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# ***House of Cards*: Comparing the British and the American TV Series from a Constitutional Perspective**

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**Abstract:** The aim of this essay is to compare the two *House of Cards* TV series – the British one and the American one – from a constitutional viewpoint. In so doing, the contribution tries to answer some research questions: how are the constitutional systems of the UK and the US respectively portrayed in the two TV series? More generally, how can contemporary political dramas approach constitutional issues?

**Keywords:** House of Cards, TV series, UK Constitution, US Constitution, political drama

## **1 Introduction**

The aim of this essay is to compare the two *House of Cards* TV series – the British one and the American one – from a constitutional viewpoint. In so doing, the essay tries to answer some research questions: how are the constitutional systems of the United Kingdom and the United States respectively portrayed in the two TV series? More generally, which are (some of) the possible approaches to constitutional issues in political dramas?

The two *House of Cards* series can be described as two of the most prominent examples of contemporary political drama, alongside with other TV series like *Borgen*, *The West Wing* and, more recently, *Marseille*. Their distinctive feature is that they both rely, although with major changes, on a common literary source, the trilogy of novels by Michael Dobbs which were published between 1989 and 1994.<sup>1</sup> For this reason, the authors of the two series drew on

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<sup>1</sup> Michael Dobbs, *House of Cards* (London: Harper Collins, 1989), *To Play the King* (London: Harper Collins, 1992), and *The Final Cut* (London: Harper Collins, 1994). Michael Dobbs himself was a political insider, having been heavily involved in the daily operation of the Conservative Party machine under Margaret Thatcher's leadership in the 1980s. See also Paul Smith, "You

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Michael Dobbs' trilogy – with the American authors also building on the British series – and adapted it to television. Interestingly, Michael Dobbs also revised the contents of his novels as the episodes of the British series were televised, in a very peculiar interplay between literary sources and TV adaptations. The British series was written by Andrew Davies and released by the BBC between 1990 and 1995. It is made up of three serials – *House of Cards*, *To Play the King* and *The Final Cut* – each of which includes four episodes. The American series has been created by Beau Willimon. So far, five seasons have been released by the streaming service Netflix since 2013, one per year. Each season includes 13 episodes, with 65 episodes overall. These data make it possible to get a basic understanding of the huge structural differences between the two series, which also reflect massive evolution in the genre of television series since the early 1990s. As will be shown later, these differences in size also affect the way each series depicts “its” own constitutional system.

In considering the two *House of Cards* series, this essay will combine two different methodological insights. On the one hand, the most “obvious” strategy for analysing the two series, insofar as their contents are relevant to constitutional law, is to focus on their “realism,” thereby meaning the adherence of the plot to “reality,” both in general terms and in light of the constitutional framework of, respectively, the United Kingdom and the United States. On the other hand, it is possible to use the constitutional order as a starting point: in that case, the question is how, and possibly whether, the (evolving) British and American constitutional orders lend themselves to being transposed into television series. The simultaneous use of these two perspectives makes it possible to focus not so much on the supposed “realism” of the two series, as on the respective plausibility of their plots. What should be avoided, in my opinion, is a somehow pedantic discussion about inaccuracies and contradictions the authors might have incurred: still, both series are marked by a close relationship between the fictional plot and the actual constitutional, political and historical background. Indeed, the authors have taken care of emphasising the “links” between Francis Urquhart’s and Frank Underwood’s worlds and the constitutional history of, respectively, the UK and the US. It will suffice to mention some examples: the British series is full of references to Margaret Thatcher’s 11-year premiership, IRA terrorist attacks, and the negotiation of the Treaty of Maastricht. Key figures and moments of American constitutional history are mentioned throughout the course of the American series. More specifically, in both series it is possible to identify a watershed between history and fiction. In

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might very well think that; I couldn't possibly comment.' *House of Cards* de Michael Dobbs," *Parlement[s]. Revue d'histoire politique* 13.2 (2016): 121–129.

the British series, Henry Collingridge is elected as Leader of the Conservative Party and appointed as Prime Minister in 1990, just after Thatcher's downfall. In the American series, President Barack Obama decides not to stand for re-election after his first term in office, after which the Walker-Matthews Democratic ticket wins the presidential election in 2012. The time framework of Seasons 4 and 5 coincides with the presidential campaign of 2016. In this respect, both series invite their audience to engage in a subtle comparison between fictional events and real political developments: this is sharply different e. g. from some less recent examples of political fiction, in which a specific political and institutional context is easily recognizable but is only vaguely portrayed and provides little more than a colourful atmosphere.<sup>2</sup>

## 2 The British series: A relatively faithful picture of the state of the unwritten constitution in the post-Thatcher years

An appropriate starting point for this analysis might be drawn from the British constitutional vicissitudes in the run-up to the ominous Brexit referendum on 23rd June 2016.<sup>3</sup> I will draw two examples from the political developments of those months. In February 2016, Boris Johnson, then the Conservative Mayor of London, announced that he would support the Leave option during the campaign. Interestingly, Boris Johnson's statement generated considerably more public attention than the quite extraordinary decision by Prime Minister David Cameron to suspend the convention of collective ministerial responsibility.<sup>4</sup> Meanwhile, the pro-independence First Minister of Scotland, Nicola Sturgeon, took a distinctively peculiar stance with regard to the Brexit referendum, as she stressed the close ties between membership in the European Union and the

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<sup>2</sup> See e. g. two very good novels by Georges Simenon, *Maigret and the Minister* (trans. Daphne Woodward, New York: Melville House, 2011) and *The President* (trans. Moura Budberg, London: Hamish Hamilton, 1969). In both of them, reference is made to the institutional context of the 3rd and 4th French Republics only in very vague terms.

<sup>3</sup> See interesting analyses by Claudio Martinelli, "I presupposti del referendum e i *cleavages* costituzionali aperti dalla Brexit," *Diritto pubblico comparato ed europeo* 18.3 (2016): 803–818; and Francesca Rosa, "Referendum e democrazia parlamentare nel Regno Unito dopo Brexit," *Astrid Rassegna* no. 14/2016. Available at [www.astrid-online.it/rassegna](http://www.astrid-online.it/rassegna) (last access 23rd August 2017).

<sup>4</sup> See Adam Tomkins, *Public Law* (Oxford: Oxford University Press, 2003), 137.

Scottish question,<sup>5</sup> so much so that some commentators became increasingly suspicious of possible “friendly fire” coming from Scotland. Indeed, some Scottish nationalists looked more interested in an independent Scotland than in a United Kingdom remaining in the European Union.<sup>6</sup> Also, the late Martin McGuinness, then Deputy First Minister of Northern Ireland, made it clear that he, like many other nationalists in Northern Ireland, was feeling uncomfortable about the possibility of the UK withdrawing from the EU.<sup>7</sup>

In what respect are these examples, drawn from recent developments in British politics, relevant to an analysis of a TV series dating back to the early 1990s? Indeed, they show very clearly how different Francis Urquhart’s world is from today’s Britain. In fact, by the time Francis Urquhart had become Prime Minister of the United Kingdom, the Local Government Act had eliminated the Greater London Council, viewed as a bulwark of far-leftist opposition; furthermore, a Scottish Parliament in its own right would only be established under the Scotland Act 1998, while direct rule had been implemented in Northern Ireland since 1972. In the British *House of Cards* series, there are neither a Mayor of London nor a First Minister of Scotland nor a First Minister of Northern Ireland: for his rise to Prime Minister and subsequent political survival, the leading character does not face any relevant rivals outside Whitehall and Parliament Square. At most, he has some occasional contacts with media magnates. As for the crucial question of the European single currency, Urquhart’s main concerns are generated by his deputy and would-be successor, Tom Makepeace.<sup>8</sup> In this respect, the British series might be described as an interesting document of the state of the British Constitution in the post-Thatcher years, just before the New Labour Government launched an ambitious, wide-ranging agenda of constitutional reform. The plot of the series, which refers to a very centralised constitutional system, somehow corresponds to Aristotelian precepts about unity of

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5 See Oliver Wright, “Brexit against Scotland’s wishes would ‘almost certainly’ trigger independence referendum, warns Nicola Sturgeon,” (London) *The Independent* (21st February 2016). Available at <http://www.independent.co.uk/news/uk/politics/eu-referendum-brexit-scottish-independence-vote-nicola-sturgeon-a6887366.html> (last access 23rd August 2017).

6 See Hugo Rifkind, “Scots will vote In but they’d secretly love Out,” (London) *The Times* (1st March 2016). Available at <http://www.thetimes.co.uk/tto/opinion/columnists/article4702525.ece> (last access 23rd August 2017).

7 See Henry McDonald, “Sinn Féin calls for vote on Irish reunification if UK backs Brexit,” (London) *The Guardian* (11th March 2016). Available at <http://www.theguardian.com/politics/2016/mar/11/sinn-fein-irish-reunification-vote-brexit-eu-referendum> (last access 23rd August 2017). See also Elettra Stradella, “L’Irlanda del Nord: lo specchio del centralismo britannico dalla repressione alla Brexit, attraverso la *devolution* ‘intermittente’,” *federalismi.it* 15.12 (2017): 1–44.

8 *House of Cards* (British series), Season 3, *The Final Cut*.

action, time and place. Meanwhile, it mirrors quite well some of the perceived flaws of those years in British constitutional history.

During Margaret Thatcher's term as Prime Minister, academic and non-academic commentators had repeatedly warned that Walter Bagehot's classic interpretation of the British (or, more precisely, English) Constitution – based on the “efficient secret” of fusion of Parliament and the executive – was more and more unfit to describe the actual operation of parliamentary government. This trend would be confirmed and perhaps even sharpened after Tony Blair's New Labour administration took office in May 1997. As a comparative constitutional law scholar put it, “Margaret Thatcher's and Tony Blair's strong political leaderships imprinted Westminster democracy with ‘post-parliamentarian’ traits”<sup>9</sup>: in order to define this evolution and to characterise it as a departure from Bagehot's “elective monarchy,” analysts have made resort to locutions like “elective dictatorship” (Lord Hailsham) and “quasi-presidential government.”<sup>10</sup> Such remarks were based on the analysis of constitutional practice and have generated further questions concerning the ongoing viability of traditional understandings of the British unwritten constitution. More particularly, some critics argued that in age marked by strong personalisation of public life and a possible weakening of the position of political minorities, the key tenets of the unwritten constitution were being put into question more and more often:

Like all gentlemen's agreements, they depend ultimately on gentlemanly behaviour and good faith. That faith was maintained through two world wars, an abdication, the revolutionary introduction of the welfare state and accession to the EEC. It broke down only in the 1980's when the Prime Minister of the day grew impatient with unwritten conventions and began to test the bounds of government power, including delegated prerogative power. It was the realisation that an unwritten constitution provided no sure defence against a determined ‘elective dictator’ that triggered the formation of Charter88 with its call for a written constitution. The declared desire of the present Prime Minister to follow in Mrs Thatcher's footsteps prompts a fresh look at the uses and abuses of the Prerogative.<sup>11</sup>

Discomfort with some features of that age in British constitutional history can be thought to have played a crucial role in triggering the subsequent attempts at

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<sup>9</sup> Alessandro Torre, *Regno Unito* (Bologna: il Mulino, 2005), 77.

<sup>10</sup> Christopher Foster, *British Government in Crisis or The Third English Revolution* (Oxford: Hart Publishing, 2005), 84. See also Robert Blackburn, “The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform,” *Public Law* 54.4 (2009): 766–789.

<sup>11</sup> David Gladstone, Memorandum attached to the 4th Report of Session 2003–04 of the Public Administration Select Committee of the House of Commons on *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*. Available at: <https://publications.parliament.uk/pa/cm200304/cmselect/cmpubadm/422/422.pdf> (last access 23rd August 2017).

reform,<sup>12</sup> both in the New Labour Years and under David Cameron's coalition government.<sup>13</sup> Furthermore, it prompted a temporary decline of *political* readings of the British constitution, to the advantage of a definitely *legal* understanding.<sup>14</sup> As Vernon Bogdanor put it,

In the immediate post-war years, the constitution played little part in British politics. The political agenda was dominated largely by socio-economic issues. [...] The main check upon government in the immediate post-war years was widely believed to be the 'swing of the pendulum', the alternation of power between governments of opposing political colours. [...] After 1979, however, it seemed that the pendulum had ceased to swing. [...] Opponents of the Conservatives alleged that, untrammelled by fear of opposition, they were straining Britain's uncodified constitution to its limits. They cited as one particularly flagrant example the abolition by Margaret Thatcher's government of the Greater London Council and the metropolitan councils, strongholds of the Left, in 1985. [...] It was perhaps in reaction to the increase in state power that, from 1997, constitutional reforms were instituted to transfer power away from the government of the day, whether to politicians outside Westminster – in Northern Ireland, Scotland, Wales and London – to judges, as in the Human Rights Act, or to the people – as with the use of the referendum to validate some of the reforms.<sup>15</sup>

In the 1980s, the perceived weakness of traditional checks upon the government of the day had even led some commentators to discuss the possibility of "counter-majoritarian" interventions of the Queen.<sup>16</sup> This is the framework of the second season of the British series, in which a newly enthroned King tries to oppose Francis Urquhart's agenda. It is worth noticing that the King accuses his Prime Minister of "practically abandon[ing] Wales and Scotland"; in a way, this quote reflects a typical mood of frustration in those countries in the Thatcher years.<sup>17</sup>

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<sup>12</sup> See Vernon Bogdanor, *The New British Constitution* (Oxford: Hart Publishing, 2009); *The Changing Constitution*, eds. Jeffrey Jowell & Dawn Oliver (Oxford: eighth edition, Oxford University Press, 2015).

<sup>13</sup> See retrospective analysis by Mike Gordon & Adam Tucker, "Twenty Years On: Assessing the State and Legacy of New Labour's Constitution," *UK Constitutional Law Blog* (4th July 2017). Available at <https://ukconstitutionallaw.org/2017/07/04/mike-gordon-and-adam-tucker-twenty-years-on-assessing-the-state-and-legacy-of-new-labours-constitution/> (last access 23rd August 2017).

<sup>14</sup> Tomkins, *Public Law*, 28–30.

<sup>15</sup> Bogdanor, *The New British Constitution*, 23 and 39.

<sup>16</sup> See Robert Blackburn, "Monarchy and the Personal Prerogatives," *Public Law* 49.3 (2004): 545–563; Rodney Brazier, "'Monarchy and the Personal Prerogatives: a personal response to Professor Blackburn,'" *Public Law* 50.1 (2005): 45–47; Philip Norton, "The Crown," in *Politics UK*, eds. Bill Jones and Philip Norton (Abingdon: eighth edition, Routledge, 2014), 284.

<sup>17</sup> See extensive discussion by T.M. Devine, *Independence or Union: Scotland's Past and Scotland's Present* (Harmondsworth: Penguin, 2017), chapters 12 and 13.

A number of recent constitutional innovations can be interpreted as a direct reaction to that period in British constitutional evolution: this is the case not only of the Human Rights Act and devolution in Scotland, Wales and Northern Ireland, but also of the House of Lords Act 1999 and the strengthened independence of the judiciary. After the Liberal-Conservative coalition took office in 2010, reformers addressed tried to “rationalise”<sup>18</sup> some aspects of parliamentary government (think e. g. Fixed-term Parliaments Act 2011).<sup>19</sup>

Some other elements are noteworthy in that they reveal how different the current constitutional and political scene is from the *House of Cards* series. Francis Urquhart is not particularly interested in political communication and, more specifically, in engaging in direct dialogue with the public. Sarah Harding, who seconds him during Season 2, does not play so meaningful a role as Seth Grayson does within Frank Underwood’s Executive Office in the American series. Moreover, the rules which govern the selection of the Leader of the Conservative Party – and, consequently, shape the relation between the Leader himself and the party base – have also been altered: until the selection procedures were revised in 1998, party members did not take part in leadership elections. Thus, the selection procedure in which Urquhart and Makepeace stand for leader<sup>20</sup> – just like the two other elections which are held during Season 1 – is entirely settled by the Conservative Members of Parliament. Finally, a sociological element contributes to strengthening the distance between Urquhart’s world and the present-day landscape. Unlike both his predecessors, Margaret Thatcher and the fictional Henry Collingridge, Francis Urquhart is explicitly at ease with his upper-class origins. In chronological terms, he is a successor to Thatcher; from a different viewpoint, however, it seems correct to describe him as a quintessential patrician Conservative politician from the pre-Thatcherian age. Indeed, Urquhart proudly sports his own commitment to *noblesse oblige*: “I am a loyal servant of the State, and proud to be so.”<sup>21</sup> These data make it possible to state that Urquhart’s personality and political action are very distant from any idea of “presidentialisation of politics,” which comparative constitutional lawyers and political scientists have discussed in depth in the last few decades.<sup>22</sup>

<sup>18</sup> As regards “rationalisation” of constitutional law, see Boris Mirkine-Guetzévitch, *Les nouvelles tendances du droit constitutionnel* (Paris: Marcel Giard, 1931).

<sup>19</sup> See Omar Chessa, “La fine del modello Westminster. Il nuovo parlamentarismo razionalizzato del Regno Unito,” *Diritto pubblico* 21.3 (2015): 809–865.

<sup>20</sup> *House of Cards* (British series), *The Final Cut*.

<sup>21</sup> *House of Cards* (British series), Season 1, Episode 1.

<sup>22</sup> See, among others, *The Presidentialization of Politics: A Comparative Study of Modern Democracies*, eds. Thomas Poguntke & Paul Webb (Oxford: Oxford University Press, 2005); *La presidenzializzazione degli esecutivi nelle democrazie contemporanee*, eds. Alfonso Di Giovine &

Furthermore, his generally patronising attitude would be hardly conceivable in an age in which traditional deference towards political elites has been undermined, among other reasons, by the parliamentary expenses scandal.<sup>23</sup>

### 3 The American series: Really the worst show ever?

What has been said so far makes it possible to claim that the American *House of Cards* series, when compared with its British counterpart, lends itself to being described as a peculiar pastiche. I am using the word “pastiche” because I believe that the American series is based on a “blend” made up of constitutional “layers” and materials which can be traced back to different eras in American constitutional history. In light of this, there is little doubt that the plot of the American series, on the whole, is less plausible than the British one – all the more so because the time frame in which the plot develops is clearly made explicit from the outset. Garrett Walker’s (fictional) presidential inauguration coincides, in fact, with the beginning of Barack Obama’s second term, on 20th January 2013. However, those who expect the American series to provide a more or less faithful representation of the operation of the American constitutional and political system *as it is today* would be bitterly disappointed. In a keen analysis published in the *Washington Post*, Seth Masket, a political scientist based at the University of Denver, has laid down in detail the reasons which make *House of Cards* the worst TV series on American politics.<sup>24</sup> Among other reasons, Professor Masket claims that the series “aggressively depicts things as they are not.”<sup>25</sup> At least from the viewpoint of constitutional law, such an assessment might be a bit exaggerated: a “stratigraphic” analysis makes it possible to argue that the American *House of Cards* series does not only contain a number of (sometimes gross) inaccuracies but also some interesting clues

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Anna Mastromarino (Torino: Giappichelli, 2007); *Il presidenzialismo che avanza*, eds. Tommaso Edoardo Frosini, Carla Bassu & Pier Luigi Petrillo (Roma: Carocci, 2009).

<sup>23</sup> As regards deference, see cursory discussion by Vernon Bogdanor, *The Coalition and the Constitution* (Oxford: Hart Publishing, 2011).

<sup>24</sup> See Seth Masket, “‘House of Cards’ is the worst show about American politics. Ever,” (Washington, D.C.) *Washington Post* (8th March 2015). Available at <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/03/08/house-of-cards-is-the-worst-show-about-american-politics-ever/> (last access 23rd August 2017)).

<sup>25</sup> Masket, “‘House of Cards’ is the worst show about American politics.”

concerning the current state of both the constitutional order and the political system in the United States.

First of all, the American series does justice to a defining character of the constitutional architecture of the United States: its plural structure, in which (strong) horizontal and vertical separation of powers coexist. In an extremely centralised constitutional system – as it was the case with the United Kingdom in the early 1990s – Urquhart is not able to compromise with his rivals and opponents of the day, be they Michael Samuels, Patrick Woolton or Tom Makepeace. Frank Underwood is at least as ruthless as his British counterpart in his way of dealing with internal rivals and other opponents. On the other hand, it is telling to note that Underwood often takes care of pursuing “compensative” solutions in order to somehow satisfy his opponent of the moment. In this respect, the authors of the American TV series have been particularly successful in building on some typical features of a *federal polity* based on a strong understanding of the *separation of powers*. Some examples can prove the soundness of this assertion. U.S. Representative Peter Russo is forced to endure a legislative deal which clearly does not favour the interests of his own constituency, a blue-collar industrial district in Pennsylvania: shortly afterwards, he gets a proposal to run for governor of his home state.<sup>26</sup> Vice President Jim Matthews is de facto expelled from the Walker Administration, thereby leaving the office of Vice President: in exchange for this move, he successfully runs for Governor of Pennsylvania after Russo’s tragic death.<sup>27</sup> Donald Blythe, a long-standing U.S. Representative from the liberal faction of the Democratic Party, is seen as a wild card at the White House as he routinely threatens to jeopardise the attempts of the Administration to have its own legislative proposals passed by Congress. After succeeding Walker as President of the United States, Frank Underwood decides to pick Blythe as his Vice President, so as to have it neutralised in political terms and to rely on a more docile Congress.<sup>28</sup> U.S. Solicitor General Heather Dunbar is no professional politician, but widespread public indignation against political scandals considerably boosts her political career perspectives, so much so that she decides to campaign for the Democratic presidential nomination. In order for this not to happen, President Underwood

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<sup>26</sup> *House of Cards* (American series), Season 1, Episodes 4 to 6.

<sup>27</sup> *House of Cards* (American series), Season 1, Episodes 11 to 12.

<sup>28</sup> *House of Cards* (American series), Season 1, Episode 1, Season 2, Episode 4, and Season 3, Episode 1. The other reason for picking Blythe as Vice President is that Underwood aims at strengthening his own position, warning his opponents against the consequences (which are clearly perceived as disastrous) of his possible retirement.

offers Dunbar a prestigious, lifetime appointment to the Supreme Court.<sup>29</sup> In this complex interplay of flattery and threats, tragedy arises when no arrangement among the involved actors is possible any longer, as Peter Russo's dramatic fate convincingly shows.<sup>30</sup>

Another element allows, at least to some extent, judging the American *House of Cards* series more positively. Throughout the development of the plot, spectators are routinely confronted with situations which a political scientist would define as implausible and a law scholar, whilst recognising their basic compatibility with the positive legal framework, would treat as almost impossible occurrences. An interesting example is the already mentioned decision of Vice President Matthews to retire from the Administration in order to run for Governor of his home state. The whole story looks hardly credible, even in light of the huge amount of responsibilities (and powers) which have been handed over to the office of Vice President since the 1950s<sup>31</sup>; on the other hand, it is possible – and a minor character of the series does so – to object that Vice President John Calhoun resigned in 1832 in order to run for U.S. Senator in his home state of South Carolina<sup>32</sup>; and Vice President Aaron Burr had unsuccessfully sought election to Governor of New York in 1804. No more credible are the circumstances of Frank Underwood's unstoppable rise from House Democratic Whip to President of the United States, without ever participating in a national election before Seasons 4 and 5. Still, this has been made possible by the Twenty-Fifth Amendment to the Constitution, which was adopted in 1967. In factual terms, Underwood's ascent mirrors Gerald Ford's biography: the Republican House Whip was appointed as Vice President in 1973 after Spiro Agnew's resignation and became President in 1974 (although this happened at the highest point of the Watergate crisis). How can constitutional analysis make sense of these apparent inaccuracies (which seriously test the suspension of disbelief)? In my view, the authors reflect, perhaps unconsciously, a widespread attitude in the constitutional culture of the United States, in which strong emphasis is placed on the elements of "continuity" in the history of the "experiment" which was initiated in 1787. As one of the most prominent representatives of the living Constitution hypothesis has remarked, the Constitution of 1787 has

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<sup>29</sup> *House of Cards* (American series), Season 3, Episode 4.

<sup>30</sup> *House of Cards* (American Series), Season 1, Episodes 10 to 11.

<sup>31</sup> There are striking differences between *House of Cards* and the way the Vice Presidency was perceived in those years (think e. g. of the fictional Vice President Harley Hudson in *Advise & Consent*, a movie directed by Otto Preminger and released in 1962).

<sup>32</sup> See Giuseppe Martinico, "An Uneasy Character: John Calhoun's Cameos in *The Gorgeous Hussy* and *Amistad*," in this issue.

been modified on relatively few occasions, but this does not mean that the underlying principles and values have not changed, sometimes even radically:

don't expect big changes through formal amendments. We the People can't seem to crank out messages in the way described by Article V of our Constitution. ... After two centuries of development, America's political identity is at war with the system of constitutional revision left by the Framers.<sup>33</sup>

In light of the complexity of the constitutional amendment procedure, some constitutional provisions which are currently in force are sometimes seen as not completely satisfactory or up-to-date among legal scholars and the general public. This is the case e. g. of the constitutional status of the Vice President of the United States: “the Vice Presidency must now contend with an amorphous and much less tangible crisis: popular illegitimacy. ... The Vice President takes office – and accepts the vast power it confers upon its occupant – at the invitation not of the people but of the President.”<sup>34</sup> In the *House of Cards* series, the vicissitudes of Vice Presidents Matthews, Underwood and Blythe aptly exemplify the gap between constitutional text and constitutional practice.

As regards the idea that the American series contains constitutional materials of different periods *in layered form*, some examples drawn from the first three Seasons might be quoted. First, there are some *archaisms*, which are present in the plot of the series like *living fossils*. A group of senior Democratic congressmen ask Underwood not to stand for re-election at the upcoming presidential election in 2016 and tell him they will endorse another candidate. As Maskett held, congressional party leaders lost control over the selection of presidential candidates as early as the last decade of the eighteenth century. In 2016, the Republican (and even Democratic) presidential primaries have shown very clearly that the so-called party establishment – congressional leaders, major campaign donors, and other federal political grandees – found it hard to control and influence the process of selecting presidential candidates (with the Republican elite ultimately failing to do so).

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<sup>33</sup> Bruce Ackerman, “The Living Constitution,” *Harvard Law Review* 120.7 (2007): 1737–1812, 1742–1743. See also Michel Rosenfeld, *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (Abingdon: Routledge, 2010), 30 ss.: “constitutional identity can be constructed on the basis of sameness or of selfhood, or more precisely, based on the dynamic interaction between projections of sameness and images of selfhood. [...] For example, for more than two hundred years, the text of the U.S. Constitution has remained the same, except for the addition of twenty seven amendments. Interpretations of provisions contained within the original 1787 text have, however, evolved through the years.”

<sup>34</sup> Richard Albert, “The Evolving Vice Presidency,” *Temple Law Review* 78.4 (2005): 811–896, 813.

Another archaism is President Underwood's decision to appoint his wife, Claire Underwood, as U.S. Ambassador to the United Nations.<sup>35</sup> Leaving aside all opportunity concerns, the Postal Revenue and Federal Salary Act of 1967, also known as Bobby Kennedy Law, explicitly provides that "a public official may not appoint, employ, promote [or] advance" a relative in the agency "in which he is serving or over which he exercises jurisdiction or control."<sup>36</sup>

Some of the problems which emerge from the American *House of Cards* series might perhaps be defined as *timeless*: this is true e. g. of recess appointments admitted under Article II, Section 2 of the Constitution<sup>37</sup>: by making resort to this constitutional clause, the President can bypass strong opposition in the Senate, as Underwood does after deciding to appoint his wife as Ambassador to the United Nations. As recently as 2014, the Supreme Court has tried to limit the practice of intrasession recess appointments in the *NLRB v. Noel Canning* case.<sup>38</sup> As the Court cautiously held,

in interpreting the Clause, the Court puts significant weight upon historical practice. The longstanding 'practice of government', *McCulloch v. Maryland*, 4 Wheat. 316, 401, can inform this Court's determination of 'what the law is' in a separation of powers case [...] There is a great deal of history to consider here, for Presidents have made recess appointments since the beginning of the Republic. Their frequency suggests that the Senate and President have recognized that such appointments can be both necessary and appropriate

<sup>35</sup> *House of Cards* (American series), Season 3, Episodes 2 to 3.

<sup>36</sup> See Barbara Burrell, *Public Opinion, the First Ladyship, and Hillary Rodham Clinton* (New York and London: second edition, Routledge, 2001), 106, subtly raising a number of points concerning Hillary Rodham Clinton's status during her husband's two presidential terms: "does the appointment to a staff position as an advisor within the White House not to an executive branch agency constitute 'appointment to an agency' [...]?" A U.S. Court of Appeals held that "[t]he anti-nepotism statute [...] may well bar appointment only to *paid* positions in government [...] Thus, even if it would prevent the president from putting his spouse on the federal payroll, it does not preclude his spouse from aiding the president in the performance of his duties" (U.S. Court of Appeals for the D.C. Circuit, *Association of American Physicians and Surgeons, Inc., et al. v. Hillary Rodham Clinton, et al.* [1993]). See also Aaron Blake, "Why Donald Trump's family being in the White House is problematic, explained," (Washington, D.C.) *The Washington Post* (18th November 2016). Available at <https://www.washingtonpost.com/news/the-fix/wp/2016/11/18/why-donald-trumps-family-being-in-the-white-house-is-problematic-explained/> (last access 23rd August 2017).

<sup>37</sup> Under Art. II, Sect. 2, of the Constitution of the United States, "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

<sup>38</sup> See Ronald J. Krotoszynski, Jr, "Transcending Formalism and Functionalism in Separation-of-Powers Analysis: Reframing the Appointments Power After *Noel Canning*," *Duke Law Journal* 64.8 (2015): 1513–1569; Gillian E. Metzger, "Appointment, Innovation, and the Judicial-Political Divide," *Duke Law Journal* 64.8 (2015): 1607–1643.

in certain circumstances. The Court, in interpreting the Clause for the first time, must hesitate to upset the compromises and working arrangements that the elected branches of Government themselves have reached.<sup>39</sup>

By the way, in his concurring opinion Justice Scalia addressed the issue of “a fair prospect of the Senate’s rejecting his preferred nominee”: “the President could have appointed that individual unilaterally during the recess, allowed the appointment to expire at the end of the next session, renewed the appointment the following day, and so on *ad infinitum*.”<sup>40</sup>

Another detail deserves mention: when Underwood starts thinking about appointing his wife as Ambassador, reference is made to a trend which has gained more and more significance in the last few decades and reached a peak after 2001: the role of those lawyers, notably the White House Counsel, who advise the executive power on legal issues. Doing so, the White House Counsel plays a pivotal role in shaping a constitutional consensus around topical questions, so much so that he or she often influences the way courts interpret the law subsequently. As a prominent critic has put it,

the increasing authoritativeness of their legal pronouncements will create serious problems going forward. During previous centuries, opinions of the Court were accorded unquestioned centrality by the broader legal community; but the rise of executive constitutionalism threatens to shatter the Court’s de facto monopoly – putting the justices on the defensive in their future showdowns with the presidency. If the president’s lawyers manage to gain broad professional support for their legal opinions, the Court will think twice before confronting a runaway presidency.<sup>41</sup>

Finally, the plot contains other elements which are clearly derived from the *current stage of constitutional development* in the United States. Campaign funding channelled through Super PACs (political action committees), which generates the scandal which forces President Walker to resign,<sup>42</sup> has been boosted by the decision of the U.S. Supreme Court in *Citizens United v. FEC*, in 2010.<sup>43</sup>

<sup>39</sup> U.S. Supreme Court, *National Labor Relations Board v. Noel Canning*, 573 U.S. (2014).

<sup>40</sup> U.S. Supreme Court, *National Labor Relations Board v. Noel Canning*, Scalia, J., concurring.

<sup>41</sup> Bruce Ackerman, *The Decline and Fall of the American Republic* (Cambridge, MA: Harvard University Press, 2010), 89. As regards literary treatment of similar issues (against a very different framework), see Mario Vargas Llosa, *The Feast of the Goat* (trans. Edith Grossman, New York: Picador, 2001), chapter 8.

<sup>42</sup> *House of Cards* (American series), Season 2, Episodes 7 to 13.

<sup>43</sup> U.S. Supreme Court, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). See Corrado Caruso, “Il caso *Citizens United v. Federal Election Commission*: money must talk,” *Quaderni costituzionali* 30.2 (2010): 389–392; Samuel Issacharoff, “Il caso *Citizens United v.*

Another relevant element from the contemporary constitutional and political landscape is the crisis of political representation, which many relevant actors seem to understand in tribunitian terms. Some examples illustrate this claim: it is the case of the uncompromising, solipsistic attitude of Republican U.S. Senator Curtis Haas, who goes so far that his fellow Republican colleagues end up taking distance from him. Another topical issue is generalised impatience vis-à-vis political scandals: the rising trend towards a judicialisation of politics<sup>44</sup> and the rise of independent institutions, often credited with any kind of virtues, are directly related to this evolution. This is an aspect which makes the American series clearly different from the British one: Heather Dunbar's fictional ascent is part of the wider discussion about juristocracy and has been compared with the political record of Elizabeth Warren, special advisor to the Consumer Financial Protection Bureau and later U.S. Senator from Massachusetts.

Unlike Professor Masket, this author does not see Heather Dunbar's quick entry into politics as completely implausible. According to a well-rooted assumption, state governors and federal cabinet secretaries were seen as the most obvious candidates for the Presidency. In any case, they were perceived as being stronger candidates than congressmen. Indeed, after John F. Kennedy's election in 1960 and before Barack Obama's first victory in 2008, no U.S. Senator or Representative could win a presidential election. State governors, in particular, were thought to rely on a wide constituency (unlike Representatives) and to be distant enough from the federal political elites in Washington (unlike Senators).<sup>45</sup> This consensus seems to have been weakened since 2008: in that year, a first-term U.S. Senator, whose legislative record was at least controversial,<sup>46</sup> was elected to the White House. This shift became even more evident in 2016. The main candidates for presidential nomination – especially, but not

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*Federal Election Commission: il finanziamento dei partiti nel diritto americano,* *Quaderni costituzionali* 30.2 (2010): 392–397.

<sup>44</sup> As described, among others, by Ran Hirschl, "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Political Science* 11.1 (2008): 93–118.

<sup>45</sup> For general assessment see M. Nelson, "Who Vies for President," in *Presidential Selection*, eds. A. Heard & M. Nelson (Durham, N.C.: Duke University Press, 1987): 120–154; Joseph A. Pika, John Maltese & Andrew Rudalevige, *The Politics of the Presidency* (Los Angeles: ninth edition, CQ Press, 2017).

<sup>46</sup> Kate Zernike & Jeff Zeleny, "Obama in Senate: Star Power, Minor Role," (New York City) *The New York Times* (9th March 2008). Available at: <http://www.nytimes.com/2008/03/09/us/politics/09obama.html> (last access 23rd August 2017).

exclusively, in the Republican Party<sup>47</sup> – seemed to contradict all the main assumptions derived from the history of presidential elections: among them, quintessential outsiders like Donald J. Trump and Ben Carson and freshmen Senators like Marco Rubio and Ted Cruz were particularly prominent. Rubio had not been particularly diligent in attending the meetings of the Senate, whereas Cruz had apparently been unable to cooperate with his colleagues, even those from his own party. In light of this, the authors of Seasons 3 and 4 of the American series might even have been relatively “moderate” in staging a fictional presidential campaign.

## 4 Concluding remarks

As I have tried to show in the preceding paragraphs, there are deep differences between the two *House of Cards* series when it comes to constitutional issues. Although they share the same plot, the approaches of their respective authors in this respect are clearly different. The British authors have somehow portrayed the state of the unwritten constitution as it was in a very specific moment, i. e. the early 1990s. Their American counterparts, in turn, have deliberately opted for a “mixture,” a pastiche in which very different constitutional materials coexist. This does not contribute to the plausibility of the American series but has probably enhanced its spectacular character. In a way, this basic difference between the two series might be interpreted as an inevitable consequence of the difference in size between them. The British series is made up of 12 episodes, whereas no less than 65 episodes of the American one have been released so far: this has required the American authors to engage with a much wider array of constitutional materials, some of which have just started being inquired about by legal scholars.<sup>48</sup>

A possible *fil rouge* for the American series might be the decline of traditional understanding of the separation of powers and the corresponding increase in partisanship:

the failure of the Framers’ understanding of political competition raises the risk of a mismatch between constitutional structures and constitutional aims. Recognizing that failure and replacing it with an understanding of the actual mechanisms of political

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<sup>47</sup> Think e. g. of the huge popularity of U.S. Senator Bernie Sanders, who ran as a “democratic socialist” at the Democratic presidential primaries.

<sup>48</sup> See Rocco Bellanova, “From House of Cards to House of Data?,” *PRIO Blogs* (11th March 2016). Available at: <https://blogs.prio.org/2016/03/from-the-house-of-cards-to-house-of-data/> (last access 23rd August 2017).

competition suggests new approaches to constitutional law and institutional design that would more effectively realize the aims of the separation of powers.

Such a project is all the more urgent as we come to terms with an emerging equilibrium of ideologically coherent and polarized political parties. Strong parties will accentuate the differences between unified and divided government, making constitutional law's conceptualization of a singular, static system of separation of powers all the more problematic.<sup>49</sup>

For all their differences, the two series share a crucial feature (which is possibly a flaw as well): they focus, almost inevitably, on one major character – Urquhart and Underwood, respectively – struggling for political power. Doing so, both series somehow neglect the role of other relevant actors, like the Labour opposition or the Republican Party (with the possible exception of Seasons 4 and 5 of the American series). In this respect, intraparty competition looks much more important than interparty competition for both series. Even in spite of these relevant flaws, both series are quite good at grasping, at least partially, some aspects of the institutional complexity of contemporary regimes.

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<sup>49</sup> Daryl J. Levinson & Richard H. Pildes, "Separation of Parties, not Powers," *Harvard Law Review* 119.8 (2006): 2312–2386, 2386.