
Executive Dominance in Provincial Legislatures

Executive dominance has long been a fact of life for provincial legislatures. This paper investigates areas of legislative strength and weakness in the light of a modified theory of responsible government. Concentrating especially on the use of committees and the business of Supply it finds certain reforms that bear investigation by other provinces. These are: committee examination of bills (with public input), greatly expanded committee terms of reference, a central legislative focus for overview of the public corporation and regulatory sectors, an economic and fiscal review committee of the legislature, and unlimited time for legislative debate of Estimates.

by Christopher Dunn

Provincial cabinets have, generally speaking, enjoyed a measure of predominance and control over their legislatures which exceeds that found in Ottawa. There are four reasons for this. One is the comparatively small size of most provincial legislatures. Opposition parties face a serious manpower problem in finding competent critics for the full spectrum of government policies and actions. This problem is enhanced by the high rate of turnover in provincial legislatures, especially in the West, (see Table 1) by the recurrence of "landslide" electoral victories and large majorities and by the growing size of provincial cabinets relative to the size of the legislative assemblies. A second reason for provincial executive dominance is the workload of provincial legislatures which tends to be shorter than sessions of the House of Commons. One result is that part-time legislators confront full-time governments. A third reason is the small size and selectivity of provincial legislative press galleries. The focus of media coverage tends to be on governments rather than on oppositions and on policy announcements rather than on debates, tendencies which are enhanced by the shortness of legislative sessions. A fourth reason is the tendency toward "executive federalism". Legislatures have been left in the position of debating important decisions reached at federal-provincial or inter-provincial conferences which could not be conveniently

modified and often cannot be retracted without considerable embarrassment.

Growing executive dominance carries with it disturbing implications for Canadian politics. Canadian parliamentary government is structured on the operative constitutional theory of representative and responsible government. Citizens elect members to *represent* them in the legislature, and the efficient executive (cabinet) is directly *responsible* to the legislature (and thus indirectly to the public). If the House loses confidence in the executive, so the theory goes, the legislature can support a new ministry or a general election can be imposed, the choice of which is to be decided by the Lieutenant-Governor.

Generally, however, responsible government manifests itself in less dramatic ways. It has also been interpreted so as to imply the necessity for the Government of the day to allow sufficient legislative opportunities for scrutiny and debate, to respond to criticism and to disclose enough information to keep legislators and the public apprised of vital functions in government.¹ The "legislative implications" of responsible government have in addition been interpreted to include measures that allow legislative influence on, but not direct participation in public policy-making: measures such as disclosure of executive plans and priorities, strengthened legislative committees, and those "that otherwise give the legislature the power to check the freedom of movement of the executive, without checkmating it".² To the extent that these supplemental measures of disclosure, influence and restraint are not honoured, executive dominance holds sway, responsible government is harmed and legislatures drift further

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Table 1
Number and Percentage of Newly-elected Members in Federal
and Provincial Legislatures, by General Election 1981-1989

	HOUSE	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC
1981				9/52 17%		43/122 35%	28/125 22%	24/57 42%			
1982		10/52 19%	6/32 19%		16/58 28%				38/64 59%	19/79 24%	
1983											12/57 21%
1984	128/282 45%			14/52 27%							
1985		14/52 27%				64/122 53%	39/125 31%				
1986			9/32 28%					18/57 32%	21/64 33%	41/83 49%	36/69 52%
1987					37/58 64%		49/130 38%				
1988	127/295 43%			19/52 37%				22/57 39%			
1989		24/52 46%	8/32 25%			34/125 27%				21/83 25%	

Source: For most provinces and House of Commons, see *Canadian Legislatures, The Comparative Studies 1981-1988*.

away from the accountability or "answerability" which is the hallmark of healthy government.

Disclosure, influence and restraint are of central importance in the subtopics considered in this paper, namely referrals to committees, the independence of committees, overview by functional committees and the legislative power to withhold supply. The recent case of New Brunswick is given special attention.

The question of executive dominance has arisen in several recent task forces or committees including *The Report* of the Royal Commission on Financial Management and Accountability (Lambert Report), 1979; the federal position paper *The Reform of Parliament*, 1979; the various reports of the House of Commons Special Committee on Standing Orders and Procedures, 1982-1984; *Reform of the Senate: A Discussion Paper*, issued in 1983 by Minister of Justice Mark MacGuigan; the *Report of the Special Committee on Reform of the House of Commons* (McGrath Report), 1985; and several others as well. All have agreed on the need to reinforce the centrality of the legislature in the governmental system.

There have also been important provincial initiatives of a high-profile nature. A Royal Commission headed by Dalton Camp studied the Ontario Legislature and in a number of reports proposed measures to halt its decline; these later were examined by the Morrow Select Committee. Ultimately there were changes in the Standing Orders (rules of the legislature) in 1976 and 1978. The Standing Committee on Procedural

Affairs and Agencies, Boards and Commissions studied the Ontario Legislative Assembly's standing orders and procedures for over half a decade. It made recommendations in its fourth report (in 1985) which led to changes in the standing orders in 1986. The "Liberal-NDP Pact" of May 1985 among other things called for several reforms and reviews aimed at strengthening the role of the backbencher, the committees and the public in the Ontario legislative process. In Nova Scotia, the Special Committee on Rules and Procedures of the House of Assembly was established in 1982 with a wide-ranging mandate to study the Assembly's rules, facilities and administration. The Special Committee took special care to invite input from the public on reform of the rules and, as much as possible, to conduct its deliberations in public view. To date it has tabled three interim reports and has begun a process of changing Estimates and Committee procedures.

The record in other provinces is mixed. To be sure, revisions of the rules of the legislature take place at regular intervals but these tend to be "in-house" efforts the knowledge of which is available only to intrepid researchers. Saskatchewan and British Columbia have published required reports of reform documents: in Saskatchewan the *Reports* of the Special Committee on Rules and Procedures, and in British Columbia the reports issued under the authority of the *Legislative Procedure Review Act*. In February 1985 the British Columbia Legislative Assembly adopted a wide range of amendments to its Standing Orders which had been unanimously

recommended by its Select Standing Committee on Standing Orders and Private Bills. These were the first major revisions in over fifty years. Premier Levesque of Quebec commissioned a study by one member, Denis Vaugeois, in 1982 (*The National Assembly in Evolution*) which in turn led to the National Assembly adopting new rules in March of 1984. Made permanent in the Standing Orders adopted April 16, 1985, the new rules provided an unusually wide mandate for each committee. These efforts, impressive as they were, could have been made even better if they had been premised on high-profile public involvement efforts.

The Use of Legislative Committees

Heightened use of legislative committees holds promise for strengthening responsible government as we have defined it. It provides for a number of venues where the Government must explain and defend its actions and thus allows a degree of oversight perhaps not available in the assembly itself. Some may argue that the combination of relatively short provincial legislative sessions, light legislative loads and the generally insufficient number of members makes dependence on committees unrealistic. However, E. George MacMinn, the Deputy Clerk of British Columbia's Assembly, has argued that a well designed committee system as a number of important benefits. It brings parliament closer to the people; minimizes the adversarial system and promotes earnest examination of legislation; facilitates detailed consideration of legislation and estimates; permits examination of witnesses when necessary; enables simultaneous proceedings; and brings bureaucrats and legislators together and may promote "bureaucratic responsibility".

An argument against using committees is an argument for allowing a vast array of government activity to go unexamined; some role for committees must be charted. A number of reforms are possible to strengthen committees:

Referral of bills or policy questions to committees. Since the late sixties in the federal House of Commons there has been automatic referral of all bills to standing committees with the hope that expert committees will achieve valuable technical overview of the bills. Special committees were used for investigation of broad policy areas, but since standing committees could also perform this role, the number of special committees was not high. Introduced in the Standing Orders of 1986 were provisions for three types of committees, namely standing, special and legislative. *Standing committees* will no longer review bills but will continue as in the past to review departmental estimates and to perform special investigations. Added to their duties and powers will be review of relevant departmental statute law, policy objectives, program effectiveness, regulations, as well as scrutiny of order-in-council appointments and the ability to launch independent investigations (whereas previously the terms of

reference for investigations were established by the Government). *Special committees* are those chosen to study an issue, with their existence limited to the duration of the study or else to the end of the session. *Legislative committees* are structured to review specific bills and legislation and cease to exist with the submission of reports. In 1986 there were twenty-four standing committees. The number of legislative committees is of course dependent on the legislative workload of the House.³

The provinces do not have the same degree of specialization in legislative committees; most rely principally on "standing" committees. Fleming explains the nomenclature of provincial committees:

Each province tends to use its own nomenclature when referring to Committees, i.e. Quebec simply uses the term "Committee" for what is in effect a "Standing" Committee, whereas most other provinces use "Standing Committee". British Columbia uses the term "Select" Standing Committee in connection with all its permanent committees; in addition, it strikes "Special" Committees. Whatever the terminology, it may be taken for granted that almost all committees are permanent, the exception usually being "Special" Committees struck to examine particular matters relating to the Legislative Assembly, or "Select" Committees which tend to look at critical areas which have developed in the country [or] a province that should be examined from a non-partisan governmental perspective.⁴

The reader will find in Table 2 a compilation of the various types of committees to be found in the federal House of Commons and provincial legislatures.

Whatever the terminology, many provincial legislatures do not refer bills to legislative committees. Partly this stems from a historical reluctance to dilute the focus on the Legislature itself. In small legislatures like that of Prince Edward Island, it is a question of the unexceptional nature of most bills; most are dealt with adequately enough in the PEI Committee of the Whole, with only bills of import sent to standing or select committees.

However, there are exceptions to this pattern of non-referral. In Manitoba standing committees both review bills and receive input from the public, which by long-standing Manitoba tradition may speak to any bill. Generally the eleven-member Law Amendments Committee is the favoured forum for public input since it deals with most legislation (although some legislation is referred to five other standing committees as well). The Manitoba system seems preferable, with regard to both the depth of legislative oversight and the degree of public involvement in business of legislation. Fleming's figures show that Manitoba committees had a higher and more consistent level of citizen input in the early Nineteen-eighties than did those of most western provinces. New Brunswick, Ontario and Quebec also follow the practice of considering bills in Committee. Between 1965 and 1985 there were more than 185 interventions per year before permanent or special committees in Quebec.⁵

Table 2
Number of Standing and Select Committees
House of Commons and Provincial Legislatures
1981-1987

	HOUSE	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC
1981											
ST	20	6	12	15	11	25	8	11	12	8	8
SE	9	4	0	5	6	2	3	0	3	5	0
1982											
ST	24	6	12	15	11	25	8	11	10	8	9
SE	4	4	0	5	5	2	1	0	1	5	0
1983											
ST	24	4	9	15	11	9	8	11	10	7	9
SE	7	4	3	3	5	0	1	0	1	2	1
1984											
ST	21	4	9	15	7	9	8	11	10	7	9
SE		3	0	5	5	0	1	0	1	1	0
1985											
ST	21	4	9	15	9	9	9	11	10	8	9
SE	*	3	0	3	5	0	4	0	1	2	1
1986											
ST	28	4	9	15	9	9	10	11	10	9	N.A.
SE	*	0	1	3	5	0	2	0	1	0	1
1987											
ST	28	4	9	9	9	9	10	11	10	7	10
SE	1 Joint	1 Special	0	1	1 Select 2 Special	0	1	0	2	1 Special	1 Special

Key: ST is number of Standing Committees and SE is number of Select Committees
Source: *Canadian Legislatures, The Comparative Studies 1981-1988*

In June 1989 Newfoundland authorized an experiment whereby some government bills would be referred to one of three five-member "review committees" of the House of Assembly. Able to meet even when the House is not in session, the committees are actively seeking public input. The aim is to reverse an historical pattern of rushing bills through the House with little advance notice to the media or to the public. Other reforms may follow from the work of a House Committee on reform of legislative rules which was established in November of 1989.

Standing committee independence: a measure of independence for standing committees is desirable if legislatures are to be strengthened and accountability obtained. Indices of committee independence include the degree of flexibility in the committees' terms of reference and the resources allowed to fulfil these terms of reference.

The 1986 alterations to the federal House of Commons Standing Orders have significantly aided committee independence. Standing committees may now commence independent investigations as they deem fit on the mandate, management, organization or operation of the department(s) assigned to them by the House. The Government must table a comprehensive response to the report of a standing or special

committee within 120 days. To further aid independence, committee members have a degree of tenure, with membership to continue from session to session within a Parliament during a given year (but terminating in the last sitting day of the year). Standing, special and legislative committees may obtain expert staff as deemed necessary and the Board of Internal Economy will approve budgets for committee expenses.

On March 13, 1984 the Quebec National Assembly was the first to adopt reforms that gave its nine committees (plus one subcommittee) a significant degree of independence in execution, planning and investigations. The amended Standing Orders provided an unusually wide mandate for each committee, allowing it to consider bills, review estimates, supervise public bodies, control delegated legislation and examine other matters relative to departments assigned to its direct supervision. The committees were each given one secretary and one support staff and the power to launch independent investigations. When considering a bill or reviewing estimates, the committee has autonomy in executing its work. In these and its other responsibilities, it also has the power to plan its work without intervention by the Assembly. The Assembly appoints the chairmen and vice chairmen of eight committees for two-year periods and pays them extra

money. The President of the National Assembly presides over the Committee of the National Assembly and its Subcommittee. Whereas in the past most committees were chaired by Government members, now Opposition members chair three. Ministers now do not, as before, have to be members of committees except for a few exceptions.

Ontario Legislative Committees now also have the power to initiate their own investigations. Ontario legislative reforms of July 25, 1989, followed on the heels of a prolonged opposition bell-ringing protest. It had arisen over the Government's refusal to have a standing committee investigate allegations made about the Solicitor-General. The wide-ranging changes to the Standing Orders, which included limitations on bell-ringing and presenting of petitions, a fixed parliamentary calendar, five "opposition days" per session, an elected Speaker and abolition of appeals to Speakers' rulings, also extended committee independence. All three legislative parties can now in effect refer matters of their own choosing to four Standing Committees and designate the time (subject to an upper limit) for consideration of each matter. The Standing Committees themselves have received wide new powers under Standing Order 90a "to study and report on all matters relating to the mandate, management, organization or operation of the ministries and offices [and relevant agencies] which are assigned to them." There is also a new Standing Committee on Estimates (discussed later in this article).

Other provinces do not give their legislative committees the same degree of independence as do Ottawa, Ontario or Quebec. Traditional practices predominate. Committees do not have leeway to establish their own mandates and they are restricted to matters referred to them by the House. Broad terms of reference may of course allow significant freedom of movement but they do not actively promote a spirit of curiosity or independence.

Saskatchewan has however tackled the problem of committee mandates depending on the will of the House by establishing a "Continuing Select Committee". Begun in 1981, and chosen at the beginning of each Legislature, this committee may establish both all-party "select committees" and their terms of reference without involving the House. The select committees were to have operated like short-term task forces reporting directly to the Legislative Assembly. This mechanism has been employed only once since 1981, probably for lack of sizable opposition from 1982-1986.⁶

The other provinces have not emulated the Saskatchewan or Quebec-Ontario examples. On the other hand, there do not seem to be many complaints about resources for committees (a problem in the past in Ottawa) and increasingly the legislatures are allowing their standing committees to meet between sessions of the legislature, which also strengthens committee independence.

Functional committees: In order for overview to have meaning there should be legislative committees whose subject

matter is not limited to departmental activities, but cuts across them to review broad functions of governments. It is useful if committees review matters such as crown corporation activity, regulatory activity and the making of fiscal and economic policy. Here again there is an uneven record; some provinces excel, others do not.

(a) *Crown corporation activity:* In order to counter executive dominance, it is desirable to have a central focus in the legislature to review the crown corporations. Governments allot a dizzying array of public activity to crown corporations to perform, and without a central legislative focus, a methodical and accessible of the crown sector is not possible. Saskatchewan, to its credit, does possess a Standing Committee on Crown Corporations (dating back to 1946) which reviews the annual reports and financial statements of the corporations and summons the responsible Minister and relevant executive officers to appear before it. The British Columbia Legislature established a similar mechanism, the Crown Corporations Reporting Committee, in 1977. The Committee had significant independence, since it was established by statute, could choose its own staff, had broad terms of reference, and had members who were established for the duration of the Legislature.⁷ No Minister could sit on it. Unfortunately, there lacked a requirement that the House debate its annual and other reports. The B.C. Committee was ended in 1983 in part because, "the government became concerned over the committee taking unto itself some of the functions the government saw as its own prerogative."⁸ The B.C. Legislature now has a "Committee on Finance, Crown Corporations and Government Services" with a more general mandate. In Manitoba, amendments to the *Crown Corporations Accountability Act* in 1988 required that annual reports of all Crowns (as well as audited financial statements) be reviewed by either the Economic Development Committee or the Public Utilities and Natural Resources Committee. This was an improvement over the deficiencies identified by Thomas some years before.⁹ New Brunswick has recently instituted a "Committee on Crown Corporations." Quebec allocates supervision of "public bodies" to various Committees, but to date there has been little study of this procedure. Provinces other than Saskatchewan must rely on the work of the Provincial Auditors and the Public Accounts Committee for authoritative review of the financial records of Crown Corporations. Accountability can be sought as well through questions to responsible ministers, but this is a rather hit-or-miss accountability. The Saskatchewan pattern seems preferable.

(b) *Delegated Legislation:* The picture with regard to legislative review of delegated legislation is less salutary. Only four provinces have specific committees to review delegated or subordinate legislation (regulations made pursuant to legislation), and even within this category there are problems.

The four provinces in question are Manitoba, Saskatchewan, Alberta and Ontario. Manitoba in 1960 was the first province

to establish a legislative committee for scrutiny of regulations, the Standing Committee on Statutory Regulations and Orders. The principles that the Committee is to use in the review of regulations are based upon those first developed by the Donoughmore Committee in Great Britain in 1932. Saskatchewan next established a Special Committee on Regulations in 1963. The regulations made pursuant to Acts and the bylaws of professional organizations must be tabled in the Assembly which in turn refers them to the Regulations Committee. Legal counsel is made available to the Committee. Alberta's Select Standing Committee on Law and Regulations, created in 1965, was based on the Manitoba model. Ontario in 1969 provided for a Special Committee to review regulations and this later became the Standing Committee on Regulations and Private Bills. It owed its formation to a recommendation by the *Report of the McRuer Royal Commission Inquiry Into Civil Rights* in 1968.

The mere fact that a committee has been created to review delegated legislation does not necessarily imply that effective review takes place. Miller noted in 1986 that the Manitoba Committee on Statutory Regulations and Orders had met only once on the subject of regulatory review since consolidation of the Manitoba regulations in 1970. "The Committee's original role to oversee the technical aspects of regulations has essentially fallen into disuse, meaning there is no systematic review of regulations by members of the Legislative Assembly."¹⁰ The Ontario Committee also has a limited remit: only the "scope and method" — or technical review — of regulations was to be allowed and the Committee was not to investigate the merits of the policy or objectives to be effected by regulations.

The other provinces do not have a legislative focus for review of regulations. Quebec studied the matter intensively in 1982 and 1983, but has not deemed it appropriate to institute a regulations committee. A recent review of committee operation done by the Quebec National Assembly noted that the amended rules of 1985 confided "control of delegated legislation" to various parliamentary committees but "the nature of this control, its extent and conditions, have not yet been specified, therefore Committees have not yet exercised this function." Although most provinces have "Regulations Acts" or informal procedures that provide for filing and publishing of regulations, these contemplate scrutiny by the executive, not by the legislature. Thus we have a form of executive dominance which manifests itself by the withdrawing another vast expanse of public policy — the making of regulations — from the surveillance of the legislature. If responsible government implies disclosure of information by the executive and subsequent scrutiny by the legislature, and we hold that it does, in part, then the principle has been under duress in some Canadian provinces.

(c) *Economic and Fiscal Overview*: A legislative focus for review of broad economic and fiscal matters is also useful in

modifying executive dominance. Despite the importance of such matters, there is little opportunity for legislators to tap public input and both governmental and non-governmental expert opinion on them in a regularized fashion. Two major federal reports have called for committees of the federal House of Commons which would allow for pre-budget consultation and broad investigations of economic policy. The Lambert Report of 1979 called for the establishment of a new "Standing Committee on Government Finance and the Economy" to which the Government would submit a Fiscal Plan of expected five-year revenues and expenditures. The Committee would seek expert governmental and non-governmental input and report before Christmas, in time for a Commons debate which would give the Government the flavour of current economic thinking before it had committed itself to a course in its budget-making. The Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission) recommended a similar mechanism. The Commission recommended a permanent "Economic Policy Committee" for the Commons, whose hearings would allow pre-budget input from public and private institutions and interests. The proposed Committee would scrutinize the government's performance and assess the implications of private sector recommendations for the revenue and expenditure picture.

Most provincial governments have never seriously entertained the idea of economic and fiscal committees for their legislatures. Discussion of fiscal policy is by no means lacking, since the discussion of the Premier's Estimates in most provinces is the unofficial forum for review of the fiscal record; but this is not entirely sufficient. (It should, of course, be noted that Sections 275 and 292 of the Rules of Procedure of the National Assembly of Quebec make some provision for extended or periodic debate on economic, fiscal or budgetary matters.) The Liberal Government in Ontario some years ago blazed a trail for other provinces and for Ottawa in the field of fiscal committees. *Reforming the Budget Process*, a discussion paper tabled with the October 1985 Budget by the Minister of Treasury and Economics Robert F. Nixon, suggested a "Standing Committee on Economic and Fiscal Affairs." It noted that the Legislature lacked a forum for discussion of economic affairs and a means of input to development of the budget. It suggested the Committee receive the "Ontario Economic and Fiscal Outlook" [a discussion document outlining forecasts and options with regard to economic growth, employment, revenue and expenditure and the deficit]. It also recommended that the Committee hold pre-budget hearings; review all tax legislation arising from the budget; prepare a recommendation on the overall level of provincial revenues, expenditures and net cash requirements; consider guidelines on budget secrecy; consider the reform of Estimates procedures; consider review of legislative provision of Supply

and the use of Management Board Overview; and consider reform of the budget debate procedure.

In April 1986 it was reported that House Leaders in the Ontario Legislature had agreed on the establishment of a new standing committee on finance (the Standing Committee on Finance and Economic Affairs) which would consider the budget and Government economic forecasts. Such a reform at the very least bears experimentation in the other provinces. (Ontario Estimates Procedures have since been reformed: see the section on "Supply").

Committee scrutiny of appointments: the practice of having confirmation hearings for order-in-council appointments (such as officers of Parliament, senior public servants and executives of crown corporations and members of boards, commission and agencies) is an unusual but increasingly popular innovation in responsible government. The McGrath Committee of the federal House of Commons explained the connection between review and responsible government. It suggested that governments would be driven toward consultation with committees in order to avoid embarrassment over appointments.

This type of information mechanism [prior consultation] is the hallmark and strength of responsible government. Parliament's traditional relationship with the executive comes not only through approval, rejection or alteration but also through the deterrent effect of bad publicity. The House of Commons exists to represent the people of Canada, to legitimize the rule of the executive and to hold the government accountable. It must receive the tools to pursue that mandate. One of those tools is the scrutiny of government appointments.

The Committee went on to recommend different types of scrutiny for different types of appointment. The response of the Government came with the Commons' adoption of new Standing Orders 84 and 85. These allowed various standing committees to call individuals either "appointed" or "nominated for appointment" before it, as deemed appropriate, to "examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been nominated or appointed." A "veto" power neither is mentioned nor implied. The exercise is plainly an experiment and will be scrapped if too embarrassing to the government.

No province has shown signs of trying the same system, but again Ontario has shown that a voice for committees, this time in the appointment process, is just as applicable for a provincial government as for the federal. The Liberal/New Democrat blueprint for cooperation arranged after the May 1985 election (*An Agenda for Reform*) called for the "establishment of a select committee on procedures for appointments in the public sector to recommend changes in the system of recruiting and selection of public appointees". The job fell to the Procedural Affairs Committee which began hearings in January 1986 seeking public input on how to reform the appointment process for 2,500 order-in-council appointments. It was a possibility that

Ontario would move to the optional committee review pattern established by Ottawa, but the government seems to have retreated on this matter. Given the political strife that has continually surfaced throughout the country about "political appointments", it does not seem heretical to suggest that other provinces institute hearings along the Ottawa or Ontario model as well.

Reform of Supply

The power to withhold Supply should be a touchstone for responsible government and in this area provincial legislatures are better placed to withhold Supply than their federal counterpart. Since the late sixties, House of Commons Standing Committees have examined the Estimates, replacing the work of the Committee of Supply, which was a Committee of the Whole (that is, a committee of all members of the Commons). Elements of the new system have not seemed to work: committee review is ineffectual and overly partisan, allotted days in the Commons are largely not used for supply business, as first intended, and the power to delay supply — an ancient parliamentary right — is mitigated by the requirement to report Estimates to the House within a rigid time frame.

By comparison provincial legislators are in an enviable position. In at least four provinces there is virtually unlimited time allowed for debate of the Estimates. In Saskatchewan there are no limits on consideration of estimates; Government and Opposition negotiate an informal timetable. New Brunswick similarly has no time limit on Estimates. British Columbia experienced ugly political debates in the "time limits controversy" of 1974-1975 and subsequently the time limits on Committee of Supply proved to be short-lived. There is no time limit on any matter in the Legislature of Prince Edward Island except for oral question period.

The other provinces have time limits on consideration of Estimates, which is a partial indication of executive dominance. For more than a decade Manitoba had no limit on debate of Estimates. However Rule 64.1 (1) adopted in 1986 set a time limit of 240 hours at each session for consideration of Ways and Means and Supply Resolutions respecting Main, Interim, Supplementary and Capital Supply, and for consideration of the relevant Supply Bills in Committee of the Whole. Alberta has a 25 sitting day limit on consideration of Main Estimates by the Committee of Supply and a 12 sitting day limit for Heritage Fund Estimates and Supplementary Estimates. Section 283 of the Quebec Rules of Procedure stipulates that "not more than two hundred hours may be devoted to consideration of the estimates in committee, and not more than twenty hours to the estimates for any one ministry." Newfoundland has a seventy-five-hour limit for consideration of the Budget and Estimates. Ontario's new (post-1989) Estimates procedure features time limits, as the previous Standing Orders did, plus a mandatory November date for the

report of the Standing Committee on Estimates; but there are some bows to Opposition scrutiny. All Estimates are now deemed referred to this Committee, chaired by an opposition member, which must consider not less than six and not more than twelve ministries and offices. They are considered in two rounds, with each of the three legislative parties choosing one or two ministries/offices for a maximum of fifteen hours of Committee consideration at each round. Estimates not selected are deemed passed by the Committee.

Offsetting the picture with regards to Estimates, most provinces have provisions for lengthy budget speech debates (Manitoba 8 days, British Columbia 6, Saskatchewan 5, excluding Budget Day and the debate that day, and there is no limit in Alberta). There are frequent opportunities to criticize government spending. In Quebec, there is a twenty-five hour time limit.

There are other considerations which deserve serious consideration because of the implications for responsible government:

(1) The amount of money provincial cabinets are seeking by means of "special warrants" is becoming excessive. (Special warrants entail a *post hoc* approval by legislatures, usually in the supplementary estimates, of urgent or "emergency" expenditures.) The requests for special warrants have become ever larger, and increasingly appear to be part of political strategies rather than *bona fide* responses to unforeseen needs.

(2) The standard format for presentation of estimates is inadequate. Governments should take seriously their responsibility to inform the legislature (as Manitoba has done for some time) by presenting supplementary historical and programmatic material to round out the simple listing of programs and dollars sought. Ontario ministries chosen for consideration by the Standing Committee on Estimates will now have to provide detailed briefing material, which is a progressive move.

(3) The question of referral of estimates to committees should be reconsidered. (Ontario, Quebec and Newfoundland automatically refer their estimates to committee. Revisions in February, 1985 to the British Columbia Legislature's Standing Orders provided for the possibility of referral of Estimates to select standing committees. Alberta has the (unused) provision that the Committee of Supply can further divide itself into subcommittees. Manitoba has the unusual structure of the Committee of Supply sitting as one committee in two different sections. All the other committees have unitary committees of Supply.) If there are advantages to examining ordinary bills in committees, does the same hold for Estimates or does the use of committees to examine only "components" of spending imply the Legislature's weakness?

The "Special" Case of New Brunswick

The New Brunswick provincial general election of October 13, 1987, produced an anomaly in the Canadian parliamentary system: a Government without an Opposition. Despite winning only about 60% of the popular vote, the Liberals captured all of the Legislature's 58 seats. The only parallel in Canadian history is with the complete sweep of all thirty of the Prince Edward Island Legislature's seats by the Conservatives in July of 1935. Needless to say, such complete landslides elevate the problem of executive domination to a completely different plane.

The Liberal Government of Frank McKenna has undertaken a number of new measures — or modified existing practices — to deal with the unusual situation. Some involve the use of legislative committees. The Government has promised to submit its bills and Estimates to legislative committees where opposition parties will be able to make statements and ask questions of ministers (but not to engage in debate). A Standing Committee on Estimates consisting of twenty-four members sits concurrently with the Committee of Supply and offers at least a modicum of scrutiny for departmental estimates. Other measures aim at public and political input. After major Government announcements, sittings are suspended and the opposition is allowed a "media day" to present its views. The opposition parties have of late been accorded the opportunity to address written questions to the Government for a half-hour after the daily question period; the ministers answer but no supplementary questions allowed. The Government has also allowed the opposition Conservatives and New Democrats certain administrative privileges in the Legislative Buildings.

Other options have been closed off. The Government has not the formation of an "unofficial opposition" from among its own (Liberal) members as was the case in Prince Edward Island from 1935 to 1939. It has not given the opposition parties the funds that they would have been allowed if they would have had legislative representation. Predictably there have been no structural incentives inaugurated to promote a hard-hitting Question Period.

The New Brunswick situation points out a broader problem in provincial legislatures. Agar Adamson has calculated that since the inter-war period there have been twenty-five one-sided provincial election results (eight in Alberta) in which a single party takes 85% or more of the legislative seats.¹¹ No systematic study of what the "correct" parliamentary theory should be in such instances has emerged. Perhaps it is time that it did. One would expect such a theory to contain base-line requirements for the effective functioning of parliamentary (or in some cases non-parliamentary) oppositions — a kind of "Opposition Bill of Rights." Our thoughts on responsible government may provide a possible point of departure.


Conclusion

The "decline of legislatures" has often been a catch-phrase to describe the lot of parliamentary institutions in general, but the term has lacked enough specificity to be very useful to analysts. The term "executive dominance" has its problems too; but if we narrow its meaning to signify the restriction of legislative committee mandates and of the House's power to withhold supply, then we can assign positive or negative implications to it. We view such restrictions as harmful to a more expansive meaning of "responsible government."

Committees may be strengthened in a number of ways. The House may refer to them its bills or policy questions. Standing Committees may expand their range of functional surveillance to include review of crown corporation and regulatory activity and of the making of fiscal and economic policy. It is even conceivable that committees scrutinize appointments, as long as this does not imply a congressional "veto power."

Estimates consideration should involve few time restrictions on the House, while of course allowing for the Government the ultimate protection of closure. Consideration should also be given to certain measures that imply a heightened level of responsible government, such as voluntary restrictions on the use of "special warrants" and increased use of supplementary estimates material. The referral of Estimates to Committees bears investigation to see whether it holds positive or negative implications for the legislature's power.

Provinces each have important pieces of the puzzle. Manitoba's Law Amendments Committee offers a useful example of in-depth oversight on bills in a manner that invites public input. Quebec has pioneered in the areas of broadening the general mandates of committees and of giving them a great deal of room for independent initiative. Saskatchewan's Committee on Crown Corporations is a model for comprehensive review of the public corporation sector. Ontario has structured a special legislative committee to perform economic and fiscal reviews and also seems strong in the area of legislative scrutiny of regulations. (It considered committee review of appointments, a most interesting possibility, but retreated.) Several provinces have either virtually unlimited time for legislative debate of Estimates or else a significantly extensive total hour allotment.

How, then, to promote a cross-fertilization that will aid the status of responsible government in Canada's provincial legislatures? We suggest no simple answers but in general there has to be a more generalized reflex to submit major policy questions to extensive legislative investigation and public input. 

Notes

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1. T.A. Hockin, "Flexible and Structured Parliamentarianism: From 1848 to Contemporary Party Government," *Journal of Canadian Studies*, 14:2 (1979):17-18.
2. Christopher Dunn, "A Note on the Meaning of Responsible Government," *Canadian Parliamentary Review*, 11:3 (1988):13.
3. See John Holtby, "A New Day for Committees?," *Parliamentary Government*, 6:2 (1986):14-16.
4. Robert J. Fleming, *Canadian Legislatures: 1987-1988* (Ottawa: Ampersand Communications Services, Inc., 1988) p. 151.
5. Correspondence to the author from Jacques Prémont, Director, Direction de la Bibliothèque, Assemblée nationale, Québec, May 23, 1989.
6. Correspondence to the author from Gwenn Ronyk, Deputy Clerk of the Legislative Assembly of Saskatchewan, July 24, 1985.
7. R.S. Milne and N.A. Swainson, "The Crown Corporations Committee of the British Columbia Legislature," *Parliamentary Government*, 3:2 (1982):6-8, 15.
8. D.P. Gracey, "The Real Issues in the Crown Corporations Debate," in Kenneth Kernaghan (ed.), *Public Administration in Canada: Selected Readings* (Toronto: Methuen, 1985), p. 136.
9. Paul G. Thomas, "Accountability and Crown Corporations in Manitoba," *Parliamentary Government*, 3:2 (1982):9-10.
10. Donna J. Miller, "Regulatory Reform in Manitoba: A Blueprint for Change," *Manitoba Law Journal*, 15:2 (1986).
11. Agar Adamson, "Digging Democracy out from Under McKenna's Landslide," *Parliamentary Government*, 8:1 (1989):16-20.