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The Harper Minority and the Majority Myth: Implementing the Conservative Agenda

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Abstract

At a Canadian Study of Parliament conference in October 2010, senior Conservative adviser and Harper confidant Tim Powers told participants that the prime minister was increasingly convinced he could implement most of his agenda without achieving a majority. Additional support for Powers' claim can be found in the memoirs of Harper's former chief of staff Tom Flanagan, who argues first that Harper's agenda is not merely short-term policy implementation, but long-term institutional and societal change and, second, that Harper has long had a coherent and deliberate strategy to achieve this broader objective. Few would disagree with the claim that Harper's aggressive approach to the institutions of government, including his widespread disregard for parliamentary conventions and the oversight role of the legislature, along with his unprecedented control of access to information and centralization of power in the PMO, have played a significant role in enabling his minority government to achieve their immediate objectives. However, seen through the prism of Flanagan's insight about a longer-term strategy, many of the Harper government's tactics with respect to extraparliamentary democratic institutions -- including the marginalization of the media, defunding of interest groups, muzzling of the bureaucracy and blatant disregard for judicial rulings -- can also be viewed as contributing to the implementation of the Conservative agenda. These tactics in turn bear a striking resemblance to the approach used so successfully by the American New Right during the Reagan and Bush eras, several of whose leading advocates are well-known to Harper and members of the original Reform Party. This paper attempts to analyze the various aspects of Harper's strategy and its impact after five years of minority government, in an effort to determine whether the results would support the conclusion that a parliamentary majority, while helpful, is not essential for the implementation of the Conservative agenda in Canada.

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“We can create a country built on solid Conservative values... a country the Liberals wouldn't even recognize, the kind of country I want to lead.”

– Stephen Harper, 2004

Introduction

In the aftermath of the recent federal election, much speculation has focused on the nature of the agenda the Harper Conservatives will pursue now that they have achieved a majority. While some anticipate a major shift in policy direction -- and the introduction of dramatic right-wing measures such as re-criminalizing abortion or eliminating the CBC -- others have suggested that any changes will be far more moderate and incremental. The rationale for these more cautious predictions is political reality. They argue it will not be possible for the Conservatives to move too far to the right without alienating voters who have only given them a test drive, not a permanent license to govern. (Ensign Canada, April 4, 2011)

Interestingly, little attention has been paid to a third possibility. This is the likelihood that change will continue at a moderate pace, largely outside of the legislative arena, because that approach has already proven to be highly effective. This possibility was expressly stated at a Canadian Study of Parliament conference in Ottawa in October 2010, when Harper confidant Tim Powers indicated the prime minister was less concerned about achieving a majority because he was now convinced that he could implement much, if not most, of his agenda with a minority government.

There can be little doubt that the Conservatives' original short-term objectives, as outlined in their election platform, were successfully implemented. The five priorities spelled out within days of taking power in 2006 – GST cuts, accountability legislation, a 'crackdown' on crime, cash to families for child care and a reduction in health care wait times – were neither ambitious nor particularly difficult to achieve, particularly in a minority situation where the opposition parties were loathe to bring down the government. But these priorities were hardly reflective of the broader conservative agenda. As Harper's former Chief of Staff, Tom Flanagan, has described in some detail, the idea behind this minimalist approach was to placate supporters while ensuring that the majority of Canadians who did not vote for Harper were not 'spooked' by rash measures. “Small conservative measures”, he wrote, “are less likely to scare voters than grand conservative schemes, particularly in a country like Canada, where conservatism is not the dominant public philosophy.” (Flanagan, 2009:)

There are a number of important points to take away from Flanagan's comments. First and foremost, Flanagan has recognized that Canada's political culture is essentially 'liberal'. Secondly, it is clear from Flanagan's writings that this reality is not lost on Stephen Harper. Indeed, Harper has frequently made this point himself, most notably in comments before taking over the helm of the Conservative Party. For example in a speech to an American think tank in June of 1997 Harper, who at the time was Vice President of the National Citizens' Coalition,

famously declared that Canada “is a northern European welfare state in the worst sense of the term and very proud of it.”

Thirdly, Flanagan’s comments make it clear that he believes only a specific and targeted strategy can succeed in overcoming the entrenched liberal culture and delivering an electoral victory for any conservative party in Canada. Indeed, in a piece he co-authored with Harper entitled “Our Benign Dictatorship”, Flanagan specifically argued that no conservative victory could be achieved without a concerted effort to win, *at a minimum*, the support of western populists and Quebec nationalists along with the ‘red Tory’ Progressive Conservatives. (Gairdner, 1998)

But as Flanagan himself admits, Stephen Harper was not convinced that such a strategic alliance would be either sufficient to gain power, or durable enough to achieve permanent change. In his seminal June 2003 speech to Civitas, a secretive group of conservative thinkers, Harper outlined his own views on how to achieve a conservative victory. Simply put, his strategy involved the merger in one political party of economic and social conservatives, or ‘neo-cons’ and ‘theo-cons’. More importantly, he argued for a greater emphasis on the social conservative side of the equation because “serious conservative parties simply cannot shy away from values questions.” This in turn was because “on a wide range of public policy questions, including foreign affairs, defence, criminal justice and corrections, family and child care....social values are increasingly the really big issues.” In fact, Harper argued the party needed to emphasize the social conservative side because “a growing body of evidence points to the damage the welfare state is having on our most important institutions, particularly the family.” Similarly, he declared even such disparate areas as defence and foreign affairs were affected, and stressed that “emerging debates on foreign affairs should be fought on moral grounds” as well.

An equally important factor in the speech was Harper’s rejection of the Canadian version of liberalism and/or European socialism, which he simply referred to as The Left. He made it clear that he saw the “real challenge” posed by liberal cultures and governments to be their social, not their economic, agendas, and went on to decry the “social relativism, moral neutrality and moral equivalency” of a liberal culture in which secularism, pluralism and social justice are highly valued. He equated modern liberal philosophy with something “darker” than relativism. “It has become a moral nihilism” he argued. This is particularly informative about Harper’s views on the role of government institutions. Simply put, he believes such institutions are an obstacle for conservatives because they promote liberal ideology in and of themselves. Similarly, many government practices and parliamentary traditions are to be regarded with skepticism, since they allow for organized dissent, a concept at odds with the view that conservatives are right and those who oppose them are not simply in disagreement but wrong. (Nadeau, 2011)

At the same time Harper agreed wholeheartedly with Flanagan’s cautionary approach to implementation of the conservative agenda. “The explicitly moral orientation of social conservatives”, Harper declared, “makes it difficult to accept...the incremental approach. Yet, in

democratic politics, any other approach will certainly fail.”¹

From a strategic perspective, Harper admitted in his Civitas speech that the new value-driven conservative policy agenda might cause the party to lose some voters, such as red Tories and members of the corporate business community. However, he emphasized that “this is not all bad...a new approach can draw in new people. Many traditional Liberal voters, especially from key ethnic and immigrant communities, will be attracted to a party with strong traditional views of values and family. This is similar to the phenomenon of the Reagan Democrats in the United States, who were so important in the development of the conservative coalition there.”

Harper’s reference to the Reagan Democrats is especially revealing. In order to understand his long-term agenda, as well as the rationale for his short-term tactics and strategy, it is necessary to examine in somewhat more detail the phenomenon to which he referred, and with which he was so familiar, namely the rebirth of the conservative movement in the United States and its co-optation of southern Democrats in a new coalition known as the New Right.

The ‘New Right’ Connection

Stephen Harper’s admiration for American politics and culture has been publicly demonstrated on a number of occasions. Among the most controversial were his decision to travel to Washington in 2003 to meet with the Republican leadership to show support for the Iraq War effort, and to publish a letter in the *Wall Street Times* apologizing for Canada’s failure to participate in the ‘coalition of the willing’. (“Conservative Canadians Speak Out!”, 3/28/03). Perhaps less well-known is his statement to the American Council for National Policy in 1997 that “Your country, and particularly your conservative movement, is a light and an inspiration to people in this country...” Yet this perspective is hardly surprising, given the similarity in the situation of the two groups of conservatives and the fact that many of their leadership are known to each other. Most of all, Harper’s comments provide an insight into the lessons he drew from the successes of American conservatives, which he intended to apply to the Canadian context.

Like Canada’s Progressive Conservatives, American Republicans were generally on the outside of power looking in. Admittedly Republicans in the United States have had their fair share of presidents, but control of the legislature, and especially of the House of Representatives, has been a far more difficult proposition. Most observers have attributed this to the fact the United States is essentially a liberal democratic country. Republicans could only win on those occasions when the Democratic Party had been in power for too long or done something too offensive. After the departure of Richard Nixon in disgrace, even the presidency looked as if it would be unattainable for Republicans for a very long time.

¹Originally reproduced in the *Citizens Centre Report* of June 2003 and then posted on the Christian Coalition International website, the speech has been removed and is now unavailable except on the website of Cannabis Culture, at <http://www.cannabisculture.com/v2>)

It was in this climate of despair that Paul Weyrich, Richard Viguerie and Howard Phillips began to organize events around a small group of committed conservatives whose objective was to not simply to return a conservative party to power but to achieve a “long-term goal of realignment ... a shift in the predominance of one political philosophy to get hegemony over American politics.”(Drew, 1997) This was obviously a tall order but the small group of committed conservatives saw themselves as separate from the old, traditional Republican Party which was not particularly conservative at all, and they were determined to make a difference. Together they created a ‘New Right’ in America which ultimately led to the victory of Ronald Reagan and the dominance of the Republicans in the White House throughout the 1980's and early 90's, and again in the first decade of the new millennium under George Bush Jr. How they accomplished this was something Stephen Harper – from his own comments to the Civitas group and his subsequent actions as Conservative Party leader and prime minister -- observed with close attention.

Paul Weyrich, the so-called ‘father’ of the New Right, began this rebuilding process by organizing like-minded conservatives, many of whom had served together on the failed Goldwater campaign. His point of departure was the need for a party which stood for something, rather than the existing brokerage model which consisted of an amorphous group of non-Democrats. Broadly speaking he made two major contributions to the conservative effort. First, he created a number of right-wing think tanks and research organizations to articulate the ideas the conservatives could use to build a base, a significant development in itself. (It was in these organizations that many of the leading members of the first Bush administration such as Paul Wolfowitz sought shelter during the Clinton years, while awaiting their return to power under George Bush Jr.) However Weyrich’s second and far more lasting contribution was to recruit an entirely new body of supporters for his conservative ‘new right’ movement from social issue activists (such as the pro-life movement of Phyllis Schaffly and the American Rifle Association) and Christian evangelicals. As Meacher (2009) has noted this strategy, which coopted the so-called Southern Democrats to the Republican Party, was essential in securing the longer-term rock solid base of support for the Republican Party. In his view, “the New Right not only helped to bring conservatives to power in the late 1970's, but changed the nature of the Republican Party and partisan politics in Washington for decades to come” (2009)

Perhaps equally important, Weyrich convinced conservative ideologues that it was necessary to be pragmatic, and at times to settle for incremental change. In so doing, he also persuaded them that they could actually win. While this might have seemed problematic after Nixon’s exit in disgrace, by 1978 victory had indeed been accomplished in terms of the New Right’s vigorous campaign to defeat targeted and well-known liberal Democrats and elect their own supporters in several seats in the House. (Vigneurie, 1978)

Weyrich’s contributions were complemented by those of Richard Viguerie -- who became known as a direct mail fundraising guru and who took advantage of the strong views of many of Weyrich’s new recruits to secure previously unimaginably high levels of funding for the cause – and Howard Phillips, who served as a grassroots organizer, not only securing new members but getting out the all-important vote. Conversely, as Weyrich himself stated bluntly during the 1980

campaign which saw Ronald Reagan elected, another aspect of the New Right strategy was to count on the disaffection and failure of many Democratic supporters to vote. “I don’t want everyone to vote...our leverage in the election quite candidly goes up as the voting populace goes down...” (Hodgson,1996: 249)

The success of the New Right in 1980 was only the beginning. As noted in an earlier work:

The 1980 election was a watershed in more ways than one. Not only did it put a right-wing Republican in the White House, but it did so by dividing the nation in a way previously unheard of since the New Deal. Just as Reagan’s conservative views broke the Liberal Democratic consensus about the role of the state, so his campaign Strategy and electoral platform broke the Democrats’ traditional electoral coalition...Reagan captured much of the white middle class with his economic conservatism, and much of the South and rural America with his social conservatism...” (Jeffrey, 1999:22)

Over time the Christian evangelical component of the New Right coalition became even more significant. As Reagan failed to move fast enough or decisively enough for some on the far right, groups such as the Moral Majority (Newt Gingrich) and the subsequent Christian Coalition and Family Research Council have emerged to prod the Republicans even when they are in power. As Meagher concluded, this coalition appears to have become a permanent fixture in conservative politics in America. “The Christian Right is now firmly entrenched in the GOP coalition, and we have the New Right to thank. The emergence of Sarah Palin as one of the faces of the GOP suggests the influence of the New Right within the party is only growing.” The subsequent introduction of the Tea Party, according to Meagher, only serves to reinforce this conclusion. (2009)

This emphasis on social conservatism by the New Right should not be taken to suggest that they did not also retain their commitment to economic conservatism. Yet another important aspect of the New Right which would prove influential in the Canadian conservative movement was a concept first introduced by Irving Kristol and then heavily promoted by Grover Norquist, the founder and President of Americans for Tax Reform. (A group that served as a prototype for the Canadian Taxpayer’s Federation, chaired at one point by Harper cabinet minister and long-time Reformer Jason Kenney.) It was Norquist, an early supporter of the New Right and the candidacies of Ronald Reagan and George W. Bush, who famously introduced the term “starve the beast.” In essence, Norquist argued that one way to reduce the size of government, (a fundamental objective of conservatives), is to reduce state funding. One way to accomplish this is through tax cuts, thereby denying the state the revenue needed to support its activities. Another is to reduce or eliminate funding for a number of programs or entitlements, thereby avoiding much of the political fallout that would come from vested interests if the actual programs were eliminated.

Norquist's arguments are widely viewed as the motivation for Bush's massive tax cuts and widespread cuts to cultural and social welfare programs. Identified by Nina Easton as one of the "gang of five" most influential conservatives in America today, Norquist's weekly gatherings or 'seminars' during the Bush years were regularly attended by representatives of the president *and* the vice-president, Dick Cheney. (Easton, 2002) A co-author of the *Contract with America*, Norquist is currently considered a driving force behind the nascent presidential candidacy of Newt Gingrich.

A third element of the New Right strategy revolved around its approach to the judiciary. Since conservatives were opposed to most of the programs of the New Deal, in addition to the moral laxity demonstrated by the courts on issues ranging from busing to abortion, it was hardly surprising that the Supreme Court would become a target for the far-thinking proponents of the new conservative agenda of the 1980's. Ronald Reagan would not be around forever, they reasoned, and one day the Democrats would be back in control of the presidency. In order to extend their reach, therefore, the conservatives would need to ensure that they had taken advantage of every possible opportunity to shape the future decisions of the Court, and of quasi-judicial bodies or regulatory bodies such as the Environmental Protection Agency (EPA) by appointing like-minded individuals to replace the 'activist' judges appointed by liberal Democrats.

The Federalist Society was the instrument created to achieve this objective. Created in 1982 by Robert Bork of Harvard, its members believe in a strict "originalist" interpretation of the constitution which coincides with the "states' rights" arguments used as codewords by politicians from Goldwater and Wallace to Reagan. While Bork himself was unsuccessful in his attempt to join the Court, fellow Society members including Antonin Scalia, Clarence Thomas and Samuel Alito are among the impressive number who have succeeded. In addition, members of the Society were and are effectively placed in virtually all of the important decision-making bodies of the executive and legislature, including at various times the post of Attorney General.

The success of their strategy has been evident for more than a decade. As Robert Reich (2011) has argued, the Republican New Right "has politicized the Court more than at any time in recent memory. Last year, for example, a majority of the justices determined that corporations have a right under the First Amendment to provide unlimited amounts of money to political candidates...a patently political and legally grotesque decision ...ranking right up there with Bush vs. Gore." According to Reich, both Thomas and Scalia have continued to be actively involved in Republican strategy while serving on the bench and have recently participated in events organized by Tea Party conservatives, including right-wing financier Charles Koch.

Another significant element of the New Right strategy was the development of an alternative right-wing media. Originally limited to talk show hosts such as Rush Limbaugh and online publications, the concerted efforts of a number of conservative journalists have produced a situation in which liberal media are currently outnumbered even in conventional areas such as print media and television. The Wall Street Journal is now routinely viewed as a conservative organ. Roughly four times more viewers tune in to Fox News than CNN, and local and regional

news stations, including Christian radio programming, have even higher numbers. This has proven an invaluable aid to the conservatives in shaping and even defining public discourse, as the Weapons of Mass Destruction debacle (allegedly involving Rove himself) demonstrated.

Finally, no discussion of the New Right, no matter how brief, would be complete without a reference to two key tacticians who have reinforced the conservative world view within the broader context of American society. The first, Karl Rove, was described by President George Bush Jr. as ‘the architect’ because of his uncanny ability to plan and execute comprehensive electoral strategies. He is frequently referred to as the ‘father’ of attack ads, and has often indicated that attacking opponents, often without regard to the validity of the accusations, is an important factor in winning campaigns. Not surprisingly, he is also widely recognized as a purveyor of misinformation and master of deception. (Democratic presidential candidate John Kerry’s political demise after the “Swift Boat” debacle, for example, is universally cited as an example of Rove’s best handiwork.) As his biographers concluded, “Under Rove, the politics of deception has become a conventional political tool.” (Moore and Slater, 2006) As senior political adviser in the White House, Rove’s influence and authority were likely unprecedented during the Bush years, yet his ultimate objective was “to build a right-wing dynasty that can dominate American politics for decades.” With the advent of the Obama era many observers might have concluded that Rove’s project had failed, but the recent rise in interest in the Tea Party, and his own involvement with a Republican fundraising organization, American Crossroads, and work for Fox News, has kept him personally in the spotlight and provided new outlets for his efforts to shape public opinion.

A similar approach to the aggressive tactics of political campaigns can be found in Frank Luntz, a highly regarded Republican pollster and media relations expert whose self-described expertise is manipulating language for political benefit. Among his more well-known campaigns were those to oppose Democratic proposals by redefining them. For conservative Republicans, a proposed inheritance tax became a “death tax,” global warming became the less worrisome “climate change” and the Obama health care reforms were described as a “government takeover.” However, despite his large client base among Republicans Luntz has been censored by almost every professional polling organization at one time or another, frequently for refusing to release data on which his polling results are based.

Luntz is only the most recent of New Right proponents and tacticians to have met with Stephen Harper and other members of his cabinet and caucus. His presence in Ottawa and meeting with the prime minister in 2006 became a matter of public knowledge when CanWest News reported Luntz had spoken at a Civitas meeting attended by Harper’s then Chief of Staff, Ian Brodie and former campaign manager Tom Flanagan, as well as delivering a campaign-style lecture to the Conservative caucus on “how to win a majority in the next election.” When questioned, Harper indicated “I have known Mr. Luntz for some years”, but insisted he was not in the employ of the Conservative Party. (May 9, 2006)

While there are a number of features in the Conservative Party’s most recent election campaign that suggest it has paid close attention to the tactical lessons of Luntz and Rove, it is perhaps

Stephen Harper's adoption of many of the strategic and philosophical positions advocated by the New Right that is most suggestive of his long-term policy agenda, and notably of his determination to achieve a shift in the Canadian political culture. An examination of the record of his government leading up to the 2011 federal election suggests that far more of both his short-term and longer-term agenda may have been implemented than has been widely understood, partly through the use of such tactics.

At the same time, it is important to note that Harper's Conservatives have had a number of additional advantages not available to American conservatives. With a Westminster parliamentary system, the distinction between the power of the executive and that of the legislature can be effectively blurred, as various observers have argued for some time. (Savoie, 2010; Simpson, 2001) Moreover, with much of parliamentary procedure dependent on common practice and conventions, those who choose to ignore them can often succeed without paying a political penalty. And with a divided opposition in a three-party system, as well as a lack of legislation restraining partisan political spending outside of election campaign periods, the Harper Conservatives appear to have taken full advantage of their unique situation. In addition, they have also taken advantage of the numerous ways in which policies can be implemented by non-legislative means, thereby avoiding entirely the issue of legislative consent. From the introduction of symbols and promotional materials to the creation of programs, the defunding of interest groups and partisan use of the appointments process, much of the agenda can be promoted outside of parliamentary institutions, just as some elements of the liberal agenda that the conservatives reject can be *eliminated* without such legislative scrutiny.

In the next section, a variety of examples have been chosen to highlight – within the limitations of time and space – a number of ways in which the tactics of the New Right, coupled with the realities of the Canadian political system, appear to have been employed by the Conservatives, in order to determine to what extent the various aspects of the Conservative agenda could be considered to have been advanced.

Harnessing the Power of the Executive

Although discussion had taken place for more than a decade among Canadian academics about the real or perceived centralization of power within the office of the Prime Minister, little had prepared them for the degree to which Stephen Harper took advantage of the lack of formal checks and balances on the PMO to achieve the most centralized government operation in history. From the beginning, Harper explained to his ministers that he was not simply in charge but the *sine qua non*. The first objective of his government, he informed them, was to stay in power, in order to implement their agenda. In a minority situation, this meant, as far as Harper was concerned, that he would assume total control of the situation.

As described by one chronicler, ministers attended cabinet meetings to be seen but not heard. They were given marching orders and sent on their way with precise instructions and no mandate to deviate under any circumstances. (Martin, 2010) Within short order, their freedom to speak with the media was severely curtailed and even the location of cabinet meetings was declared a

top secret, so that media scrums of ministers leaving meetings would be impossible. Apart from a few trusted stalwarts such as Finance Minister Jim Flaherty and Industry Minister Tony Clement, (and increasingly to everyone's surprise Treasury Board President Stockwell Day), who were allowed to speak on their own on occasion, most ministers were invisible to the general public, nameless and faceless. This was particularly striking given that Harper's cabinet (as of January 2011) technically consisted of 38 ministers and ministers of state, one of the largest in history.

Given the lack of visibility of most ministers, any incidents involving their performance were obviously newsworthy as the case of Maxime Bernier, an otherwise obscure Quebec cabinet minister, demonstrated. However the most significant revelations about the workings of the Harper PMO and cabinet – and their relevance to the Harper agenda -- occurred when KAIROS, a well-known and highly regarded non-governmental organization, was denied a renewal of its funding by the Canadian International Development Agency (CIDA). The group was a Canadian faith-based ecumenical organization promoting social change through advocacy, education and research programs on human rights, aboriginal self-government and environmental protection. When the firestorm created over the group's rejection reached epic proportions, two highly interesting developments took place. First, Immigration Minister Jason Kenney, who was visiting Israel at the time, implied that the refusal was related to his government's well-known support for that country and determination to crack down on Canadian organizations that provided support for or worked with Palestinian organizations. In short, Kenney was suggesting that funding cuts could and would be decided in terms of the government's broader policy objectives, not bureaucratic rules, and in this case the promotion of a "moral" foreign policy and support at all costs for the state of Israel. This was even more revealing given that KAIROS, the organization in question, was a religious one. But, as various observers noted, its membership did not contain any evangelical Christians.

The outcry from Kenney's comments forced the minister responsible for CIDA, Bev Oda, to deny his claim and insist that the rules had been followed and the organization simply did not meet the criteria for a grant under new guidelines she had issued. In the end, as virtually all Canadians eventually became aware, the issue morphed from one of setting priorities for funding NGOs to one of contempt of parliament. When it became known that Oda had actually received a recommendation from her senior mandarins to support the grant, indicating it did in fact meet the priorities established by her guidelines, she was forced to admit that she had overridden their recommendation. Worse, it soon came to light that she had done so by adding a "not" to a positive recommendation after the fact. When calls for her resignation mounted because opposition parties claimed she had misled the House by saying she did not know who had added the "not", the prime minister staunchly stood behind his minister. Reflecting on the very different treatment of Bernier and Guergis, most observers sensed that this decision was qualitatively different. As one report indicated, "opposition parties were outraged by Harper's support, which they allege is part of an effort to conceal the role the Prime Minister's Office played in ordering Oda, after she had approved the funding, to reverse her stance and alter a key document." (*Montreal Gazette*, February 17,2011) Put more bluntly by opposition leader Michael Ignatieff, "Who do you think told her to change the document? We don't need to send

the Mounties crawling through here. That came straight out of PMO. It's perfectly obvious." (Feb.17, 2011)

The credibility of this claim was heightened by the PMO's earlier establishment of the unprecedented Messaging Events Proposal (MEP) system, used to ensure neither ministers nor bureaucrats were allowed to speak in public without first vetting all comments through a special committee in the Privy Council Office. Apart from the serious problem of blurring the lines between politicians and bureaucrats, the system has reduced virtually all output from government, and hence many reliable sources of information for the media and the general public. Jonathan Rose of Queen's University described the MEPs as a "pre-emptive strike" by PMO to limit debate and ensure that the message of the government is not merely dominant but in fact the only message that is heard. (*Globe and Mail*, June 7, 2010)

A final example of the Harper government's use of executive power in the recent past is equally instructive. Having crafted legislation to ensure fixed election dates, Harper then chose to ignore the legislation at his convenience. While some measure of protest followed his dropping of the writ in 2008, it was limited by the fact that the election date legislation itself was widely considered to be unwise and impractical in a Westminster model parliamentary system. But his decision to request the Governor General grant a prorogation of parliament on two separate occasions within the period of two years – in both cases for blatantly obvious reasons of political expediency – raised more eyebrows and launched a vigorous debate among experts.

Although Canadians did object to Harper's arbitrary use of prorogation on the second occasion, (when he faced ongoing difficulties in the House of Commons about the Afghan detainee issue), they were far more sanguine than the experts about the first. This was primarily because, following the Rove/Luntz formula for communications, Harper was able to frame the debate in such a way that the legitimate constitutional option of a coalition government formed by the opposition parties came to be seen by most Canadians as a proposed coup d'état. Moreover, as constitutional expert Eric Adams has noted, the existence of constitutional conventions was not an effective deterrent to Harper's plans, as both sides advising the Governor General in her dilemma claimed that such conventions supported their position. (Adams, 2009) (Adding insult to injury, it is worth noting that on the second occasion, Harper did not even visit the Governor General in Rideau Hall to obtain her consent, but delivered his request by telephone.)

Nevertheless, a substantial body of expert opinion concluded that the granting of the Prime Minister's request for prorogation in 2008 has set a dangerous precedent. As Andrew Heard has concluded, "By granting prorogation, the Governor General not only allowed the prime minister to escape almost certain defeat in a confidence motion, but she also set the stage for every future prime minister to follow suit. With this precedent, any prime minister can demand that the governor general suspend Parliament whenever he or she believes a successful vote of no confidence is imminent." (2009)

Not content with his success in 2008 with Governor General Michaëlle Jean, Harper has recently attempted to enhance the image of his government and Conservatives in general by associating the party with honours normally handed out by the head of state. As columnist Jeffrey Simpson

noted, “for decades the office of the Governor General has been the place where honours and awards are organized and distributed. Why? Because the office is above politics, represents the entire country and can’t be accused of having ulterior motives, let alone political ones.” Yet Harper’s office recently announced a full-scale review of such honours to determine which ones, (such as the Order of Canada) might be transformed into the Prime Minister’s Awards. Trying yet again to establish the conservative hegemony and shift the culture to the right, Simpson wrote, is an obsession with this government. “For years the Conservatives have felt that many of the country’s most important symbols are tied in the public’s mind with the Liberals”, and Harper has evidently concluded that such a move might have a positive impact without incurring significant political or economic costs. In fact, it might well prove to be an invisible accomplishment in terms of his long-term agenda.

Nevertheless, while Harper’s use of executive power can certainly be described as unprecedented, it pales in comparison with the efforts of his government to test the limits of parliamentary accountability and oversight functions.

Overriding the Legislature

A sample of the tactics the Harper Conservatives were planning to use to ensure control and command of the legislature emerged soon after the House of Commons convened in the fall of 2006, when a massive briefing book destined for the Conservative MPs who were appointed as committee chairs was accidentally leaked to the media. The text left no doubt as to the determination of the government to limit debate, criticism and even information. Committee chairs were provided with instructions on how to obstruct the work of their own committees, including how to ensure government-friendly witnesses, and if necessary how to filibuster. On occasion it was also suggested that Conservative MPs might need to leave a committee to force the end of a meeting that was unfolding badly.

Shortly after, a major altercation developed between the PMO/PCO and the Public Accounts Committee over the interpretation of the new role of financial responsibility assigned to Deputy Ministers in the Harper government’s Federal Accountability Act (FAA). Despite a preponderance of expert advice that sided with the committee and its chair, the PCO issued a contradictory interpretation that effectively limited the scope of the committee’s authority to question top bureaucrats.

While some committees did continue to function reasonably well during the successive minority parliaments, a pattern evolved in which those committees whose subject matter overlapped with the government’s agenda priorities were conspicuously unsuccessful at calling witnesses, holding hearings or obtaining information. This state of affairs came to a head in 2009 when a committee investigating the issue of Afghan detainees was uncovering damaging information on an almost daily basis about what members of Harper’s government knew and when. It was this development that prompted the second prorogation, leaving the committee and the opposition parties in limbo, with no means of communicating their concerns, until after the 2010 Winter Olympics. Still, when Parliament returned the Speaker delivered a clear rebuke to Harper’s

government, indicating that the legislature did have the power to call witnesses and to demand documents, even if the government viewed them as confidential for security reasons. In his decision, Speaker Peter Milliken wrote “It is the view of the Chair that accepting an unconditional authority of the executive to censor the information provided to parliament would in fact jeopardize the very separation of powers that is purported to lie at the heart of our parliamentary system and the independence of its constituent parts.” (*Globe and Mail*, April 28,2010).

Yet despite this decisive finding, the government continued to stall. An independent expert was assigned to review the material and determine how it could be viewed without risk to security. Once the report was filed, a process was established to create a special, smaller body of Mps to view the material, a compromise accepted by the opposition. Further delays ensued. By July 2010 the small group began reviewing more than 40,000 pages provided by the government in an obvious attempt to further delay accountability.

In the meantime, further questions of parliamentary privilege were raised over the government’s refusal to provide relevant financial information related to two major budgetary proposals, the so-called ‘super prisons’ and the purchase of F-35 fighter jets. As even traditional Conservative supporters noted, this behaviour was unthinkable in the past. In an article in the *Globe and Mail* of February 14, 2011, columnist John Ibbitson went so far as to make the comparison between Harper and his Republican counterparts.”The Harper government is using ‘cabinet confidence’ the way the Nixon administration used ‘executive privilege’”, he wrote, declaring that such an excuse was simply “ridiculous” and unjustifiable. His point was underlined by the Parliamentary Budget Officer appointed by the Harper Conservatives, who declared parliament was “losing control of its fiduciary responsibilities” in testimony before the Finance Committee on February 15, 2011.

During this time the imbroglio surrounding Bev Oda over the funding for Kairos had evolved to the point where a question of parliamentary privilege had been raised over whether the minister had misled both a parliamentary committee and the House itself. With two such cases under consideration, it appeared that the Harper government might have overextended itself in terms of pushing the parliamentary envelope.

And in fact in both cases, in unprecedented rulings, the Speaker found the government to be in contempt of parliament. The result was the defeat of the government on a non-confidence motion, the calling of a federal election and the return of a Harper majority, suggesting that the government had correctly calculated the lack of interest of the general public in such issues. Moreover the government has announced it will be proceeding with its proposed budgetary measures, and has no plans to re-open the Afghan file. As political scientist Jonathan Malloy pointed out, In all of these cases the government took advantage of the degree of flexibility inherent in parliamentary conventions, tradition and practice, even if no actual rules were broken. Moreover the Conservatives were only too well aware that “public reaction on this rule-bending has been modest, and largely confined to huffy professors and committed partisans.” (*Ottawa Citizen*, March 16, 2011) Malloy also notes that in defence of their actions the

Conservatives have used tactics commonly employed by the followers of Luntz and Rove, such as framing the question in a favourable light or downplaying its importance, (merely an administrative decision and/or one taken by a biased Speaker), and accusing the opposition of having done the same thing or worse.

Stacking the Senate

A different set of tactics was employed with respect to the second chamber of the legislature, the Senate, in a highly effective utilization of another instrument of power to further the conservative agenda. The Senate, which had long been described by the Reform/Alliance Party as illegitimate because it was unelected, unrepresentative and ineffective, has become one of Stephen Harper's most effective parliamentary tools. After an initial attempt to demonstrate that his government was delivering on a pledge to reform the upper chamber by introducing Bill C-20, a bill most experts viewed as misleading, potentially dangerous and likely unconstitutional, (Hall, 2008; Mendes, 2008) Harper embraced the appointments process with a vengeance. As Liberal-appointed Senators reached mandatory retirement age they were replaced with a host of partisan Conservative appointments despite the party's original commitment to eliminate such practices. Once again, the argument used was that the government had no choice. Since the opposition parties opposed reform, in a Liberal-dominated Senate he was obliged to appoint partisans to ensure passage of his legislation. By January 2010 the Conservatives had a plurality in the upper chamber and by December they had an absolute majority.

This scenario allowed Harper to act with dispatch to eliminate troublesome legislation put forward by the opposition, some of which inevitably passed the House in a minority government situation. Two examples stand out. First, in November 2010 – for the first time in 70 years – a climate-change bill passed in the House to the great chagrin of Mr. Harper was effectively killed *without a hearing or debate* on a procedural technicality eagerly seized upon by the Senate House Leader. Adding insult to injury, Senator Marjory LeBreton once again employed the tactics of Luntz and Rove, referring to the legislation as a “coalition” bill.

Similarly Bill C-393, a bill passed by an overwhelming majority of Members in the House to provide cheap generic AIDS drugs for Africa, was deliberately stalled in the Senate and allowed to die on the order paper with the election. Conservative Senators took direction from Industry Minister Tony Clement, who appeared before the Senate committee examining the bill to urge them to ignore it. His case, according to Dr. James Orbinski, an international health expert, was based on “distortions, deceptions, lies and scare-mongering.” (Caplan, 2011)

Last but hardly least, the politicization of the Senate has been remarked upon by practitioners and observers alike. The previously calm and non-partisan nature of Senate debates has steadily deteriorated under the iron hand of Senator LeBreton and several other senior Conservative senators. Even more noteworthy has been the overtly partisan participation of several recent appointees to the upper chamber, and notably former members of the fourth estate, Senators Wallin and Duffy. In the recent federal election, Wallin in particular was a leading spokesperson for the Harper team, aggressively defending the party line.

However the impact of the conservative agenda on the Senate is unlikely to be as significant as its impact on the Supreme Court and the judicial system, both of which have long been stalking horses for the right's rejection of a number of charter rights. As in the United States, the disdain of Canadian conservatives for the "activist" judges appointed over the years by the Liberals is difficult to overestimate. It is important to note that even the supposedly independent judiciary were included in Harper's last election campaign declaration that voters could safely give his party a majority because ""The reality is that we will have for some time to come a Liberal Senate, a Liberal civil service... and courts that have been appointed by the Liberals. So these are obviously checks on the power of a Conservative government."(2008)

Controlling the Courts

Since the earliest days of Reform and the Blue Book platform which Stephen Harper authored as Preston Manning's policy director, the Canadian conservative agenda has been intent on curtailing the influence of "activist" judges in much the same manner as the American New Right. And in this area – unlike the differences imposed by different legislative systems -- the two groups have a similar ability to act through the executive. Legislation is not required, and hence the approval of the opposition is not an issue, even in a minority parliament. This is particularly important since the consequences of a partisan approach to judicial appointments can easily be seen in the United States, where the court now routinely splits decisions by 5-4, based on their Democrat or Republican appointments. This has not been the case in Canada, where appointments have been pre-screened by bar associations and governments of either Liberal or Progressive Conservative stripe have appointed individuals generally considered to be unbiased. The proof of this approach has been the almost total inability of observers to predict the outcome of contentious cases, unlike the American scenario.

The Harper conservatives clearly see the courts as part of the Liberal and liberal institutional apparatus they must remake in their image, and little time was wasted before they began the process. Among the first acts of the Minister of Justice was to change the selection and appointments process for the courts, adding a law enforcement representative. Harper himself at one point came dangerously close to crossing the fine line between commentary and political direction to the independent judiciary when he opined publicly that he wished they would take a 'harder line' on crime. More recently, Immigration Minister Jason Kenney publicly criticized judges for failing to follow the political direction of the government. In an open letter to Kenney the judges fought back, declaring. "Your public criticism of judges who follow the law but not the government's political agenda is an affront to our democracy and freedoms".

By 2015 four of the nine Supreme Court Justices will have reached retirement age. In the meantime Harper will be able to make numerous appointments to lower courts. As columnist Dan Garder wrote in an article in the *Ottawa Citizen* of May 6, 2011, "Quite conceivably, Stephen Harper will determine the character of the Canadian judiciary for a generation".

Similarly the appointments to bodies such as the Parole Board were quickly changed to reflect a "tough on crime" approach, one which has now been demonstrated to have resulted in fewer

requests for either day or full parole being granted. Nor were the operations of prisons ignored. The highly regarded and demonstrably successful Prison Farm Program was cancelled by the Conservatives despite widespread appeals from experts to preserve it as a classic tool of rehabilitation. More recently, the government has proposed massive expenditures on 'super prisons', a move which incidentally contributed to the defeat of the government on a contempt charge when it refused to divulge the estimated costs.

Of course one of the most well-known and symbolic concerns of the Harper conservatives has been the gun registry, which they not only successfully neutralized with changes to the legislation in the last year, but also managed to use as a political weapon against Members of other political parties who voted against it, having committed themselves to its repeal during a previous election campaign. In addition there have been a raft of amendments to the Criminal Code, made easier by the government's use of both omnibus legislation and the threat of confidence votes. Among the more improbable have been legislation to enable citizens' arrests and lengthen or eliminate the pardon process. Meanwhile the Court Challenges program, on the hit list of conservatives since it was introduced by the Liberal government in 1982 to provide assistance for Charter defences, was eliminated by the Harper government in 2006 as a "cost-cutting measure."

Yet for all its efforts to modify the behaviour of the courts and 'strengthen' the criminal justice system, the Harper government has also demonstrated an unprecedented lack of respect for judicial decisions. A case in point is that of Omar Khadr, the child soldier and Canadian citizen imprisoned and tortured in the American facility at Guantanamo. On the one hand, the government has been remarkably successful at framing the discourse on this issue; Khadr is not a child soldier but a terrorist, and not a native-born Canadian but an interloper. As such, despite repeated decisions from the courts finding that Khadr's rights have been violated and ordering the government to take action, it has remained adamantly passive, aided in large measure by public disinterest. This in turn is likely caused at least partially by the disinformation campaign.

As one human rights expert argued, "a different narrative would have produced a different result."

Another fascinating example of the government's desire and/or ability to avoid legal responsibility appears to be taking place in the infamous "in and out" election expense scandal. Despite findings by lower courts that the process was in violation of the Elections Act, and the laying of charges against four senior Conservative campaign officials, the Harper Conservatives continue to paint a picture of an administrative difference of opinion. Having successfully delayed the outcome of the appeals process until after the election, it may now matter far less to the government what the ultimate decision of the courts will be. Nevertheless the Conservatives have taken advantage of every opportunity to use the Rovian defence that other parties have done the same thing, a factually incorrect comparison which the public appears to have accepted and which a variety of experts have tried in vain to rectify.

Muzzling and Manipulating the Bureaucracy

Although a companion paper covers the relationship between the Harper Conservatives and the public service in detail,² it is worth mentioning the federal bureaucracy here in the context of the government's agenda. Two points come to mind immediately. As noted above, much of that agenda involves promoting a 'tough on crime' approach to the criminal justice system, despite the fact that there is no expert opinion or empirical data to suggest that this approach is effective at improving the safety of citizens, the stated objective of the agenda. Similarly, the government is intent on NOT pursuing a variety of measures to promote environmental sustainability, and especially concerned with maintaining a positive image for the energy sector in Alberta, including the oilsands. In both cases, the expert advice of professional bureaucrats is therefore unhelpful. More importantly, their expertise could prove counterproductive if it were to become public knowledge.

As a result, the Harper Conservatives have embarked on a massive campaign to muzzle public servants, one which has been widely reported and which has caused considerable strain in the relationship. Nevertheless it appears to have accomplished its short-term objective. Neither the media, the academic community or interest groups are able to obtain even the most basic information from government departments in a timely fashion, a situation accentuated by the MEP process mentioned above.

In addition, as a variety of parliamentary watchdogs including the Access to Information Commissioner have publicly stated, the government has intervened directly within the bureaucracy to prevent access to information in an unprecedented fashion. The resignation of ATI Commissioner Robert Marleau after his tabling of a scathing report, in which he accused the government of deliberately sabotaging the process, was followed by international evaluations that placed Canada's ATI performance well below that of many OECD countries, and of previous evaluations. The culmination of the government's determination to limit access to information was the recent and highly controversial decision to cancel the long-form census, a move which resulted in the resignation of the Chief Statistician.

At the same time, the government has actually increased the size of the public service, rather than imposing draconian cuts as had been anticipated by many observers. The overall increases, however, conceal the imbalance between areas which converge with the government's agenda and those that do not. While the Environment Department has seen significant reductions and the elimination of a number of specific programs, the Defence Department and the RCMP have made major gains.

Similarly programs such as the Forum of the Federation have seen all of their funding withdrawn, as have several key regional offices of the Human Rights Commission and a variety of women's rights and cultural programs. Another well-known agenda conflict involved the Centre for Rights and Democracy, where not only funding was cut but the executive and board

²“Strained Relations: The Conflict Between the Harper Conservatives and the Federal Bureaucracy”, Paper presented to the Annual CPSA Meeting, Waterloo, May 17,2011

of directors were replaced for reasons similar to the KAIROS case. Meanwhile a new program has recently been established within the Foreign Affairs Department to promote religious freedom. As one observer pointed out, this is a hot button issue for the very evangelical Christians the Harper Conservatives have so assiduously courted in the same fashion as the New Right. And it is another non-legislative, “low cost, high yield pledge that resonates deeply with evangelicals, without the divisive risks of explosive sexuality issues.” (Malloy, 2011)

In keeping with their determination to realign the political culture in the long-term, the Harper Conservatives have also employed a number of classic tactics of the new right to reinforce their image as a governing party. Most notable was their controversial directive to all government departments to refer to “the Harper government” rather than “the federal government” or “the government of Canada” in all press releases and other official communications. Other examples include their ill-advised attempts to take the credit for infrastructure projects through the use of bogus government cheques, and the many changes to government websites – including the prominent use of blue – to emphasize conservative themes about the military and the “true north”. Similarly, the government-commissioned Paille report inadvertently revealed the Conservatives had already spent more on polling and commissioned more polling studies than their Liberal predecessors by 2007. (*Globe and Mail*, Dec. 15, 2007)

Despite these various interventions, though, the Harper Conservatives’ principal response to the federal public service has been indifference. In many cases a parallel political bureaucracy in PMO and ministerial offices has taken up the slack, and in any event PMO is the primary source of policy development. For the Harper Conservatives, it is not possible to keep the bureaucracy – in their view the most likely source of liberal propaganda -- on too short a leash. Relations between the politicians and the mandarins are not merely strained but largely non-existent. Implementation is a one-way street, with top down direction in minute detail controlling every aspect of many operations. In this respect, the ability to manage the bureaucracy and use it to pursue their own ends appears to have been successful, at least for the short-term.

Perhaps even more remarkable – and certainly unexpected -- is the impact which the conservative agenda has had on the media and communications industry in Canada, again following in the footsteps of the New Right.

Managing the Media

Like other democratic institutions, Canadian conservatives have long viewed the media as an instrument of liberal propaganda. Although the CBC has been the lightning rod for this discontent, the Harper conservatives came to power with an even greater dislike and mistrust of the fourth estate, which they additionally viewed as representing a central Canadian bias. As a result, from the beginning, in moves that would have been unimaginable under any previous administration the Harper government has managed to control its image in the media. This has been accomplished through a variety of measures which, individually, were not simply unprecedented but unthinkable in earlier times. The examples are telling. The prime minister refused to participate in scrums. He insisted that a line-up of questioners be provided to his press secretary in advance. He refused to allow his ministers to speak with the media at all. And his office adopted a pattern of behaviour which favoured local and regional media over the national media and the parliamentary press gallery. Even among the national media the PMO played favourites, granting interviews to channels other than the CBC on a number of occasions.

More recently, the PMO has prevented media access to a number of events, and then provided prepared texts and photos to media outlets if they wish to 'report' on the events in question. Not surprisingly, Harper's communications adviser has frequently been described as the most important person in the PMO after the Chief of Staff. Although the media in general objected to almost all of these measures, in the end they were obliged to either fall in line or have little to report. Only a handful of print media columnists have dared to criticize or even report on this state of affairs.

Not content with this degree of control over the message, the Harper PMO has more recently intervened directly in decisions of the CRTC, the allegedly arms'-length agency, over access to the internet, and the allocation of a top category license to the new Canadian version of Fox news. In another unprecedented move, a communications adviser in the PMO was hired by the new conservative channel as its senior executive, a move which appeared to be in direct violation of Harper's own lobbying and conflict of interest legislation. In addition the prime minister has not only appointed a close friend of his communications director to the number two position at the agency, but has made it clear that his government would review and/or overturn the CRTC decision on the internet, resulting in the agency's announcement that it would review its own decision...

Conclusion

Limitations of time and space prevent the exploration of other areas of potential interest, such as the Conservatives' defunding of a variety of 'liberal' interest groups and NGOs, and the promotion of others, as well as their vigorous approach to the promotion of right wing think tanks and overt criticism of dissenting expert opinion, and particularly of academics. However, the behaviour outlined above with respect to a number of democratic institutions and parliamentary conventions does appear to suggest a deliberate and targeted approach to the promotion of the conservative agenda, both short and long-term, and the creation of an

alternative conservative narrative

A number of expert observers have concluded that the progress made to date is indeed significant. As W. T. Standbury has concluded:

In his five years as Prime Minister, Stephen Harper has provided much evidence that he has serious authoritarian tendencies. He has established a governing culture based on a combination of secrecy, deceit and contempt of Parliament. Harper has ruthlessly exploited the vast array of powers put into the hands of any PM by Canada's particular version of the Westminster model. But he has gone much further by governing 'outside the box' of constitutional conventions that rely on custom, unwritten constitutional conventions and self-restraint. (2011)

The question is why. Why is such control necessary? It is difficult to believe that the rationale is simply the need to stay in power. As the late James Travers concluded, it is more likely because of the determination to accomplish as much as possible in whatever time is available. "Determination and the patience to alter the country's course one incremental step at a time are core characteristics of a prime minister who is changing Canada more fundamentally than friends or foes often recognize...Measuring Harper's five-year realignment of Canada demands no more than deconstructing what the country is – and isn't – talking about." (2011)

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