

# Parliamentary Reform:

## Impediments to an Enlarged Role for the Backbencher

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### INTRODUCTION

There can be little doubt that any survey of the Canadian Parliament would reveal that the members are massively in favour of parliamentary reform. But the same survey, if it took the trouble to probe the members' attitudes at all, would also show considerable disagreement as to what kind of parliamentary reform they had in mind.

For a start, ministers of the Crown would like to see government business proceed with greater dispatch through the House.

Government backbenchers want, in addition, more opportunity to ask questions during the oral question period and to make speeches during the consideration of government orders. Opposition frontbenchers would like to be able to hold up government legislation effectively and to scrutinize and criticize spending estimates at greater length. Opposition backbenchers also want an opportunity to participate in a more positive way - not simply to frustrate government initiatives but to take some themselves, with a real possibility of affecting legislation. Given the

opportunity, the N.D.P. would abolish the Senate. The lone independent member would like to see independent members given the same rights as the spokesmen for the recognized parties. Senators would like a chance to participate more fully in the legislative process.

Nevertheless, I believe there is considerable common ground among members of different parties on parliamentary reform and that the common ground extends at least to a more active and independent

role for backbenchers in the committee system. What, then, hinders reform?

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The inherent tension between the legislative interest and the executive interest is universally recognized as a principal inhibiting factor. Although this tension is not susceptible of final resolution, it is nevertheless open to accommodation from time to time, and I have argued elsewhere that a new accommodation now is to the executive as well as to the legislative advantage.<sup>(1)</sup> The executive cannot concede any additional

powers in the Chamber itself. In fact, its greatest need is tighter control over House business, and this would be the quid pro quo the executive would attempt to obtain in a new accommodation. What the executive would yield and backbenchers would therefore gain would be greater freedom of action on parliamentary committees. It would appear from such an analysis that all that is necessary to more fully accommodate all sides is a new bargain. But the reality is much more complex than this analysis, because the inhibition to a creative role for backbenchers is more extensive than the fiat of the executive.

What I want to explore in this paper is the full range of impediments to a creative backbench role in parliament. By this I mean the circumstances peculiar to his role as an M.P. which limit an M.P. in his participation in legislative work. Even when the existence of these impediments is realized, their force is not always understood. My hope is that I can provide, from the inside, a greater awareness of their reality. Since there is a general agreement that the most fitting site for the exercise of backbench talents is the committee, I shall focus principally, though not exclusively, on committee work. Because the role of the executive as an impediment to the freedom of action of backbenchers is already well understood, I shall assume, without arguing, that factor.

For such an undertaking, the most basic thing is an understanding of the character of parliamentary life. I should like, therefore, to attempt to describe the experience of being a Member of Parliament, and especially to trace the changes in that role which have occurred during my years in public life. From that background I believe there will emerge a fuller awareness of the limitations on the activity of an M.P. which arise from the conditions of his life rather than from executive dominance.

## THE SITUATION OF THE INDIVIDUAL MEMBER

My time in Parliament corresponds almost exactly with the Trudeau years in government (1968-1978).(2)

When I was first elected I found myself in a small office on the fifth floor of the Centre Block about the size of a household study. I had one secretary with whom I shared this office, and a single telephone line. As you would imagine, with a single line for both ingoing and outgoing calls for two busy people, there was keen competition for the telephone when I was in the office.

After we were allowed a second secretary in 1969 and I also acquired a parliamentary intern, we were four in this small office (fortunately by then with a second telephone line). There was no privacy either in the office or on the telephone. When, as often happened, I had a visitor whose business necessitated privacy, my staff had to go for coffee, or walk the corridors. (In fairness I should probably note that as recently as six years earlier two M.P.s and two secretaries had to share similar offices, with a single telephone line for all. As a former minister once remarked to me in exasperation, "I knew that as soon as M.P.s got full-time secretaries they'd want larger offices").

As soon as parliamentary committees began meeting in the fall of 1968, I found that parliamentary demands on my time were considerable, and the burden of constituency cases staggering. On the parliamentary side there was the daily question period, which most members of parliament wish to attend both for excitement and information, and three-half-days of duty service in the House to ensure that the Government always maintained a quorum. (This "duty day" requirement has subsequently escalated to include every fourth Friday as well). I belonged to two standing committees, which met from time to time, frequently during times of estimates and referred legislation. I was soon

chairing a special committee study on statutory instruments, which became my major time commitment and lasted for a year.

Then there were caucus meetings - every Wednesday morning from 9:30 to 12:30, and, after caucus committees were formed in 1969, meetings were scheduled with ever-increasing frequency during lunch and dinner breaks.(3) I was also among the majority of members who participated to some extent - a comparatively small extent in my case - in the parliamentary associations (the Inter-Parliamentary Union, etc.). Being determined to become bilingual, I participated in twice-weekly French classes on parliament hill, and went every second month or so to the Royal Military College in St. Jean for immersion sessions. (Most of the French I know I learned in this way from 1968 to 1971).

On weekends I commuted the five hundred miles to my constituency in Windsor, to spend the weekend with my family and my constituents. Many constituents' problems could be dealt with by telephone - as many as possible - but for the unavoidable personal encounters I had to travel by car to constituents' homes. (Some members of parliament had a satisfactory arrangement of rooms in their homes for seeing constituents, but I did not). My constituency is a particularly heavy one for civic functions, as the 25-odd ethnic sub-communities expect the presence of their M.P. at their celebrations. During my early years in parliament I kept a record of the number of events I had to attend. It ran to about two hundred public functions and two hundred visits to constituents' homes a year, both of which I squeezed into week-ends and holidays with my family in Windsor. The constituents' problems I brought back with me to Ottawa, but I had to leave my family in Windsor.

Fortunately I had an extraordinarily experienced and able secretary in Ottawa who had come from my constituency and who was able to deal with constituents'

problems as well as I could myself - in the beginning, much better. With her help, I managed to cope, but to do so, I had to give up almost all social life and all reading except newspapers and magazines. My work day usually finished in my office about 2:00 a.m.

One of the petty limitations on an M.P.'s effectiveness throughout the 28th and 29th Parliaments was his restricted access to the government telephone lines. From his Ottawa office, an M.P. or his secretary could telephone anywhere in Canada, and indeed, with the assistance of the U.S. operator available during daytime hours, anywhere in the United States. But once he was in his constituency, dealing with his constituents, he could no longer use the government telephone lines to call government offices in Ottawa or even his own office. Only in March of 1976 were M.P.s given unrestricted access to government telephone lines. About the same time (June, 1976) they were also allowed three telephone lines in their Ottawa offices.

But undoubtedly the biggest change in an M.P.'s working effectiveness has been brought about by his increase in staff. In 1974 constituency offices were established at government expense. (Until then, the member's wife had to bear the burden of constituency calls during the week). Initially, the constituency secretary was paid at a lower rate than a first-level secretary in Ottawa, but since May, 1977, the pay has been the same. Rent and office expenses are also taken care of by the government. Coordinately, there has been an expansion in the M.P.'s Ottawa office. The right to three Ottawa secretaries has been fully recognized since October 1, 1976. This increase from one to four (three Ottawa, one constituency secretary) has meant an enormously increased capacity for work in M.P.'s offices from 1968 to the present.

At the same time the volume of constituency business has increased. The fact of having a secretary readily available

in an office, backed up by a telephone answering service, has probably made people more willing to refer cases to their M.P., believing that it is less of an imposition. (Certainly, in the days before constituency offices, when constituents had to telephone a member's house, they were often very apologetic for having to disturb him with his family). Probably more important, however, has been the advertising of the availability of the service. Constituents have come to know of the existence of the offices (now available in Ontario also to members of the provincial parliament), and have come to expect the service. The quarterly constituency reports which an M.P. is allowed now to send to his constituents also draw their attention to his service. My office usually notes a considerable increase in calls immediately after a constituency mailing has been received.

Although my constituency office provides a location where I meet constituents on Saturdays by appointment, the daily service provided is largely by telephone, with the people calling in with complaints or problems and my Windsor secretary proceeding to deal with them in the same way. My mail comes largely to the Ottawa office, telephone calls largely to the constituency office. The total volume is approximately 3,000 cases a year through the constituency office and a further 2,500 through the House of Commons office.

I might also mention that members who are committee chairmen may receive a large additional volume of mail in that capacity. As chairman of the Standing Committee on Justice and Legal Affairs, I received some 8,000 letters on Bill C-83 the first "gun control bill", in early 1976. The Committees' Branch of the House had a standard reply typed for me, but I had to sign all the letters myself.

Finally, there are the general political interests of members. Unless a member retains his seat, he will cease to be

able to make any contribution to the governmental process. He must see his constituents with their problems, make sure that he is getting an adequate amount of local publicity, keep in constant touch with his key election workers (people whom he ignores between elections are not likely to want to put themselves out for him at election time), and generally appear to be representing the interests of constituents and responsive to the feelings of the party faithful in his constituency. He must also attend regional, provincial, and national political meetings, both to represent his local interests and to make a name for himself personally on the larger scene.

#### THE GOVERNMENT CAUCUS

From the beginning of the 28th Parliament in 1968 it was clear that some large-scale changes would have to be made in the government caucus. There was a large number of new members who insisted on being listened to, and the Prime Minister himself appeared from the beginning to be sympathetic to caucus reform.

The decisive change came with a special weekend caucus on June 20-22, 1969, under the leadership of Gerald Laniel, then Chairman of the Caucus, now Deputy Speaker of the House. The general principle of consultation, as agreed on at that time, was as follows: "Before a final decision is made on a bill and before its final drafting, the minister responsible shall discuss the bill in general terms with the Caucus Committee concerned and a subsequent detailed discussion will be held upon the first reading.(4) No bill shall be submitted for second reading until such consultation has taken place or has been renounced by common agreement. A similar procedure shall be followed for major changes relating to government policies for which no legislation is required". Although this rule has not always been followed with precision, especially with regard to ministerial statements in the House, it continues

to represent the general commitment of the government to the caucus.

The effect of the change has been at the same time greatly to increase both the input of the M.P.s and the number of meetings they have to attend. Initially, it led to the establishment of a system of standing committees of caucus which met simultaneously, but this system proved impracticable, and has been replaced by a system of ad hoc committees.(5) All government members are invited to every meeting and meetings are never run simultaneously. The government member who wants to influence policy finds it advisable to attend all of these meetings.

From the beginning of my years in Parliament it has been apparent that strong caucus opposition to any government proposal imposes an absolute veto on that proposal. The government has shown time and again that it dare not act in the face of clear caucus opposition. On the other hand, the Cabinet is quick to exploit any disagreement among caucus members to enable it to proceed in the desired direction. On the positive side the caucus initially lacked power with respect to the making of policy, but the great reform of 1969 made backbench participation in policy formation more structured and more effective than before.

Gerald Laniel was himself the last caucus chairman appointed by the Prime Minister, and he resigned in March, 1970, in large part to allow the caucus for the first time to elect its own officers. Since then all caucus offices have been filled by election.

#### THE EFFECTS OF THE IMPROVEMENTS

Since I moved into the Confederation Building after the 1972 election I have had a spacious and well-appointed private office, with an equally larger outer office shared by my three secretaries

(and a parliamentary intern, when I have one). It is air-conditioned and carpeted and has padded doors for added quietness. In short, it is both comfortable and efficient, a far cry from the cramped quarters and inadequate services with which I began in 1968. A streamlined telephone system is just being installed, allowing members to make conference calls.

A member of parliament is now better able to serve his constituents than ever before. However, the very effectiveness of his service has, along with the greater public awareness of it, increased the volume. The success of constituency offices has therefore led to a greater need for staff in the Ottawa office, since all the more complicated problems from the constituency office have to be forwarded to Ottawa to be dealt with there.

A few members manage to assign one of their Ottawa staff permanently to the role of an assistant, to help in legislative tasks in Ottawa. I have found that impossible. My need for secretarial assistance is such that the entire energies of my four-person staff (in the two offices) are devoted to secretarial and constituency business. I believe my experience is typical of members in this respect. Reform has not yet gone far enough to provide time for policy creativity. I can now finish work at midnight, rather than at 2:00 a.m. but I am still not prepared for my committee hearings at 9:30, to say nothing of having enough time for general reading.

Here it is crucial to understand the psychology of M.P.s. In any conflict of roles I believe it is fair to say that they will always give their representational function priority over their legislative one. For one thing, the constituent's problem is there, in a very concrete sense. It cannot be dodged, and, while responsibility for the solution may in many circumstances be transferable to some one else (e.g., a minister), responsibility for answering the constituent and for trying to deal with the problem cannot be transferred beyond the M.P.'s office. The

M.P. may even come to assign a greater theoretical, as well as practical, importance to representing his constituents than to solving the problems of the country. He is certainly aware that, if he doesn't succeed in pleasing his constituents, he won't stay around long to grapple with the problems of the nation.

Perhaps more important, in psychological terms, is that constituency work is easier - not necessarily easier to solve but easier to handle - and M.P.s are human enough to share the common preference for what is easier! Cases are a world of single instances, presented in readily apprehensible human terms, and most people feel more at home with the concrete. Policy-making involves abstract, conceptualized, and generalized judgments, all of which is hard work. If M.P.s are to be induced to devote themselves to a task so demanding, they will have at the very least to be assured in their own minds that their constituency work is in good - and a sufficient number of - hands.

Here we come squarely to the principal limitation upon the legislative activity of a member of parliament. It is the fact that he is loaded with constituency problems and to a much smaller extent inescapable political duties, which consume the substantial portion of his time and energy and leave him with a very limited amount of both to spend in policy-making. In my view this internal constraint is the principal limitation upon the legislative creativity of the member of parliament.

I am just not able to be prepared in advance for a committee meeting, whether it concerns a bill, or estimates, or an investigation. I do not have time to analyze in advance the material which witnesses submit, or which is made available by the government for advance consideration. From ten years' experience in committees I would dare to say that this is also true of all other members except those who are the principal spokesmen for the opposition on a particular committee.

The reason they are exceptions is that their party normally makes available to them in their committee function the services of one or two researchers from the party research office, whose duty it is to prepare material and questions in advance. Other members do not have the advantage of such a service, and are therefore in fact not prepared for the committee meetings which they attend. Personally, I am constantly forced to draw on my intellectual capital to participate intelligently in committee.

It needs little imagination to see what a transformation would be wrought in a committee meeting(6) if all of the members were prepared. The member or his staff would have studied documentary evidence and interviewed public servants or others in advance. There would be seemingly no end to the questions, and the witnesses would be delighted or embarrassed, as the case might be. The questions would be penetrating, consecutive, and presumably would lead to a new and clearer understanding of the issue by all concerned. New areas of concern would be illuminated. The total effect would be that the committee system would be burst open at the seams from the quantity of business, and we might even see attitudes change on one side or the other as a result of a new understanding of the subject matter.

Committees of twenty (and, in two present cases, thirty) could not continue to function at all. No committee larger than ten or twelve would be functional, because all of the members or at least all of the members who chose to be active would pursue the subject matter incessantly. The only relieving feature with respect to time would be that something less than 100% of the members ever have an interest in serious policy-making. The others would either not attend at all (as they often do not now) or would remain silent (also not an uncommon feature at the present time), allowing their more concerned colleagues to press on in their search for information.

This would be a different system, and in my view a better one, than we now possess, and it is premised on providing the members with legislative assistance so that they can cope with the legislative dimensions of their positions. I recall that the first time I met an American congressman he had brought his counsel with him to assist him in the discussion. I was impressed then, as I have been on other occasions when I have met, say, the foreign policy advisors of various American Senators.

There is no scientifically ascertainable number of assistants that would automatically enable a member to be a legislator as well as a representative, but the best estimate I can make as to the desirable number is eight, exactly twice the size of the present staff. That number would provide a constituency staff of two and an Ottawa office of six, including at least two legislative assistants.

#### OTHER ADDITUDINAL IMPEDIMENTS

I have already touched on the attitudinal impediments to the legislative role of the M.P. implicit in his preference for his representative role. But there are others.

A reformed committee system might be resisted by older or more traditionalist members who are more accustomed to the House than to standing committees or who regard the maneuverability or publicity possible in the House as more advantageous than that in committee.

To a large extent what goes on in the House is show business, a ritual stating of positions by committed antagonists with the only real debate consisting in the wit or forcefulness or verbal ingenuity of the participants. Some members relish it precisely because it is what it is, despite its limited legislative possibilities. Their attitudes are likely

to change with time, and especially with the televising of committee proceedings. In any event, I am concerned at the moment with the psychological restraints on members who want to participate in committees.

There are also members who are more concerned with party orthodoxy than with individual participation. For them, whether they are in government or in opposition, the interests of the party are predominant and that of the individual subordinate. To some extent, as I have suggested, the partisanship which springs up in committees is natural and almost inevitable. But to some extent it is also a result of the fact that there are party stalwarts on both sides who are not prepared to let party lines disappear in the common pursuit of good government.

At present there are comparatively few occasions on which members do not follow party lines in either House or committee, and there are even fewer occasions on which the government majority does not in any event carry the day. It is worth emphasizing that this tendency to vote with one's party is as true of opposition members as it is of government members.

The motivation is probably varied. One explanation is that the desire for promotion keeps most M.P.s in line, at least most of the time. (Promotion for a backbencher consists of becoming a committee chairman, a parliamentary secretary or cabinet minister if on the government side, or a whip, or simply going on a parliamentary trip, though the parties do not in fact closely correlate travelling perquisites with performance). Promotion is undeniably a factor in voting, especially on the government side, and probably also in the official opposition where its members have some realistic hope of some day being in power. But members have not been slow to remark that there is not necessarily an exact correlation between toeing the party line and being promoted. Some notable backbench mavericks have made their way, perhaps because of the publicity they have gained as a



result. It is also noteworthy, however, that many effective public critics of their party always vote with it, regardless of what they may have said. Parties can tolerate loose talk more than they can deviation in voting.

There may also be direct pressure by frontbenchers or whips on backbenchers to vote "the right way". At least, this is the suspicion, and it may sometimes be the practice. I have to say, however, that in nine years in parliament I have never seen such pressure operate. I have noticed that government members from time to time have voted against the government, and in the cases in which I have chosen to ask them, I have been told by them that no one ever spoke to them about their vote either before or afterwards. I have not myself had reason to vote against the government, but during the Judges' Affair in early 1976, when I was opposing the position of my party, I left the House with the whip's knowledge rather than vote for the government on an opposition motion, and no one ever questioned my action either before or since. I have heard the present Prime Minister say many times that "every vote is a free vote" and that in his mind the only sanction is the danger of an election. My personal experience would bear out the truth of this statement.

In my view the most compelling reason for not voting against one's party is the desire to get along with and to be well thought of by one's closest associates. It is, in other words, an in-group feeling which is generated by constant association, a common philosophy, and the desire to keep the party strong. I have remarked how quickly such in-group feeling arises in, say, government members of a committee when opposition members begin to make partisan attacks on the government. The reaction is immediate and almost spontaneous.

It follows that, if there were a general tendency to act more on one's own, this in-group factor would not operate to inhibit going in a different direction

from the party. The solution obviously has to be found in developing a general expectation of independent behaviour in committee.

## CONCLUSION

From the viewpoint of the executive, the most urgent reason for parliamentary reform comes from the need for more control over the legislative timetable, but for other members of parliament the most pressing necessity is to enlarge the role of backbenchers. This is a common aim of backbenchers in all parties, and should be realizable by means of a compromise which would surrender to the executive more control over the legislative timetable in the House, in return for greater independence for committees.

In fact, a number of changes could pre-dispose the parliamentary system towards a fuller role for individual parliamentarians. The provision of fuller information to members on government activities would enable them to perform their role more effectively. The broadcasting of committee debates via radio and television would provide a greater incentive by making an active member more appreciated by the public.(7) More regular scheduling would enable Members to plan their time so that they could better avoid conflicts between their legislative and other functions.

Such changes would help members both in House and in committee, but any great expansion in backbench activity would necessarily have to be in parliamentary committees rather than in the Chamber itself. It is in committees that the detailed and most constructive work of parliament is done, and it is there that the backbencher could make his greatest contribution. This contribution is both legislative, with respect to policy proposals, and critical, with respect to expenditures.



Real improvement in the functioning of the parliamentary committees depends upon the possession and exercise of power by the standing committees: (8) more control over their agenda and budget, the right to specialize, smaller membership and fewer conflicts in scheduling, an increased status for chairmen, and the loosening of Party bonds in both government and opposition. Above all, it depends upon freeing the M.P. from the bonds which prevent him from achieving his role as legislator. These bonds consist partly of his sense of party loyalty, but principally of his fundamental commitment to serve the interests of his constituents.

The effect of a real reform in committees on the Canadian political system would probably be dramatic. The greater

independence which the member of parliament came to exercise in committees would be reflected in his general role in the party, and would lead to a greater diffusion of decision-making, especially through the party caucuses. The way to participatory democracy is not through a closer contact between the prime minister or the cabinet and the people, but rather through a more obvious sharing of power in parliament among all members.

The first thing, however, is that a member must be free to participate. He is not fully free to do so if he is restrained by burdensome duties or attitudes. The removal of these structural and psychological impediments is fundamental to enlarging the role of the backbencher.

#### FOOTNOTES

1. "Decision-Making in Public Policy" in Law and Policy ed. David N. Weisstub, Toronto, Osgoode Hall Law School, 1976, pp. 1-19 (Comments pp.20-34).
2. I have had the political advantage and the experiential disadvantage of serving only on the government side. I have sat as a rank backbencher, chaired a Commons special committee of twelve Members (on Statutory Instruments) and a subsequent special committee of both Houses with thirty Members (on the Constitution of Canada) and acted also as chairman both of a Standing Committee of the House (Justice and Legal Affairs) and of a Sub-Committee of that Committee with a special mandate (Penitentiary System in Canada). I have also had the opportunity of serving two Ministers (Manpower and Immigration, and Labour) as parliamentary secretary, in that capacity participating both in the work of the Cabinet committees and in departmental decision-making. I have also been fortunate in having the assistance of a half year each of four parliamentary interns under the program instituted in 1969.
3. Regional caucuses meet on Wednesday mornings from 9:30 to 10:30, and national caucus from 10:30 to 12:30. Caucus committees usually meet from 6:00 p.m. to 8:00 p.m. (the dinner recess period in the parliamentary day) with a light meal provided.
4. No discussion is permitted on first reading of a bill. Debate begins with second reading, which is usually thought of as approval in principle. Second reading ends with the reference of a bill to the appropriate standing committee. The committee reports to the House in due course and amendments to its report are permitted during report stage. Third reading then follows.

5. Standing Committees of caucus had fixed chairmen and members, whereas the ad hoc alternative permits all members to attend. The chairman is chosen by the caucus executive from a panel of bilingual volunteers. His only duty is to run the meeting. He has no function before or after the meeting.
6. Standing committees usually limit questioners to about 10 minutes for the initial questioner for each party and about 5 minutes for each subsequent questioner. The time limits include the time for both asking and answering questions. A skilful questioner may effectively extend his time by asking questions for the full time allotted and leaving it to the witness to insist that additional time be allowed so that the witness can reply to the issues raised.

There is no theoretical limitation on the number of "rounds" of questioning a particular member may be allowed, but practical limits are set by the time available for the meetings of the committee and by the patience of his colleagues.

7. The institution of radio and television coverage of parliament in October, 1977, extended only to the Chamber. So far no provision has been made for the broadcasting of committee meetings.
8. A partial model may be found in the extensive powers conferred upon select committees in the British Parliament. For an analysis of this precedent see Specialist Committees in the British Parliament. The Experience of a Decade by Members of the Study of Parliament Groups, vol. XLII, June 1976, 48 pp.

