are legitimised by the very existence of a political opposition: democracies are regimes of guaranteed opposition<sup>7</sup>.

Opposition is a complex phenomenon that can be read across two dimensions<sup>8</sup>.

The first dimension concerns the status of the opposition within the constitutional architecture.

Parliamentary opposition is not a simple parliamentary minority, but a qualified minority which opposes the policy of the majority: the principal objective of the opposition's political act is the substitution of the majority<sup>9</sup>.

The so-called majority rule is a general starting point to understand this first dimension of the opposition. In democratic societies, majority rule is a generally accepted solution for issues discussed as it supports efficiency. The basis of this principle is that it makes impossible for a minority or a person to tyrannise society and that reaching an optimal consensus has too high costs.

It is possible to study the majority rule in more than one context<sup>10</sup>. At the constitutional dimension, we can observe the majority rule as the tool of the secure and predictable order of lawmaking procedures and functioning of state organs. The electoral dimension reveals the difficulties of the majority rule at the composition of representative bodies: for those who remain in minority, different electoral systems can give only limited compensation.

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<sup>7</sup> R.A. Dahl (ed.), *Political Opposition*, cit., 1966; S. Haberland, *Die verfassungsrechtliche Bedeutung der Opposition nach dem Grundgesetz*, Berlin, 1995; K. Von Beyme, *Die parlamentarische Demokratie. Entstehung und Funktionsweise 1789-1999*, Opladen/Wiesbaden, 1999.

<sup>8</sup> B. Stone, *Opposition in Parliamentary Democracies: A Framework for Comparison*, in 29 *Australian Parliamentary Review* 19 (2014); G. Webber, *Opposition*, in R. Bellamy, J. King (eds), *The Cambridge Handbook of Constitutional Theory*, Cambridge, 2024.

<sup>9</sup> G. De Vergottini, *Opposizione parlamentare*, in *Enciclopedia del Diritto*, XXX, Milano, 1980. See also J. Blondel, *Political Opposition in the Contemporary World*, in 32(4) *Government and Opposition* 462 (1997); P. Norton, *Making Sense of Opposition*, in 1-2 *Journal of Legislative Studies* 236 (2008).

<sup>10</sup> G. Sartori, *Democrazia: cos'è*, Milano, 1993, pp. 77-79.

However, in defining the status of the opposition the examination of the majority rule is somewhat insufficient. Modern democratic political systems prefer protection of the political minority even against the majority rule and the effective decision-making. As basic condition, political pluralism must be established; opposing political forces should be recognized as legitimate actors; the fact of the multi-party system should not be only tolerated but organized as well.

The second dimension regards the constitutional guarantees pertaining to political pluralism, namely a “procedural” dimension to opposition. In this sense, a direct reference to the system under examination in this contribution seems useful.

The rights of the opposition are generally defined and described in the Standing Orders, albeit in some parliamentary systems Standing Orders are only temporary documents. This is the case of the United Kingdom, where some Standing Orders are temporary and only last until the end of a session or a parliament<sup>11</sup>.

Another interesting point about the British practice on determining and defining opposition’s rights by Standing Orders is that a huge part of the parliamentary procedures is not written into the Standing Orders but exists as customs and practices of the Parliament. Some stem from the Speaker’s ruling in the House, other procedures are followed because “that is the way things had been done in the past”: for example, one of the most well-known practices is that bills are being read three times in both Houses.

Hinted at these two dimensions regarding the concept of opposition, however, the fact remains that the opposition as qualified minority is still an uncertain phenomenon. Since it is not possible to precisely circumscribe minorities as legal subjects, opposition appears not to be exactly a constitutional institution, but rather a function:<sup>12</sup>

“The opposition’s real function is to act as the responsible outlet for criticism as the incorruptible searches after scandals which need expose, the organized expression of legitimate grievances and last but not least, to act as a partly formed responsible, trained, team prepared to take office as a government when the existing administration loses the confidence of the people”<sup>13</sup>.

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<sup>11</sup> I.W. Jennings, *The British Constitution*, Cambridge, 1961; W. Bagehot, *The English Constitution*, Oxford, 2001.

<sup>12</sup> S. Haberland, *Die verfassungsrechtliche Bedeutung der Opposition*, cit., pp. 147-149.

<sup>13</sup> Q. Hogg, *The Purpose of Parliament*, London, 1962, p. 87.

It is still difficult to draw conclusion regarding the specific and definite function of the opposition but there is some sort of agreement on at least some aspects:<sup>14</sup> to form an alternative government given an opportunity; to form autonomous public opinion on domestic and external issues; to expose the failure of the party in power to fulfil its electoral promises.

Based on what has been examined, political opposition means a disagreement with the government and its policies expressed in the public sphere, by an actor organised through different modes of action<sup>15</sup>. Although inevitably generic, we can assume this concept of opposition to be sufficiently inclusive to integrate the two aforementioned dimensions, although it is closer to the functional one. It also has the advantage of escaping the traditional reductionism of the literature on political opposition, which is mostly focused on the study of parliamentary opposition, as it allows room for the treatment of other types or varieties of political opposition.

### *3. The Institutionalised Opposition*

In analysing the opposition within the British constitutional system, we will now look at the politico-legal aspect regarding the opposition *in* Parliament.

As already stated, Britain is widely known to have an official opposition with a capital “O”, namely “HM Loyal Opposition”. The underlying assumption of the British political system is, therefore, that the opposition is the alternative of the government and that two major political parties have alternated in office.<sup>16</sup>

“The dispositions of Opposition and government members to regard each other as *constitutional* actors ... are facilitated and encouraged by the swing of the pendulum. The alternation of office between two main political parties promotes the understanding that the Opposition is the government-in-waiting and ... that the government is the Opposition-in-waiting”<sup>17</sup>.

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<sup>14</sup> *Ex multis*, I.W. Jennings, *Parliament*, Cambridge, 1970.

<sup>15</sup> N. Brack – S. Weinblum, *Political Opposition. Towards a Renewed Research Agenda*, in 1(1) *Interdisciplinary Political Studies* 69 (2001); L. Helms, *Studying Parliamentary Opposition in Old and New Democracies: Issues and Perspectives*, in 14(1-2) *Journal of Legislative Studies* 6 (2008).

<sup>16</sup> A. King, *The Implications of One-Party Government*, in A. King (ed.), *Britain at the Polls*, London, 1992, p. 223 ff.

<sup>17</sup> G. Webber, *Loyal Opposition*, cit., p. 369 (emphasis in original).

It is possible to find in the House of Commons the strongest evidence of the role of the opposition in Britain. As we noted, the physical structure of the Chamber encourages adversarial debate<sup>18</sup>.

There are numerous instruments in the parliamentary procedure that speak in favour of the institutional status of the opposition. Amongst others: since 1985, seventeen days in each session have been at the disposal of the “official” opposition when it is entitled to determine the subjects of debate, whilst a further three days are assigned to the opposition party<sup>19</sup>; at Prime Question Time, the leader of the opposition is by convention permitted to put up to five supplementary questions; the opposition front bench team also enjoy a privileged status when their opposite numbers in the government are answering<sup>20</sup>.

But also, away from the House opposition has by convention other rights and privileges. For example, it can expect to have a reasonable share of Select Committee chairmanships; and some positions such as that of chairman of the Public Accounts Committee always go to a senior member of the opposition<sup>21</sup>.

Lastly, the recognition of opposition goes beyond the parliamentary procedural conditions of the House. For example, “Short Money”, introduced in 1975, is the public financial aid to all opposition parties in the Commons. Since then, the opposition leaders receive substantial sums of additional money from the government, based on a formula taking account both number of MPs a party has and the votes it has received<sup>22</sup>.

In analysing the role of the opposition *in* Parliament, it must therefore be said that the Commons’ checking function is exercised in parliamentary debate. Parliament is a “speaking place”<sup>23</sup> and in parliamentary debate the Speaker will recognise, in turn, a member from the government benches and a member from the opposition benches.

In carrying out the Commons’ scrutiny of government legislation and administration, the opposition participates in the law-making process initiated by the government and criticises government administration: “[there is a] radical distinction between controlling the business of government, and actually doing it”<sup>24</sup>. This mutual

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<sup>18</sup> See *supra*, § 1. See also R.M. Punnett, *Front Bench Opposition*, London, 1973; J.A.G. Griffith – M. Ryle, *Parliament: Functions, Practice and Procedures*, London, 1989.

<sup>19</sup> They are indeed called “Opposition Days”.

<sup>20</sup> N. Johnson, *Opposition in the British Political System*, cit., p. 492.

<sup>21</sup> *Ibid.*

<sup>22</sup> R. Kelly, *Short Money*, House of Commons Research Briefing Paper SN1663, London, available at <https://commonslibrary.parliament.uk/research-briefings/sn01663/>

<sup>23</sup> G. Webber, *Loyal Opposition*, cit., p. 371.

<sup>24</sup> J.S. Mill, *Considerations on Representative Government*, Cambridge, 2010, p. 89.

recognition of roles between government and opposition has led part of the doctrine to consider this relationship as carried on “by agreement”<sup>25</sup>. In Parliament, Government and opposition thus facilitate the fulfilment of each other’s constitutional duties to govern and to oppose<sup>26</sup>.

The organisation of the opposition through a “shadow cabinet” is also functional for what is here defined as an institutionalised opposition.

In the late-nineteenth century it was usual for the leaders of the party defeated at an election to come together as an informal committee of former cabinet members to discuss parliamentary actions. It is to the Labour Party’s opposition 1951-1964 that the practice of identifying shadow ministers as opponents to government ministers is recognised<sup>27</sup>, but for many years the party in opposition could manage its business only in an amateur way<sup>28</sup>. The main problem faced when trying to organize themselves as an actor capable of mounting a concrete challenge to the government in office has always been how to find adequate financial support for the task: the position improved after 1975 with, as already outlined, the introduction of a scheme to provide a public contribution (“Short Money”) to the work of the opposition, giving birth to what is called a “shadow administration”<sup>29</sup>.

In Parliament (and in British parliamentarism), “HM Loyal Opposition” is thus recognised as a “hyphen which joins”<sup>30</sup>. It is an alternative government, presenting itself as such “not only at every election, but at every debate in the Commons”<sup>31</sup>.

#### 4. The “decentralised” opposition

We will now move on to analyse the second of the aspects briefly introduced, namely the ability to extend the concept of opposition to one not strictly bound to the analysis of the parliamentary institution.

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<sup>25</sup> G. Webber, *Loyal Opposition*, cit., p. 372.

<sup>26</sup> See J. Waldron, *Political Political Theory: Essays on Institutions*, Cambridge, 2016.

<sup>27</sup> “The Opposition spokesman ‘shadows’ her ministerial counterpart, developing expertise in the portfolio and criticising the minister for her policy decisions and indecisions”: G. Webber, *Loyal Opposition*, cit., p. 380.

<sup>28</sup> R.M. Punnett, *Front-Bench Opposition: The Role of the Leader of the Opposition, the Shadow Cabinet and Shadow Government in British Politics*, Heinemann, 1973, p. 8.

<sup>29</sup> R. Brazier, *Constitutional Practice*, Oxford, 1999, p. 174.

<sup>30</sup> G. Webber, *Opposition*, cit., p. 10.

<sup>31</sup> *Ibid.*

“There is much opposition to government beyond Parliament, and a fuller account of political opposition would include the media, pressure groups, unions, the courts and the range of other actors who also exercise the critical function of holding the government to account. With the fragmenting of political authority to devolved assemblies and local administrations, some opposition may be said now to develop to any government at Westminster, rather than only or especially to the government of the day. In turn, there is much opposition to government in Parliament beyond what the Official Opposition contributes. Intra-party dissent from government backbenchers, critical reports from Select and Public Bill Committees and delaying tactics in the House of Lords all stand, in differing ways, in opposition to the government”<sup>32</sup>.

In this perspective, the focus is mainly on what can be defined as the “decentralised” instances of opposition, i.e. those that may come from the opposition to the centre (Westminster) by the devolved authorities (Northern Ireland, Wales, and Scotland)<sup>33</sup>.

Politically speaking, decentralisation lends greater visibility to dissenters’ views, especially when the latter have the possibility to act in opposition independently. When one (devolved) group dissents by deciding, the majority (at the centre) can’t just ignore them but must do something to get the policy overturned. Decentralisation thus gives dissenters the chance to shift the burden of inertia and force the majority to engage.

This relationship between centre and periphery as a (distorted) relationship between government and opposition was clearly shown in the instances deriving from one of the devolved systems in the UK, the Scottish one.

In this respect, two bills that have recently been the subject of important decisions by the UK Supreme Court should be firstly considered as examples.

In *Att. Gen. and Adv. Gen. Reference*<sup>34</sup> the Court was called upon to determine whether or not two bills were within the powers of the Scottish Parliament: the first bill sought to incorporate the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) (UNCRC) Bill into Scottish law; the second bill proposed to do the same for the European Charter of Local Self-Government (Incorporation) (Scotland) (ECLSG) Bill. While the competence of the Scottish Parliament to

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<sup>32</sup> G. Webber, *Loyal Opposition*, cit., 360. See also D. Denver, *Great Britain: From “Opposition with a capital ‘O’” to Fragmented Opposition*, in E. Kolinsky (ed.), *Opposition in Western Europe*, Croom Helm, 1987, p. 87 ff.

<sup>33</sup> For an examination of the relationship between opposition and decentralization (with reference to federalism) in the US legal system see H.K. Gerken, *The Loyal Opposition*, in 123(6) *Yale Law Journal* 1958 (2014).

<sup>34</sup> [2021] UKSC 42.



incorporate these Treaties was not in dispute, the way they were operated was. Indeed, the Court held that the Bills went so far as to amend the Scotland Act 1998, which the Scottish Parliament clearly has no competence to do.

In Lord Advocate's Reference<sup>35</sup> the Scottish Government referred the legality of the Scottish Independence Referendum Bill to the Supreme Court. Again, the Court held that the bill was not within the competence of the Scottish Parliament, as it related to matters – relations between the United Kingdom and Parliament – reserved to Westminster.

Even further than the two cases just mentioned, a “territorial” opposition can be seen in the ruling *Re Scottish Minister's Petition on 8 December 2023*<sup>36</sup>, by which the Outer House of the Court of Session ruled that the Secretary of State for Scotland acted rationally and within the scope of his powers under s. 35 of the Scotland Act 1998<sup>37</sup> in blocking the Gender Recognition Reform (Scotland) Bill (GRRB) submission for the Royal Assent<sup>38</sup>.

The bill was intended to amend the UK Gender Recognition Act 2004<sup>39</sup> to supplement UK law by requiring anyone applying for a Gender Recognition Certificate (GRC) to make a declaration that they intend to live permanently in their acquired gender. The act also aimed to lower the minimum age to apply for a GRC from 18 to 16 (reducing the period required to obtain a GRC); finally, it removed the requirement for applicants to provide evidence of gender dysphoria.

Jack Alister (Secretary of State for Scotland) had declared his intention to issue an order under s. 35 referred to above, to prevent the GRRB, passed by the Scottish Parliament on 22 December 2022, from being submitted to Royal Assent and, consequently, enacted.

It should be noted that the exercise of s. 35 power is subject to the existence of certain mandatory requirements: the first relates to the presence of reasonable grounds for believing that the bill is incompatible with international obligations or with defence or national security interests; the second requirement enables the Secretary to intervene only when there is a fear that the bill might produce “modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to

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<sup>35</sup> [2022] UKSC 31.

<sup>36</sup> 2023 CSOH 89.

<sup>37</sup> Section 35, § 1, *Scotland Act 1998*, available at <https://www.legislation.gov.uk/ukpga/1998/46/contents>.

<sup>38</sup> For a more in-depth analysis see E. Andreoli, *Gender Recognition Reform (Scotland) Bill e Devolution. Spunti di riflessione sui conflitti di competenze tra Regno Unito e Scozia*, in 2 *Stals Research Paper* 1 (2023).

<sup>39</sup> 2004 c. 7, available at <https://www.legislation.gov.uk/ukpga/2004/7/contents>.

believe would have an adverse effect on the operation of the law as it applies to reserved matters”<sup>40</sup>.

It is the second of the above-mentioned requirements that comes into consideration: according to Westminster, the bill created a problem of overlapping jurisdiction<sup>41</sup>. In fact, since the subject matter of “Gender Recognition” is a devolved matter for Scotland, whereas “Equal Opportunities” is a matter reserved to the UK Parliament, the UK Government stated that the GRRB would amend the UK Gender Recognition Act 2004 in such a way as to adversely affect the operation of the Equality Act 2010<sup>42</sup>.

The then acting First Minister of Scotland, Nicola Sturgeon, reacted by stating that the Secretary was committing a profound error, accusing him of deliberately launching a direct attack on the Scottish Parliament as an institution. He also stated that the Secretary himself had decided to act in the manner of a Governor, treating the Scottish Parliament as a subordinate body and thus carrying out a full-frontal assault on the devolution settlement<sup>43</sup>. An attitude that was described as colonial, such that the loyal cooperation between Westminster and the devolved areas could be undermined. Not surprisingly, it is noted that even Mark Drakeford, Welsh Prime Minister from 2018 to 2024, had condemned the decision taken by the British government as a very dangerous precedent for British devolution<sup>44</sup>.

What appears interesting to note is that in the relationship between the centre and the periphery the Scotland Act emphasises that devolution is not intended to undermine the supremacy of Westminster<sup>45</sup>, which is essentially presupposed. S. 28 of the Scotland Act states that “this section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland”, making it clear that the

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<sup>40</sup> Section 35, § 1, *Scotland Act 1998*.

<sup>41</sup> C. Himsworth, *Scotland: The Constitutional Protection of a Mixed Legal System*, in J. Costa Oliveira – P. Cardinal (eds), *One Country, Two Systems, Three Legal Orders – Perspectives of Evolution*, Berlin-Heidelberg, 2009, pp. 119-141; J.E. Pfänder – D.D. Birk, *Article III and the Scottish Judiciary*, in 124(7) *Harvard Law Review* 1613 (2011).

<sup>42</sup> 2010 c. 15, available at <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

<sup>43</sup> *Nicola Sturgeon brands Alister Jack a 'Governor-General' for blocking Holyrood gender reforms*, Daily Record, 19 January 2023, <https://www.dailyrecord.co.uk/news/politics/nicola-sturgeon-brands-alister-jack-29000602>. See A. Muscatelli – G. Roy – A. Trew, *Persistent States: Lessons for Scottish Devolution and Independence*, in 260(1) *National Institute Economic Review* 51 (2022).

<sup>44</sup> *Gender reform: Drakeford says Scottish law block is dangerous precedent*, BBC News online, 17 January 2023, <https://www.bbc.com/news/uk-wales-politics-64304540>. For an in-depth analysis of the political reactions to the British government’s decision to trigger s. 35, see D. Torrance – D. Pyper, *The Secretary of State’s veto and the Gender Recognition Reform (Scotland) Bill*, London, pp. 31-39, available at <https://commonslibrary.parliament.uk/research-briefings/cbp-9705/>.

<sup>45</sup> M. Burgess, *The British Tradition of Federalism*, Leicester, 2012.

devolutionary mechanism is intended to preserve the sovereignty of Westminster<sup>46</sup>. Against this, a limitation on Westminster's freedom to legislate on devolved matters was introduced through the adoption of the so-called Sewel Convention<sup>47</sup>, under which the British Parliament may only legislate on devolved matters in the event of prior agreement with the Scottish legislature.

The conflict shown with the cases under consideration demonstrates what is stated at the beginning of this contribution, namely that opposition in the British legal system can go far beyond the opposition in Parliament. For what appears to be quite far from a "loyal" opposition, what emerges is the existence of a "decentralised" opposition, i.e. an opposition between parliaments. It is the evidence of an opposition that seems characterised by a certain tendency to instrumentalise the draft laws of the peripheral level of government, whose political objective does not pursue the traditional dialectic in the Chamber, but increasingly seeks to overcome by judicial means the limits posed by political instruments. An opposition that is not so "loyal": hardly surprising, given that it is completely lacking the swing of the political pendulum.

### 5. Conclusion

The use of a geometric metaphor in analysing the concept of opposition within the British legal system has been used to escape the traditional reductionism of the literature, which is mostly focused on the study of parliamentary opposition.

It has been seen that this cannot disregard its construction in the terms of "HM Loyal Opposition", a concept that is rooted in a precise path of the politico-legal evolution of the constitutional order. At the same time, it may be pointed out that this notion no longer appears sufficient to account for the most recent trends in British constitutionalism, increasingly challenged by demands from outside, i.e. from the devolved legal orders such as Northern Ireland, Wales, and Scotland.

These trends are linked to a multiplicity of issues, of which the right to self-determination is the most cited but, to some extent, also the least effective. On a closer

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<sup>46</sup> V. Bogdanor, *Devolution: decentralisation or disintegration?*, in 70(2) *Political Quarterly* 185 (1999).

<sup>47</sup> G. Burgess, *The Sewel Convention – Westminster legislation in devolved areas*, in 1 *Scottish Constitutional and Administrative law and practice* 12 (2000). See also F. Rosa, *Le conseguenze parlamentari della devolution: la Sewel Convention al crocevia dei rapporti fra Parlamenti e Governi*, in A. Torre (ed.), *Processi di devolution e transizioni costituzionali negli Stati unitari (dal Regno Unito all'Europa)*. *Atti del convegno dell'Associazione di Diritto Pubblico Comparato ed Europeo*, Bologna, 24-25 novembre 2006, Torino, 2007, p. 1011.

inspection, these are political demands (not always legitimate) that seek their potential effectiveness in the folds of legal instruments made available by the same constitutional order that these claims seek to challenge.

This results in a potential definitional short circuit. If the concept of opposition were limited to that of opposition *in* parliament, this fails to explain certain disputes that the government faces from actors other than the “loyal” opposition. If the concept of opposition were fully extended to opposition from outside parliament, it would lack the basic idea of “government-in-waiting”.

The proposal adopted is that of a variable-geometry concept, capable of extending the field of observation of traditional classifications, without losing sight of the rules capable of explaining the constitutional perimeter.

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**Abstract:** The notion of opposition as an inherent feature of the political system is probably more sharply defined in Britain than anywhere else. Here, the opposition is as definitely organised as the government itself. At the same time, the formal recognition of opposition has also had an impact outside the boundaries of political institutions. That is why I have assumed the idea of a ‘variable-geometries system’. First, reference will be made to the politico-legal aspect regarding the opposition *in* Parliament. Secondly, it will be analysed the ability to extend the concept of opposition to one not strictly bound to the parliamentary institution.

**Keywords:** Democratic Opposition – Political Constitutionalism – Parliament – Constitutional Design – Decentralisation

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