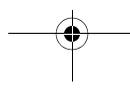
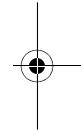
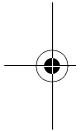
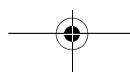
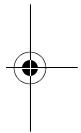
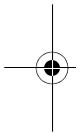
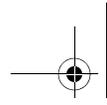


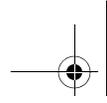
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**PART ONE**

**The Macro Political-Economic  
Recession Context**







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## 2 The Drama of Parliament under Minority Government

JONATHAN MALLOY

### INTRODUCTION

For the first time in many years, Parliament has become the most significant institution in Canadian politics in practice and not just as symbol. While our entire system of responsible government rests on the government's ability to retain the confidence of the House of Commons, Parliament as a functioning institution has long been seen as weak with its exact roles contested and unclear. In times of majority government, Parliament and particularly the House of Commons are often seen as little more than rubber stamps, in which governments rely on their disciplined members to pass their legislative agenda with little dissent. This has led to perennial calls for reforms that would make Parliament matter.

The advent of three minority governments since 2004 has dramatically changed things. Parliament has become a "theatre" of great drama and pivotal votes and decisions. But this has not been in the way envisaged by decades of would-be reformers. Instead of relaxed party discipline, greater freedom for MPs and powerful and autonomous parliamentary committees, Parliament has become a place of constant brinkmanship. With a shifting configuration of four established parties and no government commanding a majority, the House of Commons has seen numerous showdowns and nail-biting votes, and the remarkable crisis of December 2008 which culminated in the proroguing of Parliament.

Furthermore, the Senate has entered an uncertain era in which the Conservative government has tried to reform it – or perhaps undermine it – by incremental means. These include, introducing bills for Senate elections and



fixed terms and leaving large Senate vacancies unfilled and then suddenly appointing Conservative senators *en masse*. Parliament is no longer the dignified but unimportant institution that many accuse it of being under dominant majority governments. Yet while parliamentary proceedings are far more significant, this is not necessarily beneficial for the institution or Canadian democracy.

This chapter discusses Parliament since 2004 under both Liberal and Conservative minority governments. It argues that Parliament and particularly House of Commons votes, because of their uncertain outcomes, have become more important and central to Canadian politics. But it also argues that Parliament has entered a dangerous new era of hyper-partisanship, in which rules and unwritten conventions are constantly bent and manipulated to suit short-term agendas. Some writers argue that minority government, though messy, can be effective<sup>1</sup> and is ultimately more responsive and democratic.<sup>2</sup> But this chapter argues that while the drama of Parliament Hill attracts national attention, the era of minority government has further undermined the relevance and standing of Parliament in Canadian politics. In this larger sense, Parliament continues to be a curious institution in Canadian politics whose role and purpose remain contested and unclear.

#### THE PUZZLE OF PARLIAMENT

Parliament is a longstanding puzzle in Canadian politics. While loaded with historic and symbolic importance as the centrepiece of Canadian democracy, its actual impact is often questioned and debated. For some, this has been a decline from a supposedly golden age of one time or another.<sup>3</sup> But whether or not there was once a better age, for decades now there has been an ongoing debate – in both academic and popular circles – about the purpose(s) of Parliament, with varying diagnoses of its problems and plenty of prescribed solutions. Yet always unresolved is the basic question of what exactly Parliament is supposed to do. What is the role of a representative body in the running and holding to account of a modern state? This question can be asked of legislative bodies around the world. But the Canadian Parliament seems to struggle, particularly with basic questions about its role and purpose.

While other western democracies also experience high public cynicism and disillusion with state institutions, their legislatures do not seem to struggle with the basic relevance and legitimacy dilemmas that we see in Canada. Graham White writes of “the unsatisfactory status quo that has immobilized and neutered Parliament for far too long” and asks “does anyone seriously think Parliament ain’t broke?”<sup>4</sup> Even aside from the arguably unique Senate, the House of Commons leaves few satisfied. In David Smith’s recent *The People’s House of Commons*, he writes “[T]he House of Commons has a problem, and it knows it

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– no one is happy with its performance<sup>5</sup> and later that the Commons “confronts a conflict of alternatives and choice over the role it should play.”<sup>6</sup> Smith pays particular attention to competing conceptions of democracy rooted in constitutional and judicial structures and/or direct democracy and plebiscitary institutions, arguing that parliamentary representation faces serious competition from each. Parliament is no longer taken for granted.

Hence much of the study of Parliament in Canada revolves around the perennial questions of what Parliament is for and what it is supposed to do.<sup>7</sup> But as C.E.S. Franks argues, “reform of parliament is not simply a technical matter of making parliament more effective and efficient, though it is often presented in those terms. Reform is also a question of the purposes for which political power is to be used in Canada and how various interests and viewpoints succeed or fail to influence political choices and outcomes.”<sup>8</sup> In short, Parliament resists simple questions and answers, and poses a complex and intricate puzzle in Canadian politics and political science.

### MAJORITIES AND MINORITIES

For many years, under the majority governments of Pierre Trudeau, Brian Mulroney and Jean Chretien, the most common diagnosis of Parliament’s problems – at least in the media and among MPs themselves – was stifling party discipline imposed by majority governments. When a governing party controlled a majority of seats in Parliament, it was able to pass legislation with few impediments, as MPs voted largely along party lines.<sup>9</sup> The problem, therefore, was seen to be the allegedly mindless enforcement of party discipline at all times and diminishment of MPs’ autonomy to act either as delegates of their constituency (as argued by the Reform Party) or as independent-minded trustees using their best judgement (as argued by many individual MPs).

Majority governments used their disciplined parliamentary majority, along with control of the legislative agenda, supposedly to ram through whatever policies they wanted, while ignoring contrary views and ideas. When governing parties did not hold a majority of Senate seats there was a greater possibility of delays or even outright blockages, and even governing party senators sometimes held up their own party’s agenda. But majority governments, especially if they controlled the Senate, enjoyed considerable prerogative and the assurance that their legislation would rarely encounter serious impediments.

Criticisms of majority governments were not limited to their control of the procedural agenda but also about their apparently sluggish nature and lack of responsiveness. In contrast, minority governments were considered more dynamic and innovative. The Liberal minorities under Lester Pearson (1963–65, 1965–68) and Pierre Trudeau (1972–74) were noted for their productivity

and notable achievements such as national medicare, the Canada Pension Plan and Petro-Canada. Similar observations were made about other minority governments like those in Ontario from 1975–81 and 1985–87. These examples lead Peter Russell to argue it is better to be governed by a minority than a majority government – particularly what he calls a “false majority” when the government wins a majority of Commons seats but not a majority of the popular vote.<sup>10</sup> Russell sees minority governments as much more responsive and democratic, since governments must seek the support of other parties (and hence a greater number of voters) to pass their legislation and stay in power. Furthermore, minorities “restore vitality to Parliament,” he says<sup>11</sup> because of this need to seek the support of other parties and the reduced ability of the Prime Minister to control the outcome. Tom Axworthy agrees that Parliament’s influence “waxes” in a minority government: “The energy level in a house of minorities is high, and the attention level of ministers is sharpened,” he writes, and “as Parliament’s influence waxes, the bureaucracy’s influence wanes.”<sup>12</sup>

Nearly all recent minority governments were characterized by deals and agreements between political parties, and especially between the Liberal and New Democratic parties. In a chamber of three parties, a minority government could rely on the support of one of the other parties to pass its legislative agenda and insulate it from votes of non-confidence. Normally these were informal and often day-by-day arrangements, but in 1985 the Ontario Liberals and NDP signed a formal accord in which the Liberal government promised a series of policies, and in return the NDP pledged its support for two years. Even apart from this exceptional agreement, there was a certain level of stability and predictability to the deal-making and agreements of minority governments in this era of three significant parliamentary parties (along with the waning Social Credit party in the 1960s and 1970s). This stability has not been so evident in the current multi-party era.

In the early 1990s, when the Reform Party and Bloc Québécois joined the traditional three parties as serious electoral contenders, some writers speculated about how a five-party parliament could possibly work. But the ability of the Liberals to maintain majority governments through three elections meant the five-party Parliament worked much as before with only minor adjustments.<sup>13</sup> In particular, the same perennial complaints about majority government dominance and party discipline continued. While the later Chretien years saw an increased assertiveness among veteran backbenchers,<sup>14</sup> Paul Martin among others argued that Parliament itself suffered from a “democratic deficit” that hobbled MPs and the institution as a whole, and proposed a series of changes to address this.<sup>15</sup>

Thus, past Parliaments have been seen to have somewhat more influence under minority governments as parties strike deals with one another. But in both majority and minority situations there have been the same complaints

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about too much party discipline and constraints on individual MPs, along with the perennial discussions of parliamentary reform and the overall purpose of Parliament. However, the most recent series of minority governments since 2004, and the presence of four rather than three strong parliamentary parties, has meant a very different set of dynamics and a very different role for Parliament.

### PARLIAMENT SINCE 2004

Several events in 2003–2004 dramatically changed the dynamics of the Canadian Parliament. Damaged first by their own internecine fighting and then by the sponsorship scandal, the Liberals under Paul Martin were re-elected with a minority of seats in June 2004. Furthermore, the Canadian Alliance and Progressive Conservatives merged into a new and stronger Conservative Party, while the NDP and Bloc Québécois remained strong in their traditional areas of support. Consequently, the House of Commons moved into a new configuration with four significant parties of varying strength and size. Neither the traditional three party configuration of the 1970s and 1980s nor the 1990s arrangement of a strong governing party and four comparatively weak opposition parties were in effect. Most significantly, the Liberals and NDP could not command a majority together – the traditional underpinning of most previous minority governments. With some adjustments, this configuration continued through the 2006 and 2008 elections and significantly affected the place of Parliament in Canadian politics. And while power passed from the Liberals to the Conservatives in 2006, we have seen similar patterns of parliamentary behaviour throughout this period.

Since 2004, the House of Commons has displayed repeated brinkmanship and manoeuvring, as each party calculates and advances its interests in terms of political “plays” and strategic “ploys.” House of Commons voting has become far more interesting, with numerous government defeats and occasional ties broken by the Speaker. The parties have repeatedly adjusted their stance on matters of confidence, alternately pledging to support or bring down the government of the day, as their interests dictate. Inter-party agreements have been weak and fleeting, lasting for a few months at best.

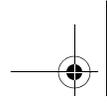
What has gone out the window is talk of relaxing party discipline, the traditional preoccupation of reformers under majority governments. While a number of MPs have crossed the floor to sit as independents or with another party, party caucuses are more disciplined than ever, as they closely count votes in their inter-party manoeuvring. Committees have become highly polarized and most observers decry the apparent decline of basic civility and the “extreme tribalism”<sup>16</sup> across party lines.

Since 2004, governments have lost numerous votes in the House of Commons. The Martin government lost 40 votes; in comparison, the Pearson

governments of the 1960s saw three defeats and Pierre Trudeau's 1972–74 minority government saw 8 defeats.<sup>17</sup> The majority governments of the 1970s, 1980s and 1990s enjoyed long stretches without any significant defeats (although they encountered long delays, such as the 1982 bell-ringing incident that paralyzed Parliament for two weeks). In addition to outright government defeats, the House has seen five tie votes since 2004 – the same number it had in the previous 137 years since Confederation.<sup>18</sup> These ties were broken by Speaker Peter Milliken, who follows the precedent that speakers should uphold the *status quo*. Most significantly, in 2005 the Speaker had to break a tie vote on a motion of non-confidence – an unprecedented action in Canadian parliamentary history. These new voting patterns have given the House of Commons a level of nail-biting attention and significance it has not enjoyed for many years. Commons votes are no longer as predictable as they were under both majority and past minority governments, making them far more compelling and uncertain.

Combined with these votes is the multi-polar and multi-level nature of inter-party manoeuvring. On some bills, the various parties continue to consult one another and the government may modify proposals to ensure parliamentary support. But at another level, governments – especially the Harper government – have gone ahead with bills and motions without support from the other parties, essentially daring them to oppose the legislation. At times, the government has even declared legislation to be a matter of confidence, in which defeat would trigger an election – even when the subject (such as changes to youth offender legislation) is not traditionally considered a confidence matter. Finally, the opposition parties have worked together, or tried to work together, to bring down governments through more direct motions of non-confidence. This has led to almost every possible combination of alliances between parties. In many cases the parties have negotiated more or less in public through the media as they attempt to explain their reasoning and logic, especially when they abruptly change strategies.

This new world of unpredictable votes and intense party manoeuvring is what has made the House of Commons so pivotal in Canadian politics. It is no longer the proverbial rubber stamp. The leading champion of minority government, Peter Russell, argues that this has meant a considerable curbing of prime ministerial power to do as they wish and various specific concessions and deals in both the Liberal and Conservative regimes.<sup>19</sup> For example, the Martin Liberal government avoided almost certain electoral defeat in the spring of 2005 after striking a deal with the NDP for \$4.6 billion of new social policy expenditures. Russell also notes that the Harper government was forced to address the successful passage of a 2007 private member's bill that called for Canada to meet its Kyoto environmental commitments along with other apparent compromises.<sup>20</sup> Perhaps most significantly, the House of Commons held almost unprecedented votes in 2006, 2007 and 2008 over the



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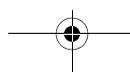
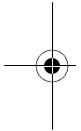
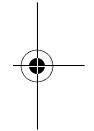
Canadian military mission to Afghanistan. In 2006 the Commons voted narrowly, 149–145, to extend the mission until 2009; the next year, a motion to definitely withdraw at that time was narrowly defeated, 134–150, and a third vote in 2008 extended the commitment to 2011. Not since the Second World War had MPs voted so explicitly on a military mission abroad.<sup>21</sup>

In short, under minority government there has been much more attention paid to parliamentary votes, and what happens in the Commons (and Senate) is much less predictable than in times of majority government and even previous periods of minority governments. But so much of this has been achieved through bluffing and bullying and other forms of partisan warfare. All parties act inconsistently as they concentrate on short-term tactical manoeuvres with no larger strategy or objective beyond immediate advantage. Thus, for example, the Afghanistan vote of 2006 was likely prompted less by a genuine commitment to parliamentary consultation and more by the Harper government's calculation that it would provoke a split in the Liberal ranks (which it did). This means greater attention is paid to parliamentary votes and actors but Parliament remains perhaps more puzzling, and with less agreement over its proper role and effectiveness, than ever.

#### BENDING THE RULES

All parties appear to have twisted the rules and conventions of Parliament to suit their short-term advantages. While both the House of Commons and Senate have written rules (standing orders) determining their behaviour, along with other relevant statutes, much parliamentary business operates on unwritten conventions and understandings, following the tradition of the organic, partly-unwritten Canadian constitution. Indeed, one of the acknowledged strengths of the Westminster parliamentary tradition is the flexibility provided by its mix of written and unwritten rules, allowing it to respond and adapt to new situations to produce legitimate and stable outcomes and avoid absurd or undesired outcomes forced by the constraints of formal rules. This inherent flexibility means that the rules are continually tested and bent, though not broken. However, the current minority governments have seen an alarming degree of rule-bending.

Arguably the most important of these rules is the confidence convention, determining whether a government has retained the confidence of the House and the consequent legitimacy to govern. Gary Levy argues that recent history has seen the “repeated abuse of the most important principle of responsible government, the confidence convention.”<sup>22</sup> Levy and others focus especially on the vote of May 10, 2005, when the government of Paul Martin lost (by 150–153 votes) a motion attached to a committee report calling for the government to resign. The government refused to consider this a motion of confidence and won another vote nine days later (on a 152–152 tie broken



by the Speaker). Andrew Heard argues the first vote should have been considered a motion of confidence and argues that “from a constitutional perspective, the prime minister asserted a false authority.”<sup>23</sup> This vote and surrounding controversy is worth remembering as we consider the 2008 parliamentary crisis below.

Other unwritten understandings have also been bent under partisan stress. House of Commons committees have always faced a “dilemma.”<sup>24</sup> as they attempt to exercise autonomy while remaining relevant and in line with their parties. Nevertheless, some committees have been able to act effectively with some consensus (if not total agreement).<sup>25</sup> But under the minority governments, committees have emulated the dynamics of the larger chamber, with members closely following party lines, manoeuvring for advantage, and attempting to accelerate or block proceedings for partisan advantage. In May 2007, particular controversy ensued over a Conservative party “obstruction manual” which allegedly advised Conservative MPs how to manage committees for partisan advantage and how to disrupt or shut down proceedings to the party’s advantage.<sup>26</sup> Both government and opposition parties have used committee powers in dubious ways to exploit damaging issues, such as opposition-driven investigations of former Conservative prime minister Brian Mulroney or Conservative attempts to investigate Liberal MP Ruby Dhalla over alleged abuses of domestic workers.

Perhaps most surprising of these bent rules is fixed election dates. The Conservative government pledged and passed a bill in 2006 establishing four-year fixed election dates, as already found in several provinces and other parliamentary democracies. But (as with other jurisdictions), this bill allowed exceptions for matters such as the government losing a vote of confidence, stating “Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General’s discretion.”<sup>27</sup> Of course, in September 2008 Prime Minister Harper asked for and was granted a dissolution, leading to the October 2008 election. The audacity of introducing this new rule but exploiting its (necessary) loophole is remarkable.

#### THE SENATE

A particularly remarkable case of unconventional behaviour and rule-bending is found in the Harper government’s Senate reform agenda.<sup>28</sup> Senate reform has of course been a perennial issue in Canadian politics and various governments – especially Pierre Trudeau’s and Brian Mulroney’s – proposed ambitious changes to the upper chamber that required the agreement of at least two-thirds and sometimes all the provinces. None were successful. The Harper government chose a very different, incremental strategy that asserted the federal government’s ability to change aspects of the Senate without provincial agreement. In 2006, the new government introduced two bills, one to

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fix Senate appointments to terms of eight years (later amended to a single non-renewable term), and a second to provide for the appointment of Senators following “consultative” elections by the provinces (i.e., retaining the formal power of appointment as enshrined in the constitution). Hailed by some provinces, the bills were opposed by others and at the very least raised significant concerns about their constitutionality. The bills were not passed; the most recent versions died on the order paper with the 2008 dissolution of Parliament and have not been reintroduced as of the time of writing.

The Harper government also did not appoint new senators as vacancies arose due to retirements and other departures, with two exceptions. Michael Fortier was appointed to cabinet and the Senate in February 2006 to ensure a Montreal-based member of cabinet. (Fortier pledged to resign his Senate seat and run for a Commons seat in the next election and did so, going down to defeat in the 2008 election.) It also appointed Bert Brown, who had been twice elected in Alberta’s unilateral province-wide Senate elections, when an Alberta seat became vacant in 2007. But other seats remained unfilled, presumably waiting for the proposed new system of fixed terms and consultative elections.

Then, following the December 2008 crisis (see below), the government filled the then-18 vacancies with new senators under the traditional system of appointment, and largely with Conservative partisans. Another batch of nine senators were appointed in August 2009 to fill further new vacancies. In both cases, the government faced the possibility of an imminent election, and this is almost certainly why it suddenly exercised its right to fill the Senate seats, just in case it was defeated.

The Harper government has thus embarked on an unusual and questionable Senate reform agenda that lacks the support of the other parties and raises important constitutional questions and uncertainties. But in the context of all the other rule-bending in the minority era, it is only one more example of how unwritten understandings and conventions have been disrupted and heavily bent to suit partisan agendas.

In short, Parliament under both Liberal and Conservative minority governments since 2004 has attracted more attention but arguably lost standing and respect. Rules are heavily bent as the House of Commons follows a pattern of showdowns, close votes, occasional government defeats, and general bluffing and bullying. All parties are driven by immediate tactical advantage, bending rules and unwritten conventions as needed. And all this is the backdrop to the remarkable crisis of late 2008.

## THE 2008 PARLIAMENTARY CRISIS

Following the 2008 election and its inconclusive return of a second Conservative minority government, it was widely expected that the House of Commons

would begin to stabilize, and party officials suggested a new tone of respect and cross-party cooperation.<sup>29</sup> As late as November 20, the *Globe and Mail* reported that “since being re-elected in October, the Tories have purposely adopted a new, less confrontational approach toward opposition MPs in the House of Commons.”<sup>30</sup>

However, despite this talk of a kinder, gentler Parliament, the government announced a “fiscal update” on November 27 that was highly confrontational in both tone and substance. In a time of global economic crisis and widespread stimulus spending in other countries, it announced no significant stimulus and proposed to outlaw public service strikes and suspend pay equity redress. These provisions were unacceptable to the other parties. But even more unacceptable was the sudden government proposal to end public subsidies to political parties – a provision that would seriously damage the Liberals and Bloc Québécois in contrast to the Conservatives who were far less reliant on the subsidies. The Conservative actions were stunning in their unilateral and confrontational tone and shattered the expectations of a less fractious Parliament.

The following days saw several remarkable events.<sup>31</sup> The Liberals and NDP negotiated an agreement to form a coalition government, supported by the Bloc Québécois. To do this, they needed to show that the House of Commons had no confidence in the Harper government. An “opposition day” (a day when the opposition controls the Commons agenda and can introduce such motions) was scheduled for Monday, December 1, but the government quickly postponed it for a week. After several more days of posturing and national television addresses by party leaders, on December 4 Governor-General Michaëlle Jean granted Prime Minister Harper’s request to prorogue Parliament until January 26, 2009. Prorogation meant the end of the parliamentary session that had just begun two weeks before and, of course, no chance for the opposition to express non-confidence and bring down the government.

Parliament was at the heart and centre of the 2008 crisis, but again, in a way that diminished rather than enhanced its legitimacy. The government was able to avoid defeat by postponing the opposition day and then shutting down Parliament for a crucial six weeks. Others have debated the constitutionality of the prorogation<sup>32</sup> but, at the very least, this was the most stunning example yet of bending the accepted conventions and rules of the parliamentary system.

Furthermore, the prime minister and his supporters made disturbing arguments that coalition governments were unconstitutional and that Canadians had *directly* elected the prime minister and the Conservative Party to power and no other party or leader had a right to govern. Neither of these arguments is true. But this further confused the existing understandings and agreements about the rules of the system, and further undermined public understanding of the role of Parliament. All these elements help to explain

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why the political showdown of winter 2008–09 is widely seen as a “crisis” – a time of uncertainty that posed a danger to our democratic system as actors argued over the basic constitutional legitimacy of each other’s actions.

The opposition parties as well must shoulder their responsibility for the crisis. The coalition, headed by a lame-duck leader, was assembled in great haste and was clearly an opportunistic attempt to take advantage of the Conservative miscalculation rather than a coherent plan of governance.

After the dramatic prorogation of December 4, the final elements of the crisis slowly emerged, ending the crisis not with a bang but a whimper. A new parliamentary session began on January 26 and the new Liberal leader Michael Ignatieff (hastily installed after his competitors withdrew) pledged to support the government’s budget under the condition that the government issue regular reports on its stimulus spending that the opposition could then vote on as matters of confidence. But as spring and summer passed, these reports followed the now-familiar patterns of bluffing and brinkmanship as each opposition party calculated its electoral prospects and acted accordingly, and the government was able to win again and again.

By the fall of 2009, it seemed clear that little had been learned from the crisis and that Parliament was back to the established patterns of posturing, bluffs and showdowns. In August, Michael Ignatieff announced that his party would no longer support the government and pledged to bring it down through a vote of non-confidence in September. But with almost clockwork precision, NDP leader Jack Layton then announced that his party would support the government if it supported NDP priorities on several issues. The Conservatives said they had no interest in negotiations and an election seemed imminent. But by the time the scheduled vote of non-confidence was held, the parties fell into line and the government was sustained by 141 votes to 117. This was undoubtedly influenced by opinion polls showing strong public opposition to yet another election during a deep recession, and so costly and so soon after the last one, and likely to produce similar inconclusive results. No opposition party wished to be blamed for causing yet another trip to the polls, while the Conservatives calculated they could probably benefit by arguing they deserved a majority that could end the instability. But it was clear Parliament would continue to lurch from showdown to showdown, as all parties jockeyed for position and prepared for an imminent election that no one – save perhaps the government – wanted.

Yet another episode of rule-bending was the prorogation of December 30, 2009, when the prime minister telephoned the governor-general in the holiday season to request an end to the current session of Parliament, with a new session to begin in March. This was widely interpreted by the opposition and others as a chance to shut down damaging committee hearings into possible government knowledge of the torture of Afghan detainees.<sup>35</sup> The government argued correctly that prorogation was not uncommon and had been

used for questionable purposes by the Liberals in the past. However, the stealthy nature of the prorogation in the middle of the holiday season, without a formal prime ministerial visit to Rideau Hall, suggested a continuing indifference to the spirit of parliamentary and constitutional rules, and a willingness to bend them as necessary.<sup>34</sup> The December 2008 crisis then was merely the most notable of the continuing string of smaller crises and show-downs that have characterized this period of minority government. It is in some ways gratifying that the parliamentary system – while bent in unusual directions – was ultimately able to contain and defuse the crisis, allowing the government and opposition to fall back into familiar fractious patterns without the sense of emergency and near-chaos unleashed by the crisis. But throughout it, Parliament was the centre of attention but not of admiration.

#### NEW RULES FOR STABILITY

Writing in early 2008 before that year's election and parliamentary crisis, Peter Russell titled his book on minority government *Two Cheers for Minority Government*, holding back a third cheer because of the greater instability of minorities.<sup>35</sup> And both before and after the 2008 parliamentary crisis, Russell and other scholars have discussed how the instability and general stress of minorities might be mitigated in a way that enhances not only the significance but the legitimacy of Parliament, along with other political institutions. What new written or unwritten rules might be introduced to guide and stabilize the system? And how can these be protected and not routinely bent as far as they can go, as so many others have been since 2004?

Some suggestions, like fixed election dates, have already been shown to be easily broken at the government's convenience. Another issue, which received far more attention after December 2008, was the governor-general's reserve power – that is, her ability to act independently of the prime minister's advice. We have already mentioned the arguments that Michaëlle Jean should have refused Stephen Harper's 2008 request for prorogation, and Mark Chapman writes that “the lack of clarity surrounding the constitutional rules and conventions on which the Governor-General must base her decisions risks creating a perception of arbitrariness.”<sup>36</sup> Hence Lorne Sossin and Adam Dodek argue that governors-general should publicly justify and explain their reasons for granting requests for prorogation or dissolution, providing not only greater transparency but also a record of precedents to guide future actions.<sup>37</sup> Peter Russell argues vividly that “the time has come to bring those spooky unwritten constitutional conventions down from the attic of our collective memory and try to see if we can pin them down in a manner that is politically consensual and popularly accessible.”<sup>38</sup>

The Canadian experience with minority government and particularly questions of constitutional conventions has attracted international attention,

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and not always favourably. Robert Hazell, reflecting on experiences in various Westminster-style jurisdictions, says that “Canada illustrates the difficulties which can arise when the rules are not clear, especially the rules governing the key constitutional conventions around government formation and dissolution.”<sup>39</sup> In contrast, New Zealand, with considerable experience of multi-party governance since the 1990s, has codified many of these rules, and Lori Turnbull and Peter Aucoin suggest a similar written protocol should be developed in Canada,<sup>40</sup> a proposal also supported by Chapman.<sup>41</sup>

Related to this is the perennial call for more civic education and public understanding of Canadian political institutions. The December 2008 crisis clearly showed widespread confusion among the public (and notably parts of the media as well) about the nature of the reserve power, confidence convention, coalition government and the government’s assertion that prime ministers and governments are directly elected. This in turn fits with other misconceptions or blurred understanding of the role of Parliament, MPs, and party discipline. Greater public awareness and knowledge about our democratic system, it is argued, might curb much of the rule-bending and manipulation seen in the minority government era or at least make what is being done more apparent.<sup>42</sup>

Other suggestions have focused on the need to accept coalitions as a normal aspect of Canadian parliamentary government, countering the inaccurate Conservative arguments in 2008 that coalitions were illegal or otherwise unacceptable in the Canadian system of government. William Cross argues that “Canadians may have largely rejected the proposed coalition, but they should get used to the idea”<sup>43</sup> and Lawrence Leduc, noting the widespread practice of coalitions in many other parliamentary systems, states that “Canada will very likely someday have a coalition government of some type.”<sup>44</sup> Along with Russell and others, these writers all argue that the pattern of multiple party-parliaments and minorities is likely to continue, and that both politicians and the public must accept more formal coalitions as a normal and even desirable practice. Yet this is not likely to happen – as even many of the above writers admit – as long as Canadian parties, and especially the Conservatives and Liberals, see majority governments as within their reach. Hence Mark Chapman concludes that “perhaps the greatest obstacle to making [minority government] work has been the reluctance of the Conservative and Liberal parties to accept that minority government is here to stay for the foreseeable future.”<sup>45</sup>

A final possibility is what Peter Russell calls “the ultimate stabilizer”<sup>46</sup> – electoral reform. Proponents of more proportional electoral reform schemes argue that they will eliminate “false majorities” once and for all and force parties to work together. Ben Yong argues that New Zealand’s experience of multi-party governance since the introduction of the Mixed-Member Proportionate (MMP) system, while not without hiccups, “has led to relatively

stable and durable government.”<sup>47</sup> Similarly, Scotland’s Additional Member System has produced a series of relatively stable minority and coalition governments.<sup>48</sup> Thus Russell argues that “one of the benefits of electoral reform is the stability it would bring to the operation of minority government.”<sup>49</sup> But the likelihood of electoral reform is increasingly slim. Proposals have been rejected in three provinces (Ontario, PEI and BC, the latter twice) and, while reform proponents argue this was due to insufficient citizen education, enthusiasm has dwindled considerably since those initiatives.<sup>51</sup>

#### CONCLUSIONS

The series of minority governments since 2004 has made Parliament, and particularly the House of Commons, the centre of political attention because of the constant brinkmanship and uncertainty of parliamentary votes. But this significance has come at great cost to the overall legitimacy and health of the institution. The constant state of instability and uncertainty has created a hyper-partisan atmosphere, in which tribalism and partisan advantage are paramount and rules are bent or even possibly broken to serve immediate short-term advantage. Parliament has become very important, but perhaps more unsatisfying and less convincing than ever.

There is little doubt that Canada’s flexible Westminster system of democracy will continue under the stresses of minority government and the possible futures of either coalition governments or the return of majority government. The system allows for many configurations and varieties<sup>52</sup> and even the chronic rule-bending of recent years does not mean an overall breakdown. But more than ever, the role and purpose of Parliament is a continuing puzzle in Canadian politics. What is Parliament supposed to do? How well does it do it? The minority government era has created an entirely new set of dynamics, but the perennial questions remain.

#### NOTES

- 1 Robert Hazell and Akash Paun, eds., *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall* (London: Institute for Government, 2009).
- 2 Peter H Russell, *Two Cheers for Minority Government* (Toronto: Emond Montgomery, 2008).
- 3 See Jonathan Malloy, “The House of Commons Under the Chretien Government” in G. Bruce Doern, ed., *How Ottawa Spends 2003–4: Regime Change and Policy Shift* (Toronto: Oxford University Press, 2003), 60–61; and Thomas Axworthy *Everything Old Is New Again: Observations on Parliamentary Reform* (Kingston: Centre for the Study of Democracy, Queen’s University, 2008) 9.

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- 4 Graham White, "The Coalition That Wasn't: A Lost Reform Opportunity" in Peter H. Russell & Lorne Sossin, eds., *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009), 151.
- 5 David E. Smith *The People's House of Commons: Theories of Democracy in Contention* (Toronto: University of Toronto Press, 2007), 9.
- 6 Smith, *The People's House of Commons*, 19.
- 7 Jonathan Malloy, "The 'Responsible Government' Approach and Its Effect on Canadian Parliamentary Studies." *Parliamentary Perspectives* (Ottawa: Canadian Study of Parliament Group, 2002).
- 8 C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), 7.
- 9 Jonathan Malloy, "High Discipline, Low Cohesion? The Uncertain Patterns of Canadian Party Parliamentary Groups." *Journal of Legislative Studies* 9:3 (2003).
- 10 Russell, *Two Cheers for Minority Government*.
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- 13 David Docherty, "It's Awfully Crowded in Here: Adjusting to the Five Party House of Commons." *Parliamentary Perspectives* (Ottawa: Canadian Study of Parliament Group, 1998).
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- 29 Michael Valpy, "The 'Crisis': A Narrative" in Russell and Sossin, eds., *Parliamentary Democracy in Crisis*.
- 30 Brian Laghi and Steven Chase, "Facing a crisis, Harper Instructs MPs to Be Less Confrontational." *The Globe and Mail*. Nov 20, 2008. pg. A.4
- 31 See Valpy, "The 'Crisis'" for further details.
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