Their constitutional ideas are very similar to proposals put forth by the coalition government in Great Britain following the last election. They would:

- establish fixed election dates every four years that could not be changed by the Prime Minister unless a majority of two thirds of MPs approved a motion to dissolve.
- adopt the "constructive non confidence" procedure whereby the opposition can only bring down a government via an explicit motion of non-confidence that would also identify who would become the new Prime Minister.
- require the consent of a two-thirds majority of the House of Commons in order to prorogue Parliament.
- establish a deadline requiring the House of Commons to be summoned within 30 days after a general election.

These changes are intended to remedy the central problem – the ability of prime ministers to abuse power. All would require formal constitutional amendment All are absolutely necessary if we learned anything from our period of minority government. It is time our elected men and women put aside the self imposed post Meech Lake moratorium on constitutional change and start to move us from a dysfunctional to a functional form of government.

To reform parliament the authors would like to see the House:

- Adopt legislation limiting the size of ministries to a maximum of 25 plus 8 parliamentary secretaries
- Use secret preferential ballots by committee members to select committee chairs for the duration of a parliament.
- Adopt a schedule of opposition days in the House that cannot be altered unilaterally by the government
- Reduce by 50% the partisan political staff complement on Parliament Hill.

Of course much more is needed to reform Parliament, particularly in the way parliamentary time is used, but these ideas would be a good place to start for the members of the 41st Parliament.

To reform political parties the authors suggest:

- Restoring the power of party caucuses to dismiss party leaders including a sitting prime minister and to appoint a new interim leader.
- Removing the party leader's power to approve or reject party candidates for election in each riding.

These sound easy but in fact are probably even more difficult than the proposed constitutional changes. In any event they are somewhat of an afterthought to the main constitutional and parliamentary discussion and perhaps deserve to be developed in a similar but separate book on political parties. Sadly professor Aucoin will not be around to contribute to that work but let us hope that his two collaborators will continue their reflections on responsible government.

Thomas Jefferson wrote that the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. Responsible government inspires no such dramatic language but it too must be reviewed and refreshed. Let us hope that every one of our politicians both federal and provincial find time to read this book and to take its message to heart.

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Gaston Deschênes, L'Affaire Michaud : Chronique d'une exécution parlementaire, Septentrion, Quebec 2010.

Ten years after the incident occurred, Gaston Deschênes, a former research director at the Quebec National Assembly, recounts what is now known as the Michaud Affair. On December 14, 2000, in a move that many people later described as impulsive, the National Assembly unanimously adopted a motion denouncing Yves Michaud for making "unacceptable statements toward ethnic communities and, in particular, the Jewish community" in a speech at the Estates General on the French language in Montreal. The motion, unprecedented in a Westminster-style legislature, sparked a flurry of media coverage and ignited a debate that continues to this day over the legitimacy of the National Assembly's actions. The author leads us through the years that followed the incident, a period in which Mr. Michaud constantly sought reparation for what he considered to be a grave injustice against him.

Deschênes begins by recounting the events which unfolded on December 14, 2000. In response to a question from Jean Charest, then Leader of the Opposition, Premier Lucien Bouchard stood in the National Assembly and condemned comments made by a candidate for the Parti Québécois nomination in the riding of Mercier, Yves Michaud, and announced that all government members would be voting

for a motion of censure put forward by a Liberal member and seconded by a PQ member. Later that day, the National Assembly gave the unanimous consent needed to debate the issue without prior notice, and without due consideration, the motion was put to a vote and immediately adopted. No one raised an eyebrow, but the author expresses the view that the motion [TRANSLATION] "would not have survived 24 hours of consideration, which is the normal procedure for a substantive motion in the National Assembly" (30).

But what exactly are these "unacceptable statements"? After giving a brief biography of Yves Michaud – a fervent advocate of sovereignty and formerly a member of the National Assembly and Quebec's delegate-general in Paris – Deschênes endeavours to locate the "anti-Semitic" comments he allegedly made. It quickly becomes clear that no parliamentarian appears to have heard Mr. Michaud's speech and that the official transcript made no mention of anti-Semitic remarks. The author traces the paths taken by Michaud's political enemies and tries to understand how Michaud's message could have been altered in the hours following his speech. It seems that there was no agreement on exactly what he said, and the answer to that question will remain a mystery.

The author follows with a detailed account of Michaud's reaction – he first wanted MNAs to hear him out – and the reactions of other players on the political stage. Many prominent figures, among them former Quebec premier Jacques Parizeau, signed an open letter denouncing the National Assembly's unprecedented act, which he viewed as being out of line with its mission. The situation quickly degenerated into a crisis that primarily affected Lucien Bouchard, who steadfastly defended his actions. A number of Parti Québécois MNAs subsequently tried to repair the damage Michaud caused, but they ran into dissent within the caucus and, after the 2003 election, a majority Liberal government that wanted the subject to remain closed.

Much of the book focuses on Michaud's demands for reparation. His first step was to approach the National Assembly with a petition that was tabled by a PQ member in accordance with section 21 of Quebec's *Charter of Human Rights and Freedoms*. In that petition, he demanded to be heard. He was denied the opportunity; likewise for a second petition tabled in December 2001. Proposed amendments to the rules of procedure aimed at prohibiting the adoption of motions of censure against a person other than a member of the legislature, except in the case of a breach of the National Assembly's privileges, were introduced by the government but never made it beyond the parliamentary committee stage.

When there was no response from politicians, Michaud filed a lawsuit against the National Assembly. He asked the Superior Court to acknowledge that the National Assembly exceeded its powers. Deschênes then discusses the state of the law on the issue and the response from the Superior Court and, later, the Court of Appeal. Michaud's request was denied by both courts. The judges found that the privileges claimed by the National Assembly in this instance, namely MNAs' freedom of speech and the Assembly's control over its internal affairs, extended to the adoption of the type of motion in question. There was nothing the court could do: "Parliamentarians do not meddle in trials, and judges do not meddle in parliamentary debates" (p. 193). The Court of Appeal's decision was essentially the same, although Justice Beaudoin did acknowledge the injustice that had been committed but added that the law could not help. Finally, the Supreme Court refused to hear the case.

The author concludes on a rather bitter note. He points out that 10 years after the fact and even though many politicians have expressed regret over the adoption of the motion, nothing has been resolved and there is still a great deal of ambiguity regarding the circumstances that led to the censure. Yves Michaud has still not received satisfaction in his quest for an apology from the National Assembly. Deschênes goes on to discuss at some length the messages this affair sends regarding the existence and exercise of parliamentary privilege, stating that is in their interest for parliamentarians to define privilege more clearly and limit its use. In his view, the lack of reform and the use of privilege as a weapon against the public is at odds with human rights and could at some point be used by the courts as a pretext for greater intervention on their part.

If one thing is to be learned from this book, it is that adopting this type of motion of censure against a private citizen is an unusual and undesirable use of parliamentary privilege. Gaston

Deschênes rightly questions the legitimacy of the MNAs' actions. It seems clear that condemning individuals in circumstances of this sort violates the principles of natural justice, in particular a*udi alteram partem*, the right to be heard. It is perfectly reasonable to ask if a legislature's role is to make determinations on matters like this and condemn individual citizens for their remarks.

The purpose of parliamentary privilege is to give legislative assemblies the tools they need to carry out effectively their duty to enact laws and hold the government to account. In *New Brunswick Broadcasting Co.* v. *Nova Scotia, (Speaker of the House of Assembly) t*he Chief Justice of the Supreme Court, Antonio Lamer, identified the source of parliamentary privilege: "In essence, it was a struggle for independence as between the different branches of government" (p. 36). In that case, the majority found that some "inherent" privileges have constitutional status and therefore cannot be challenged under the *Canadian Charter of Rights and Freedoms* or the Quebec Charter. Once a privilege has been recognized by the courts, the use of that privilege is left to the absolute discretion of parliamentarians. As both the author and Michaud point, adopting a motion of censure against a member of the public is a use of parliamentary privilege that goes against its purpose. It would not be surprising, if other similar abuses were to occur, to see the courts limiting the scope of parliamentary privilege. The Michaud affair illustrates the urgent need for parliamentarians to define more clearly and set parameters for their privileges and prevent this type of abuse from happening again.

There is a very real possibility of the courts taking a more interventionist approach to parliamentary privilege in cases like Michaud's. The possibility is even greater when one considers the National Assembly's rationale, namely that there was no specific rule against this type of motion. That excuse is weak, and the courts are generally reluctant to allow such abuse. As Deschênes notes, in *Canada (House of Commons)* v. *Vaid*, the Supreme Court refused to broaden the scope of parliamentary privilege in order to protect the House of Commons from being sued in connection with a case of discrimination against a former driver of the Speaker. And in *Harvey* v. *New Brunswick (Attorney General)*, Justice McLachlin addressed the relationship between the *Charter* and privilege. In concurring reasons, she wrote in paragraph 71, "To prevent abuses cloaked in the guise of privilege from trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege." This creates an opening that the courts could possibly to use to limit parliamentary privilege in order to prevent abuse by legislative assemblies.

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