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Group

Reforming Electoral Democracy — Responses to the Lortie Royal Commission

Party Discipline: Should it be Loosened?

Canadian Study of Parliament Group

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Reforming Electoral Democracy — Responses to the Lortie Royal Commission

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Learned Societies Panel

Reforming Electoral Democracy — Responses to the Lortie Royal Commission

Moderator:

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Panelists:

Professor Herman Bakvis
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Professor Janet Hiebert
Department of Political Studies
Queen's University

Senator Donald Oliver

Following introductions from the moderator, **Agar Adamson**, the first speaker, **Herman Bakvis**, began by sketching the background to, and work of, the Lortie Royal Commission on Electoral Reform and Party Financing. Prof. Bakvis was a research coordinator with the Royal Commission's research programme. The Lortie Commission, he noted, grew out of the failure of Bill C-79 on electoral reform, Charter challenges to the present electoral legislation, and what the Chief Electoral Officer, Jean-Marc Hamel, termed the "crisis" in election administration. The five-member Commission was tri-partisan. It had a comprehensive mandate (although it did not consider fundamental reform of the electoral system such as proportional representation or Senate reform), held extensive public hearings, and had an extensive research programme.

The basic objectives of its recommendations for reform were as follows: to secure the democratic rights of voters; to enhance access to elected office, particularly for under-represented groups; to promote the equality and efficacy of the vote; to strengthen political parties as primary political organizations; to promote fairness in the electoral process; and to enhance public confidence in the integrity of the process. Ultimately, it produced a four-volume report containing 560 unanimous recommendations. The recommendations encompassed a number of more or less controversial recommendations addressing, for example, the voting age, the role of interest groups in election campaigns (i.e. "third party advertising"), the extension of public financing for parties and candidates, and the extension and creation of a broader regulatory framework which would include the leadership selection process and candidate selection at the constituency level.

Strengthening Political Parties

Following this introduction, Prof. Bakvis focused on the Royal Commission's proposals for a new regulatory framework for political parties, and how this framework may or may not strengthen them as primary political organizations. The proposals, he acknowledged, had been contentious. The basic issue was whether political parties perform best if they are left alone by the state, or whether the state and/or some kind of legislative framework has an active role to play in ensuring such values as equity and fairness. The Royal Commission's Report stated that: "Canadian political parties are essentially private organizations. They always have been, and should remain so for very good reasons", (p. 231) mainly to do with freedom of association. However, the Commission also noted that parties constitute an integral part of democratic governance. They therefore warrant special acknowledgement in law, and should be subject to some public regulation.

The Commission recommended new regulations in four areas. The first was the nomination process at the constituency level and leadership selection. The second was the registration of constituency associations (currently, only the national political

party needs to be registered). Third, it recommended partial public funding for "party foundations" — associated institutions or "think tanks" — which would in turn entail some additional regulation of political parties. And fourth, it called for the registration of parties between elections.

One of the key mechanisms recommended for implementing changes with respect to candidate and leadership selection was the requirement that, as part of the registration process, all parties and constituency associations submit a democratic constitution. The constitution would contain provisions requiring all participants in candidate and leadership delegate selection meetings to be voters, would entrench the principle of one person — one vote, would set out dispute resolution mechanisms, and would establish sanctions for those who break the rules. More specific regulations applying to candidate and leadership selection would include spending limits and reporting requirements. In turn, tax credits would be available for those seeking party leadership or nominations. Clearly, Prof. Bakvis noted, many of the rules are designed to eliminate practices such as instant memberships and the packing of nomination meetings which have damaged the image of political parties in recent years. They are also intended to open up the process, that is, ensure open nomination meetings, reduce the impact of "old-boys networks" at the constituency level, and generally make the process more accessible to "non-traditional" candidates.

There is no doubt that the Royal Commission's recommendations in these areas would produce more red tape. Various critics have raised the spectre of an army of regulatory agents from the proposed Canada Elections Commission to police the activities of the political parties, standing at the doorways of meeting halls checking citizenship and minimum age. Certainly, the parties will have more responsibilities in terms of administering such things as tax credits for nomination contests.

However, Prof. Bakvis argued that this spectre was largely misplaced, if only because the Canada Elections Commission would not have the resources to engage in such highly interventionists activities. The proposals essentially place the onus on the political parties to police themselves, with the Elections Commission performing a passive role. Only if there is a failure within the party, resulting in complaints to the Commission, could it then act. In such situations, the enforcement mechanisms would include suspension of certain benefits such as tax credits, suspension or deregistration of the constituency association, and, in extreme cases, deregistration of the national party itself. In other words, the major change would presumably be for the parties to do the things that they say they have been intending to do for a number of years: imposing meaningful spending limits, curbing abuses in the nomination and delegate selection processes, and so on. The difference is that under the Royal Commission's proposals party officials would now have the authority of the law behind them. In this respect, parties would resemble otherself-policing, legally-backed organizations such as the barrister's society or the medical society.

The key question arising from these recommendations is whether the Royal Commission could have handled this issue differently. For example, could it have simply recommended a Code of Conduct for parties, which could then be adopted and implemented voluntarily by them? Prof. Bakvis argued that observers must put themselves in the position of the Commissioners in assessing the options they had before them. One option would be to deregulate the parties altogether. This he viewed as clearly impossible given the level of public financing provided to parties, which in turn requires some mechanism of accountability. A second option was to leave things as they are. This would also be very difficult, given several serious and specific problems which afflict the status quo, such as the major gap in the accountability regime where public funding of constituency associations is concerned. A third option would be that of relying on a voluntary Code of Conduct or Code of Ethics. However, the parties have heretofore shown no inclination to take the issues in question seriously, or even much awareness that there were problems. Important groups such as women's organizations and visible minorities presented a well argued case, emotional but confirmed by sound research, that leaving the process

of party reform to the parties themselves would not work. Also, evidence showed that in the case of private or professional associations with the public responsibilities, it was very rare for them to correct their internal problems without government involvement.

Realistically, the problems with these options left only the last alternative: regulations backed by the authority of law. In accepting this approach, Prof. Bakvis acknowledged, one can still question whether the Royal Commission has gotten some of the details right. For example, is the requirement of a democratic constitution necessary? Is it really necessary to impose spending limits for leadership contests since the parties themselves are adopting such limits in a highly visible manner? Overall, however, he concluded that the Royal Commission had little choice but to follow the path that it did.

Spending limits for non-party groups and individuals

Janet Hiebert, also a Commission research coordinator, addressed its recommendations on campaign spending limits for individuals and groups other than political parties. The Commission deliberately avoided the use of the term "third party" to describe this spending in order to avoid confusion between interest groups and political parties. The principal goal underlying its proposed spending regime in this area was to ensure that money doesn't have an undue influence in determining electoral outcomes — in other words, to attempt to ensure a "level playing field". Since 1984, an assymetrical spending regime has been in place: spending limits for electoral candidates and parties have remained intact, while those for individuals and groups have not. The 1988 federal election was widely seen to have confirmed the need for a regime limiting individual and group spending. During the election, four times as much was spent by interests promoting free trade as by those opposing it. Given the centrality of the free trade issue in the election, the money spent in effect disproportionately favoured one party (the Progressive Conservatives) over the others. This raised the question of whether party and candidate spending limits were in fact meaningful: in other words, could one party obtain an unfair advantage on the basis of apparently issue-related spending?

Several important policy considerations entered into the Commission's deliberations on a non-party spending regime. First, the Royal Commission was concerned with the associated limitations on the right of free speech. Such limits to this fundamental right, guaranteed under the Charter, could not be taken lightly. Nevertheless, no right is absolute: trade-offs between competing values are unavoidable. In this instance, free speech had to be balanced against the value of a fair electoral process. This policy objective was considered worthy of imposing some limits on free speech.

A second, related policy issue concerned the means used to accommodate this value: are they reasonable? The Royal Commission was concerned that the method used to pursue the goal of a fair electoral process accommodate the right of free speech to the greatest extent possible.

Finally, a third crucial policy issue arose from the 1983 legislation on electoral reform. Under this legislation, groups and individuals could spend without limit on issues, but were prohibited from spending on candidate/partisan advertising. They were not, in other words, permitted to "name names". The Commission had to confront the issue of whether this was a meaningful or effective distinction. The problem was illustrated by the "Free Trade Election" of 1988. Whereas the pro-Free Trade advertising made few partisan references, much of the anti-Free Trade effort was explicitly partisan. Under the 1983 legislation, therefore, it would have been illegal, while the pro-Free Trade effort would not have been; yet the Tories clearly benefitted from this "non-partisan", "issue-specific" advertising.

Furthermore, the distinction was a difficult one to enforce. Prof. Hiebert cited the abortion issue as one in which the distinction between issue and partisan advertising was difficult to sustain. A related concern was that any legislation making such a distinction would have difficulty surviving a Charter challenge. Could it survive a challenge based on the premise

that there was a less oppressive way of limiting the right of free speech? There was certainly reason to doubt that it would pass such a test.

Having sketched this policy context, Prof. Hiebert turned to the proposal adopted by the Commission. In brief, it proposed that any individual or group should be allowed to incur election expenses of up to one thousand dollars in the course of a campaign. The Royal Commission made no distinction between issue and partisan advertising. It would impose no restriction on the ability of any group or individual to advertise. It would not allow any pooling of funds by different groups, so as to ensure that the spending limits were meaningful.

Prof. Hiebert concluded by discussing the public response to the Commission's spending proposals. It was, she noted, decidedly mixed. Some critics have argued that freedom of expression is too fundamental a value to be limited, while others have argued that the one thousand dollar spending limit is too low to allow for the mounting of an effective campaign of any kind. On balance, however, there has been a surprising degree of support for the Commission's proposals. To illustrate this point, Prof. Hiebert noted that following the National Citizen Coalition's successful court challenge of the spending limits in 1984, media opinion had been overwhelmingly critical of spending limits. By contrast, media coverage of the Royal Commission's recommendations had been quite favourable. She noted that if the Commission's recommendations on spending limits are brought into law, they will certainly be challenged in the courts. However, if no policy on spending limits was recommended and adopted, candidates and parties would have (and will) challenge their own spending limits, arguing that their rights are being violated.

Implementing the Lortie Commission's Recommendations

Senator **Donald Oliver**, former Progressive Conservative party legal counsel and one of the Commissioners until his appointment to the Senate in 1990, then addressed the short-to medium-term prospects for implementing the Commission's recommendations. Of the 560 recommendations in the report, he asked, what are the politicians likely to do about them? The short answer was, not very much.

Historically, changes in election law in Canada have been implemented only on the basis of a consensus among all major political parties. Such a consensus is not a legal requirement, but has been perceived as a means of maintaining credibility and fairness.

On 14 February 1992, a Special Committee of the House of Commons was appointed to undertake a comprehensive review of the recommendations of the Royal Commission's Report. The Committee was composed of five Conservative Members of Parliament, including the chair, Jim Hawkes, two Liberals and one NDP Members. Their priorities had been determined practically, with the focus on what they could readily agree to, what must be done immediately, what the Chief Electoral Officer needs to do, and what can be done before the next federal election. As the work of the Committee had proceeded, its efforts had increasingly been dominated by the partisan views of the respective political parties. Its most recent meetings had been held *in camera*, in an effort to reduce political posturing and thus expedite its work (the Committee had fallen behind schedule, with its goal being to complete its report by the end of the Parliamentary Session on 23 June). Partisan splits had been in evidence on a range of key issues, including broadcast time limits and election day registration. On the latter issue, for example, Senator Oliver noted that the Royal Commission had recommended that the right to register and vote on election day currently available to voters in rural polling divisions should be extended to all other voters. However, Conservative members of the Special Committee had been resisting this recommendation, viewing it as potentially vulnerable to fraudulent voting — that is, voting more than once. Their alternative was to eliminate this right in rural areas, but to extend the revision period to five days prior to an election from the current fifteen.

The Electoral Reform Committee had split the Commission's recommendations into two phases for

action: Phase I reforms, scheduled to be implemented as amendments to the existing *Canada Elections Act* in time for the next election; and Phase II reforms, to be implemented after the next election in the form of a brand new Act. The scope of the reforms to be incorporated into Phase I had been contentious. Both opposition parties had pressed for an agreement on an expanded definition of election expenses including, for example, party spending limits, with Rod Murphy of the NDP asserting that he would not agree to a Phase I report without real "meat" on this issue. However, no such agreement had been possible as of the end of May, less than a month before the Phase I report deadline of 23 June.

The Committee had originally hoped to incorporate 140 of the Lortie Commission's recommendations into its Phase I report, so they would be implemented by Elections Canada before the next election. However, this plan had become unfeasible with the government's decision to put in place provisions for a possible national referendum on the constitution. Not surprisingly, this has become Elections Canada's top priority. The Chief Electoral Officer requires at least 90 days after referendum legislation has been passed to prepare for such a vote. As a result, it would not be possible to deal with reforms to the *Canada Elections Act*, recommended by the Electoral Reform Committee, before September. Complicating this problem was the fact that the legal issues associated with the referendum legislation had proven to be complex and difficult. For example, on the issue of referendum spending limits for individuals and groups, the Cabinet had received a variety of conflicting legal opinions, so that it was having difficulty determining a safe course.

As a result of this "referendum factor", as well as partisan disputes, the scope of the Electoral Reform Committee's Phase I report would be scaled down significantly. Senator Oliver predicted that a report, dealing with 40 to 50 of the Lortie recommendations (as opposed to the original 140) would be completed by the Committee's late-June deadline. It would then go to the Department of Justice, and on to the House of Commons for legislation in the fall. The House, in the meantime, could deal with its recommendations in special one-week sessions in July and August, called primarily to deal with constitutional issues. The legislation could be expected to deal with the 40 to 50 Lortie recommendations dealt with by the Committee, plus a good portion of the contents of Bill C-79, which had died on the *Order Paper* in 1988.

Discussion

The ensuing discussion was lively and wide-ranging, **Jane Jenson** initiated it by addressing a question concerning spending limits to Herman Bakvis and Janet Hiebert. Although the Commission's ultimate recommendations on this issue were based on a rather complex reasoning process, the basic element appeared to be the conclusion that Canada should retain a limit on electoral spending. Yet in the legislation concerning a national referendum (discussed above by Senator Oliver), this basic element of the Canadian electoral spending regime seemed to be under assault, since the legislation proposed no such spending limits. She asked, therefore, whether the Royal Commission had discussed the possibility of abandoning spending limits in the course of its deliberations.

Prof. Hiebert responded that the feeling in the Commission had been that Canadians very strongly valued an election spending regime incorporating clear spending limits. Such limits were widely perceived to enhance rather than detract from free speech when carefully implemented. In the context of a referendum, however, and in contrast with the elections context, Prof. Hiebert was not sure a system distinguishing between parties on the one hand, and other groups and individuals, on the other, was justified. In an election, the voting decision goes beyond specific issues to the broader issue of choosing a governing party. However, in a referendum, the vote is only about issues. In such a situation, it was questionable whether parties were entitled to a louder voice than any other group of interested citizens. However, an argument for uniform spending limits during a referendum could be constructed on the basis of attempting to ensure adequate representation and equality of voices.

Prof. Bakvis expressed general agreement with Prof. Hiebert. He added that some other countries, notably Australia, had provisions for referendums in their constitutions which did not incorporate spending limits. However, in the Australian case, the referendum regime was established over 100 years ago in a very different social and historical situation. Bakvis argued that there was still a good case to be made for spending limits in the referendum context, in order to ensure that the process was fair and/or seen to be fair.

Jenson also directed a second question to Senator Oliver. Noting that many of the Lortie Commission's recommendations had had to do with establishing a "level playing field" in elections, specifically in terms of gender, she asked whether this issue was getting any attention in the Parliamentary Electoral Reform Committee. Senator Oliver's brief answer was yes: Committee members were in agreement with the Commission's recommendations in this area.

Senator Oliver was then asked by **Heather MacIvor** about the politics of enacting the Lortie recommendations. She wondered how the fact that the parties themselves were responsible for enacting the reforms would affect their prospects for implementation, particularly in the context of a majority government wherein government Members (and thus the majority on the Electoral Reform Committee) had presumably been well served by the existing electoral system. Would this heighten the obstacles to successful electoral reform along the lines envisioned by the Royal Commission? Senator Oliver did not think so, arguing that Conservative Committee members would not use their majority to force their wishes on the Committee. In this view, they were committed to the convention of achieving electoral reform by all-party consensus or nothing.

Vincent Lemieux returned to the question of a voluntary Code of Ethics or Code of Conduct, querying whether the need for some of the reforms advocated by the Royal Commission might not be obviated if one of the major parties adopted such a Code. Had the Commission considered the possibility that all major parties would feel bound to follow such an example without the need for legislation? Prof. Bakvis responded that the Commission had in fact recommended the adoption of a Code of Ethics by political parties. However, the question remained how such a Code could be made to work — what authority would support it? So far, he noted, the major parties had shown little inclination to act in this vein, and party insiders had suggested to the Commission that rules backed by the authority of law would be necessary for a clean-up of party practices. Prof. Hiebert added that the idea of a Code of Ethics had been floated by Commission personnel in a seminar, where a draft Code had been presented to party representatives. However, the predominant view among these representatives was that such a Code was window dressing: without enforcement measures, it was not likely to be adhered to, bringing its utility into question. A Code of Ethics could only be as important as the parties themselves recognized it to be.

Michael Stein noted that one of the key criticisms of the 1984 electoral reform legislation had been that "minor" or "third" parties were not accorded the same advantages as the three main parties. Such a criticism would be even more relevant in the coming election, with the emergence of important "third parties" like the Reform Party and the *Bloc Québécois*. Prof. Bakvis responded that the Lortie Commission had considered this issue in formulating its recommendations on broadcasting, for example. Prof. Hiebert added that given the Commission's view that political parties were the primary electoral actors, with other groups being secondary, access for new parties was crucial. **Frederick Fletcher**, a Commission research coordinator instrumental in developing the proposals on broadcasting, noted that the 1984 legislation had been drafted when "third parties" were truly marginal. The Lortie recommendations sought to improve access to paid advertising time for "minor" third parties. An intervenor from the floor pointed out that this was not the case for free time advertising. Mr. Fletcher responded that the Lortie approach to the allocation of free time advertising started with a minimum amount for all parties, with the remainder allocated on the basis of their percentage of the popular vote in the last election (Senator Oliver suggested that this would result in the Reform Party

getting roughly eight minutes of free time advertising!). An alternative, basing free broadcast time on the number of seats contested by the various parties, was judged by Mr. Fletcher to be administratively more difficult, but potentially fairer. **Peter Aucoin**, Director of Research for the Lortie Commission, added that the Commission's recommendations called for earlier party access to the tax credit and for fair access to paid broadcasting time, and that both would be of advantage to smaller parties. The Commission also recommended that candidate and party reimbursement be based on their percentage of the popular vote — another improvement in the position of smaller parties.

Donald Rowat returned to the issue of distinguishing spending on issues from that on parties and/or candidates, asking about the status of court cases on this issue in the United States. Prof. Hiebert noted that so far, the US Supreme Court has provided no definitive guidelines on this distinction. The legal situation was constantly changing, so that interested parties could not be certain as to whether an advertisement was issue-based or partisan. The parameters of these regulations were constantly being challenged in the courts, and remained in flux. The key arguments in this controversy revolved around the proposition that if free speech is to be meaningful, there should be some opportunity to link issues with candidates.

Robert Young questioned the logic followed by Prof. Bakvis in explaining why the Commission considered the deregulation of party activities untenable — that is, that given the level of public financing of party activities, there had to be some degree of public regulation. Mr. Young suggested that in a capitalist system, governments support many things which are not subject to close public regulation and accountability — notably corporations. Prof. Bakvis responded that he could not see how you could publicly subsidize party activities without some kind of regulatory framework. The present system is an accountability regime incorporating reporting mechanisms. He could not see any compelling argument for withdrawing the basic, elemental rules which are in place: to do so would be widely perceived as irresponsible. Prof. Hiebert added two points. First, the sheer size of public funding for parties produced a need for accountability. Second, she suggested that a consideration of this issue needed to start with the question of whether the state has a legitimate interest in regulating party activities. In her view, the fact that parties perform very public functions led to the conclusion that some regulation was needed.

Mr. Young went on to say that he personally lost interest in the work of the Lortie Commission when it became clear that it would not consider any fundamental redesign of the electoral system. He wondered what the providence of this decision was. Senator Oliver responded that at the first meeting of the Commission, motions not to deal with either Senate reforms of the first-past-the-post electoral system were moved and passed. The rationale for these decisions was essentially that the Commission needed to limit the scope of its work. **Raymond Hébert** followed up by arguing that the Commission missed a major opportunity to inject itself, and important new ideas, into the current debate about constitutional reform. He argued that some form of proportional representation would constitute a major improvement in the electoral system, with distinct advantages over the West's current favoured option, the Triple-E Senate. Western alienation, he argued, was largely rooted in the lack of Western representation during the Trudeau era. This situation would not have arisen had a proportional representation system been in place. He therefore asked why this option had been so quickly discarded by the Commission.

Senator Oliver agreed that with the benefit of hindsight, more extensive consideration of proportional representation would have been useful. However, Peter Aucoin took issue with the argument that this system would eliminate the need for a reformed Senate. He noted that one of the key rationales underlying demands for proportional representation in the House of Commons has been that it would improve the societal representativeness of the House. Yet evidence from jurisdictions using this system doesn't support the idea that it facilitates better representation for such groups as women and minorities; rather, quotas do this in Europe. Second,

he raised the issue of the conflict between the principle of, and preference for, local representation in Canadian political institutions, and proportional representation. If it was applied to three or four member constituencies, so as to preserve some element of local representation, the outcome in terms of a match between the popular vote and Commons representation might in fact be worse than the status quo. And if constituencies of five or more MPs were used, the principle of local representation would be offended. Furthermore, all administrative devices currently used in the electoral system would have to be altered where some element of proportional representation to be incorporated, making the scope of reforms to be dealt with much greater.

Bill Cross questioned Janet Hiebert on her characterization of the basis for supporting spending limits for candidates, which was rooted in the desirability of enhancing equality and competitiveness. He suggested that in the US, the key consequence of the lack of spending limits was that it was seen to underpin the advantage of incumbency. Prof. Hiebert responded that the goal was not strict equality, but rather equity. The spending limit of $70,000 per candidate was supposed to bring the opportunity to run within range of the "ordinary Canadian". Furthermore, in Canada, there was no conventional wisdom comparable to that in the US that incumbency is a significant electoral advantage — indeed, the same correlation may simply not hold. The goal of equity also involved the idea that candidates should not be beholden to special interests — that their candidacy should be widely acceptable — which also reinforced the argument for spending limits. In response to Mr. Cross' questioning of the recommended spending limit of $1.9 million for leadership races, Prof. Hiebert noted that in terms of equity, women's groups had emphasized local constituency nomination races, rather than national leadership contests. Securing local nomination was viewed as the real barrier to greater political access for women. Therefore, although she was not sure what the appropriate spending limit for leadership races should be, the main locus of concern about equity and access was the constituency level.

In terms of national party leadership contests, Prof. Bakvis suggested that the rationale for spending limits included the fear that their absence, and thus the need for very large amounts of financing to wage a successful campaign, would produce beholdenness to wealthy, and possibly foreign, special interests. Returning to the issue of the advantages of incumbency, Peter Aucoin argued that incumbency per se is not the basis for this advantage in the US; rather, the problem is that the lack of spending limits scares off potential electoral challengers, thus creating an advantage for the incumbent. He said that when Commission researchers heard, in the course of their work, about the amounts of money raised in the context of US electoral contests, Canadian spending was put firmly in perspective. Agar Adamson added that the amounts of money required for election to the Japanese Diet made those required in US House of Representatives contests look like peanuts.

Prof. Adamson went on to ask about the status of the tax write-off for the expenses of independent candidates who are not sanctioned through party nomination. Mr. Aucoin responded that under the Commission's recommendations, independent MPs could register their constituency association to obtain access to tax credits and funds could be held in trust for a future contest should they lose the election.

The final questioner, Vincent Lemieux, returned to the distinction drawn by Prof. Hiebert between elections and referendums, and the differing roles of groups and parties therein. He expressed scepticism about the utility of this distinction. Prof. Hiebert justified her position by suggesting that in a non-binding referendum, governing parties are simply seeking a sense of public opinion on the issue in question. Such a situation does not justify giving parties a louder voice than anyone else. If, one the other hand, the issue in question is so fundamental that a party would stake its future on it, the issue should become an electoral one, in which different assumptions would apply. A non-binding referendum simply does not involve the same kind of stake as a general election.

-rapporteur, David Black

Learned Societies Panel

Party Discipline: Should it be loosened ?

Moderator:

Professor Stéphane Dion
Department of Political Science
University of Montréal

For:

Jean-Pierre Blackburn, MP
Senator Heath Macquarrie

Against:

Professor Robert Jackson
Department of Political Science
Carleton University

Hon. John Reid
Former Member of Parliament

Stéphane Dion: The topic of the debate, 'Should Party Discipline be loosened?' is a theme that is currently relevant. All major parties have projects that are examining the use of more free votes. Further, proponents argue that loosening party discipline would reinforce and improve the role of committees while allowing Members to express personal opinions that do not coincide with party policy.

These arguments and projects have been questioned and met with scepticism by those who see the Westminster Parliamentary rules as valuable. Those rules, they argue, maintain clear lines of responsibility within parties, as well as between the government and the opposition.

Jean-Pierre Blackburn: There is a double question raised by the debate on party discipline. First, it is important in the context of the recent bill proposing reform to the *Unemployment Insurance Act*. Second, given the upcoming election, it will be important whomever is the new Progressive Conservative party leader. Both
Ms. Campbell and Mr. Charest have expressed an interest in reforming Parliament, including reassessing the value of party discipline.

An historical perspective is useful. In the mid-19th century, there were no political parties. Members were independent and, as a consequence, governments had trouble passing legislation. Parties were developed as a response to this situation, in order to introduce discipline and allow governments to become more effective.

Now, in 1993, there is a new situation. Party leaders decide how their party is going to vote, then enforce that decision through their whips. It is not surprising that the public has lost confidence in the system. The electorate is increasingly sceptical, and is becoming convinced that MPs do not represent the views of their constituents. There appears to be no room for intelligence on the part of the individual members in the system as it has developed.

To understand this, it is useful to understand how an Act of Parliament is passed. First, public servants present information and analysis to their Minister for his or her consideration. Based on this information, the Minister and civil servants develop a bill which the Minister presents to Cabinet. If the Minister has the confidence of his or her Cabinet colleagues, the bill will be introduced into the House of Commons for first reading, which is essentially a formality. The first opportunity for debate is at second reading.

How does a debate work? Speeches read by Members follow either the government or opposition line, depending on the Member. These speeches are prepared by the party. If members want to go into greater detail, explore nuances or deviate on certain points, they must write their own speeches.

At this point, a bill is sent to a legislative committee, where it is considered. However, regardless of the committee's deliberations, the bill will not be amended in any significant way. If it were to be changed, it would not be accepted by the government once it was sent back to the House of

Commons. On third reading, everyone on the government side must vote for the bill, and everyone in opposition must vote against it.

Nine or ten Conservative MPs were opposed to the Unemployment Insurance Bill. Before second reading, they proposed some amendments, but none of them touched any of the financial aspects of the Bill. The Minister did not want any changes to the Bill because he did not want to lose face and, therefore, had to put pressure on the backbenchers to conform. It was at this point that the backbench Conservatives rebelled.

"Why are MPs sent to Ottawa if there are only going to be 'yes-men'?" has become the question of constituents, and of some backbench members. There is a great need to reflect people's wishes and opinions in Ottawa. Kim Campbell has suggested amending the system. One possible amendment would be sending bills to legislative committees for consideration after first reading.

When voting, Members must use their intelligence; if they know something is not right, they should stand up to their party. However, when voting against the government, MPs need to distinguish between votes that will overturn the government and those that will not. In the case of Bill C-113 (Unemployment Insurance), Mr. Blackburn voted against it — although it was a very difficult decision.

There is a need to connect the system better — to connect Parliament to the people. What is needed is not total freedom, but also not total rigidity, which is what exists now. MPs can better reflect the needs and opinions of their constituents with a relaxation of party discipline. The need for change is especially true now — if it is not possible to change even a comma in legislation — to make democracy more efficient or, really, valuable at all.

John Reid: John Reid was elected to the House of Commons in 1965, the youngest MP in the last 40 years. However, he noted that he did not come to Ottawa without experience; he had spent two years as the executive assistant to a Minister in a previous government. Upon his arrival, he recalled, he met with the party whip for the first time. The whip had two things to say to him. First, the whip told him that Canada has a system of responsible government. He added, with a touch of sarcasm, that meant that the government was responsible and the opposition was not. Next, the whip inquired whether he planned on being a talker or a success. The whip noted at the time that of the 15 Liberals with the largest block of speaking time in the previous Parliament, 13 were defeated in the election, one did not run and one was appointed to Cabinet. The lesson, Mr. Reid noted, was to learn not to talk.

Mr. Reid had a reputation for voting against his party. However, he emphasized, it was fortunate for public policy and party cohesion that these votes did no harm to policy. That he had planned his dissensions this way was an important point. The government has to be able to count on its troops. The electorate will decide if the government has carried the day on the basis of its performance and its ability to meet its commitments. It is not up to MPs to overturn party policy.

That being said, Mr. Reid noted that the biggest pressure to vote for a bill does not come from the Minister sponsoring it, or the Prime Minister, whose policy it represents, or from the whips for that matter. Rather, the pressure that matters the most is that which comes from a Member's own caucus colleagues. Politics is a team sport. The members of a party need to be reliable, the party has to be able to count on them. If they cannot be counted upon, MPs lose their credibility with colleagues on both sides. The only people who like mavericks are journalists. Mr. Reid noted with a touch of irony that, given the current state of disrepute and disfavour into which the Canada media has fallen, having no one but the media on your side could be the kiss of death.

Nowhere is it written in the rules of Parliament or of any party that an MP must support the party. No party would insist on support on votes that were clearly a matter of conscience. The majority of questions are a matter of judgement; only a very few bills deal with matters of conscience. Most important areas of legislation, including the budget, deal primarily with matter of judgement.

Turning to another key aspect of the political system, Mr. Reid noted that Caucus is where the

party gathers to make policy. The debate in Caucus is necessarily held in secret so that the party gathers to make policy. The debate in Caucus is necessarily held in secret so that the party can work out its differences. In fact, he observed, Caucus debates were often more volatile than the fieriest House of Commons debate. Caucus is a vital forum for building and maintaining party discipline.

MPs join parties voluntarily. As a free decision, they must accept the consequences, the responsibility of being a good team member, or face sanction. One must ask who benefits from total independence regarding MPs' voting. Do the voters benefit? Does the Member benefit? The voters, Mr. Reid argued, do not benefit. The existing structure provides the greater benefit to the voter; they know where their vote is being cast. The system is, in a word, effective. A free vote would not allow the electorate to change government. However, independence does allow MPs to pander to their constituencies, perhaps enhancing their chances of getting re-elected.

Mr. Reid concluded by stating that the Canadian political system is complex and governing is a complex process. Some of policies supported by each Member go against the interests of their constituency, while others favoured it. In the end there is a balance. What needs to be kept in mind, he re-emphasized, is that some votes are a matter of conscience, and others, the vast majority, are questions of judgement.

Senator Macquarrie: When I was young, Senator Macquarrie began, I was taught that we have a fine system of responsible government. I even taught that for a few years. I later woke up to realize that the whole thing is inverted. Members of Parliament are responsible to and held hostage by the people who run the country — the Cabinet and the Prime Minister.

The central point is that, if you cannot exercise your conscience even on a matter of procedure, then you do not have democracy. Senator Macquarrie recalled that, as a young politician, he saw party leaders, in this case John Diefenbaker, order backbenchers to vote against what they thought were sensible rulings by committee chairmen on points of order.

Members of the Finnish Parliament, he noted, had managed to overcome the dreary life of the back bench. Someone, so the story goes, noticed that a match placed just so in their individual voting machines accomplished exactly what would have happened if they remained in their seat. This discovery freed up much time for libations. In Washington, the Senator continued, he overheard one member of Congress say to another that he was thinking of voting for a piece of legislation that the other had sponsored. "Thinking about how you are going to vote," Macquarrie sighed, can any MP say that he or she ever said that? Backbench MPs are increasingly regarded by the public as the equivalent of trained seals — it is insulting.

The PC Party used to be against closure. However, changing circumstances and a declining respect for debate in the House of Commons have allayed the reluctance of party leaders to limit debate.

When partyism becomes everything and MPs are forced to toe a rigid line, all is done for the party and not always for the country. Senator Macquarrie noted the Gilbert and Sullivan commentary on this tragic circumstance: "he always voted at his party's call/and never thought of thinking for himself at all." Senator Macquarrie suggested that Members consider whether they ever did their own thinking on questions other than those of conscience. He concluded that it might be that there is something wrong: if everyone is thinking the same thoughts, then some likely are not thinking at all.

There have been attempts to improve this, he recalled. For them to be successful, however, he argued that first we must rid ourselves of the view that every vote is a vote of confidence. The Swiss National Parliament handles this better.

It is important to do what we can to diminish the disrespect directed toward politicians. The trained seals symbol implies a lack of thought. Furthermore, Senator Macquarrie argued that he had never found Caucus debate particularly conclusive. Finally, he reiterated that Ministers pay more attention to their chief advisors in the civil service than they do to their Caucus colleagues.

Robert Jackson: Chekhov, Mr. Jackson began, said that the stage is the scaffold on which an author may hang himself. Mr. Jackson suggested that the panel was one scaffold, and that he might be such an author. He suggested that such a topic should be approached in three parts: 1) why we should maintain party discipline; 2) the logic of the arguments against party discipline (on the cutting edge of thirty years ago, he noted); 3) the counterarguments in light of the facts as we know them.

First, we need to acknowledge and understand the 'ribbon of Canada', the fact that most of the Canadian population is stretched along a 180 kilometre-wide strip of land atop the border to the United States. Second, we need to understand its incredible heterogeneity. It is made up of numerous different regions and two fundamental languages that are ever changing because of changing immigration patterns.

Because of these two factors, there is a need to build Canada in an East-West fashion. Some said this was Trudeau-ism, but the truth is that all 17 Prime Ministers before Brian Mulroney saw Canada as an East-West entity. Sir John A. Macdonald saw this and used a railroad to unite the country. Since then, the East-West architecture has been provided by various public policies, including the railways as well as health and social policy.

Such East-West policies, he argued, are necessary in order to buttress Canada against the centrifugal forces acting upon it. These forces include growing world economic interdependence and, as the product of the Mulroney era, greater North-South pull as a result of the emergence of trade agreements. The Mulroney era, he argued, has undermined the East-West character of many Canadian institutions.

Political parties are among the few remaining national institutions that can unite the country in an East-West fashion. This is especially true of the mainstream parties, now that Reform has appeared as a Western-based party and the *Bloc Québécois* attempts to impose a 'language *apartheid*' on Canada.

In this context, Mr. Jackson maintained, party discipline is one of the few things to keep parties cohesive and strengthen East-West ties.

Secondly, we should maintain a Cabinet-responsible political system; MPs are elected to support political parties, their leaders and their platforms. We don't want to adopt the ramshackle US system.

The 1985 McGraw report, which proposed a reduction of party discipline and was accepted by all Members, has had no significant affect on the system. Why there is today no such thing as a free member? MPs have far too many influences on them to be free: constituencies, interest groups, big business. In his view, it is better to have MPs controlled by parties than by interest groups. This is especially true because MPs are in a sense vulnerable as they need money and information to be effective. The simple fact is that it is better to have MPs controlled by broad-based political parties rather than narrower interest groups.

Many have pointed Britain as an example of a system that has changed to produce more effective MPs. However, that change is a myth. The idea came from the period of Labour Party rule in the late 1970s. Since 1980, and the return to power of the Conservatives, the average British MP votes against the party once per year, or about once per every 1000 votes.

There is also a myth put forward by some, including Preston Manning, about constituents wanting members to be free from the party whips. In fact, within a few weeks after any election more than 75 per cent of voters cannot remember the name of their own MP. Furthermore, since 1940, of the 31 Members who have voted against their party and then run as independents, only 6 have been re-elected. The lesson seems to be that dissidents are punished by the electorate.

Moreover, the reality is that no MP in a minority situation has ever voted against his or her party.

Mr. Jackson concluded that what is dangerous is the assumption that because the public is upset with politicians, something must be done, and that the best choice is relaxing party discipline. This conclusion,

Mr. Jackson emphasized, must be avoided. Party discipline is an iron necessity in Canada — an imperative for keeping party cohesion and maintaining responsible Cabinet government. Both of these are necessary to maintain a viable independent country north of the United States.

Debate

The first questioner, directing his query to Mr. Blackburn, inquired why MPs do not vote against their parties whenever the government position strikes them as ill-advised. Mr. Blackburn noted that, simply, it takes guts to rebel, and that rebellion does not happen without sanction. The pressure to toe the line, he noted, falling back on an earlier point, comes as much from fellow back-benchers who would also like to vote against the party but are under pressure or feel obligated to vote for their parties position. The consequence of deviating from the party line is becoming a black sheep in caucus. Rebel MPs carry less weight and life becomes more difficult.

Mr. Reid noted that the decision regarding whether to follow the party was essentially a clash of individual versus group responsibility. This was especially true, he observed, as regards committee responsibility. The main problem was not so much feeling obligated to vote for the government on third reading of a bill, after which it becomes law. The main problem is that some MPs would prefer that certain pieces, that are sufficiently ill-conceived or offensive, not be introduced at all let alone proceed to third reading.

Another person inquired of Mr. Blackburn whether he had resolved his objections to Bill C-113, and of Mr. Jackson whether part of the problem regarding party discipline was that parties need much more clearly defined and detailed policy platforms. Mr. Blackburn replied that, even if one votes against a bill, it is not as if you are abandoning the party altogether. It may that the situation in which one finds oneself is unacceptable, but the reality is that if leaving is not an option, compromises must be made. As for voting against the party, the effect of sanctions are not always immediate and there is respect in the caucus for those who dare to do it.

Mr. Jackson concurred with the need for coherent party policy platforms that dealt with a wider range of issues and agreed that they needed to be more developed. All parties should have written manifestos, he argued. However, he noted the diverging experiences of a former Liberal party campaign that dealt in great depth with detail, to their detriment, contrasted with the experience of President Clinton and his many thousands of specific policy initiatives, a characteristic that seemed to attract favour. Part of the problem, he noted, was the propensity of the Canadian media to deal at length with irrelevant questions, thereby letting politicians off the hook as regards policy.

Isn't changing party structure more important than adjusting party discipline, the next person asked? Isn't there a need to reduce the power in the hands of the Prime Minister? Mr. Blackburn agreed that structure and process were important points to address. That is why, he said, he favours referring bills to legislative committees for debate after first reading. As it is, changes in bills are only marginal. There is a need to include MPs in the process of developing legislation, including more consultations with public servants. Otherwise, backbench MPs have little influence on government policy.

Mr. Jackson again emphasized the need to distinguish between kinds of votes. He also noted that many compromises were possible, in terms of power sharing. He reiterated his suggestion that caucus nominate the people that would be in Cabinet, while the Prime Minister would retain the prerogative to install them in a particular portfolio.

Senator Macquarrie speculated that some reform would involve an attempt to change human nature. The Prime Minister, he remarked, was getting much more powerful, and that fact was reinforced by perception fuelled by the media. John Reid recalled that there have been a series of experiments designed to change this whole process. However, he pointed out that if Mitchell Sharp, as finance minister, could survive the defeat of his budget on third reading, then there was no reason to consider any vote a *de facto* vote of confidence.

One person suggested that more deals between House leaders worked out in advance would reduce the number of votes of confidence and allow members to be freer within the confines of the party. Robert Jackson replied that Canada did indeed need cohesive parties and that MPs also need the freedom to explore ideas with less sanction. Whether or not deals would be effective, Mr. Jackson was unsure. He reiterated that there is no such thing as a free member. Everyone needs support, money and information.

Stéphane Dion, the moderator, inquired of the debaters what changes they would accept that would not altogether destroy party discipline. Robert Jackson raised his three points: first, distinguish between votes of conscience and votes of judgement; second, use your intelligence; and third, have Cabinet selected by caucus and appointed to their portfolios by the Prime Minister. Jean-Pierre Blackburn returned to the referral of bills to legislative committees after first reading. He also suggested that omnibus bills need to be improved. Senator Macquarrie argued that anything that might improve the present situation should be tried.

Party discipline, John Reid observed, emerges from the political culture of Canada. In part because of that, there is not enough intellectual debate in Canadian politics. There is no means of communicating ideas, he argued, and all ideas get mixed up in the metaphor and symbolism surrounding a particular leader.

- rapporteur, Mark Glauser