

Canadian
Study
of Parliament
Group

Responsible
Government

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Responsible Government

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Keynote Address

Some Late Reflections on Responsible Government: Irresponsible Government?

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UNTIL QUITE RECENTLY at least, Canada's history has been one long celebration of our emancipation from Great Britain, a *Colony to Nation* story, to quote Arthur Lower, a triumph, a teleology that became a nationalist religion embraced by a number of politicians, not least Mackenzie King. Perhaps now the nation is becoming sufficiently grown up for us to stand back and take a more balanced view.

Examined dispassionately, history is a thing of many facets. An example: Lady Byng told Eugene Forsey in 1942, seven years after her husband's death, how King had betrayed him. After the fall election of 1925, there was a gentleman's agreement between Lord Byng and Mackenzie King: King would be allowed to carry on the government, but in return, he would not ask for a second dissolution. At the time Lady Byng said to her husband, "Bungo, have you got it in writing?"

"No," he said, "It was a gentleman's agreement."

"My dear," said Lady Byng, "Mr. King is no gentleman."

She begged him to get the arrangement set down on paper, but Lord Byng would not; he trusted in Mackenzie King's honour. And of course, when King broke that agreement, he knew that the Byngs were condemned to silence by the protocol of office.

Our history likes to tell us how we got to where we are; everything directed to that end is therefore good, and everything that counters it is bad. In this extraordinary process, historical positions and issues become twisted and changed, some of them out of all recognition. And there are some ironies. In the end the Clergy Reserves really did work, just as they were finally being abolished.

This litany of lost causes ought to be more historically neutral. If right and wrong were assigned on the basis of success in the long run, history would be a queer thing indeed. For the irony is that men act not on the basis of what they might expect in the

future but on the lessons they may have drawn from the past. If they think they are looking forward, the spring of their thought and motivation lies in their own past life and experience. Sir Charles Metcalfe was not being vindictive or bloody-minded when he refused Baldwin and Lafontaine their patronage appointments in 1843; according to his lights he was being reasonable. It was his ministers who were unreasonable, and to a degree irresponsible. To resign on an issue of patronage!

Indeed, the governors of Canada have been neglected in modern times, especially in the things they have accomplished for the country they administered often dispassionately and well. We have Stanley Park and the Stanley Cup: who knows anything about Lord Stanley? We have the Grey Cup: who knows Lord Grey? Who knows anything about Lady Byng, who gave the trophy for sportsmanship, a quality she was sure Mackenzie King had not?

The Plains of Abraham were rescued for posterity and made into a national park at the suggestion of Lord Minto (1898-1904). The walls of Quebec were saved in the 1870s from an impecunious and greedy town council by Lord Dufferin. Lord Lorne started the Royal Society of Canada and the Royal Canadian Academy. These marks of a strong conserving (and conservative) tradition are not fortuitous; they are, or would have been, lacunae in our world and attitudes that we were apparently incapable of filling on our own mere motion.

And we ought not ever to underestimate the greed, querulousness and love of patronage so conspicuous in our history. "Upon my word," said Sir Edmund Hornby visiting Canada in the 1850s, "I do not think there is much to be said for Canadians over Turks when contracts, places, free tickets on railways or even cash is concerned."

We do not have to accept the British view that North American politics is a place where false pearls are thrown before real swine. But we ought not to dismiss it. There have been some fairly primitive politicians set loose on British North American electorates over the years. Perhaps the most delicious of these was A.H. Gillmor's frank 1864 statement of his duties as a member of the Legislative Assembly of New Brunswick for Charlotte County:

Mr. Speaker, when a bill's before this house I always asks what's it going to do for Charlotte. I ain't got anything to do with the Province. I sits here for Charlotte and if they tells me it'll do good to the Province but do harm to Charlotte then says I, "I go in for Charlotte." If they tells me it'll harm the Province but do good to Charlotte then too says I, "I go in for Charlotte."

This robust sentiment from the grass roots of southwest New Brunswick serves to introduce that side of Canadian politics most often deplored by transatlantic observers.

Colonial Policy a Bore

It is useful to point out at the start that despite occasional impressions to the contrary, there was rarely a heated debate in the British House of Commons over colonial policy. By the 1840s, the Empire had to be kept going not because the British were passionately concerned about it, but because it was there; any major loss of a part of the Empire would, in the words of Lord John Russell in 1849, set loose the vultures.

British North America was especially vulnerable because of the United States. Even the most level-headed of the Colonial Office officials thought that American success would go to their heads, that they would become too powerful to be fair-minded and just. Lord Elgin in Canada was well aware of this toward the end of the Mexican War:

Nothing can resist them after their achievements in Mexico, is the faith of the American Nation. Woe betide any man who does not share it. As to Canada they may take it when they please — bon gré or mal gré its people — the time of doing it and the mode are questions merely of convenience.

But outside of these elemental considerations, the hard truth was that in London, colonial affairs were a beastly bore. There was little party disagreement over colonial affairs and little party excitement. Lord Grey, perhaps the most distinguished of the colonial secretaries (1846-1852) in a long run of indifferent occupiers of that most undesired post, admitted in 1848 that the cabinet never had the time or, what is still more revealing, the inclination to deal with colonial questions. The country gentlemen of the Commons and landed aristocrats of the Lords were no more interested than the cabinet.

The great question of responsible government, for which Lord Durham has been made the putative father, is not even mentioned in the text of his report. It appears in a margin note on page 278 and was picked up and fastened on by colonial reformers. British officials, when they spoke of it, were apt to put it into quotation marks, for to them it was a term full of ambiguities. How much self-government did it imply? A rigid delineation between Imperial and colonial responsibilities was impracticable.

It is right to say that Durham probably did not appreciate how far the party system had gone in

British North America, especially in Nova Scotia and Canada: he still believed that issues and measures would be the focus of party concerns and around which *ad hoc* groups would coalesce. Under such conditions, an astute governor could retain considerable personal influence by altering the balance, when needed, in the Executive Council. But Metcalfe and Elgin in Canada and Falkland in Nova Scotia soon discovered that party always triumphed over principles, that the 'outs' simply wanted to be 'ins'.

A Comfortable People

The fact was, said Elgin, that British North Americans had few substantial grievances:

Several causes co-operate to give to personal and party interests the overweening importance which attaches to them in the estimation of local Politicians — There are no real grievances here to stir the depths of the popular mind — We are a comfortable people — With plenty to eat & drink — No privileged classes to excite envy — or taxes to produce irritation — It were ungrateful to view these blessings with regret, and yet I believe that they account in some measure for the selfishness of public men and their indifference to the higher aims of Statesmanship —

Examples of this salient characteristic abounded in all the colonies. Nova Scotians, who liked to pride themselves on being a cut above the grubby politics of the other colonies, certainly could have given lessons in both patronage and politics. The Reformers in the Nova Scotian coalition of 1840 resigned in 1843 over patronage. When they came to power at last, in February 1848, Sir John Harvey, acting on the advice of his new Reform ministry, appointed nearly 300 new justices of the peace and dismissed a large number of others. In the process, admitted Harvey, a large proportion of the intelligence and respectability of the province went too.

The Colonial Office did not like what it saw in Nova Scotia. Benjamin Hawes, the Parliamentary Under-Secretary, minuted, "A Government must be content with a majority in the Assembly and not on the Bench." He was ready to establish a Colonial Office list of proper magistrates. Grey would not go that far. A Nova Scotian majority could and did manage to do virtually anything it chose, at least in internal affairs.

Lord Elgin, coming through Nova Scotia in February 1847 on his way to Canada, warned Grey that the Reformers would press patronage very hard

and that it would be used "chiefly if not exclusively in the purchase of interested Support." Elgin acknowledged that to some degree such things were countenanced in English practice, but in Nova Scotia it would be "broadly affirmed and unscrupulously acted upon" and would certainly lower the tone of public morals and public life.

It is true, however, that those old office holders had been around a long time. It also has to be said that the family compacts in Halifax, Quebec and Toronto were long-headed, well entrenched, intelligent, competent, and not usually very scrupulous. There were always new recruits to family compact ranks. They were of course the government. Colonial governors came and went; they might have some influence in their day, but that day did not last much more than six or eight years. And their power, strong on paper though it looked, was limited.

Joseph Howe, writing to Lord John Russell in 1839, had good reason to be biting; he had known and experienced the thralldom of the Council:

It is mere mockery to tell us that the governor himself is responsible. He must carry on the government by and with the few officials whom he finds in possession when he arrives. He may flutter and struggle in the net, as some well-meaning Governors have done, but he must at last resign himself to his fate; and, like a snared bird, be content with the narrow limits assigned to him by his keepers. I have known a Governor bullied and sneered at, and almost shut out of society, while his obstinate resistance to the system created a suspicion that he might not become its victim: but I never knew one who, even with the best intentions . . . was able to contend, on anything like fair terms, with the small knot of functionaries who form the Councils, fill the offices, and wield the powers of the government.

There was indeed reason for the animus of the Reformers. That Nova Scotian administration was stuffed with Tory appointments going back over decades. By no means all of them were bad, either; that was the rub. So the savage partisan politics of the Nova Scotians, the Prince Edward Islanders, and the Canadians had some justification. But the effect was to make British North American politics fairly rough going; and good men in political life did not stick it for very long.

"Political Life Ruins Men. . ."

Robert Baldwin Sullivan is a good example, a Reform politician, first cousin of his namesake, and for whom

Lord Elgin developed a considerable respect despite his addiction to partisan rhetoric and the bottle.

I regret however to say [wrote Elgin to Grey] that I much fear I shall lose Sullivan — He hates the tracasseries of Political life & will not I think forgo his claim to the Judgeship — The fact is that . . . Political life is ruin to men in these Countries & the best will not remain in it a day longer than they can help. Land-jobbers, swindlers, young men who wish to make a name . . . may find in public life here or in the States a compensation for the sacrifices it entails, but with honest men who are doing well in their own line of business, & who have not private fortunes to fall back upon, it is otherwise.

Too many of our politicians, that is, those who stayed, were hard, greedy, vindictive. A few were in it for the sport of it, expensive sport though it was, like John A. Macdonald. Some were in it because they liked bigger challenges, like J.S.D. Thompson or R.B. Bennett. But we need to read Lord Dufferin's eloquent testimony to the stubbornness of Alexander Mackenzie, the sensitivities of Edward Blake, the power and force of Brown's domination on the *Globe*. There is much of intelligence and good sense in those governors of ours; and in our slightly paranoid way we have rather neglected them. Certainly the tale is by no means that of Canada slowly, steadily, with high patriotism, wresting power from the reluctant hands of Great Britain. As one reads the despatches, in London or in Canada, one is impressed with the intelligence of these officials and their long-suffering patience as they sought to mitigate something of the inglorious savagery of colonial political life.

Certainly few enough of the officials one observed in Britain or appointed as governors in British North America could really be termed irresponsible (although Sir Francis Bond Head breaks all generalizations). But then, on the other side, in colonial politics there is a noble spirit like Robert Baldwin, who was clearly the exception to the general run of grasping, greedy and vindictive men that too frequently followed him. And lest Reformers get blamed, let me remind you that Tory mobs have had their own taste for recreational violence. Witness Montreal, April 25, 1849.

Colonial history has to be read with a transatlantic perspective, and with the principle of colony to nation kept well at arm's length. Nationalism is the delight of the young: older historians ought to have learned to distrust its enthusiasms and its naïvety.

Panel I

The Meaning of Responsible Government

Moderator:

Professor Janet Aizenstat
Department of Political Science
University of Calgary

Panelists:

Professor A.H. Birch
Department of Political Science
University of Victoria

Dr. Gary Levy
Editor
Canadian Parliamentary Review

Dr. Ronald G. Landes, Chairman
Department of Political Science
Saint Mary's University

ESTABLISHING A CONTEXT for the discussion, Anthony Birch identified three related meanings for responsible government:

- that governments are or should be *responsive* to movements in public opinion and the needs of society,
- that governments should operate *responsibly*, with mutually consistent policies, be well organized in carrying them out, and so on, and
- that ministers are *accountable* to Parliament.

It helps to think of the first and second points as the *ends* of responsible government, and the third, the accountability of ministers, as the *device* for achieving them.

The principle of responsible government has long been considered an indisputable and indispensable part of the British constitutional tradition, and was introduced into Canada as a consequence of the Durham Report, published exactly 150 years ago. It is true, as Professor Waite suggested, that Durham used the term 'responsible' only in a marginal note, but he referred quite clearly to the *concept* in the following sentence and in several paragraphs that followed it:

But the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the Government in unison with a representative body, it must consent to carry it on by means of

those in whom that representative body has confidence.

In practice, however, governmental accountability operates differently in Canada than it does in Great Britain. Here a government defeated on a major issue is plunged into crisis; there the convention is not so strict.

In contemporary Britain governments face a crisis only if they are defeated in a specific vote of non-confidence framed in those terms. Since 1969, 12 major government bills have been wrecked in the House of Commons, despite governmental majorities, while in the 10 years of the Thatcher government, 102 government bills have been amended against government wishes in the House of Lords. Birch sees value in the British practice: it means that a parliamentary majority cannot be taken for granted; governments must consult their backbenchers, and proposals are often modified to meet backbench criticisms before they are even presented to Parliament. This way of legislating strengthens the responsiveness of the government to parliamentary and public opinion.

Canada's constitutional history has evolved somewhat differently. The laws that form the basis of our constitution, including the *British North America Act* and the *Charter of Rights and Freedoms*, offer protection for certain freedoms as well as a means of providing for the services we want from governments. But as a student of comparative government, Birch sees certain shortcomings in our constitutional arrangements, particularly when compared to those of the United States and Australia:

- the ambiguity of the sections on the division of powers, which has permitted increasing decentralization,
- the failure to ensure adequate representation of the provinces in federal decision-making processes, which has led to ever-increasing power for first ministers' conferences (where provincial premiers are not subject to the usual checks and corrections of responsible government facing them at home, in the form of the caucus and the provincial civil service), and
- the failure to provide for an internal system for amending the constitution in the *BNA Act*; one was eventually agreed to, but through a controversial process that resulted in the current impasse on the Meech Lake Accord.

Among its other provisions, the Meech Lake Accord introduces further constitutional ambiguity through the 'distinct society' clause, gives each province a veto on future amendments respecting the

Senate, the Supreme Court and the creation of new provinces, allows provinces to opt out of federal shared-cost programs, and gives Quebec some control over immigration. Is Meech Lake a good example of responsible government at work? Is it the product of a responsive government? Is it part of a deliberate strategy and consistent with the government's other objectives? It is for the listener to decide, but Birch has doubts about it.

Returning to the Durham Report, Birch noted that Lord Durham's greatest mistake was to predicate his vision of the future of Canada on the assumption of Quebec's eventual anglicization. The determination of the Quebec community not to let this happen, and the magnitude of its achievement in doing so, serve to illustrate why that community is often insecure when it comes to language and cultural issues.

Political from Birth to Death

Quoting Senator Eugene Forsey, Gary Levy noted that Canada's conventions with respect to responsible government are political in birth, in growth, in decay and in death. Several developments have had significance for the country's constitutional evolution and for the course of responsible government in Canada since 1980: the introduction of the *Charter*, agreement on a constitutional amending formula, the debate on the Meech Lake Accord, the advent of a more activist Senate, and reform in the House of Commons to expand the scope of the backbencher's role. Levy argues that many of these events have weakened our attachment to the traditional principles of responsible government.

Conventions are being challenged or broken as a result. Our convention is that the government has the right to govern as long as it maintains the confidence of a majority in the House. Yet the timing of the 1988 election was determined largely by the Senate. Where the House of Commons once had clear supremacy, we have now turned the corner toward a system of checks and balances. This is not what the parliamentary system is supposed to be, but if different parties control each chamber and the Senate decides to exercise its constitutional right to block legislation, the result is the same. Thus the prospect of an elected Senate with no change in its powers is problematic.

Federal-provincial relations is another domain where the ability of the House of Commons to hold ministers accountable has been blunted. Legislators are often called upon to approve the decisions of 11 first minister, decisions emerging from a system

characterized by yet another level of bureaucracy that is difficult to penetrate and hold accountable. Yet given the scope and import of decisions made through the federal-provincial relations system, legislators should take special interest these matters. In particular, Parliament should have a standing committee on federal-provincial fiscal arrangements and other federal-provincial issues.

As well, proposed changes to the constitution should be discussed initially in a legislative forum — for example, a committee of federal and provincial legislators on constitutional reform — not in the federal-provincial bureaucracy. The current round of reform has seen no legislative involvement apart from ratification of the Meech Lake Accord through passage of an omnibus package, a process that Levy argues is not in keeping with parliamentary traditions and conventions.

Levy suggested that the omnibus amendment could (and should) have been ruled out of order by a Speaker. This raises the issue of who is the proper defender of the conventions of constitutional government. Levy argues that it is the Speaker, not the courts.

As for responsible government in the age of the *Charter*, the House of Commons may not, as many have argued, be up to the task of checking the executive. Yet the judges who are being asked to take on this role through the review of law and other forms of government action are neither elected nor representative. As judges become more involved in policy making through their decisions on *Charter* issues, Canadians will want a greater say in how judges are appointed. Once that shift in perceptions occurs, and as the courts gain strength, will responsible government be anything more than a hollow shell? Use of the notwithstanding clause would keep issues out of the courts, but would Canadians accept this as a legitimate means of protecting responsible government?

One answer may lie, Levy suggests, in the use of non-binding plebiscites, which would allow Canadians to come to grips with complex issues, including constitutional issues. We should not hesitate to use this device if it reinforces responsiveness between government and electors.

Reconciling the Irreconcilable

Constitutional reform is the leitmotif of the Canadian political process — the politics of our constitution is the constitution of our politics. The reason for this situation, suggests Ron Landes, is that the driving

force behind Canadian politics is the need to reconcile two irreconcilable principles of democratic government — parliamentary sovereignty and popular sovereignty. Understanding the conflict between these contending principles of democratic governance may shed light on how to revive Parliament by reworking and, if possible, saving the notion of collective responsibility.

Landes sees evidence of this conflict — and in particular the limitations of collective responsibility, a key component of parliamentary supremacy — in the fact that the public appears indifferent to behaviour that is contemptuous of the legislature. Political scientists and other observers have long recognized the myth of parliamentary supremacy; now the public knows it too and expresses it through indifference to Parliament. Better that Parliament be hated than ignored, says Landes.

The traditional response to the weakness of collective responsibility is to place the blame on party discipline and to seek internal reform of the House of Commons. This attitude is apparent in the McGrath committee report, which sought specifically to limit the confidence convention and party discipline:

The purpose of reform of the House of Commons in 1985 is to *restore* to private members an effective legislative function, to give them a *meaningful role* in the formation of public policy and, in so doing, to *restore* the House of Commons to its *rightful place* in the Canadian political process. (*emphasis added*)

Landes suggests, however, that there is little point in seeking the culprit or the cure in the internal relations of government institutions. With its increasing emphasis on the principle of popular sovereignty, the Canadian political culture has simply rendered the principles of collective responsibility and parliamentary sovereignty superfluous to the Canadian public.

To support this contention, Landes pointed to the origin of the principle of collective responsibility. It is a nineteenth-century concept adopted at a time of limited participation in politics and when the House of Commons (and the Senate) represented the Canadian elite. From a modern perspective, representative democracy in Canada at the turn of the twentieth century was neither very representative nor particularly democratic. Moreover, party discipline was used initially to produce a pattern of collective responsibility, not to undercut it. It was a mechanism by which the elected elite sought control over the executive and, through it, the entire political system.

By contrast, the twentieth century, and particularly the past two decades, have seen the emergence of popular sovereignty as the dominant feature of Canada's political culture and one that is increasingly reflected in our political institutions. Among the many examples that could be cited, Landes mentioned the following:

- the expansion of the franchise to include prisoners and the mentally ill;
- the increasing pervasiveness of television in politics through, for example, its influence in election campaigns and its intrusion into the House of Commons;
- the 'presidentialization' of the role of prime minister;
- the proliferation and impact of public opinion polls;
- the expansion of the role of the first ministers' conference;
- the introduction of the *Charter*, the embodiment of the idea that the people need protection from Parliament, when traditionally Parliament is the protector of rights;
- the attitude of the Senate in forcing an election to "let the people decide" the free trade issue in 1988; and
- the effective undermining of the constitutional notwithstanding clause because governments are reluctant to risk the political consequences of using it to take a strong stand on an issue.

Given our history, our heritage, and our institutions, few Canadians will admit the emergence of popular sovereignty as the dominant principle of government. Instead, we will continue to try to reconcile these contending principles, retaining the façade of parliamentary supremacy but living with the growing reality of popular sovereignty. As a firm believer in parliamentary supremacy, Landes finds this a disappointing conclusion.

Question Period

Anthony Birch pointed to the contrast between Gary Levy's and Ron Landes's perspective — too little popular sovereignty versus too much. Landes disagreed strongly with the notion of referenda or plebiscites, arguing that constitutional reform issues are too technical and complex for most members of the public to understand. Then we should frame the issues in a way people *can* understand, came the response, and then write legislation and intergovernmental agreements to give effect to the popular will. After all, people don't think of the

constitution in terms of its technical details. The attentive public and interest groups might become involved in such campaigns, Landes countered, but 'the public' would not.

Professor Mallory doubted that Senate reform offers a solution to issues such as provincial participation in federal decision making. No matter what we do with the Senate, there is no way to remove the partisan politics from it; we will never have a Senate made of members of the 'attentive public' and reflecting the full range of opinion in the country. And far from undermining responsible government, party discipline was what made responsible government work from the 1840s on. As Landes reminded us, party discipline stemmed from the realization that the only way to be effective in government was to achieve coherence, organization and discipline among one's supporters.

The question of whether change in the Senate's role is real or perceived provoked some discussion. A mechanism exists (joint conferences) to deal with conflict between the House and the Senate, Levy pointed out, but it has not been used in the past five or six years because of the makeup of the two houses. Yet others suggested that this is not at issue because no dispute between the Senate and the House has actually been carried to a conclusion. For example, if the Senate had rejected the free trade agreement a second time after the election, there would have been swift action to curtail its powers. So in all the debate about a Triple-E Senate, no one has ever defined exactly what the third 'E' — effective — really means.

Janet Ajzenstat brought the discussion to a close by pointing out that a government is responsible to the House not because members of the House are elected but because Parliament holds the power of the purse. She quoted Pierre Bédard, first leader of the Canadian Party in the Legislative Assembly of Lower Canada, writing in *Le Canadien* in 1806:

The Ministry must necessarily have a majority in the House of Commons. When it loses the influence that has been given it or when its program no longer appears good, it is relieved. It sometimes happens that when the King desires to know which of the two programs the nation wishes to adopt, that of the ministry or that of the opposition, he dissolves Parliament. Then the nation exercises its judgement. It is after the people's feelings have been indicated by the choice of persons whose programs it adopts that the new ministry is established. The ministry is sure of being sustained by the House of Commons and the people as long as it does not deviate from its principles. (*traduction libre*)

Panel II

Accountability in Parliament

Moderator:

Mr. Gordon Barnhart
Clerk of the Senate

Panelists:

Mr. Doug Fisher

Mr. Raymond Dubois
Deputy Auditor General
Office of the Auditor General of Canada

WHERE IS THAT OLD principle of parliamentary government, grievance before supply? **Gordon Barnhart** led off the discussion by picking up on Janet Ajzenstat's point at the close of the previous session. In principle, Parliament has two avenues for holding governments to account through its control of the purse: examination of estimates or spending proposals, and review by the Public Accounts Committee of spending that has already occurred. For both purposes Parliament needs good information, as well as Members who recognize the value of the exercise even in the absence of close public attention to it.

Was there a golden age of Parliament in the past? Or is the golden age of accountability in Parliament today? **Doug Fisher** admits that when he contemplates the many developments aimed at providing for monitoring and oversight to make governments and bureaucracies accountable, he is tempted to conclude that if there has ever been a golden age of accountability, it is today. But when he contemplates the size of the annual deficit and the mounting public debt, his assessment of the state of accountability in Parliament today is not nearly so glowing. Parliament does not seem much closer to exercising control over financial matters than it was 35 years ago when Fisher was first elected to the House.

Fisher draws a distinction between political accountability and financial/administrative accountability in Parliament. Parliament has been more successful in holding ministers to account on political and policy issues, in part

through parliamentary devices such as question period, committee inquiries, and the caucus system, and in part because external developments such as expansion of the news media (particularly the parliamentary press gallery) and growth in the number of interest groups, protest groups and lobbyists have tightened and sharpened the focus on political activities. MPs also have a great many more research and information resources at their disposal than they did three decades ago.

In Fisher's view these phenomena may have the effect of making politicians more accountable, in the sense that they help to concentrate greater interest on the political scene in Ottawa and promote greater public participation in political activities. But at the same time the volume of competing demands is such that politicians become more shallow in their approach to issues and more short-term in their outlook, thus undermining accountability in the longer term.

This is how issues like the deficit get out of hand; the vast majority of the competing demands are to spend more money, not less. In this environment, accountability based on a tough and thorough examination of spending as portrayed by the estimates or the public accounts is difficult to achieve. And what political reward lies in store for MPs who devote their time to the Public Accounts Committee? There may never have been rewards for such work, but in the past at least the work could be carried out in an environment with fewer competing demands on MPs' time and attention.

A Servant of Parliament

To assist Parliament in holding the government to account, **Raymond Dubois** explained, the Auditor General of Canada has the power to examine the accounts of federal departments and agencies and many of its Crown corporations. On the basis of this audit information, Members of Parliament can judge whether the government has spent public funds for the purposes authorized by Parliament and whether public resources have been used economically and efficiently.

The Auditor General's office is not part of the government, and independence from the government of the day is vital if the audit office

is to perform effectively and render unbiased judgements. For similar reasons, the Auditor General submits his report direct to the House of Commons through the Speaker.

Since 1977, the Auditor General has been directed by law to report to Parliament on the following issues:

- whether the government's financial statements are complete and fair. Known as the 'attest' function, this is carried out annually in all departments and agencies.
- instances where departments have not complied with legislative and policy directives, have not exhibited due regard to economy and efficiency, or do not have procedures to measure and report on the effectiveness of programs. These are the Auditor General's 'value-for-money' functions.

Together, the attest and value-for-money functions make up the Auditor General's program of comprehensive auditing. Control of the public purse is achieved when government officials manage public resources prudently, comply with the law, and are accountable for their actions. Parliament gives direction and authorizes the expenditure of monies for certain purposes. Government in turn must display due regard for value for money in carrying out that direction and must give Parliament enough information so that the government can be held to account for its actions. This is the essence of accountability in Parliament.

Dubois sees the role of the Auditor General as helping legislators maintain control of the purse by informing them about how the executive approaches its responsibilities. The primary role is to provide the audit information the House of Commons needs to carry out its scrutiny role. A general objective of the OAG is that audits should make a contribution to better government, but audits do not include reviewing the merits of government policy. The Auditor General's role begins only after policy has been decided and implementation has begun.

Nor does the Auditor General usually comment on the effectiveness of programs, because this may be seen as criticism of the merits of policy. Instead the auditors limit themselves to assessing the reliability and completeness of the government's information on program effectiveness and whether the government is reporting this information adequately to Parliament.

Although there are few legislative restrictions on comprehensive auditing, there are some practical

limitations. For example, the nature of some government programs is such that they have multiple objectives that are 'soft' and difficult to quantify, making comprehensive auditing a challenging endeavour. In addition, the Auditor General sometimes encounters situations where extra costs are incurred because decision making has been dominated by objectives other than the stated program objective.

This is not to say that the reason for the extra costs was not a perfectly valid government objective. But problems can arise if Parliament is not informed of the real reason for the expenditure. In such cases neither Parliament nor its auditor can say whether appropriate care has been given to achieving value for money in the use of public resources. Thus, openness and clarity in stating the real purposes of program expenditures would assist in establishing better accountability relationships.

The Auditor and Accountability

Dubois outlined the role of the Office of the Auditor General (OAG) in relation to the various accountability processes that exist in Parliament. For example, with respect to ministerial responsibility, he pointed out that the annual attest audit of each minister's portfolio supports that responsibility, but audits may also enhance ministerial responsibility by raising issues that deserve the minister's attention.

The Public Accounts Committee (PAC) is the main channel through which the OAG deals with Parliament. It differs from other committees in that it has an opposition chairperson and generally operates in a non-partisan way, since politicization of its work tends to neutralize its effectiveness. But the work of the PAC is mainly retrospective; it looks back at expenditures that have already been made. Dubois points out that committees looking to influence future decisions or spending, including those examining estimates, might benefit from the OAG's independent advice and information but seldom call for this assistance.

Part of the accountability process is served when the Auditor General's report is tabled in the House. That process continues when the report is broken into more manageable chunks by a committee and digested in some detail through hearings and debate. Committees can then use the vehicles of public exposure and reports and recommendations to the House to call the government to account for its actions.

Committees (and especially the PAC) are a particularly effective accountability mechanism when

they secure commitments from or make recommendations to departments for specific action in response to audits. By operating at a level of detail and following up on their recommendations to departments, committees can perform functions essential to accountability that the House itself does not have time to perform. In this sense, committees are the means of effective accountability in Parliament.

The work of the OAG is also used in less visible ways to support or strengthen accountability, for example, as the basis of a line of inquiry during question period and as a source of authoritative, objective information for debate in the House or committees. MPs can use the information in their role as policy critics, standing or legislative committee members, and participants in debates.

Question Period

One participant suggested, and Dubois agreed, that control of the purse would be enhanced if standing committees took a more prospective outlook, attempting to influence policy and spending decisions before they are made instead of concentrating on the past. But Fisher disagreed, arguing that Members are generally more interested in expanding or adding programs and expenditures, not scrutinizing them. He also noted that despite considerable efforts to improve the way information is presented in the estimates, accountability has not improved.

By way of example, Fisher mentioned communications and culture committee chairman Felix Holtzman, an MP who is concerned about reducing spending but whose efforts immediately attracted a strong contingent of interest groups opposed to his approach. How can we force MPs to pay attention to matters like economy, efficiency and effectiveness or spending reduction given the array of groups defending the status quo or pressing for even more spending?

A second area of discussion centred on whether party discipline lay at the heart of the accountability problem. On one hand, some participants argued, governments could be held more accountable by the House and its committees if they did not exercise such complete control over their majorities. But others countered that as long as we have a parliamentary system where the executive must face and maintain the confidence of the legislature, parties are inevitable; if today's parties were abolished tomorrow morning, more would be forming by noon.

Paul Thomas engaged Raymond Dubois in debate on several issues: what the Auditor General means by "better government" and how he assesses this; and whether the Auditor General should comment on issues such as the nature or wording of federal-provincial cost-sharing agreements, which arise from compromises reached through a political process. Do these not go beyond the scope of the legislative auditor's proper role?

Dubois noted that recent experience shows that parliamentarians are indeed interested in knowing whether transfer moneys are spent for the purposes intended and that unclear wording in transfer agreements complicates this determination.

Panel III

Responsible Government and the Public Service

Moderator:

Professor J.R. Mallory
Department of Political Science
McGill University

Panelists:

Professor Paul G. Thomas
Department of Political Studies
University of Manitoba

Professor Sharon Sutherland
Department of Public Administration
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THE QUESTION OF WHO is responsible or accountable boils down to the impossible distinction between policy and administration. Where does policy advice end and administration begin? This is the question at the heart of responsible government and the public service. How much can a minister be held accountable for, given the growth in the capacity and reach of government?

As Professor Mallory pointed out, we have come a long way from the 1960s in terms of more direct contact between Parliament and officials for purposes of accountability. The public service has become much more visible in the accountability process and in explaining government policy. Yet there are still grey areas where we have yet to define what ministers can reasonably be expected to answer for. Moreover, developments such as the growth of ministers' staffs and the expanding scope of the Prime Minister's Office have added another dimension to these questions.

Defining Terms

All changes to parliamentary procedures and practices have some constitutional significance, not just in terms of formal rules or conventions, but also in terms of attitudes and understandings — the unwritten rules about what people with political influence regard as the proper way to deal with issues

and reach decisions. Recent developments in the political system, **Paul Thomas** argued, are placing a strain on traditional constitutional conventions of ministerial responsibility and the complementary idea of an anonymous, neutral and permanent public service.

To define the terms of this debate,

- *responsibility* refers to an obligation to perform certain tasks, an obligation that is owed to the authority that assigned those tasks, and
- *accountability* refers to an obligation to reveal, to explain and to justify how one discharges responsibilities and to be rewarded or penalized according to the judgement on one's performance. The origins of accountability in the political system can be several: constitutional, statutory, political, hierarchical or contractual.

The orthodox constitutional theory of cabinet-parliamentary government presumes only an indirect relationship between Parliament and the public service. The doctrine of ministerial responsibility assigns to elected ministers, both individually and collectively, responsibility for explaining and defending in public the actions of government. Of course the 'pure' version of ministerial responsibility, if it ever operated in practice, has been diluted over time. Ministers are not expected to know about everything done in their departments and feel compelled to resign only if they had direct knowledge and involvement with a serious blunder by their department or, even more common, if they are seen as guilty of personal behaviour unbecoming a public official.

Ministerial responsibility is not defunct; ministers must still answer for the management of their departments and are expected to prevent the recurrence of mistakes. It is the loss of political reputation, however, rather than the loss of a job, that constitutes the real sanction behind the doctrine today.

The conventions surrounding the role of the public service derive directly from the doctrine of ministerial responsibility and are meant to reinforce democratic political control. Public servants are expected to serve ministers loyally and to the best of their ability. And loyalty is a two-way street; ministers are expected to accept responsibility for departmental actions and to shield officials from the glare of publicity and personal identification.

The obverse of complete ministerial responsibility is a public service that is anonymous, politically neutral and relatively permanent. A 1985 statement by Sir Robert Armstrong, former head of the Home

Civil Service, on the formal role of the public service ("The Civil Service has no constitutional personality or responsibility separate from the duly elected government of the day.") had changed little from the thinking of the nineteenth century, when these conventions took shape.

This statement may have provoked snickers at Whitehall among public servants who thought it missed the mark on the real relationship between ministers and public servants, but what else could Sir Robert have written? Guidelines issued in 1982 by the Canadian Privy Council Office offered basically the same description of the relationships among ministers, officials and Parliament. Everyone recognizes the unreality of these conventional statements and accepts that there is a significant element of mythology in the concept of ministerial responsibility given the scope of modern government and the demands on ministerial time.

But although we are long on diagnosing the problems, we are short on prescriptions that would command widespread support. Not the least reason for the lack of agreement on a direction for reform is the fact that the traditional approach to accountability represents a coherent set of interdependent ideas. As a result, tinkering with parts of the system may be impossible. If parts of the traditional system are faulty, the real problem may be how to replace the original holistic scheme with one that is both internally consistent and practical.

Conventions Strained

Despite the flexibility and adaptability of the cabinet-parliamentary system of government, recent developments have imposed severe strains on the conventional understandings of the roles of ministers, officials and Parliament. The growing insistence on greater openness, responsiveness and accountability of the bureaucracy has produced a number of changes, and others are being contemplated. The philosophy at work seems to be that if accountability is a good thing, you cannot have too much of it. Adding new accountability devices is designed to compensate for the presumed deficiencies of existing means of holding the bureaucracy accountable. The assumption is that bureaucratic accountability is absent or weakly enforced, and that this leads to irresponsible behaviour by public servants.

Thomas suggests that this conclusion is premature. Before we can conclude that accountability is missing, we must examine the cumulative impact of various control measures, not just the potential for their

separate failure. We would also have to examine how the inner sense of responsibility of public servants contributes to their willingness to be held accountable for their actions. Multiplying accountability requirements will confuse rather than clarify responsibility for a particular suggestion, Thomas argues. Layering accountability requirements on top of one another may detract from the efficiency and effectiveness of departments and other agencies of government. For accountability to be effective, it must be of the right kind and focused clearly on the individuals that exercise the corresponding authority.

Pinpointing clear-cut responsibility for particular actions is difficult, if not impossible, in a complex system like modern government. The blurring of accountability relationships has been compounded by recent developments in the House of Commons and elsewhere:

- Spending estimates and annual reports now go automatically to the appropriate standing committees of the House, where senior officials appear, often without their ministers present, to explain and at times even defend departmental actions. But as we know, such committees tend to focus on policy, not financial and management issues. Most officials have handled the new situation with skill, but there have been unfortunate episodes involving verbal attacks on public servants and attempts to entangle them in policy controversies.
- Since February 1986 order-in-council appointments (apart from judicial appointments) are eligible for review by the appropriate standing committee. Critics held that review of appointments is a congressional idea that would compromise the neutrality of the public service and discourage competent individuals from joining the public service. In practice, the procedure has not produced such a drastic constitutional upheaval, but nor has it contributed significantly to parliamentary influence on the bureaucracy, one of the ostensible reasons for introducing it. For the most part the targets of review have been political appointments, not appointments of deputy ministers from within the public service, and since committees cannot veto appointments, opposition members may well see the process as an exercise in futility.
- Parliament has created several auxiliary agencies to strengthen its surveillance of the bureaucracy — the Auditor General, the Information, Privacy and Official Languages Commissioners, the

Canadian Human Rights Commission and other bodies that report direct to Parliament. Thomas is concerned in particular that the extended mandate of the Auditor General makes it virtually impossible to avoid becoming entangled in policy issues.

Again, the issue is that efforts to enhance accountability raise challenges to existing constitutional relationships. And as Thomas points out, despite the multiplication of accountability requirements, there has been no improvement in the public perception that the bureaucracy is unresponsive and not under democratic control. One response has been to suggest that deputy ministers should be directly and separately accountable to Parliament for their management responsibilities (recommendations made by the Lambert Commission in Canada and the Coombs Commission in Australia, among others).

Thomas rejects this as radical and unnecessary constitutional change, believing it an overreaction to the problems of political direction and control of modern government. It has not been demonstrated conclusively that the bureaucracy is unresponsive to political leadership, that it has abused the extensive discretionary authority it has been granted, or that mismanagement is a systemic problem throughout the public service.

Further, separate accountability for deputy ministers implies that a clear demarcation line can be drawn between policy and administration, ignoring the fact that an increasing portion of policy represents a succession to past policies based on administrative experience, as opposed to pure policy innovation. Finally, accountability of deputy ministers would blur rather than clarify the accountability picture by multiplying accountability relationships and the potential for conflict between them. Such proposals may be made in recognition of existing trends, but if implemented they would also extend and hasten those trends, which have seen a gradual loss of anonymity for senior public servants and could lead in the long term to the increased politicization of the public service.

Why Ministers Resign

As Thomas pointed out, recent reform proposals have been premised on the belief that the doctrine of individual ministerial responsibility for administration has become outdated or unrealistic and that it stands in the way of 'genuine' accountability by senior officials. Having reviewed the reasons for the 149

ministerial resignations that have occurred since 1867, Sharon Sutherland concludes that individual ministerial responsibility for maladministration by officials, which many argue is now dead, was in fact born dead.

Sutherland provided a breakdown of all the resignations from operating cabinets (1867 to August 1989) described in a compilation prepared by the Library of Parliament's Information and Technical Services Branch. In Canadian history there have been only two instances of resignations for maladministration, both involving actions taken in person by the minister in question. Of the 147 other resignations from cabinet,

- 41 per cent were because ministers had accepted other positions (all but three of them political appointments),
- nearly 20 per cent were on account of policy differences with the prime minister or the cabinet,
- 15 per cent were ostensibly for reasons of ill health, and
- a total of 19 ministers (including the 2 resignations for maladministration) were brought down as individuals: 7 for varieties of conflict of interest; 2 for interference with the judicial system; 3 hounded from the Pearson minority government that could not protect them; 4 for purely personal misconduct; and a minister of defence for a kind of misjudgment difficult to classify.

In other words, it is the prime minister that manages the cabinet and its solidarity, requesting resignations where necessary to preserve it. In this sense ministerial responsibility is not dead: collective responsibility/solidarity arguably operates in the majority of resignations, and as for individual ministerial responsibility, ministers resign over maladministration only if they had a hand in it or could reasonably have known about it. In this context, what does the responsibility of public service officials mean? In what sense can senior officials be held responsible, and for what, in the political forums of the House?

In the past decade or more, proposals for reform, largely of the House of Commons committee system, have been made to deal with these issues, among others. But in Sutherland's view the proposals (some of which have been implemented) raise more questions than they answer:

- To what extent can bureaucrats be held responsible without creating corresponding areas of positive authority?

The authorities vested in officials by virtue of the *Financial Administration Act* and similar administrative

and personnel law are limited in comparison to the scope for inquiry given to standing committees under the post-1985 reforms. Committees can investigate the full array of departmental statutes, objectives, and the relationships among the objectives and the department's activities. Given this largely policy-oriented mandate, how can we look to standing committees to improve the surveillance of departmental administrative procedures, budgetary processes and expenditures?

- To what extent can bureaucrats be held responsible without creating legal rights for officials?

This issue has not been addressed in reforms to date, but if public officials are to be brought before committees to answer for their actions or for their exercise of responsibilities, then eventually the system will have to elaborate their rights as witnesses (the right to know the whole case against them, to have counsel, to appeal a decision, to receive compensation when wronged). How would establishing such rights affect the privileges of MPs? And the powers of ministers? In short, simple justice will drive us toward articulating a constitutional personality for the public service.

- To what extent can the House of Commons delegate to its committees powers that it does not really have or exercise itself?

For example, a committee cannot 'make' a bureaucrat do something that the minister doesn't want done, any more than the House of Commons can force a government to take any given step (short of resigning). The House may inquire into anything it wishes, but this is in effect a consensual right, based in part on responsiveness to public interests and concerns. This power is delegated to committees, but these committees consist of very small minorities of self-selected people, who may represent neither public opinion nor House of Commons opinion, suggesting to Sutherland faulty logic in delegating this power.

- Does it make sense to organize committees to reflect the organization of government into departments?

If the aim is to inquire into the "whole policy array", would it not make more sense to base the Commons standing committees on the cabinet committee structure (or other similar system of policy sectors) than to adopt a system of inquiry inside administrative entities? For example, there is no committee to shadow Treasury Board and thus even less attentiveness to the government's overall accountability for its budget than in Britain.

Abandon Partisanship?

Related to this question are issues that have less to do with the responsibility of officials than with the other premises of reform, for example, whether governments have the capacity to absorb many of the policy recommendations coming out of such committees, which may involve new proposals that contradict or go far beyond anything the government has on its own agenda. Similarly, can opposition parties give equal attention to building opposing programs and contributing constructively to committee proposals for (possibly the same) programs?

- Can committee members be expected to leave partisanship at the door and enter committees armed only with pure reason and common sense, especially when much of the committee system is premised on an adversary or court-like style of inquiry?
- Can MPs build an interesting backbench career through committee work, as implied by reform proposals, within an electoral system where constituencies like to change members regularly?

To sum up her misgivings about the thinking underlying recent changes in the parliamentary committee system aimed at dealing with the relationship between Parliament and the public service, Sutherland referred to A.H. Birch's *Representative and Responsible Government* (discovering only later that he was in the audience). Birch describes two contending conceptions of parliamentary government the "Liberal" or "majesty of Parliament" conception, which sees executive power as largely illegitimate, and the "Whitehall" or "executive-centred" conception, based on the government's right to govern.

Sutherland argues that in post-1984 Canada the proponents of these competing views have been no more successful in working out a shared understanding of what is possible (or even a shared description of what happens) in a parliamentary democracy than the contending forces were in Britain in 1964 when Birch published his work. In Canada they are still shouting past each other. Birch put it this way:

The most important terms in the Liberal language are the sovereignty of Parliament, ministerial responsibility, and Parliamentary control of the executive. This terminology is misleading in two rather different ways. Each of them has both a formal and a limited meaning which is correct and a wider and looser meaning

which gives a false impression of the situation. Thus the statement that Parliament is sovereign embodies an important truth; that legislation passed by Parliament cannot legally be challenged by any other authority. But the statement also carries the implication that Parliament is all-powerful, and this hardly corresponds with the facts of the matter. Equally, the statement that ministers are responsible to Parliament for the work of their departments conveys the important truth that ministers have to appear in Parliament and explain and if possible justify what ministers have done. But it also conveys the impression that ministers have to pay the penalty of resignation if departmental blunders are revealed, and this is hardly borne out by experience.

As Sutherland sees it, the language of the debate in Canada has made it appear that the whole responsibility for making the government responsive depends upon the efficacy of the House in controlling and criticizing ministers. This is not so. The political process is larger than the House and includes the legitimate activities of the media, pressure groups, protest demonstrations and so on. To quote Birch again,

[The] limitation [of Whitehall language] is that it gives the impression that the responsiveness of the administration to public wants depends simply upon the sense of duty of civil servants and ministers. Like the Liberal language, it seriously underrates the complexity and flexibility of the political system.

When parliamentarians and observers say that Parliament's power has declined, they are really talking about the power of backbenchers relative to that of the government, says Sutherland. This is based on the misconception that political power can be located clearly and precisely. The notion that ministers control departments and Parliament controls ministers describes what are in fact very tenuous relationships. We must analyse what we have in order to understand it before we simply spoil it.

Better Than Before

Whatever criticisms we may wish to level at the current committee system, Jack Manion believes that it is still an improvement on what went before. He pointed to his experience with several Senate committees as the model of constructive, instructive

and useful exercises in parliamentary influence on the public service. Even in these cases, however, where officials spent long hours with the committees, there was never any question but that they were there for ministers.

The experience with the new House of Commons standing committees has been mixed. Some of the problems that have arisen may have resulted from a lack of understanding, on the part of committee members, ministers and public servants, of the meaning of responsible government and of their respective roles within it.

The current guidelines for public servants appearing as witnesses at parliamentary committees underline several assumptions: that ministers are fully responsible for all the activities of their departments (there can be no distinction between policy and administration); that deputy ministers are accountable to ministers, not to Parliament; that deputy ministers and officials are responsible for supporting ministers with respect to the latter's answerability before Parliament, and it is in this capacity that officials appear as witnesses before committees; and that ministers decide who will appear at committees and speak on their behalf.

Not all issues have been resolved, nor do the guidelines eliminate all possibility of conflict or confrontation. For example, committees have the power to summon any witness and to compel testimony under oath. Public servants summoned under such conditions face a dilemma if their minister does not want them to appear, or if they are bound by their oath of loyalty not to reveal information that the committee may ask for, or if the minister has directed them not to reveal it.

Nor do committee members necessarily feel bound by the restrictions on public servants. Some committees still approach public servants directly or ask questions that public servants are not permitted to answer, such as questions about the nature of the advice provided to a minister. In this sense the post-1985 rules of procedure have gaps; they do not recognize that ministers, not public servants, are accountable to Parliament and that public servants do not appear at parliamentary committees in order to fulfil an accountability requirement, regardless of whether the issue is policy or administration.

The answer, Manion believes, lies in reaching a better understanding among all the parties of the risks inherent in the relationship between Parliament and the public service. Ignoring the conventions surrounding ministerial responsibility, for example,

by forcing officials to make public their advice to ministers, undermines the minister's role and freedom to consider advice from many sources before reaching a decision.

The more subtle risk is that experienced and adroit public servants could use the committee system to advocate and promote their own ideas, even if they were at variance with those of the minister. On the other hand, if committees came to be seen as one-sided or unfair to the public servants appearing before them (ignoring the rights Sharon Sutherland identified), it would be a great temptation to witnesses to be only as helpful as they had to be under the circumstances. Eventually, busy ministers would be asked more and more often by public servants to be present to defend them at parliamentary committees, and we would be back where we started long before 1985.

Question Period

One listener challenged the value of guidelines for public servants (or for parliamentarians, for that matter), expressing concern that an understanding of the substance of these conventions will be lost in the attempt to reduce them to a set of rules. Sutherland agreed, recalling Birch's contending conceptions of parliamentary democracy; she noted that the existence of rules presupposes someone in control of the system, while conventions are based on consensus about how the system works. Manion defended the guidelines as being an attempt to identify what is certain and what is not certain about the relationship between Parliament and the public service; they should not be seen as a set of rules.

Several listeners supported the contention that the cumulative effect of engaging public servants in debate at committees would be eventually to undermine the neutrality of the public service. Manion agreed and for this reason opposes televising the appearance of public servants at parliamentary committees. Another source of erosion of the neutrality and anonymity of the public service, suggested another listener, is the ease of movement between the political and administrative realms, particularly as the size of ministers' staffs increases and their latitude to make appointments expands. Manion did not see this as a serious problem.

— *rapporteur, Kathryn Randle*

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