

# FIXING PARLIAMENT, FROM COMMITTEES TO QP: A CONVERSATION ABOUT PARLIAMENTARY REFORM

Yaroslav Baran and Graham Fox



Through a string of minority governments, Parliament has been increasingly described as overly partisan, dysfunctional and irrelevant for the purposes of meaningful public policy debate and scrutiny of the public accounts. While significant recent legislative achievements illustrate that all is not lost, the increased focus on scandal, muckraking and political positioning has eroded the effectiveness of key functions of Canada's highest representative institution. Senior political analysts Yaroslav Baran and Graham Fox evaluate the causes of the current dysfunction, while discussing prescriptions for reform.

D'un gouvernement minoritaire à l'autre, le Parlement canadien a de plus en plus souvent été accusé d'être outrageusement partisan, dysfonctionnel et insensible à la nécessité d'un véritable débat politique et d'un minutieux examen des comptes publics. Si tout n'est pas perdu, comme l'indiquent la récente adoption d'importantes mesures législatives, cette focalisation sur les scandales, les intrigues et l'appartenance politique a bel et bien amoindri l'efficacité de fonctions clés de la première institution représentative du pays. Yaroslav Baran et Graham Fox échantent sur les causes de ces dysfonctionnements et proposent des moyens de redresser la situation.

Following a spring sitting that will be remembered more for insults than for insights, few people would challenge the idea that our Parliament is broken. Political pundits, parliamentologists and Canadian consumers of current affairs have arrived at a consensus that Parliament routinely fails in its most basic functions. It is no longer the forum of informed public debate it should be. It no longer holds government to account to its potential. And it has lost the trust of many citizens. Parliamentary sessions — particularly in the House of Commons — are increasingly (to borrow a phrase) nasty, brutish and short.

Parliament's decline in relevance has been long developing. Partly due to the structures and processes inherited from the Mother Parliament at Westminster, partly due to the fragmentation of the federal party system in the 1990s and partly due to the exigencies of a 24-hour news cycle and the need to "feed the beast," Parliament started its slow march down this road at least a few decades ago. What is clear, however, is that today Parliament stands at a crossroads: it will either embrace an agenda of meaningful reform and reclaim its central role in our democracy, or it

will resist change and slide further into disrepute, with ever-diminishing voter turnout as a direct consequence.

To be sure, the rules by which our Parliament operates were designed for majority governments. Throughout most of its history, Westminster operated with two dominant parties alternating in power. And our experience here in Canada has seen two dominant parties form successive majority governments for most of our history as well.

As long as our electoral system produced majorities, our parliamentary system accommodated the emergence of third parties rather well. Our system has not adjusted nearly as well, however, to minority governments. Observers of the national political scene have in recent years engaged in debate over whether the current string of minorities is transitional, whether it is the new norm in federal politics and what that might mean for parliamentary reform.

The conventional wisdom in 2004, when the first of three minority parliaments was elected, was that minorities would be a welcome change from the authoritarian and excessively partisan trend of majority governments — that they would force cooperation, consensus and collaboration.

The reality, however, is that minority governments, operating within a structure designed for majorities, merely lead to increased partisanship, more gridlock and more grandstanding.

Does Parliament need saving? It is still producing results — this year, and last, important budgets were passed, with significant opposition support, that responded to Canadians' concerns about the global recession,

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and there have been significant agreements on other issues, too, like access to Afghan detainee documents. But can it work better? Undoubtedly. So how do we reform the rules of our governing legislature — in particular the increasingly partisan House of Commons — to rebuild it into a more mature, thoughtful and productive chamber of public policy discourse, regardless of majority/minority electoral returns, and regardless of dominant political stripes? Focusing on four elements of parliamentary business — private members' business, House of Commons committees, the supply and estimates process, and Question Period — Yaroslav Baran and Graham Fox try to crack this nut.

**Yaroslav Baran:** I'll start with private members' business because I think it is the one area of House of Commons activity that is working well. Minor tweaks are always possible to the process, but the procedure governing private members' business has already been radically overhauled over the last handful of parliaments. And it works much better for MPs.

When I first started working on the Hill in 1997, the rules for private members' business were far tighter — resulting in far slimmer chances of success — than they are now. Back then, every MP selected to bring forward a legislative initiative had to appear before a procedural subcommittee and plead why

their bill should even be votable. This subcommittee of the Standing Committee on Procedure and House Affairs was partisan in composition and activity, and the denial of votable status was the first line of defence by a government that disagreed with the policy initiative at hand.

Even when bills were granted votable status — and the subject matter was considered too politically sensitive to oppose in open voting — the

favoured trick of governments was to allow bills to pass an initial second reading vote, only to languish indefinitely in committee. Under majority governments, of course, government MPs dominated committees and were able to set their work agendas, leaving troublesome private bills indefinitely at the bottom of the priority work list. More than a few populist (and politically sensitive) private members' bills were sent to committee by overwhelming votes in the Commons, never again to see the light of day.

Over the years, significant reforms were introduced. Debate times were shortened, meaning a quicker legislative processing. Second reading debate, for instance, now lasts two hours (on two separate days), rather than three hours (on three separate days), with the hours of debate approximately one month apart. More significantly, House committees now have firm deadlines for considering bills sent to them by private MPs — if they do not report a bill back to the House within 60 days (which can be extended to 90 days, if the House agrees), the bill is automatically deemed to have been reported back without amendments. This is a significant hammer forcing committees to treat private members' bills with expediency and respect.

All private members' bills and motions on the Order of Precedence

are now presumed to be votable, unless the same procedure and house affairs subcommittee agrees they either are unconstitutional or purport to revisit a House of Commons decision already taken in the same parliamentary session — *and* the subcommittee tends to work on consensus rather than a show of hands.

To balance out the new-found powers of private members through these reforms, enough consideration was also built in to safeguard the exclusive prerogatives of the government, acting on behalf of the Crown. Private members' bills cannot levy new taxes

without a ways and means motion, nor can they expend new government funds without a royal recommendation — both of which can be granted only by the executive branch of government. In other words, backbench MPs cannot abuse their new legislative freedoms to blow a \$10-billion hole in the government's fiscal framework by quickly passing a private member's bill establishing a new universal pharmacare program or fundamentally overhauling the employment insurance system.

In sum, private members' business is the one facet of parliamentary activity in least need of reform, precisely because this reform has already occurred. The new rules governing the process have struck a balance between effectiveness and responsibility, and have built in sufficient safety valves to guard against abuse. More than anything else, private members' business is now a symbol that meaningful reform is indeed possible — and that it is possible to get it right, fairly.

**Graham Fox:** I certainly agree that private members' business [PMB] generally works well and that the reforms you describe have a lot to do with it. In contrast to how PMB was conducted during my first tour of duty on the Hill in 1997, PMB today is considerably freer from interference from either the government or the party leadership in opposition. The fact that

all business is votable, and that the vote is (for the most part) a free one, sends an important signal.

Other reforms have also taken place, including, for instance, the new practice of starting votes in the fifth row rather than the front bench. These are more symbolic in nature, but nonetheless underscore the fact that the PMB process has already been significantly democratized: MPs are free to vote their conscience and/or the will of their constituents, but they are also responsible for their choice and will be called on by voters to answer for it.

In large part, I think PMB works because PMB matters — certainly much more than it used to. Notwithstanding the motions and bills whose only purpose is to embarrass the other side, MPs now stand a reasonable chance of getting their bill passed if they focus on issues around which a broad coalition can be built. And I think there is a theme here that is relevant to how we consider the merits of other parliamentary reform proposals. When something is at stake, the likelihood grows that parliamentarians will treat the matter seriously. When, on the other hand, the outcome has been predetermined by the party leadership, it is more likely that back-bench MPs will focus on scoring points rather than the issues at hand — which brings us to committees...

In the last decade, committee business has showcased the best and the worst that Parliament has to offer. And, again, one can easily draw out traits that are common to their success, and other traits that link together their embarrassing displays.

On the positive side, successful committee endeavours usually begin with an issue about which members are genuinely open-minded. Whether on health care, budget considerations, foreign aid, energy policy or the impact of the 2008-09 recession on

certain industries, committees have shown that they have the ability to consider a problem, consult broadly and propose innovative solutions. In all these cases, the work has been helped along by knowledgeable chairs, collaborative members and a shared commitment to offer real solutions.

In contrast, hearings into the sponsorship scandal, Mulroneys-Schreiber, Chuck Cadman, Rahim Jaffer and all the other “-gates” have shown Parliament at its worst: inept or partisan chairs; members who either do not know what lines of inquiry are in and out of order or, worse still, don’t care; little or no regard for scopes of

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inquiry or committee mandates; and a deliberate disregard for the reputation of witnesses or fellow parliamentarians. In all these cases, throwing mud was the name of the game, and there is little evidence anywhere that anyone was actually interested in — and motivated by — getting to the truth.

Again, I can’t help but think that committees become circuses when they are given no meaningful work. If their business mattered — to Parliament, to government, to public policy — they would not spend countless hours prosecuting an official for a lunch receipt in the hope that somewhere in there lies a scandal they can feast on for weeks. Of course, in some

cases in which the abuse is demonstrable, it is very much the role of Parliament to ask tough questions. But all too often, committees ignore the big debates and focus on such matters because they can’t handle anything more complex.

In support of the tremendously positive work of committees, and to buttress the system against excess, I would suggest two reforms. First, on a policy level, I would encourage governments to rediscover the white and the green papers: policy papers that outline a problem and, in the case of white papers, consult on particular solutions or, in the case of green papers, remain open to consider many options.

There is in my view much to be gained from charging committees with tasks at stages at which governments are genuinely undecided on the appropriate course of action and/or when we want to “road test” a policy option. At a minimum, this would leave less time available for committee mischief, and at best, the fruits of their labour might prove to be valuable input.

In support of this, we would also need to equip committees with the tools they possess in other countries — a proper staff, and a proper budget. Only by increasing their heft and status will we see a corresponding increase in the quality of their work. If we want committees to up their game, we need to give them the resources to do it.

**Yaroslav Baran:** While I agree with the premise that committees demonstrate the best and the worst of Parliament, I will disagree with the latter prescription for improvement.

I appreciate the optimism that giving committees a “proper” staff and budget to do their work would augment the stature of committees and thus engender good behaviour; but as it stands, I think this approach would only make matters worse. As long as committees operate outside their

mandates, and as long as chairs exceed their powers to do their political masters' bidding, the last thing we should do is increase their resources and status to congressional levels.

The spring of 2008 was one of the ugliest periods I have ever seen on the committee front. Three committees were entirely shut down due to procedural stalemates, and one was on the verge of collapse (it still met, but the government chair would immediately leave the table to force the opposition vice-chair to run the meeting; the latter would refuse to give up a floor vote, and immediately gavelled each meeting to a close).

While we can certainly debate who was *more* in the wrong or right with each case, there was nearly a uniform common denominator: committee studies that exceeded their rightful mandates, exacerbated by chairs who skirted the rules of proper procedure with no higher authority available to call them on it. Yes, a chair's decision is open to appeal to the entire membership, but enter the next problem: tyranny of the majority upholding extraprocedural proceedings and rulings. These are real problems.

The simplest solution would be to emulate in committees what we have in the House: chairs who, once elected, take on a strict mantle of neutrality — to the point of not attending caucus meetings or votes in the House. This approach of turning chairs into effectively independent MPs and mini-Speakers would certainly augment their credibility. At the same time, however, such a reform would be entirely impractical. Votes are too scarce and valuable — particularly in minorities — to allow taking 25 additional MPs out of circulation. What, then, can be done to curb extraparliamentary activity in committees?

Speaker Peter Milliken delivered an extensive landmark ruling on this problem in April 2008 — a ruling that is sure to be one of his greater lega-

cies, and that has undoubtedly entered into parliamentary jurisprudence throughout the Commonwealth. In sum, he ruled that as the Speaker of the House in its plenary, he has no authority to micromanage committee proceedings. Chairs would have to be trusted to exercise their authority competently; however, as a safeguard, where committees conduct inquests that exceed their mandates, he as Speaker of the House would deem any reports they generate as unreceivable by the House of Commons. To paraphrase, "I have to trust you to play nice, but if you start to do wacky stuff you're not authorized to do, any recommendations you make to the House on said wackiness are dead on arrival."

Significant as this ruling was, its practical benefits were minimal. Yes, he shut down committees' ability to effect censure related to illegitimate studies, but after a full and public inquisition, the real damage is already done. Individual persons whose personal or professional reputation has already been eviscerated by a star chamber — cameras rolling throughout — will take little comfort in the Speaker refusing to accept a written report on the proceeding.

In the absence of truly neutral and nonpartisan committee chairs, what

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we really need is the procedural authority for the Speaker to reach into committees and act as a court of appeal to keep them on their proper track *while* their proceedings are nascent or ongoing. We need Speakers with authority to directly overrule improper chair rulings, and with the authority to order a halt to illegitimate committee studies

that are not rooted in the explicit mandates laid out for individual committees in the Standing Orders of the House.

Until we address the root of committee problems with a truly effective appeal mechanism, additional resources would risk creating bigger monsters out of the ones we already have.

**Graham Fox:** I don't disagree with your proposal at all — I do think we need to ensure committees stay within their mandates and I see no problem with the idea of extending the reach of the Speaker's authority into committee business in cases in which it is needed. But I don't see why we can't walk and chew gum at the same time. Both of our proposals could in fact be introduced in tandem: yours to address the scope of committees and mine to begin to bridge the knowledge gap between government and Parliament.

In my view, increasing the resources available to our standing committees is important for two reasons. Sure, it will greatly enhance their capacity to contribute to policy debates, which is an important goal — after all, most citizens who are compelled to seek public office do so because they want to do something about a particular issue. But in deciding on the nature and level of these additional resources, we also have to

keep in mind that the core function of Parliament is accountability, not policy-making. As Senator Lowell Murray, the dean of the Upper Chamber, is fond of saying (and as I am fond of quoting him), "Someone needs to remind these people that they are not there to govern. They are there to hold to account those



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Former Conservative MP Rahim Jaffer appearing at a parliamentary committee that looked into his business dealings with a Toronto venture capitalist who wanted government funding for green start-ups. The circus atmosphere of the hearings showed Parliament “at its worst,” write Graham Fox and Yaroslav Baran, “with a deliberate disregard for the reputation of witnesses or fellow parliamentarians.”

who do.” Any additional resources for committees must recognize that, yes, committees play a role in policy, but they must also be supported in their watchdog function.

The most troubling deficiency in the way in which Parliament currently discharges its duties involves estimates — and the quasi-total absence of debate around them. As countless committee hearings and Question Periods are consumed by packs of gum and “water features,” literally billions of dollars of spending are approved every cycle without so

much as the spine of the estimates document being cracked. We chase scandals like animals attracted by shiny things; and while we are distracted, 99 percent of how the government spends taxpayers’ money is approved without scrutiny.

As a remedy, I would suggest we begin by eliminating the rule that allows for estimates to be “deemed to have been adopted” at committee by a certain date, regardless of whether the relevant committee has considered them. Today, Parliament approves billions of dollars of spending with an up-and-down vote, without proper scrutiny.

Now, I appreciate that, particularly in a minority setting, putting the spending power of the government in the hands of a parliament controlled by the opposition involves real risk. But in defence of the proposal, I would say two things. First, having passed the budget — which is, after all, the document that guides spending plans for the year — Parliament would be hard pressed to unduly delay or deny its approval of the estimates. Secondly, I think the reality of EI cheques bouncing and the public service not meeting payroll after a certain date if the

estimates are not passed would certainly focus the mind of committee members to see them through. In sum, Parliament should retain the ability to adjust vote items within the estimates, and should be forced to consider them before the right to spend is granted. But in so doing, a duty would be placed squarely on Parliament's shoulders to act diligently and responsibly in the consideration of the nation's finances.

In support of this proposal, additional committee resources should be geared toward enhancing parliamentarians' financial literacy and supporting their ability to cross-reference estimates with annual departmental plans and priorities, departmental performance reports and auditor general reports. Only then will individual parliamentarians be in a position to make an informed "value for money" decision about the spending plans of specific government initiatives.

**Yaroslav Baran:** I will grant you the fact that government estimates are inadequately scrutinized, but this is entirely by choice of MPs who have full authority to study them thoroughly.

You note the procedural peculiarity that if estimates are not studied by a committee, they are "deemed" reported back whole 48 hours before they are voted on in the House. This rule is not designed to absolve committees of their responsibilities; it is designed to be a hammer forcing them to study estimates by a deadline — thus ensuring the timely funding of public programs.

I could support reforms including a mandatory minimum number of meetings for estimates review, but I could not support a veto being devolved to committees who choose to be passive-aggressive for unrelated political reasons. Moreover, in the end, what use is there in *compelling* parliamentarians to use their committee time on number crunching if they are truly interested in those sensational "shiny objects"?

And what a perfect segue to the favourite topic of Parliament watchers: Question Period.

**Graham Fox:** Ah yes. Question Period — a daily spectacle that should now come with a warning: "May contain scenes that are not suitable for all audiences. Parental discretion is advised."

Too much has been said and written about what ails QP for us to have to indict it here all over again. So let's skip right to what we should do about it. In one sentence, I would say, "Follow Michael Chong's advice!"

In this last session, Michael Chong — Conservative MP for Wellington-Halton Hills, chair of the Standing Committee on Industry, former minister of intergovernmental affairs and, it must be said, a long-time student and defender of Parliament — challenged the status quo by introducing (as part of private members' business — see, it does work...) Motion M-517: a proposal to reform Question Period and bring decorum back to the most visible component of parliamentary business.

The proposal is simple and straightforward: (1) strengthen the role of the Speaker in enforcing discipline; (2) increase the amount of time allotted to every question and answer; (3) examine the convention that allows ministers to not answer questions put to them; (4)

Committee on Procedure and House Affairs for consideration — recommending examination of the above reforms — and for a report back to the House within six months. In that time, some elements of the proposal might well be tweaked (for instance, while there should be less flexibility for the government to assign any question to any minister, some flexibility must be preserved to ensure that, in cases of shared responsibility for instance, the right minister answers the question), but the proposal should be given very serious consideration. Increasing the time allotted to questions and answers will allow for more context and nuance in how the question is posed. Determining which member of cabinet is there on what day allows regular, predictable access to these ministers for other members of the House. Selecting half the questions at random will make it more difficult for party leadership to script exchanges. Imposing some limits on which minister takes what question will ensure some kind of link to the subject matter. And to anyone who has watched QP of late, the need for greater discipline is self-evident.

I might add another proposal for reform: no paper. Members who want to ask a question and ministers who want to answer them should do so

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select half the questioners every day randomly; (5) dedicate Wednesday as Prime Minister's Question Day (as is done at Westminster); and (6) dedicate the other days to ministers in a way that would require each to be present on at least two of four days.

The motion asks the House to refer the matter to the Standing

without a script. Perhaps then we might get closer to a real exchange.

As a final point, I would encourage members of the House to pass this motion as quickly as they can, including any amendment that MPs agree may be needed to make the study effective and broadly acceptable, and send the matter to committee. I

would then encourage the committee to consider the motion as a whole, and not as individual proposals. The recommendations work because they stand together. Cherry-picking from the list will only diminish the chances of real reform.

**Yaroslav Baran:** These are interesting suggestions, and could indeed

pens there (context and all!) — not on who had the best line of the day.

One could argue that in the information age, removing cameras would not address the broader issue of real-time superficial analysis via live blogging and Twitter, but I would argue that's a qualitative issue for media to solve. The limit of 140

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perhaps improve QP. I don't find myself disagreeing with them in principle, but I would approach Question Period reform differently.

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My prescription is far less involved than the Fox/Chong approach, but would also be more controversial and, I think, have a greater impact.

The central problem with QP is that it has become a forum for sound bites. MPs speak to the camera rather than to each other. Pithy wit and punchy delivery are superior to substance, content and earnestness. The combo of Best Screenplay, Best Director and Best Actor wins the day.

So take out the cameras.

This would have a far more profound effect than changing 30-second spots into 45 seconds, or randomizing question selection. The Senate has no cameras, and consequently, the news media report on what actually hap-

characters of text allows for little more than a teaser headline, so Twitter is not going to be fundamentally subversive to the parliamentary cause. Moreover, the live-blogging I have followed from parliamentary proceedings has tended to provide far more context than the 15-second QP clips I have seen on the nightly news. What we need is to end the theatre, and thus end the regression of what was once a chamber of golden oratory into a factory of made-for-TV talking points.

Take out the cameras, force reporters to attend in person, so their final reportage reflects a fully contextualized account and analysis of the underlying issues, with a summary of the opposition-government exchange in QP merely adding final colour and accent. This is the kind of reportage we have coming from the Senate and our courts — society's final camera-free bastions — and both institutions consistently offer immeasurably superior decorum and discourse than the House of Commons.

Am I a Luddite for such a bold proposal? Certainly the accusation will be made. But would the result be worth the sacrifice? Absolutely.

**Graham Fox:** Actually, I think it's great. Sign me up: out with the cameras!

Our Parliament is simultaneously our highest institution of public appeal, the highest court in the land and — on the Commons side — our key institution of democratic and representative governance.

If the monarchy has been able to adapt and transform itself throughout the centuries to remain vibrant, relevant and effective, then certainly our Parliament is capable of changing itself to adapt to the political and technological realities of our day.

In the end, however, reforming our Parliament has to be about more than

tinkering with this standing order or that procedure. Over the years, constructive proposals have been made and debated at length. What is still missing is a clear and concise articulation of what we want Parliament to look like and what we want it to do better.

Whatever the specifics of the package, any agenda for reform must strike an appropriate balance between giving Parliament adequate independence to hold government to account, providing the integration it desires into meaningful government policy-making and serving the overall public good — all while preserving its own esteem in the process. This is not easy to achieve, but with a little creative will it is certainly possible.

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