

*Parliamentary Control of the Government and Public Enterprises :
theoretical foundations and actual conflicts*

M. CHRISTOPH MÖLLERS

(Professeur de droit public et de philosophie du droit, Université Humboldt de Berlin)

The notion of parliamentary control in the German parliamentary system has been widely misunderstood, even within the German doctrine up to today. Coming from a monarchist and dualist constitutional tradition the relation between parliament and government is still defined in terms of separation, and not as a “fusion” (Walter Bagehot) between the majority and the government.

My talk will in its first part introduce two concepts of parliamentary control: Firstly, a monarchist one that understands parliamentary control as the formal participation of parliament in the governmental decision-making process. This concept obviously ignores the fact that the majority of parliament shares the political preferences of its government. Secondly, a genuinely parliamentary concept of control will be developed, which is centred on the crucial task of the opposition to collect information about the activities of the government in order to shape the public political discourse.

In the second part of my talk I will present two examples for each model respectively. The first example for an appropriate understanding of parliamentary control is the rather generous jurisprudence of the German Federal Constitutional Court with regard to the rights of information of the opposition. One recent problem that has not yet been decided upon is the control of public enterprises which plays out at the intersection of public and private law and that may be influenced by basic rights. The second example, now for a more problematic approach, is the recent case law on the parliamentary participation on the process of European integration. In these decisions the parliament is obliged to work as a veritable co-government.