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in Comparative Perspective

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POLITICAL ETHICS AND RESPONSIBLE GOVERNMENT

Andrew Potter

ABSTRACT

In 2004, the Canadian government appointed an ethics commissioner reporting directly to Parliament. I show how an appeal of the ethics commissioner finds its traction in three problem areas. First, there is an increasing distaste in Canada for patronage and other similar forms of partisanship in politics, but there is general uncertainty about the constitutional or ethical standards that ought to apply. Second, the language of democratic criticism and reform of Parliament is rooted less in actual constitutional practice than in an idealized sense of how Parliament ought to work, a problem that is exacerbated by the ongoing presence of the American example. Finally, these both feed into a growing disengagement from traditional party politics and a desire for more ''independent'' or non-partisan checks on government, of which the Office of the Auditor General is becoming a popular exemplar. As an independent, Parliamentary, and non-partisan check on government, the ethics commissioner appears to serve as at least a partial solution to much of what is wrong with the Canadian political system.

Since the mid-1970s, many political jurisdictions at the provincial, state, and national levels have adopted some sort of codified ethics regime for public officials. There are a number of reasons for this, foremost of which, perhaps, is the Watergate effect: concern about scandal, corruption, and abuse in the public sector leading to unprecedented levels of cynicism about politics (Saint-Martin, 2003). But the desire for formalized ethics codes also reflects a more general decline in public deference to governing elites, and a shift to a more managerial or professionalized approach to government.

In its 1993 Red Book election platform, the Liberal Party of Canada promised to restore integrity to public office (after nine scandal-ridden years under the Conservatives, led by Brian Mulroney) by appointing an independent ethics counselor who would be appointed after consultation with the leaders of all parties in the House of Commons, and would report directly to Parliament (Liberal Party of Canada, 1993). Once in power, the Liberals reneged somewhat on this promise: Prime Minister Jean Chrétien appointed an ethics counselor who reported not to Parliament, but to the prime minister himself. There was, in fact, an excellent rationale for this decision, even though neither the government nor the media did a very good job of communicating it to the public. One of the ethics counselor's jobs was to administer the code of ethics for senior public officials, including cabinet ministers. The problem is that since the prime minister has sole constitutional responsibility for the composition of cabinet, for hiring and firing ministers, he also has ultimate responsibility for overseeing their ethical conduct and disciplining them accordingly. Responsibility for the conduct of ministers is a matter for the Crown, and it was believed that having an officer of Parliament – a legislative watchdog – oversee the ethics code would involve improper legislative interference with the executive (Saint-Martin, 2003). Accordingly, it was decided that the ethics counselor would have to be an advisor reporting directly to the prime minister.

This situation was exposed as less than satisfactory when Chrétien was later accused of violating his own ethics guidelines, in the so-called Shawinigate affair. Chrétien was cleared of a conflict of interest by Howard Wilson, the ethics counselor, but for many critics this only served to prove the point: since the ethics counselor was in the end the servant of the man he was supposed to be investigating, he was himself in a conflict, and it was inevitable that the watchdog would become a lapdog (Democracy Watch, 1994).

When he took over as leader of the Liberals and became prime minister in December 2003, Paul Martin introduced a Democratic Reform Action Plan based on the three pillars of democracy: ethics and integrity, the

representative and deliberative role of MPs, and executive accountability (Privy Council Office, 2004). In March 2004, the Canadian Senate passed Bill C-4, an act establishing the position of ethics commissioner as an officer of Parliament who will oversee both an improved code of conduct for ministers as well as a new code of conduct for MPs. In late April 2004, former McGill University Principal Bernard Shapiro was named as the first ethics commissioner.

Although the ultimate effectiveness of the office remains to be seen, there is widespread enthusiasm among the opposition parties and the general public for the position of ethics commissioner, and my goal in this chapter is to try to understand that appeal. I begin with the following assumption: there is no serious problem with the ethical behavior of public officials, in particular of cabinet ministers, in Canadian federal politics. That is, there is no evidence that ministerial ethics in Canada are particularly lax, either by historical or international standards, and public officials in Canada are generally held to a higher ethical standard than executives in the private sector (Heath, 2004).

This will strike many people as naive. Yet despite opposition rhetoric and the journalistic enthusiasm for scandal and things ending in "-gate," it is my contention that the real issue, and what actually motivates the underlying appeal of the ethics commissioner, is not worries over government ethics, but concerns about excessive partisanship and majoritarianism. That is, it is not so much that the individual and collective actions of cabinet ministers has earned our disgust, it is that they are increasingly failing to mobilize our consent. Thus, the appeal of the ethics commissioner is part of Canada's so-called democratic deficit, the term used to describe the sense many Canadians have that the federal government has become unresponsive and unrepresentative, and that Parliament is increasingly unable to hold either the government or the bureaucracy accountable. There is a feeling that there is no longer an effective check on executive power, and consequently, Canadians live in either a friendly (Simpson, 2001) or unfriendly (Pue, 2002) dictatorship.

Here, I try to show how appeal of the ethics commissioner finds its traction in three problem areas. First, there is an increasing distaste in Canada for patronage and other similar forms of partisanship in politics, but there is general uncertainty about the constitutional or ethical standards that ought to apply. Second, the language of democratic criticism and reform of Parliament is rooted less in actual constitutional practice than in an idealized sense of how Parliament ought to work, a problem that is exacerbated by the ongoing presence of the American example. Finally, both these feed into

a growing disengagement from traditional party politics and a desire for more independent or nonpartisan checks on government, of which the Office of the Auditor General is becoming a popular exemplar. As an independent, Parliamentary, and nonpartisan check on government, the ethics commissioner appears to serve as at least a partial solution to much of what is wrong with the Canadian political system.

POLITICS AND PROFESSIONAL ETHICS

Is politics a profession? Russell Hardin suggests that it is.

> I propose to treat the class of elected officials as a profession, so that their morality is a role morality and is functionally determined. If we conceive the role morality of legislators to be analogous to the ethics of other professions, then this morality must be functionally determined by the purpose that legislators are to fulfill once in office. (Hardin, 2004, p. 76)

Yet some features of politics complicate matters somewhat. First, unlike most professions, there is no esoteric body of knowledge that politicians need to master. Aristotle and academics might consider politics a science, but there is perhaps no other field of human endeavor, apart from sex, in which ignorance and lack of experience is so frequently portrayed as a virtue. Additionally, while professions are typically marked by collegiality, the central feature of democratic politics is partisanship.

Still, politics has a number of characteristics that make it something like a profession. Politics certainly serves a number of vital social functions. Also, while politicians perhaps need not master a given body of knowledge, they do control or have access to a great deal of power and influence. They control the raising and spending of public money; they make, administer, and enforce the law; they possess the ability to raise an army and make war, and so on. In short, politicians have the entire coercive power of the state at their (collective) disposal, and are therefore the sorts of people in which the public has placed a tremendous amount of trust.

If we accept, then, that politicians are at least professionals in the sense of being in a fiduciary relationship with the citizenry, we can ask, with Hardin, what is the role morality of elected officials? Again, a number of problems quickly arise. To begin with, politician, or even elected official, is not a well-defined role. If we restrict ourselves to Canada's Parliament, there are MPs and senators. Among MPs, there are those on the government side and those in opposition. There are also party leaders, members of cabinet,

backbenchers, the shadow cabinet, and so on. Even if we treat MPs simply as representatives of a constituency, there are a great many competing theories of representation. Some of these roles are constitutionally defined, but many are not, and it is not clear that there is a single sufficiently clear and robust role description that could underwrite a suitable professional ethic for elected officials.

Let us focus then on the government, i.e., the prime minister and members of cabinet. In a recent paper, Glor and Greene (2002–03) argue that a pillar of ethical democratic government is integrity. In addition to the requirement that elections be free and fair, integrity means that there should be a mechanism for assuring transparent and accountable government, as well as rules for ethical decision making. According to Glor and Greene, ethical decision making includes impartiality, accountability, and the exercise of a fiduciary responsibility. Ministers are caretakers of the public trust, and their prime ethical directive is to refrain from abusing or violating that trust.

The trick lies in determining just what constitutes an abuse or violation of the public trust. The prohibition of conflicts of interest is central to every code of professional ethics, and codes of behavior for politicians are no exception. There are obvious reasons for this: if agents are in a position to achieve private gain from the exercise of their fiduciary duties, there may be a clear conflict between what is in the agent's interest and what is in the principal's interest. When it comes to ministers exercising their executive responsibilities, they have a duty to act so that they do not – or cannot – profit privately from public office. According to the federal conflict of interest code for cabinet, ministers have an obligation to arrange their private affairs in a manner that will bear the closest public scrutiny, which entails preventing real, potential, or apparent conflicts of interest from arising.

Yet the prohibition of conflicts of interest goes beyond simply refraining from taking bribes or accepting gifts or favors in return for the granting of public benefits. As Ian Greene argues, conflicts of interest are prohibited by two unwritten constitutional principles, the rule of law and social equality. Thus, the rule against conflict of interest is part of a general rule against bias: ministers should make decisions fairly and impartially. Not only should they not profit personally from their office, but also they

> may not show favouritism to friends and associates. It may also mean that ministers should not show favouritism to party members and that they must disqualify themselves whenever they might appear to be partial. (Greene, 1990, p. 241)

This ideal of the fair, impartial, and unbiased administration of the law by the executive runs into a number of immediate difficulties. First, there is the

question of patronage. If we accept a fairly broad definition of patronage as the giving of appointments, contracts, and other measureable forms of preferment to supporters of the government of the day, then a great deal of what passes for patronage in Canada is neither criminal nor necessarily ethically wrong (Simpson, 1988). Despite its status as a universal term of political opprobrium, patronage has many legitimate and even useful functions. As Jeffrey Simpson points out in his book, *Spoils of Power*, whether certain forms of patronage are ethical or not will not be decidable by explicit rules or principles, but will instead have "much to do with the eye of the beholder, conditioned by the political culture of the country or the province" (Simpson, 1988, p. 9), or even by the relative popularity of the government at a given moment.

A related question is the extent to which the rule against conflict of interest should apply to decisions that have partisan consequences. Again, it is hard to see how a general rule against bias or conflict could help us to distinguish those cases where it might be legitimate for a minister to favor the party's interests from those where it is not (Greene, 1990). The problem is not just that the line is blurry. There is a deeper sense in which politics is about choosing sides, defending one set of interests against another. Democratic party politics is not just a fight over who gets to administer the laws, it is a fight for power. In politics, there are stakes.

The problem of deciding just what counts as a conflict of interest in politics is compounded by three features that distinguish politics from other professions. In the typical professional–client relationship, the professional is responsible for applying (1) a fairly limited and esoteric body of knowledge (medicine, law) toward (2) a single dominant end (health, legal interests), on behalf of (3) a single individual or small group of people. In contrast, the cabinet minister is responsible for (1) the general exercise of power of (2) almost unlimited potential social impact, on behalf of (3) the general population. The minister is simultaneously the agent for a number of overlapping or conflicting principals, pursing multiple, potentially conflicting goals. Consider the various responsibility roles of a minister in the federal government in Canada:

- legally responsible to the Crown for the administration of her portfolio;
- constitutionally responsible to Parliament;
- responsible to constituents for local issues;
- responsible for representing regional or provincial interests (as a political minister);
- responsible to the prime minister;

- responsible to the cabinet as a whole for supporting government policy; and
- responsible to the party.

The problem of multiple goals and multiple principals often serves as a get-out-of-jail-free card, since, when charged with failing to pursue one set of interests, agents can always claim that they were trying to meet another conflicting set of responsibilities (Heath & Norman, 2004). This is exactly what happened with the so-called Shawinigate scandal, when Jean Chrétien was accused of improperly interfering, as prime minister, with the head of a bank. His reply – accurate as far as it went – was that, as an MP, he was merely exercising his duty on behalf of a constituent. To paraphrase Jeffrey Simpson, it is hard to see how the problem of conflict of interest could be amenable to impartial and independent oversight, since what counts as a conflict in politics will often depend on which side of the House of Commons one figuratively, or literally, sits. That is one reason why our traditional mechanism for holding governments accountable for their ethical behavior is not independent and legalistic, but adversarial and political. Through responsible opposition, we ensure responsible government.

THE MEANINGS OF RESPONSIBLE GOVERNMENT

The *Constitution Act, 1867* says that Canada shall have a constitution similar in principle to that of the United Kingdom, which was understood to mean that what underlies the Canadian constitutional order, is a Westminster-style system of parliamentary responsible government. There is considerable debate over the various meanings of *responsible*, but in defining the link between the government and the legislature in Parliament, the term has two essential meanings. In its primary sense, it means that ministers are legally responsible for exercising the executive powers of the Crown. Second, it means that

> ministers are not only responsible *for* the use of these powers, but are responsible and accountable *to* parliament. Parliament, and particularly the House of Commons, is consequently the central forum for discussion about the use and abuse of political power, and is the source of the legitimacy and authority of a government. (Franks, 1987, p. 11)

The essence of parliamentary democracy is the accountability of the government to an elected legislature. The people are represented by the members of the House of Commons, and in order to remain in power the government must retain the support of the majority of MPs.

Under the cabinet system of government, responsible government describes two ways in which ministers are accountable to Parliament. First, each minister bears individual responsibility for the work of his or her department. Second, ministers bear a collective responsibility for government policy. The government must defend its policies and actions before the House of Commons, and it must resign if it is defeated on a bill of substance or on a vote of confidence. The doctrine of cabinet solidarity is central to this system. It began as a device for protecting the ministers, preventing the king from interfering with the government by picking ministers off one at a time. As the English constitution evolved and power shifted from the king to the Commons, cabinet solidarity became just another way of expressing the principle of responsible government: there is a government consisting of the prime minister and cabinet, which has the support of and is responsible to the House of Commons. The cabinet, as a government, stands or falls as a unit.

While this doctrine makes it clear that the government is subordinate to Parliament, it also entrenches the crucial distinction between Parliament and the government. Unless they are members of cabinet, MPs do not – and should not – attempt to govern. Responsible government relies on two distinct domains, "one for ministers to govern and the other for the House to hold the government to account and, if it so desires, to remove the government from power" (Savoie, 2003, p. 33).

There is a third meaning of responsible government that goes beyond the twin doctrines of legal and parliamentary responsibility. This is a broader, or higher, form of responsibility, understood as a set of moral obligations associated with the responsibility of leadership in a constitutional democracy. This higher sense of responsibility is what Amery calls "a state of mind, which weighs the consequences of action and then acts, irrespective, it may be, of the concurrence or approval of others" (Amery, 1964, pp. 30–31). This is the responsibility of leadership, of conviction, conscience, judgment, and integrity. It eschews mere partisanship or majoritarianism, in favor of the pursuit of the public good and the national interest.

We could call it the professional ethic of responsible government, and while it is never strictly codified or even written down anywhere, it includes the unwritten rules and norms that make up a large part of our constitutional heritage. Because the cabinet is able to exercise a great deal of unchecked Crown prerogatives, it is imperative that these standards of obligation are internalized by those in power and accepted as binding regardless of the possibility of being caught or punished. This is not to say that there is no enforcement of the ethical behavior of the government: the

check is the system of responsible government, the ongoing oversight of the executive by Parliament.

Yet just what this oversight consists of is not entirely clear, largely because it is not clear just what the relationship between the government and Parliament ought to be. The problem is that we have two conceptions of responsible government, each of which gives a different account of the role of MPs, the relationship between the cabinet and the House of Commons, and the appropriate balance of power between these two central elements of Parliament.

TWO CONCEPTS OF THE CONSTITUTION

The basic parliamentary model affords considerable flexibility in configurations of power, and over the course of the development of the Westminster system the relative powers of the Crown (or government) and the Commons have waxed and waned (Franks, 1987). What we have now are two general understandings of the constitution, two languages that we use to talk about our system of responsible government. There is what Birch (1964) calls the liberal–individualist model, that sees a strong House of Commons and independent-minded MPs as the most effective check on the government. Then there is the executive-centered model that focuses on the central role of the cabinet in setting the parliamentary agenda and on the dominance of party discipline in the Commons. On this model, the most effective check on the government is public opinion, motivated by effective partisan opposition in Parliament.

Perhaps the most well-known proponent of the liberal–individualist concept of the constitution is Walter Bagehot. Bagehot's is an essentially republican view of the English constitution, with power flowing up from voters to their representatives in Parliament, and then from MPs to the cabinet. Responsibility, in turn, flows the other way: from the cabinet to the House of Commons, and from the Commons to the voters. For Bagehot, the Crown now embodies the dignified part of the constitution, liable to move the spirits of the ruder sorts of men, but not exercising any actual effective power (Bagehot, 1867/1974). Bagehot actually describes Great Britain as a disguised republic, with the Commons as an electoral college through which the people choose their president and executive. He says that the cabinet is a committee of the House, a "board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation" (Bagehot, 1867/1974, p. 11). Bagehot sees this as superior to the

American system, providing a more effective check on executive power. Under responsible government, the Commons is a continuous election; it "watches, legislates, seats and unseats ministries from day to day" (Bagehot, 1867/1974, p. 22) And unlike the sham American electoral college, the Commons is

> a real choosing body, [it] elects the people it likes. And it dismisses who it likes too. (Bagehot, 1867/1974, p. 116)

To a large extent, this was the view of the constitution during the mid-to-late 19th century. Dicey, John Stuart Mill, Gladstone, and many others held similar views, and by the end of the 1880s the supremacy of Parliament – understood as the dominance of the Commons over the executive – had come to be seen as the cardinal axiom of the constitution (Birch, 1964). As a description of Victorian parliaments, this was a somewhat accurate view. The period between the Reform Acts of 1832 and 1867 was characterized by weak, unstable governments confronting a strong, independent-minded Commons. Many ministries did not last very long, and government defeats on bills were common. But this balance of power did not survive the turn of the century, undermined by the extension of the franchise, the growth of party discipline, and the subsequent domination of Parliament by the executive.

Yet a significant difficulty with the liberal–individualist concept of the constitution is that it confuses the relationship between Parliament and the government. Birch quotes an 1893 speech in the House of Lords by Lord Hartington:

> Parliament makes or unmakes our ministries, it revises their actions. Ministries may make peace and war, but they do so at pain of instant dismissal by Parliament from office … it [Parliament] does actually and practically in every way directly govern England, Scotland, and Ireland. (Birch, 1964, p. 73)

Hartington's view may be constitutionally inaccurate – Parliament is not the government – yet, as we shall see, it in many ways represents an idealized view of how many people, especially the general public, think the constitution ought to operate.

In contrast, the executive-centered view sees the British constitution as the product of a long process of balance and adjustment between two elements of independent and original authority, the Crown (cabinet) and the nation (Parliament). The long struggle between the two resulted in their fusion, i.e., in the system of responsible government, but they remain distinct entities, fulfilling distinct constitutional functions. The Crown, as represented by the cabinet, remains the wellspring of power and initiative. It is the Crown that

sets the agenda in Parliament: it initiates most legislation (and all money bills), it sets government policy, and it directs the administrative bureaucracy. Through the cabinet, the Crown governs in and with – but not by – Parliament. Parliamentary democracy is certainly a democracy, but it is a system of "democracy by consent and not by delegation, of government of the people, for the people, with, but not by, the people" (Amery, 1964, p. 21).

This is very distinct from the liberal–individualist view of the place of the cabinet. In the executive-centered position, it is simply not the case that the cabinet is a committee of the legislature, or even a committee of the majority in the legislature. After an election, the queen (the governor general in Canada) selects as prime minister whoever has the support of the majority of the House of Commons. It is then up to the prime minister alone to choose the cabinet, in what is often described as the loneliest of political jobs. However the decisions are made, the process certainly does not involve election by, or even widespread consultation with, the party MPs. Thus, the prime minister is not primus inter pares in the cabinet, but more like the keystone of the cabinet arch (Amery, 1964). It is the prime minister's cabinet: only he or she chooses it, changes its composition, or brings it to an end through resignation or dissolution. The important point is that ultimately Parliament does not appoint or elect, but rather accepts, a prime minister and the cabinet.

In this respect, there is no fusion of powers. The Parliament and the Crown may be joined through the cabinet, but each exercises distinct functions. The role of the government is to lead, legislate, and direct the affairs of the nation. The role of Parliament is to make a government and hold it accountable. It follows, therefore, that Lord Hartington, Parliament, and its committees should not attempt to govern, set policy, or arrogate executive power; rather, its primary function should be to exercise oversight and control of the public purse and hold the government to account for its actions.

In this view, the most important role of Parliament within the Westminster system of government is to minimize the coercion involved in government by helping to engineer the consent of the governed – in particular, of minorities. Through critical examination, opposition, and discussion, Parliament serves as the great forum of national deliberation through which the government obtains consent for its policies. Its success will be measured by the extent to which it is able to ensure that we have responsible government in the higher sense discussed above. It has long been thought that one of the strengths of the Westminster system is that it encourages this higher

sense of responsible government, with the opposition playing a vital role (Amery, 1964). The existence of an opposition that criticizes the government of the day, while remaining loyal to the constitution, helps generate the creative tension through which consent is mobilized. The government proposes, and by

> withstanding the attacks of the opposition and by putting forward its proposals with conviction and vigour, proves the sincerity and the justness of its cause. The process is neither rational nor scientific, but it achieves consent, though through conflict rather than cooperation. (Franks, 1987, p. 15)

Thus, effective parliamentary government requires both responsible government and responsible opposition. The essentially adversarial nature of the system helps simplify the impossibly messy world of politics by offering only two sides to every issue: for or against. This is reinforced by the physical setting of the House of Commons. It is a rectangular chamber, with the supporters of the government on the speaker's right, and the opposition members on his left. Winston Churchill famously endorsed this setup over the semicircular assembly, "which enables every individual or every group to move round the centre, adopting various shades of pink as the weather changes" (quoted in Franks, 1987, p. 144).

The upshot is that the parliamentary model is one that tends to favor the party system. Political parties are certainly not required for responsible government, but in their absence governments tend to be weak, unstable, and – paradoxically perhaps – unaccountable (Smith, 1999). What parties do is support the executive-centered model of the constitution by ensuring the primacy of the government within Parliament. This amplifies and clarifies the underlying adversarial structure by sorting the members of Parliament into a government party (whose job it is to support the cabinet) and opposition members, whose job it is to oppose. Under party government, the cabinet becomes the apex of the governing party caucus, and party discipline is just an extension of cabinet solidarity (Aucoin, 1994).

So, to a large extent, party discipline is crucial to the executive-centered system of responsible government and responsible opposition, by making it clear just who is responsible for supporting the government and who is responsible for opposing. As Sutherland argues,

> party does not empty collective responsibility of its meaning, but gives it meaning. They are the same thing by different names: both are constituted of shared preferences and shared views about how preferences can be acceptably realized. Party makes these visible, arguable, and accountable. (Sutherland, 1991, p. 96)

THE IMPORTANCE OF RESPONSIBLE OPPOSITION

Even Bagehot (1867/1974) agreed that the party system was necessary for effective parliamentary government, although he thought it vital that the parties should not be composed of what he called *warm partisans*.

> The body is eager, but the atoms are cool. If it were otherwise, parliamentary government would become the worst of governments – a sectarian government. (Bagehot, 1867/1974, p. 126)

That is, when cool party feeling turns into hot partisanship, the ability of the Commons to engineer consent will degenerate into raw majoritarianism, as "the party in power would go to all the lengths their orators proposed" (Bagehot, 1867/1974, p. 126).

Aside from the naturally moderate English temperament, Bagehot believed that the parliamentary system was an excellent mechanism for enforcing moderation in party feeling, by keeping party leaders in contact with the world. An opposition party coming into power is like a merchant whose bills are coming due. Having spent a great deal of time saying what they would do once in power, new ministers find that they now have to make good on those promises. Yet reality is always more complicated than it seems from the opposition side of the Commons, "and the end always is, that a middle course is devised which *looks* as much as possible like what was suggested in opposition, but which *is* as much as possible what patent facts … prove ought to be done" (Bagehot, 1867/1974, p. 128). As they take turns rotating through government and opposition, this reality principle enforces on the competing parties a certain amount of moderation. It gives a system of responsible government and responsible opposition that "makes party government permanent and possible in the sole way in which it can be so, by making it mild" (Bagehot, 1867/1974, p. 128).

Advocates of party-based government argue that it is an effective way of managing two competing demands on government: that it exercises strong leadership, while remaining responsive to public opinion. Party discipline gives a government the strength and stability it needs to implement its agenda, while ensuring that its accountability to citizens for its record is completely transparent (Aucoin, 1999). Unfortunately, it is rather difficult nowadays to find many advocates of the current party system.

For its many critics, party discipline is no longer a means for enabling responsible government; it is an obstacle to it. Firm discipline means that backbench MPs on the government side become mere ciphers, irrelevant nobodies, trained seals standing up or sitting down as the prime minister

orders. Meanwhile, the growth in the size and complexity of the permanent bureaucracy has led to the concentration of executive power in a handful of central agencies – the Prime Minister's Office, the Privy Council, Finance, and the Treasury Board (Savoie, 1999). Ministers themselves get shunted aside by the twin forces of the central agencies and the permanent officials, and the cabinet becomes a mere focus group for the prime minister. When all of this is combined with the absence of formal checks on the prime minister, what we end up with is an "imperial prime minister" or an "elected monarchy."

All these contribute to what has come to be known in Canada as the democratic deficit. What is interesting is that the language of criticism, and hence the language of reform, is the language of the liberal–individualist conception of the constitution. Lord Hartington's hope for a Parliament that truly governs looms large in the popular mind, so when it comes to proposals for remedying the democratic deficit, high on the list are things like relaxed party discipline, more free votes in the House of Commons, and the strengthening of bipartisan parliamentary committees to give MPs greater input into policymaking and the drafting and scrutiny of legislation. Of course, what motivates this is not so much nostalgia for Victorian-era Parliaments, but rather an obsessive awareness with the American congressional system of government. The U.S. Congress is seen as the near-embodiment of the liberal–individualist model, with its strong checks and balances and the regime of shared legislative and executive power. For the public, and even for many MPs, the obvious conclusion is that since MPs do not govern, or even really legislate, the House of Commons is simply a weaker and less democratic version of the American Congress (Aucoin, 1999).

Under the spell of the liberal–individualist conception, many critics see the real test of the health of responsible government and the strength of Parliament as lying in the extent to which it is able to force a minister to resign or be dropped from the cabinet. If a minister is forced to resign, it is quite a coup for the opposition. Yet, an embattled minister can be protected by the cloak of cabinet solidarity. By extending that solidarity to the government party as a whole through party discipline, a majority government can effectively check any attempts at picking off an individual minister. Although (as we have seen) the function of cabinet solidarity is precisely to prevent Parliament from picking and choosing among ministers it likes by allowing the majority to govern as a single administration, when it is used to protect weak ministers it is often seen as a "rather low political strategy to protect the inadequate" (Sutherland, 1991, p. 91).

It is actually exceedingly rare that a minister is forced out of the cabinet over violations of public ethics standards. This is borne out by the figures compiled by Sutherland (1991) in her comparative look at the history of ministerial resignations in Canada and Britain. According to Sutherland, by 1991 in Canada there had been 151 ministerial resignations since Confederation. Of these, 28 were for reasons of cabinet solidarity, 62 left to take up patronage posts, and 21 left for health reasons. Meanwhile, 11 ministers resigned for public ethics violations (seven for conflict of interest, three for interfering with a judge), and only two ministers in 124 years resigned over questions of departmental maladministration.

In comparison, of the 98 resignations in Britain between 1903 and 1986, 80% were for solidarity reasons. Five ministers resigned over private moral scandal, and a half-dozen or so were pushed out for political errors. One obvious conclusion is that in Canada, ill health is often easy for the prime minister to arrange (Dawson's joke – see Ward, 1987) while in Britain, the ailing minister picks a fight with the prime minister before he goes (Sutherland's joke). Sutherland draws a more important conclusion: the opposition can force a resignation "only when it can make a case as to lack of personal ethics or probity of a kind for which the minister's own colleagues *refuse* to extend the protection of collective responsibility, or when the cabinet cannot extend solidarity because the government is in a minority" (Sutherland, 1991, p. 105).

Two further points. First, Parliament cannot actually force a minister to resign, in the sense that it does not have the constitutional authority to directly remove a minister from the cabinet. All it can ever do is use strong and effective opposition to make it politically inexpedient or risky for the prime minister to protect an embattled minister. Second, to the extent to which ministerial resignations indicate the efficacy of the accountability mechanisms within responsible government, it would appear that either parliamentary opposition has never been very good at exposing and capitalizing upon breaches of ministerial ethics, or that a widespread lack of ministerial ethics has rarely been a serious problem in Canada.

If you believe the latter, the obvious conclusion to draw is that the best way to continue to ensure an ethical responsible government is to have a strong, responsible opposition. Nothing keeps the government honest like a united and reasonably popular government-in-waiting. But you would be hard pressed to find anyone who believes this. There is a widespread consensus, in Canada and, increasingly, in other jurisdictions such as Britain and Australia, that the Westminster parliamentary system is deeply flawed, if not utterly obsolete. As Michael Atkinson puts it, "so thoroughgoing is

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this depressing assessment that to argue the opposite – that everything is
fundamentally fine – is to court ridicule'' (Atkinson, 1994, p. 717).

In Canada, this general rejection of traditional party-based politics is ex-
acerbated by two additional problems. The first is the long-standing feature
of Canadian federal politics: there is a single dominant government party
that holds power for long periods of time, with a chronic opposition party
that occasionally rides a wave of populist discontent into power. The second,
more recent problem is that since 1993 the opposition to the ruling Liberals
has been far weaker than usual. The feeling that federal politics has reached
''Gritlock'' (White & Daifallah, 2001) has at least partially contributed
to increased public disenchantment, and voter turnout in the last two federal
elections has reached all-time lows. What this means is that Parliament's
ability to engineer a national consensus is severely diminished. Canadians
are turning away from the traditional forms of integrative politics, under
which political leaders fought to articulate collective aspirations through
reasoned debate and deliberation. There has been a shift in preference to-
ward more individualistic, participatory, or citizen-based forms of govern-
ment that are suspicious of the old party-based elites (Atkinson, 1994).

So, we seem to have reached the rather unpleasant point where the tra-
ditional institutional mechanism for ensuring ethical responsible govern-
ment is in both disrepair and disrepute. This is a dangerous situation to be
in, because what we are left with is a system where ''the governing party with
a majority can govern with little in the way of partisan–political checks and
balances, and thus [has] virtually no incentive to build a broader consensus
for its initiatives'' (Aucoin, 1999, p. 100). In this case, it is inevitable that
the opposition in Parliament, as well as the broader public, will begin to
demand other mechanisms for constraining the government. Furthermore,
owing to the influence of both the American example and the quasi-
republican language of the liberal–individualist concept of the constitution,
it is inevitable that these mechanisms will involve trying to give the legis-
lature the means of exercising more direct control of the executive and other
senior public officials (Fleming & Holland, 2000).

CONCLUSION

This is the political environment in which the ethics commissioner finds a
welcoming niche. It offers the hope of a check on the executive that is
independent, nonpartisan, and parliamentary, and its proponents ignore or
downplay the constitutional improprieties that might arise. After all, if an

ethics commissioner overseeing the executive but reporting to Parliament is unconstitutional because it involves legislative interference in the executive loop, then so much the worse for the constitution (this seems to be the general attitude in Fleming and Holland (2000)). Of course, it might be worth fudging on the constitution if the office of the ethics commissioner is able to deliver the goods as advertised; that is, if we could be reasonably certain that it will help ensure the integrity and ethical behavior that is at the core of building public confidence in government and in the political process (Privy Council Office, 2004).

It may do so. But I want to close by highlighting some areas of concern.

The first concerns the incentive structure it gives to cabinet ministers. The adversarial nature of the party system necessarily puts a premium on public perception. In the highly charged partisan atmosphere of parliamentary debate, especially the question period, the opposition frequently tries to paint the government as corrupt, unethical, and thoroughly incompetent stewards of the nation's affairs, while the government tries to defend itself. Each tries to marshal the support of the media and of the public, and the final verdict on the government's ethical behavior is delivered in the court of public opinion and, ultimately, the voting booth.

The existence of a parliamentary (as opposed to a legal or constitutional) check or limit on government power gives a rather distinctive form of institutional incentive for ethical behavior. Leaders are ultimately held in check by their own sense of duty, responsibility, and professional obligation; Parliament functions as the institutional site of moral socialization (Atkinson, 1994). The move to a written code of ethics administered by an independent officer of Parliament involves a fundamental shift from an incentive-based ethical regime to a control-based one. That is, instead of giving ministers an incentive to internalize the standards of public ethics, the idea of an ethics commissioner starts with the assumption that ministers will exploit their office for private gain if given the chance. What is therefore required is a strict and codified system of external oversight and control.

This move, from a reliance on internalized incentives to external controls, involves a fundamental shift in our regime of public ethics enforcement, and it could well backfire. To draw a Kantian distinction, it may encourage ministers to act merely in accordance with the rules (out of fear of being caught), when what we really want is for them to act out of respect for the rules (because that is what political virtue demands). This might well lead to rule bending and even ethical risk taking, as ministers seek to be seen as adhering to the strict letter of the rules, regardless of what the public good actually requires. It might even result in less accountability, not more, as

ministers look for loopholes or other ways of getting around the rules (Juillet & Paquet, 2002).

What underlies all of this is a basic uncertainty over what the point of the ethics code is supposed to be. Is the point to actually improve ministerial conduct, or is it to simply increase the chance that supposedly inappropriate conduct will be detected and exposed? While ideally we should prefer the former, there is evidence that implementing codified rules of behavior for ministers results in the latter (Fleming & Holland, 2000). In that case, the unhappy effect of the ethics commissioner might be increased public cynicism and disgust, by proving what people have always suspected; namely, that most politicians are only in it for their own benefit.

A second, related worry concerns the institutional nature of the office of the ethics commissioner. As a quasi-judicial office, the commissioner's inquiries will have to put a premium on due process and the gathering and evaluation of evidence. When the commissioner becomes involved in investigating a possible ethical breach by a minister, it could have the effect of taking the issue out of the political realm entirely. As a mechanism for holding the government to account, this could backfire by actually making it harder for the opposition to hold the government's feet to the fire. The government might find it easy to get a possible scandal off the agenda by parking it with the ethics commissioner for investigation; the opposition could hardly continue to harass a minister during a question period while the commissioner is conducting an investigation.

There is precedent for this, of course. Canadian governments have always found royal commissions and judicial inquiries extremely useful instruments for burying politically inconvenient issues. For example, the investigation into the treatment of protesters at the 1997 APEC meeting on the campus of the University of British Columbia took three years and cost $10 million. Inquiry Commissioner Ted Hughes replaced the original commission when all three panelists quit after several months of hearings. When his report finally came out in August 2001 there was very little public interest, despite the fact that Hughes found that the Liberal government twice tried to interfere with police operations during the summit (Pue, 2001). The inquiry effectively buried the scandal.

None of this is intended as a knock-down argument against the office of the ethics commissioner or against ethics codes for ministers in general. Bernard Shapiro may turn out to be a useful aid to an increasingly overworked and embattled Parliament as it seeks to fulfill its vital constitutional function of providing oversight to the actions of the government. What we need to resist, though, is the temptation to regard ethics oversight – along

with other positions such as the offices of the auditor-general and access to information – as the principal instruments through which we hold the government to account.

To make use of a helpful distinction that John Uhr makes elsewhere in this volume, we must be careful that an obsession with political ethics does not detract from what really matters, viz., ethical politics, or what I have called here the higher form of responsible government. It may be true that Canada suffers from excessively partisan, majoritarian, and executive-centered government. To the extent that this is true, it is largely the result of the long-standing feature of the Canadian political landscape that sees an entrenched government party governing for long periods, punctuated by occasional and short-lived populist revolts. One consequence of this may be that, instead of leading cool and moderate party government, it breeds arrogance on one side and cynicism and apathy on the other. The government grows arrogant because it knows it will rarely be held fully accountable for its activities, while the opposition ceases to offer responsible opposition and turns to scandal mongering.

To the extent that this is true, the only viable solution is electoral and institutional reform. As Aucoin argues in a similar context, we need to guard against

> the perception that partisanship in governance stands against good governance, that is, responsive and responsible government … The current imperative, accordingly, is to reform the partisan structures of representative and electoral democracy. If for no other reason, the reform of the Senate and the electoral system, as the institutional means to diminish the unbridled power of the executive, needs to be on our political agenda. (Aucoin, 1999, p. 100)

There is no guarantee that these sorts of reforms will give us more ethical government. No reform is politically neutral, and any institutional change that brings more individualized and republican elements into the parliamentary system might do as much harm as good. One consequence of American-style government will likely be American-style politics. In the meantime, a focus on political ethics narrowly conceived will only drain attention and energy from our real concern, which is responsible government.

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