



CANADA

# Responsibility in the Constitution

Privy Council Office



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Privy Council Office

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CLERK OF THE PRIVY COUNCIL AND  
SECRETARY TO THE CABINET



GREFFIER DU CONSEIL PRIVÉ ET  
SECRÉTAIRE DU CABINET

CANADA

## Preface

In 1977, the Privy Council Office made a submission to the Lambert Commission on Financial Management and Accountability. One of the four papers in that submission dealt with the principles and evolution of responsible government in Canada. The document, entitled "Responsibility in the Constitution", has been used as a basic reference work within and around the Privy Council Office ever since.

This paper is being re-issued with the aim of making it more widely available to those interested in the history and foundations of our system of responsible government and of the principles and conventions that underlie it. I hope this volume will be as useful to a new generation of readers as it has been to us over the past sixteen years.

Clerk of the Privy Council  
and Secretary to the Cabinet

June 1993

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## **VIII THE PRINCIPLES OF ACCOUNTABILITY**

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## Foreword

Since the Second World War, the Government of Canada and its associated Crown enterprises have played an increasingly significant role in the lives of Canadians. The growing demands of the citizenry and the response by its government have had far-reaching effects on the way in which our society recognizes and responds to particular problems. The program innovations introduced by government during the forties and fifties significantly increased the scope of government, and as its scope has continued to expand so has its size. Government has taken on an activist function in the creation of policy, and has institutionalized elaborate policy-making structures to support the function. During the last twenty years a new style of public service has evolved both to staff the policy-making structures and to administer the complex programs that they produce. A distinct species of policy "co-ordinators" and others concerned with interdepartmental relations has been developed. New structures have grown up to help to channel the flow of initiatives; and more change has occurred in the way the government orders its machinery for getting things done, and in the variety and pervasiveness of the programs it delivers, than in any comparable period in our administrative and social history.

Ten years ago a number of steps were taken in an attempt to modernize government so that it might cope with its rapidly changing and always more onerous burdens. Apart from major structural changes, such as the establishment of a separate minister in charge of the Treasury Board and the elaboration of the Treasury Board's central management role, a major effort was made to bring order to the *process* of government. Borrowing from the disciplines of science and technology, government endeavoured to introduce procedures built upon *systems theory* for organizing the flow of business, measuring productivity, and determining the value of its activities. It was an article of faith, evangelized by some and subscribed to by many, that structure and process held the keys to the solution of complex problems.

A decade has elapsed during which this theory has been applied in such diverse areas as the budgetary process, the role and use of the

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cabinet, the elaboration of a professional planning establishment, and the development of institutionalized mechanisms for "horizontal" coordination. Each has had a degree of success, but not all have fulfilled the expectations attendant at their creation, and some have induced unforeseen side-effects. On the whole, however, given the scope and size of governmental operations, orderly process has been beneficial in smoothing the passage of complex problems and proposals. But looking back it is apparent that *process* can also obscure the identification and resolution of problems, and that applied indiscriminately or mechanically it is inefficacious.

Important changes have also taken place in the basic institutions of parliamentary and cabinet government. The complexity and size of government, the development of modern communications, and the organized involvement of the community in political action have made it more difficult for Parliament to remain the central focus of national affairs. Ministers have found their burden increasingly heavy, the search for solutions more time-consuming, and the process of resolution more difficult to relate to political concerns. Similarly, not only has the composition of the public service changed, but, because of the complexity of the *process*, public servants have found it increasingly difficult to relate their particular functions to those of the government as a whole.

It is now more than thirty years since the current role played by government began to take hold of the federal establishment. As we enter its fourth decade, it is apparent that the problems caused by size and complexity will not recede. It is also clear that although a more scientific method sometimes helps both in problem solving and in organization, system piled upon system tends to make complexity more complex. The *constitutional responsibility* that lies at the heart of parliamentary government is, however, elemental. If understood and applied sensibly, it should ensure not only that our governmental institutions are representative but that they can cope adequately with the changing needs of society.

Canadians live in a political democracy. Government is representative in character. It is, therefore, human, and must respond to the differing views and needs of the electorate, organized and unorganized, in all parts of the country. System and logic cannot always provide the most appropriate response by government to those whom it serves,



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and we have learned that the complex rationality of government differs significantly from the precise rationality of systems analysis.

The most important aspect of our government is that it is representative. Indeed, parliamentary and cabinet government is a *system* of representative and therefore responsible government. Looking back over all that has happened to government and society since the war, and more particularly during the last twenty years, it is apparent that our efforts to make government better able to meet the needs of society have not always been made with a clear understanding of the principles for the responsible use of power that underpin all of our constitutional arrangements. We have elaborated programs to meet perceived needs and internal management systems to control the consequent increase in governmental activity. Unfortunately, the combined effect of all these changes has militated against the clear exercise of constitutional responsibility, and has to a degree diffused both the beneficial value of power and accountability for its use. It is ironic that in consequence the system is widely perceived to be unresponsive, and although power continues to be exercised responsibly, there is concern that it is held in check not by the principles of responsibility but by the complexity of bureaucratic process.

This paper has three objectives: first, it seeks to peel away the layers of complexity and expose the essentials of parliamentary government as a system for controlling the exercise of the power of the state; second, it describes the constitutional system within which ministerial government operates and in relation to which solutions to particular discontents should be sought; third, it explains the nature of the *personal* responsibility and accountability of ministers and senior public servants, and the importance of their accountability to the successful functioning of parliamentary government.

The Privy Council Office  
August, 1977

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**I**

**THE CONSTITUTIONAL  
RESPONSIBILITY OF MINISTERS**

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## Introduction

Responsible government in Canada is based on the individual and collective responsibilities of ministers to Parliament. Ministers of the Crown, charged with the duties of office, are answerable to Parliament, and they may remain in office only so long as they retain the confidence (i.e. support of a majority) of the members of the House of Commons. In our system of parliamentary and cabinet government, ministers are *constitutionally responsible* for the provision and conduct of the government. This is to say that through the law and the convention of the constitution, power and hence responsibility are concentrated in the hands of ministers. Ministers exercise power constitutionally because the law requires it and Parliament and their colleagues in the ministry hold them responsible for their actions under the law.

The *constitutional responsibility* of ministers does not limit the obligation of other office holders to obey the law; rather it assures that Parliament may focus responsibility for the conduct of government on those of its members who hold ministerial office and who in the ultimate must personally answer to Parliament and thence the electorate for their actions and the actions of their subordinates. The constitutional responsibility of ministers enables Parliament to satisfy itself that power is exercised responsibly throughout the system of government.

## Ministerial Government

Our system of government, deriving from British and pre and post confederation practice, is ministerial in character. Ministers, in their capacity as advisers of the Crown, are individually and collectively responsible for most activities of government.<sup>1</sup> Their individual responsibilities are mainly legal in character. Principally, they exercise powers bestowed upon them by the Crown in Parliament and hold

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<sup>1</sup> In law, the Crown in Canada is the Queen represented by the Governor General.

office at the pleasure of the Crown. The exercise of these powers, for which ministers are constitutionally responsible to Parliament, provides the foundation of responsible government. The collective responsibility of ministers is, on the other hand, primarily conventional rather than legal, providing the stability and unity essential to the conduct of ministerial government.<sup>2</sup>

*Individual ministerial responsibility*, i.e. the personal responsibility of the minister, derives from a time in history when in practice and not just in theory the Crown rather than ministers provided the government, and ministers merely advised the sovereign and were legally responsible to the Crown for their actions. Today, this legal individual responsibility of ministers reflects the theory and law of the constitution and remains a practical force because of the conventional responsibility of ministers to the House of Commons and the statutory basis on which ministers are charged with the administration of the public service. The individual responsibility of ministers also provides the basis for accountability throughout the system.<sup>3</sup>

*Collective ministerial responsibility*, a complex arrangement involving the personal responsibility of each minister and of ministers as a group, is of recent vintage in our constitution, dating back not much more than 100 years. It evolved as a means of providing stable government within the framework of the existing structure of ministerial government after the Crown had ceased itself to be the motive force of government. Ministers replaced the sovereign as the decision-makers of government, and collective responsibility made effective the collective leadership of ministers. However, because collective responsibility is conventional and recent rather than legal and ancient,

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<sup>2</sup> For an excellent discussion of the distinction between the law and the convention of the constitution, and of the process whereby precedent evolves into practice and practice becomes convention, see Sir Ivor Jennings, *Cabinet Government*, 2nd edn., (Cambridge 1951) pp. 1-13.

<sup>3</sup> For a discussion of the legal basis of ministerial responsibility, see A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 10th edn., (London, 1964) pp. 325-327.

its significance in terms of accountability in the system is indirect, though nonetheless essential.<sup>4</sup>

The nature and importance to the system of the constitutional responsibility of ministers are not well understood and the continuing effectiveness of ministerial responsibility is sometimes questioned. In fact, the operation of ministerial responsibility does not differ widely in current practice from that of 200 years ago when it first became clearly distinguishable in the constitution, which is to say that it has generally operated in and reflected a political context.<sup>5</sup>

Ministerial responsibility is a fundamental principle of the constitution. It requires that a minister be *personally* answerable to the House of Commons for the exercise of power. Because the House determines the circumstances in which it operates, the principle has the flexibility necessary to deal with an infinite variety of situations in the widest of circumstances.

The principle of ministerial responsibility provides the foundation of our constitutional system for the control of power. It vests ministers with constitutional responsibility to Parliament that is unique to them and distinguishes them from others who hold office under the Crown. The principle governs the responsible use of power, and does not rely for its effectiveness on the application of the ultimate sanction of loss of office. Instances in which ministers have been required to resign have been relatively few.<sup>6</sup> The fact that ministers will probably not lose office as the result of the exposure of a particular instance of

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<sup>4</sup> As collective responsibility and the means of achieving it modify the individual responsibilities of ministers, so accountability for officials, which is centered on the individual legal responsibilities of ministers, is affected by the essential requirement for unity within the government that is the *raison d'être* of collective responsibility.

<sup>5</sup> For example, the circumstances in which a minister may lose office or come close to doing so are a matter of political judgement and bear little relationship to whether a minister had prior personal knowledge of the events for which he or she is being held responsible.

<sup>6</sup> For extensive discussion of this matter see A.H. Birch, *Representative and Responsible Government* (London, 1964) pp. 139-149; and S.E. Finer, "The Individual Responsibilities of Ministers" *Public Administration* vol. xxxiv, 1956.

mismanagement, or even the misuse of authority by officials, does not detract from their constitutional responsibility or their obligation to ensure that such instances do not occur. Indeed, this responsibility is honed by the ever-present possibility that in particular circumstances ministers may be embarrassed, suffer loss of prestige weakening themselves and the government, jeopardize their standing with their colleagues and hence their political future, or even be forced to submit to public enquiry possibly resulting in censure and loss of office as a result of the way in which their power has been used. These possibilities underpin the constitutional responsibility of ministers, which forms the basis for accountability throughout the system.

## **The Evolution of the Constitution**

Canadians live in a political system that has evolved over centuries in response to the need to control power. Government is a means of organizing the control of power, and however complex society and its problems may be, the responsible exercise of power is in the long run fundamental to the solution of national problems and the stability and well-being of society.

The need to control the exercise of power by the state is basic. The means we have chosen are also basic: the vesting of constitutional responsibility in ministers. To know and understand our history is to articulate the *system* according to which we are governed, to realize that it is a *system*, and that to change it in some particular way requires that we understand how that particular relates to the generality of our practices, why it is there, what consequences will flow from change, and what other changes may be necessary to ensure the integrity of the system as a whole.

It is essential, therefore, that we know our history and understand the origins of our practices. They provide a framework within which solutions to current complexities should be sought, or, if inadequate, they provide a point of reference for workable and hence worthwhile reform of the system.

## Conclusion

Personal accountability provides the foundation of our system of parliamentary and cabinet government. It derives from the individual responsibility of ministers, which is in essence personal as opposed to institutional. It is shared with no one. It is the minister, not the office, who is responsible, and it is this that vests in each minister the unique *constitutional responsibility* for the use of power.

The origins, evolution and nature of each minister's constitutional responsibility, and the impact upon its exercise of the means whereby collective responsibility is derived from the individual responsibilities of ministers, summarize the essence of our system of government and provide the parameters within which accountability may be sought.

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**II**

**THE ORIGINS OF**

**INDIVIDUAL RESPONSIBILITY**



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## Power in the Constitution

Constitutionally, the power of the state flows from the Crown and generally speaking may only be exercised by or on the authority of the Crown. Parliamentary and cabinet government is a system that has evolved to ensure that power is exercised responsibly by the Crown and its advisers.

The powers of the Crown may be divided into two classes, those deriving from the Crown in Parliament and those deriving from the prerogative. The powers of the Crown exercised under statute law are authorized by the law-making authority, which is the Crown in Parliament. Those deriving from the prerogative find their origins in the ancient customary powers of the king, which have become part of the Common Law and (like statutory powers) are subject to the interpretation of the courts.<sup>1</sup> They are, however, exercised without reference to Parliament.

In theory, under the feudal Crown all power flowed from the prerogative. The king exercised not only the executive power, but also what later became the legislative power (principally the authority to tax and to spend) and through his courts the judicial power.

The history of parliamentary government has been a process of narrowing the exercise of the prerogative authority by subjecting it increasingly to the pre-eminence of the statutory authority, substituting the authority of the Crown in Parliament for the authority of the Crown alone. This process may aptly be characterized as having made the Crown responsible to Parliament for the exercise of its power. The Crown continues to exercise the legislative power, but it can only do so with the approval of Parliament. Coincidentally, although the Crown continues to preside over the courts, it has been required to exercise the judicial function through an independent judiciary. These are the qualities that make the Crown "constitutional", and the means whereby

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<sup>1</sup> See *Halsbury's Laws of England* 14th edn., (London, 1974) vol. viii, p. 583.

this has occurred have gradually reduced the Crown's prerogative powers and ensured that the residue is subject to judicial interpretation. It is important to note, however, that throughout the process authority for the exercise of power has remained with the Crown, and the exercise of power by the Crown on the advice of responsible ministers forms the basis of constitutional responsibility for the exercise of power in the system as we know it today.<sup>2</sup>

### **The Responsible Use of Power**

The medieval Crown was supposed to provide the customary costs of government from its hereditary and feudal revenues. There was no system of taxation, and thus no pecuniary need for the Crown to consult lords or commoners. Government was minimal in scope, but there was, nonetheless, a well-defined concept of responsibility according to which it was the duty of the Crown to provide the governance of the realm, and from the earliest days the chief men of the realm advised the Crown on its administration. The notion of the government being provided by the "King in Council" is as old as the Norman conquest.

War could not, however, be financed from the hereditary revenues, and the expense of war gave rise to the imposition of extraordinary taxes over and above the traditional feudal levy. Taxation created tension between the Crown and the baronage, culminating in the first milestone of responsible government, *Magna Carta*, which established that the prior consent of those to be taxed was necessary before taxes could be levied by the Crown. By the 13th century the development of society was such that taxation began to be imposed directly on a class of landed gentry and burghers that was as articulate as the baronage, and the principle established by *Magna Carta* required that they consent to the levying of taxes. The development of an assembly

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<sup>2</sup> For discussion of this elusive subject see S.A. de Smith, *Constitutional and Administrative Law* 2nd edn., (London, 1973) pp. 114ff; and Sir William Anson, *The Law and Custom of the Constitution* 4th edn., (Oxford, 1935) vol. ii, pt. i, pp. 17-72.

of commoners for this purpose completed the essential structure of Parliament as we know it: the Crown, the Upper House and the Commons.

It was not, however, until the constitutional struggle in the 17th century that the principal steps were taken that made possible the responsibility of the "Government" to the House of Commons, which became clearly distinguishable (if not always upheld) in the constitution by the close of the 18th century. The struggle between the commoners and the Crown in the 17th century was qualitatively no different from that between the Crown and the baronage in the 13th century: each was pursued to force the Crown to exercise power responsibly.

The weakening of the baronage during the long period of civil strife preceding the establishment of the Tudors, was followed by a vigorous reassertion of the power of the Crown, which climaxed during the reign of Charles I. The responsibility that had been forced upon the Crown by the medieval baronage had receded as the power of the baronage declined, and in the 17th century was cast off in favour of the Stuarts' belief in "Divine Right of Kings". By the mid-17th century the principal restraint on the Crown and the principal source of revenue were the newly established mercantile and landed gentry classes, who were the commoners. The imposition on this group of taxation without consent, and the enforcement of its collection without recourse through law, precipitated the great struggle between the Crown and the Commons.<sup>3</sup> That struggle witnessed the ultimate penalty for personal irresponsibility in the use of power: the execution of a king; and its outcome was to establish the foundation of the convention of ministerial responsibility before the House of Commons.

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<sup>3</sup> The best-known of these taxes was Shipmoney, a levy on each county for the provision of ships for the king's service, and the means of enforcement was the Star Chamber, which dispensed with the procedures of the courts in order to place criminal justice in the hands of the king.

## The Origins of Ministerial Responsibility

By the close of the 17th century, more particularly through the *Bill of Rights*, the *Mutiny Act*, and the *Act of Settlement*, the Crown's dependency on the Commons for the imposition of taxes was embedded in the constitution.<sup>4</sup> The king's advisers continued to be appointed by the Crown, but they found it necessary to work in harmony with the Commons because it exercised control over the financial and military power of the Crown. If the king's ministers, those in charge of the principal offices of state, were to function successfully, if money was to be granted, they had to get along with a majority of members of the Commons. Gradually ministers saw the importance of – and a considerable number, particularly those with financial responsibilities, profited from – being members of the House of Commons.

Control over ways and means (taxation) and supply (expenditure) enabled the House of Commons to hold ministers responsible for their actions, which is to say that ministers, appointed by the Crown, were held responsible for the actions they took in the name of the Crown. This individual responsibility was manifested not only in the accounting that ministers might be required to give to Parliament, but also in the impeachment procedures that were used to force the Crown to dismiss a minister who ceased to enjoy the confidence of Parliament.<sup>5</sup>

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<sup>4</sup> These measures created "constitutional monarchy". The *Bill of Rights* (1689) established that the law-making authority is the Crown in Parliament, the *Mutiny Act* (1689) made the existence of the army dependent on the annual approval of Parliament, and the *Act of Settlement* (1701) *inter alia* removed the control of justice from the hands of the king.

<sup>5</sup> "Parliament used to bring Ministers to account by a semi-judicial process. The King could do no wrong in the eyes of the law (unless he was Charles I or James II) and it was more satisfactory and expedient to attack his advisers for their evil counsel by charging them with high crimes and misdemeanours. The Commons were the accusers; the Lords were the judges; the process was called impeachment. Not only Ministers but officials and judges accused of corruption, were impeached; the verdicts were not necessarily a foregone conclusion. During the course of the 18th century votes of censure against Ministers and Governments gradually replaced the cumbersome machinery of impeachment; political accountability was

There was little respect for the concept of "the Government", and ministers entered and left office individually as the king (occasionally at the behest of Parliament) saw fit.

The ability of the king to pick and choose ministers was circumscribed by political forces at work in Parliament and among ministers. The growth of political parties favouring particular groups of ministers further reduced the exercise of the Crown's prerogative. George I, the beneficiary of the Hanoverian Settlement, owed his throne to the new Whig party, and was constrained to select his ministers from this group.<sup>6</sup> George I had the additional handicap of speaking little English. The powers of royal patronage were now increasingly exercised on the advice of the principal Treasury Lord, who became the first of the king's ministers. In short, the Hanoverian Settlement began the process of substituting prime ministerial control for the king's control over the selection of ministers.

By the time of the Seven Years War the First Lord of the Treasury had begun to be known as first or prime minister.<sup>7</sup> By the end of the century the prime minister had taken effective control over the appointment although not necessarily the dismissal of ministers and some other senior office holders.<sup>8</sup> This development made possible

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better achieved without a heavy-handed political trial. The last impeachment was brought in 1805; the procedure has never been abolished but it is in practice obsolete." It survives in the United States. See de Smith, *Constitutional and Administrative Law* p. 169.

<sup>6</sup> The Crown devolved on the House of Hanover according to the terms of the *Act of Settlement of 1701*. When Queen Anne died in 1714, the Tories straddled the fence between George and the Stuart pretender (James II's son) whereas the Whigs firmly backed the settlement of the Crown on George, the Elector of Hanover.

<sup>7</sup> It was first used as a term of derision by Walpole's political opponents during his long tenure as First Lord of the Treasury from 1721 to 1742.

<sup>8</sup> The right of a prime minister to require the resignation of his colleagues has been exercised very sparingly. The precedent was established in 1792 when the younger Pitt secured the dismissal of the Lord Chancellor by informing the King that he must choose between the Lord Chancellor and himself. It was not until the late 19th century that the precedent became convention. Today the "confederal" nature of the relationship among ministers and between ministers and the prime minister is confirmed by the sparing use of the prime minister's right to dismiss ministers and the unhappy consequences that usually follow from the removal of groups of ministers. See Robert, Lord Blake, *The Office of Prime Minister* (Oxford, 1975) pp. 30-39.

and was accompanied by the emergence of the cabinet as a device for co-ordinating the views of ministers in order to enable them to support one another in the House of Commons. In this way the critical convention of collective responsibility was added to the individual responsibility of ministers, which in the 18th century was a legal matter rendering them liable to impeachment. Individual responsibility remains the primary legal basis of the system today. The possibility of impeachment has been replaced by the threat of loss of office, which usually takes place through voluntary resignation in order not to invoke the collective responsibility of colleagues that would result in removal from office of the ministry as a whole.<sup>9</sup>

### Ways and Means, and Supply

The imposition of constitutional responsibility, first on the Crown and later (in its behalf) on its advisers, came about through the struggle first of the Lords and later the Commons to force the Crown to levy taxes only by consent.

During the century that followed the model or first true Parliament of 1295, it was the practice for grants to the Crown to be made by the Commons with the advice and assent of the Lords. This practice, like most matters relating to Parliament, was of somewhat doubtful permanence given the neglect of that institution during the civil strife of the 15th century and its co-optation to the autocratic tastes of the early Tudors. The practice was, however, actively reasserted towards the close of the 16th century and under Charles I it precipitated the great constitutional crisis of the 17th century. The *Bill of Rights* and later the *Act of Settlement* resolved the responsibility of the Crown to act in accordance with the law, and in particular the *Bill of Rights* established that "levying money for or to the use of the Crown.... without grant of parliament.... is illegal", and set in place annual meetings of Parliament that led to a system of annual grants of money to the Crown.<sup>10</sup>

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<sup>9</sup> See Anson, *Law and Custom of the Constitution* vol. ii, pt. i, p. 118.

<sup>10</sup> See Sir Ivor Jennings, *Parliament* 2nd edn., (Cambridge, 1969) p. 283.

Until the 18th century, the practice had been for Parliament to approve the levying of a specific tax so that the proceeds could be used for a particular purpose. Control of the purse (i.e. the permission to spend, or granting supply) was a consequence rather than the cause of parliamentary control of taxation. In essence, therefore, parliamentary control over public spending grew out of the struggle to prevent the arbitrary imposition of taxation. These circumstances, coupled with the constitutional principle that because power emanates from the Crown only the Crown may govern, established that only the Crown could propose a tax or an expenditure. Erskine May, the foremost authority on the subject, has put it like this:

The Sovereign, being the executive power, is charged with the management of all the revenue of the State, and with all payments for the public service. The Crown, therefore, acting with the advice of its responsible ministers, makes known to the Commons the pecuniary necessities of the government; the Commons, in return grant such aids or supplies as are required to satisfy these demands; and they provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers.<sup>11</sup>

The latter principle was placed among the rules of the Commons at the beginning of the 18th century.

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<sup>11</sup> Sir Erskine May, *The Law, Privileges, Proceedings and Usage of Parliament* 18th edn., ed. by Sir Barnett Cocks, (London, 1971) p. 676. (May first published his book in 1844, and he and later his successors have kept it up to date.) It should also be noted that any M.P. may propose a reduction in expenditure.

Following the constitutional watershed of the 17th century, the constitutional advisers of the Crown became more closely associated with Parliament until by the mid-18th century they became inseparable from it. At a time when government was growing, political parties taking more permanent form, and the Crown was if not always less politically active certainly more inured to the acceptance of "advice", the ministry as we now know it began to emerge in the constitution.

Following the passage of the *Mutiny Act* in 1689 all military expenditure was made subject to annual votes of supply. The civil government was in theory provided from the proceeds of the *Civil List*, voted to the Crown at the beginning of each reign and renewed without further reference to Parliament each year until the sovereign's demise. In fact, however, there were frequent deficits and corresponding need for the king's ministers to seek new supply from the Commons.<sup>12</sup> Indeed, Parliament annually appropriated the bulk of public expenditure throughout the 18th century, although it must be admitted that the scrutiny of the Commons was cursory and there was a general expectation that it was up to the Treasury to assure the Commons that spending was being adequately managed and controlled.<sup>13</sup> The principle of annual appropriations by Parliament was extended to all civil expenditure in the first part of the 19th century when by stages the *Civil List* was reduced to meet only the personal expenses of the sovereign, and funding for the civil administration was placed on the same annual basis as that for the military services.

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<sup>12</sup> It is worth noting that the charge of the civil administration on the public purse in the 18th century was at best one-tenth (and often less) of the charge of the naval and military services.

<sup>13</sup> For an excellent account of the Commons' relationship with the Treasury during the 18th and 19th centuries see Henry Roseveare, *The Treasury* (London, 1969) pp. 88-132. At p. 91, Roseveare cites the apparently typical views of one M.P. on the subject of accountability in 1775: "Could any ministers carry on the business of the public if any gentleman in this House has a right to call for such an account? It would be impossible...; the public service can never be advanced by calling for accounts which destroy your confidence in them." The author of this statement merely recorded that in *partisan* circumstances questions of administration are unlikely to be discussed dispassionately.



## Conclusion

The constitutional history of parliamentary and cabinet government traces the process of ensuring that individuals who exercise power are constitutionally responsible. At first the Crown, the source of power in the system, was held responsible by the great men who were the principal officers of the realm. Later it was the Commons that sought this role, and ultimately secured it through holding the Crown accountable by making its advisers responsible to the House for their exercise of the Crown's power. Thus the individual power of the king was made responsible by *Magna Carta* in the 13th century and by the *Bill of Rights* in the 17th century. In the 18th century that power was placed in commission,<sup>14</sup> and the ministers who exercised it were made responsible individually to the House of Commons. Our system of parliamentary and cabinet government is, therefore, based on the constitutional responsibility of ministers to the elected House of Commons, monarchical government having been succeeded in the *efficient* constitution by ministerial government.<sup>15</sup>

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<sup>14</sup> See below p. 23, footnote 1, for a discussion of this term.

<sup>15</sup> Bagehot distinguished between two classes of institutions within the constitution: "...first, those which excite and preserve the reverence of the population – the *dignified* parts, if I may so call them; and next, the *efficient* parts – those by which it, in fact, works and rules....The dignified parts of government are those which bring it force – which attract its motive power. The efficient parts only employ that power". Walter Bagehot, *The English Constitution* 2nd edn. (London, 1896) pp. 4-5. It might be added that the dignified parts are essential to the operation of the law of the constitution, whereas the efficient parts reflect practice and custom in the application of law and convention.

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**III**

**THE ORIGINS OF COLLECTIVE  
RESPONSIBILITY**

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## Introduction

The supply procedure evolved in concert with the gradual supersession of monarchical by ministerial government in the efficient constitution. Although control of supply by the Commons is fundamental to the responsible exercise of power by ministers, and forms the conventional basis for individual ministerial responsibility, its evolution was greatly influenced by the convention of collective responsibility and the means for sustaining the cohesion of the ministry.

## Treasury Control

The principle that only the Crown could ask the Commons to impose taxation and authorize expenditure for the civil, naval, and military services not only protected the taxpayer from the generosity of the House of Commons, it also had the effect of reinforcing the position of the Treasury Lords within the ranks of the king's ministers. As public expenditure grew, it became more and more important to ensure that it could be defended in the Commons. Early in the 18th century this need was recognized and the office of Lord Treasurer was placed in commission partly in order to ensure the presence in the Commons of several ministers competent to defend the Estimates.<sup>1</sup> The new Treasury Lords defended government expenditure, and sitting as a Treasury Board required their colleagues in the ministry to justify proposed expenditures for which the Commons would be

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<sup>1</sup> During the constitutional seesaw between Crown and Commons in the 17th and 18th centuries, it became the practice to place "in commission" important offices, whose holders might become too powerful or too susceptible to the influence of the Crown or the Commons. Thus the office of Lord High Treasurer was placed in commission from time to time during the 17th century and permanently after 1714. The commission consisted of a group of individuals known as the Lords Commissioners of the Treasury, who collectively fulfilled the functions of Lord High Treasurer. Similarly, in 1708 the office of Lord High Admiral was placed in commission, its functions being discharged by the Admiralty Board.

asked to vote supply. The function of the Treasury in *reconciling the demands of ministers for funds* into a single request for supply was fundamental to safeguarding the Crown's constitutional prerogative that only it could ask the House to grant supply. The "painful pre-eminence" of the Treasury was a matter of concern to other ministers, but the Treasury Lords took seriously their responsibility to control public expenditure, as was expected of them by the Commons.<sup>2</sup>

The function of reconciling estimates was and remains a crucial element in establishing and maintaining the solidarity of the ministry and of ensuring that it retains the confidence of the House of Commons. The function is fundamental to the responsibility of the ministry to Parliament. In addition, because finance impinges so directly upon administration, the reconciliation of estimates provides the basis for the management of the public service in accordance with particular standards and procedures, whose observance is in turn central to the cohesion of the ministry and for which ministers and their officials must be held accountable if the system is to be responsible.

### **Prime Minister and Cabinet**

In 1721, ten years after the Treasury was placed in commission and the First Lord assumed the Crown's prerogative of appointment over

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<sup>2</sup> Roseveare, *The Treasury* p. 129. Operating under the close direction of the First Lord, who if a commoner strengthened his control by holding office also as Chancellor of the Exchequer, the Treasury Board continued to work in this manner until the middle of the 19th century when its functions were taken over by its staff under the direction of the Chancellor of the Exchequer separate from the prime minister. The demise of the Treasury Board was the direct consequence of two developments: first, the development of a modern civil service; and, second, although the position of First Lord had been built into the post of prime minister on the basis of Treasury control and Treasury patronage, by the 1850's the prime minister was well enough established that it was no longer necessary for him personally to supervise the exercise of these powers.

his Treasury colleagues,<sup>3</sup> Robert Walpole received the Exchequer seals and gradually took on the role of the king's first minister. The growth of the party system, and the gradual elimination of the Crown as the central political influence, made possible the evolution of Walpole as the first prime minister known to the convention of the constitution. As First Lord of the Treasury and Chancellor of the Exchequer, Walpole had extensive financial sway over his colleagues and a "large patronage", which he put to use to build support for his position and to ensure loyalty in the swelling ranks of office holders.<sup>4</sup> At the end of the 18th century looking back on his time in government and more especially opposition, even Fox remarked that "It was impossible for the government of a great kingdom to go on, unless it had certain lucrative and honourable situations to bestow on its officers."<sup>5</sup> And in 1850 Peel, the first prime minister to function in constitutional circumstances more or less similar to our own, remarked simply that "the Prime Minister has the patronage of the Crown to exercise".<sup>6</sup> In short, given the political circumstances of the day, Treasury control and Treasury patronage made possible the development of the position of prime minister (and of political parties).

In the same period the institution known as the cabinet replaced the king's council as the principal deliberative forum of government.<sup>7</sup>

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<sup>3</sup> This was a significant development for in later years it opened the way for the prime minister to recommend the appointment of all of his colleagues in the ministry. See Anson, *Law and Custom of the Constitution* vol. ii, pt. i, p. 190.

<sup>4</sup> Anson, *Law and Custom of the Constitution* vol. ii, pt. i, p. 191. Indeed, Walpole's use of royal patronage to influence elections led to renewed efforts to exclude office holders (other than ministers) from membership in the House of Commons. For discussion of the efforts to forbid office holders or "placemen" from membership of the Commons, see Alpheus Todd, *Parliamentary Government in England* (London, 1892) vol. i, pp. 242-248.

<sup>5</sup> See Parris, *Constitutional Bureaucracy* p. 29. Charles James Fox was the parliamentary opponent of the younger Pitt.

<sup>6</sup> See Jennings, *Cabinet Government* p. 140.

<sup>7</sup> The king's council was composed of a privileged group of members of the Privy Council known as cabinet councillors. The group usually included former holders of ministerial office, whom in theory the king wished to continue to consult, as well as the members of cabinet. Its complete supersession by the cabinet towards the end of the 18th century coincided with the decline of the king's participation in political activity.

The concept took root of a ministry consisting only of the heads of the great departments of state and other holders of ministerial office. Gradually, as the prime minister's powers of appointment over his colleagues increased, it became the practice for the ministry to meet in the cabinet at 10 Downing Street under the chairmanship of the prime minister.<sup>8</sup>

In effect, the motive power of the constitution was passing from the Crown to its advisers. The Crown was becoming associated more with the dignified than with the efficient parts of the constitution. The prime minister sought to concert the policies of his colleagues and ensure their solidarity before Parliament. The latter was often breached in the 18th century. Indeed, it was not until after the *Reform Act* of 1832 that extended the franchise and crystallized the party system, and the complete withdrawal of the Crown from politics following the Prince Consort's death in 1861, that collective responsibility was firmly established in the convention of the constitution.<sup>9</sup> Nonetheless, its origins in the 18th century are unmistakable, and its lengthy gestation paralleled the maturing of the role of prime minister as the principal architect of unity within the ministry. By the close of the 18th century, the cabinet was composed solely of those charged with the administration of the departments of the government (besides of few senior colleagues holding sinecure offices), and since the passage of the *Reform Act* in 1832 the ministry has regarded the loss

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<sup>8</sup> Modern usage, which traces its origins to the 18th century, distinguished between the ministry and the cabinet. The ministry is a *term* applied to ministers holding office at the pleasure of the Crown, and individually responsible in law to the Crown and by convention to the House of Commons for their activities. The cabinet is a *place* provided by the prime minister to enable his colleagues informally to develop the collective responsibility of the ministry required by the convention of the constitution. In a word, the cabinet is the prime minister's cabinet and is the physical expression of collective responsibility. The ministry, on the other hand, summarizes the individual authority of its members.

<sup>9</sup> See A.J.P. Taylor, "Queen Victoria and the Constitution" *Essays in English History* (London, 1976) pp. 65-66.

of a major initiative by any of its members in the House as vote of want of confidence and cause for the ministry as a whole to resign.<sup>10</sup>

## Conclusion

Collective responsibility is the cement of our system of government. Its three key elements are Treasury control and the allied convention that the government alone and as a single entity may ask the Commons to approve ways and means and vote supply, and the *de facto* powers of appointment over ministers and other holders of high office that are exercised by a prime minister that emanate from his historic role as the arbiter of Treasury control and patronage. These are the elements that make possible the cabinet, which exists to bring together the individual responsibilities of ministers so that they may be exercised by each minister in a manner that is acceptable to all ministers. It is evident that although collective responsibility unlike individual responsibility is conventional rather than legal, it is fashioned through means that may serve to make more effective the exercise of individual responsibility and which must influence accountability within the system.

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<sup>10</sup> The first instance of a "clean sweep" of the ministry occurred in 1782 when Lord North resigned and all but one of his colleagues (the Lord Chancellor) went with him. Blake, *The Office of Prime Minister* p. 5.

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**IV**  
**CANADIAN ADAPTATION**  
**AND PRACTICE**



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## The Fabric of the Constitution

The *British North America Act*, enacted at Westminster in 1867, is Canada's basic constitutional document. The Act created Canada's Parliament and provided for an executive government in the Governor General exercising the powers of the Crown on the advice of the Privy Council. Although the Act says little else about the executive, it implies the then well established conventions of the British constitution requiring the Crown to act on "advice".

The Act presupposes, and its preamble makes clear, that as a constitutional document it must be taken in conjunction with the body of precedent and Common Law from which it itself emerged.<sup>1</sup> Accordingly, the *BNA Act* does not specify the responsibility of the ministry to Parliament, the office of Prime Minister or the powers of that office. The Act did, however, define the composition of Parliament, and in that it assumed that in the exercise of executive authority the Crown would be responsible to and dependent upon the approval of the Senate and the House of Commons. Indeed, not only did convention demand that the ministers answer to the House of Commons for the advice given the Crown, but the responsibility of the ministry before Parliament may be said to have been implicit in the Act. In these respects the *BNA Act* reflected most of the more

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<sup>1</sup> The preamble reads in part: "Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom.... And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also the Nature of the Executive Government therein be declared..." *The British North America Act 1867*, 30° & 31° Victoriae, cap. 3, 29 March 1867.

important conventions surrounding the individual responsibilities of ministers for their actions.<sup>2</sup>

The Act acknowledged in law the control of the House of Commons over taxing and spending. It also established in law that spending proposals could only be made by the Crown.<sup>3</sup> These essential aspects of the supply procedure indirectly introduced into the law an element of collective ministerial responsibility, which by the mid-19th century had begun to take a firm hold in the constitution through the convention that spending proposals must come from the government as a whole, and through the special unifying role that was the *raison d'être* for the Prime Minister and the emergence of the cabinet. Each of these conventional rules was to have an important influence on the development of responsibility in the constitution.

Although the Canadian constitution was provided for in the *BNA Act* and the constitutional practice and custom of Westminster's traditions and the body of English Common Law, Canada already had a body of constitutional experience upon which to draw, dating from the colonial period. The development of local self-government in Britain's settled colonial possessions during the middle part of the 19th century following the dismantling of the old and unrepresentative colonial system was marked by the establishment of miniature replicas of the Queen's government, which in the principal provinces of British North America, the Australian states, and New Zealand was reproduced in the form of a governor, executive council, and legislature.

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<sup>2</sup> The *South Africa Act* of 1909 was more specific about the organization of the government taking the summary of constitutional developments further than the *BNA Act*. Section 14, in particular, refers to departments of government being headed by ministers, who shall be members of the Executive council.

<sup>3</sup> This provision had also appeared in the *Act of Union* of 1840 that created the Province of Canada.

Eventually these arrangements came fully to respect their origins in England's constitutional history, their underlying purpose being to carry forward the principle of constitutional responsibility for the exercise of power. More particularly, and after some struggle, the principle of ministerial responsibility became the centrepiece of these colonial arrangements, the members of the executive council being individually responsible to the legislature with the governor acting on "advice".

A colony was, nevertheless, not an independent state. The governor, although the representative of the constitutional Crown, was answerable to the Crown's advisers in Whitehall. In matters other than local government, or when doubts arose about the powers of a colonial administration to take specific actions, the governor might be required to act on the instructions of the Colonial Secretary at Whitehall rather than on the advice of his executive council. Direct intervention by Whitehall would, however, have been "at variance with the acknowledged principles of ministerial responsibility within the colony in all matters of local concern".<sup>4</sup> Although constitutional responsibility was achieved only after some struggle with colonial governors and Whitehall, once established respect for the principle had particular consequences for the role of colonial legislatures and later for the parliaments that were established when the former colonies achieved independence through dominion status.

The potential conflict between the governor's instructions from Whitehall and the advice of his executive council (and the consequent threat to the responsible exercise of power in the colony) was largely avoided by requiring executive councils to exercise the authority of the Crown through the legislature rather

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<sup>4</sup> Alpheus Todd, *Parliamentary Government in the British Colonies* 2nd edn., (London: Longmans, Green, 1894) p. 200. In British North America, more precisely in the provinces of Canada and Nova Scotia, ministerial responsibility was established in the 1840's during the decade following the Durham Report.

than by virtue of the prerogative, and through the related practice of disallowing colonial legislation. Ministerial responsibility *vis-à-vis* the legislature was in no way trammelled if a proposal of a minister was approved by the legislature, and the action of the legislature subsequently disallowed by the *Imperial Crown*. As Alpheus Todd has noted:

The supremacy of the Crown over colonies which possess representative institutions, and have been further intrusted with privileges of local self-government by the incorporation into their political system of the principle of responsible government, is ordinarily exercised only in the appointment and control of the governor as an Imperial officer, and in the allowance or disallowance in certain cases of the enactments of the local legislature.<sup>5</sup>

This procedure for ensuring the constitutional responsibility of colonial ministers to colonial legislatures gave the latter a greater role in administrative and other matters than was enjoyed by Parliament at Westminster, where such arrangements were usually carried out on the authority of the royal prerogative without reference to Parliament.

The pattern established in the colonial period was followed after Canada achieved dominion status, and although disallowance by Whitehall of the Canadian Parliament's legislative proposals was for most practical purposes a dead letter after 1867, the tradition was preserved of calling upon Parliament to act in a wide variety of administrative matters including the organizational framework of the public service and the standards by which it is managed.

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<sup>5</sup> Alpheus Todd, *Parliamentary Government in the British Colonies* pp. 107-108.

## The Structure of Government

Canada's colonial heritage provided from the outset that the dominion government would seek to use the law-making rather than prerogative authority for major new organizational forms and important administrative matters. In accordance with the practices described earlier, the provinces of British North America had sought legislative bases for their major administrative units, and these (particularly those of the Province of Canada) were carried forward, elaborated, and added to by the new federal Parliament.<sup>6</sup>

Parliament has provided a legislative base for each department of government, and it authorizes the payment of salaries to ministers. Each minister is individually responsible for his or her department. The system is built on this individual responsibility and revolves around twenty odd program departments whose ministers are responsible for the greater part of governmental spending. These are the ministers whose activities in Parliament and the public service provide the essential basis of ministerial government and from whom accountability for the exercise of power through the expenditure of public monies is sought by Parliament.<sup>7</sup>

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<sup>6</sup> For another aspect of the influence of our colonial experience on the development of the post-confederation public service, see J.E. Hodgetts, *The Canadian Public Service* (Toronto, 1973) pp. 55-58. It should also be noted that in 1867 the dominion government took over intact the institutions of the former Province of Canada, the *BNA Act* having made separate provision for the reestablishment of the former provinces of Upper and Lower Canada in the sections of the act dealing with Ontario and Quebec.

<sup>7</sup> It was noted above (p. 4) that collective as opposed to individual responsibility is primarily conventional rather than legal in character. Legal collective responsibility is in fact reflected extensively in the law of the constitution. Action in the system is taken either by ministers individually or by the Crown on the collective advice of ministers. In each case the authority for action may reside either in powers bestowed by the Crown in Parliament or in the prerogative. Ministers have always been individually responsible for their departments, but until the end of the second world war it was common practice to require ministers to take specific actions only with the approval of the Governor in Council. The reasons for this were political and to some extent reflected successive Prime Ministers' apprehension about the

The relationship between ministers is confederal in character. Each represents particular interests – departmental, regional, constituency, political, and so on. In the dignified constitution ministers are sworn to the Privy Council to advise the Governor General in the fulfillment of the Crown's duty to exercise the executive power.<sup>8</sup> In the efficient constitution ministers are appointed to office by the Prime Minister and they exercise their individual functions in concert with the functions of their colleagues, and do so through the instrument of the Prime Minister's cabinet. The confederacy of independent ministers is made workable through the convention of collective responsibility. The convention is reflected in the activities of each minister, and ministers who preside over the spending departments are assisted by colleagues, whose functions are principally co-ordinating in character. As might

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ability of colleagues to exercise powers prudently. In a limited way the requirement had the effect of introducing into the law of the constitution the conventional political function of the cabinet in seeking to maintain collective responsibility. The effect was limited, however, because the formal collective decisions required were largely administrative in nature having to do with contracts, appointments, and other matters of similar interest. As Professor Mallory has noted, the need for such formal vetting of administrative decisions declined as patronage became a less prominent feature of government; see *The Structure of Canadian Government* (Toronto, 1971) p. 104. Today, legal responsibility devolving on ministers collectively through the Governor in Council is reserved for important matters in which the government wishes to demonstrate formally action or advice that has been sanctioned by all ministers. Apart from the public nature of an order or minute of the Council, this device enables the government to provide legal evidence that action has been taken by the government, which contrasts with the more usual situation in which a minister acts on his or her individual authority having where appropriate informally secured the approval of the cabinet. In such cases the action is the minister's, cabinet having played its political function of ensuring that the minister will be supported by his or her colleagues. Action by the Governor in Council is formal action taken by the government and can be proven legally by production of an Order in Council to a court of law. Action by a minister may be equally formal and can be proven in law, but the fact of cabinet approval does not indicate any formal sharing of the minister's personal responsibility. Nor because of cabinet confidence would it be desirable for evidence of cabinet decision to be used to indicate that the minister's action was in fact the action of the government.

<sup>8</sup> This provides one of the legal bases of the responsibility of ministers. The statutes that Parliament has enacted providing for their offices form the second legal basis for their responsibility. See above p. 4, footnote 3.

be expected, given the origins of collective responsibility in the system, principal among these co-ordinators are ministers who exercise special powers over matters of finance and, in the case of the Prime Minister, appointment to high office.<sup>9</sup>

The system faithfully reflects the evolution of constitutional responsibility stretching back to *Magna Carta* and beyond. Ministers, individually responsible for their expenditure of taxes are co-ordinated in these activities by colleagues whose function is to ensure the maintenance of solidarity within the ministry through the cultivation of collective responsibility among their colleagues.

Each minister's actions reflect the individual and collective responsibilities of the system that has been built up to ensure that they and their subordinates in the public service exercise power in a manner acceptable to a majority of the elected house of Parliament. Ministers are held accountable for the exercise of power by their colleagues internally and publicly each day in the House of Commons.<sup>10</sup> The accountability of ministers to Parliament is the cornerstone of our constitutional system and the essence of the historical precedents that require individuals personally to answer to the House of Commons for their use of power. The collective responsibility of ministers is also tested each day in the House, and this conventional need for unity imposes an additional discipline on ministers, requiring them to account internally to each other for the exercise of their individual authority.

Throughout the system of government individual responsibility is sharpened by the requirements of collective responsibility. Each level of the bureaucracy reflects the confederal nature of the system, which

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<sup>9</sup> Co-ordinating ministers are also to be found in areas such as external and urban affairs, common services, and science and technology.

<sup>10</sup> A recent Prime Minister of England has described the trepidation with which ministers prepare for question period, which he refers to as the "high tribunal of the nation". Unlike the practice at Westminster, in Canada ministers do not receive notice of questions and must answer in the House every day rather than from time to time. See Sir Harold Wilson, *The Governance of Britain* (London, 1976) p. 133ff.

builds up through the bureaucratic hierarchy to the level of ministers. It is a process that seeks constantly to resolve conflicting interests arising from the independent powers that flow from each minister's individual authority.

In theory, ministers are independent members of the confederal system that they themselves constitute. In practice, their independence is constrained by the need to find accommodations with their colleagues. The system is, therefore, based on a collective leadership, whose constituent elements seek constantly to establish and maintain a state of equilibrium. Ministers are supported throughout by a public service, which must also seek constantly for a balance between the interests and powers of the confederacy that it serves. The resolution of conflict is a constant and necessary concern of ministers, and is fundamental to ensuring that ministers exercise the power of the state responsibly. Extreme views, or initiatives that ignore the responsibilities of others in the system, threaten its essential equilibrium.

## **Conclusion**

Our system of government is not compartmentalized as between the government and Parliament. The executive is composed of Members of Parliament and is therefore not separate from Parliament. In order to provide sound government, ministers will endeavour to accommodate views based on differing responsibilities and interests, and to a large extent Parliament relies on the collective responsibility of the ministry to ensure that the responsibility of each minister is being exercised fairly and effectively. Indeed, the tension inherent in the search for equilibrium among differing functions and interests within the confederacy of ministers is essential to collective government by ministers, and without it Parliament would not have confidence in the government. As was noted earlier, Parliament historically has relied in part on the ministry itself to ensure responsible government. It expects ministers to answer for the way they discharge their duties, but Parliament does not itself seek to order the day to day affairs of government. This reliance on internal self-discipline is made possible by collective responsibility, and as the tasks of government grow more complex, the inter-reliance of ministers increases, providing additional checks on the exercise of the power vested in each.





**V**

**THE FORGING OF CONSENSUS**

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## Introduction

The confederal nature of the system requires that the resolution of conflict take place throughout the system at all its levels. As noted earlier, this process is assisted by ministers with special financial and policy co-ordinating functions, and they in turn are supported by bodies of officials organized in what are known as the central agencies.<sup>1</sup> In addition, specialized policy areas and the provision of services common to the needs of ministers collectively are organized under the direction of special ministers who are also supported by bodies of officials.<sup>2</sup> The officials of these departments and agencies play an important role in assisting other departments to co-ordinate the initiatives that flow from the program (i.e. spending) functions of their ministers. The central agencies, in particular, play a key role in a network of interdepartmental committees that endeavours to co-ordinate the differing functions of ministers involved in particular complex initiatives.

## The Cabinet and its Secretariat

The cabinet is the essential forum for the creation of consensus among ministers. It is uniquely the Prime Minister's; he provides it to his colleagues as a forum within which he may lead them to agreement on particular matters that each will be prepared publicly to defend.<sup>3</sup>

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<sup>1</sup> Principally the Cabinet Secretariat in the Privy Council Office, the Treasury Board's Secretariat, the Federal-Provincial Relations Office, and the departments of Finance and External Affairs. The Public Service Commission is an independent body, and although not so strictly a part of the government's machinery it plays an important role in providing skilled resources and training essential to the fulfillment of the government's programs.

<sup>2</sup> The Ministries of State and departments such as Supply and Services and Public Works.

<sup>3</sup> See above, p. 26, footnote 8. Sir Robert Borden said of the misnamed Imperial War Cabinet that it was a "Cabinet without collective responsibility and therefore without a Prime Minister". See Anson, *Law and Custom of the Constitution* vol. ii, pt. 1, p. 150.

The cabinet is the mainspring of modern ministerial government. It is essentially a *political* mechanism, and as such it remains an informal body even though its "decisions" are authoritative. Generally speaking, these "decisions" complete the process of consensus-making whereby (in the formula of its recorded decisions) "the cabinet agrees" with the proposals of ministers to exercise their individual responsibilities in some particular way. Ministers do not ask the cabinet to agree to each initiative they take deriving from their individual responsibilities, but only those that have political importance: i.e. those items likely to involve the collective responsibility of the ministry, requiring all ministers to stand behind the initiative of one or some of its members. The cabinet's historic role has been and is principally political in the sense described. In relatively recent times, however, the cabinet has also assumed a central role in the co-ordination of initiatives that require the *administrative* action of two or more departments. It is a matter of observation that these *political* and *administrative* co-ordinating roles of the cabinet have become enmeshed during the last two decades as a consequence of the growing complexity of the cabinet's business and the elaboration of the support services provided by its secretariat.<sup>4</sup>

The cabinet is served by its secretariat located in the Privy Council Office, which is responsible to the Prime Minister.<sup>5</sup> At the direction of the Prime Minister, the Privy Council Office provides the cabinet's secretariat, and on behalf of the Prime Minister it organizes the cabinet's committee system and support services.<sup>6</sup>

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<sup>4</sup> See below pp. 61-64.

<sup>5</sup> Order in Council, P.C. 1962-240, 22 February 1962.

<sup>6</sup> The secretariat was formed in 1940 when Arnold Heeney succeeded to the post of Clerk of the Privy Council and was (by the same instrument - P.C. 1121, 25 March 1940) appointed Secretary to the Cabinet. Prior to 1940 the Privy Council Office had been concerned solely with the formal work of the Council - the preparation of draft submissions for orders and minutes. The modern Privy Council Office is the responsibility of the Prime Minister. Until 1957 the Prime Minister always held a ministerial portfolio. In the early days it had been Justice and occasionally other offices (from 1912 to 1946 the Prime Minister was *ex officio* Secretary of State of External Affairs), but later the Prime Minister satisfied the conventional need (see below\*) to hold formal office by assuming the Presidency of the Council. It happened that in 1940, Mr. King was both Prime Minister and President of the

The essential function of the cabinet's secretariat and other officials in the Privy Council Office, all of whom answer to the Prime Minister, is to assist the Prime Minister in establishing the equilibrium essential to the system. The Secretary to the Cabinet and his or her officers coordinate the initiatives of ministers' departments, ensuring informally as well as through an extensive system of interdepartmental committees that interdepartmental consultation takes place, to the extent possible disputes are resolved, and that remaining issues are clearly identified for discussion among ministers.

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Privy Council, and the Clerk of the Council was responsible to him. Since the cabinet is the Prime Minister's cabinet, it was natural that the Prime Minister be responsible for the organization of its secretariat and this was accomplished through the device of Arnold Heeny's double-barrelled appointment. Since then the positions of Clerk and Secretary have been combined. When Mr. Pearson decided (as for a brief period before him had Mr. St. Laurent) to use the Presidency of the Council to attract senior colleagues without burdening them with departmental duties, and later Mr. Trudeau decided to devolve the leadership of the House on a separate minister, the Prime Minister gave up the Presidency of the Council but he kept the Privy Council Office. The office is not, therefore, a responsibility of the President of the Privy Council and there is not formal relationship between them.

\* The *Salaries Act* provides a separate salary for the "Member of the Queen's Privy Council holding the recognized position of First Minister". The original intent of this provision was to provide a higher salary for the Prime Minister than he would otherwise receive as the minister holding one of the other portfolios set out in the *Salaries Act*, such as Justice or the Presidency of the Council.

The original *Salaries Act* of 1868 made no provision for the Prime Minister, and it was only in 1873 that provision was made to enable the "First Minister" to receive "in addition" to his regular ministerial salary the sum of \$1,000. But an amendment passed in 1920 provided a completely separate salary for the "First Minister". This provision established in law the distinct nature of the Prime Minister's office. Nonetheless, for many years it had the effect of merely ensuring that the Prime Minister would be remunerated as "First Minister" rather than according to whatever ministerial portfolio he happened to hold. It was not, however, until the last few months of Mr. St-Laurent's administration that full advantage was taken of the statutory base provided in 1920 and the Prime Minister served without holding a separate ministerial portfolio.

The Privy Council Office also supports the Prime Minister in the exercise of the other means that he uses to provide leadership and promote consensus in the system, including efforts to develop in consultation with his colleagues the general thrust of the government's program, the appointment of deputy ministers and other senior officials, and the general organization of the machinery of the government and relationships among its key elements, including the arbitration of jurisdictional disputes between ministers.

In all of this the Privy Council Office seeks to facilitate and assist rather than to create and direct. The office must respect the confederal nature of the system in which power flows from ministers. Its roles are to co-ordinate the exercise of power and to assist the Prime Minister in leading his colleagues to establish the general orientation of the government. These are powerful roles. But the office, like its master, exists primarily to promote consensus by maintaining the equilibrium among ministers, and this *raison d'être* remains valid so long as neither the secretariat nor departments lose sight of the essential differences in their respective roles, the one co-ordinating and the others initiating.

### **The Treasury Board and its Secretariat**

The Treasury Board, a committee of the cabinet, is a second essential mechanism devoted to assisting ministers in the exercise of their collective responsibilities.<sup>7</sup> For the historical reasons set out earlier, finance was an essential part of the establishment of the office of the Prime Minister, and the Treasury Board exercises on the Prime Minister's behalf the latter's unifying functions of financial control.

Put simply, the Treasury Board is a mechanism that the ministry has imposed on itself for the preparation and reconciliation of estimates. It was established on the Prime Minister's recommendation at

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<sup>7</sup> The Treasury Board is formally a committee of the Privy Council. As such it disposes of a wide variety of business deriving from its statutory responsibilities. It operates, however, as a committee of the cabinet, and it is the cabinet that has the last word. See below, footnote 9.

confederation and provided with a statutory base two years later.<sup>8</sup> Until the *Financial Administration Act* was set in place in 1951, the Treasury Board conducted all of its business subject to the formal approval of the Governor in Council, and the cabinet continues to insist on its right to approve the estimates framed by the Treasury Board within the parameters set by the cabinet and to hear appeals by ministers against particular decisions of the Treasury Board.<sup>9</sup>

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<sup>8</sup> See *An Act Respecting the Department of Finance* 32°-33° Victoriae, Cap. iv. The Act stated that the Board "shall act as a committee of the Queen's Privy Council for Canada, on all matters relating to Finance, Revenue and Expenditure, or Public Accounts, which may be referred to it by the Council, and shall have power to require from any public department, board or officer, or other person or party bound by law to furnish the same to the Government, any account, return, statement, document, or information which the Board may deem requisite for the due performance of its duties."

<sup>9</sup> The Governor in Council is a formal mechanism for authorizing action by the Crown as distinct from action by ministers on behalf of the Crown. Formally it consists of the Governor General *acting* on the advice of the Committee of the Privy Council, which has the same membership as the cabinet. It is, however, distinct from the cabinet, which is both informal and cannot in legal terms authorize action in the system. Put simply the cabinet determines the policy of the government, and that policy is effected either by a minister or by the Crown. If the latter, the Crown in order to take action usually must be authorized to do so by the Governor in Council. Although until 1951 the Treasury Board conducted all of its business subject to the approval of the Governor in Council, the Treasury Board was not originally constituted as a committee of the Privy Council. The Minute of the Council of 2 July 1867 recommended that a "Board of treasury be constituted with such powers and duties as may from time to time be assigned to it by Your Excellency in Council". Thus at the outset the Board had the potential to *act* rather than advise, and it was only when the Board was provided with a statutory base that it was constituted as a committee of the Privy Council, sharing the *advisory* functions of its parent body. Accordingly, from 1869 until 1951 the Board advised and the Governor in Council acted. In 1951 the *Financial Administration Act* authorized the Board to act for the Governor in Council in order to reduce the flow of formal paper through the Council. The Board remained, however, a committee of the Privy Council, even though unlike the latter it exercised executive functions. (To draw the parallel it should be noted that although the Special Committee of the Council acts for the Committee of the Privy Council in approving draft submissions to Council, the special committee does not itself take action, which may be said to occur when draft orders are approved by the Governor General, thereby fulfilling the legal requirement for action by the Governor in Council.) The reasons for this anomaly may be found among the Prime Minister's prerogative powers, because as a committee of Council

The original Treasury Board was chaired by the Minister of Finance, and consisted "for the present" of the Minister of Customs, the Minister of Inland Revenue, and the Receiver General.<sup>10</sup> The activities of the Treasury Board were supported by the department of Finance, which placed the Minister of Finance in a position similar to that of his British counterpart, the Chancellor of the Exchequer. The Minister of Finance was required, therefore, to work closely with the Prime Minister in fulfilling the basic duty of the Board ministers to reconcile conflicting demands for money from their cabinet colleagues.<sup>11</sup>

Until 1947, the Deputy Minister of Finance was also the Secretary of the Treasury Board, and it was largely his function to ensure that consolidated estimates were prepared. In this respect, our history paralleled developments in Whitehall where at about the same time (1860's) the functions of the Treasury commissioners were being taken over by the Chancellor of the Exchequer and his officials, permitting the Treasury Board to fall into disuse.<sup>12</sup> Over time, however, we were to move in the opposite direction from the British. The role of the Treasury Board ministers was strengthened, ultimately separating the Board's secretariat from the department of Finance and providing the Board with a chairman (the President) separate from the Minister

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the Treasury Board's actions remain subject to the intervention of the Prime Minister. Had the Board been given executive authority and not remained a committee of Council, its chairman would in theory be able to exercise the authority of the Board without reference to the Prime Minister. This evidence of the Prime Minister's power in matters of finance illustrates the importance of finance to the solidarity of the ministry and the origins of the Prime Minister in using financial authority to help forge consensus among his colleagues.

<sup>10</sup> Minute of the Privy Council, approved 2 July 1867. *Privy Council Minute Books*, Public Archives of Canada.

<sup>11</sup> See Norman Ward, *The Public Purse* (Toronto, 1951) p. 233.

<sup>12</sup> Anson notes "As the Treasury Board has diminished, so the Chancellor of the Exchequer has risen in importance. At the present time he is in fact a Finance Minister, with most important duties, and the Board of which he is a member consists of persons whose duties are unconnected with the work of the Treasury, the chief of them being the Prime Minister". *Law and Custom of the Constitution* vol. ii, pt. i, p. 192. Also see above pp. 23-24.

of Finance. These changes spanned 100 years of our constitutional development.

Financial control exercised by ministers collectively through the Treasury Board opened the way for the establishment of management and other administrative standards on a central basis. From the outset, the Minister of Finance through the Treasury Board assumed certain *de facto* powers that affected the management of individual departments. The Treasury Board, responsible for reconciling estimates, was in theory also concerned that the unity of the ministry not be made vulnerable in Parliament through the exposure of corrupt or inefficient practices in departments. As noted earlier, this function was well established in the 18th century Treasury in England, which was looked to by Parliament to provide assurance that such practices were vigorously safeguarded against. The *Finance Act* of 1869 set out clearly the powers of the Treasury Board with respect to matters of finance and expenditure, and by implication of management. These responsibilities have since been elaborated in a series of important Acts designed to improve the standards of resource management and to eliminate careless, wasteful, and corrupt practices. Each of these successive Acts has sought to strengthen the Treasury Board's ability to provide a framework for the management of the public service that will reassure Parliament that the service is being managed efficiently.

The Treasury Board's management functions had been fulfilled somewhat haphazardly over the years prior to the formation of Mr. Bennett's administration in 1930.<sup>13</sup> Estimates had been reconciled, and corrupt practices eliminated. Not much had been done, however, to standardize financial expenditure and accounting systems, and overspending of votes and other unauthorized expenditure was not uncommon. Parliament, more particularly the Public Accounts

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<sup>13</sup> In fact, most of its function had been fulfilled by the Minister of Finance. Sir George Murray, a former Permanent Secretary of the Treasury at Whitehall, who had been commissioned in 1912 to report on the organization of the government, recommended that the Board should be abolished and its duties carried out by the Minister of Finance. See Sir George Murray, *Report on the Organization of the Public Service of Canada* (Ottawa, 1912) sessional paper 57a, p. 9.



Committee, had shown little interest in improving the system.<sup>14</sup> Mr. Bennett, who was also Minister of Finance, was disconcerted to discover that owing to widely differing standards and systems of accounting he could not determine the financial position of the government.

These circumstances precipitated the *Consolidated Revenue and Audit Act* of 1931, which imposed a highly centralized system for authorizing expenditure and a standardized accounting system. The Act created the subordinate position within the department of Finance of Comptroller of the Treasury. This officer was provided with a staff of *accounting officers* stationed in each department.<sup>15</sup> The Comptroller and his staff, responsible to the Minister of Finance, were responsible for authorizing each expenditure made under the authority of a particular minister.<sup>16</sup>

The Bennett reforms ushered in a period of highly centralized financial control that spanned the succeeding 35 years. They were occasioned by hard times and stringent economies, but they also reflected a chronic weakness in departmental financial systems due to the absence of uniform systems for expenditure and accounting. The reforms were, however, somewhat repugnant to the principles of

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<sup>14</sup> Norman Ward has noted that it was not until the late, 'forties that the Public Accounts Committee "had finally shaken off its antique obsession with scandal"; *The Public Purse* p. 216.

<sup>15</sup> *An Act to amend the Consolidated Revenue and Audit Act*, section 36. 21-22 George V, ch. 27. It is interesting that this section was not retained in the *Financial Administration Act* of 1951.

<sup>16</sup> For an excellent description of the Bennett reforms, see Norman Ward, *The Public Purse* pp. 167-172. Professor Ward notes that the role of the Comptroller's officers as accounting officers was substantially the same as the role of permanent secretaries as accounting officers in Whitehall, except for the crucial difference that in Whitehall they were – and still are – generally responsible to the minister under whose authority the expenditure was made, even though they were specifically accountable to the Treasury for financial matters. See below pp. 75-77.

responsibility in the system.<sup>17</sup> As times improved, as government activity grew, and as ministers increasingly exercised their program authority, the appropriateness of this centralized system was called into question. The Glassco Royal Commission's theme of "let the managers manage" precipitated amendments to the *Financial Administration Act* in 1966 that set in place the organizational and financial relationship that currently exists between the Treasury Board and ministers in their departments. Summarizing the developments that had occurred since 1931, the Commissioners noted:

By divesting departments of the authority essential to the effective management of their own affairs, the system tended to weaken their sense of responsibility. Each new evidence of irresponsibility within departments seemed to confirm the wisdom of existing controls and to suggest the need for more.<sup>18</sup>

The Commission argued in effect for a reassertion of ministerial authority. It proposed the separation of the Treasury Board's secretariat from the department of Finance placing it under the leadership of a secretary with the rank and status of a deputy minister, the appointment of a separate minister to preside over the Board, and the substitution of management leadership and Treasury Board prescribed standards for the control functions exercised by the Comptroller of the Treasury.<sup>19</sup> These recommendations were incorporated in the 1967 amendments of the *Financial Administration Act*, which reinforced the

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<sup>17</sup> The drafters of the 1931 amendments were obviously sensitive to criticism on this score; section 31 contradicted the consequence of the Act as a whole in stating that "No provision of this Act shall be construed to limit the responsibility of ministers, deputy ministers, departmental officers or other persons charged with the administration of grants of Parliament." 21-22 Geo. V, ch. 27.

<sup>18</sup> *Royal Commission on Government Organization* (Ottawa, 1962) vol. i, p. 44.

<sup>19</sup> *Royal Commission on Government Organization* vol. i, pp. 55-56. In fact the Commission proposed that the Secretariat be transferred to the Privy Council Office, thereby emphasizing the Treasury Board's *de facto* role as a committee of the cabinet stressing the Prime Minister's primordial concern with finance. The recommendation was resisted because it would have distorted the service role of the cabinet secretariat, because the concentration of so much authority in a single central agency would have unbalanced the relationship between departments and central agencies, and because the equilibrium among central agencies is itself essential to the well-being of the system as a whole.

role of the Treasury Board in setting management standards for the public service.

The system presided over by the Comptroller of the Treasury between 1931 and 1967 operated to the detriment of ministerial responsibility with adverse consequences for the exercise of constitutional responsibility and (as evidence of this) for the flexibility and responsiveness of government. During this period the idea of accountability disappeared and was replaced by the system of controls criticized by the Glassco Royal Commission. The post-Glassco reforms initiated a trend away from a highly centralized system based on controls and a move towards greater freedom for the exercise of ministerial autonomy, and since 1967 the Treasury Board and its secretariat have sought to elaborate a role more appropriate to the needs of ministerial government.

### **The Public Service Commission**

A discussion of collective institutions (i.e. central agencies) must include reference to the Public Service Commission. Unlike the cabinet and the Treasury Board and their supporting organizations, the Commission is neither of the ministry nor is it its agent. The Commission is a strange hybrid.<sup>20</sup> The Treasury Board exists in part to ensure probity in the use of financial resources because lack of probity will undermine confidence in ministers. The Commission, in carrying out its role to ensure probity in appointments, fulfills an important function in preventing abuses that could *inter alia* undermine confidence in ministers. Although the consequences for collective responsibility flowing from the activities of the Board and the Commission are similar, the obligations of the Commission are to Parliament rather than to the ministry. In the wider context of parliamentary control of resources, this similarity illustrates the interest held in common by Parliament and the ministry to ensure sound personnel and financial management in the public service.

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<sup>20</sup> For a summary of the events leading to the establishment of the Commission in 1908 and its subsequent relations with deputy ministers and the Treasury Board, see J.E. Hodgetts, *The Canadian Public Service* (Toronto, 1973) pp. 263-286.

In setting standards of selection and promoting the concept of a unified public service with careers spanning the entire range of federal activity, the Commission endeavours to provide ministers and their deputies with the best human resources available. In fulfilling its duty to ensure merit in appointment, the Commission safeguards ministers from the politically damaging effects of patronage. The advantages of a unified public service could, however, become disadvantageous if the service took on objectives separate and distinct from those of the individual ministers whom its members serve. In pursuing the objective of a unified professional public service, the Commission plays a difficult role that must neither centralize nor balkanize the service. Indeed, as with the central agencies proper, the Commission must guard against the evils of attempting too much or doing too little.

## Conclusion

The central agencies play, therefore, an essential role in the successful functioning of ministerial government. They enable the confederacy to work. They pull the system together, synthesizing and co-ordinating, occasionally leading. When necessary, and this is particularly true of the special policy functions of the departments of Finance and External Affairs, they give direction in the development of matters of general concern to all ministers.<sup>21</sup>

As has been noted, however, the distinction between serving the collective need without damaging the individual has not always been observed or even recognized, and this has been particularly true in the financial area. Indeed, it is probable that the absence of adequate financial accountability in the system stems from the long period of highly centralized management control experienced between 1931 and 1967. During those years central control displaced the need for financial accountability. At the same time the functions of government

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<sup>21</sup> Examples that come readily to mind are the role of the Minister of Finance in determining the appropriate level of government spending within the context of the national economy, and that of the Secretary of State for External Affairs in setting the political framework within which his or her colleagues will operate in their international dealings.

were growing. In consequence when central financial control was eased the system had forgotten the importance of accountability and had become too used to looking for central direction, which is a phenomenon that has remained in the system and accounts in part for the uncertain relationship that is current between departments and central agencies.<sup>22</sup>

Nonetheless, successfully worked, the mechanisms for collective responsibility make possible the effective exercise of individual responsibility, and the degree of success achieved by "central agencies" determines in large measure whether ministers are able to provide successful government based on the effective exercise of their authority.

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<sup>22</sup> Examples of this are seen in the failure of many departments to distinguish between directives and guidelines issued by central agencies, and in the tendency to urge operational roles on these organizations.

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**VI**

**MINISTERS AND THEIR DEPARTMENTS**

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## The Minister

The legislative bases for the departments of government make explicit the individual responsibility of the ministers who preside over them, and as has been noted, provide one of the legal bases of the minister's responsibility. The way in which ministers fulfill their responsibilities and are called to account for the exercise of their statutory authority is subject to practice and convention. All departmental acts provide for the formal appointment of the minister by the Crown (informally on the advice of the Prime Minister), set out the powers, duties, and functions for which the minister will be responsible, and give him or her the management and direction (control and supervision) of the financial and public service resources deployed in the department.<sup>1</sup> These statutory provisions are given life through the conventions of the constitution, which determine at any given time the way in which ministers fulfill their respective roles and the circumstances of their answerability to Parliament for their actions, and offer further safeguards through the conventional responsibility of ministers collectively.

The individual responsibility of the minister requires that he or she be personally responsible for the activities carried out under his or her authority. This concept is fundamental to the long struggle to impose responsibility on the exercise of power. Parliament has insisted that ministers be directly accountable to it by being part of it. Ministers are, therefore, assailable on a daily basis for their actions and those of their officials. The traditions of civil service anonymity built up in England during the later part of the 19th century, and the creation in Canada of the Civil Service Commission in 1908 to ensure that public servants would be non-partisan, reinforced this principle.

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<sup>1</sup> In theory, ministers may be said to have the "management and direction" of their departments for which purpose they have the "control and supervision" of the public service resources deployed within it. In practice, however, the phrases are used interchangeably in the statutes, which support neither this nor any other distinction.

Officials are disqualified from membership in the House of Commons and accordingly may not be held constitutionally responsible by the House. It is worth noting that it was not until the close of the 18th century in England that individuals whom we would recognize as permanent officials were barred from Parliament.<sup>2</sup> Indeed, not until this happened was it possible to identify the beginnings of a civil (as distinct from political) service. It is also worth noting that the exclusion of officials from the House and hence from constitutional responsibility for their actions was accompanied by organizational change that had the effect of concentrating the civil service in departments, each presided over by a minister who could be held personally responsible for the actions of his or her officials. This development was marked in the early to middle part of the 19th century by the substitution of the personal responsibility of a minister for the "indefinable and irresponsible authority of boards".<sup>3</sup>

The subordinate quality of officials as distinct from the responsible estate of a minister is most clearly seen in the two types of boards and commissions that survived these changes. First, there are those such as our Treasury Board that consist solely of ministers. Second, there are boards, such as our Defence Council and the Admiralty Board in England (both now defunct), presided over by a minister personally and solely responsible for the activities of the board whose other members are officials, advising rather than deciding.<sup>4</sup>

As the number of officials increased, the importance of ministerial responsibility grew proportionately. Today more than ever the actions

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<sup>2</sup> Parris, *Constitutional Bureaucracy* p. 34. The membership of these "officials" indicated that the part of the *Act of Settlement* of 1701 that barred office holders from the House of Commons was a dead letter.

<sup>3</sup> Birch, *Representative and Responsible Government* p. 141.

<sup>4</sup> When the Board of Admiralty was reconstituted in the 1860's the ministerial responsibility of the First Lord was made explicit, he being empowered to decide "without reference to any vote or equality which may exist under the present board system". Parris, *Constitutional Bureaucracy* p. 93. These comments do not, of course, apply to boards and commissions that have been separated from the purview of ministerial responsibility because they fulfill regulatory, quasi-judicial, or related functions.



of civil (or as we now call them public) servants are numerous and often far-reaching in their effect, and the presence of a minister charged with responsibility personally to answer for their actions is essential if constitutional responsibility is to be maintained.<sup>5</sup>

The principles of responsibility, the concentration of the Crown's power in the hands of ministers, the subjection of ministerial power to parliamentary control, and the limited capacity of Parliament itself to assure the justice of official actions, reinforce the responsibility of ministers, requiring them to be in a position to assure the House that they are exercising power responsibly. The constitutional responsibility of ministers is clear, but their ability to speak confidently of the actions of their officials is a matter for constant attention. It is in this context, and in the light of the history and implications of the constitutional manifestations of responsibility in parliamentary and cabinet government, that the accountability of officials must be considered.

### **The Deputy Minister**

Deputy ministers have duties that reflect the nature of cabinet government. They are the most senior official of their respective ministers, to whom they are responsible. They may, by delegation, exercise virtually all of their minister's powers. The deputy's responsibility to his or her minister reflects the individual and collective responsibilities of the latter, and, because of the significance of the minister's collective responsibility, the deputy also has certain obligations to the Prime Minister and (through the minister) to the ministry as a whole.

The roles of deputy ministers are complex, but they must ultimately unravel to support the responsibilities of ministers, and, as with

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<sup>5</sup> Sir William Harcourt, a 19th century British Chancellor of the Exchequer, described this relationship as between ministers and officials more tersely: "The value of the political heads of departments is to tell the permanent officials what the public will not stand." A.G. Gardiner, *The Life of Sir William Harcourt* (New York, n.d.) vol. ii, p. 587.

ministers, the roles of deputies that reflect the individual responsibilities of ministers form the bedrock of responsibility and hence accountability in the system. But the system would be unstable without the collective responsibility necessary to cabinet solidarity, and the deputy must also play a role in and be affected by means that are used to ensure the maintenance of collective responsibility among ministers.

The individual and collective responsibilities inherent in cabinet government create a system that operates through a series of countervailing forces. Balancing the individual responsibilities of ministers encourages consensus and forms the basis of stable ministerial government. The deputy minister, like the minister, faces and must find ways of resolving potential conflicts between the minister's individual responsibility and the obligation to support the collective wishes of his or her colleagues.

In order for deputies to fulfill their roles in a responsible manner and to be held accountable for their performance, it is necessary that deputies understand their role in government and the duties that devolve upon them by virtue of the individual and collective responsibilities of their ministers. Deputies must also have access to means of resolving apparent conflicts between countervailing responsibilities and loyalties within the ministry so that they can function effectively as policy advisers and administrators for their ministers individually, and in doing so contribute to the solidarity of the ministry.<sup>6</sup> They must, in short, understand how responsibility in the constitution affects them.

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<sup>6</sup> The cabinet is an instrument that provides ministers with such means for the resolution of matters of common interest to them. Deputies (and to a degree ministers) rely in part on senior interdepartmental committees for this purpose, and central agencies have a particular responsibility to use these committees and other means (such as encouraging deputies to consult bilaterally with their opposites in charge of the central agencies) to assist deputies in solving multi-jurisdictional problems.

## The Deputy and the Minister's Individual Responsibility

Deputies, like their ministers, are provided with a statutory base for their appointment in the departmental statutes. Unlike their ministers they are appointed formally not by the Crown, but by the Crown on the advice of the ministry as a whole. This provision perpetuates the conventional control of the Prime Minister over senior public offices. It also indicates something of the broader role that deputies play *vis-à-vis* the ministry as a whole.

Although departmental statutes are silent on the subject, the *Interpretation Act* is clear that the deputy may exercise the power of a (i.e. his or her) "minister of the Crown to do an act or thing" except "to exercise any authority...to make a regulation".<sup>7</sup> This statutory interpretation makes explicit the legal accountability of deputies to their ministers that is implicit in the departmental statutes.<sup>8</sup>

Accordingly, with the authority of the minister, the deputy may exercise the powers of the minister set out in the departmental Act and by extension in the other Acts for which the minister is responsible. The deputy also fulfills the minister's obligation to manage and direct the department and has the control and supervision of the financial, personnel, and other resources at its disposal.<sup>9</sup>

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<sup>7</sup> *Revised Statutes of Canada* (Ottawa, 1970) vol. iv, c. 1-23. Nor may a deputy substitute for his or her minister in the latter's role as spokesperson in the House of Commons.

<sup>8</sup> The congruence between what is explicit in statute law and what is implicit in the law and custom of the constitution is worth noting because it is not always the case. Custom is composed of practice whereas law may set a precedent, and in administrative matters our system usually prefers to let precedent evolve into practice before thought is given to casting into law the practices that have prevailed as a matter of custom. In administrative matters the law of the constitution usually evolves in this cautious manner, but not always, and sometimes precedent established at a given moment as a matter of law is at variance with the custom that has evolved through long-standing practice.

<sup>9</sup> In practice, however, the deputy does not sign Treasury Board submissions involving new money or matters of policy. By custom and as a matter of policy these must be signed personally by the minister, which provides another manifestation of the practical exercise of his or her individual responsibilities. See *Treasury Board Circular* 1968-71, 18 September 1968.

The duties of the minister are set out in the statutes and are usually very general in character, leaving it to the minister to propose specific means of fulfilling them; these are then presented to Parliament in the estimates for its approval. If the minister wishes to seek an appropriation for a program whose provision is not covered in the general duties set out in the departmental Act, it is usually necessary for the minister to seek the necessary authority through legislation. Normally, however, the duties described in the minister's acts cover a wide variety of functions, ranging from policy formulation and program development to program implementation and departmental administration. These functions, whether policy, program, or administration, may be devolved upon the minister's senior permanent adviser in the latter's quality as the minister's deputy.<sup>10</sup>

In 1929, during his testimony before the Tomlin Commission on the civil service in England, Sir Warren Fisher, who was then Permanent Secretary of the Treasury, head of the service, and a vigorous opponent of the concentration of authority in central agencies, at the expense of departmental autonomy and ministerial responsibility, summed up the role of a deputy minister and the nature of delegation between a minister and the permanent head of the department with the observation that the permanent head "is not (except by accident) a specialist in anything, but rather the general adviser of the minister, the general manager and controller under the minister, with the *ultimate* responsibility to the minister for *all* the activities of the department (and of its officials)".<sup>11</sup>

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<sup>10</sup> There are certain exceptions to the rule that deputies act as agents of their ministers. Sections 24, 25 and 27 of the *Financial Administration Act* place certain financial duties directly in the hands of deputies, and section 7 of the same Act empowers the Treasury Board to delegate to deputies any of its powers and functions having to do with personnel management. Section 6 of the *Public Service Employment Act* gives similar powers of delegation to the Public Service Commission. These are significant exceptions that emphasize the special management responsibilities of deputies. There are also certain other acts that confer directly on deputies (and for that matter other officials) powers that are thought undesirable for ministers to be required to exercise.

<sup>11</sup> See Jennings, *Cabinet Government* p. 96. This was an accurate statement of the deputy's responsibility in a ministerial system and therefore significant coming from the Treasury with its centralizing tendencies. Fisher had sharply reminded the Commissioners that he was not by background a "Treasury man"; see Roseveare, *The Treasury* p. 253.

## **The Deputy and the Minister's Collective Responsibility – Policy**

The deputy's relationship with his or her particular minister does not stop with the latter's purely individual responsibilities. Through the minister's collective responsibility, the deputy minister has a direct and well-established link between the office he or she holds and the ministry as a whole.

It was noted earlier that as the Crown retreated from active political involvement, and as monarchical government was effectively replaced by ministerial government, it became necessary to find means of stabilizing the provision of a form of government that was based on the collective views and leadership of a group of individuals. The position of Prime Minister and the institution known as the cabinet (and later its structured system of committees and secretariats) emerged as a means of providing such stability. The Prime Minister built his position from the application of his powers over government finance from which (loosely speaking) flowed his ability to control appointments to high office. Control of finance and high office introduced stability to ministerial government, and made possible the evolution of collective responsibility over a 150 year period in the 18th and 19th centuries. The exercise of these powers remains the basis of stable government in the system.

The system depends upon the Prime Minister's ability to promote consensus among his colleagues in two principal areas: the policy of the government, and the management of the financial and hence personnel resources provided by Parliament annually for carrying out that policy. Policy and administration are not, however, mutually exclusive processes. They should be reliant on each other, and the deputy minister plays an important role in ensuring that they are.

The Prime Minister exercises a variety of informal powers most of which are directed to ensuring the solidarity of the ministry. His powers of appointment over ministers and deputies are particularly important and are of principal concern for our purposes. They should, however, be considered with reference to the Prime Minister's duty to

promote consensus among his colleagues, for which purpose he provides them with the cabinet, endeavours to set the tone of government and its broad lines of policy, organizes the general structure of government, arbitrates disputes among ministers, and (with or without consulting some or all his colleagues) determines when to seek a dissolution of Parliament.<sup>12</sup> The exercise of these prerogatives enable the Prime Minister to promote the solidarity of the ministry and his leadership of the government, and the appointment of ministers and deputies should be seen in this context. Deputy ministers are, of course, responsible to their respective ministers, but their appointment by the Prime Minister reinforces their commitment to ensure the successful functioning of ministerial government.

The tone of government may be set by the Prime Minister and the cabinet, but most of the policies of the government flow from the exercise of the individual responsibilities of ministers. With rare exceptions these policies are initiated by ministers and their deputies, co-ordinated at the official level through a network of interdepartmental committees and by other means, discussed by ministers and deputies in committees of the cabinet, finally resolved by ministers themselves in the cabinet, and given effect through the exercise of the individual responsibilities of the minister or ministers involved. The intimate way in which deputies interrelate with ministers on matters of policy illustrates one means by which deputies support the collective responsibilities of ministers.

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<sup>12</sup> See Jennings, *Cabinet Government* ch. viii, esp. pp. 153-154. In a departure from custom, Sir Charles Tupper in 1896 sought to impress his authority on his colleagues by having Council adopt a minute enumerating the powers of his office. In brief, the minute stated that the Prime Minister called meetings of the cabinet, recommended the dissolution and convocation of Parliament, and the appointment of Privy Councillors, ministers, deputy ministers, lieutenant governors, provincial administrators, chief justices of all courts, the Speaker of the Senate, senators, membership of the Treasury Board and cabinet committees, and parliamentary appointments in the gift of the Crown. The minute also made the interesting assertion that whereas a minister could not make a recommendation affecting the discipline of a colleague, the Prime Minister could make recommendations in any department (Minute of the Privy Council, 12 May 1896). The minute was reissued substantially unaltered by Messrs. Laurier, Meighen, Bennett, and King. Although not reissued since, it is now regarded as conventionally established. See also Mallory, *The Structure of Canadian Government* pp. 87-88.

The individual responsibility of a minister is virtually always exercised in relation to the individual responsibilities of one or more of his or her colleagues. This is particularly true as government activity has grown and programs have become more complex and interdependent. The function of providing necessary co-ordination usually falls to the deputy and his or her officers, and in carrying it through they find themselves sharing their minister's concern that particular initiatives will be supported administratively by colleagues whose co-operation is essential to success.<sup>13</sup> This administrative co-ordination (referred to earlier in the context of the interaction between officials in support of the responsibilities of ministers in our confederal system) has become increasingly complex since the Second World War. The need to coordinate the responsibilities of several ministers in order to take particular initiatives is now the rule rather than the exception, and this is reflected in the growth of the co-ordinating functions of the cabinet.

Although strictly an unofficial and political body for the forming of consensus among ministers on matters whose substance may be tested in the House to determine whether collective responsibility has been applied, the cabinet is also used to co-ordinate the policy administrative activities of particular ministers whose individual responsibilities must be exercised in concert in order to effect particular actions. These policy administrative (as distinct from political) co-ordinating functions are most obviously manifested in the committee system that supports the work of the cabinet.<sup>14</sup> The cabinet committee system

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<sup>13</sup> This administrative co-ordination, as distinct from political consensus forming, is not strictly speaking an integral part of collective responsibility. In theory, co-ordination may necessarily extend only to those of a minister's colleagues whose administrative co-operation is required to carry forward an initiative. The line, however, between administrative and political co-ordination is seldom precise, and with the growth of governmental activity and the increasing use of the cabinet for administrative as well as political co-ordination, it has become increasingly difficult to make this distinction.

<sup>14</sup> For a description of the committees and how they operate, see R. Gordon Robertson, "The Changing Role of the Privy Council Office" *Canadian Public Administration* (1971) vol. xiv, no. 4. The structure of the committee system is largely unaltered, and the process is as described by Mr. Robertson except for the role now played by the Treasury Board.

requires that all memoranda from ministers be considered by a committee of the cabinet before they are referred to the cabinet itself, and, if they involve new expenditure, the committee reports on such memoranda are referred first to the Treasury Board. The committee and Treasury Board reports are then taken up by the cabinet. At each step, apart of course from discussion in the cabinet, deputies are required to support their ministers, accompanying them to cabinet committees for the discussion of particular items, and, earlier, by smoothing the way through the activities of the interdepartmental committee system as well as in less formal ways. These procedures, and the complexity of the policy issues that they reflect require deputy ministers more frequently than before to support their minister in the exercise of the latter's collective responsibility.

Moreover, the deputy is responsible for ensuring that the "decisions" of cabinet are carried into effect. It is worth reiterating that in our system authority flows from the Crown to ministers individually, and with certain exceptions where the Crown must act on the advice of ministers collectively, most actions are the personal responsibility of a particular minister or ministers. The "decisions" of the cabinet have political and administrative rather than legal effect, and their enforcement is left almost entirely to the minister or ministers directly responsible. Indeed, proposals to vest the Privy Council Office and the Treasury Board Secretariat with "follow-up" authority have generally been regarded as incompatible with ministerial responsibility and alien to the informal and political functions of the cabinet in the system. In a very real sense, therefore, deputies are relied upon to exercise the responsibilities conferred on them by their particular ministers in accordance with the consensus formed by all ministers in support of the collective responsibility of the ministry.

### **The Deputy and Minister's Collective Responsibility – Management**

Important as are their policy advisory and co-ordinating functions, deputies have a special responsibility for the management of resources, and here in practice they act almost entirely in the place of their



ministers.<sup>15</sup> In supporting their minister's individual responsibility by managing departmental resources to produce policies and programs, the deputies observe management standards that have been prescribed by ministers collectively and which are judged essential to the unity of the ministry. These standards are established by the Treasury Board and flow directly from its power of finance in the reconciliation of estimates.

It was noted earlier that finance was one of the principal tools used to establish the position of Prime Minister and hence the collective responsibility associated with modern cabinet government. The evolution of the constitution in the 18th century contributed a number of practices that have since taken on the force of convention and in some cases of law, and which have reinforced financial control (and hence the maintenance of particular management standards) as an essential aspect of collective responsibility. Foremost are the rules that the Prime Minister will approve the measures that will be presented to Parliament,<sup>16</sup> that estimates must be presented on behalf of the Crown as the agreed proposals of the government, and that only the ministry may propose money bills.

The necessity that the ministry approach Parliament for funds as a collectivity requires that in reconciling estimates the Treasury Board set management standards in accordance with which each minister's statutory responsibility for the management and direction of his or her department, and for the control and supervision of the personnel, financial, and other resources deployed within it, must be exercised.

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<sup>15</sup> See above pp. 59-60.

<sup>16</sup> Anson takes the view that the Prime Minister has a "decisive voice in the measures to be submitted...to Parliament"; *Law and Custom of the Constitution* vol. ii, pt. i, p. 124. Jennings is less sweeping, noting "If, as is usual, he is leader of the House of Commons, he is, subject to the determination of the priority of proposals by the Cabinet, in control of the business of the House, through the Government Whips"; *Cabinet Government* p. 155. In Canadian practice, the Prime Minister (or in his absence the next most senior Privy Councillor of the ministry) signs draft bills before they are introduced in Parliament. This procedure may be said to reinforce the Prime Minister's "decisive voice" in determining the government's legislative program.

The role of the Treasury Board as a committee of departmental ministers advising ministers collectively on the content of the estimates does not diminish the individual responsibility of the minister to Parliament to administer his or her department and its programs with the funds appropriated each year for these purposes. It is indeed essential to constitutional responsibility that ministers (acting through their deputies) manage and direct their own departments. Nonetheless, the requirement that ministers manage their departments in accordance with centrally prescribed standards and practices imposes a particular obligation on deputies to ensure that this aspect of their minister's collective responsibility is adequately supported.

Because much of finance is a matter of policy, the financial functions of the Treasury Board are of direct concern to ministers working closely with their deputies in the essential task of reconciling estimates, which in turn is central to the establishment of collective responsibility. Once resources have been allocated, however, the management of the department and the observance of centrally prescribed management standards must in practice fall almost exclusively on the deputy minister, even though in law the minister is responsible.

The deputy must endeavour to administer the minister's department in order best to serve the application of existing policies and programs and their future development as well as the concern of the ministry as a whole that adequate financial and other management standards are observed. The interaction of these requirements, like the reconciliation of the minister's individual and collective responsibilities, should enhance rather than conflict with the ability of the deputy to manage effectively. In the extreme, of course, if the deputy cannot reconcile the requirements of the administration of the department and its programs with centrally prescribed standards and practices, either the deputy must go or the centrally prescribed standards must be adjusted.

It is evident, however, that just as cabinet government is devoted to the development of consensus among ministers that will reconcile their individual and collective responsibilities, so there must be a reasonable balance struck between the administrative needs of a minister's department and those of the ministry as a whole as determined on its behalf by the Treasury Board. Because it is essential to constitutional

responsibility that ministers (through their deputies) manage their own departments, and because they do so in accordance with certain standards judged necessary for sound management and hence the unity and survival of the ministry, it is also essential that ministers as a group have an adequate voice in the establishment by their colleagues in the Treasury Board of the standards and practices that they will be required to observe in their departments. In addition, because management falls almost exclusively on the shoulders of the deputy, it is necessary that as a group, deputies be in a position to influence the central standards that they will be required to implement and for whose observance they will be held accountable. For the Treasury Board's Secretariat, as for other central agencies, this requires that a delicate balance be struck so that the constitutional requirement that each minister manage the public service resources deployed in his or her department will be reinforced and not weakened by the conventional requirement for the establishment and observance of centrally prescribed management standards. Above all it is essential that central agencies conscientiously avoid any action that would have the effect of arrogating to them the line responsibilities of ministers, whether in matters of policy or of administration. The danger of this sort of thing occurring is greatly increased if the standard-setting role of central agencies becomes control-oriented, and the best means of guarding against this happening is to ensure that equilibrium is maintained throughout the system. In management matters, responsibility for the maintenance of this equilibrium must be shared between deputies and the appropriate central agencies, each acting on behalf of ministers, and each recognizing that the management of the public service is the special responsibility of the deputy minister.

The balance between the management of the public service by ministers and deputies, on the one hand, and the observance of central standards, on the other, or between the minister and the Treasury Board, or between deputies and the Treasury Board's Secretariat, tends to force the participants at each level to justify their actions. If however, the rule-making habits of central machinery lead central agencies to proliferate central standards, or if they become control-oriented, there is a danger that the individual responsibility of ministers and deputies (on which the system is built and from which accountability flows) will be eroded. Experience in the central control of resources, especially in the financial area in the period 1931-1967,

indicates that unless ministers and their deputies have an adequate voice in the management of departments it is difficult to hold them accountable, and in the absence of accountability central control becomes inevitable.

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**VII**  
**CONSTITUTIONAL RESPONSIBILITY**  
**AND ACCOUNTABILITY**

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## Accountability in Parliamentary Government – the Minister

Accountability is a means of making responsible the exercise of power. In parliamentary government power resides in the Crown and is exercised by ministers. Power is concentrated in ministers both in its exercise and in their personal accountability to the House of Commons for its use. Our system does not control power by dividing it as in systems founded upon "the division of powers", but by ensuring that those who exercise it are personally responsible for their actions.

The direct responsibility of ministers to Parliament on a day-to-day basis is the essential strength of our system.<sup>1</sup> Its vitality depends on the ability of ministers to answer for actions carried out under their authority. From the origins of our system, however, political circumstances rather than literal application of the principle of ministerial responsibility have governed the answerability of ministers. Critics of ministerial responsibility have noted that the chances of punishment through loss of ministerial office are few, and that the operation of this ultimate sanction is "arbitrary and unpredictable".<sup>2</sup> The fact is, however, that although ministers seldom lose office due to irresponsibility, the possibility of that occurring, and more important the embarrassment and political consequences of being caught out, are more than adequate sanctions.<sup>3</sup> Parliament expects ministers to answer to it. Members look upon ministers as readily accessible spokespersons for their departments, and ministers strive to respond because they are constitutionally responsible and they fear the political consequences of making a poor showing.

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<sup>1</sup> See above pp. 3-6, also Parris, *Constitutional Bureaucracy* pp. 294-308; and Geoffrey Marshall and Graeme Moodie, *Some Problems of the Constitution* (London, 1959) pp. 78-84.

<sup>2</sup> See Finer, "The Individual Responsibility of Ministers" pp. 393-394.

<sup>3</sup> Indeed, although ministers may not lose office immediately as the result of some shortcoming, they are often demoted and sometimes dropped in subsequent cabinet shuffles.

The personal responsibility of ministers is strengthened by their collective responsibility, which helps internally to ensure the accountability of ministers for their individual actions. Indeed, although it is true that collective responsibility rendered obsolete the impeachment of ministers by Parliament, it replaced that practice with a requirement either to vote want of confidence in the ministry of (by threatening to do so) to persuade a Prime Minister to seek the resignation of a particular colleague whose continued presence might be considered an affront to the doctrine of individual responsibility on account of his or her actions or omissions, or which might force a vote of non-confidence in circumstances that the ministry as a whole was not prepared to accept. In short, the responsibility of ministers depends in good measure on the *will* of the House to hold them answerable.

### **Conclusion**

Constitutional responsibility is, therefore, individual in character and governs the relationship between the minister and the House of Commons. Ministers are responsible for all the actions taken under their authority. Although it is true that the degree in which they will be required to answer for the actions of officials will depend upon the political circumstances and whether an official has, for example, acted in a clearly unacceptable manner of which the minister had no knowledge, the fact remains that the minister is constitutionally responsible and this is essential in determining who answers for what and to whom in the system.

### **Accountability in Parliamentary Government – The Deputy Minister**

The responsibility of ministers is a constitutional principle whose quality is essentially political, being drawn upon from time to time in response to exposure of differences about policy or of wrong-doing or mismanagement in order to test the confidence of the House in the ministry. Although the possibility lurks behind every question put to a minister, and although the quality of the answers could weaken the minister's or the government's position, even resulting in parliamentary

or public enquiries or the withdrawal of the support of colleagues resulting in the minister's resignation, in many cases the minister's answerability is a matter of providing uncontroversial information where no real test of his or her responsibility is involved.

The pyramid of responsibility that rises up to the deputy and then to the minister extends from the minister to Parliament. Parliament's constitutional concern is to assure itself that ministers have adequate control over their departments in order that they may answer for the activities carried out in their names. Parliament achieves this through a variety of mechanisms such as written and oral questions, motions for papers, study of the estimates, scrutiny of government bills, and review of the Public Accounts and the reports of the Auditor General. Officials, particularly deputy ministers, play an important role in many of these activities.

Officials are not of course constitutionally responsible, but they play and have played a role *vis-à-vis* Parliament that in some important respects complements the role of ministers. Although officials do not have constitutional responsibility nor share the responsibility of their ministers, they do share to a degree in the answerability of their ministers to Parliament. A traditional preserve has been established that protects officials from answering to Parliament on matters of policy or matters involving political controversy. Apart from the obvious reasons of political sensitivity, matters of policy and political controversy have been reserved more or less exclusively for ministers principally because political answerability on the part of officials would inevitably draw them into controversy, destroy their permanent utility to the system, and, indeed, undermine the authority and responsibility of their ministers. Ministers are, furthermore, most closely associated with policy, and conflicting views expressed by officials could give rise to chaos and embarrassment. Deputies may, however, in the presence of their ministers explain and answer questions having to do with complex policy matters, but they do not defend policy against political attack. In other matters, principally those having to do with the administration of the department and its programs, officials answer directly on behalf of their ministers.

The answerability of deputies and other officials is rendered in the committees of both houses, and is best seen in the Public Accounts



Committee, where it is now customary for officials rather than ministers to appear. In other committees officials are supposed to appear in support of the minister or his or her parliamentary secretary. The practice is that officials answer questions of administration directly, with the minister or parliamentary secretary (although regrettably sometimes neither is present) intervening if the proceedings threaten to turn into political debate, raising the possibility of the minister's responsibility being involved overtly.<sup>4</sup>

Officials are, therefore, in a sense accountable *before* Parliament for matters of administration. This is a matter of observation. It does not detract from the responsibility of ministers, which will be invoked in cases where administration infringes on matters of policy or political controversy.<sup>5</sup> Even in the days before officials answered before committees, it was normal for ministers to be accompanied by officials to brief them in answering administrative questions. This practice extended to the committee of the whole on supply, where for the first 70-odd years of this century the deputy regularly sat in conference with his or her minister when the department's estimates were under consideration. Nowadays committee of the whole is seldom used

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<sup>4</sup> When Mr. Pickersgill was Minister of Citizenship and Immigration he set out the following ground rules: "The view I have taken on what I should do is to use my own judgment when a question is asked as to whether it is the type of question I should take the responsibility of answering myself or the type of question I should ask one of the officers of the department to answer. I do not intend myself to answer questions which do not involve policy and which do involve detail, because I think it would be quite ridiculous for me to turn to one of these gentlemen here and ask him to whisper the answer to me. He is far more capable of giving the answer himself because I do not pretend to be an expert on the details of the department. However, I would like it clearly understood that any question which I wish to answer myself I have the right to answer exclusively." *Special Committee on Estimates Minutes of Proceedings and Evidence*, No. 1, 17 February 1955. For some of the history of officials appearing as witnesses at committees, see Norman Ward, *The Public Purse* pp. 62 and 267. See May, *The Law, Privileges, Proceedings and Usage of Parliament* p. 629-630, on the power of committees to compel officials to attend.

<sup>5</sup> The distinction between policy and administration has been familiarly allegorized: "Policy is rather like an elephant, you recognize it when you see it, but cannot easily define it"; see Edward, Lord Bridges (Secretary of the Cabinet in Whitehall, 1938-1945) "The Relationship Between Ministers and the Permanent Departmental Head", *Canadian Public Administration* vol. viii, no. 3, 1964.

except for tax bills. Instead, officials appear before select committees, where they answer directly in the manner described.

## Conclusion

Officials are *accountable to their ministers*, who must answer to the House for their use of the authority conferred upon them in law and by virtue of their responsibility to the House of Commons. It is, however, possible to distinguish between a deputy's accountability to the minister for all that occurs under the minister's responsibility, and the deputy's accountability *before* parliamentary committees for administrative matters so long as they do not call directly into question the exercise of the minister's responsibility. The accountability of officials before parliamentary committees for administrative matters cannot be said to alter the *formal* and *direct* responsibility of ministers personally to Parliament for any matter within their discipline for which the House chooses to hold them answerable.

## Accounting Officers

Practice at Westminster with regard to officials *vis-à-vis* Parliament is in some respects different from ours. At Westminster officials do not appear to give evidence before standing committees. When bills are considered (estimates are not referred to standing committees), the minister becomes a member of the committee and debate is carried on much as in the House of Commons. Witnesses are not called. Officials do, however, appear before select committees. This is particularly the case with the Public Accounts Committee, where ministers do not appear because the committee is administrative in its proceedings and non-partisan in its practices. The Public Accounts Committee, which generally meets in public, summons senior departmental officials to answer questions based on the reports of the Comptroller and Auditor General. These officials, usually the permanent secretaries, are appointed by the Treasury as "accounting

officers", and they are responsible for the probity and economy with which funds in their custody are spent.<sup>6</sup>

The basis for the "accounting officer" is the *Exchequer and Audit Act* of 1866, which in section 22 established that the duty of preparing departmental accounts "may be assigned by the Treasury" to "any Public Officer or Officers".<sup>7</sup> This act, and the provision made in the early 1920's to designate permanent secretaries as "accounting officers", perpetuated Parliament's long established practice of looking to the Treasury to ensure probity and economy in the use of resources. The practice whereby "accounting officers", rather than ministers, appear before the Public Accounts Committee depends upon the non-partisan and administrative concerns of that committee, emphasizing that the accountability of accounting officers is *before* rather than *to* the committee and does not detract from the constitutional responsibility of ministers.

Similar if not as precise provision was made by Parliament at Ottawa in 1867. Sections 34 and 37 to 46 of the *Revenue Act* of that year set out the civil responsibilities and the criminal liability of specially designated officers for the custody and accounting of public money.<sup>8</sup> The substance of these provisions was retained in successive consolidated revenue Acts, and was strengthened in the 1931 Bennett reforms through application to the Comptroller of the Treasury and his network of accounting officers. Section 57 to 65 of the *Consolidated Revenue and Audit Act* of that year established in extensive and very

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<sup>6</sup> The appointment of permanent secretaries (i.e. deputies) as accounting officers recognizes that finance cannot be divorced from policy, and that accountability for financial matters can only be rendered by those responsible for providing ministers with policy advice. When the British system was established in the 1920's the Treasury successfully overcame the recommendation of a parliamentary committee to designate financial experts as accounting officers.

<sup>7</sup> *An Act to consolidate the Duties of the Exchequer and Audit Departments, to regulate the Receipt, Custody, and Issue of Public Moneys, and to provide for the Audit of the Accounts thereof* 29° and 30° Victoriae, Cap. 39. See also extract from a *Treasury Minute* dated 14 August 1872, in "The Responsibilities of an Accounting Officer", *Note by the Treasury*, 17 February 1964.

<sup>8</sup> *An Act respecting the collection and management of the Revenue, the Auditing of Public Accounts, and the liability of Public Accountants* 21 December 1867, 31° Victoriae, Cap. V.

direct terms the accountability of financial officers to the Minister of Finance for the expenditure and accounting of public funds, including their liability to pay costs and fines associated with the recovery of unauthorized expenditures.<sup>9</sup> Although reference to the accountability of financial and other officers was removed when the *Revenue Act* was superseded in 1951 by the *Financial Administration Act*, the civil liability of such persons was retained, and remains part of the Act currently in force. Similarly, throughout the amendments to successive revenue acts spanning the century from 1867 to 1967, criminal liability for embezzlement and the taking of bribes by public servants has remained a constant feature.<sup>10</sup>

It is clear, therefore, that the constitutional responsibility of ministers is not designed to protect the irresponsibility of officials. From the earliest days, Parliament has made specific the liability of officials for civil and criminal wrongs respecting their custody of public monies. In fact, the rule of law requires that any individual who violates the law must be legally responsible for his or her action. Dicey noted that "every official, from the Prime Minister down to a constable or collector of taxes is under the same responsibility for every act done without legal justification as any other citizen".<sup>11</sup>

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<sup>9</sup> *An Act to Amend the Consolidated Revenue and Audit Act* 21-22 Geo. V. ch. 27. See Norman Ward for a description of the similarities between the Whitehall reforms of the 1920's that established permanent secretaries as "accounting officers" and the Bennett reforms at Ottawa of 1931; *The Public Purse* pp. 168-169.

<sup>10</sup> See *An Act for the Financial Administration of the Government of Canada, the Audit of the Public Accounts and the Financial Control of Crown Corporations* 15-16 Geo. VI, ch. 12, 1951, pt. ix; and R.S.C 1970, ch. F.-10. It is also worth noting that sections 24, 25 and 27 of the Act currently in force require deputy heads to maintain adequate accounting procedures to ensure that funds are not over-committed and that payments made are both "reasonable" and according to contract.

<sup>11</sup> Dicey, *Law of the Constitution* p. 193. At p. 327 he notes that "the acts of Ministers no less than the acts of subordinate officials are made subject to the rule of law".

## Conclusion

The civil liability of public officers for misappropriating funds and their criminal liability for fraud has a long history in Canada and may be said to be entrenched in the Common Law. Until 1951 specific provision was made for a system of accounting officers to ensure probity in the use of public money. In Canada accounting officers were responsible in law to the Minister of Finance, and today the "accounting officer" in England is legally responsible to the Treasury. Their accountability before Westminster's Public Accounts Committee is a matter of *practice*, and it is a matter of observation that a not altogether dissimilar *practice* is current in Ottawa at the present time. The British practice is, however, better established, which in part at least is due to the non-partisan ground rules at Westminster that enable the Public Accounts Committee and the Treasury to work closely to improve the financial management system.<sup>12</sup> The committee is, in short, a highly respected body, and its more important recommendations are periodically published as *Epitomes*, which are regarded as "the standard text-book of financial administration".<sup>13</sup>

The British institution of the "accounting officer" is recognition in the statute law of the civil and criminal liability of an individual for his or her personal actions. Convention and parliamentary practice has, however, enabled the institution to develop as a means of enabling Parliament to scrutinize and to some extent to control the exercise of administrative authority within the government. The convention that enables Parliament to hold officials rather than ministers accountable for administration lies at the heart of the value of the institution of the accounting officer, and is made possible by the non-partisan practices of the Public Accounts Committee.

As government has learned through the blurring of individual responsibility by the imposition of central controls, responsibility shared tends to be responsibility shirked. *Formal and direct*

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<sup>12</sup> Indeed the relationship often takes the form of collaboration. See Roseveare, *The Treasury* pp. 141, 202.

<sup>13</sup> Jennings, *Parliament* pp. 337-338. See also de Smith, *Constitutional and Administrative Law* pp. 289-290.

accountability of officials to Parliament for administrative matters would divide the responsibility of ministers. It would require the establishment of firm practices governing the sorts of questions for which ministers as distinct from officials would be answerable, and this would be reflected daily during Question Period. Experience indicates that such distinctions are artificial and that Parliament prefers not to recognize the informal division between the answerability of officials and of ministers for the very reasons that ministers are constitutionally responsible and that the extent of their answerability is defined by political circumstance. Furthermore, theology aside, such divided responsibility would be unsound management.

Administration and management of programs consists of carrying out policies based on political decisions. Programs have, of course, a technical administrative aspect, and these matters are usually dealt with by officials at parliamentary committees. The attempt, however, to identify discrete areas of official accountability to Parliament would likely result in the further blurring of lines of accountability, weakening the ability of the House to hold the minister responsible when it chooses for matters falling under his or her authority. This does not argue against the value of having officials appear and being held accountable before parliamentary committees on behalf of their ministers, and strengthening Parliament's capacity to examine officials and ministers more closely. Ultimately, however, ministers are constitutionally responsible because they (not their deputies) have the deciding word for which they alone can be held politically answerable.<sup>14</sup>

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<sup>14</sup> It may be noted that historically Parliament has left detailed control of the purse to the ministry. In his report to the Borden administration in 1912, Sir George Murray plainly set out the facts. "The control of expenditure may be considered from two points of view, there is the control exercised by the Government over its own Departments; and the control exercised by Parliament over the proposals of the Government. The latter may, I think, be regarded as negligible for the present purpose. In theory the control of Parliament over expenditure is complete, in practice it is of little value. This is partly due to the fact that, as the Government must necessarily command a majority in the House of Commons, it can generally secure the passing of its own estimates; and partly because notwithstanding many professions of a desire for economy in the abstracts [sic]. Members will generally be found demanding increased expenditure

## Ministerial Responsibility and the Congressional System

Accountability is a means of controlling the exercise of power. In parliamentary government constitutional responsibility requires (literally and figuratively) that ministers answer daily for their actions, and imposes a variety of sanctions if they fall short in their answers. There are, however, other constitutional means of controlling the use of power, based not so much on the principle of the exercise of power responsibly as on the limitation of power through its formal division. The best known of these is the congressional system, particular features of which are often promoted for incorporation into our practices. One such feature involves the "accountability" of officials to congressional committees.

What would happen to constitutional responsibility if the minister ceased personally to be exclusively responsible for his or her department and its activities? Could we divide constitutional responsibility between ministers and officials? The short answer is yes, but that in doing so we would also have to make extensive changes in our system of government and set aside the historical evolution of our form of constitutional responsibility based on personal accountability.

Sometimes, those who doubt the continuing application of ministerial responsibility point to federal institutions in the United States, where the activities of government departments are scrutinized through the appearances of several levels of *politically appointed* officials before the committees of the Congress to defend the *policy* of the

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for purpose in which their constituencies are interested, rather than reductions on items which do not fall under this category. In short, the control of public expenditure must depend almost entirely on the Government of the day; and here again we shall generally find that individual Ministers, while not unwilling to acquiesce in the reduction of the estimates of other Departments, are *prima facie* disposed to recommend increased expenditure in their own." Murray's solution to this age-old problem was tighter control by the Minister of Finance over the process of reconciling estimates. *Report on the Organization of the Public Service of Canada*, pp. 10-11.

administration. It should be noted, however, that this scrutiny is *not* formal accountability since once appointed such officials may only be removed by the president unless the Congress resorts to the extraordinary measure of impeachment. In short, *such officials are not constitutionally responsible*. It is also important to stress that they are politically appointed and not intended to be non-partisan. Indeed, the appearance of officials to defend policy is the consequence of a governmental system based on a principle for the control of power completely different from that operating within parliamentary government. To achieve the same consequence in parliamentary government, we would need to re-examine the principles on which our system is built, starting with the origins of power and the nature of constitutional responsibility that form the basis of all of our arrangements.

Power in representative parliamentary government flows from the Crown, which exercises power responsibly according to the wishes of the legislature and the interpretation of the judiciary, both of which include the Crown as a constituent element. In the congressional system, however, power flows from the People. It is not controlled primarily by making it responsible (i.e. by holding those who use it accountable), but rather by limiting its scope and countervailing its operation – hence the separation of powers.

In giving limited power, congressional government endeavours to ensure that power cannot be grossly abused. It is important to understand that although the system involves important elements of *de facto* accountability of officials before the committees of the Congress, the system does not vest responsibility in these individuals regardless of their rank. Power is divided among the executive, the legislature, and the courts, three formally distinct and separate arms of the constitution. Once appointed to office by the president and confirmed by the Congress, members of the executive are formally accountable only to the president, who is the only externally accountable member of the executive, and except in the extreme he is accountable not to the Congress but to the People, from who he and the constitution derive their power. In addition, because the executive is vested in one person, rather than in a group individually and collectively responsible, and because neither the president nor his advisers are members of the Congress, there is no collective responsibility and thus no overt internal pressure to ensure the responsible



exercise of the executive's authority, which is checked in the last resort not by responsibility in its exercise, but by its inherent limitations.

The control of power by its division (rather than by making those who use it constitutionally responsible and daily and directly accountable to the representatives of the electorate) tends to weaken accountability for its use. The division of powers makes it difficult to focus responsibility or to hold individuals personally accountable. In any given area of major policy one finds a succession of players in the Administration as well as the Congress each of whom has a degree of responsibility and a share of power, but as a rule there is no one with ultimate responsibility for the exercise of all the power necessary to take action.<sup>15</sup> An essential aspect of the division of power is the operation of countervailance among those exercising its various parts, and in the absence of constitutional responsibility vested in accessible individuals, the operation of countervailance in a system of divided powers makes it virtually impossible to hold individuals personally accountable, except in the narrow sense of prosecuting personal misconduct.<sup>16</sup>

Those who think that our parliamentary system is inefficient in transacting business have only to consider the congressional system to realize that parliamentary government is not the only slow-moving constitutional arrangement for the exercise of power. Under parliamentary institutions a government that has determined to act can expect to see its decision translated into action. In the congressional

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<sup>15</sup> The president may, for example, propose a budgetary measure to the Congress, but the House Ways and Means Committee may modify it extensively or recommend something entirely different to the Congress, and short of exercising his veto the president may have to accept measures to which he is more or less opposed and which in any event he has not recommended. By contrast the proposals of the Minister of Finance may only be changed with his or her agreement, and the House may neither increase these taxing proposals nor introduce new ones. In the parliamentary system the budgetary policy of the government is, therefore, the clear and personal responsibility of the Minister of Finance, and he or she cannot blame the House or anyone else for its consequences.

<sup>16</sup> The blurring of accountability may also be seen in the operation of the congressional committee system where powerful committees with influential clientele can in effect remove control of certain parts of the bureaucracy from the executive.

system this is not always so. A president (unlike a Prime Minister) may have security of office for four years, but he may not be able to persuade the Congress to do his bidding. Unlike Parliament, the Congress is able to initiate taxing and spending proposals, but the president may veto them. It is evident that each element of the congressional system of countervailance or "checks and balances" operates independently, which is necessary if the separation powers is to be effective. Parliamentary government functions quite differently. Power is made responsible through the twin devices of integrating the "executive" into the "legislature" and creating a collective executive each member of which is constitutionally responsible and individually accountable to his or her colleagues and to the House of Commons.

In the congressional system, cabinet secretaries and others of similar rank are creatures of the president. Their deputies are appointed to office and are intended to be partisan *vis-à-vis* the Congress, which holds them *politically* answerable for their respective roles in the president's administration.<sup>17</sup> Ministers are quite different from cabinet secretaries. They are constitutionally responsible for the exercise of power, and they are elected representatives. Their deputies are non-partisan and they cannot formally share the personal responsibility of ministers. Cabinet secretaries could, however, take an important step towards the constitutional responsibility of ministers by being popularly elected and made responsible to the Congress. If under such conditions their deputies continued in a politically active role *vis-à-vis* the Congress, it would be evident that the cabinet secretaries were not truly constitutionally responsible in that their inability to answer completely for their department undermined their responsibility to the Congress. In such circumstances Congress could either strip deputies of their political answerability, or else it could bring them into the Congress ensuring that the cabinet secretaries and their deputies together would be constitutionally responsible and jointly answerable to the Congress in the sort of commission or board

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<sup>17</sup> Although formally accountable only to the president, they appear freely before congressional committees to explain the *president's* policy and actions. To the extent that such appearances constitute *de facto* accountability to congressional committees, secretaries and deputy secretaries share accountability for actions they have taken on behalf of the president.

arrangement that was current in parliamentary government until it was found more effective to concentrate responsibility in a single individual personally answerable.

Such an arrangement would, of course, violate the essential principle of the separation of powers in congressional government, and takes no account of the president as the embodiment of the executive. It seeks to graft onto the congressional system the parliamentary notion of the responsibility of the executive to the legislature, which could not be set in place without fundamental change in the distribution of power and hence responsibility in that system. The reverse of the coin in parliamentary government would be formally to divide the constitutional responsibility of ministers. A very important consequence of such a development would be to politicize those with whom the responsibilities of ministers were shared, i.e. deputy ministers. Unless at the same time parliamentary government was replaced with institutions compatible with a congressional-style division of powers, which would require that ministers be stripped of their constitutional responsibility to the House and reduced to the subordinate state of their deputies, the only means of accommodating the politicization of deputies would be to bring them into the House formally placing the minister's responsibility in a commission consisting of the minister and his or her deputy. Without this, Parliament would no longer be able to hold those of its members forming the government responsible for the activities of the public service, which would be intolerable to Parliament and the negation of its historical struggle to make government constitutionally responsible.

## Conclusion

Congressional government *works* more subtly than is indicated here. Nonetheless, the essential differences in foundation and approach to the use of power are stark and must be understood by those who think that an attractive aspect of a different system of government can be

transplanted without disturbing the pattern of the constitution, risking destruction of the delicate balance of constitutional responsibility.<sup>18</sup>

### **The Deputy Minister's Accountability**

The deputy minister is appointed by the Prime Minister, in consultation with the minister whom he or she serves, and must observe centrally prescribed standards for the management of the resources at the disposal of his or her department. It is sensible, therefore, that the accountability of deputy ministers should rest on the roles and responsibilities that stem from their relationships with their respective ministers, the Prime Minister, and the ministry as a whole.

The deputy's accountability cannot be exercised without reference to the responsibility of ministers to Parliament. Deputies act on behalf of their ministers. They are, therefore, accountable to their ministers, although they may be required to answer *before* parliamentary committees for matters that do not overtly impinge on the responsibilities of their ministers.

The triangular relationship between Prime Minister, minister, and deputy minister defies precise dissection. There is, of course, the theoretical possibility of conflict between the deputy's loyalty to the minister and the Prime Minister. In practice, however, this will not occur if the system's principle of countervailance is at work, with the needs of the collectivity emerging from and sharpening the exercise of the individual responsibilities of ministers.

The deputy's "supreme loyalty is to his (or her) minister", who has within him or her the seeds of the individual and collective nature of the system.<sup>19</sup> The Prime Minister orchestrates the individual responsibilities of ministers, drawing forth the harmony essential to stable

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<sup>18</sup> For some interesting thoughts on the differences and similarities in the nature of the "executive" in parliamentary and congressional systems, see Richard Neustadt, "White House and Whitehall" in *The British Prime Minister* ed. by Anthony King, (London, 1969) pp. 131-147.

<sup>19</sup> See Bridges "Ministers and the Permanent Departmental Head", p. 277.

government. As the Glassco Royal Commission observed in its report, the appointment of deputies by the Prime Minister "provides a reminder to them of their need for a perspective encompassing the whole range of government" and "emphasizes the collective interest of ministers, and the special interest of the Prime Minister in the effectiveness of management in the public service".<sup>20</sup> Nonetheless, provided the equilibrium of the system is in order, the principal quality of deputies is loyalty to their ministers.<sup>21</sup>

Conflict between the deputy's loyalty to the minister and his or her responsibility to the Prime Minister will be symptomatic of a failure of the confederal principle discussed earlier. If it occurs, the clear line of responsibility passing between the minister and the deputy may be destroyed and in the extreme will only be restored through the resignation of one or other, in which event who goes will depend on the particular circumstances.

A deputy will go to the Prime Minister in two sorts of situations. First, there will be the rare case in which the deputy feels that the minister has instructed him or her to do something that is unconscionable, or where in the deputy's opinion the minister is proposing to act dishonestly or in some other unacceptable manner that breaches the standard of ministerial conduct. In such cases deputies must make use of their avenue to the Prime Minister. The second situation is one in which the deputy becomes involved in a dispute with the minister over some matter of policy or administration, or some centrally prescribed management ordinance that the deputy thinks is contrary to the minister's interest. In such a case, a wise deputy will appeal to the Prime Minister only in the last resort, and it would be most extraordinary for disagreements of this nature to result in resignations. Such differences are, after all, exaggerated or uncontrolled examples of

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<sup>20</sup> *Royal Commission on Government Organization* vol. i, p. 60.

<sup>21</sup> Jennings, *Cabinet Government*, p. 97. A former Secretary to the Cabinet has observed that it is the duty of a deputy minister to advise the minister and "...to try to keep him out of trouble. But once the minister decides upon a course of action or new policy, it is the duty of the public servant to further it loyally, except in the rare case where it may be unlawful. When that happens and all else fails, the public servant has no choice but to resign." See J.W. Pickersgill, "Bureaucrats and Politicians" *Canadian Public Administration* vol. xv, no. 3, 1972.

countervailance at work in the system, and usually the machinery for forging the collective from the individual wish will correct the situation.

Cases of dispute between ministers and deputies may be resolved with the help of the Prime Minister and his senior advisers, the secretaries to the cabinet. More generally, however, countervailance between ministers or between deputies is made a creative rather than a destructive force by their own desire for accommodation and by the synthesizing roles of the Privy Council Office and the Treasury Board Secretariat, which work to draw individual initiatives and proposals into the market place so that they may interact, gradually forming themselves into initiatives satisfactory to the collectivity.

Deputies are, therefore, principally concerned with the responsibility of their ministers. They should be judged foremost for the way in which their activities on behalf of ministers contribute to the equilibrium of the system. If central agencies operate successfully, they will create the right circumstances for transforming individual initiatives into a collective undertaking. If they do not, due either to too much or too little activity, they destroy the circumstances in which ministerial government operates successfully. This is why it is crucially important that central agencies and departments understand the nature of constitutional responsibility in our system of ministerial government and their respective roles within it. If central agencies can strike the right balance throughout the system, their activities will complement the policy initiatives and management functions of departments, ensuring that the requirements of the centre sharpen the individual responsibilities on which the system is based.

## **Conclusion**

Because deputy ministers support the individual responsibilities of their ministers, and because they play a special role in helping their ministers to maintain the collective responsibility of the ministry, their accountability should reflect:

- i) their responsibilities to their ministers for the authority that they exercise on behalf of ministers to develop policies and

programs, to execute it in accordance with the purposes for which Parliament appropriates money, and to do so by managing and directing those portions of the public service located in ministers' departments;

- ii) their support for the exercise of their ministers' collective responsibility by ensuring (a) that their ministers' policy positions on departmental and other governmental issues are adequately supported; (b) that at the direction of their ministers they develop policies and programs that will complement the overall objectives of the ministry as subscribed to by their ministers; and (c) that in fulfilling their special responsibility for the management of departments and programs, they observe the standards and practices imposed on each minister and his or her deputy by all ministers;
- iii) their special responsibility to ensure that the centrally prescribed management practices of the ministry applicable across the government are observed in their departments in order to ensure (a) that the ministry will be able to approach Parliament as a collectivity for supply; and (b) that management practices are such as to ensure the maintenance of Parliament's confidence in the ministry; and
- iv) that they should (a) be consulted in the elaboration of those policies of the government in whose implementation they will be expected to play a key role; and (b) because they have a special responsibility for the management of the public service resources deployed in their departments, they should contribute to the establishment of centrally prescribed management standards necessary to the maintenance of Parliament's confidence in the ministry.

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**VIII**  
**THE PRINCIPLES OF ACCOUNTABILITY**



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Accountability in the system derives directly from the responsibility of ministers. Ministers answer before Parliament and are challenged to defend the way in which they or their officials have exercised the power that is made legitimate by their constitutional responsibility as ministers. Parliament expects and requires that ministers be responsible, and enjoys ready access to ministers for the purpose of holding them answerable. Deputy ministers derive almost all of their authority from ministers. They are loyal to their ministers and are required actively to support and participate in the policy and administrative decisions taken by ministers individually and collectively. Put simply, deputy ministers are responsible to ministers.<sup>1</sup>

This paper has traced the line of authority flowing from the Crown and the way in which power has been harnessed to the requirements of a representative system of government. Henry Parris has summarized the history that has made the concentration of responsibility in the hands of ministers the bedrock of parliamentary government.

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<sup>1</sup> Pickersgill has noted "... while bureaucrats should not be partisan, they do not have the right to be neutral between government and opposition. Public servants owe loyal service to the government in office whether they like its politics or not. Governments are put in office by the electors, and public servants have no right to sabotage or even to obstruct the decision of the voters. For the best public servants it is not enough to avoid obstructing the political will of the minister and the government. The best of them will try to contribute to the limit of their abilities to the formulation, amelioration, and implementation of new policies or changes in policy of the government of the day, since the government, not the public service, is answerable to the legislature and the public"; "Bureaucrats and Politicians", pp. 426-427. Lord Armstrong, when he was head of the British home civil service, echoed similar views on the link between loyalty and responsibility in testimony to a select committee of the House of Commons: "The impartiality of the civil service lies in its loyal support to the particular party which happens to be in power and the impartiality does not extend to impartiality between the Government on the one hand and the Opposition on the other." See Maurice Wright, "The Professional Conduct of Civil Servants", *Public Administration* spring, 1973, pp. 1-15. On the desirability of permanent and relatively anonymous senior officials, see Sir William Armstrong, "The Role and Character of the Civil Service" published for the British Academy, (Oxford, 1970) pp. 13-16.

If the advice of the Crown originated with a permanent official, what was the proper course for opponents of that policy to take? To attack the minister would miss the target. If, on the other hand, they attacked the official, they would not be able to get rid of him, because of his permanent status. The difficulty was eventually resolved by an extension of the doctrine of ministerial responsibility. In extreme cases, ministers resigned while officials stayed on. Maitland pointed out that "royal immunity coupled with ministerial responsibility". Lowell turned the coin over to read the inscription on the other side: "The permanent official, like the King, can do no wrong."<sup>2</sup>

*But, of course, just as the Crown must act on "advice", so officials must subordinate themselves to ministers, and these are the considerations that create and fasten on ministers their constitutional responsibility.*

It is, however, a matter of observation that government is a large enterprise. It is not a modern phenomenon that ministers cannot know everything that is done under their authority; the phenomenon is merely more acute today than it was 200 years ago, and not *prima facie* proof of the irrelevance of ministerial responsibility. Ministers spend much of their time providing information to Parliament, indicating a need for the minister's ability to answer and provide information to be shared without, however, sharing his or her responsibility. Parliament has recognized this need, and, without prejudicing its right to hold the minister responsible, it has increasingly accepted that officials should answer for matters that at first glance at least are unlikely to involve the House's confidence in the ministers. This development is best observed in the practices that have grown up in Parliament's standing committees.

The essential principles of accountability are, therefore, that power flows from the Crown and is exercised by ministers who are responsible to Parliament. Officials advise ministers and they are accountable to ministers. The accountability of ministers to Parliament may,

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<sup>2</sup> Parris, *Constitutional Bureaucracy*, pp. 104-105.

however, be divided into those matters that directly involve or in the course of debate come to involve the House's confidence in ministers, and those which do not or are unlikely to involve that confidence. The distinction having been drawn, and bearing in mind the importance of ensuring that ministers can effectively hold officials accountable, it is noteworthy that current practice indicates that parliamentary committees play (or have the potential to play) a significant role in holding officials accountable *before* them, thereby *assisting ministers* to ensure sound management of the public service and making more effective the *direct* and *formal* accountability of officials *to* ministers.

Parliamentary committees may play a role in the accountability of deputy ministers, but it is the responsibility of ministers to ensure that deputies, who are their agents, are accountable to ministers. When all is said and done, the fact is that in our system ministers are *elected to decide* whereas officials are *appointed to administer and advise*. The accountability of deputies should reflect harmoniously the relationships with Prime Minister, minister, and ministry that devolve upon deputies by virtue of their responsibilities to support the individual and collective responsibilities of ministers.

Accountability depends upon systematic means of assessing performance. In this, a distinction should be drawn between the roles of deputies as policy advisers and as administrators. The assessment of the deputy's policy role is essentially a matter of subjective judgement and an appreciation of his or her success in fulfilling any previously stated specific policy goals. Assessment for administration is, however, more amenable to objective evaluation based on the deputy's success in the application of management standards and other relatively objective criteria. In this, deputies should be given an adequate voice in the establishment and operation of the centrally prescribed management practices and procedures, which govern the use of the resources that are essential to the fulfillment of the policy and program objectives of the government.

Deputies should understand (and wherever possible participate in determining) the criteria according to which they will be judged and held accountable. This is particularly true in the formulation and management of programs and the administration of their departments. It is also important in the area of policy development and the setting

of policy objectives, where deputies must ensure that they have taken advantage of their opportunity to explain their views and set out any administrative or other constraints that may hinder the fulfillment of particular objectives. Deputies should not be held accountable on a piecemeal basis. Management and finance are integral to policy, and although the deputy's performance in these areas initially may be assessed separately, conclusions and career decisions must be determined on an overall basis. The performance of deputies should be assessed as objectively as possible, and their accountability should depend on the judgement of those to whom they are responsible (the minister and Prime Minister) based on the best specific expert assessments that can be provided.

### **Conclusion**

Accountability that takes account of these considerations depends on an understanding by Parliament, ministers, the public service, and above all by deputies and central agencies of the complex role played by the deputy in reinforcing the constitutional responsibilities borne individually and collectively by ministers. The accountability of deputies, based on the constitutional responsibility of their ministers, sharpened by the convention of collective responsibility, made more effective by their administrative answerability before Parliament, must be rendered to those from whom they hold their appointment, to whom they are responsible, and who will determine their future.