

FEDERAL HOUSE COMMITTEE REFORM: MINDLESS ADVERSARIALISM WELL DONE

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INTRODUCTION

Intermittently in the fall of 2002, starting in early September, and then dominating the period of 30 October to 5 November, the attention of the national media, all parties in the House of Commons, the Government House Leaders, and the Prime Minister was engaged by the possibility of one House vote. At issue was what looked like a minor change to Standing Committee procedure to adjust Standing Order 106, proposed in two motions brought under different procedures, one of them to be perhaps passed before the session's committees would be struck. The formal goal was to provide that standing committee chairs and vice-chairs would be elected in their respective committees by a *mandatory* secret ballot. The benefit promised by supporters was that the change would liberate the House's standing committees from government direction, allowing them to pursue democracy and the public interest.

All the opposition parties — the Canadian Alliance (the Official Opposition), the Bloc Québécois, the Progressive Conservatives and the New Democratic Party — and the section of the split parliamentary Liberal party owing loyalty to the former Finance Minister, Paul Martin, were united for Parliament and against the Prime Minister. The Prime Minister, often mentioned in the context of non-elected advisers in the Prime Minister's Office and the enforcer of party discipline in the House, was called many names. All this might seem dismissible as normal House theatrics.

But, labouriously, through a series of procedural moves by its House Leader, John Reynolds, and assisted by a significant Speaker's ruling, the Canadian Alliance did achieve a vote on the issue on 5 November. The Prime Minister declared a free vote for backbenchers, but told members of the government to vote against the provision. The public differences between Martin and the Prime Minister did the rest. Martin had, since his departure from the position of finance minister and thus from government ranks on 1

June 2002,¹ been openly running for the party leadership. Just two weeks earlier he had declared his approval of such a secret ballot to deal with what he called the "democratic deficit" and "mindless adversarialism" in Canada's Parliament.

The existing practice for electing chairs by show of hands provided a technical option of a secret ballot that could be invoked by unanimous consent of all committee members, and on occasion this occurred. The practice, however, was that the government whips identified prospective chairs and government vice-chairs from among government committee members (having first allocated members with other whips), and managed the elections by communicating their choices to government-side backbenchers. Normal practice has been to nominate one candidate for each post. Committee chairs in the House are all Government members, and — unlike the Speaker — remain in caucus when serving. Since 2001, the chairs and vice-chairs receive a stipend from government for their work.² (Opposition whips identified their own vice-chair for each committee.)

A vote by show of hands, it might be said, would be reassuring to government house managers. Standing committees — with the exception of a handful of specialist committees — largely reflect ministerial departments, and in Canada they are richly multifunctional. Significantly, standing committees handle most government legislation that falls within the

¹ Library of Parliament, Information and Documentation Branch, "Ministerial Resignations: Current List" (updated 2 June 2002).

² In part to encourage the Standing Committees to review more energetically the annual Estimates of Expenditure, the Commission to Review Allowances of Parliamentarians (the Lumley Commission) recommended additional salaries for chairs and vice-chairs of all but two House and Senate Committees in recommendation 5 in its report of May, 2001. The Commission recommended about \$10,000 for chairs and half that for vice-chairs. The recommendation was swiftly passed as part of Bill C-28, *An Act to Amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act*, 1st Sess., 37th Parl., 2001, receiving Royal Assent on 14 June 2001.

policy sphere of government organizations in their remit.³ Government of course is responsible for the product of the legislative system.

The theme of the article is that while the event looked arcane, its substance was both radical and important for several reasons. Most obviously, the Alliance–Martin victory was enacted on a particular view of House Standing Committees that denies the majoritarian principle of democracy: they could and should be freed from the government's majority rule of the House and thus from government control. Reynolds and Martin, the latter outside the House, both argued essentially that committees belong to the House and not to the government, and are in some sense foundational to and constitutive of the House. Second, of real practical importance, the expression that "the House is master of its own procedures" had before this meant that procedural change is agreed consensually by the various parties in careful and civil discussion. This was somewhat despairingly explained only in the second portion of debate on 31 October by the Government House Leader, Don Boudria.⁴ In pushing for a vote, the various House factions showed themselves willing to seize House procedure to advance their political goals. In effect, in the use of a procedural ruse in this case, a certain line has been crossed. Third, the government's leading ministers were unwisely silent on this issue, a factor that becomes increasingly important for the record. Partly because of this lack of leadership, the debate lacked content, poetry and passion. There was no thorough, consistent, cohesive and principled explanation offered for the reform or the manner used to achieve it.

The procedure of this article is to first briefly sketch a context for the events as the last part of this introduction. It then provides a chronology of the procedural tactics put into play, before moving to the

pre-debate positioning of the major actors. This segment is dominated by an account and discussion of Martin's views on House reform made in a speech that was not subject to House contestation. The next section walks the reader through the main points made in the debate that preceded the vote in the House, to provide evidence for the claim above. It starts with the arguments of the House leaders and whips, first, and then summarizes the stands taken by the backbenchers who participated. The last section sketches a description of the practices for choosing committee chairs in Britain and in the United States, often the implicit cultural model for Canadian reformers.

The first Mulroney Government implemented the McGrath Committee's reforms in 1985–1986, which were in turn based on work done by the Lefebvre Committee. In regard to standing committees, the reforms conferred authority on committees to choose their own subjects for investigation, set their own agendas, shadow departmental and portfolio administration and assess results, enjoy stable memberships, elect their officers, and exclude parliamentary secretaries (the minister's representative) from their membership. (For the current powers of standing committees which have developed since McGrath, see Chapter XIII of the Standing Orders.⁵) More generally, the McGrath changes provided for the election of the Speaker and established a separate set of legislative committees to whom government would thenceforth send legislation, an innovation borrowed from Britain.⁶ Thus a model "McGrath" committee was intended to execute departmentally-oriented scrutiny functions, conduct broader inquiries from time to time, and provide contributions to the earliest stages of policy development, including discussing policy that could lead to Bills — but not to process legislation. As it happened, the legislative committees proved deeply unpopular in practice, and although they remain an option, the "expert" standing committees recaptured the role of examining legislation.

Before the 1985 reforms, party managers sitting together in a striking committee had openly allocated committee memberships and designated their chairs and vice-chairs. In the session following the McGrath changes, the downside of removing top-down

³ In the second session of the thirty-seventh Parliament, beginning 30 September 2002, there are eighteen committees of which most follow the estimates, administrative processes and policy outcomes for a group of major government organizations, of which a department is usually at the centre. While the system is always subject to adjustment to reflect changes in the organization of government, "standing" means, loosely, that a committee has no determined end. Public Accounts has a specific constitutional duty and status, thus one speaks somewhat loosely of seventeen standing committees at the moment. There are other types of committees: legislative committees can be struck even though most legislation is presently handled by the standing committees; special committees can be given references; and there are both standing and special joint committees between the House and the Senate. See Canada, House of Commons, *Committees: A Practical Guide*, 6th ed. (Ottawa: House of Commons, 2001), online: <www.parl.gc.ca/InfoCom/documents/GuidePratique>.

⁴ *House of Commons Debates* (31 October 2002) at 1159–60.

⁵ Canada, House of Commons, *Standing Orders of the House of Commons* (Canadian Government Publishing, 2001).

⁶ Canada, House of Commons, *Report of the Special Committee on the Reform of the House of Commons: Third Report* (The McGrath Report), Appendix V, 127, Votes and Proceedings, 33d Parl., 2d Sess. (18 June 1985). See also S.L. Sutherland, *Parliamentary Reform and the Federal Public Service*, University of Western Ontario: National Centre for Management Research and Development (July 1988).

government management of committees was made evident. In several committees, clerks found themselves sending out for Bibles as members insisted that public servant witnesses swear formal oaths to tell the truth.⁷ In 1987, government members in the Labour, Employment and Immigration Committee behaved so outrageously that the chairman resigned rather than, in his words, "endorse its proceedings by his presence."⁸ The committee then rejected the government's new choice of chair and instead elected a colourful Quebecer. The new committee chair drove the Deputy Minister of the Department into retirement by providing or encouraging one accusation after another both in committee and on the floor of the House.⁹ The MP accusers were protected by privilege and the public servant, without standing in the House, could not defend himself against even the most egregious fictions. Such events made it clear that with the overt, understood, visible control of the striking committee and the Parliamentary Secretary gone, very attentive *sub rosa* management — which would necessarily involve considerably more intelligence-gathering activity and blandishment — could not be avoided. The McGrath team had counted on their reforms to change the culture of the House such that collegiality would replace partisanship.

In short, an idea that demonstrable influence over governance could be exercised by supporters of government and opposition working harmoniously in self-restraining committees, was put vaguely onto paper in the mid-1980s. The cultural change that followed was an opposition willingness to interpret government management of committees as "interference," at least rhetorically, an idea not shared by the government side. The divide helps one interpret Government Whip Marlene Catterall's plain statement to the effect that, the government having the right to govern, it must be able to have confidence in the chairs of the

committees.¹⁰ There are overlapping questions behind the Catterall statement that can guide a reading of this text. How can Standing Committees be free of government coordination (whips' influence) and at the same time assist with the implementation of the government's basic policy program? How, if committees are self-directing, are their activities to remain relevant to the government's plan of work? Given that committees are created and mandated by the House, by what right can they exercise powers beyond those delegated? In short, parliamentary government in its party government form — ministerial responsibility, confidence and collective responsibility, and party discipline — cannot in logic be both the basic mode of operation and at the same time "the problem" of the system.

HOW THE VOTE WAS WON PROCEDURALLY

The procedural manoeuvres on how to select chairs and vice-chairs of committees were set up in the Standing Committee on Procedure and House Affairs in late October. The Alliance House leader, Reynolds, introduced a motion in the Procedure Committee on 29 October to make the secret ballot mandatory. This provision, unadorned, would have allowed members of all parties to secretly elect chairs without any party allocation principle whatever. Carolyn Parrish, a Liberal MP, resolved the impasse with an amendment that only a member of the government could hold the chair — the proposed secret ballot would therefore allow all members of a committee to secretly choose between Liberals should there be more than one Liberal nominee for the chair or vice-chair. A second amendment was added that the change should be reviewed before "its next application." Parrish and another backbench Liberal, Guy St. Julien, joined the opposition representatives on the committee to pass the motion, allowing the recommendation to be sent to the House for its decision in the form of a Report.¹¹

It was therefore the Committee on Procedure and House Affairs that first got the change onto the floor of the House, by serving notice on 29 October 2002 that it would make a motion in the House in forty-eight hours that its recommendation be concurred in. By 30 October, all opposition parties had committed

⁷ For a general introduction to the unpredictable outcomes of reforms, see J.R. Mallory, "Parliament: Every Reform Creates a New Problem" (1979) 14:2 J. Can. Stud. 26 at 26–34. See also Peter Dobell, *Parliamentary Secretaries: The Consequences of Constant Rotation*, Institute for Research on Public Policy (September 2001); and Canadian Study of Parliament Group, *Parliamentary Reform: Making it Work* (Proceedings of the Conference, Parliament Buildings, Ottawa, 13 May 1994).

⁸ For a partial history, see S.L. Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem" (1991) 24 Can. J. Poli. Sci. 91 at 114–17. In July of 1988 the Conservative Government also experienced a House revolt, the so-called "dinosaur" uprising by eighteen backbenchers against Bill C-72 amending the Official Languages Act to enhance bilingual requirements and also to guarantee a right to trial in English or in French.

⁹ *Ibid.*

¹⁰ Cited in CBC News transcript of "MPs back elected chairs for Commons committees" (30 October 2002) at 21:25, online: <cbc.ca/storyview/CBC/2002/10/29/committees>.

¹¹ Although the sequence of events is clear in testimony, the following provides a colourful history: Bill Curry, "PM tried for two weeks to avoid vote" *National Post* (6 November 2002) A4.

themselves to support the motion, as had Martin and a number of other Liberal backbenchers.

However, on 30 October, Reynolds set in motion a spare plan. He proposed two motions for debate under the aegis of an allotted opposition supply day (under Standing Order 81) that the Alliance had earlier borrowed for the purpose from the New Democratic Party. The second of these two motions was the same as that moved by the Procedures Committee Chair. The supply day debate would occur the very next day — the same day as the House debate on the Procedure Committee's Report. Boudria, the Government House Leader, objected to the Alliance tactics on 30 October, asking the Speaker for clarification on which "supply" matter would be brought forward. The Speaker replied that he would rule the following morning, "unless some other arrangement has been made."¹² The next day, the "other arrangement" had prevailed. The Alliance withdrew one motion, retaining the motion on the secret ballot as its supply day business, the debate on which would take place in the second part of the day.

Therefore, on 31 October, the Procedure Committee's chair, Liberal Peter Adams, made a motion in the House at approximately 10:00 AM, recommending the adoption of his own Committee's Report. Yvon Godin, an NDP member, next asked Adams whether he believed the motion should be voted upon immediately, without any government amendments. Fifteen minutes on, Jacques Saada, the Liberal deputy whip, moved an amendment that the report of the Procedure Committee be referred back to the Committee for reconsideration, reporting to the House again within fifteen sitting days, effectively bringing the motion under government control. Reynolds soon moved that the House proceed to Orders of the Day. His motion was voted on and lost 119 to eighty-six. (Thus the government apparently had a majority early in the day on October 31.) From that point forward the House debated the Procedures Committee Report as amended by Saada. The debate consisted primarily of name-calling. Since only two of the House of Commons' standing committees — Finance and Foreign Affairs — had then been struck, supporters of the secret ballot urged that the reform should take effect immediately, to affect the current session. As 2:00 PM drew near, Adams rose to ask for unanimous consent to revert to his original motion, and vote. The Deputy Speaker asked whether there was unanimous consent, but voices were heard saying "no," and the House moved to Statements by Members and other business of the day.

¹² *House of Commons Debates* (30 October 2002) at 1081.

Just after 3:00 PM that same afternoon, the House moved to the supply motion. Boudria began with a point of order, attempting to convince the Speaker that because the Alliance's supply day motion was identical with the Procedures Committee motion before the House that morning, it should be disqualified for recurrence for debate that afternoon. Reynolds objected that the Procedures Committee motion had been effectively adjourned, the government having amended it, and the morning's debate had been on the government motion. Reynolds then told the Speaker that in disallowing the motion, he would be putting the subject matter of the opposition's supply motion into the hands of Cabinet, and, of course, establishing a grave precedent. Reynolds had in hand a ruling by Speaker James Jerome, which stated that "the opposition prerogative ... is very broad in the use of the allotted day and ought not to be interfered with."¹³ Loyola Hearn, a Progressive Conservative member, next rose to cite Erskine May that a question may be raised again if it had not been definitely decided, alongside Beauchesne's statement that "[m]otions on allotted days may relate to any matter within the jurisdiction of the Parliament of Canada ... and ought not to be interfered with except on the clearest and most certain procedural grounds."¹⁴ Chuck Strahl, a Canadian Alliance Member, added the point that, if allotted day motions can be disallowed on grounds that such business is already before the House in some sense, then any subject whatever could be prevented by government by identifying a report awaiting attention.

The Speaker then made his ruling on the admissibility of the opposition motion proposed for that supply day, adding "what is left of it."¹⁵ On the basis of Speaker Lamoureux's finding in 1973 that between then and 1968, when the practice of allotted opposition days had begun, no opposition motion had been ruled out of order,¹⁶ combined with the negative results of a search by his Office that morning for any such case between 1973 and the present, he ruled that the Opposition motion was in order.

The debate on the Alliance supply day motion began at about 3:25 PM. At 6:15 PM the Deputy Speaker deemed that all the questions necessary for disposing of the matter under supply had been put, and that a recorded division was further deemed requested and deferred until Tuesday, 5 November at 3:00 PM.

¹³ *Supra* note 4 at 1148. He does not give the details of the ruling.

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 1149.

¹⁶ *Ibid.*

On 5 November, the Alliance motion was carried with 174 MPs voting for it, and eighty-seven against. Fifty-six Liberal MPs stood beside Martin and the Alliance. The government's usual comfortable majority of more than forty votes over all four opposition parties was thus denied by its own MPs. During the next few days, in the fifteen committees that had not yet been struck, the result of the mandatory secret ballot was that the Alliance was voted out of five or about a third of the vice-chair positions it had previously held as the Official Opposition. The government fared better. Liberal Members, free at last, upset one of the Liberal whip's choices for the fifteen committee chairs in the Transport Committee.¹⁷

POSITIONING REFORM BEFORE THE LIBERAL PARTY SPLIT

As they approached the beginning of the second session of the thirty-seventh Parliament at the end of September 2002, every player — the Government, the Official Opposition, Martin and his supporters as opposition internal to the Liberal party — made statements about the role of Parliament, sometimes designating the House of Commons, and sometimes the House, Senate and Crown, which together constitute Parliament in its formal identity as the sovereign authority of the state. The intention of the government to improve procedures in both the House and Senate was signalled but not elaborated in the Speech from the Throne of 30 January 2001. Government-led change would “strengthen” the “institutions of Government.”¹⁸ Since 1993 the government had created “new opportunities for MPs to represent their constituents,”

primarily through pre-budget consultations and more generous provision for private members' bills.¹⁹

Alliance Preparation

Also in January, 2001, Reynolds, as the House leader of the Alliance party, published a paper titled “Building Trust,” containing proposals for reform.²⁰ These elements were updated in a revised paper published on 18 September 2002.²¹ One prominent continuing recommendation was the election of standing committee officers by secret ballot. The rationale, written by Reynolds, draws a parallel between the Speaker's task in the House of Commons and the role of the chair of a standing committee. Both are officers whose task is to preside impartially, he claims. Two further recommendations were crafted by Chief Opposition Whip Dale Johnson, and the Deputy Opposition House Leader Carol Skelton. One recommends that parliamentary secretaries be (once more) effectively excluded from membership in the standing committee related to their Minister's portfolio, with the goal that the government no longer “interfere” in the standing committees. The second recommendation would have the effect of requiring committee reports to be put to a vote in the House of Commons, as opposed to being talked out as basically occurred in the first half of 31 October in the case of the Procedure Committee report, and which had been understood as a convention of House management.

The three Alliance provisions are coherent and mutually reinforcing. As a package, they could further block low-profile government coordination of committee business with the work of the House, even while allowing the standing committees more isolation from the government's program and the right to command significant amounts of House time with mandatory votes on their own concerns (given that there are presently seventeen such committees). The minimum impact of the Alliance package would be to make government work harder to accomplish less of its program.

Then, on 24 September, Reynolds sent a letter to Liberal backbenchers encouraging them to vote for the forthcoming Procedure Committee proposal for secret ballot elections for committee chairs. In early October,

¹⁷ See “Alliance victory leads to backlash as committee vice-chairs dumped” *Red Deer Advocate* (8 November 2002) A8; and Joan Bryden, “Rebel Liberals punish Alliance: Official opposition members get dumped from parliamentary committee chairs” *Edmonton Journal* (8 November 2002) A5. The spirit of autonomy again visited the Transport Committee in June 2003, when the secretly-elected chair and a number of rebels met over breakfast in the parliamentary restaurant and cut VIA Rail's budget by \$9 million. See Bill Curry, “MPs clash over VIA budget” *National Post* (5 June 2003) A9. The writer speculates that the Committee at this point is hoping to get House support for its budget challenge to government, and thereby to provoke a general election. On 6 June, the *Globe and Mail* reported that the Transport Committee, dominated by Martin's Liberals, intends to stall and therefore kill the government's Bill C-26 reforming the *Canada Transportation Act*, S.C. 1996, c. 10. See Steve Chase, “Infighting threatens transport legislation” *Globe & Mail* (6 June 2003) A4.

¹⁸ See the last page of the “Speech from the Throne to Open the First Session of the 37th Parliament of Canada: Address by Prime Minister Jean Chrétien in Reply to the Speech from the Throne,” online: Privy Council Office, Government of Canada <www.pco-bcp.gc.ca/default.asp?Page=InformationResources&Sub=sfddt&Language=E&doc=sfddt2001_reply_e.htm>.

¹⁹ *Ibid.*

²⁰ The papers are on the Canadian Alliance website, online: Canadian Alliance <www.canadianalliance.ca/english/policy/building_trust_II_01_introduction.asp>. The Alliance also supported the election of chairs in its materials leading up to the 2000 election.

²¹ *Ibid.*

the Prime Minister reportedly argued in caucus that the government needed to control these elections for effective coordination of his legacy agenda, amid further speculation that Martin supporters wanted to take over the committees precisely to prevent decisions and spending that could limit Martin's future degree of freedom once he had become Prime Minister.²²

Martin Brings House Reform to Osgoode Hall

On 21 October 2002, Martin presented his own proposals for reform of the House of Commons to Osgoode Hall, York University's law school, making this speech his statement of record.²³ Martin asserted that the Office of the Prime Minister holds too much power over individual Members of Parliament. His six-point plan of reform is comprised of the following: degrees of party discipline under a British-type three-line whip;²⁴ more frequent referral of legislation, under an existing provision, to standing committees after first reading in the house; further changes to the system for private members' legislation; more review of senior appointments by committees, under an existing provision; appointment of an independent ethics commissioner; and a nest of recommendations for committees. The committee material is broken into elements: one is the election of committee chairs by secret ballot; another is a separate proposal to remove the authority to strike committees from the party leaders and whips, giving the role of allocating places on committees to party caucuses; and a third is more Ministerial appearances before committees. Some resource proposals for committees are also offered.

No rationales are given for the package or for the various committee items, which should have been worked through. For example, one might ask how a big caucus could make the complex allocations involved in choosing 300 committee members for about seventeen committees. If each caucus were to form a committee for this purpose, what would be the substantial difference between the Osgoode Hall proposal and the status quo? The secret ballot for committee chairs might suggest that the single vice-chairs belonging to the

Opposition would be identified by government majorities on the committees, as did happen. Where is democracy when the Prime Minister's control reaches to other parties?

Martin's framework for the package of reforms starts with a study by the Canadian Policy Research Networks that is cited as showing that Canadians most prize their "democratic rights" among the elements supporting their quality of life.²⁵ The speech then immediately states that it is the "democratic process" that citizens value, although most would agree that this is a shift of topic: rights have content while process is about rules or the means of making decisions. It next links the broad democratic process and its ills to institutional decline. At present, the speech says, all MPs "find themselves trapped in a morass of mindless adversarialism."²⁶ Partisan spectacles in the House cause voter "alienation, indifference and even hostility ... toward a system they see as remote and unresponsive."²⁷ Next, the "significant" drop in voter participation in the 2000 election (documented in the CPRN work) is linked to alienation. In its turn, alienation is caused by the fact that "We have allowed power to become too centralized." The key to "getting things done," says Martin, is "Who do you know in the PMO."²⁸ In short, voter alienation, low turnout and a mindless House are the Prime Minister's fault. He is the only independent variable.

Restoration of "the virtues of the Westminster model" is signalled by reference to Edmund Burke. This deserves more care. Burke died at the end of the eighteenth century, almost three-quarters of a century before "manhood" suffrage would create the mass political party. In Burke's day, the electorate was small, with voters being solvent as well as male. In the eighteenth century, members of the House of Commons were male, mostly landed, each in nostalgic memory a notable (and principled) personality in the world of his own constituency and in the House of Commons. But

²² Mike Scandiffio, "Trouble is brewing in House committees on Parliament Hill" *The Hill Times* (7 October 2002) at 16.

²³ Martin, "Address," Osgoode Hall Law School, York University (21 October 2002), online: <paulmartin.ca> for the bare list of proposals, and <paulmartin.ca/doc/speech_e> for the Osgoode Hall speech.

²⁴ The "three-line whip" means that Martin would impose party discipline on backbenchers on the model of the graduated or three-stage whip of British practices, where the insistence on discipline is commensurate with the importance of a matter to government.

²⁵ Although it is not referenced clearly in the speech, the CPRN paper was probably by J.H. Michalski, *Quality of Life in Canada: A Citizen's Report Card*, CPRN Background Report (July 2002) at 90. CPRN arranged about forty focus-group discussions with 350 Canadians, facilitated by moderators. The participants had studied background materials. The two indicators of "democratic rights and participation" in this work are exercising democratic rights (voter turnout) and tolerance of diversity. The groups established the rankings of indicators, but the development of the indicators appears to have been the lion's share of the work. This particular report does not link the "rights" priority of this small number of persons (not statistically representative of the population) to institutional renewal of Parliament.

²⁶ *Supra* note 23.

²⁷ *Ibid.*

²⁸ *Ibid.*

electoral practices were often corrupt, protecting small and safe enclaves for particular candidates who served particular patrons and interests. Some did not visit their constituencies. Mass suffrage created competitive political parties. Election practices and districting were to a large degree cleaned up. Competitive parties in turn created disciplined party governments in all western industrializing democracies, by organizing the vote into the basis for programmatic action. Party government is then majority government built upon party platforms and party discipline. It is seldom recalled that Burke did in fact support political parties, if only in the restricted sense of his time. Deeply conservative, he nevertheless allied himself with the Whigs.

Burke is, however, most frequently remembered by practicing politicians for his denial that representatives should allow themselves to be instructed by their constituents or act as delegates of their constituents.²⁹ Regardless of his particular views, he represents a period when Parliament could and did make decisions that did not in the least coincide with the content of public opinion or welfare.³⁰ The speech continues by warning that the concentration of power at the very centre of government, alongside citizen apathy, is a "dangerous trend" which could lead the Canadian public to withdraw "its consent to be governed."³¹ The phrase could refer to civil disorder. Or it could equally mean the electorate will gradually become so apathetic that elected governments will have too little voter support to claim legitimacy. Here was an opportunity to discuss the serious matter of the increasing use by western governments of the executive prerogative,³² but it is not fulfilled. Indeed, the speech suggests that Martin would be a firm Prime Minister because he is

effectively promising reform of the representative institutions.³³

Overall, in the Osgoode Hall speech, remedies begin and end in the House. While the lack in federal Canada of an electable opposition party is not the fault of the Liberal party, there are House reforms that would foster opposition. The Osgoode proposals do not seriously undertake to develop the scrutiny capacity of the opposition. A relatively well-tested reform in Westminster parliaments is, for example, to allocate chairmanships of committees proportionately to the membership of parties in the house, concentrating opposition chairs in the committees whose duties lean to scrutiny. In effect, the robust element of the Osgoode Hall speech is that it offers the Alliance party's measure on secret ballots at the same time as the Alliance.

In summary, therefore, leading into the debate on committee chairs and the splitting of the government majority into two parties, there was a general climate of interest in reform of the House.³⁴ United on one narrow provision for House reform, one had the Canadian Alliance, Martin as the probable new head of the sole party of government, and the Standing Committee on Procedure and House Affairs — the whips' and house leaders' forum. As noted, the Liberal majority in the whips' forum had been overturned with the help of two Liberal members. The next section takes the reader through the play on the issue in the House of Commons, scattered through September to November, with the major debate taking place on 31 October 2002.

SUMMARY AND ANALYSIS: HOUSE DEBATE ON SECRET BALLOT ELECTIONS — SEPTEMBER THROUGH NOVEMBER 2002

In the following summary of the content of House debates on the secret ballot, the two-part debate of 31 October is the centrepiece, although an attempt is made

²⁹ *Ibid.* at 18–22. In 1774, Burke was elected in a general election to represent Bristol. The text Martin's speech writer probably had in mind is E. Burke, "Speech to the Electors of Bristol," in *Works*, vol. 3 (London: Rivington, 1801), found in many collections.

³⁰ David Judge, *Representation: Theory and Practice in Britain* (London: Routledge, 1999) at 51. For a discussion of the three phases of representative government (government by notables as in Burke's world, by party government and by image-making in the post-modern phase of audience democracy) see Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

³¹ *Supra* note 23 at 1–8.

³² John Locke discussed the prospect that citizens might "appeal to the Heavens," that is, rise in violent revolt to overthrow their "unjust prince" for his misuse of prerogative powers. See "Of Prerogative," in any edition of Locke's political writings. The citation here is from David Wootton, ed., *John Locke: Political Writings* (London: Penguin, 1994) at 344–49. Although Locke lived from 1632 to 1704, his ideas on the prerogative, essentially the unlegislated and essential executive power to respond autonomously to new or unknown threats and events, are much more relevant to the modern situation in a fluid world than Burke's House of Commons.

³³ Reinforcing the impression of power, on 8 May 2003, Martin said that, as Prime Minister, he would simply not implement Bill C-7, *First Nations Governance Act*, 2d Sess., 37th Parl., 2002, then being piloted through the House by Robert Nault, the Indian Affairs Minister. See "If he differs with Nault, what is Martin's plan?" *Globe & Mail* (8 May 2003) A18.

³⁴ For other initiatives, see Canada, House of Commons, "Report Of the Special Committee on the Modernization and Improvement of the Procedures of the House Of Commons" (Ottawa: House of Commons, 2001), online: <www.parl.gc.ca/InfoComDoc/37/1/SMIP/Studies/Reports>.

to bring in contributions before and after.³⁵ The discussion begins with some context, then moves to the arguments of those who led the discussion for the government, followed by Reynolds' views. The shorter interventions by backbenchers are next rolled up under four themes. The importance of this material is that it constitutes a good portion of the empirical basis for the conclusion that the debate was insubstantial.

One can begin by observing that, at least in their formation, committees are indisputably miniature versions of the House of Commons. It is hard to do better than the sketch of a typical committee of the thirty-seventh Parliament provided by Bloc member Pierre Bryan in the first part of the 31 October "main" debate. Bryan's example is based on a sixteen member committee, whereas most committees have one or two more, but he communicates the principle economically. He notes that nine members in such a committee are from government, three from the Official Opposition, plus two from the Bloc Québécois, one from the NDP and one from the Conservatives. Nine of sixteen members are then Liberals. One becomes the chair, which leaves eight Liberal members, with seven members from the opposition. "If the Liberals remain united on the policy ... they are still in the majority."³⁶

The debate proper is begun with Peter Adams' asking the House to support the Report of the Procedure Committee. He defends the Report's substance on three matters. First, in a political point, he emphasizes that the partisan distribution of chairs and vice chairs remains as it was, the government always keeping the chair (except for the Public Accounts Committee, which has had an opposition chairman since 1958). His second point is that MPs should be at work: with eighteen committees (counting Public Accounts) of sixteen to eighteen members, about 300 MPs could be at work on "*the topics that interest them most* if the matter were voted upon as opposed to being returned to this Committee for further study."³⁷ His third point is that he personally, as a committee chair, feels "responsible for the working conditions of members of Parliament."³⁸ Thus Adams presents the secret ballot motion as a moral change to support workplace democracy.

The government's position is represented in the main debate primarily by three figures: Paul Szabo, Parliamentary Secretary to the Minister of Public Works and Government Services; John Harvard, Chair of the Northern and Western Caucus and a former

Parliamentary Secretary; and, later in the day, by Boudria. Szabo's themes are that opposition members "know very well that Parliament, by its very nature, is a partisan institution," and thus the so-called democratization of Parliament is more complex than they allow; that Liberal members are indeed able to dissent, which many did in the gun control debate in the thirty-fifth Parliament; that a majority government is expected to implement its platform; that Members are not elected as individuals but as representatives of political parties; and that the government is accountable to the electorate.³⁹

Harvard, on the other hand, emphasizes that the straight application of a majority principle within committees could destroy representativeness of region and gender among chairs, and that the existing system resulted at the end of the last session in twelve Ontario chairs, two from Québec, three from Atlantic Canada, and three from the West, with four women overall.⁴⁰ He, too, speaks of "the reality of the House," in which committee chairs manage the first stages of public business in a system of responsible government. The secret ballot, he says, is irresponsible as a method for choosing chairs: "We are public representatives and we should be voting publicly and openly."⁴¹ He denies that PMO exercises omniscient coercion over all features of parliamentary life.

Later, Harvard points out that chairs of committee are not miniature Speakers. They remain members of caucus whereas the Speaker of the House does not. He expands on the lack of parallelism in remarking that the U.K. Speaker is not opposed in general elections after becoming Speaker, and thus holds the job in complete independence until retirement.⁴²

Taking the floor after the Speaker's ruling on the Alliance's supply motion, when he would have known that the secret ballot would come to a vote, Boudria protests the Alliance's strategies. His central point is the lack of precedent for deciding House procedures by means of partisan confrontation on the floor of the House. The Alliance strategy to force change through a temporary majority breaks with House convention on how standing orders are amended: "It has been done by unanimous consent in large measure. Ninety-nine per cent of standing order changes have been made by

³⁵ *Supra* note 4.

³⁶ *Ibid.* at 1224.

³⁷ *Ibid.* at 1112 [emphasis added].

³⁸ *Ibid.*

³⁹ *Ibid.* at 1130-32.

⁴⁰ *Ibid.* at 1132.

⁴¹ *Ibid.* at 1119.

⁴² *Ibid.* at 1134.

unanimous consent.”⁴³ In cases where standing order changes have been imposed, provision has been made for automatic lapsing on a specified date, unless re-enacted. “We do not want 51 per cent of the members supporting the rules that govern us, with 49 per cent opposing them. It is improper to adopt rules in this fashion, not to mention the fact that it would be almost impossible to change them.”⁴⁴ Boudria’s “wish list” on procedure, besides the expiration date, includes wide consultation with MPs, and an option for choice of committee officers by show of hands.

Reynolds’ contribution can be separated into substantial remarks, filler and procedural strategy. The filler has the purpose of achieving his procedural goals by buying time. He carries the whole burden for the opposition after the Speaker’s ruling, on recommencement of the debate under supply. In his longest speech, which occurs in the supply half, Reynolds describes the result of his procedural move as a “great victory for democracy in the House,” characterizing the government contribution as “filibustering ... all done for naught.”⁴⁵ He thanks the NDP for giving the Alliance its supply day, and thanks the Conservative Party for its offer of its own supply day. He chose to bring the motion under supply, he says, because “the current procedural mechanism provided for private members is inadequate.”⁴⁶ There is a catch: committee work can acquire “authority” only when adopted by the House, but the government has a practice of “talking out” committee reports. The government thus acquires the initiative — and will not bring a report forward if it is critical or requests sensitive documents. This “loophole” that stands in the way of committee authority should be removed. In essence Reynolds wants the standing orders further amended such that all motions to concur in committee reports be put to a vote, “not shelved by a simple procedural manoeuvre,” “mere procedural trickery,” by the government.⁴⁷ He rejects the government argument that standing order changes should be done in related packages, rather than in a piecemeal way, citing a number of one-off changes. But his secret ballot proposal is still special, symbolizing “the struggle for power between the executive branch, the PMO, the Prime Minister and the private members of the House.”⁴⁸

Reynolds says the government’s tactics in favour of its candidates in the standing committee elections is equivalent to “strong-arming tactics of the 19th century thugs” in general elections before the secret ballot was introduced. Further, he notes, “[i]t is the height of hypocrisy for Canada to send observers to a country like Zimbabwe to oversee its election,”⁴⁹ given our own behaviour in the federal House. He continues to cite many abuses and developments in general elections in British Columbia and Québec.⁵⁰ Reynolds closes this long intervention by urging that all remaining House positions be removed from the Prime Minister to be, instead, appointed by the Speaker.⁵¹

One other speaker is recognized, but Reynolds is soon back to explain that the government must relinquish the content of legislation. The Environment Committee, he notes, made 300 amendments to a government bill, but at Report stage, only 120 of these changes remained in place. Reynolds asks the House “[W]hat is the purpose of legislation” if the Minister and “his bureaucrats” can “rejig” committee amendments that are the “majority will of Parliament.”⁵² By the end Reynolds appears exhausted: he says Joe Clark’s populist opposition to centralized power has been developed in part (in what must have been very short seminars) with “persons at the Tim Horton’s drive-through.”⁵³

The themes raised most often by backbenchers are:

1. Voting by show of hands is unsafe for government members in that the Prime Minister or PMO will surely retaliate against independence of mind, and that Liberal members are at any rate naturally reduced to puppets of the Prime Minister by their blind ambition to become part of government (one can note that the acting Speaker commented only once on the un-parliamentary attribution of motives, a feature that permeated the opposition attack).
2. The secret ballot is a guarantee of free elections which must be allowed in the House as in any democratic forum including general elections, and at the same time secret ballots are the guarantor of workplace democracy. In the second

⁴³ *Ibid.* at 1158.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* at 1150–51.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at 1152.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.* at 1153.

⁵² *Ibid.* at 1170–71.

⁵³ *Ibid.*

sense they will work in a manner parallel to the Speakership in the Chamber, where the Speaker's impartiality in ruling is owed to that officer's election by secret ballot;

3. Committees are House instruments as opposed to government instruments, they are accountable to the House and should thus be free to take any position in their own right as committees (with some Bloc members' views being more parliamentary); and
4. The claim that appointing chairs is a way to ensure regional and gender representation is insincere and irrelevant nonsense, and contravenes election on the merit principle.

On 31 October, the personalized rage against the Prime Minister is well vented. Deborah Grey characterizes the government's procedural move to delay the Procedure Committee motion as "this unbelievable attack on democracy."⁵⁴ Later, she says "these people [Liberal backbenchers] are feeling whipped and intimidated."⁵⁵ Similar remarks are made by Yvon Godin of the New Democratic Party⁵⁶ and Brian Pallister, Canadian Alliance.⁵⁷ Rick Borotsik, Progressive Conservative, raises "the intimidation that flows from the Prime Minister's Office."⁵⁸ Joe Clark, Progressive Conservative, attempts a reading of the writing on the House wall — "one of the first indications of the development of a totalitarian regime is a fear of free votes and an insistence on secret votes,"⁵⁹ perhaps intending to say that the support for the secret ballot is a measure of fear in the House. Odina Desrocher of the Bloc even speaks of the "downfall of the dictator."⁶⁰ Jim Gouk, Canadian Alliance, characterizes the issue as government by the elected or by appointed advisors: "we are talking about whether we elect chairs, which therefore is done by secret ballot, or whether the chair will be appointed by the PMO."⁶¹ Claude Bachand, Bloc Québécois, notes that the pattern of the "holy Liberal democracy" is to "bulldoze" over all opposition.⁶² Greg Thompson, Progressive Conservative, reinforces that "[t]he issue is

control, absolute control."⁶³ In the second half of the debate Thompson returns to his theme, praising Parrish's bravery in the Procedure Committee in the face of the Prime Minister's total control: "He is a control freak ... the Prime Minister resembles Richard Nixon in his dying days."⁶⁴ While Nixon's red button was the threat of nuclear war, the Prime Minister's is "a snap election call" and "four more years."⁶⁵

Bev Desjarlais, one of few NDP members to speak, brings a long personal attack on the Prime Minister into the main debate, essentially echoing Carol Skelton of the Alliance speaking on 1 October in reply to The Speech from the Throne.⁶⁶ Skelton on that day said of the Prime Minister:

He will never solve problems we face if he continues with the same style in governing, continues to use patronage to reward his friends, continues to use the authority of his office to punish his opponents for personal gain [sic], continues to waste taxpayer money, continues to divide Canadians and continues to demean parliament and its members.⁶⁷

The second theme — that secret ballots are necessary in principle — was strongly tied to the Office of the Speaker and by extension to the PM by Skelton as early as 9 September 2002⁶⁸ when she reported to the House that the Liberal whip had been outrageously telling government members in February how they were to vote in the Finance Committee: "While we expect discipline in political parties, we cannot accept it being deployed to influence an election."⁶⁹ The Alliance member then equates the English Crown's loss of control over the Speaker of the House of Commons some centuries earlier to the forthcoming loss by the present Prime Minister of his power to name the persons to fill committee chairs.⁷⁰

In the main debate, the analogy continues between the Speaker's independence and committee chairs as small speakers equally needing independence. The theme is picked up by Bryan Fitzpatrick, Canadian Alliance⁷¹ and by Liberal rebel Karen Kraft Sloan.⁷²

⁵⁴ *Ibid.* at 1112.

⁵⁵ *Ibid.* at 1120.

⁵⁶ *Ibid.* at 1112.

⁵⁷ *Ibid.* at 1116.

⁵⁸ *Ibid.* at 1112, 1115.

⁵⁹ *Ibid.* at 1116.

⁶⁰ *Ibid.* at 1119.

⁶¹ *Ibid.* at 1120.

⁶² *Ibid.* at 1129.

⁶³ *Ibid.* at 1132.

⁶⁴ *Ibid.* at 1167.

⁶⁵ *Ibid.*

⁶⁶ *House of Commons Debates* (1 October 2002).

⁶⁷ *Ibid.* at 40. Desjarlais' less coherent version is found *supra* note 4 at 1126–27.

⁶⁸ *House of Commons Debates* (30 September 2002). The parallel suffers from the fact that the Monarch was not elected to the House as the head of the most numerous party in the House.

⁶⁹ *Ibid.* at 7.

⁷⁰ *Ibid.*

⁷¹ *Supra* note 4 at 1118.

⁷² *Ibid.* at 1124–25.

Alliance Member Brian Pallister takes up Martin's partly-Burkean view of the MP — which perhaps leads him to notice the latter's absence:

The ability to be elected should not hinge on one playing to the current whims of the public. It should hinge on a sincere desire to fight for changes one believes in. When one does not believe in those changes one is absent from the House when one had the opportunity to express his or her opinion.⁷³

One of the Bloc members, Pierre Bryan, argues that "the role of the committees is study, and reporting to the House." Committees "are accountable to the House, and not only to the cabinet." "Committees are therefore for us ... [MPs] ... must do their work and be as neutral as possible.... If members want "a balance of powers" between committees and Government the committees must be able to take positions different from the wishes of the Government."⁷⁴ "[T]he public expects us to play a role ... to have a say in the parliamentary debates, to have real power and influence."⁷⁵ Parenthetically, the Bloc is not as consistent as the Alliance in its remarks; Michel Guimond of the Bloc rises later in the afternoon to state that "a committee is ... a miniature version of the House of Commons."⁷⁶

Returning to Bryan, he is, on my reading, the only debater to complain that the question of opposition chairs is not on the agenda.⁷⁷ He notes that in Québec's National Assembly almost half of the committees are chaired by opposition members.

There is more much more variety in the MPs' opinions on the government's attempt to achieve representativeness of committee chairs on criteria of gender and region. Bryan points out that the Liberals' claim that the appointment method increases chairs' representativeness is confirmation that "someone is examining candidates against particular criteria."⁷⁸ Progressive Conservative Member Rick Borotsik is against using the chair positions for representative purposes, preferring to see the "best person" elected.⁷⁹ NDP Member Bev Desjarlais argues from the opposite perspective, saying that if the method of allocating chair positions did indeed guarantee gender balance, 50 percent of the chairs would be women whereas there is not even gender parity in committee memberships (the unequal representation of women in the House goes unmentioned). On 6 November, Reynolds adds to this

topic, heaping scorn on the idea of representativeness in a rambling intervention that includes appointments of Supreme Court judges and the judges' subsequent interference with the legislation passed by Parliament, as well as their influence on everything from sexual morality to extending the right to prisoners to vote. The House is the highest court in the land, says Reynolds.⁸⁰

But Reynolds' true contribution will be remembered as his procedural accomplishment. He managed the secret ballot wedge from start to finish: identifying an isolated reform that Martin could support; his targeting of Liberal MPs with letters of solicitation; engineering the necessary compromises in the Procedures Committee by using Parrish and the other Martin MPs; pushing forward the timing of the motion to concur in that Report as a stalking horse and a focus for MPs; at the same time, negotiating with the other opposition parties to obtain a supply day as insurance and then teasing the government House Leader with two supply motions; prolonging debate on the Procedure Committee motion so the government could make its predictable moves (without explaining them) and make his points for him; keeping the Procedure Committee part of the debate focussed on the person of the Prime Minister to flatter and motivate Martin's section of the Liberal party; being prepared and organized on the procedural points on supply to win the Speaker's support; and himself prolonging the debate on the supply motion to the very end of the day on 31 October so the vote would be postponed. This last accomplishment allowed time to bring Martin to the House for 5 November.

Overall, the debate on the secret ballot saw the system dismantled to simplistic opposites: democratization of the House versus party discipline and cabinet solidarity; the public interest versus party interests; the cabinet as opposed to caucus; Parliament versus cabinet and its coordination function; and backbenchers versus the Prime Minister, and his advisors and inner circle. Opposition and Martin Liberal MPs pushed as hard as they could for the apparent underdog on each of these dichotomies, ending without agreement on workable alternatives, floating in a vacuum.

BRITISH AND AMERICAN PRACTICES FOR CHOOSING COMMITTEE CHAIRS

Opposition Members of the Canadian House most frequently raise two examples of superior free democratic practice: Britain and the United States

⁷³ *Ibid.* at 1116.

⁷⁴ *Ibid.* at 1120–23.

⁷⁵ *Ibid.* at 1121 [emphasis added].

⁷⁶ *Ibid.* at 1160.

⁷⁷ *Ibid.* at 1120.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* at 1115.

⁸⁰ *House of Commons Debates* (6 November 2002).

Congress. Nevertheless, neither Britain nor the U.S. allow members of the committees that are the equivalent of the Canadian standing committees to first autonomously nominate and then elect their presiding officers in a secret ballot. In Britain, the equivalents to Canadian standing committees are called select committees. The present system there was established in 1979. There are eighteen committees, each with nine members — proportionately roughly a quarter of the committee places in Canada, given the British House has more than 600 members. Appointments to committee membership are made by the whips. On the other hand, members of opposition parties, chosen by their parties, are appointed to chair committees in proportion to their party's House seats.⁸¹

The same is true in Ontario: opposition members hold chair positions on scrutiny committees. Chairs are elected on an allocation principle and for this reason the election is by show of hands. (Likewise, as the Bloc member noted, the Québec National Assembly puts opposition chairs on a good number of scrutiny committees.)

In the United States, membership on House of Representative committees is handled with an iron hand by the majority party. The proportion of memberships to be held by the minority party is set by the majority party, then the respective caucuses nominate the members for election by the House. Committee chairs are elected from nominations by the majority party caucus.⁸²

It is also interesting to notice which reforms diffuse across countries and which do not. Complaints about executive domination and excessive use of the prerogative powers are not unique to Canada, nor are complaints about non-elected advisors that surround Prime Ministers and Presidents. In Britain, the Minister of International Development resigned on 15 May 2003, mentioning the "unelected Blair coterie's 'control freak style' and their policy 'diktats in favour of increasingly bad policy initiatives ... from on high'."⁸³ This centrality of appointed advisors in the British Prime Minister's entourage was addressed just weeks before the Minister's resignation by the British

Parliament. The British Liaison Committee — made up of all select committee chairs — can, since April 2003, question the Prime Minister on his management several times during the year.⁸⁴ Likewise Americans, despite the historical jealous restriction of the President to his listed powers under the Constitution, are beginning to feel a newly broadened presidential use of executive prerogative as evidenced in the decline of both Congressional and judicial independence: "The Republican majority in both houses of Congress and the courts' acceptance of the notion that the President's war powers override all other concerns have given him effective control of all the branches of government. The administration's nominees to the courts would consolidate its domination of the judiciary."⁸⁵

CONCLUSION

A few weeks after the 5 November vote, the *Canadian Parliamentary Review* published a summary of a debate over the creation of the Special Committee on the Modernization and Improvement of House Procedures. The debate was held on 20 and 21 November, and the Committee was created by the House on 29 November. In his remarks, Reynolds recapitulates the importance of the McGrath Committee reforms that freed committees from government work references, and presents the accomplishment of the secret ballot for committee chairs as a second step "toward freedom and democracy for committees."⁸⁶ And what will be next? Committee motions to concur in a report must come to a vote. This is "vital for the authority of committees."⁸⁷ In this regard, Reynolds states that committees must be able independently to fully exercise the powers they formerly held as delegates of the House: sending for persons and papers, and bringing proceedings of contempt against persons. Other goals are for the House to have, and to exercise through committees, a veto over order-in-council (political) appointments, in keeping, he says, with the "House ... veto over government legislation ... how the government spends money ... how [government may] tax ... [and its veto] over the appointment of officers of parliament."⁸⁸ This is a plan for a House with the government almost out of it. The government will be retained for one thing: "We must find a way to ensure that the government gives effect to the motions that the

⁸¹ Great Britain, House of Commons, Information Office, *Departmental Select Committees*, Fact Sheet P2 (February 2003); and House of Commons, Library, Parliament and the Constitution Centre, *Departmental Select Committees*, Research Paper 02/35 (10 May 2002).

⁸² United States Congress, *Rules of the House of Representatives* (7 January 2003).

⁸³ Michael White, "It is time for Tony Blair to go: Maverick minister Clare Short resigns and gives PM a word of advice" *The Guardian Weekly* (21 May 2003) 1.

⁸⁴ Great Britain, House of Commons, Liaison Committee Press Release, *Liaison Committee Annual Report*, HC558, Session 2002–2003 (1 April 2003).

⁸⁵ Stanley Hoffman, "America Goes Backward" *New York Review of Books* (12 June 2003) 74. Hoffman is a professor at Harvard.

⁸⁶ Round Table on Modernizing the House of Commons (Spring 2003) 26 *Can. Parliamentary Rev.* 30 at 31–32.

⁸⁷ *Ibid.* at 31.

⁸⁸ *Ibid.* at 32.

House passes ... perhaps through its powers of contempt [the House] can enforce its authority."⁸⁹ The government will work for the House, and the House will work for committees.

But if the House were to authoritatively control the levers of government, the answerability of Ministers in the House for action and inaction would be pointless. The House would be making and forcing decisions, driven in various directions by committees less subject to party control than in even the U.S. government. There would be no way to keep House decision-makers in bounds or hold them responsible for decisions, errors or misrule. In short, the government's *ex ante* domination of legislative business and its *ex post* answerability in the House for policy effects, taxing and spending are the two sides of the coin of responsible government.

The day after the November vote, Martin told journalists that the secret ballot "speaks to the independence, the authority of members of Parliament and it will also strengthen the committee system which is a very, very important foundation for the way policy is developed in the parliamentary system."⁹⁰ This statement expands on the Osgoode Hall speech and makes it clear that Martin's view of committees is roughly compatible with Reynolds' views and thus at least temporarily revolutionary. In classical doctrine, committees cannot be seen as the foundation for the House's work. This is upside down. The House is the foundation of and the source of authority for any policy work that is to be done by the committees. Committees, as miniature Houses, are useful in government because several can operate at the same time, a form of parallel plumbing allowing more business and more scrutiny to be done. The standing committees are creatures of the House and are in fact comparatively modern experiments (apart from Public Accounts), only beginning to take shape in their present duties and liberties since 1968. Political parties are the bodies entrusted to develop policy in the parliamentary system as we know it. Does Martin really intend that bipartisan committees will design policy for which a Liberal government would be held answerable?

In the first days of the sway of the mandatory secret ballot, individual Liberal members used their new "right" to not only largely confirm the government whip's slate of chairs, but also to handicap the Official Opposition by taking away its role in steering committee business in five committees. Removing scrutiny capacity from an Official Opposition that holds

only one committee chair (Public Accounts) shows a bullying lack of seriousness about the responsibility of MPs to work for both open government and the competence of all members of Parliament. In the short term, therefore, the proposition that "one small procedural change" would benefit the House culture appears to have been tested and found to be without support. Parenthetically, it will be interesting to see whether the Speaker had a precedent for the use of supply to change procedure, and if this will be the route for the rest of Reynolds' program.

In the longer term, however, the gulf between responsible government and the bare words of the Standing Orders on the role of committees has been deepened. Amended so disastrously so many times by so many well-meaning people, the surface of committee provisions might seem to justify a vision of "authoritative" policy-making powers for backbenchers. This vision — whether politicians believe in it or only use it — both subverts the classic design of the institution of Parliament and kills the prospect of clear thinking about modernization of structures and procedures.

Boudria's complaint that Alliance leaders pretend "that what they want is modernization when all they had in mind was the creation of chaos"⁹¹ seems more realistic at the end of the research for this article than at the beginning. It also suggests that "mindless adversarialism" does not describe the way the House was used in the series of events making up this episode. Martin and Reynolds silently allied their forces to show that they were capable of preventing the government from governing, without ever having formally announced their alliance to the House and thus to the public.

The concerted attack on the Prime Minister on moral or character grounds constitutes a distraction from the broader misunderstandings of and anomalies in the Canadian political system writ large. Perhaps the way the Liberal party chooses its leader in a mass convention elevates the leader too far beyond any cabinet members; or perhaps the volatility of the Canadian electorate that periodically sweeps away governing experience is a deep flaw; or perhaps the post-1993 implosion of one of the two great parties of Confederation accelerated our slide into a "one-party" system that will see the Liberals divide into factions (succeeding one another as in the Japanese Liberal Democratic Party) — perhaps these features should be examined among others such as a smaller House of

⁸⁹ *Ibid.* at 33.

⁹⁰ Tim Harper & Tondy MacCharles, "Chrétien stunned by vote revolt" *Toronto Star* (6 November 2002) A1.

⁹¹ *Supra* note 4 at 1156.

Commons and electoral reform to encourage thematic parties.⁹² For if the causes of malaise in the Canadian body politic are to do with politics and not exclusively with Prime Minister Chrétien, then we may expect that Martin will soon be encumbered with all these same powers. We shall then see how seriously he has thought about the question of how safely to divest power into a vacuum.

S.L. Sutherland

With the generous assistance of my colleague at the School of Policy Studies, Queen's University, David Elder. The evaluative component of the paper is solely my responsibility as are the inevitable errors. I would also like to thank the editors of the FORUM for their welcome and intelligent help in improving this text.

⁹² Making federal constituencies much larger than they are now to create a smaller and more manageable House would more accurately reflect federal policy presence. Committees could obviously be improved by reducing the number of members on each to allow MPs some thinking time.