Discretion and the Reserve Powers of the Crown

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The decision of Governor General Michaëlle Jean to grant prorogation when requested by Prime Minister Harper in 2008 and 2009 led to considerable debate among students of Parliament as to the discretionary power of a governor general to reject advice of a prime minister. This article agrees with those who believe that Mme Jean did not err in acting on those specific requests but rejects the idea that it would violate constitutional convention for a governor general to ever refuse such a request from a prime minister. It further argues that in the Westminster system the monarch or her representative, in exercising any of the Crown's legal powers in relation to Parliament, retains the right to reject a prime minister's advice if following that advice would be highly detrimental to parliamentary democracy. That rationale applies equally to prorogation and to dissolution.

A recent article by Nicholas MacDonald and James Bowden[1] quite rightly stressed that in the democratic age the reserve powers of the Crown should be rarely used. They say that "most scholars" agree that it is only under the "most exceptional circumstances" that the governor general may reject the prime minister's advice. I entirely agree with that statement, and would go further and say that virtually *all* scholars agree on that general proposition. That indeed is the constitutional convention that enabled a parliamentary system dominated by the Crown to evolve into a parliamentary democracy. But that convention clearly implies a corollary convention about the exceptional circumstances when the Crown might exercise discretion and say "no" to a prime minister. If there is a convention that governors general *normally* accept the advice of prime ministers in exercising their legal powers in relation to parliament, there must be a convention or principle that enables us to identify those "most exceptional circumstance" when the governor general would be constitutionally correct to reject the prime minister's advice.

On that question, it is my view, and it is a view that I believe is shared by a great many constitutional scholars, that "in this democratic age, the head of state or her representative should reject a prime minister's advice only when doing so is necessary to protect parliamentary democracy." Those words of mine are quoted, with what I take to be approval, by MacDonald and Bowden in their article. The justification for the convention is to ensure that parliamentary government is democratic and not controlled by an hereditary head of state or her representative. It follows that if a prime minister's advice seems seriously adverse to the functioning of parliamentary democracy, it should not be followed. An authoritarian prime minister might be as much a threat to parliamentary democracy as an authoritarian sovereign. In each case we rely on conventions, a body of constitutional or legal ethics", as A.V. Dicey explained, for guidance on the proper use of legal powers.[2]

Prorogation

Now let me apply the general theory set out above to prorogation. First, we should be clear that the power to prorogue parliament legally rests with the Crown. King Henry VIII invented it as a device for ending a session of parliament without dissolving parliament. In the democratic age when prime ministers rather than monarchs take the initiative in deciding when to prorogue, the practice is to prorogue when the main business of the session is done so that, after a break, a new session can be opened with a Speech from the Throne setting out a new agenda. Throughout this democratic

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evolution the legal power to prorogue has remained with the Crown. In Canada, since Confederation, Royal Letters Patent setting out the Commission of Canada's governor general, most recently King George VI's 1947 Letters Patent, have made it clear that the power to prorogue the Parliament of Canada is to be exercised by the governor general.[3] MacDonald and Bowden seem to think that some significance should attach to the fact that the governor general's power to prorogue, unlike the Crown's powers to summon and dissolve Parliament, is not specifically mentioned in the *Constitution Act, 1867*. But they are wrong to attach any significance to that difference. The governor general's power to prorogue is no less a legal power than the Crown's powers specifically referred to in the Constitution. With whom else could it legally rest?

As with all the legal powers of the Crown, we look to constitutional conventions for guidance on their proper use. What is the proper test for determining the requirements of constitutional conventions? MacDonald and Bowden do not address this question directly. We can only infer that for them the test is primarily precedents. But constitutional conventions have both normative and dynamic dimensions that go beyond the mere recitation of precedents. Sir Ivor Jennings is the best guide. In his *The Law and the Constitution*, Jennings wrote as follows about precedents:

> We have to ask ourselves three questions: first, what are the precedents? Secondly, did the actors in the precedents believe that they were bound by a rule? And thirdly, is there a good reason for the rule? A single precedent with a good reason may be enough to establish a rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it.[4]

It was the Jennings' test that that the Supreme Court of Canada used in 1981 when it was called upon to determine whether there was a constitutional convention requirement that requests by the Parliament of Canada to have the United Kingdom Parliament amend the Constitution of Canada in areas affecting the provinces' powers and rights required provincial consent.[5] The importance of " a good reason" in the Jennings test captures well the normative aspect of conventions: they must be based on securing something that is greatly valued in our political system. And his requirement that "the persons concerned" feel bound by the rule picks up the dynamic quality of conventions. The persons involved in operating this part of our constitutional system must feel morally bound by the rule.

Let me now apply the Jennings' test to the question of what are the constitutional conventions governing the governor general's use of the power to prorogue Parliament. First, it is clear, that according to convention the governor general should not prorogue on her or his own. The governor general should prorogue only on the advice of the prime minister. But then comes the difficult question: should the governor general always comply with prime ministerial requests to prorogue? Or could there be any circumstances in which the governor general would be correct in refusing such advice? The one circumstance in which even MacDonald and Bowden would agree that the governor general should not feel bound by a prime minister's advice is when the prime minister has lost the formal confidence of the House of Commons. But aside from that they believe that "on the available evidence …the governor general's reserve power *ought* not to apply to prorogation."

First, what are the precedents? There have been three occasions in Canadian history when a prime minister's request that the governor general prorogue Parliament has been controversial enough to give the governor general reason to consider using the Crown's reserve power: Sir John A. Macdonald's request to Lord Dufferin in August 1873, Stephen Harper's request to Michaëlle Jean in December 2008 and his request again in December 2009. In all three cases the controversy arose because the purpose of the prime minister's request appeared to be to avoid the judgment of the House of Commons.

On all three occasions, the governor general, after considerable deliberation, granted the request and prorogued Parliament. On all three occasions, as MacDonald and Bowden acknowledge, the governors general and the "majority of political actors" believed that they possessed the reserve power to accept or reject the prime minister's request."[6] So too do virtually all the constitutional commentators. While some who question the constitutionality of Governor General Jean's granting of a prorogation in 2008 disagreed on whether she made the right decision, they all agreed that she had discretion in the matter and was not bound by Prime Minister Harper's request. Peter Hogg, a leading constitutional scholar, recognizes that "while the Byng-King dissolution of 1926 is not a close analogy to the Harper-Jean prorogation of 2008, it is a precedent for the proposition that the governor general has a personal discretion when a Prime Minister tenders advice the effect of which is to preclude the House of Commons from passing judgment on his government."[7] Hogg concludes, however, that in the particular circumstances that pertained – in particular, Mr. Harper's undertaking to submit his government to the judgment of the House at the end of January,

two to three weeks after the Christmas break – the Governor General made the right decision in acceding to the prorogation request.

The three precedents do not establish a rule, that governors general must always accede to a request for prorogation by a prime minister who has not lost the confidence of the House of Commons. Such a rule fails to meet two crucial parts of Jennings' test for a constitutional convention – the reason for the rule and the fact that the actors involved regard themselves as bound by the rule.

As for the reason for the rule, Bowden and MacDonald reject Professor Hogg's rationale for upholding the governor general's power to refuse a prime ministerial request for prorogation – namely that the government might use the power to avoid the judgment of the House for a very long time. They argue that we need have no fear that a government might use prorogation to "indefinitely avoid or postpone a vote of non-confidence" because a new session of Parliament must always open with a Speech from the Throne that will be a confidence test, and section 6 of the *Charter of Rights and Freedoms* requires that Parliament meet at least once annually. So, their argument goes, there is no reason for the governor general to ever refuse prorogation because, even if it means the government does not submit itself to the judgment of the House of Commons for nearly a year, that would not amount to the exceptional damage to parliamentary government that justifies the Crown in exercising discretion and saying "no" to a prime minister. Frankly, I am astonished that anyone would think so little of responsible parliamentary government, to not see grave damage to parliamentary government, if a prime minister facing the prospect of a non-confidence vote sent parliament away for nearly a year. I think few if any parliamentarians or constitutional scholars would accept this rationale for denying that the Crown's reserve power can be applied to prorogation.

As for the question of whether the political actors involved feel bound by the rule, the evidence is all against Bowden and MacDonald. Governor generals Dufferin and Jean certainly thought they had discretion in responding to the prime ministerial requests for prorogation. So did leaders of the opposition parties, and I can find no evidence that either Prime Minister Macdonald or Prime Minister Harper thought that governors general must always accede to such requests. So, it seems clear that there is not a constitutional convention requiring that governors general always accede to a request for prorogation by a prime minister who has not lost the confidence of the House of Commons. Moreover, it also seems clear that there is strong support for constitutional convention recognizing that the governor general has the constitutional right to reject a prime minister's request for prorogation if it is for a length of time significantly longer than the prorogations of 1873 (71 days), 2008 (53 days) and 2009-10 (62 days). If, for example, Mr. Harper in 2008 or 2009, had asked that Parliament be prorogued until at least the fall of the next year, the governor general most certainly would have refused and I believe that in doing so would have had the backing of the great majority of Canadians. There may be reasons other than an excessive length of time that could justify the governor general refusing a prime minister's request for prorogation. But for a parliamentary democracy to go without parliament sitting for many months simply because the prime minister of the day advises the governor general to close it down is to convert our system from one in which the prime minister is the servant of parliament to one in which parliament is the servant of the prime minister.

Following the latest prorogation, the House of Commons took a step aimed at giving it a role in prorogation. On March 17, 2010, Jack Layton, Leader of the NDP, moved the following motion:

> That in the opinion of the House, the Prime Minister shall not advise the Governor General to prorogue any session of Parliament for longer than seven calendar days without a specific resolution of this House of Commons to support such a prorogation.[8]

The motion was passed by a 139-to-134 majority with members of the three opposition parties supporting it, and government members opposing it. The Conservatives' unwillingness to accept this restriction on a prime minister's powers means that the motion lacks the status of a constitutional convention. Conventions of the constitution cannot be partisan confections. They must be accepted by all of the actors involved and the prime minister is most certainly an actor. As it stands it is difficult to see what force the Layton motion could have. Suggestions have been made that it be incorporated into the Standing Orders of the House of Commons. But serious doubts have been raised about the House's power to regulate the advice prime ministers give to the Crown.[9]

It is the nature of constitutional conventions to lack precision. That is certainly true of the conventions relating to the governor general's power to prorogue Parliament. We do know, for sure, that convention forbids the governor general proroguing Parliament on his or her own. Convention requires that the advice of the prime minister to trigger prorogation. We also envisage that situations may arise in which

acting on that advice would seriously undermine our parliamentary system of government. For that reason constitutional convention recognizes that the reserve power of the Crown could apply to prorogation. We do not have a constitutional convention stipulating precisely when a governor general should exercise that power. The best guide for politicians and citizens is a passage from the Supreme Court of Canada's *Patriation Reference* decision in which the Court's majority captured well the essence of A.V. Dicey's conception of the role of conventions in our constitutional system:

> The main purpose of constitutional conventions is to ensure that the legal framework of the Constitution will be operated in accordance with the prevailing constitutional values and principles of the period.

When we recall the intense and wide-spread public opposition to the second Harper/Jean prorogation, and bear in mind that in seeking this second prorogation the prime minister, unlike a year earlier, was not brazenly seeking prorogation to avoid a vote of non-confidence, it seems clear that parliamentary democracy is a prevailing value and principle of Canadians. I believe that clear expression of public concern will act in the future as a powerful political restraint on prime ministers considering out of the ordinary requests for prorogation.

Dissolution

There is much more evidence of the Crown's reserve power to deny a prime minister's advice being available with respect to dissolution than with respect to prorogation. Eugene Forsey in his classic study *The Royal Power of Dissolution of Parliament,* written in 1943, reports 51 cases in the Westminster parliamentary world, in which requests for dissolution were refused.[10] A number of these were in Canada. In addition to Lord Byng's refusal of Mackenzie King's request in 1926, there were a number in colonial Canada before Confederation, one in Newfoundland prior to its joining Canada and three in Canadian provinces – New Brunswick in 1883, Quebec in 1879 and British Columbia in 1903. There were a number of other situations in the provinces when Lieutenant Governors granted dissolution only after careful consideration.

In all of these situations in which the Crown or its representative have had to deliberate about whether or not to accede to a prime minister's advice to dissolve parliament there was never any doubt that the Crown had to look carefully at the circumstances and consider whether parliamentary government would be best served by rejecting that advice. When writers like myself refer to the Byng-King affair as a precedent, we do not mean that its is a precedent for the Crown doing what Byng did in circumstances exactly the same as those that pertained in the Canadian Parliament in June, 1926. We mean that it is a precedent for the proposition that the Crown reserves a power to say "no" to a prime ministerial request. Political leaders and constitutional commentators at the time and subsequently have disputed whether the Governor General Byng exercised his discretionary power correctly. But there has been broad agreement among constitutional writers that there are circumstances in which the right decision for the Crown is a refusal. Even Quebec commentators who push the limiting of Crown discretion to the maximum concede that a Governor General might refuse a prime minister whose request amounts to a *coup d'etat*.[11] Deciding whether to exercise the reserve power and say "no" to a prime minister's request is bound to be a judgment call. The existence of the Crown's discretionary power to refuse a dissolution does not depend on the Crown's judgment being accepted as correct by all concerned in each and every case it is exercised.

There is no precise formula to guide the governor general or those who judge his decision in what is inescapably a judgment call. But we can consider the main reasons for the Crown having some discretion and identify the essential points that must be considered in exercising that discretion. The principal reason for the Crown retaining discretion to refuse a prime minister's request for dissolution is the possibility that granting the request would mean that a newly elected House of Commons would not be given a chance to see if it can support a government. This would mean that the will of the people as manifest in the popular chamber of Parliament they have elected will not be given an adequate opportunity to show if it can sustain a government. This rationale is closely linked to a concern that "a steady diet of elections" will undermine the public's interest and support for elections – the quintessential democratic activity of citizens. A clear hypothetical is a prime minister who is disappointed with the outcome of an election and requests a dissolution even before the new parliament has assembled.

In the real world, the main considerations that come into play are twofold: first, how recent was the last dissolution and election? Secondly, is there a plausible alternative to the prime minister requesting the dissolution? As to how little time must have elapsed since the last election, most commentators would use "less than a year" as a general yardstick. But a short length of time since the previous election cannot on its own rule out a dissolution.

Consider, for instance, John Diefenbaker's request for a dissolution in February, 1958. In the June 10, 1957 election, Diefenbaker's Conservatives scored an unexpected break-though, winning 112 seats to the Liberals' 105 in a 265-member House. Soon after the election, Prime Minister St. Laurent resigned and Diefenbaker formed a minority government, ending 22 years of Liberal rule. The Diefenbaker government immediately launched a flurry of policy initiatives and watched their stock rise rapidly in the polls. Diefenbaker was on a roll. Rumours soon began to fly that he would capitalize on his party's rising political fortunes by asking for an early dissolution. This prompted the eminent constitutional authority Eugene Forsey to write a stern letter of warning to Diefenbaker in October, 1957:

> To announce eight or ten months in advance, that whatever Parliament does, it will be dissolved next spring seems to me to be a very odd way of showing respect for Parliament. Elections are serious matters. They disrupt business. They interrupt the orderly conduct of foreign policy. They cost money, millions to the public treasury, millions more to the parties and the candidates. A second election within a year can be justified only on grounds of public necessity. A clear majority for the Government over all parties is a convenience for the Government. It is not, in itself, a public necessity.[12]

In his reply, Diefenbaker said he agreed with Forsey. Nevertheless in February, 1958, less than nine months after the election, he asked Governor General Vincent Massey for a dissolution even though he had not been defeated in the House. His pretext was that "the government needed a majority to protect itself from Liberal obstruction."[13] Massey granted the dissolution, and Canadians went to the polls on March 31, 1959. This dissolution was not politically controversial. There was no majority in the House or appetite in the country for a quick return to Liberal rule. In that situation Governor General Massey really had no alternative.

Now consider the very different circumstances that pertained when Governor General Byng refused Mackenzie King a dissolution in June, 1926. Again this request for a dissolution and a new election came a short time – just eight months – after the last election. Prime Minister King went into the October 29, 1925 election with 117 seats to 50 for Arthur Meighen's Conservatives. Progressive, Labour and Independent MPs held the remainder in a 235-member House. The Liberals came out of the 1925 election with just 99 seats, 17 fewer than the Conservatives' 116. The Progressives, whose 24 members could give either party a majority in the 245-member House, held the balance of power. The remaining six seats were split by Labour and Independent members. Clearly, after this election, if any political leader was on a roll, it was Arthur Meighen. After the election, Governor General Byng made it clear to Mackenzie King that he should resign and let Meighen whose party had more seats form a government. But Prime Minister King thought he had a better chance than Meighen of winning the support of the left-leaning Progressives. So he continued on as Prime Minister, as he had every right to do, until Parliament was summoned.

The new Parliament did not assemble until January 7, 1926. From that time on, King and his government were on the ropes. The Liberals spun out the debate on the Speech from the Throne until March 2, when it was supported by a majority of nine. Having lost his own seat in the election, King then had to adjourn Parliament so that he could run in a by-election. When Parliament resumed, rather than being able to introduce a new legislative program as Diefenbaker's Conservatives did, King's Liberals were under constant pressure to defend themselves against allegations of scandalous wrong-doing in the Customs Department. On June 18, when a parliamentary committee set up to investigate the allegations presented its report, opposition spokesman H.H. Stevens, moved an amendment which described the conduct of "the Prime Minister and the government" as "wholly indefensible". In the ensuing days, motions to remove that amendment were lost, but before it could be voted on and approved, a government motion to adjourn the debate carried by one vote at 5:15 on the morning of Saturday, June 26. That is the context in which Prime Minister King decided to request a dissolution.

Unlike the circumstances in which Diefenbaker requested a dissolution in 1958, the Governor General had every reason to consider whether there was another leader who could form a government. Prime Minister King was seeking dissolution to avoid the judgment of Parliament. Moreover, Meighen's Conservatives had more seats, and were winning support from other opposition members in the customs scandal votes. When King presented his request to Governor General Byng on the morning of Monday, June 28, he demanded an instant response – in the affirmative. The Governor General was unwilling to give that response as he wished to ascertain whether Mr. Meighen was willing and able to form a government that would have a reasonable prospect of completing the work of the session. His refusal to grant a dissolution on the spot to Mr. King provoked the Prime Minister's resignation – on the spot. This left the Governor General without a Ministry – "an action which appears to be without

precedent in the history of the Empire."[14] Byng now had no choice but to send for Mr. Meighen and ask him "if he could command a majority in the House to get the work of the session conducted in an orderly manner. Mr. Meighen replied that he could, having received informal promises from a number of the Progressives to the effect that they would vote with the Conservatives to get these all-important Bills through, pass Supply, and prorogue."[15] The Governor General then asked Mr. Meighen to form a government.

When the Meighen government met the House the next day, June 29, the House completed the debate on the Stevens amendment to the Customs Committee report damning the now departed King Government. The motion carried with a majority of 10. On June 30, Mackenzie King, now Leader of the Opposition, moved a vote of non-confidence in the Meighen government's fiscal policy. It was defeated by a majority of 7. But then the Liberals turned their guns on the make-up of the Meighen government. Because at that time the law required MPs assuming ministerial responsibilities for the first time to resign their seats and run in by-elections, in order to get the business of government done and avoid a lengthy adjournment, Meighen put together a temporary Ministry of seven members who would be sworn in as acting ministers without portfolio. A motion challenging the legality of this arrangement was debated into the early morning hours of July 1 and finally carried against the Meighen government by one vote. The single vote that defeated the Meighen government was an accident. A Progressive MP, T. W. Bird, who had formed a parliamentary pair with a Liberal, dozed off during the debate and when suddenly awakened for the vote, mistakenly voted for the Liberals' motion. Meighen accepted the defeat as a vote of non-confidence. The next day Meighen advised the Governor General to dissolve Parliament. Governor General acted on Meighen's advice, dissolving Parliament on July 2, 1926.

The debate about Byng's refusal of a dissolution to Mackenzie King is not about whether governors general have a right to refuse a dissolution early in the life of a new parliament if they think there is an alternative prime minister with a reasonable chance of securing majority support in the House. In his attack on Meighen's opposition government in the House of Commons, Mackenzie King conceded that the Governor General's refusal would have been correct if the Meighen government could survive in the House.[16] The main argument against Byng's action is that he should have known that the Meighen government would be quickly defeated in the House. On this point I come down on Byng's side, partly because King's resignation on the spot did not give Byng an opportunity to inquire about Meighen's willingness and ability to form a government that could survive in the House. On the afternoon after King resigned, Meighen told him that he had informal statements of support from some Progressives. The next day when he met with Robert Forke, the Progressives leader handed him a confidential memorandum stating that the members of the Progressive caucus "were prepared to act fairly with the new administration and facilitate the completion of the session's business…"[17] How could Byng have foreseen that a Progressive member would accidentally vote the wrong way? My quarrel is with Meighen for conceding defeat and asking so quickly for a dissolution. I also do not see why the Progressives commitment to support the Meighen government should have been confidential. Parties that pledge their support for a minority government should do so in a public and accountable way.

The Byng/King episode raises the question of the appropriate way for the governor general to get the information he needs to make an intelligent, informed decision in exercising the Crown's discretionary powers. When members of opposition parties communicate to the governor general that they may be able to form an alternative government if the incumbent government is defeated, they provide the reliable political intelligence the Crown needs to make an informed decision. MacDonald and Bowden are surely wrong to suggest that when the opposition communicate their intentions directly to the governor general they are offering "presumptuous" advice to the Crown.[18] But having said that, I would concede that in Canada we have some work to do in designing the best way in which the governor general (or Lieutenant Governors) can obtain accurate and reliable information about opposition parties' intentions without involving themselves in negotiations with party leaders. Governors of Australian states, where the greatest number of refusals of prime ministerial requests for dissolution have occurred, have been too prone to become personally involved in these situations.[19] I have suggested that the Scandinavian practice of appointing an *informateur* to assist the Crown in ascertaining the intentions of parliamentary leaders might be adopted in Canada.[20]

It is often suggested that because Mackenzie King's Liberals won the most seats in the 1926 election and in that election campaign King attacked Byng for refusing him a dissolution, the Canadian people pronounced their disapproval of the governor general's actions. That is a very dubious proposition. To begin with, King's attack on Lord Byng was not a major issue in the 1926 election. Far more important was the King

Liberals' promise of Old Age security legislation and other progressive measures. Lord Byng could not set before the electorate all the facts and considerations on which he based his judgment. The whole issue was muddied by Mackenzie King's anti-British rhetoric giving the impression that he was the victim of lingering British imperialism. There will always be disagreement whenever the Crown's representatives in Canada use their judgment in deciding how to exercise their reserve powers in controversial situations – whether they accept or reject prime ministerial advice. But, I would submit, that none of the key players in 1926 or since have supported a constitutional convention denying the Crown's right to exercise independent judgment in these situations.

Conclusion

In Canada, as in all the Westminster parliamentary democracies that retain the Queen as their Head of State, the monarch and those her exercise her authority in Commonwealth countries retain their reserve powers to use their own independent judgment – but only in exceptional circumstances. The common thread in justifying the use of these reserve powers in relation to Parliament is to protect the parliamentary system of government. That I believe is common ground for all constitutional scholars, including Nicholas MacDonald and James Bowden, and – it is to be hoped – all of our parliamentary leaders. There is always a danger that the Crown will go too far and exceed the limitation on its powers appropriate to our democratic times. As democrats, I believe we have much more to fear today from an authoritarian prime minister than from an audacious representative of the Crown. We should be thankful that the reserve powers are in place as a constitutional check on prime ministers who may come to think they are masters rather than servants of Parliament.

Notes

1. Nicholas A. MacDonald and James W.J. Bowden, "No Discretion: On Prorogation and the Governor General," *Canadian Parliamentary Review* 34, no.1 (2011), pp. 7-16.

2. A.V. Dicey, *Introduction to the Law of the Constitution*, 10th edition (London: MacMillan, 1959): 417.

3. Barbara J. Messamore, *Canada's Governors General, 1847-1878: Biography and Constitutional Evolution*, (Toronto: University of Toronto Press, 2006, pp. 20-21.

4. Sir Ivor Jennings, *The Law and the Constitution,* (London: University of London Press, 1933), p. 109.

5. Re: *Resolution to Amend the Constitution* (1982), 125 D.L.R. (3d) 1.

6. Peter H. Russell and Lorne Sossin, eds., *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009): Andrew Heard argues that the Governor General was constitutionally required to refuse the request. C.E.S. Franks and Brian Slattery conclude that she did the right thing in granting prorogation but that she had the constitutional right to refuse.

7. Peter W. Hogg, "Prorogation and the Power of the Gov*ernor General," in* National Journal of Constitutional Law (2009-2010), p. 198.

8. *House of Commons Debates,* March 17, 2010, p. 576.

9. Warren J. Newman, "Of Dissolution, Prorogation, and Constitutional Law, Principle and Convention: Maintaining Fundamental Distinctions during a Parliamentary Crisis," *National Journal of Constitutional Law* (2009-2010), pp. 224-5.

10. Eugene A. Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth*, (Oxford: Oxford University Press), p. 65.

11. See Hugo Cyr, "The Dissolution of Parliament: Memo for Workshop on Constitutional Conventions," www.aspercentre.ca

12. Quoted in Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: MacFarlane, Walter and Ross, 1995), p. 273.

13. *Ibid.*, p. 278

14. Forsey, *The Royal Power of Dissolution of Parliamen*t, p. 135.

15. *Ibid,* p. 133-134.

16. *House of Commons Debates,* 1926, pp. 5189-5225.

17. Ibid., p. 134.

18. MacDonald and Bowden, p.11.

19. See Anne Twomey, "The Governor General's role in the Formation of Government in a Hung Parliament," *Legal Studies Research Paper No. 10/85,* Sydney Law School, University of Sydney, http://papers.ssrn.com/sol3papers.cfm?abstract_id=1666697

20. *Two Cheers for Minority Government: The evolution of Canadian parliamentary democracy*, (Emond/Montgomery, 2008), pp. 144-145.