

REVIEW ESSAY

The Canadian Parliamentary Crisis of 2008-09: Searching for a Left Response

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Russell, Peter H. and Lorne Sossin, eds. 2009. *Parliamentary Democracy in Crisis*. Toronto: University of Toronto Press. ISBN: 978-1-4426-1014-9. Paperback: 24.95 CAD. Pages: 201.

Topp, Brian. 2010. *How We Almost Gave the Tories the Boot: The Inside Story Behind the Coalition*. Toronto: Lorimer. ISBN: 978-1-55277-502-8. Paperback: 24.95 CAD. Pages: 192.

Is it time to abolish Canada's ties to the monarchy? Can we move beyond "responsible government" and parliamentary democracy? These are questions raised, perhaps indirectly, by these two books.

Following the October 2008 federal election, Canada experienced a remarkable series of political events. Faced with the threat of a non-confidence motion and the prospect of a Liberal-New Democratic Party (NDP) coalition supported by the Bloc Québécois (BQ), Prime Minister Stephen Harper sought and received the prorogation of Parliament after it had sat for a total of only thirteen days. Once Parliament reconvened seven weeks later and the Conservative minority government introduced its budget, the Liberals blinked and the coalition fell apart.

Thus, with Governor General Michaëlle Jean's acquiescence, Harper's Conservative minority government was able to dodge the non-confidence threat and carry on, subsequently winning a majority government in May 2011. This episode raised serious questions about the practice of responsible government and the role of the governor general (GG). Apart from these constitutional issues, the proposed Liberal-NDP coalition was an unprecedented partisan development in federal politics. These two books examine these events by focusing on one aspect of the crisis, namely the constitutional and the partisan. In doing so, they provide much to reflect upon, but wider issues remain unexamined.

Peter H. Russell and Lorne Sossin have assembled an impressive roster of scholars to address the constitutional aspects. Former Governor General Adrienne Clarkson provides a short but interesting foreword. She

doesn't directly address the 2008-09 events, but decries the "abysmal lack of knowledge about the system" exhibited by the public and the media (ix). This becomes a major refrain throughout the book.

In his chronology of the events, journalist Michael Valpy questions whether they deserve to be called a "crisis." As Valpy describes, "The country at no time was at risk of tumbling into bedlam and anarchy. Whatever the governor general's decision, someone would have been given her nod to govern Canada legally; unless, of course, no political party or group of parties could claim Parliament's confidence, at which point she would have authorized another election to be called. That is how the system works" (4). In a sense, Valpy is correct.

Framed differently, however, Andrew Heard argues that the extent of the public and media miscomprehension of responsible government,¹ the confidence convention² and the role of the governor general,³ suggests that it was "quite worthy of being called a crisis" (47). The seeds of this crisis predate the Harper government. Gary Levy points out that these events were "the culmination of repeated abuse of the most important principle of responsible government, the confidence convention" (19). Paul Martin's Liberal minority government repeatedly postponed opposition days to avoid potential non-confidence votes in April and September 2005 and continued to govern after it lost two votes that the opposition considered confidence measures.

The ability of Martin and Harper to play fast and loose with the principle of responsible government is undoubtedly related to this lack of understanding of our system of governance. Most of the contributing

¹ The basic definition of responsible government is "government by a cabinet answerable to, and removable by, a majority of the assembly" (Forsey 2010, 3).

² "If the House of Commons votes want of confidence in a cabinet, that cabinet must step down and make way for a new government formed by an opposition party (normally the official Opposition), or call an election right away so the people can decide which party will govern." (Forsey 2010, 27).

³ The *Constitution Act, 1867* (formerly the *British North America Act*) does not mention the prime minister, cabinet or responsible government. It outlines a system in which executive power is held by the governor general, acting on behalf of the Queen, but with the advice of the Queen's Privy Council for Canada which is itself summoned (and removed) by the governor general. Guided by constitutional conventions, executive power has in fact been wielded by the prime minister and cabinet. The GG's role is thus highly, but not completely, ceremonial. "The Governor General and the lieutenant governors have the right to be consulted by their ministers, and the right to encourage or warn them. But they almost invariably must act on their ministers' advice, though there may be very rare occasions when they must, or may, act without advice or even against the advice of the ministers in office" (Forsey 2010, 33).

authors agree that Harper benefited from, and cynically contributed to, this state of affairs. Thus, Lorraine E. Weinrib's argues that "Harper played on the ignorance of the Canadian public as to the constitutional framework within which our parliamentary system of government operates" (67).

In fact, it was Harper's actions and rhetoric that precipitated the crisis. Certainly, it was the content of the Conservatives' *Economic and Fiscal Update* on 27 November 2008 that led to the proposed coalition. As the global economy plunged into a major recession, the government decided to suspend the right to strike for federal public sector workers, eliminate legal channels for federal public sector workers to enforce pay equity rules and scrap public subsidies for political parties. These actions were apparently included in the government's financial update due to the direct intervention of the prime minister himself (see also Savoie 2010, 132). Meanwhile, the government offered no economic stimulus and even forecast a small budgetary surplus over the next two years.

None of this, of course, amounts to a crisis. The government was fully within its rights to introduce a contentious fiscal update. The Liberals, NDP and BQ were also within their rights to work together to defeat the government and replace it with a governing coalition supported by a majority of MPs. Had the opposition defeated the government and formed a government, or had the government marshalled sufficient votes to defeat the non-confidence motion, one could say that rather than being a crisis, the system of responsible government had worked. Non-confidence votes are not a crisis, but responsible government in action.

The situation only reached an actual crisis point when the prime minister misrepresented the actions of the opposition parties and sought the prorogation of Parliament. Harper argued that "Stéphane Dion does not have the right to take power without an election" (11) and described the coalition as an "undemocratic seizure of power" and "an illegitimate government" (13). In his televised address on 3 December, Harper stated that "the Opposition does not have the democratic right to impose a coalition with the separatists they promised voters would never happen" (15). All of these statements are blatantly wrong and misleading interpretations of the Westminster model of parliamentary government.

Then, in asking Michaëlle Jean to prorogue Parliament, Harper placed her in a very awkward position. By constitutional convention, the GG normally follows the advice of the prime minister, but this request was designed to undermine another constitutional convention. By seeking to close down Parliament in order to avoid a non-confidence motion, Harper was subverting the principle of responsible government.

While critical of Harper's actions, the authors are divided in their reaction to the governor general's decision to grant the prorogation of Parliament. C.E.S. (Ned) Franks supports the GG's decision, as do Jean Leclair and Jean-François Gaudreault-DesBiens. Franks points out that "no governor general has ever refused a prime minister's request for prorogation" (33). In this specific case, he points to the fact that the Conservatives were able to sway public opinion against the proposed coalition. Perhaps public opinion did influence the GG's decision, making it easier for her to defer to the prime minister rather than take the bold step of refusing the request. But does that make it the right decision from a constitutional perspective? Franks suggests that if he was refused prorogation, Harper would have waged a political campaign against the governor general. Again, this sort of logic hardly justifies the granting of prorogation.

Taking a different stance, Lorraine E. Weinrib avoids the question of whether the GG should have refused the prime minister's request, instead placing the blame on Harper for making the request. Andrew Heard agrees that Harper's prorogation ploy was "unconstitutional" (54) and "a fundamental abuse of power" (55), however, he also argues that the GG could have, and should have, refused the request. Heard insists that the governor general "had a duty to ensure that Parliament continue sitting" in order to allow MPs "to pass judgement on the government" (59). Brian Slattery similarly notes that "the principle of responsible government is not self-administering. It requires the active participation – indeed intervention – of the governor general" (87). While understandable from the perspective of the British parliamentary tradition, this position is ultimately unsatisfying from a socialist perspective, for reasons I'll outline below.

Shutting down the House of Commons was only one aspect of Harper's survival strategy. He also engaged in an aggressive attack on the proposed coalition. Minority parliaments and coalition governments are topics taken up by various authors. Lawrence LeDuc provides an introduction to coalition governments in seven other countries.⁴ The underlying message being that coalition governments are a common occurrence in multi-party democracies and, to quote Graham White, "not

⁴ Since the publication of the book, a coalition government has been formed in Britain following the 2010 general election. As Britain headed toward an expected minority parliament, Canada was cited and studied as an example of a "dysfunctional minority parliament" to be avoided rather than emulated (see Chalmers 2009).

the devil's work" (154). Unfortunately, a similar overview of coalition governments at the provincial level in Canada is not forthcoming (but see Marchildon 2006). As LeDuc points out, coalitions are a "practical alternative" in a minority situation offering stability and a broader base of support thus being more representative of public opinion (132). The other authors agree on these positive features, however, they don't really address how a coalition government might come to exist in Canada. It might make sense, but that doesn't mean it's going to happen. In fact, coalition governments have probably been made less likely by the controversial events of 2008-09.

The editors in their introduction and David R. Cameron in the concluding chapter take an optimistic view of the outcome of the prorogation crisis. Despite their real concerns, Russell and Sossin suggest that the crisis sparked beneficial levels of interest and debate over our political system.⁵ Cameron argues that the Conservative government had to back down from the controversial aspects of their fiscal update and produced a budget that reflected the demands of the opposition. Thus, the system worked. Yet, considering the damage done to the principle of responsible government, it is hard to share this optimism.

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In *How We Almost Gave the Tories the Boot*, Brian Topp provides a political take on the prorogation crisis. An NDP insider, he presents an engaged and partisan analysis. He acknowledges that his goal is to "balance the books" (15) and keep the coalition option open for the future. While focused on the events of 2008-09, he provides interesting autobiographical anecdotes from an active career in politics as deputy chief of staff to Saskatchewan Premier Roy Romanow, head of the federal NDP campaign war room and national campaign director. Along the way, he provides an engaging read and many insights on the political process and politicians including Romanow, Jean Chrétien, Stéphane Dion and Bob Rae.

Topp makes it clear that the NDP had a long-standing interest in the possibility of coalition government. During the 2004, 2006 and 2008 election campaigns, with the likelihood of minority governments, the NDP considered all options for obtaining some direct influence in Parliament, keeping in mind the Ontario Liberal-NDP accord of 1985 and coalition governments in other countries.

⁵ Despite the possibility or threat of another coalition and the unprecedented rise of the NDP during the campaign, voter turnout moved only marginally upward to 61% of registered voters in the 2011 election.

After the 2004 election, Layton approached Prime Minister Paul Martin about working together. Without the balance of power, the NDP lacked leverage. Eventually, the NDP joined talks which had already begun between Harper and Duceppe. Together, a package of amendments to the Throne Speech was developed. On 9 September 2004, the three opposition leaders sent a letter to Governor General Adrienne Clarkson describing their “close consultation” and calling upon her to consult with them in the context of a request for dissolution (34). Harper was poised to become prime minister with Bloc and NDP support.⁶ Ultimately, Layton decided not to support Harper becoming PM and the NDP soon worked with Martin, influencing the 2005 budget.

During the 2006 campaign, the NDP looked for policy grounds to work with either the Conservatives or the Liberals. They thought that Harper might support electoral reform in exchange for support on justice and accountability issues, but again, the NDP did not gain the balance of power. By the 2008 campaign, Layton was intent on “turning the tables on Mr. Harper by using Harper’s own proposed parliamentary manoeuvres to replace him” (46-47). During the campaign, Layton openly mused about working with the other parties to defeat the Conservatives and by election night, the NDP had prepared letters for Dion and Duceppe proposing cooperation. Clearly, the NDP was working to build a coalition well before the *Economic and Fiscal Update*.

Topp explains the NDP’s motives in terms that are alternately banal and revealing. He claims that “For the New Democratic Party of Canada, these events were in essence pretty much what they appeared to be: a good attempt to rid the country of a Conservative government and to replace it with something better” (177). Layton saw the opportunity to achieve “Canada’s first partially NDP federal government – his basic goal as federal leader” (69). More revealing is Topp’s admission that “I liked the idea that the federal NDP would have a direct role in the government for many reasons, a key one being that it would change the federal NDP, by giving it direct exposure to the realities of government” (123). This is an interesting insight into Jack Layton’s NDP and the attempt to turn it into a pragmatic party of government, particularly now as it settles into its new role as the Official Opposition.

⁶ In the 2011 federal election, Harper warned voters of an opposition coalition, while the other leaders, in particular, Duceppe insisted that Harper’s anti-coalition rhetoric was hypocritical considering these past efforts at Conservative-NDP-Bloc cooperation.

Topp provides an inside account of the coalition negotiations. The NDP aimed for one-third of cabinet with the hope that this “would provide us with a regionally balanced team of experienced NDP ministers that Canadians would be able to imagine running the country, perhaps in a larger role after the next election” (82). In policy terms, the NDP sought measures to deal with the economic downturn (financial stimulus, infrastructure spending, sectoral aid to the manufacturing and forestry sectors, improvements to EI), increased child benefits and child care, and a commitment to discuss a North American cap-and-trade system. The NDP downplayed corporate taxes and the Afghanistan mission, two important areas of policy differences with the Liberals. Interestingly, Topp writes that “we wanted the policy accord to spell out the New Democratic Party’s commitment to fiscal responsibility...That meant a commitment that the budget would be rebalanced once the economic crisis was mastered” (126).

The NDP was remarkably comfortable with the idea of Stéphane Dion becoming prime minister. As Topp admits, “the idea of making Dion prime minister seemed less ludicrous to some of us than it seemed (as it turned out) to many other Canadians” (80). He points to the popularity of the Clarity Act among many New Democrats, glossing over Layton’s own misgivings. That said, having previously announced his resignation, the NDP expected Dion to be replaced as leader. As it happened, the Dion camp saw the coalition plan as a second chance, a way to salvage his leadership. If the coalition offered Dion the hope of a potential lifeline, the reality was that Dion, in return, weighed the coalition down like an anchor.

As one would expect, Topp is highly critical of Harper’s actions. He argues that it was “entirely inappropriate, democratically illegitimate, and improper in 2008 for the prime minister to direct an appointed official, the governor general, to instruct the majority in the House of Commons on when it can sit or what business it can conduct, so that the prime minister could avoid a confidence vote” (182). Topp insists that the prime minister must respect the principles of responsible government. At the same time, he is careful not to criticize the GG’s decision. Without taking a position on the reserve powers of the Crown, he suggests that “if it is true that the governor general must do the prime minister’s bidding, then a heavy responsibility lies on the prime minister to tender ‘advice’ to her that is appropriate, democratically legitimate, and proper” (183). Like Andrew Heard, Topp considers the prorogation, in the context of a threatened non-confidence vote, to be a dangerous precedent.

Some of Topp's other criticisms of Harper are surprising. Topp portrays the Conservative proposal to end public subsidies to the political parties as an "attempt to reintroduce big money to federal politics" (18) however, the Conservatives are not proposing to increase the personal contribution limits (currently \$1000) or allow corporate contributions. Rather than trying to defend the subsidies as good public policy (if they are) or pointing to loopholes in the current regulations, Topp misrepresents Harper's position. Such a stance isn't likely to convince anyone.

As well, Topp blames Harper for pursuing "high-deficit" policies (52) and for "throwing money at old infrastructure projects" (180). In light of the NDP's demands for stimulus spending, this rings rather hollow. Certainly, some Conservative spending (on prisons, military jets and the G-20 summit) and the corporate tax-cuts should be criticized but Topp's blanket condemnation of deficit spending is overblown and self-defeating. Topp still refers favourably to the 2005 "NDP budget" passed by the Liberals that contained massive military spending increases (36). Does the NDP support military spending but not infrastructure spending? Overall, the NDP that Topp describes is a mildly centre-left party intent on winning elections and influencing public policy, nothing more and nothing less.

Finally, one must note Topp's swipes against public sector unions. Pointing to the 1999 nurses' strike in Saskatchewan and the 2009 municipal workers' strike in Toronto, he argues that, "Public-sector bargaining is one of the progressive left's proudest achievements in Canada. It is also perhaps our greatest gift to the political right, who lie in wait for it to destroy our government, and then often find ways to outlaw it when they rule" (30). Presumably public sector workers should help elect NDP politicians and then thankfully accept whatever thin gruel is offered in return.

These two books provide a very useful discussion of the prorogation crisis. The reverberations from these events continue to be felt. The coalition continued to be debated and misrepresented during the May 2011 federal election. Questions about it dogged Ignatieff while Harper was seemingly successful in appealing for a stable majority government to avoid another minority government or an NDP-Liberal coalition. It is notable that two of the three parties that cooperated in an attempt to defeat Harper experienced historic defeats, while the NDP achieved a major breakthrough. Layton has succeeded in making the NDP a credible challenger for government, yet it is increasingly difficult to determine what his party stands for.

The election of a Conservative majority government (with approximately 40% of the vote), has pushed questions about the coalition government and the GG's power off the immediate agenda. Yet, the underlying issues remain unresolved. Political scientists and constitutional experts bemoan the lack of public understanding of our British parliamentary system. The message is that the system is fine but the people are ignorant and inattentive, allowing someone like Stephen Harper to abuse his power. Ultimately, however, this is a conservative and traditionalist perspective that ignores the limitations of our system. Indeed, many coalition supporters were reduced to defending the reserve powers of the Crown and clinging to the hope that the governor general would say no to the prime minister. If this didn't make leftists squirm, it should have. Rather than educating the public about the glory of the British parliamentary tradition, perhaps it is time to think about moving on to modernize and democratize our political system.

The role of the monarchy, as a colonial and undemocratic anachronism, should be questioned not reinforced. Rather than quoting chapter and verse from Eugene Forsey⁷ to support the discretionary powers of the governor general, the Left should sympathize with those Canadians uncomfortable with power wielded by an appointed official on behalf of the Crown. To his credit, Topp briefly mentions "replacing the governor general with a legitimate, accountable president elected by the House of Commons" but points to the difficulty of amending the constitution (183).

In general, proposals for reform in the face of the prorogation crisis have been remarkably timid and this is true for the contributions to *Parliamentary Democracy in Crisis*. Lorne Sossin and Adam Dodek call for transparency insisting that "the public has a right to know the basis for the prime minister's request as well as the reason or reasons for the governor general's decision granting the request" (91). Peter Russell and Lorraine E. Weinrib argue that it is time to clarify and perhaps codify the constitutional principles of our parliamentary democracy. Such tinkering is well-intentioned and likely beneficial, but would do little to democratize the status-quo.

⁷ A constitutional expert and an ardent monarchist, Forsey was also a social democrat and a member of the League for Social Reconstruction and the Cooperative Commonwealth Federation. He split with the NDP after it recognized Quebec as a nation in 1961 and later became a Liberal Senator.

Graham White strikes the right tone in pointing out that “the great pity of the failure of the coalition initiative lies in the missed opportunity it represented for leading the way to substantial and much-needed progress towards real parliamentary reform” (150). He rightly asks (151), “does anyone seriously think that Parliament ain’t broke?” Yet, rather than demanding radical change, White argues that the formation of a coalition government would be useful precisely for demonstrating the flexibility of the current system. He refers to the “genius” of responsible government and describes himself as “an unabashed fan of the Westminster system of cabinet-parliamentary government...one of the greatest political inventions of all time” (153, 159). Ultimately, he falls back to a position that decries public “misunderstanding” and “ignorance” (153, 154).

For their part, Leclair and Gaudreault-DesBiens point to a deeper “crisis of representation” (111). They argue that “there is an increasing disconnect between Westminster-style parliamentary democracy and the citizens’ understanding of democracy” (105-106). They do briefly question the monarchy’s role in Canada and they present the possibility of “changing our democratic system altogether and undertaking a major constitutional overhaul” (118). These are ideas that need greater exploration and practical development.

Neither the social democratic left in the NDP⁸ nor the broader left⁹ in Canada has focused much on these issues beyond the on-going campaign for electoral reform. Replacing the single-member plurality system remains as fundamental as ever, as evidenced by the May 2011 federal election, but it also remains insufficient. Unfortunately, imaginative left contributions to discussions of democratization and institutional reform remain few and far between (e.g. Resnick 1984; Albo, Langille and Panitch 1993; Rebick 2000; Evans 2006). The immediate context of the prorogation crisis has passed, but the need to think more deeply about genuinely radical proposals for democratic participation and governance remains.

Finally, while there can be little doubt that a Liberal-NDP coalition would have been perfectly legal and politically preferable to a Conservative government (minority or majority), such a coalition would have been, at

⁸ One exception is the fact that the CCF/NDP has, since the Regina Manifesto of 1933, advocated abolishing the unelected Canadian Senate.

⁹ Despite the continuing relevance of Marx’s discussion of the Paris Commune of 1871 (in *The Civil War in France*) or Lenin’s conception of “dual power,” the Marxist tradition has little to say about transcending the limits of contemporary liberal democratic institutions.

best, a mildly left of centre government in no position to challenge neoliberalism or democratize the political process. The socialist left should not ignore parliamentary politics, but rebuilding the left in Canada must also take place beyond the parliamentary arena.

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